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CONFIDENTIAL

REPORT

of the

**DEPUTATION OF THE GOVERNMENT OF
INDIA**

To

SOUTH AFRICA

WITH APPENDICES

1926



SIMLA ;
GOVERNMENT OF INDIA PRESS
1926.

CONFIDENTIAL

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,

Education, Health and Lands Department,

SIMLA.

SIR,

Introductory.—We have the honour to submit our report on our deputation to the Union of South Africa. The deputation was sent out, in the first instance to “collect information regarding the economic condition and general position of the Indian community in South Africa” so as “to afford material to the Government of India for use in their discussions with the Union Government in connection with the Areas Reservation, Immigration and Registration (Further Provision) Bill.” When the Government of India decided to accept the offer of the Union Government to refer the Bill to Select Committee before the second reading, provided that they (the Government of India) agreed to place evidence before it, the deputation was selected to give evidence in their behalf before that body. Finally, it had to carry on informal negotiations with the Union Government to arrive at an acceptable basis for a conference between the two Governments on the Indian question in South Africa. The Executive of the South African Indian Congress requested the Government of India to postpone the departure of the deputation as the Congress was sending out a representative deputation of its own to India; but, since the Bill was to come on for consideration in the Union Parliament early in 1926, and the information wanted by the Government of India was urgently required, it was decided not to delay the departure of our deputation. Accordingly, the leader, Mr. G. F. Paddison, C.S.I., I.C.S., Commissioner of Labour, Madras, the Hon’ble Syed Raza Ali, Member of the Council of State, Member, Mr. G. S. Bajpai, C.B.E., I.C.S., Acting Deputy Secretary to the Government of India in the Department of Education, Health and Lands, Secretary, and Mr. C. S. Ricketts, Assistant, sailed from Bombay by the s.s. “Karagola” on the 25th November 1925. Sir Devaprasad Sarvadhikary, Kt., C.I.E., third Member who was appointed later, left by the following boat on December 4th. Mr. Paddison’s party reached Durban on the 16th December. Sir Devaprasad landed at Durban on the 20th December and at once proceeded to join his colleagues at Johannesburg where he arrived on the last day of the year.

2. The deputation spent 12 days in Natal, 10 days in the Transvaal and nearly 3½ months in the Cape Province. Owing to his late arrival, Sir Devaprasad was unable to participate in the investigations in Natal which included visits to Stangar, Verulam, Tongaat and other areas round about Durban, Pietermaritzburg, Ladysmith, Glencoe, Dundee and Vryheid. In the Transvaal, the places visited were Johannesburg, Vrededorp, Benoni, Springs, Boksburg and Germiston on the Rand, Potchefstroom and Pretoria. In the Cape Province, Kimberley, Port Elizabeth, East London and Cape Town

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were the main centres of inquiry. Messrs. Paddison and Bajpai did to East London or Port Elizabeth as it was considered desirable to divide temporarily at Cape Town, which, as the Legislative Capital of the provided the most convenient centre for watching developments.

3. *Method of Inquiry.*—The comparative shortness of our stay in and the Transvaal was due to the exigencies of the situation. The Reservation Bill was expected to be reintroduced in Parliament early legislative session which was to open on the 22nd January 1926. Our therefore, had to be completed in sufficient time to enable us to report conclusions to the Government of India not later than the middle of January. As the time at our disposal was short, our inquiries had to be intensive. We had devoted considerable time on the voyage to the study of the provisions of the Bill and the sequence of events of which it was the product. We therefore, able to define for our own guidance, the scope of our investigations after a brief consultation with the representatives of the South African Congress and its affiliated bodies. A meeting of members of the executive of the different provinces had taken place at Durban just before the arrival of Mr. Paddison's party. They kindly decided to stay on to confer with his colleagues who thus had the advantage of their advice in framing the itinerary and general programme of work. For statistical data it was necessary to seek the aid of officials and public bodies whose primary concern was to collect and maintain them. To get a correct appreciation of the atmosphere we felt that personal, informal and, where so desired, discussion with representative Indians and Europeans would yield the best results. We also decided to consider any memoranda that individual bodies interested in the problem might submit to us. The method of private discussion we followed largely throughout our inquiry. It helped to win the confidence of many who, but for the assurance of privacy, probably not have given us the benefit of their experience and opinion. We have mentioned few names, whether to support a statement or to indicate to whom our debt of gratitude for assistance courteously and ungrudgingly rendered is heavy, it is not because their number was small but because the pledge of secrecy precludes the possibility of a public invocation of authority or of our obligation. Happily this restriction does not apply to acknowledging the help we received from Mr. J. R. Hartshorne, Principal Immigration Officer and Registrar of Asiatics for the Transvaal, who was our official cicerone during the greater part of our stay in the Union, or to various Government and Municipal officials with whom we had to deal in the course of our inquiry. We are equally happy to record our appreciation of the unfailing co-operation which was extended to us by the principal office of the South African Indian Congress and other bodies whether affiliated or otherwise. Messrs. Kajee and S. R. Naidu in Natal and Messrs. and Kavadia in the Transvaal were indefatigable. In the Cape Province Dr. Gool and Mr. Nooruddin proved very helpful. Mr. Andrews who went out to South Africa by the Indian Citizenship Association and devoted services to the Indian cause on this occasion deserve the praise, also gave us most valuable assistance. We would also take this opportunity to express our gratitude to the Government of the Union of South

for their courtesy and ready co-operation in the conduct of our inquiry, and for the arrangements which they made for our travelling. Of Indian hospitality in every centre we visited, we cannot say enough. The highest tribute we can pay to it is that it was worthy of India.

4. As we visited practically every centre in the Union which had a considerable Indian population or large Indian interests, we were able to acquire a fairly comprehensive, if necessarily, hurried idea of the conditions under which the different classes of Indians live and work. These visits of inspection proved invaluable in supplementing the information that we were able to collect from witnesses.

5. CHAPTER II.—*The Inquiry*.—The year 1921 is a convenient starting point for our survey. The last census of the Union was completed in that year. The Asiatic question formed the subject of an authoritative inquiry in 1920-21 with special reference to Asiatic rights in respect of trade and acquisition of immovable property. In Natal, anti-Asiatic feeling found expression in the Provincial Legislative Council in a definite proposal to take away the municipal franchise from the Asiatic. We deal later on with the origin and growth of this feeling. At this point we shall endeavour to analyse the data collected at the last census and since, in so far as it helps to illustrate the general and economic position of the Indian community in South Africa.

6. *Figures of population*.—The total Asiatic population of the Union in 1921 was 165,731. 161,339 of these were Indians of whom 102,323 were born in South Africa. Between the censuses of 1911 and 1921 the Asiatic element increased by 8.89 per cent. or at a rate considerably less than 1 per cent. per annum. The corresponding figures of progression for the European population were 19 and 1.9 per cent. In this connection it must be noted that during the decennium ending 1921, 26,935 Indians returned permanently to India. (See Appendix I). In the Cape and Natal Provinces the males decreased by 13.02 per cent. and 2 per cent., respectively, and the bulk of the numerical increase was among females. This was due, partly to natural causes but, mainly, to the preponderance of males among the persons who were repatriated to India during this period.

The provincial distribution of Asiatics at the census of 1921 was as follows:—

Cape Province	7,095
Natal	141,649
Transvaal	15,991
Orange Free State	395

73,205 Asiatics were resident in towns, the rest in rural areas. Classified according to age, 50,294 were below 10; 31,507 were between 10 and 19; 14,663 between 20 and 39; 19,104 between 40 and 50 and 14,164 over 50. According to sex 97,386 were males and 68,395 or 41.27 per cent. were females.

7. *Religion*.—Over two-thirds of the total Asiatic population were Hindus, 16 per cent. Mohammedans, and 5.3 per cent. Christians.

50,294
 31,507
 14,663
 19,104
 14,164

8. *Vocational distribution of Asiatics in the Union.*—The following table which are taken from a special report relating to the Asiatic population of the Union issued by the Census Department in 1924 give details of the distribution of Asiatics in various occupations :—

Class of Personal Occupation. (15 years of age and over).	Natal.	Transvaal.	Union.
Fishermen	121	..	14
Agricultural Occupations	19,023	358	19,47
Mining and Quarrying Occupations	2,181	184	2,02
Workers in the treatment of non-Metalliferous Mine and Quarry Products. (excluding workers in Gas Works)	19	..	1
Makers of Bricks, Pottery, Glass, etc.	200	2	20
Workers in Chemical Processes, Makers of Paints, Oils, etc.	453	1	45
Metal Workers (not Electro-plate or Precious Metals)	398	29	44
Workers in Precious Metals and Electro-plate	201	4	21
Electrical Apparatus Makers and Fitters (not elsewhere enumerated) and Electricians	8	1	1
Makers of Watches, Clocks and Scientific Instruments	62	7	7
Workers in Skins and Leather and Makers of Leather and Leather Substitute Goods (not boots and shoes)	18	1	2
Textile Workers	10	10	2
Makers of Textile Goods and Articles of Dress	382	247	77
Makers of Foods, Drinks and Tobacco	952	21	1,01
Workers in Wood and Furniture	773	96	93
Makers of and Workers in Paper, Printers, Bookbinders, Photographers, etc.	268	5	28
Persons employed in Gas, Water and Electricity undertakings (not elsewhere enumerated)	2	..	..
Persons employed in Transport and Communications	15	..	1
Commercial, Finance and Insurance Occupations (excluding Clerks)	403	114	60
Persons employed in Public Administration and Defence (excluding Professional men and Typists)	44	..	4
Professional Occupations (excluding Clerical Staff)	70	1	7
Persons employed in Entertainment and Sport	2	..	..
Persons engaged in Personal Service (including Institutions, Clubs, Hotels, etc.)	1,207	106	1,18
Clerks and Draughtsmen (not Civil Service or Local Authority) Typists .. .. .	..	..	..
Warehousemen, Storekeepers and Packers	11	2	14
Other and Undefined Workers	27,403	2,302	30,68
Retired	78	3	8
Total	30,984	2,550	34,66

(Note.—Details are not given regarding the Orange Free State and the Cape as the Asiatic population of those Provinces is small. They are, however, included in the total for the Union.)

The following figures are taken from the Census of Manufacturing Industries 1917-18. No later figures are available, as the Statistical Council decided, in order to simplify the returns, that the particulars should be furnished for subsequent years only in respect of all non-European races combined:—

	Natal.	Transvaal.	Union.
Builders, Bricklayers, Stone and Slate Workers, Contractors	272	14	136
Painters and Decorators (not Pottery)	226	8	245
Workers in mixed and Undefined Materials (not elsewhere enumerated)	46	..	51
Persons employed in Gas, Water and Electricity undertakings (not elsewhere enumerated)	12	..	12
Persons employed in Transport and Communications	2,958	65	3,513
Commercial, Finance and Insurance Occupations (excluding Clerks)	4,625	4,734	12,073
Persons employed in Public Administration and Defence (excluding Professional men and Typists)	1,720	15	1,735
Professional Occupations (excluding Clerical Staff)	328	60	412
Persons employed in Entertainment and Sport	68	9	82
Persons engaged in Personal Service (including Institutions, Clubs, Hotels, etc.)	4,250	1,116	6,006
Clerks and Draughtsmen (not Civil Service or Local Authority) Typists	518	337	934
Warehousemen, Storekeepers and Packers	218	73	310
Stationary Engine Drivers, Dynamo and Motor Attendants	239	1	255
Other and Undefined Workers	4,605	633	9,510
Retired	192	2	222
Total	49,002	8,055	61,909

Occupations of Asiatics in the Union—Females Census 1921.

<i>Class of Occupation (Personal).</i>	Natal.	Transvaal.	Union.
Fishermen	2	..	2
Agricultural Occupations	1,776	7	1,784
Makers of Bricks, Pottery, Glass, etc.	4	..	4
Workers in Chemical Processes, Makers of Paints, Oils, etc.	16	..	16
Metal Workers (not Electro-plate or Precious Metals) .. .. .	..	..	..
Workers in Skins and Leather, and Makers of Leather and Leather Substitute Goods (not boots and shoes)	13	1	14
Textile Workers	13	..	15
Makers of Textile Goods and Articles of Dress	14	15	42
Makers of Foods, Drinks and Tobacco	63	..	63
Workers in Wood and Furniture	15	..	17
Makers of and Workers in Paper, Printers, Bookbinders, Photographers, etc.	3	..	3
Workers in other Materials	10	..	10
Workers in mixed or Undefined Materials (not elsewhere enumerated)

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Industrial Census of 1917-18.

Province and Industrial Area.	Number of Employees.			W.
	Male.	Female.	Total.	
Cape	277	12	289	1
Natal	10,559	1,250	11,799	33
Transvaal	231	2	215	1
Orange Free State	11	..	11	..
	11,040	1,273	12,313	36
Cape Peninsula	132	2	134	..
Port Elizabeth	54	5	59	..
Durban	4,190	412	4,602	18
Witwatersrand	178	2	180	1
<i>Class of Industry—</i>				
I. Treatment of Raw Material, etc. ..	87	8	95	..
II. Process in Stone, etc. ..	443	4	447	1
III. Working in Wood ..	501	80	581	1
IV. Metal, Engineering, etc., Works ..	645	..	645	2
*V. Preparation of Food, etc. ..	6,358	1,020	7,384	20
VI. Books, Paper, Printing, etc. ..	285	..	285	1
VII. Clothing and Textile Fabrics ..	279	60	345	1
VIII. Vehicles, etc. ..	78	..	78	..
IX. Ships and Boats ..	50	..	50	..
X. Furniture, etc. ..	300	4	313	1
XI. Drugs, Chemicals, etc. ..	1,129	85	1,214	3
XII. Surgical, etc., Instrumenta ..	..	..	..	..
XIII. Jewellery, etc. ..	31	..	31	..
XIV. Heat, Light and Power ..	102	..	102	..
XV. Leather and Leatherware ..	139	..	139	..
XVI. Building and Contracting ..	86	..	86	..
XVII. Other Industries ..	18	..	18	..

* Class of Industry No. V—Preparation of Food, etc.—is mainly composed of employees in the sugar industry, which, in the year 1917-18, employed 5,257 Asiatic and 811 Asiatic females.

9. *Economic Conditions.*—(1) *Merchants and traders.*—No accurate figures of the income of Indians engaged in trade and the more lucrative professions are available as the returns of income-tax do not show the races assessed separately. All we could elicit from personal enquiries was the income of Indians engaged in trade varies considerably. At one end of the scale is the wholesale merchant or large retailer who reaps a handsome profit every year. At the other end is the petty trader or hawkers who manages to eke out a living. Some of the richer men own valuable property in the principal towns in Natal, the Transvaal and the Cape. The follo

table gives figures of the value of immovable property owned by Indians in some of the more important municipalities from which alone we were able to obtain the necessary information :—

	£
Durban	1,248,740
Pietermaritzburg	138,820
Ladysmith	116,455
Newcastle	46,790
Dundee	25,256
Escourt	22,905
Pretoria	150,000
Matieling	21,876

(2) *Agricultural Farmers and Market-gardeners.*—The number of Indians who do farming on a large scale is strictly limited. We visited the estate of one of the sons of the late Mr. Bodha Singh near Stangar which is approximately 1,000 acres in area and is devoted to the cultivation of sugar cane. Mr. Parekh, a wealthy merchant of Durban, also has a large farm. In Glencoe we met one Mr. Singh who acquired a large plot of land about two years ago. In the Transvaal Mr. D. Patel also has a farm not far from Vereeniging. But the average Indian cultivator has small holdings varying from 1 to 4 or 5 acres and his main occupation is market gardening. These small cultivators abound in the neighbourhood of Durban but are to be found in every township in Natal, except in the northern districts which were annexed after the last Boer War. Some of them own their land but most of them lease it, generally from Europeans and, in some cases, from Indian landlords, on monthly or yearly tenure. As the Asiatic Inquiry Commission pointed out, the position of Indian squatters on European land is insecure for they are frequently pushed out after they have cleared the bush and developed the land. Besides the market gardener, there is the *ex-indentured* labourer who bought a small plot of land out of his savings and now grows his own cane which he sells to the nearest factory. The number of these is considerable. We tried to ascertain separately the area of agricultural land held by Indians in Natal under proprietary or leasehold title, but without success. The Report on the Agricultural and Pastoral production of the Union published by the Census and Statistics Office gives the area of Indian farms under sugar cane only. The total area owned by Indians in Natal is 83,000 acres. It was impossible for us to ascertain the average monthly earnings of this class of Indian. Most of them are illiterate men and keep no accounts. The great majority among them did not appear to us to be strikingly prosperous. Rather, they seemed to be on the border line of poverty which, in no small measure, accounts for the dilapidated and somewhat insanitary condition of their dwellings. The rent they pay is on the whole high, and the margin of profit just sufficient for subsistence.

(3) *Agricultural labour.*—Separate figures of wages paid to Asiatics in different industries also do not appear to have been collected. From the labourers engaged in the sugar industry whom we met, we ascertained that their wages vary from 50 shillings to £6 per mensem besides rations, the cost of which is estimated from 9d. to 11d. per diem. The higher wage is paid to the Sirdar who is in charge of gangs working in the fields, and to skilled operatives in the sugar refineries. The average monthly earnings of the male field labourer approximate to 50 shillings per mensem besides rations. These workmen are housed in barracks constructed by the employer, and are also entitled to free medical treatment for which the employer has to pay a daily fee of 1s. 6d. for the period of a patient's detention in hospital, and a flat monthly contribution of the same amount for each labourer employed. The condition of the barracks varies very much. On the Sanderson estate at Tongaat, we were shown a settlement consisting of separate cottages, each standing in its own compound, which was a model of cleanliness. On the other hand, near South Coast Junction, we saw a collection of narrow, low-roofed quarters, built in rows and devoid of privacy, in many of which families of five were residing, though the accommodation would barely suffice for two. It is inevitable that the general sanitary condition of these dwellings should be unsatisfactory. The blame for this lies largely with those responsible for the construction and upkeep of these quarters. Unfortunately, the majority of barracks which we were able to inspect, whether on cane fields or on mines, approximate to these in type. As regards the efficiency of the Indian agriculturist, we heard only praise from the majority of the people whom we saw. He is more industrious and more reliable than the native whose work is haphazard and whose sojourn in employ uncertain. Generally the Kaffir cannot be trusted to keep an engagement for more than six months. His instinct is not to work unless poverty compels him to.

(4) *Mining Industry.*—The majority of Indians are employed on the coal mines in Natal for "picking, lumbering, loading, track clearing", as pump attendants, drivers, greasers, fitters, drill sharpeners, stokers, haulage boys, etc. If the Colour Bar Bill becomes law the semi-skilled or skilled Indian employees on the mines will suffer. Their average wages vary from 1s. 10d. to 4s. 8d. a shift, or £2-10-0 to £6 per mensem besides rations, the cost of which varies from 8d. to 10½d. per day. Generally, they do a class of work for which neither the white man nor the native would be an adequate substitute. The Manager of the New Tugela Colliery in the Vryheid district told us that his Indian employees were in every way efficient and satisfactory. On gold mines the number of Indians working is small. In 1924 there were 138. None are employed on diamond mines. We were informed that the diamond companies prefer to standardise their labour force as much as possible, and draw it mainly from natives of whom even convicts are employed. From figures supplied to us by the Government Engineer of Mines, it appears that the employment of Indian in mines is diminishing. Between 1920 and 1924 there was a drop from 3,139 to 2,224.

10. *Education.*—It was only for Natal and the Transvaal that we were able to get figures of Indian pupils receiving instruction in Government-aided or private schools. In the Cape Province, Indians attend the same institu-

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tions as the coloured people or, in a few cases, natives, and are not separately classified. The table at Appendix XIII gives the information that we were able to collect in respect of Natal and the Transvaal. Indian are not, in practice, admitted into Universities. The only collegiate institution where a few Indians have, as a matter of grace been admitted, is the College for natives at Fort Hare in the Cape province. In Natal for elementary education Indians have to pay fees while European children do not. This, in spite of the fact, that both races pay the wheel tax which is supposed to be in force for education.

The points worthy of note are (1) that there is no provision in the Union for the higher education of Indians, and (2) that, except in the Cape province, even for school education, the facilities provided fall far short of requirements. Private munificence, of which the institutions founded by the late Parsi Rustamjee in and about Durban, and the Indian school at Johannesburg, are noble monuments, might, if it were more generously forthcoming, partially help to improve the situation. But no real progress can be made without substantial Government aid.

11. *Sanitation.* (a) *In rural areas.*—We have already referred to the poverty of the small Indian cultivator which is mainly responsible for the insanitary condition in which he lives. In the suburbs of Durban and the villages in the adjoining districts which we visited, we found that there is little effective sanitary control and little attempt made to provide sanitary amenities. We were told that this state of affairs is not the result of racial discrimination but of financial stringency. This may be one cause, but it is important to recognise that without organised and sympathetic effort on the part of the authorities, it is impossible to expect any real improvement. Individual effort must be supplemented by State assistance.

(b) *Urban areas.*—The problem of rural sanitation concerns the Indian mainly in the province of Natal. In the Transvaal it is pressing in the "so-called" Asiatic Bazaars which have been established near proclaimed townships on the Witwatersrand. We visited these areas at (1) Springs, (2) Benoni, (3) Boksburg, (4) Germiston and (5) Pretoria. We also visited the Asiatic Bazaar at Potchefstroom, which is not on the Witwatersrand, and Vrededorp which is a slum area near Johannesburg in which Indians and others reside. In paragraphs 121—125 of their report, the Asiatic Inquiry Commission described these bazaars as 'neglected', 'insanitary', 'crowded', and "not calculated to inspire confidence in a general policy of segregation." We can add little to this description. Boksburg and Vrededorp still enjoy their unenviable pre-eminence. In the other bazaars conditions are not much better. There is a regular sanitary and water service provided by the Municipality, and in some bazaars there are electric lights in the streets. But these amenities only serve to accentuate the general impression of neglect and squalor which alone lingers in the mind after a visit to these places. The houses are decrepit and unkept; and the roads are worn and in disrepair. It is possible that these conditions are allowed to continue because the local authorities for some reason consider that they would not be justified in utilising rates and taxes which they levy from Europeans and Indians outside for improving Asiatic locations. The

Indians who met us pointed out that even if they could overcome their repugnance to live in such an environment, the insecurity of tenure on which they are allowed to hold land would be an insurmountable obstacle to the investment of capital in building. The point requires explanation. At Boksburg there are two bazaars and the exact tenure on which Indians hold land in the older is somewhat obscure. In the new bazaar in this township and, with one exception, Pretoria, in the others that we have enumerated, Indians can only construct houses on plots technically known as "stands" which in strict theory the Municipality leases out to them from month to month. We pointed this out to the Mayor of Germiston who recognised the force of the Indian argument. He promised to give the matter careful attention. But real progress can only come when local authorities generally become imbued with a genuine spirit of sympathy with the Asiatic. At present the Asiatic lacks the municipal vote which constitutes the most effective weapon to secure redress. The local authorities who owe him no responsibility are naturally apt to overlook his grievances. And things continue as they are.

(c) *Indian Shopkeepers.*—Complaints were made to us by several European that the Indian shopkeepers are not sanitary in their habits. We inspected a large number of their residences and, as was to be expected, conditions were far from uniform. Some houses were as good as those of Europeans of the same position in life. Some were even better. A good number were bad. The remedy for these is a judicious application of sanitary laws.

12. *Civil and Political Status.*—In the Transvaal and the Orange Free State the Indian has neither the political nor the municipal franchise. In Natal he was deprived of the political franchise in 1895 but continued to be eligible for the municipal vote until the passing of the Natal Boroughs Ordinance (No. 19 of 1924) and the Natal Township Franchise Ordinance (No. 3 of 1925) which took away the right from all except those who were already registered. He enjoys both the political and the local franchise in the Cape province.

13. *Certain Aspects of Colour Bar.*—There are certain general phases of the Colour Bar as it operates in Natal and the Transvaal and, on railways, practically throughout the Union, an account of which should prove of interest. In these two provinces there are separate counters for Europeans and non-Europeans in post and telegraph offices, while even in law, courts separate accommodation is set apart for European and non-European visitors. At Durban we saw a notice issued by the Registrar of the provincial division of the Supreme Court requesting persons desirous of obtaining processes of the Court to send Europeans only for the purpose as non-Europeans would not be attended to. This order, we understand, has only recently been promulgated. In trams, only a few back benches on the top are available for non-Europeans. On railway trains, non-Europeans can not travel except in carriages reserved for them. The accommodation so provided is limited and not always of good quality. Indian gentlemen of position especially resent this. Only the Cape Province is free from these restrictions, except in regard to long distance all way journeys on the main lines. Hotels, theatres and cafes throughout the Union do not as a rule admit Indians. In Pretoria we found that even license issued to barbers specified the class of person—coloured or non-coloured—whom the licensee could serve in his shop.

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14. *The Problem.*—We shall now address ourselves to the Indian problem of which the solution contemplated in the Areas Reservation, Immigration and Registration (Further Provision) Bill was immediately responsible for our visit to South Africa. The Asiatic Inquiry Commission which carefully investigated the position in 1920-21 had unanimously recommended that there should be no compulsory segregation of the Asiatic whether for purposes of residence or of trade. Like its predecessor the Class Areas Bill of 1924, the Areas Reservation Bill sought to make both commercial and residential segregation compulsory. The Commission, with one dissentient, proposed that in Natal the right of Asiatics to acquire and own land for farming or agricultural purposes should be confined to the coast belt. This proposal was not included in the Class Areas Bill of 1924. Clause 10 of the new bill purported to apply the restrictions proposed by the Commission for agricultural land to all immovable property except in class areas. The Commission found that there was practically no illicit immigration of Asiatics into the Union and merely suggested that the existing law should be strictly enforced. The new Bill prescribed a time limit after which even the wives and children of Asiatics lawfully domiciled in the Union may not be admitted into the country, and sought to impose fresh restrictions on inter-provincial migration. Our first duty, therefore, was to endeavour to ascertain the causes to which this departure from the recommendations of the Commission was due. We felt it to be equally important to find out the general attitude of the Indian community towards the various provisions of the Bill.

15. It was to the European that our inquiries relating to the reasons for the adoption of the policy underlying the Bill were primarily directed. They revealed the existence of an almost unanimous feeling that the Indian was a menace, and that the Bill provided at least a partial remedy if not a perfect panacea. The chief complaints against the Indian made to us in Natal were that (1) he kept the European out of (a) trade and (b) to a lesser but growing extent, industry, (2) sought social equality with the European by penetrating into residential areas where his presence was unwelcome and tended seriously to lower the value of adjoining European property, (3) was distrustful of Government whose most beneficent measures e.g. the Public Health Ordinance, 1923, he challenged and (4) constituted a distinct and unassimilable element in a country where political, economic and social problems were already complicated by the existence of races so fundamentally different, as the Native and the European. In the Transvaal stress was laid mainly on trading competition. In the Cape where his numbers are comparatively small and racial relations more tolerant—this does not imply that the Indian has no grievances in the Cape Province—we found little disposition on the whole to challenge his rights. His success in trade was attributed to his low standard of living, which, it is said, enables him to get assistants of his own race at a lower wage, and generally to effect substantial economies in overhead charges. His inacceptability as a neighbour was said to be due to his habits which differ from those of the European considerably, and to strong colour feeling which is inherent in the members of both the white races domiciled in the country. If we had anticipated the complaints in regard to commercial competition, after the definite conclusion recorded on the

subject by the Asiatic Inquiry Commission in paragraph 173 of their report we were less prepared for the allegation that the Indian was also ousting the European from skilled trades. We decided to investigate both.

16. *The Indian in Trade. (i) Natal.*—The Provincial Secretary, Natal kindly supplied us with comparative statistics of licenses for trading issued to Europeans and Asiatics respectively in 1921, and 1924. The figures for the more important towns are tabulated below:—

	Europeans.		Indians.	
	1921.	1924.	1921.	1924.
Charles Town	7	7	21	15
Dundee	111	118	61	57
Durban	2,078	2,438	1,938	2,041
Escourt	34	38	26	17
Greytown	62	60	39	29
Harding	14	16	6	10
Howick	9	7	6	7
Ladysmith	76	86	101	124
Mooi River		24		12
Newcastle	31	38	41	45
Richmond	17	22	19	17
Stanger	13	12	55	60
Verulam	15	16	27	34
Weenen	5	5	6	6
Pietermaritzburg	417	448	563	581
	2,889	3,334	2,909	3,065

Increase in European licenses 445, or 15 per cent.

Increase in Indian licenses 146, or 5 per cent.

We also took the precaution of inquiring from the Provincial Secretary, what we saw at Pietermaritzburg, and the responsible officials of all the Municipalities in the Provinces that we visited, whether the restrictive policy pursued by local bodies in the past in the matter of granting trading licenses to Asiatics had undergone any modification during the last few years. The Provincial Secretary informed us that the Natal Rural Dealers' Licensing Ordinance which became operative in 1924, was being applied to areas outside boroughs and townships. The municipal authorities informed us that their own stringent policy had in no way been liberalised. At Pietermaritzburg we found that the powers vested in local bodies by the Natal Urban Land Alienation Ordinance had only recently been utilised to displace a number of Indian traders from some premises which the Town Council had acquired. The land on which these premises were constructed has been occupied by the Indians concerned for a considerable number of years. It was sold with an anti-Asiatic clause to a certain European Corporation which ejected them. This step was taken merely because the shops were too near the European trading quarter. At Ladysmith and Dundee, the Indi-

community gave us several instances in which applications for the transfer of a business, even to adjoining premises, were refused. At Dundee, we saw a shop in the Indian business quarter for which the Municipality had refused to grant a license to Indians, but had given it to a European. In the circumstances the inference was inevitable that the administration of the provincial licensing laws rendered it impossible for the Indian to make any further progress in Natal in the sphere of trade. There could, therefore, hardly be any question of his ousting the European.

17. We were informed that part of the European alarm at the supposed extension of Asiatic trading was due to the feeling that such extension proportionately restricted the scope of activities in which the younger generation of white South Africans could engage. On the other hand, our Indian commercial witnesses strongly contended that their place was being taken not by Europeans born in the Union, but by foreigners, many of whom were not even British subjects, and were actually ex-enemy subjects. Several Europeans supported this view. As licensing statistics do not classify licenses according to their nationality or country of origin, we are not in a position to say how far the view that the place vacated by the Indian in trade is being monopolised by these outsiders is correct. At Vryheid, however, where Indians are not allowed to trade, we ascertained from the Town Clerk that out of 101 general dealers licenses issued during the year 1925, 54 were granted to "Gentiles" and 47 to "Jews". If these figures are at all characteristic of the province, there would appear to be considerable force in the contention that the exclusion of the Indian from trade will primarily benefit the foreigner.

18. Our inquiries also brought out the fact that except in places like Stangar and Verulam, which are practically Indian Settlements, municipal policy has already resulted in the separation of Asiatic trading areas from the European. In Durban, the majority of Indian businesses are concentrated in a few streets, though some of the older firms are still scattered about the principal European commercial thoroughfares. In Pietermaritzburg there are only one or two Indian shops in the main business street of the town. In Ladysmith the Indian shops are to be found only at the end of the chief shopping area. In Dundee the Indian trading quarter is entirely separate from the European.

19. (ii) *Transvaal*.—In the Transvaal the trading activities of Asiatics are restricted in two ways. The first restriction results from the limitations to which they are subject in respect of purchasing or leasing immovable property. Inside public diggings proclaimed under the Gold Laws (Acts 34 and 35 of 1908, and Act 37 of 1919) they cannot own fixed property, including stands inside and outside townships, directly or indirectly, except in such localities as Government for sanitary reasons may assign to them for the purpose of residence. The Asiatic bazaars at Springs and Benoni, etc., are examples of such localities. They are used not merely for residence but also largely for trade. Indians cannot acquire leases with respect to stands outside townships granted after the Gold Law of 1908 came into force. They cannot lease land within townships whether now held under the Gold Law title or under a title converted into freehold under the Township Act No. 34 of 1908. Except those who on the 1st May 1919 were carrying on a duly licensed business on proclaimed lands

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and townships, Indians have practically no scope for extending their commercial operations in these localities which are perhaps the busiest and most prosperous parts of the Transvaal. Indian merchants whom we saw at Johannesburg confirmed this. In the areas outside public diggings, they can acquire leasehold but not proprietary rights with respect to immovable property, and cannot obtain general dealers licenses to trade anywhere. The administration of the new Transvaal Dealers (Control) Ordinance which makes the acquisition of licenses dependent upon the approval of local authorities will, probably operate to prevent expansion of Indian trade in these areas. The municipality of Balfour actually exercised its powers under this ordinance to refuse certificates of eligibility to all Indian applicants, though the decision was reversed in the majority of cases on appeal to the Supreme Court. In centres like Krugersdorp, Potchefstroom, Zeerust and Volksrust where anti-Asiatic feeling has been strong for some time the number of general dealers licenses held by Asiatics has already diminished. The following figures illustrate this:—

	1920.	1923.
Krugersdorp	139	115
Potchefstroom	99	78
Volksrust	25	19
Zeerust	54	47

Several Indians expressed the fear that since they are not represented on local bodies while their rivals are, the new ordinance will make their position worse.

20. (iii) *Orange Free State and the Cape Province.*—In the Orange Free State, Indians are not allowed to trade. In the Cape Province the licensing policy of several municipalities is administered with special strictness when Indians are concerned. In Cape Town, we were told, that certificates for licenses are refused to Indians in certain areas which are predominantly European. The figures furnished by the Town Council of Port Elizabeth show that the proportion of Indian applications refused is higher than in the case of Europeans. The following comparative table illustrates this:—

Year.	Nationality of applicant.	Number of applications granted.	Number of applications refused.
1920	European ..	189	16
	Indian ..	139	55
1925	European ..	253	8
	Indian ..	286	36

(NOTE.—Out of the 322 Indian applications made in 1925 204 were for hawkers licenses, and only 52 for general dealers. The corresponding figures for Europeans were 53 and 157. The remaining Indian applications were for restaurateurs, butchers, etc.)

In 1924, within the Municipality of Mafeking, where there were 17 Indian general dealers in that year as compared with 25 non-Indians, seven Indian applications out of nine were refused. It would thus appear that as the Asiatic Inquiry Commission remarked in paragraph 181 of their report, Indians in the

Cape Province have substantial grounds for complaint against certain municipalities in respect of their licensing policy. There are, of course, exceptions like Kimberley and East London where no discrimination is used against them.

Segregation for purposes of trade does not appear to have been attempted in this province. Asiatics and Coloured are to be found scattered through all quarters. Nor did we discover any feeling in favour of separation. On the contrary several Europeans expressed themselves against it.

21. Before we leave the question of commercial competition it seems desirable to deal with two allegations that were frequently made to us. One was that the Indian can sell cheaper than the European because his expenses are lower; the other that his standard of commercial morality is low. Several Indian merchants strenuously challenged the first charge. According to them, the cost of an Indian shop assistant is not less than that of a European. Besides money wages his employer has to provide him with board and lodging in addition to other amenities, including, occasionally, the cost of a return passage to India. They also disputed the suggestion that the Indian undersells the European. They attributed their popularity with the non-European customer, not to lower prices but to the greater courtesy and attention with which they always treat their clients. The Asiatic Inquiry Commission were of opinion that on the whole (1) the Indian scale of remuneration was undoubtedly lower than that prevailing in the European businesses and (2) that he undersold Europeans to a considerable extent. It was not possible for us to verify this finding, mainly because we had no power to call for books from traders of different races and examine them. Without such examination no correct conclusions could be arrived at. Our general impression is that the expenses of the bigger Indian merchant are probably not lower than those of his European rival. The position is somewhat obscure as regards the small dealer. The second charge was that their standard of commercial morality is not high. In support of this view it was urged that there was a larger percentage of insolvencies amongst them than among Europeans. According to information supplied by the Director of Census to the Select Committee on the Areas Reservation Bill, the following tables give approximately the actual number of insolvencies and the proportion of European and Indian insolvencies to every thousand of the male population:—

TABLE (i)

Number of Males 15 years and over engaged in Commerce, 1921 Census.	Number of insolvencies in commerce.			
	1921.	1922.	1923.	1924.
Europeans 58,634	838*	966*	911*	896*
Asiatics 13,040	232	299	204	174

TABLE (ii).

"Insolvencies" expressed as a proportion per 1,000 of "Males engaged in Commerce 1921."	1921.	1922.	1923.	1924.
	Europeans	14.3	16.5	15.5	15.3
Asiatics	17.8	22.9	15.6	13.3

* These figures might contain a few "other non-European" but the number would not be significant. Total "other non-European" insolvencies do not exceed 20 per year.

These figures do not support any generalisation adverse to the Indian. We also took care, however, to inquire from European merchants who have had long dealings with Indians whether their experience supported the accusation that the Indian was less scrupulous in fulfilling his obligations than other classes, and the replies received amounted to an unanimous negative. On the other hand several of them paid a high tribute to the Indian's business integrity and honesty.

22. *Competition in Industry.*—The charge that the Indian is now rapidly ousting the European from the skilled and semi-skilled trades was as difficult to investigate as it was frequently repeated. Those who made the charge could only refer to isolated trades or the stray experience of individuals. They had no statistics; merely impressions. Official sources were equally unable to provide definite information on the subject. From the Chief Inspector of Factories it was ascertained that his department had made a special survey of four industries, *viz.*, printing, manufacture of footwear, matches and engineering. The report relating to the manufacture of footwear alone gives the number of persons of different races employed. These show a preponderance of the European of whom there were 2,101 working as against 134 male Asiatics. The Director of Census from whose special report relating to Asiatics we have already quoted informed us that since 1917-18, particulars of non-European of different races employed in the manufacturing industries were not included in the annual census. Such particulars will figure in the report of 1925-26 but this was not ready when we left South Africa. Comparison between the figures of 1915-16 and 1916-17 is of no value since the increase recorded in the latter year was due to the inclusion in the returns for that year of factories employing three instead of four persons or more. In 1915-16, only factories employing four or more persons were dealt with. The only recently published statistics we could get were in regard to the magisterial districts of Durban and Pinetown. These show an increase in the ratio per cent. of non-European employees to total employees in the tailoring industry from 39 per cent. in 1916-17 to 69 per cent. in 1922-23. During the same period there was also an increase of 17 per cent. in industries relating to the treatment of raw material; *e.g.*, tallow refining, tanning, chaff-cutting, etc. We should not be surprised if this increase represented in the main an addition to the strength of native labour. In the furniture trade the increase was only 1 per cent. In building, the percentage for 1923 is the same as for 1916-17 and represents a steady decline from 1919-20 when it reached 82 per cent. The complaints that we hear were probably based on developments between 1916-17 and 1919-20 when there was a progressive increase in the ratio of non-Europeans to Europeans in this trade. The same is practically true of the furniture trade the percentage of which for 1922-23 shows an increase of only one per cent. Allegations of Indian penetration in the field of industry cannot therefore be said to have been substantiated.

23. *Residential Segregation.*—The complaint of Asiatic penetration into European residential areas refers mainly to Natal. In the Transvaal Asiatics cannot acquire immovable property. In the Cape Province, we saw no residential concentration of the various races into colour compartments. A

regards Natal, we are satisfied that the realisation of social equality is not the conscious motive of the Indians' effort to acquire property in such areas. The Indian who has a natural pride in the continuity and traditions of his civilisation undoubtedly resents being treated as an inferior. But in Durban, where alone the question appears to be of immediate practical importance, the real object of the purchaser is to live in quarters suited to his position. As the Asiatic Inquiry Commission observed there are social grades amongst Asiatics as amongst Europeans. The better class Indian has practically no outlet where he may realise this natural desire. Indian opinion in South Africa and elsewhere strongly resents all idea of compulsory segregation as a racial stigma. Indians in the Union also apprehend that, once it is statutorily introduced, the deplorable conditions which now prevail in Boksburg and Vrededorp will ultimately overtake the Asiatic class areas of the future. The complaint that the presence of an Indian in a European locality lowers the value of European-owned property seems to us to be hypothetical, for hardly any concrete instances were cited to prove that such depreciation had actually taken place. On the contrary, the Natal Indian Congress gave two or three instances to prove the opposite.

24. The charge that the Indian is apt to regard every piece of legislation with distrust even if it is intended to benefit him deserves some notice. Special reference was made in this connection to the attitude which the South African Indian Congress in Natal took up towards the Public Health Ordinance of 1923. The Indians contested it on the ground that it did not allow them either representation on the Public Health Committees which it purported to set up, or any share in the selection of their members. They succeeded for the time being, as the Ordinance was held by the Supreme Court to be *ultra vires* of the Provincial Council. It may incidentally be added that early during the present session, the Union Parliament passed an Act to validate action taken by Public Health Committees under the Ordinance and to empower the provincial council to pass a fresh ordinance. The answer to this charge, however, is that the history of recent Natal legislation is not calculated to win the confidence of the Indian. If they contest certain laws it is because they regard the laws as oppressive; not because they are not law-abiding. The testimony of General Smuts and Mr. Burton provides ample proof to the contrary.

25. In regard to assimilation, little need be said. Racial assimilation is neither desired nor desirable. Assimilation by the Indian of western sanitary and economic standards will come with the adoption towards him of a sympathetic policy of educational and economic uplift.

26. *Attitude of Indian Community.*—One of the main objects of our inquiry was to ascertain the views of the Indian community in regard to the impending legislation. Their attitude was one of universal protest and alarm. Residential segregation they regarded as a deep national humiliation. The knowledge that some of them might be exempted from the operation of the proposed law was no consolation to them, for they realised that to avail themselves of the exemption would be most unfair to the less fortunate members of the community who could only improve by the effort and example of the best among them. The commercial restrictions contemplated in the Bill they felt would involve most of them in ruin. In Natal and the Transvaal a large

number of Indian traders carry on business in premises leased from Europe. These naturally looked upon the prospect of having to remove into special class areas with dismay. Those who own their own premises in predominant European areas feared that the Bill would extinguish their businesses with a generation, as their heirs would not be allowed to succeed them in trade. They apprehended that if segregation was enforced, the class areas set up for the would, in course of time, be reduced to the same insanitary condition as the Asiatic bazaars on the Rand.

The proposed restrictions on the acquisition of property were fraught with grave consequences for the Indian agricultural population in Natal many of whom are squatters on European land and would have had to change their natural *metier* for a precarious living as day labourers. The mercantile and trading community, which is almost exclusively Mohammedan and maintains an intimate family connection with India, was gravely perturbed over the proposal to inhibit the entry of wives and children from India after the lapse of 5 years from the date the Bill came into force. Owing to the disparity between men and women in this section of the Indian population, India continues to be the main field for marriage. The proposed restrictions on inter-provincial migration were also viewed with alarm as a serious interference with vested rights. There was a general determination on the part of all to oppose the basic principles of the Bill, and to accept no compromise which involved a further sacrifice of status.

27. CHAPTER III.—*Evidence before Select Committee.*—These facts were communicated to the Government of India early in January with the recommendation that they should urge the Union Government, either to institute a fresh independent and authoritative inquiry, which would enable them to form a correct idea of the real economic position, or to reconsider their decision not to enter into a conference. We felt that no other course held out a real satisfactory prospect of arriving at a settlement satisfactory both to the European and the Indian. The results of an inquiry, we thought, would help to allay European misgivings in regard to Indian competition; a conference would provide opportunities for an impartial discussion of the rival points of view and for evolving a settlement. The Government of India accepted our suggestion and invited the Union Government to accept one or the other (Appendix II). In order to enable the Union Government to ascertain from us, at first hand, the facts that had led us to recommend a fresh inquiry, they also requested that one of the ministers should grant us an interview. Ministers readily acceded to this request and we had informal conversations first with the Hon'ble Dr. Malan, Minister of the Interior on Friday January 29th, and later on Saturday the 30th January with the Hon'ble the Prime Minister. At the second meeting, the Hon'ble the Minister of the Interior was also present. Both gave us a patient and courteous hearing. For the reasons set forth in the telegram from His Excellency the Governor General of South Africa dated the 5th February, the Union Government expressed their inability to agree to either alternative, but offered to refer the Areas Reservation Bill to Select Committee before the second reading in order to enable wider evidence to be tendered (Appendix III). The offer was contingent on the willingness of the Government of India to permit a

to give evidence before the Select Committee on their behalf. The procedure proposed was exceptional, and was undoubtedly meant to be a real concession. It offered an excellent opportunity to challenge the basic principles of the Bill before these had been affirmed by the House of Assembly (Appendix IV). In their telegram dated the 9th February the Government of India accepted the offer of the Union Government, though they made it clear at the same time, that our evidence would be confined to stating the Indian case against the Bill generally, and that we would not enter into any discussion of amendments to or modifications of particular clauses as that might involve an acquiescence on their part in the principles of the Bill (Appendix V). On February 17th, Dr. Malan made an important statement in the Union Assembly on the progress of the negotiations between the two Governments, and moved that the order for the second reading of the Bill be discharged, and the subject be referred to Select Committee. The composition of the Select Committee was announced on the 19th February and the 3rd March was fixed for hearing our evidence (Appendix VI).

28. In accordance with the instructions of the Government of India we presented a written statement of the principal arguments. This will be found reproduced in Appendix VII of this report. In that document we dwelt on India's historic past and progressive present. On her ancient civilisation and modern achievement; on her importance to the Empire and her services, to its various portions, notably to South Africa. We drew attention to the contrast between her international status and the position of her nationals in the Union; to the divergence between her legitimate expectations as an equal partner in the British Commonwealth and the actual treatment of the domiciled Indian community. We described the steady deterioration in the status of the latter since 1914, and explained the reasons why the proposed legislation was viewed with resentment and alarm by Indians throughout the world. Finally, we pleaded that in the interests of political solidarity and mutual economic benefit, India and South Africa should be friends.

29. We were the first witnesses to be examined and our oral examination took up nearly four sittings of the committee. Mr. C. F. Andrews, Mr. DeNorman, a Colonial born Indian who represented the Cape Colonial-born Indian Association, Messrs. Nooruddin, Desai and Singh representatives of the Cape British Indian Union, and Mr. Rahim on behalf of the United Cape British Indian Association, also gave evidence from the Indian point of view. The South African Indian Congress and its affiliated bodies submitted a written statement, but sent no representatives to give oral evidence. Evidence in support of the Bill was tendered by delegates of the Krugersdorp Municipal Council, the Durban Town Council, the Municipal Associations of the southern suburbs of Johannesburg and of Natal, the Victoria Country Farmers Association, Mr. Cox, of Young South Africa and by the Mayor of Port Elizabeth, and was of a strongly anti-Asiatic character. Through the courtesy of the Committee we were allowed to be present throughout the evidence. We had asked for this privilege so as to be able to put in a supplementary statement, if necessary. As some of the facts and arguments adduced by certain witnesses required explanation or comment we put in a supplementary note (Appendix VIII). This was followed by a brief oral examination, and the evidence was then closed.

30. As the evidence taken by the Committee has been published, we have not attempted to summarise it in detail. Every witness was given the fullest freedom and opportunity to explain his point of view and we wish to acknowledge the fairness and courtesy with which our evidence was listened to and considered by the Select Committee. The arguments advanced on behalf of the Indians undoubtedly had effect. The Committee appeared to be convinced that the problem was far from simple, and that a solution which could secure the friendly co-operation of the Government and people of India would have a greater chance of success than one which left behind bitter memories of a sense of grievance.

CHAPTER IV—*Informal conversations.*—It was clear to us that, in order to clear up the misunderstandings as to the real objectives of the Government of India and the Union Government, it was possible that a basis for a friendly discussion of the Indian question in South Africa might still be found. The suggestion for informal conversations between the Hon'ble the Prime Minister and the Hon'ble the Minister of the Interior on the one hand, and the Leader and the Secretary of our Deputation on the other, which the Government of India made in their telegram no. 257 of March 26th, provided the requisite opportunity (Appendix IX). It was readily accepted by the Union Government and conversations took place on April 1st and 2nd as the result of which the following formula was tentatively agreed upon:—

“The Government of Union of South Africa and Government of India have been further in communication with each other regarding the best method of arriving at an amicable solution of the Indian problem. The Government of the Union have impressed upon the Government of India that public opinion in South Africa will not view with favour any settlement which does not hold out a reasonable prospect of safeguarding the maintenance of a western standard of life by just and legitimate means. The Government of India are prepared to assist in exploring all possible methods of settling Asiatic question and have offered to enter into a Conference with the Union Government for the purpose. Any proposal that the Conference might make would be subject to confirmation by the Governments of the two countries. The Union Government have accepted the offer of the Government of India, and in order to ensure that Conference should meet under best auspices have decided, subject to the approval of the Select Committee and Parliament, not to proceed further with Areas Reservation and Immigration and Registration (Further Provision) Bill until the results of the Conference are available.”

The Union Government communicated it to the Government of India on April 13th and the latter formally accepted it on 17th April (Appendix X). For ready reference we have included this correspondence as Appendices X and XI of this report (Appendix XI). On April 23rd, Dr. Malan presented the report of the Select Committee, which had also approved of the formula, to the House of Assembly, and the agreement embodied in the formula received the assent of Parliament.

31. We have no doubt that this happy sequel is the result of a sincere desire on the part of the Government and Parliament of the Union to secure friendly co-operation with the Government and people of India which, to use Dr. Malan's phrase, 'alone can ensure a successful issue of the proposed conference and lasting friendly relations between the two countries.' (Cf Appendix XII). We are equally confident that so far as India is concerned, the will to secure an amicable and honourable settlement has always been present, and will be, when the conference meets, actively exercised. The wise restraint of the Legislature, the public and the Press in India during the progress of the negotiations—a restraint which in view of the stress of universal anxiety and feeling over their issue cannot be too highly praised contributed materially to the change in the attitude of the Union Government and responsible opinion throughout South Africa of which the agreement to enter a conference was the outcome. We venture to express the hope that this attitude of dignified reserve and quiet faith in the justice of India's cause will be maintained till the conference is over. For it is imperative that the forthcoming discussions should be conducted in an atmosphere free from recrimination, doubt, and distrust.

32. In conclusion, we desire to place on record our high sense of appreciation of the marked devotion and ability with which our Secretary, Mr. G. S. Bajpai, C.B.E., I.C.S., has carried on his work. We cannot speak too highly of his services; never did he allow any question of personal inconvenience to interfere with his work which often went on till the small hours of the morning, as well as on Sundays and holidays. His charm of manner and other valuable social qualities were of great use in the difficult and delicate task before us, and his tact, judgment and resourcefulness could not be over-estimated. His ready penmanship and drafting skill were of great assistance towards prompt and efficient work. His ungrudging and unfailing services, always readily and cheerfully rendered, were one of the most valuable factors in ensuring such success as may have attended our efforts, and in the most untoward circumstances. Our gratitude to him is also personal for the admirable way in which the arrangements for our tour were planned and carried out.

Mr. C. S. Ricketts co-operated loyally and whole-heartedly in the department in his charge and had often to work up to very late hours which he never grudged.

We have the honour to be,
Sir,

Your most obedient servants,

G. F. PADDISON.

RAZA ALI.

DEVA PRASAD SARVADHIKARY.

G. S. BAJPAI.

Secretary.

S. S. "KARAPARA";

19th May 1926.

APPENDIX I.

INDIAN IMMIGRANTS REPATRIATED TO INDIA—1911 TO 22ND AUGUST, 1924.

Year.	Men.	Women.	Boys.	Girls.	Total.
1911	1,601	618	252	259	2,630
1912	840	272	141	156	1,409
1913	932	356	229	199	1,716
1914	1,703	818	572	569	3,662
1915	1,864	809	539	582	3,844
1916	2,550	1,318	438	379	5,685
1917	1,048	501	318	330	2,197
1918	837	424	284	282	1,827
1919	813	341	279	258	1,691
1920	850	383	320	252	1,805
1921	1,529	728	470	472	3,199
1922	1,449	595	314	341	2,699
1923	1,441	633	355	360	2,809
1924 (January—August)	277	114	68	64	523
Total	17,734	7,810	5,029	5,023	35,596

13,091

7,620

8,707

APPENDIX II.

TELEGRAM TO THE GOVERNOR-GENERAL OF SOUTH AFRICA, DATED THE 10TH JANUARY 1926.

Clear the line.—Our deputation after enquiry in Natal have telegraphed their interim and provisional conclusions and recommendations to us. Firstly, they have been unable to find any justification for the general opinion held by Europeans in Natal that Indian competition in trade is increasing and is closing fruitful avenues of employment to Europeans. Similarly, they are unable to obtain accurate or complete statistics to indicate how far, if at all, Indians have recently displaced Europeans in skilled or semi-skilled occupations. They suggest that a fresh survey of the situation, if one were undertaken would probably prove fears to be unfounded, so far at least as trade and commerce are concerned. Their investigations tend to show that during the last few years Indian penetration has increased only in certain trades, such as tailoring and furniture, especially in Durban area, while in the sphere of business proper the Indian has not improved his position since the report of the Asiatic Enquiry Commission. Further expansion of Indian trade is barred by action of Municipalities, who refuse issue of any new licenses to Indians, and frequently refuse transfer of old licenses to new premises even in close proximity to old ones. Same policy is being followed by Licensing Boards in rural areas. For these reasons, they suggest that, in order to verify the facts on which demand for Bill is based, a fresh enquiry is advisable.

2. Secondly, our deputation lays stress on the point that it is questionable whether the Bill will effect any mitigation in the economic competition between the two races which European opinion in Natal regards as crux of whole Asiatic problem. The positive remedies which Bill contemplated are—

- (1) commercial separation;
- (2) residential separation; and
- (3) restriction provided for in clause 10.

As regards (1), our deputation find that municipal administration of existing licensing laws has already resulted in Indian traders being concentrated in areas distinct from those occupied by Europeans, except in the case of certain old-established Indian firms which carry on business in European quarters. From European point of view, therefore, legislation now proposed appears unnecessary, while it will seriously aggravate position of Indian trading community. They assume that elimination of Indians from trade is not aimed at, as such a policy would not be in accordance with general standard of fairness particularly since they report that aliens from Europe are monopolising new opportunities for trade. If object aimed at is mitigation of competition, other remedies seem more likely to be effective. Allegation of unfairness of Indian competition is said to be based on payment of lower wages to shop assistants and evasion of regulations governing terms of employment. They consider that means could be devised to prevent such evasion and are strongly of opinion that matter deserves investigation, especially as they have been told that if board and lodging and other amenities allowed *f.e.* to Indian assistants are included, the total wages of the latter equal those paid for the same class of work by European employers.

3. With regard to (2) residential segregation, the enquiries of our deputation confirm the objections to this measure which we have consistently urged upon Your Excellency's Government. They report that condition of many localities occupied by Indians around South Africa causes Indian community to be full of apprehension that class areas created for them will share similar fate. Any measure tending to depress the social and economic standards of Asiatics may be expected to intensify rather than to mitigate industrial and commercial competition between them and the white population.

4. Clause 10 of the Bill will in the opinion of our deputation, have most serious consequences. They point out firstly, that Indian market gardeners, who tend to cluster in every town ship in Natal and a large proportion of whom held land on monthly and yearly tenure from Europeans, will be driven into coast belt where no fresh land is available to them as area within that belt owned by Indians is small and almost entirely taken up. Secondly, Indian market gardeners, who are now tenants of Europeans, will be deprived of

their means of livelihood. Thirdly, Indian traders outside belt, who now carry on business in premises leased from Europeans, will be driven into belt on expiration of their lease. This will not only impose great hardship on Indians but many Europeans will suffer as well. Asiatic congestion around Durban which is already great will be seriously intensified. Sanitary conditions of Asiatic suburbs of Durban which are already regarded as a menace will become a greater source of danger to public health. Indians shut off from land will turn for a living to more or less skilled trades in which position of Europeans will be further threatened. It is stated by our deputation that Durban Corporation seems to be alive to sanitary danger of this provision of Bill and they add that Europeans with whom they have discussed the question have also begun to realize its probable effects.

5. These facts and considerations strengthen our conviction, which we have often pressed on Union Government, that a Round Table Conference would be most satisfactory method of dealing with the situation and we hope that, as a result of discussion during the last few months and of wider appreciation of implication of Bill, there may have been some such modification in attitude of European public referred to in your telegram of September 24th as to justify your Government in reconsidering view they have taken of this proposal. We wish to make it clear that we are still willing and anxious to participate in a Round Table Conference in any place or manner which may seem to them most convenient.

6. If the Government of South Africa for any reason find themselves still unable to agree to a Round Table Conference, we hope that Union Government will agree that there is a *prima facie* case for some fresh enquiry before the proposed legislation is proceeded with. Apart from other considerations, the enquiry appears to be necessary firstly, because exact facts regarding extent of Indian competition in trade and industry do not seem to be fully known and secondly, because ultimate consequences of proposed legislation may be reverse of those which are expected and desired. Our deputation will we understand reach Cape Town on January 10th and we should be gratified if a Minister of the Government would consent to receive them informally and give them an opportunity of explaining and illustrating more fully the arguments in favour of holding an enquiry which we have only been able to indicate in brief outline. We believe that there is a great deal to be said in favour of allowing representatives of Indian community in South Africa and our representatives to place their views before a Committee of Enquiry before the Bill is proceeded with any further. The moral effect of holding the enquiry would be great. It would convince Indian opinion that Union Government were not averse to hearing representations which can be urged against policy embodied in Bill and that Parliament will not allow Indian case to be prejudiced in consequence of their not being represented politically.

MC73EHL

APPENDIX III.

TELEGRAM FROM THE GOVERNOR-GENERAL OF SOUTH AFRICA, DATED THE 5TH (RECEIVED 6TH) FEBRUARY 1926.

Your telegram dated 10th January 8-Overseas. My Ministers desire me to thank Your Excellency very cordially for your courtesy in communicating to them so fully and promptly the interim and provisional conclusions and recommendations of Deputation sent to South Africa to enquire into position of Indian population in Union.

2. With regard to Your Excellency's suggestion that it might still be possible for Union Government to agree to the holding of a Round Table Conference, my Ministers fully appreciate desire and motive of Government of India in pressing for this particular method of dealing with problem. They wish me to state, however, that they have repeatedly given their most earnest and anxious consideration to the proposal but that for reasons already stated and in spite of their desire to meet the wishes of Your Excellency's Government, if possible, they cannot see their way to alter decision to which they have previously come.

3. With regard to observation in deputation report on general situation in South Africa and more particularly on probable effect of various (group omitted) on its proposed legislation my Ministers wish to point out that any conclusions to which deputation have come must necessarily and do admittedly rest on very fragmentary evidence gathered within a very limited period. They agree, therefore, in general conclusion: this evidence must be supplemented before final and reasoned judgment shall be possible. They cannot, however, agree such further evidence must be collected by means of a fresh enquiry on the part of a commission appointed for purpose as this course seems to be unnecessary in view of similar and very exhaustive enquiry by Asiatic Enquiry Commission held only a few years ago and of information which can be made available from official sources. Besides a fresh enquiry as suggested will of necessity further delay legislation which is urgent and is already long overdue while on the other hand the parliamentary select Committee to which it is proposed to refer Bill will provide most suitable means and opportunity to supplement, as far as such may be required, any evidence which is already in hand.

4. Whilst on one hand my Ministers must regret their inability to accede to request of Government of India for a Round Table Conference or a fresh enquiry they on the other hand fully realised the anxiety of that Government to place as fully as possible the case of the Indian Community in South Africa before the Government of the Union. It is for this reason that they previously adumbrated the possibility of evidence before a parliamentary Select Committee by the deputation from the Government of India now in the country after Bill shall have passed the second reading. Although reference to a Select Committee after second reading will imply maintenance of the general principle of Bill it will at the same time offer a very wide scope for evidence and will not even exclude evidence on such a fundamental question in which Government of India is primarily concerned as to whether proposed segregation shall be voluntary or compulsory. To this suggestion which they have offered my Ministers have thus far received no reply and they are consequently in doubt as to the existence of any difficulty on the part of the Government of India in accepting the same. If such difficulty should, however, exist on the ground of too great a restriction of evidence which deputation might desire to bring forward my Ministers would agree to propose reference of Bill to a Select Committee before second reading thus widening scope for evidence so as to include principle of Bill. They wish it, however, to be understood that such a proposal on their part will be subject to Government of India intimating their willingness to availing themselves of this opportunity specially offered to place evidence before select committee through their deputation now in South Africa and further that it will be subject to Select Committee being required to report to Parliament within such limited period as well enable Parliament to deal finally during the present session with legislation proposed.

5. My Ministers have gladly acceded to the request of Your Excellency's Government that deputation who are now in Cape Town shall be received by one of Members of the Union Government. Intimation to this effect was sent to head of deputation immediately after the receipt of Your Excellency's last communication and proposed interview has already taken place.

APPENDIX IV.

TELEGRAM TO THE GOVERNOR-GENERAL OF SOUTH AFRICA, CAPE TOWN, NO. 105-08,
DATED DELHI, THE 9TH FEBRUARY 1926.

Priority—

We are in receipt of Your Excellency's telegram dated the 5th February and would be grateful if you would be so good as to convey to Your Excellency's Ministers our warm appreciation of the courtesy and consideration they have extended to use and to our deputation.

2. While we cannot conceal from Your Excellency our deep disappointment that Your Excellency's Ministers have found it impossible to agree to either of the alternative methods put forward by us as best calculated to lead to a satisfactory solution of this problem we recognise that our proposals have been given the fullest and most anxious consideration. We further understand that the offer now made to us involves a departure from normal parliamentary practice and procedure, and we see in this another proof of the desire of Your Excellency's Ministers to find a solution of this difficult question. My Government are in the circumstances prepared to accept, subject to the conditions stipulated in Your Excellency's telegram and to our observation in the succeeding paragraph, the offer made by Your Excellency's Ministers of an enquiry by a parliamentary Select Committee before the second reading of the Bill. We note with satisfaction that terms of reference to the Committee will be sufficiently wide to include consideration of the principles of the Bill and we assume it is intention of Your Excellency's Ministers also to allow representatives of Indian opinion in South Africa an opportunity of presenting their case to the Committee which we feel sure Your Excellency's Ministers will agree could not fail materially to assist the Committee in its task.

3. As Union Government are aware our objections to the Bill are fundamental and are against the principles on which the Bill is based. We propose therefore to instruct our Deputation to present the case before the Select Committee in respect of the general principles, although it necessarily follows from our arguments that we object also to the details of the Bill. We realise that Your Excellency's Ministers are anxious to avoid unnecessary delay but we trust in view of the very grave consequences for Indians which the proposed legislation must involve, fullest possible opportunity compatible with the limitation laid down in Your Excellency's telegram will be afforded for presentation of Indian case.

4. We are anxious that the offer made by Your Excellency's Ministers and our reply thereto should be published here with least possible delay and should be glad to know urgently by telegram when it is proposed to make these public in South Africa to enable us to arrange for publication here.

APPENDIX V.

INDIA AND THE ASIATIC BILL.

Dr. Malan's Statement in House of Assembly.

RESULT OF NEGOTIATIONS.

Select Committee to Report Before April 1st.

(Statement made by Dr. Malan on February 17th) 1926.

When the House of Assembly resumed yesterday afternoon Dr. Malan, (Minister of the Interior) made a statement on the Asiatic question.

Dr. Malan said: As the House is aware, for a considerable time negotiations have taken place between the Government of India and the Government of the Union, in regard to the position of Indians in South Africa. These negotiations began shortly after I made a statement to the House last year, in which I intimated my intention of introducing at an early date legislation dealing with the Indian question in South Africa. These negotiations have proceeded until a very recent date; they have now reached a definite stage, and I may almost say have reached a certain measure of finality, and I think it is only right at this stage that I should inform the House as to what the actual position is to-day.

REQUEST FOR ROUND-TABLE CONFERENCE.

The first and the chief object which the Government of India tried to achieve through these negotiations was the holding of a round table conference on the position of Indian in South Africa. Though the scope of that conference, as was suggested by the Government of India themselves, if it had been held, would have been restricted in a certain measure, yet, on the other hand, it is quite evident that the idea underlying this proposal was a discussion of the proposed legislation on the Indian question by this House, and especially the discussion of the Bill which I had intimated to the House that I was going to introduce a discussion between the representatives of the Government of the Union and representatives of the Government of India.

The attitude which was adopted by us from the beginning in regard to this proposal—and to that attitude we have consistently stuck—was this, that this particular problem was a South African one, that it had to be solved by South Africa alone, and that it had to be solved with a view solely to the interests of South Africa.

Now we did not contend, and I think we would not have been justified in contending that this attitude was inherently opposed to and, therefore, excluded any friendly conversations with an outside Government, but what we had in mind was that if these conversations were to take place at all, then while we on our part would be expected to make concessions, and we would have been expected to make this concession, if such a concession were not to turn out a failure, on the other hand there must be held out prospectively a counter-balancing advantage to the Union of South Africa.

PRINCIPLE OF RECIPROCITY.

If we were called upon to make only concessions and there was no counter-balancing then these conversations would not take place on an equal footing, and the people of South Africa would have a right to interpret these conversations as an interference in our domestic affairs from outside, and as far as we could gauge the opinion of the people of South Africa we had a right to say to the Government of India that any interference from outside in our domestic affairs would be tolerated neither by the people of South Africa as a whole, nor by the bulk of the followers of any political party in the country.

For this reason and under these circumstances we intimated to the Government of India that we were not in principle opposed to the holding of a round table conference.

But if we did hold one, then in the proposed discussions must be included this particular point, that the Government of India should be asked to be willing to co-operate with the Government of the Union to assist the Government in making the scheme of voluntary repatriation more effective than it is.

We more particularly thought of the possibility of holding out, with the assistance and co-operation of the Government of India, an additional inducement to the Indians to leave the country by holding out to them the possibility of an advantageous land settlement in India or adjacent territories. If the Government of India had agreed to include this particular point in the agenda of such a conference, the round table conference as far as we were concerned would have been held.

INDIA DISAGREES.

The Government of India, however, did not see their way to agree to the discussion of this particular point, and as a consequence we on our part did not see our way to agree to a conference with only prospective concessions on our part without any prospective advantage, a conference which would be interpreted under such circumstances by the people of South Africa as not being held on an equal footing between the two different sides, and as an intolerable interference from outside in our domestic affairs.

Failing a round-table conference, and with a view to making representations on our proposed legislation direct, the Government of India further approached us with the request to send a Commission or a so-called deputation to South Africa to inquire into the whole position of Indians here, and to give to their own Government first-hand information. We on our side had no difficulty in agreeing to this request, especially as the Government of India undertook that the men they were going to send would be men of discretion, who would not come to South Africa as agitators, and would not inflame by their presence here the mind of the Indian community, and make in that way the problem which was already difficult, more difficult.

I am glad to say that the deputation has been in South Africa now for a considerable time, and the Government of the Union have so far no complaint whatever against them. On the contrary, the Government of the Union have every reason to be satisfied with the way in which they have acted in most difficult circumstances.

We went further in connection with this request, and we offered to the Government of India that after the deputation had collected its evidence they should be allowed in the name of the Government of India and of the Indian community in South Africa to lay the opinions of Indians before the Select Committee which would be appointed by this House after the second reading of the Bill.

ANOTHER REQUEST.

After receiving the preliminary report of this deputation the Government of India approached us with the further request not to proceed, at this stage at least, any further with our proposed legislation, but to appoint as a preliminary measure a Commission similar to the Asiatic Commission which went into the whole question in 1921—to make a fresh inquiry and to report to this House. Unfortunately we were not in a position to agree to this request. We pointed out—and I think quite justly—to the Government of India that as a Commission had made exhaustive inquiries into the whole problem as late as 1921, the position since that time could not have materially changed, and that it was unnecessary under these circumstances to have a fresh inquiry. We further pointed out that such a fresh inquiry would mean delay and would mean at least this, that during the present session we would not be able to proceed with our proposed legislation; and we pointed out that in face of the impatience which existed in regard to the solution of this particular question we had no right to tell them that we would accede to their request.

TWO PROPOSALS REJECTED.

So far, then we had turned down two very important requests on the part of the Government of India, and under these circumstances we realised that a feeling was springing up in India, and also among the Indian community in South Africa, that we were forcing through this most important legislation, in which they were so vitally concerned, not only against the will of the Indian community and the will of the Government of India, but without giving them any proper opportunity to lay the case of the Indians before the Government of the country and before this Legislature.

We felt that while this feeling lasted an atmosphere existed which was certainly not conducive to the successful solution of this most difficult and most important question. It was, therefore, felt necessary as far as possible to create an atmosphere of goodwill an atmosphere which would be conducive to the successful solution of this question. Under these circumstances we thought that this feeling must as soon as possible be removed, and the only way to remove this feeling was to afford an opportunity for wider evidence, less restricted evidence, to be laid before the Committee to be appointed by this House.

OFFER TO INDIA ACCEPTED.

Under these circumstances we definitely offered to the Government of India that we would propose to this House that the proposed legislation of which notice had been given should be referred to a Select Committee before the second reading. To this proposal we felt it was only right to attach certain conditions and safeguards. We felt it was necessary, because this was under the circumstances prevailing in South Africa and in this House, an unusual procedure. It was unusual because the particular measure I introduced has certainly behind it to support it the volume of opinion in the country, and as far as I can judge there is no great division of opinion in this House with regard to this matter. To refer it to a Select Committee before the second reading we felt would be an unusual procedure.

The conditions which we thought it was necessary to attach to this offer were, in the first place, that the Government of India should intimate that they would be willing to make use of this special opportunity offered to them; the second condition was that if they thought it necessary to lay any evidence before the Select Committee before the second reading such evidence should be brought forward by their deputation now in South Africa. - Nobody else from India, either on their own behalf or on behalf of the Government of India, would be allowed to make use of this special opportunity. The third condition was that the Select Committee appointed before the second reading would be required by this House to report within such a period as to enable this House to pass this proposed legislation during the present session.

This offer, with the conditions, has been accepted by the Government of India.

31
APPENDIX VI.

ASIATIC BILL SELECT COMMITTEE.

CAPETOWN, FRIDAY.

General interest was evinced in the personnel of the Select Committee on the Asiatic Bill, which was announced by Mr. Speaker in the House of Assembly this afternoon, as follows:—

The Minister of the Interior (Dr. D. F. Malan); Mr. M. Alexander (Democ., Capetown Hanover Street), Mr. C. W. A. Couler (S. A. P. Capetown, Gardens), Mr. P. A. Duncan (S. A. P. Yeeville), Mr. A. C. Fordham (Lab., Turfontien), Rev. B. R. Hattingh (Nat., Kangersdorp), Mr. F. J. Lennox (S. A. P. Durban, Stamford Hill), Mr. M. J. Malan (Nat., Heilbron), Mr. J. S. Marwick (S. A. P. Hlovo), Sir E. Oppenheimer (S. A. P. Kimberley), Mr. C. Pearce (Lab., Liesbeck), Mr. G. Beyburn (Lab., Durban Umbilo), Mr. W. H. Roos (Nat., Barberton), Mr. A. S. van Hees (Nat., Delarey), and Mr. O. S. Versmooten (Nat., Woodboken).

Review

APPENDIX VII.

STATEMENT PRESENTED BY THE GOVERNMENT OF INDIA DEPUTATION TO THE SELECT COMMITTEE OF THE UNION HOUSE OF ASSEMBLY ON THE AREAS RESERVATION AND IMMIGRATION AND REGISTRATION (FURTHER PROVISION) BILL.

The circumstances in which we, the Deputation of the Government of India, have been authorised to give evidence before your Committee are set forth in the correspondence between the Government of India and the Union Government, which was laid on the Table of the House of Assembly by the Honourable the Minister of the Interior on the 17th February. We understand that the procedure of referring a Bill to a Select Committee of the House before second reading is unusual, and has been adopted in the case of the Areas Reservation and Immigration and Registration (Further Provision) Bill to "widen the scope of evidence so as to include the principles of the measure." These principles, as we hope to show, have stirred Indian sentiment everywhere to its utmost depths, and vitally affect the contentment and well-being of the Indian community in South Africa. The exceptional procedure of which the Select Committee is the outcome was, we assume, approved by the Government and Parliament of the Union in appreciation of this aspect of the situation. We also feel sure that this step was taken in consequence of an earnest desire on the part of the Government and Parliament of this country to ensure that the proposed legislation should not be placed on the Statute Book without the fullest investigation of its necessity and its implications. We therefore appear before the Committee in the hope that they will give the most earnest and impartial consideration to our representations.

2. In paragraph 3 of their telegram to His Excellency the Governor-General of South Africa, dated the 9th February, 1926, the Government of India intimated that their objections to the Areas Reservation and Immigration and Registration (Further Provision) Bill were fundamental, and that we, their Deputation, would be permitted to present the Indian case against it only in respect of general principles. In the following paragraphs therefore, we have endeavoured to set forth the objections to the measure in the light of broad considerations of imperial solidarity and obligations, and of elementary justice. We have made no attempt to discuss the details of the Bill, since our opposition to its basic principles is radical, and it follows that our objection to the main provisions is no less profound.

3. Our observations, however, are based not only on considerations of equity and imperial exigency, but also on our study in the Union of the "general position and economic condition" of the Indian community in South Africa. That study, though short has been intensive. It included an inquiry into local conditions at Durban and its suburbs, Stanger, Verulam, Tongaat, Pietermaritzburg, Ladysmith, Dundee, Glencoe and Vryheid in Natal; at Johannesburg, Springs, Benoni, Boksburg, Vrededorp, Germiston, Potchefstroom and Pretoria, in the Transvaal, and at Cape Town and its suburbs, Fort Elizabeth, East London, and Kimberley, in the Province of the Cape of Good Hope. In the course of our investigations we ascertained the intensity of the Indian opposition to the Bill, and the reasons for that opposition. We also endeavoured to visualize the effect of the application to the Indian community of the principle of compulsory segregation for purposes of residence and trade; and to assess the extent and strength of the alleged prejudice against the Indian, and the reasons for that prejudice. Our conclusions, therefore, have been arrived at after careful consideration of the situation in the Union as it presented itself to us.

4. We shall first try to describe the historical and psychological background which is necessary for a correct understanding of the Indian attitude. Addressing the Imperial Conference in 1923, Lord Peel, then His Majesty's Secretary of State for India, said that the position of Indians in other parts of the Empire was "a matter of sentiment and feeling." The point requires some elucidation with reference to India's place in history and her present position in the Empire. For racial pride and racial aspirations are the product of tradition. It would be impossible to appreciate fully and correctly the strength of Indian feeling throughout the world on the position of Indians in South Africa, without a brief retrospect of India's past, or reference to her present-day achievements and her legitimate expectations as an integral portion of the British Common-

wealth. Since the days of Alexander, the march of events in the great sub-continent has found faithful chroniclers. Its history stretches into a remoter antiquity; but their records bear ample testimony to India's civil splendour and military renown. Before the Christian era Indian colonists penetrated into Java and portions of the Far East: the temples of Borobudur and Nakhon Vat still bear testimony to the impress of their genius on these countries. India gave birth to two of the world's greatest religions, Hinduism and Buddhism. Among her earliest rulers was Asoka, whose temporal power was greater than that of Charlemagne, and whose spiritual fervour firmly established Buddhism in China and Tibet. Among her earliest poets was Kalidasa, whose beautiful lyrical drama, "Sakuntala," won the spontaneous homage of Goethe. Schopenhauer eulogized one of her best-known systems of philosophy in the following words: "In the whole world there is no study so elevating as that of the Upanishads. It has been the solace of my life—it will be the solace of my death." The confidence of philosophic subtlety, mysticism, characteristic of early medieval Hindu society, with the artistic energy and political genius of her Muhammadan rulers, further enriched Indian civilization. Numerous travellers and ambassadors from Europe have written of the magnificence and organization of the most illustrious Mussalman dynasty that governed India. The fabled peacock throne is a memory of that magnificence; the An-i-Akbari an impartial witness to that organization. We shall not enlarge on either at too great length. We shall only mention the two most abiding monuments of Moghul influence: the magic mausoleum of the Taj Mahal at Agra, and the system of land revenue organization, which the British power in India has adopted. When dominion in India passed to the British Crown, the civilization of her people received recognition in the gracious declaration of Her Majesty Queen Victoria that neither their colour nor their creed shall be a bar to their advancement. That promise, which was reaffirmed by His late Majesty King Edward VII and His Majesty King George V, has already been fulfilled in a generous measure, for Indians have been promoted to the British Peerage and His Majesty's Privy Council, have been elected to the British House of Commons, and, with the exception of the Vice-Royalty, have held every high office in India. In the world of literature and science they have vindicated their ready adaptability by the completeness with which they have assimilated western culture. In literature and art, Tagore; in science, Roy, Bose and Raman; in original scholarship, Bhandarkar and Shibli; in mathematics, Ramanujan; in educational statesmanship, Sir Syed Ahmed; in politics, Gokhale have worthily upheld India's claim to be included in the world's intellectual aristocracy. In sport, which occupies so important a place in the life of western nation, the pre-eminence of an Indian, Prince Ranjitsingh, is universally acknowledged. Her industrial advance has been no less remarkable. It is submitted, therefore, that by virtue of the antiquity and vitality of their civilization, Indians have established a strong claim to be treated as the equals of any race. Most civilized countries recognize this in their treatment of Indian nationals.

5. This claim is further strengthened by the position which India now occupies in the British Commonwealth as well as the comity of nations. In accordance with the declaration made on behalf of His Majesty's Government on the 20th August, 1917, a substantial measure of self-government was conferred on India in 1921. *Vis-a-vis* the other Dominions of the Empire, India has already acquired a status of equality. Since 1917 she has participated in every Imperial Conference on the same footing as the Dominions. Her representatives were admitted to the Imperial War Cabinet on terms of equality with those of the autonomous parts of the Empire. Her representatives, like those of the other Dominions, signed the treaties of peace concluded after the Great War. Like the other component States of the Empire, she is an original member of the League of Nations. At every international conference held since the conclusion of the Great War at which the British Empire has been represented by the spokesmen of Great Britain as well as the Dominions, a representative of India has been included in the Imperial delegation. We would refer to the conference on the Reduction of Armaments at Washington as the most notable example. And, in recognition of her position as one of the foremost industrial nations of the world, she occupies a seat on the governing body of the International Labour Office.

6. Apart from her position in the family of nations, India has established a special claim for considerate and equal treatment from her sister nations within the British Commonwealth on account of the part which she has played in the Empire's development and

defence. The following quotation from one of India's most brilliant Viceroy, Lord Curzon, indicates the extent of her contribution to the Empire's defence and development. Addressing a distinguished gathering at the Mansion House, London, in 1904 his Lordship said:—

"If you want to rescue the white men's legations from massacre at Peking, and the matter is urgent, you request the Government of India to despatch an expedition, and they despatch it; if you are fighting the Mad Mullah in Somaliland, you soon discover that Indian troops and an Indian General are best qualified for the task, and you ask the Government of India to send them; if you desire to defend any of your extreme outposts or coaling stations of the Empire, Aden, Mauritius, Singapore, Hong-Kong, even Tien-tsin or Shan-hai-Kwan, it is to the Indian Army that you turn; if you want to build a railway to Uganda or in the Sudan, you apply for Indian labour. When the late Mr. Rhodes was engaged in developing your recent acquisition of Rhodesia, he came to me for assistance. It is with India coolie labour that you exploit the plantations equally of Demarara and Natal; with Indian-trained officers that you irrigate Egypt and dam the Nile; with Indian forest officers that you tap the resources of Central Africa and Siam; with Indian surveyors that you explore all the hidden places of the earth."

The prosperity of Malaya and British Guiana, of Ceylon and Fiji bears testimony to the patient industry and agricultural skill of her children. Of her part in the Great War we would let the tribute paid by General Smuts to her contributions to the Allied cause speak for itself. Replying to an address presented to him by the Indian community at Durban in 1919, he said:—

"I have been proud of the privilege of having had under me in East Africa a large number of your countrymen. . . . Your countrymen fought not only in East Africa, but took part in other theatres of war. The conquering of the Turkish Army was in the main the work of the Indian Army. The burden of the work in Mesopotamia, Turkestan and the Indian Frontier fell almost entirely upon the Indian Army. . . . The stupendous part Indians have played in this great struggle had considerable effect on the result of the war."

We would only add to the theatres of war enumerated in this passage Gallipoli, Flanders and France. To help the Committee to appreciate the measure of this assistance, we would also point out that India's contribution in men was 1,302,000, and its treasure well over £200,000,000. In East Africa alone 34,000 Indian combatants and 12,500 non-combatants shared, along with South African troops, the heat and burden of the conflict.

7. In regard to the treatment of her nationals in Africa, it is submitted that India has special claims to considerate treatment which is normally her due as a valued member of the Commonwealth. Her intercourse with the Continent dates from prehistoric times. Her nationals have traded along the East Coast of Africa for centuries. Until the construction of the Suez Canal, the Cape of Good Hope was, in the phrase of the great India reformer, Raja Ram Mohan Roy, the half-way house between the East and the West. Indians have often shed their blood in defence of Imperial interests in Africa; the part played by Indian troops in defending the Suez Canal and in the conquest of German East Africa are the most recent examples of their devotion. By their labour and enterprise Indians have contributed substantially to the prosperity of the various British possessions on this continent. It will be sufficient to tell the story of what Indian labour accomplished for Natal in the words of official commissions appointed at different periods by the Natal Government.

"Emigration from India to Natal commenced in 1860. . . . Immigration continued until 1866 and then totally ceased. 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 endeavoring 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."

The effect of this, to quote the testimony of Mr. J. R. Saunders, who was one of the Members of the Wragg Commission, was that "up went the revenue, wages and salaries, and retrenchment was soon spoken of as a thing of the past." Speaking nearly 35 years afterwards before the Asiatic Inquiry Commission, Colonel Frank Addison, a planter of long experience, said:—

"The Indian has made Natal. Without the Indian on the coast you would not have had any sugar, tea or coffee plantations; coffee, of course is now out of date, but the whole of the industry on the coast is due to the Indian."

Of the work of the ex-indentured Indians who settled on the land we can do no better than reproduce the verdict of the Wragg Commission:—

"They do remarkably well as cultivators, in the coast districts, of small parcels of land rented on short leases. In such agricultural pursuits they have competed with their former masters, and the quality of maize grown by them has been no unimportant factor in lowering, for some years, the market price of that cereal. In numerous localities, in the upland as well as in the coast districts they have converted waste and unproductive land into well-kept gardens planted with vegetables, tobacco, maize and fruit trees. Those settled in the vicinity of Durban and Pietermaritzburg have succeeded in winning for themselves, almost entirely, the supplying of the local markets with vegetables."

In April, 1920, Mr. Leon Renaud, who has nearly 30 years' experience of Indians in Natal, made the following remarks on the same subject before the Lange Commission:—

"So far as agriculture is concerned, the Indian has fulfilled his duty to the country. They" (the Indians) "brought into cultivation and under production land which was otherwise idle. . . . So far as the coast-belt is concerned here," i.e., in Natal, "they have done the same thing as the peasants have done in France. . . . I know some parts of the land which at the present time have been reclaimed from nature, and which would never have been occupied by Europeans."

B. Of the Indian trader, commonly but erroneously described as "Arab"—in the course of our inquiry we did not come across a single non-Malaya Mohamedan merchant or trader who was not an Indian—whose alleged competition has for some time been the subject of special complaints, the following remarks made by the Wragg Commission may prove of interest to the Committee:—

"We are content to place on record our strong opinion, based on much observation, that the presence of these Indians has been beneficial to the whole Colony, and that it would be unwise, if not unjust, to legislate to their prejudice."

In the course of his statement before the Asiatic Inquiry Commission (1920-21), Sir Benjamin Robertson said:—

"He" (the Indian trader) "has a peculiar economic value to the rural community which may be summed up from the evidence as follows:—

(i) He plays an important part in the development of isolated districts by establishing small stores in places where the turnover is insufficient to support a European business.

(ii) He is more considerate than his Jewish rival in his dealings with the farmers, gives longer credit in times of scarcity, and is content to regard trade as and in itself, and not as a means of recouping on his customer's land.

"(iii) He studies the requirements of the native population more carefully than the white trader does."

From the evidence that we received we think that his utility would be willingly acknowledged by the large mass of dispassionate customers, both rural and urban, British and Dutch, to-day.

9. In the light of this short survey of Indian history and tradition, and of the part played by Indians in the development of South Africa, it will, perhaps, be admitted that the Indian's expectation of respect and of the same treatment as is accorded to other classes of his Majesty's subjects is rational and legitimate. Nevertheless, his actual status in South Africa to-day is, in many respects, inferior to that of the European subject of His Majesty, and he denied privileges which are extended to those who owe no allegiance to the King-Emperor—in fact, even to ex-enemy subjects. Thus, except in the Cape Province, he is not in enjoyment of the political franchise. The municipal franchise to which, until recently, he was eligible in Natal was taken away from him by the Natal Boroughs Ordinance (No. 19 of 1924) and the Natal Township Franchise Ordinance (No. 3 of 1925). A series of resolutions and laws ending with the Asiatic (Lands and Trading) Amendment Act (Act No. 37 of 1919) has completely prohibited the acquisition by him of immovable property in the Transvaal, except in such localities as Government may for sanitary reasons assign to him for purposes of residence. The Durban Borough Lands Alienation Ordinance (No. 14 of 1922) and the Natal Borough and Township Lands Ordinance (No. 5 of 1923) have had the effect of imposing a similar disability on the Indian in respect of purchasing or leasing land belonging to municipalities in Natal.

In the administration of the provincial licensing laws the Indian is treated with peculiar severity almost throughout the Union. In the Orange Free State he may not trade at all, and even in the Cape Province in some municipalities and for certain localities Indian find it difficult to obtain trading licences. As regards the province of Natal, the position is best described in the words used by the principal Licensing Officer of Durban, Colonel Molyneux, who, in giving evidence before the Asiatic Inquiry Commission, said:—

"We do what we can to restrict further Indian licences. A European licence is granted as a matter of course, whereas the Indian licence is refused as a matter of course, if it is a new one."

This is typical of municipalities in that province. Durban and other municipalities in Natal have also used their licensing powers to confine Indians to special areas for purposes of trade. The municipalities of Pietermaritzburg only last December made use of its authority under the Natal Township and Borough Lands Ordinance to eject a number of old-established Indian merchants from their premises, mainly because the localities adjoined the European trading areas. In the rural areas of the province the same restrictive policy is being pursued under the Natal Rural Dealer's Licensing Ordinance (No. 1 of 1923). In the Transvaal Indians cannot get licences to carry on trade "on any of the stands outside townships granted after the Gold Law of 1908 came into force," or on "stands inside townships whether now held under the Gold Law title or under a title converted into freehold under the Townships Act No. 3 of 1908." Elsewhere they are eligible for such licences. But their position has been rendered precarious by the new Transvaal General Dealer's (Control) Ordinance, which makes it obligatory for every applicant for a general dealer's licence to obtain a certificate of eligibility from the local authority if he wishes to carry on business under a municipality, or from a "board" if he wishes to trade within a "declared area." Indians have no representation on municipalities the elements that are opposed to them have, and can, therefore, influence municipal policy to their disadvantage. An instance is provided by the action of the Balfour municipality, which has already utilized its new powers to refuse licences wholesale to Indians.

Except on suburban lines in the Cape Province, Indians may not travel by rail in compartments other than those specially reserved for non-Europeans; in some places they may use only reserved seats on trams, and only reserved taxicabs and rickshaws. Except in the Cape Province, they may, also, not transact the normal business in post and telegraph offices at counters other than those specially set apart for non-Europeans.

In the law courts in Durban we saw a notice prominently exhibited in the Registrar's Office requesting lawyers to send only Europeans to take out processes of the Court, as non-Europeans would not be attended to. Popular prejudice is responsible for their exclusion from hotels and places of amusement like theatres and cinema. It is not suggested that the laws or administrative orders or the racial prejudice of which this differential treatment is the consequence are now in issue. The recital of these disabilities is intended solely to illustrate the contrast between legitimate Indian expectations and the actual status of the Indian community in South Africa.

11. It is sometimes contended that the Indian's services to one section of the community cannot be allowed to complicate the racial problems of South Africa. This cannot however, be treated as an excuse for subjecting him to invidious treatment. In the first place, the Indian labourer did not come to Natal of his own accord. In spite of the opposition to Indian immigration which emanated from certain quarters, the movement was, for a considerable period, actively encouraged by the authorities. Though the contract for hire on which the Indian came to the country was originally for a limited number of years, he was assured that he could engage in agricultural or commercial pursuits and move about with the same freedom as other sections of the community. Later, to achieve the same object, he was permitted to commute his right to a free passage to India for the equivalent value in land. In the second place, as the Clayton Commission pointed out in 1909, the employment of Indian labourers was widespread, and not confined to one or two particular industries. General farmers evidently found them as useful as the owners of sugar estates, and Government railways and coal mines employed them by the thousand. And, as has already been indicated in para. 7 of this statement, their activity has been of great benefit to the province as a whole. The trader who came in the wake of the labourer ministered first to the wants of his own fellow-countrymen and later to the needs of the whole community. As several Europeans, including bankers and large wholesale merchants, told us, their standard of commercial honesty is as high as that of any other race, their dealings with their customers are fair, and they are always considerate and courteous to their clients. In the third place, the bulk of the Indian population in South Africa was born in the country and knows no other home. According to the Census of 1921, the percentage of Indians born in the Union was 87.27 per cent.; many of them are complete strangers to India, her languages and customs. In the fourth place, to quote the words of Mr. W. H. Dawson, a recent writer on South Africa who is not unduly sympathetic to the Indian: "Fair-minded Europeans readily admit that the best of their Indian neighbours are quiet and unassuming in civic and business relationship, keeping themselves to themselves, rendering ready obedience to the laws of the country, so far, as they are understood, and maintaining an orderly and exemplary domestic life."

In the circumstances, they can legitimately claim that they are not an alien but an integral part of the community, an element to be nursed, not to be discarded; an asset and not an embarrassment. That, in spite of all the circumstances which we have briefly enumerated, they are, on racial grounds, subjected to disabilities from which new-comers are exempt, naturally cuts them to the quick. To them it is a bitter reflection that treatment from which they would be protected in a foreign country by treaty-rights or by the active intervention of His Majesty's Government is, paradoxically enough, the reward of their services to South Africa, and the recognition of their common allegiance to the same Sovereign.

12. Their attitude of unrest and alarm at their position in the Union which is scarcely in accord with any principle of equity; is influenced by three other factors. First, the Indian community in South Africa and Indian opinion throughout the world looks upon all fresh restrictions as a breach of the settlement of 1914, popularly known as the Smuts-Gandhi Agreement, which they regard as a guarantee that the status which Indians in South Africa had acquired in 1914 would at least be maintained. Second, they are unable to understand why, even though the white population of South Africa is no longer threatened with an Asiatic influx, the few rights that they still enjoy are being steadily curtailed. Speaking at the Imperial War Conference in 1917, General Smuts said: "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. That is the position in which

we are now—that the fear which formerly obsessed the white settlers has been removed the great principle of restricting immigration for which they have contended on our Statute Book with the consent of the Indian population in South Africa and the Indian authorities in India; and that being so, I think that the way is now open for a peaceful and statesmanlike solution of all the minor administrative troubles which occurred and will occur from time to time. Of course, the main improvement has been the calling of India to the Council Chamber of the Empire. Here, if any question prove difficult of treatment we can discuss it in a friendly way and try to find a solution in consultation, and I am sure we shall ever find it. I for one do not consider that among the multitudinous problems which confront us in our country, the question of India will trouble us much in the future. In 1918, on a similar occasion, Mr. Burton made the following statement: "As far as we are concerned, it is only fair to say—and it is the truth—that the Indians in our midst in South Africa, who form in some parts a very substantial portion of the population, are good law-abiding quiet citizens, and it is our duty to see that they are treated as human beings with feelings like our own and in a proper manner." India find it difficult to reconcile restrictive legislation such as has been enacted in Natal, is now contemplated in the provisions of the Colour Bar Bill and the Liquor Laws Consolidating Bill specially affecting Asiatics, with the principles of policy embodied in the pronouncements of two responsible South African statesmen who, at the time the statements were made, spoke on behalf of the Government of the Union. They can still less understand so deep an affront to their self-respect and so drastic a diminution of their present rights as is involved in the Areas Reservation and Immigration and Registration (Further Provision) Bill. Third, they feel that the Union Government which, when the Act of Union was passed, was made the sole guardian of their interests owes them special protection, since, except in the Cape Province, they are denied the political franchise which wherever representative institutions prevail, is the surest safeguard of the rights and interests of any section of the community.

13. The Bill appears to be incompatible with these assurances. It is a deep affront to the sentiment of an ancient and civilized people and inherently unjust. Its three basic principles are:—

- (i) Compulsory commercial and residential segregation;
- (ii) Restriction of rights of acquisition of immovable property; and
- (iii) Further restriction of rights of immigration and inter-provincial migration.

We shall deal with these *seriatim* in the light of information which we have collected and impressions which we have been able to form as a result of our inquiries.

(i) *Compulsory Commercial and Residential Segregation.*—Commenting on the proposals for residential segregation which were frequently made by witnesses of an anti-Asiatic complexion, the Lange Commission said: "The result of our visits of inspection to some of the locations or so-called bazaars at present set apart for Asiatics in the Transvaal was not such as to inspire confidence in a general policy of segregation." "At Johannesburg Indian merchants appeared before the Commission who proved by their book and their income-tax receipts that their individual incomes amounted to several thousand of pounds per annum. From their annual household expenditure, as shown by their books, which were carefully and accurately kept, their standard of living appears to be quite equal to that of ordinary well-to-do classes amongst Europeans. It seems monstrous, therefore, to suggest that these men who have by their industry and commercial ability worked themselves up to such a position should now be forced to remove into locations." On these grounds they came to the conclusion that "indiscriminate segregation of Asiatics in locations would result in eventually reducing them to helotry and that such measures, apart from their injustice and inhumanity, would degrade the Asiatic and react upon the European." They accordingly recommended that "there should be no compulsory segregation of Asiatics." Indians without exception lool upon the application of the principle of compulsory segregation to themselves as a racial stigma. It is galling to their national pride to feel that though members of their race may sit in the Council Chamber of the Empire beside the most distinguished statesmen in South Africa they may not live in proximity to the humblest of their white fellow subjects; that Tagore, though he was worthy of the Nobel prize in literature, could, i

he were in South Africa, reside only in a slum like Boksburg or Germiston. The fact that the Bill provides for exemptions is no consolation to them; for they realize that no Indian, truly proud of his origin, will seek personal aggrandisement at the sacrifice of association with his fellows—a severance of association which would most effectively destroy his value as a factor in the uplift of his nationals.

Their sense of humiliation is aggravated by the knowledge that the Bill seeks to place them on a lower level than certain Coloured elements of the population of the Union. Where Indians have inter-married with the Malay community, it is feared that to racial humiliation will be added the bitterness which is born of a consciousness of inequality between husband and wife. From the commercial point of view segregation would spell ruin to many Indians and ultimate restriction of opportunity to all. Businesses which now rely on a European clientele will be extinguished with in a generation; in the majority of cases, much sooner. Indian trade will be restricted, geographically, to a special area, practically to a section of the community which will probably be the poorest. The consequences, immediate as well as remote, of such a drastic curtailment of existing rights need no undue elaboration. We would merely ask the Committee to reflect on the results of the restriction now contemplated on the many Indians who carry on business at present in premises owned by themselves or hired from Europeans, in areas that may be set apart for the latter. From our experience we can assure them that there are many such in Natal; that in the Transvaal, where the acquisition of fixed property by Indians has always been restricted, probably the majority of Indian traders hold land on lease from Europeans; that in the Cape Province, where men of various races trade alongside each other—the dividing line is the class of business or financial capacity—segregation for the purpose of trade will impose very great hardship.

Further, with their experience of municipal administration of laws affecting them and their impotence to influence municipal policy, Indians regard their future under segregation, whether for purpose of residence or trade, with feelings of dismay. In view of the conditions prevailing at Germiston, Boksburg, Springs and other Asiatic Bazaars which we visited in the Transvaal, we consider that they have good reason for the fear that in practice, the policy of segregation will be administered in a spirit of racialism rather than of even-handed justice. The interests which are hostile to them, and which are in possession of the political franchise will, always, be able to influence the administration of the proposed law to their disadvantage, for neither local bodies nor Government are likely to disregard the wishes of the electorate.

(ii) *Restriction in regard to Acquisition of Property.*—In the Orange Free State Indians cannot hold immovable property at all. In the Transvaal they were subject to stringent limitations until 1st May, 1919, and since then acquisition of property has been prohibited. In the other two provinces where they have been subject to no such disability, the restrictions now contemplated in the Bill constitute a drastic innovation. The effect of these restrictions in so far as they are designed to subserve the policy of racial and commercial segregation has already been indicated in the preceding paragraph. They will also reduce the value of property owned by Indians in European areas by restricting the market for its sale. But grave consequences will ensue from the creation of the Coast Belt. It is in Natal that the Asiatic population is highest; at the last Census the numbers were 141,000 out of a total of 185,000 for the whole Union, of whom 161,000 were Indians. Nearly 48,000 were concentrated in Durban and its suburbs. If the total for the area likely to be included within the proposed 30-mile belt were taken the figure would be larger. A considerable proportion of these are agriculturists whose sole ambition is to own their own plot of land and cultivate it. Some of them own the land on which they grow crops; but the majority are squatters on land which does not belong to them but mostly to Europeans. This is the class which will be hit hardest by the establishment of the coast belt with the attendant condition that members of one race shall not, within that belt, outside class areas, buy or lease land from members of another race. Its effect will be to drive Indian squatters on European land from their natural metier into the labour market. The squatter will lose a congenial employment if not his livelihood; the agricultural labourer will lose all prospect of investing his savings in land, for the area of agricultural land owned by Indians is strictly limited; the general consumer will suffer from a shrinkage of the supply of vegetables and fruit, and a consequential increase in the price of these articles; the labour

market from a glut of cheap labour, and the urban community generally from congestion in towns, especially Durban, whither the squatter, deprived of his holding, will drift in quest of work. This particular phase of the restrictive policy will probably be a source of grave embarrassment to the entire community; for the indentured Indian and his descendants who have done so much for Natal it will be disastrous.

(iii) *Further Restriction of Rights of Immigration.*—In paragraph 3 of their telegram No. 609-O.S., dated the 12th October, 1925, the Government of India made the following observations of principle on the restrictions proposed in the Bill in regard to immigration and inter-provincial migration:—

“ Clause 16 (b) of the Bill will have the effect of restricting further entry of Asiatics lawfully resident in other parts of the Union into Natal and the Cape of Good Hope. The reasons for proposing this provision are unknown to us but we venture to point out that the restrictions of freedom of Inter-provincial movement must seriously affect vested interests. Again, imposition of the time limit in respect of the entry into the Union of wives and children of lawfully resident Indians prescribed in (ii) of the proviso to clause 17 is scarcely in consonance with terms of paragraph 3 of the reciprocity resolution of 1918, which did not contemplate any such limitation, and which representatives of South Africa accepted. In view of the disparity between the two sexes of the resident population, it will inflict great hardship on unmarried Indians,

“(ii) Sub-section (e), which clause 17 substitutes for the present sub-section (e) of section 5 of the Immigrants Regulation Act (No. 22 of 1913), empower Ministers to withdraw from Asiatics, born of parents lawfully resident in any province of the Union domiciled that they have already acquired or may hereafter acquire in another province. Here again we fear that existing rights will be seriously prejudiced.”

With regard to the restriction now contemplated in relation to the entry into South Africa of wives and children of lawfully domiciled Indians, we would add that it constitutes a serious curtailment of a privilege which the Indian community in the Union secured as part of the settlement which led to the abandonment of the passive resistance movement in 1914.

14. We have avoided any discussion of the details of the Bill, for, as we have already pointed out, the objection of the Government of India to its underlying principles is fundamental. Our comments on the principles purport to show how they involve a drastic curtailment of his already attenuated rights—rights which fall far short of his legitimate claims as a subject of the Empire, a useful citizen of the Union and a civilized human being. In the course of our investigations we have had evidence of the existence in certain circles of a feeling hostile to him. The Bill presumably constitutes an attempt to placate this feeling. We would urge that, so far as we have been able to ascertain, the sentiment to which the Bill is a concession is not founded on fact. Since the Asiatic Inquiry Commission definitely rejected the idea of compulsory segregation, the Indian has made no encroachment on the sphere of the European. On the contrary, in the municipalities of Natal, the number of European trading licences has increased by 15 per cent. as against an increase of only 5 per cent. in Asiatic licences. In the Transvaal in the municipalities of Krugersdorp, Johannesburg, Zeeuast, Middelburg, Pietersburg, Volksrust and Potchefstroom, where opposition to the trading activities of the Indian community was most vehemently voiced before the Asiatic Inquiry Commission, the number of Asiatic General Dealers' licences had fallen from 1,902 in 1921 to 1,671 in 1923. In the whole province the decrease in such licences between 1922 and 1923 was 296. Official comparative figures of European and Indian employment in the various industries are not available. Individuals who were most positive in stating that the Indian had ousted the European from certain trades could produce no consolidated statistics, but only isolated instances. Information for the magisterial districts of Durban and Pinetown, which was compiled by the Director of Census for the period 1916-1917 to 1922-1923, gives such figures in respect

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of Europeans and non-Europeans. Among the latter, Natives and Coloured persons are also included. These statistics reveal no change in the position since 1919 which can even remotely be described as a setback for the white worker. On the contrary, in several of them the percentage of non-Europeans has actually diminished. In any case, an attempt to solve the problem of economic competition whether in industry or trade, on racial lines is neither equitable nor sound. It is not equitable since on no principle can the Indian be assigned a position of racial inferiority. It is not sound since economic evils require economic remedies. It is suggested that the only way to secure a healthier relation between various elements of the population and safeguard the proper economic development of the country is to aim at raising the educational and economic standards of the Indian section of the community to those of the European. Co-operation between different elements of the population on a footing of equality; not conflict engendered by a sense of grievance, should be the aim of policy. In India and other parts of the Empire such co-operation, notwithstanding differences of religion and customs, has been successfully tried. The experience gained in India provides the most convincing justification of the value of such co-operation. We are confident that were such co-operation attempted in South Africa there would be no Asiatic problem.

15. On the 18th September, 1922, the Third Assembly of the League of Nations passed the following resolution, on the motion of the representative of South Africa:—

“The Assembly expresses the hope that the States which are not bound by any legal obligations to the League with respect to minorities will nevertheless observe in the treatment of their own racial, religious or linguistic minorities at least as high a standard of justice and toleration as is required by any of the Treaties and by the regular action of the Council.”

The object of this resolution was to ensure that the progressive nations of the world should strive to remove from the minds of different sections of their constituent populations all consciousness of injustice. We commend the resolution as enunciating the only right policy for a nation like South Africa to follow.

16. In the preceding paragraphs we have tried to show how the disabilities to which Indians in South Africa are subject are incongruous with their civilization, their position in the British Commonwealth of Nations and their services to the Empire and to South Africa. We have endeavoured to indicate the nature of the feelings with which Indians of all classes in the Union regard the proposed Bill. We have also tried to explain that though there is a feeling of alarm among the white community regarding the competition of the Indian, it is not well-founded. We hope we shall not be misunderstood if, before we conclude, we also emphasize the strength and universality of feeling which the Bill has roused in India. Passionate regard for *Izzet*—a national phrase for which “honour” is but a feeble substitute—is the link which unites Indians throughout the world. Indians in India look upon the treatment of fellow-Indians who have settled in other parts of the Empire as the test of their own status in the Empire. Any humiliation inflicted on them they resent as an affront to their own honour. This sentiment is as genuine as it is widespread. It is not the product of artificial agitation, but the spontaneous reaction of a highly sensitive national temperament. It would be a mistake to infer that this sentiment is animated by any arrogant or aggressive desire to interfere in the internal affairs of another portion of the Empire. Nothing is further from the mind of the people of India. They are, on the contrary, anxious to live on terms of friendship with all their fellow-subjects. All they seek is reciprocity in honourable treatment. It is a grievous disappointment to them that although South Africa is no longer menaced with an influx of immigrants from India, the rights of the Indian community in the Union are being progressively diminished. They feel such treatment to be incompatible with the spirit of the assurances they received when the Government of India passed to the British Crown that there shall not be in the eye of the law any distinction against them by virtue of their colour or creed. They feel it to be inconsistent equally with the assurances given subsequently by responsible South African statesmen like General Smuts and Mr. Burton. They fail to understand why relations between India and South Africa, which are geographically near to each other, and whose friendship should be mutually advantageous in commerce and defence, should be subjected to a strain which with goodwill and sympathetic understanding could easily be allayed. The present Bill they regard as an unnecessary incentive to estrangement. They feel that the

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Indian problem in South Africa should be susceptible of a solution honourable and satisfactory to both parties if the two peoples and their Governments approach it with sympathy and vision. To achieve such a solution it is imperative to establish a calmer atmosphere for consultation and discussion. It was with this object that the Government of India suggested a conference, whether in South Africa or in India. Considerations of amity, justice and expediency still require that such an atmosphere should be established. The passage of the Bill will only aggravate the situation. We hope that the Parliament and people of South Africa will deal with the problem in a spirit of friendliness, wisdom and justice.

G. F. FENNERTON,

RAZA ALLI,

DEVAPRASAD SARVADHIKARI.

Cape Town.

3rd March, 1926.

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APPENDIX VIII

SUPPLEMENTARY STATEMENT OF THE GOVERNMENT OF INDIA DEPARTMENT FOR THE SELECT COMMITTEE OF THE UNION HOUSE OF ASSEMBLY ON THE AREAS RESERVATION AND IMMIGRATION AND REGISTRATION (FURTHER PROVISION) BILL.

In this memorandum we have attempted to deal with certain points arising out of the evidence tendered before the Select Committee which seems to call for explanation or comment. For the sake of convenience we have grouped our observations under five broad heads, viz.—

- (1) Population.
- (2) Property.
- (3) Economic Competition.
- (4) Sanitation.
- (5) Miscellaneous.

(1) *Population. (a) Alleged inaccuracy of Census figures.*—Doubts have been expressed in certain quarters as to the correctness of the figures of the Indian population collected at the last census. One witness definitely seemed to hold the view that the census estimate was below the actuals. The Director of Census explained in his evidence before the Committee how the enumeration at the last Census could not be out by more than 1,000. An independent calculation based on figures quoted by the Asiatic Inquiry Commission confirms the substantial correctness of the Census figures. In paragraph 176 of their report, the Commission estimated the Indian population of Natal at 135,000 and the annual excess of the birth rate over the death rate at 26 per thousand (45—19). This would give a gross total of 142,535 for the Indian population in 1921, or deducting 4,000 who were repatriated during 1920 and 1921, a nett aggregate of 138,535. Applying the same rate of annual increase to the Indian population of Natal in 1911 which was returned as 133,500 in round numbers, and allowing for the repatriation to India during the decennium ending 1921 of 29,366 men, women and children, the total Indian population in 1921 would work out at 138,724. The Commission's figures were based in the main on the records of the Protector of Indian immigrants, Natal, one of whose duties it is to look after all Indian immigrants who came under indenture and their descendants, the class which is by far the most numerous. Both the calculations give a smaller total than that arrived at by the Census Department, but the difference is far from sufficient to justify a general distrust of the results arrived at by the latter, or to provide any rational support for the belief that those results contain a large margin of error.

(b) *Migration for marital purposes.*—In the course of the evidence apprehensions were expressed as to the possibility of a large influx of females from abroad to provide brides for the 56,000 Asiatic males who were returned as unmarried at the last census. The tendency in the past to import wives from India was due (1) to the disparity between the numbers of the male and female portions of the resident Indian population and (2) the preponderance among males of persons born outside the Union. The figures supplied to the Committee by the Director of Census show that of the 56,000 unmarried males living in the Union 43,617 were below the age of 21 which represents the normal matrimonial age-limit. The corresponding number of females under the same age was 41,136. Of the former, 40,567 were born within the Union; of the latter 39,452. The natural tendency for the males especially those born in the Union would be to select their wives from women of their own age in South Africa. This is confirmed by the fact that amongst the Natal born Asiatics 3,394 males married females born in the same Province whilst 368 took wives from India. The fear of a large future immigration of brides from India may, therefore, be dismissed as chimerical.

2. *Property. (a) Fresh Acquisition.*—(i) *Urban Areas.* The Transvaal witnesses were unable to adduce any evidence of the evasion of Act 37 of 1919 which prohibits the acquisition by Asiatics of land in the Transvaal. The Cape evidence divulged no tendency on the part of the Indian to penetrate into European quarters. Some Natal witnesses drew a somewhat alarmist picture of the extent and effect of Indian purchases of immovable property especially within the borough of Durban. We feel that undue emphasis has been laid on the total valuation of Indian-owned property inside the borough. To obtain a true

perspective other elements also have to be viewed in juxtaposition with the aggregate rateable value of such property. In the first place while the Indian population of the borough of Durban is nearly one-third of the European, the ratio of Indian to European-ownee property is as 1:14. This can hardly be regarded as an unduly high ratio, when it is remembered that the bulk of the well-to-do Indian population is concentrated in Durban. In the second place the percentum increase per annum since 1920-1921 only averages .1. The almost unvarying practice of private Europeans to inhibit the sale of their property to Indians and the power now enjoyed by local bodies to subject the sale of their own property to a similar condition prevents Indian encroachment of European areas.

(ii) *In rural areas.*—The figures relating to the area of land held by Asiatics in Natal which have been supplied by the Department of the Interior to the Committee do not distinguish between rural and urban areas. A comparison of this figure with the total acreage of Natal which is 11,300,000 acres in round figures brings out the insignificance of the area of land owned by Indians. For, although Indians slightly outnumber the European population of the Province, they own only one acre in every 125. In the face of these figures we find it difficult to understand how it can be seriously argued that the Indian holds more than his share of land or is a menace to any one. In our opinion these figures also serve to bring home the practical hardship and injustice of restricting in perpetuity the Indian ownership of land in Natal to 73,000 acres.

3. *Economic Competition.* (a) *Competition in Commerce.*—In paragraph 14 of our first statement we have given licensing statistics, obtained through the Provincial Administrator, Natal and the Registrar of Asiatics Transvaal, to show that the Indian is no longer thwarting European expansion. The other evidence tendered before the Committee on this subject does not appear to affect this conclusion. The figures supplied by the representatives of the Krugersdorp Municipality, which has always been a centre of anti-Asiatic agitation, show a decrease since 1919 in Asiatic trading within the area of the township. The Mayor of Port Elizabeth laid great stress on the growth of Asiatic trading within his Municipality. But the finding of the Asiatic Inquiry Commission was, even in regard to the Cape Province, "that there were substantial grounds for the complaint" that "certificates for licenses are frequently refused to Asiatics" by certain Municipalities "for the sole reason that the applicants are Asiatics." Complaints of such treatment by the Port Elizabeth Municipality were made before the Commission, but we are not in a position to say whether they were or were not investigated. Our own inquiries in the town show that a larger percentage of applications for certificates is refused in the case of Indians than of Europeans. Thus, in 1920, out of 195 Indian applications 55 were refused, while out of 189 European applications only 16 were refused. The figures for 1925 were as follows:—

	Total.	Refusals.
Europeans applications	311	11
Indian applications	286	36

Whatever the reasons for these results, it seems clear that they do not disclose any increase in Indian trade at the expense of the European.

(b) *Competition in Industry.*—The facts in regard to such competition, in so far as we are able to ascertain them, were set forth in paragraph 14 of our first statement. In regard to specific trades like printing and building Mr. Easton of the Durban Town Council corroborated our conclusion that the European was holding his own. Mr. Cox cites figures from the evidence given by the Chief Inspector of Factories, Natal, before the recent Economic and Wage Commission and seemed to consider that the Indian was penetrating generally into most fields of industry. But in reply to a question by the Chairman of the Commission as to whether he had observed an improvement in the opportunities for the employment of white labour the same official replied: "I think there is a little now." We would point out that a mere mention of the total number of Asiatics employed in industries provides no indication of causes and tendencies. Of the 10,039 referred to by Mr. Cox, no less than 4,660 are employed in the sugar industry for which they have

special and hereditary aptitude. Their presence in the other industries is due mainly to their fitness for the class of work in which they are engaged. Employment is largely a matter of economic efficiency. Unless it is contended that the Indian should not be employed at all in industrial occupations it is difficult to appreciate the relevance or force of purely numerical comparisons.

4. *Sanitation.*—Great stress was laid in the course of evidence on the insanitary habits of the Indians and their reluctance as a body to obey sanitary laws. We hold no brief for persons who do not conform to the law, nor do we wish it to be understood that we are against Indians being required to conform to the health standards in whose midst they reside. The Government of India have consistently urged that every endeavour should be made to raise the Indian to the level of the European in this respect. But we do not consider that the blame for such defects as exist is to be laid entirely at the door of India. The sanitary conditions under which a person lives are largely influenced by his financial capacity. Speaking of the well-to-do merchants in Johannesburg the Asiatic Inquiry Commission said: "From their annual household expenditure, as shown by their books which were carefully and accurately kept, their standard of living appears to be quite equal to that of the ordinary well-to-do classes amongst Europeans." This was also our experience. If the poorer Indian is unable to live up to the level of his more prosperous confrere, the explanation is to be found in his poverty and not in any inherent dislike of cleanliness. Squalor and poverty go together everywhere. In Europe and in India, especially in the larger towns like Calcutta and Bombay, the State or the local authority has stepped in to provide better housing accommodation for the poorer classes, and it is not our experience that this privilege has been in any way abused. On one or two sugar estates in Natal where the employers have constructed separate cottages for their Indian labourers, the occupants maintain their premises in a clean condition. Where they are handicapped by poverty or neglect, conditions are inevitably not of the best. There may be individuals who are difficult to reform, but it would be unreasonable to regard them as typical of the community. Segregation of the Indian community into areas removed from the town—several witnesses indicated clearly that that was the objective—is hardly likely to achieve the elevation of Indian sanitary standards. On the contrary, the tendency would be to neglect these areas which will degenerate into slums similar to the Asiatic Bazaars at Germiston or Bokaburg. The cost of providing amenities in such areas is sure to be considerable and we are not optimistic regarding the readiness of the non-Indian rate payer to shoulder this burden. On the contrary, if as several witnesses stated, the real feeling is in favour of the ultimate elimination of the Indian from South Africa, there is a danger that these areas will be neglected to accelerate the flow of Indians from the country. We do not wish to impute motives, but we cannot ignore reasonable possibilities. The Indian will be powerless to prevent this as he will not be eligible in future for the municipal vote.

5. *Miscellaneous.*—Individual witnesses seemed to doubt the accuracy of our statement in regard to (i) the commercial morality of the Indian, (ii) the exact circumstances in which certain Indian storekeepers had to leave a block of property opposite the Town Hall at Maritzburg, and (iii) the rate of wages paid to Indian shop assistants. As regards (i) we leave the figures of insolvencies supplied by the Director of Statistics to speak for themselves. Our remarks were based on independent inquiry and we attach a list of the names of European gentlemen who are prepared to give evidence in person or send in written statements on the subject. (ii) does not really affect our main contention which is that local bodies in Natal exercise their powers to confine Indians to special areas. On the facts we shall only quote a statement made by Mr. Saunders, an ex-Mayor of Pietermaritzburg in his evidence before the Committee,—evidence to which we have had access through the courtesy of the Chairman. "In Pietermaritzburg the Town Council has been put to a big expense in buying a block of ground right opposite our Town Hall which ground has been a disgrace to Pietermaritzburg owing to its being occupied by Asiatics for year past. The Corporation have bought that ground and the great object in doing so was to remove one of the standing disgraces and menaces to public health in the centre of our city." With regard to (iii) our position has always been that (a) the money wage paid to an Asiatic shop assistant does not represent the full cost to his employer of employing him, and (b) that the better class Indian merchant pays his assistant a decent wage.

We shall not discuss the suggestions made by certain witnesses to amend the Bill, for our objections to it are fundamental and we cannot, consistently with our attitude, be drawn into a discussion of details. These suggestions, however, are significant of the spirit in which the proposed law would be worked. We also venture to think that the evidence which has been tendered in support of its early enactment is inspired by a feeling of fear for which there is no real foundation. An increase of 2 women and 25 children in the Asiatic population, which seems to have frightened the Municipal Council of Krugersdorp, or the possession by Asiatics of 89,000 acres of land in Natal out of a total of more than 11 million, cannot be described as justifying legislation which is calculated to hurt the national sentiments of a friendly people, and inflict the severest hardship on a law-abiding section of the population of South Africa.

Cape Town.

The 25th March 1926.

List of the names of European gentlemen and firms who are prepared to give evidence or submit written statements regarding the commercial morality of the Indian.

Durban—

Mr. Harry Linder of Linder Brothers.

Mr. Dalton, Director of Paynes.

Johannesburg—

J. W. Jagger and Company,

J. Nunnerley and Company,

Garlick and Holderoef,

Heymann and Gordon,

Cooper Maister and Grevler,

The Linn Trading Company,

The Elephant Trading Company,

W. B. Pickle and Sons,

T. Allbrett and Company,

A. S. White and Company,

Herman and Traube,

Randle Brothers and Hudson, Limited,

A. Scholsburg,

E. Meyers,

Beatley and Company,

M. Bloch and Company,

J. Bell and Company,

S. Jacobson and Son,

United Fruit Growers,

L. Suzman, Limited,

Herbert Evans and Company,

Glenton and Mitchell,

T. Simpson and Company,

Bernstein Brothers,

Central Agency Limited,
Calico Printers Association Limited,
G. E. Taylor,
Karp and Fisher,
B. Pein and Company,
F. Lifson,
S. Matk,
Stuart Campbell Limited,
A. O. Sewart,
Sampson Marks and Company.

Pretoria—

Sundelinger and Company,
L. Solomon,
T. W. Beckett and Company,
D. Meyer,
Goodman Brothers,
Kaisersellenbogen Limited,

Ficksburg—

Yunis Brothers and Louisa,

APPENDIX IX.

TELEGRAM TO THE GOVERNOR GENERAL OF SOUTH AFRICA, CAPETOWN, NO. 257-O. S.,
DATED THE 26TH MARCH 1926.

1. Your telegram dated March 10th. We have not yet seen text of speech delivered by Minister of Interior on February 17th, and are therefore glad to receive assurance from Your Excellency's Government that it was in no way discrepant with the actual course of negotiations.

2. Your Excellency's telegram makes it clear to us that Union Government are not averse to idea of a conference provided that they are satisfied that such conference will hold out definite prospect of leading to real and effective solution of Indian problem. We appreciate desire of Your Excellency's Ministers to obtain assurance on this point and to find a formula acceptable to your Government and mine as basis of Conference which would enable discussions to be initiated. We ourselves are equally anxious that if a conference takes place, it should not prove abortive or lead to misunderstanding and it is with this object in view that we desire that there should be no misapprehension about our own attitude. As we explained in our telegram of October 9th, we are unable to agree to enter a conference of which the object would be to effect a considerable reduction of the Indian population and we still adhere to this opinion. In our view the right method of arriving at a real and effective solution of the Indian question would be for both parties to enter the conference without being committed in advance to any particular solution of the questions at issue. We ourselves should enter such a conference with the sincere intention of discussing frankly with the Union Government all possible methods of settling the Asiatic question, of understanding the difficulties which have led to the present policy of South African Government and of explaining our own difficulties in acquiescing in that policy and the objects which we have in view. In the atmosphere of better mutual understanding which we believe this exchange of views will establish, we are hopeful that agreement may be rendered possible as to general lines on which question can be finally settled.

3. As preliminary step we would suggest that Union Ministers might consent to confer informally with Leader of our deputation with a view to ascertaining whether obstacles in way of conference cannot be overcome. We cannot of course agree to invest Paddison with plenipotentiary powers to act on our behalf and any arrangement suggested after consultation with Your Excellency's Ministers would be subject to our confirmation after receipt by us of his report and after discussion with him. We are impressed with difficulty of arriving at understanding by telegraphic correspondence and it is on this account that we propose personal discussion and have always held that conference affords most hopeful method of dealing with this question.

4. In the event of agreement being reached regarding Conference, meetings between representatives of this Government and of Union Government might conveniently be held, either formally or informally, at time of meetings in October next of Imperial Conference or, if necessary, at an earlier date. We assume that progress with regard to pending legislation would be held up until Conference has had opportunity of discussing question in all its bearings.

APPENDIX X.

TELEGRAM FROM THE GOVERNOR GENERAL OF SOUTH AFRICA, DATED THE 13TH (RECEIVED 14TH) APRIL 1926.

In reply to your telegram dated 26th March, 1926, my Ministers desire to inform Government of India that in compliance with their request the Prime Minister and the Minister of the Interior have informally conferred with Mr. Paddison, Leader, and Mr. Bispai, Secretary, of deputation and that conversations have undoubtedly resulted in a mutually better understanding and appreciation of respective points of view and difficulties of the two Governments.

2. My Ministers do not consider the divergence in point of view or the difficulties so great that it should be deemed impossible to find a satisfactory basis for formal conversations, which might lead to an amicable settlement, as long as it remains understood that such conversations shall on both sides be entered into and conducted with sincere desire and intention to cooperate in finding a real and effective solution of the Indian problem. Any conference which could justly be interpreted as a mere attempt from outside to prevent the Union Government from dealing with its own problems in its own way will be resented by the people of South Africa and is and will continue to be unacceptable.

3. As was pointed out in previous correspondence the European community in South Africa consider that their economic position and civilization are seriously menaced by the presence and unfair competition of Asiatics and the demand on their part that steps shall be taken without delay to counteract that menace is insistent and practically unanimous. This fact has been corroborated to fullest extent by evidence laid before the Select Committee. My Ministers therefore wish to impress upon the Government of India that public opinion in South Africa will not view with favour any settlement which does not hold out a reasonable prospect of safeguarding the maintenance of western standards of life by just and legitimate means. If the Government of India could accept this presentation of position as the correct one and could further express their willingness to assist in exploring all possible methods of settling the Asiatic question, the Union Government will be ready to accept their offer to enter into a Conference for the purpose. Any proposal which such a Conference might make would be subject to confirmation by the Governments of the two countries.

4. In order to ensure that the Conference, if finally agreed upon, should meet under best auspices my Ministers have decided, subject to the approval of the Select Committee and Parliament, not to proceed further with the Areas Reservation and Immigration and Registration (Further Provision) Bill until results of Conference are available.

5. Should the reply of the Government of India be favourable and final agreement in regard to the holding of a Conference be reached my Ministers suggest such agreement shall be embodied in following terms which could form basis and be included in any official public statement to be made at a later date: "The Government of Union of South Africa, and Government of India have been further in communication with each other regarding the best method of arriving at an amicable solution of Indian problem. The Government of the Union have impressed upon Government of India that public opinion in South Africa will not view with favour any settlement which does not hold out a reasonable prospect of safeguarding the maintenance of western standard of life by just and legitimate means. The Government of India are prepared to assist in exploring all possible methods of settling Asiatic question and have offered to enter into a Conference with the Union for the purpose. Any proposal that Conference might make would be subject to confirmation by the Governments of the two countries. The Union Government have accepted offer of Government of India and in order to ensure that Conference should meet under best auspices have decided, subject to approval of Select Committee and Parliament, not to proceed further with Areas Reservation and Immigration and Registration (Further Provision) Bill until results of Conference are available."

6. With a view to the limited time of Select Committee and in order that they may be enabled to make the necessary recommendation my Ministers will be glad to be favoured, with an early reply.

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APPENDIX XI.

TELEGRAM TO THE GOVERNOR GENERAL OF SOUTH AFRICA, CAPETOWN, NO. 277, DATED
THE 17TH APRIL 1928.

Your telegram dated April 13th. We learn with great satisfaction that conversations between Your Excellency's Ministers and the Leader and Secretary of our deputation have led to a better understanding and appreciation of the respective points of view and difficulties of the two Governments and that as a result of them, Union Government are prepared to enter into a Conference with us with object of exploring all possible methods of settling Asiatic question in South Africa consistent with maintenance of western standard of life. We have constantly affirmed our belief that Conference affords most hopeful method of dealing with this question, and we gladly therefore accept the proposal which is now made to us. The terms in which it is proposed to embody the agreement to hold a Conference afford, in our opinion, a suitable basis for its proceedings, and have our complete concurrence. We accept the statement of Your Excellency's Government that public opinion in South Africa would not view with favour any settlement which does not hold out a reasonable prospect of safeguarding the maintenance of western standards of life by just and legitimate means, and for our own part, will enter the Conference with the sincere desire of cooperating with Union Government in finding a solution of the Asiatic question which can be honourably accepted by the Governments and peoples both of South Africa and of India. We agree further that it is essential that any proposals that the Conference may make should be subject to confirmation by the Governments of both countries.

2. It is understood that in presenting the report of the Select Committee on the Areas Reservation Bill, Minister of Interior will announce the agreement that has been arrived at between the two Governments and will move that Parliament should not proceed further with the Bill until results of Conference are available. We should be glad to know on what date this announcement will be made in order that we may arrange for simultaneous publication in this country.

PENDIX XII

S. AFRICAN ASIATIC PROBLEM

DR. MALAN'S SPEECH IN UNION ASSEMBLY.

Acceptance of Conference Urged.

TRIBUTE TO INDIAN OFFICIAL DEPUTATION.

Simla, April 29.

In view of the importance of the agreement arrived at regarding the discussion of the position of Indians in South Africa, the Associated Press made special arrangements to obtain by cable an amplified version of Dr. Malan's speech in the Union Assembly. Dr. Malan, in course of his speech, said:—

"When the Areas Reservation Bill was referred to the Select Committee on February 17, I made a statement to the House setting forth the general course and the result of negotiations which had taken place between the Union Government and the Government of India. I then defined our attitude towards the holding of a conference which was the immediate objective of the Government of India and which as then understood to be proposed was not acceptable to us. I stated definitely that we were not and could not with any justice be opposed in principle to conversations with any outside Government, but that on the contrary we were strongly and on principle opposed to any conference which was one-sided, in so far as it would admittedly have been expected from us to make concessions in connection with our proposed legislation while there would apparently have been a failure to counterbalance these concessions with corresponding prospective advantages. We did not consider the conference as then proposed by the Government of India to be otherwise than one-sided and as such to have the appearance of unjustified interference from outside with our domestic affairs."

SATISFACTORY ASSURANCES.

"After my statement on that occasion negotiations were resumed between the two Governments on an assurance on the part of the Government of India that their attitude was not correctly understood and on an assurance on the part of the Union Government that consistently with their previous standpoint they still considered that the door was open to the holding of a conference if a satisfactory assurance could be obtained as to its nature and scope. With very valuable assistance from the informal conversation between the Prime Minister and myself on the one hand, and the Leader and Secretary of the Government of India Deputation on the other, a formula was agreed upon, which, if accepted by this House, will form the basis and determine the nature of a conference which, before our legislation is further proceeded with, will make a serious and honest attempt to arrive at a real and effective, but at the same time amicable, solution of the Indian problem.

"This formula definitely excludes the possibility of a conference which could justly be interpreted as merely an attempt from outside to prevent the Union Government from dealing with its own problem in its own way and which as such would be presented by the people of South Africa, and is and would remain unacceptable. On the contrary it definitely ensures the co-operation of two Governments in exploring all possible methods of settling the Asiatic question in South Africa on the basis of the maintenance of the Western standard of life by just and legitimate means."

APPEAL TO S. AFRICAN PATRIOTISM.

Dr. Malan then read the formula which has been accepted by both the Government and which has already been published. He proceeded:—

"The Government consider the assurance which the Government of India have given under the formula to be sufficiently satisfactory, justifying the holding of a conference and to postpone the proposed legislation until the results of such conference are available, and it has accordingly recommended this course to the Select Committee. It is hardly necessary for me to point out that the successful issue of the proposed conference will almost exclusively depend upon the extent to which the public feeling in India as well as in South Africa will (respond to) in finding a real and effective solution of the problem. It is equally evident that the new and favourable atmosphere which is required can only be created by the utmost circumspection and self-control, and, let me add, by the absence of suspicion and by the presence of faith on the part of the leaders and the people of both countries. Under the circumstances I have the right to appeal, and I know that I shall not appeal in vain, to the good sense and wise discretion and patriotism of the honourable members of this House, when they shall proceed to discuss the report of the Select Committee on the Asiatic question generally inside or outside the House before the conference is held. I have an equal right to appeal, and I know that I shall not appeal in vain, to the good sense and wise discretion and patriotism of the Press and the people of South Africa. If the Parliament should think it worth while to agree to the holding of a conference, then it is surely worth while to make the most of the opportunity which that conference offers in the interests of South Africa."

"Before concluding I desire to place on record my very high appreciation of the way in which the Select Committee has dealt with this most serious and important question. I may say without any reservation that every member without exception has from the beginning to the end approached the problem without any party consideration from the broad South African point of view and with sincere intentions of serving the best interests of our country. I also desire to express on behalf of the Government our very great satisfaction with the way in which the Government of India, including the members of their deputation, have conducted the negotiation and other relations with the Union Government and the Select Committee. By looking upon the subject of our negotiations and by practically dealing with it as a matter solely concerning South Africa and India they have made a valuable contribution towards the practical recognition of the status of both these countries, and by inspiring confidence in their ability and sincerity they have laid the foundation of that sincere and friendly co-operation between the two Governments which alone can ensure a successful issue of the conference and lasting friendly relations between the two countries."—A.P.

Simla, April 29.

Messrs. Andrews and Polak, well-known workers in the cause of Indians overseas, have cabled warm congratulations to the Government of India on the proposed conference, to discuss the Indian question.

APPENDIX XIII.

RACE OF SCHOLARS.

	Primary.		Intermediate.		Secondary.		Total
	State.	Aided.	State.	Aided.	State.	Aided.	
European ..	144	33	7	..	7	4	195
Native ..	53	377	11	42	..	5	493
Asiatic ..	8	39	1	..	4	T. Colls.	52
Other coloured ..	8	11	1	..	..	T. classes	20
Total ..	213	460	20	42	7	18	760

	Boys only.			Girls only.			Boys and Girls.			Total
	Prim.	Inter.	Sec.	Prim.	Inter.	Sec.	Prim.	Inter.	Sec.	
European ..	11	..	3	3	..	5	163	7	3	195
Native ..	..	4	2	..	2	3	430	47	5	493
Asiatic ..	6	1	1	2	..	..	39	..	3	52
Other coloured ..	..	1	..	..	..	..	19	1	1	20
Total ..	17	6	6	5	2	8	691	54	11	760

Classification of Schools.	Enrolment on November 14th, 1924.		Average enrolment for the year.	Average attendance for the year.	Percentage of average attendance to enrolment.
	Boys.	Girls.			
European:—					
Primary ..	11,290	10,146	21,257	18,939	89
Intermediate ..	640	517	1,157	1,086	91
Secondary ..	1,206	1,467	2,797	2,566	91
Native ..	11,791	17,783	29,728	24,868	83
Asiatic ..	6,985	1,287	8,448	7,167	85
Other Coloured ..	954	1,021	1,938	1,656	85
TOTAL ..	32,866	32,201	65,353	56,285	86

TRANSVAAL.

Race of Scholars.	Primary Schools.		*Secondary Schools.		Scholars in Primary Schools.	Scholars in Secondary Schools.
	State.	Aided.	State.	Aided.		
European	1,107	41	54	..	112,134	18,450
Native	1	358	..	4*	37,417	336
Asiatic	5	..	..	..	555	..
Euroafricans	23	..	1	.. 4	3,706	94

*These included training institutions for teachers and industrial and continuation classes.

NOTE.—The expenditure on the salaries of teachers per pupil were:

	£	s.	d.
(1) European children	13	6	6.
(2) Asiatics	5	9	5

Property of the Government of India.



Department of Education, Health and Lands

**Selection of papers regarding South
Africa for the use of members
of the Government of India
deputation to that
Dominion**

DELHI
GOVERNMENT OF INDIA PRESS
1925

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B

PART I.

FROM HIS ROYAL HIGHNESS THE GOVERNOR GENERAL OF THE UNION OF SOUTH AFRICA, CAPE TOWN, TO HIS EXCELLENCY THE RIGHT HONOURABLE LORD CHELMSFORD, G.M.S.I., G.M.I.E., G.C.M.G., VICEROY AND GOVERNOR GENERAL OF INDIA, DELHI, No. 15-1060, DATED THE 5TH APRIL 1921.

I have the honour to transmit, for Your Excellency's information, the accompanying printed copies of the Report of the Asiatic Enquiry Commission.

FROM HIS ROYAL HIGHNESS THE GOVERNOR GENERAL OF THE UNION OF SOUTH AFRICA, CAPE TOWN, TO HIS EXCELLENCY THE RIGHT HONOURABLE THE EARL OF READING, G.M.S.I., G.M.I.E., G.C.B., K.C.V.O., ETC., ETC., VICEROY AND GOVERNOR GENERAL OF INDIA, DELHI, No. 15-1062, DATED THE 7TH APRIL 1921.

With reference to my despatch No. 15-1060, of the 5th April, I have the honour to inform Your Excellency that on the 4th April Mr. Duncan (Minister of the Interior) made a statement in the House of Assembly regarding the Report of the Asiatic Enquiry Commission.

He stated that, as the Report, which had only recently been submitted, dealt with matters of the greatest public importance and affected the most vital interests both of the European and Asiatic populations, the Government considered that it could not during the present session give to these matters the consideration which was required and it therefore decided to postpone legislation until the next session of Parliament.

FROM HIS EXCELLENCY THE VICEROY AND GOVERNOR GENERAL OF INDIA, TO HIS ROYAL HIGHNESS THE GOVERNOR GENERAL OF THE UNION OF SOUTH AFRICA, DATED SIMLA, THE 23RD MAY 1921.

I have the honour to acknowledge with thanks, the receipt of your Royal Highness's letter No. 15-1062, dated April 7th, on the subject of the Asiatic Enquiry Commission's Report. The Government of India learn with satisfaction that in view of the great importance of the matters dealt with in the Report, the Union Government have decided to postpone legislation until the next session of Parliament. They would be glad to receive direct from the Union Government, if there is no objection copies of any bill dealing with the recommendations of the Commission that may be introduced at the next session of Parliament.

2. I take this opportunity of acknowledging with thanks the receipt of the copies of the Report of the Commission forwarded with your letter No. 15-1060, dated April 5th.

DESPATCH TO HIS ROYAL HIGHNESS PRINCE ARTHUR OF CONNAUGHT, K.G., Kt., G.C.M.G., G.C.V.O., C.B., A.-D.-C., GOVERNOR GENERAL OF THE UNION OF SOUTH AFRICA, No. 307-R. A., DATED DELHI, THE 19TH/27TH DECEMBER 1921.

YOUR ROYAL HIGHNESS,

In accordance with instructions received by us from the Secretary of State for India, we have the honour to address your Government on the subject of the Report of the Asiatic Enquiry Commission. We were informed in your Royal Highness's letter No. 15-1062, dated April 7th, 1921, that the Union Government had decided to postpone legislation on this subject until the next session of Parliament. This delay has afforded us an

opportunity to make a careful examination of the Report of the Commission and to formulate our views on its leading recommendations. As Sir Benjamin Robertson pointed out to the Commission the Government of India have always felt a peculiar responsibility for the welfare of Indians in South Africa. Apart from the general interest which the Government of every country naturally takes in the condition of its nationals and former nationals overseas, they cannot but acknowledge special obligations to a community whose very existence originated in an organised system of recruitment to which they were in the past a consenting party. So long as Indians domiciled in South Africa do not enjoy the full parliamentary and municipal franchise throughout the Union, and are not in a position to secure a remedy for their grievances by the exercise of their votes in a constitutional manner, this Government cannot divest itself of a large measure of responsibility on their behalf. We trust, therefore, that the Union Government will acknowledge our right to be heard in connection with any legislation likely to affect materially the rights and status of Indians, and that we may assume that our views and representations will receive sympathetic and careful consideration at their hands.

2. We recognise that the Commission, in dealing with the intricate and contentious points referred to them for report, have been animated by a genuine desire to improve the position of Indians in South Africa, and have placed on permanent record a statement of the Indian case that is on the whole fair and just. By the statistics which their investigations have elicited, the hollowness of the agitation against the so-called Asiatic menace has been exposed, and the problem has been presented in its true perspective. But when we come to examine their recommendations, we feel bound to say that they do not in all cases appear to us to follow logically from their findings. Other considerations than those set out in the Report seem to have been taken into account. In particular, the recommendations of the Commission regarding voluntary segregation and discrimination against Indians in the matter of the ownership of land proceed on an assumption of the innate inferiority of the Indian as such, or at least of the inability of the Indian to adapt himself to the standards of life and conduct obtaining in the Union, which we cannot allow to pass unchallenged. Our general position is already well known to the Union Government. We consider that Indians lawfully domiciled in any dominion within the British Empire are entitled to the full rights and status of British citizens, and we cannot admit that sufficient justification has been shown for imposing any political, social or economic disabilities on Indians as such. At the recent Imperial Conference this claim was admitted by representatives of every portion of the British Empire except the Union of South Africa. The refusal of the latter to accept the resolution moved by the representatives of India has aroused, as was shown by a recent debate in the Council of State, widespread indignation in this country. We are not without hope, however, that developments in South Africa will make it possible for the Government to modify their present attitude. Sir Benjamin Robertson, speaking after careful local enquiry, has maintained that some of the Colonial-born Indians of the second and third generation, even with the limited opportunities now open to them, are already comparatively westernised, and we see no reason why this process should not continue and accelerate as time goes on. In our view, the only policy which holds out any prospect of settling the Indian problem in South Africa on a permanent basis is one that aims at merging the Indian community in the general body of citizens on an equal footing, and at transforming it from a body of discontented aliens, embittered by a sense of being treated as an inferior race, into loyal and contented members of the body politic. This policy has been followed in the Cape Province where Asiatics possess both the parliamentary and municipal franchise and are on a footing of legal equality with Europeans in respect both of the ownership of land and of trading rights. The comparative absence of any serious Indian question in the Province seems to us the strongest possible argument in favour of the policy which we advocate.

3. From this point of view we cannot but regard many of the recommendations of the Commission as profoundly unsatisfactory, and we do not consider that they offer any reasonable prospect of a permanent solution of the questions with which they deal. We are, however, aware of the practical difficulties with which any Government in South Africa that attempted to give immediate effect to the policy which we have indicated would be confronted. If we do not deal in detail with certain important sections of the Commission's Report, it is because we recognise this fact and wish to confine our observations as far as possible to those points which seem to offer some immediate prospect of a final and statesmanlike settlement of the questions at issue. Before, however, coming to the Report itself, there are certain preliminary considerations to which we would take the opportunity of referring. In the first place, we doubt whether sufficient emphasis has been laid on the relative insignificance of the Asiatic population in South Africa. The figures of the latest census are not available to us, but the following figures for 1911 sufficiently illustrate our point:—

Bantu	4,019,006
White population	1,276,242
Asiatics	152,309
Other races	525,837

It seems to us inconceivable that when the problem is realised in its true proportions, the comparatively small Asiatic population can be seriously regarded as a possible danger to the whole community and a menace to its institutions and ideals. On the contrary, we would suggest that the exclusion of the Indian population from some of the ordinary rights and duties of citizenship is far more likely to prove a source of weakness to the Union than their legitimate competition with other classes of citizens in the economic sphere. The feeling aroused in this country by the subjection of Indians in other parts of the Empire to special disabilities is so strong that it is bound to react on Imperial relations in times of difficulty. If more friendly feelings based on mutual good-will subsisted between India and South Africa, they could not fail to strengthen the mutual defensive position of both countries and to facilitate their co-operation in the settlement of those wider questions of Imperial policy in which both countries have a common interest.

4. There is another preliminary point to which we desire to refer. We have stated that, in our view, the only hopeful policy is one that aims at merging the Indian community in the general body of citizens on an equal footing. The terms of reference to the Commission did not empower them to take up the question of improving the general, social and economic condition of the Indian community and of suggesting measures to this end. Had they been able to do so, we feel confident that their recommendations on many points would have been very different from those actually made. In our opinion, this question lies at the root of the whole Indian problem, and unless it is faced as a preliminary issue, any action that may be taken to remove or mitigate grievances, which are merely results of the comparative ignorance and backwardness of certain sections of the Indians will have only a partial and temporary success. Our first suggestion, therefore, is that steps should be taken to elevate the social and educational condition of the more backward classes of Indians in the Union. So long as the standard of living among these classes, specially in Natal, remains low, the antagonism between the two races is likely to persist. It is only as they are enabled to approximate more closely to western standards that more friendly relations can gradually be established. In paragraphs 75 to 80 of his statement before the Commission, Sir Benjamin Robertson has suggested several methods of attaining this object, and these suggestions we would commend to the earnest consideration of your Government. The first need is, in our opinion, improved education. Primary education should be compulsory for Indian boys as it is for white children, and the present admittedly inadequate facilities for the education of Indians should be supplemented and extended. Wealthy Indians should be encouraged to found institutions for higher

education. The spread of education among Indian girls should be stimulated, and facilities should be afforded for technical and agricultural training. A strong argument in favour of these suggestions may be found in the fact that the scale of wages now paid to Indians is frequently unfair, not only to them but also to the white wage-earners with whom in certain spheres they may be said to compete. For the reasons explained by the Commission in paragraph 212 of their Report, the adoption of the legal minimum wage is not likely to prove a satisfactory remedy, but it seems to us obvious that if the spread of education is actively promoted among Indians, their standard of living, and as a consequence their scale of wages, must inevitably rise. If we can be of any assistance to your Government in giving effect to these proposals, either by lending an officer with special experience of primary education in India or otherwise, they may certainly count on our cordial co-operation. Welfare work in the form of night schools, reading rooms, organised games and classes on domestic hygiene would no doubt conduce to the same end. The success of measures of this kind must of course depend largely on the co-operation of Indians themselves, but this, in our opinion, is more likely to be forthcoming if they find that the initiative is being taken by the authorities in a sympathetic spirit. Finally, we agree with Sir Benjamin Robertson that a more strict enforcement of the sanitary and industrial laws, which should be based on the white standard of living, would have an excellent effect in enabling certain classes of Indians to abandon the degrading conditions of life in which they are often compelled to live, provided always that the means to live decently are not denied them. We lay the greatest stress on these suggestions because we feel that only by action on these or similar lines can the present estrangement between the white and Indian communities be bridged over, and the foundations laid of a spirit of mutual respect and understanding, in the absence of which there is little chance of the more backward portion of the Indian community rising in any real sense to a footing of equality with other classes of citizens in the Union.

5. With these general observations on the Indian question in its broader aspects, we turn now to the consideration of the concrete proposals put forward by the Commission. The rights of Indians regarding the ownership of land are at present unrestricted in the Cape and Natal Provinces. In the Transvaal, the ownership and acquisition of immovable property by Asiatics is prohibited by law except in certain specified locations, and subject to safeguards for certain existing rights as summarized in paragraph 92 of the Commission's Report. In the Orange Free State, Indians cannot own land and are debarred from entering the Province. Except in Natal, the Commission recommends the maintenance of the *status quo*, and if their recommendations on this subject are accepted, we assume that no alteration in the existing laws is contemplated at present. We are far from satisfied with the present position, and we question whether it can possibly be reconciled with the undertakings that have been given from time to time by the Union Government, as summarized in paragraphs 8 to 15 of Sir Benjamin Robertson's statement. When we agreed in 1906, for instance, to the exclusion of Indians from the Transvaal, we understood that the Indians in the Colony were in return to receive fair treatment. By this we understood complete equality before the law. It was on a similar understanding that we agreed to other restrictions on Indian immigration ranging from the Natal Immigration Restriction Act, 1897, to the Reciprocity Resolution of 1918. We must confess that our hopes have not been realised. We do not propose to pursue this subject further at the present time, but will content ourselves with correcting a mis-statement which has found place in paragraph 198 of the Report of the Commission. They have there stated that they were informed by Sir Benjamin Robertson that neither the Imperial Government nor the Government of India is now prepared to press for the repeal of Transvaal Law 3 of 1885, which prohibits the ownership of land by Asiatics except in certain special places set apart for them. This statement must, we think, have been made under a misapprehension. What Sir Benjamin said in his written statement was that "The difficulty

of amending Law No. 3 of 1885 or the Gold Law in the present state of public opinion is recognised." But he also quite correctly affirmed that the views of the Government of India on this subject are still those contained in the memorandum which was laid before the Imperial Conference of 1918: "The prohibition against Indian ownership of fixed or landed property should be repealed by Parliament on the grounds that it tends to foster insincerity on all sides, to deprive Indians of some of the elementary rights and responsibilities of citizenship, which are not denied even to the aboriginal natives and other non-Asiatic coloured peoples of the Province, and which are possessed by their compatriots in the Coast Province.....such a statute as Law 3 of 1885 is an anachronism and opposed to the spirit of modern legislation." The Government of India still adhere to this view, and hope that the Union Government will repeal all those laws which prohibit or restrict the rights of Indians to acquire or own immovable property in any part of the Union.

6. In Natal the Commissioners propose, Mr. Duncan Baxter dissenting, that the right of Indians to acquire and own land for farming and agricultural purposes outside townships should be confined to the coast belt. We have already lodging our protest against this new discrimination. The objections to such a restriction of elementary economic freedom have been forcibly put by Mr. Baxter, with whom we are in complete agreement, in his published reservation to the Report. It appears to be common ground that Indians have not sought to acquire land in the uplands, and that the conditions there are not suited to their methods of agriculture. Indian agriculturists will of their own accord be found collected in the coast belt, especially if land is made available to them there on a reasonable tenure. The object of the Commission in proposing this restriction was to allay the strong feeling on the subject which is said to exist among the farming population of the inland districts. Our contention, however, is that Indians have not in fact displayed any desire to exercise their right to acquire land in the uplands, and that it would be most inadvisable, in order to meet a purely sentimental aspiration on the part of the white farmers, to introduce a new restriction on the rights now enjoyed by Indians, which will certainly be hotly resented both on account of the racial stigma which a legal disability implies, and in the case of ex-indentured Indians and their descendants, on account of the breach in the conditions on which they were recruited, involved in such a measure. The Commission themselves have observed that "no man is more easily influenced than the average Indian; if fairly treated, he is easily led; but he will submit to anything rather than force; he does not like to be driven and any sort of compulsion makes him a martyr". We endorse this view, and would deprecate any action that might tend to give rise to opposition and agitation among the Indian community. In our opinion, a sympathetic policy of attracting Indians to the coast belt and affording them in that area, as Mr. Baxter suggests, "good treatment and security of tenure", would, while upholding and maintaining the principle of equality, achieve the desired object without difficulty or friction.

7. We are glad to see that the Commission have rejected categorically the proposals for the compulsory segregation of Asiatics, which were pressed on them by many witnesses. They have, however, so far yielded to the general opinion prevailing among the white community as to advocate a system of voluntary segregation. Their proposals are that municipalities in the Transvaal and Natal should be empowered to move a Special Board of three or more members, appointed by the Administrator of the Province, to allocate within any town separate residential areas for Asiatics in which they would not be compelled to reside but to which they should be gradually attracted, and particular streets as trading quarters for Asiatics, to which existing licence-holders elsewhere might be induced to remove voluntarily, and outside which no new licences to trade would be granted to Asiatics. The Government of India would welcome any measures designed to facilitate the acquisition of building sites by Indians in suitable areas, provided that their rights of living and trading elsewhere

are in no way restricted and that steps are taken to compel all municipalities to see that the sanitary conditions, so scathingly depicted by the Commission in paragraphs 121 to 123 of their Report, are not reproduced on a larger scale elsewhere. We must, however, confess to grave fears lest, when once separate areas have been demarcated, some municipal authorities may be tempted to use their powers to force Asiatics into these quarters against their will. As we have already said, the most hopeful line of advance seems to us to be one which aims at westernising the Asiatic and gradually qualifying him to adopt the same standards and ideals as the other classes of citizens in the Union. Segregation, whether voluntary or compulsory, is the very negation of this policy. On these grounds, we object in the most distinct and emphatic manner to the proposal of the Commission that the policy of commercial segregation should be enforced by the refusal to issue new licences to Indians for trading outside the specified quarters. We will return to this subject later in dealing with the proposed licensing legislation.

8. The portion of the Commission's recommendations which we are able to accept with fewest reservations is that in which they recommend an alteration in the licensing laws and advocate a uniform licence law throughout the Union, or, if that is impracticable, a comprehensive consolidating Act of Parliament applicable to the Cape, Transvaal and Natal Provinces. The law would apply generally to trading licences issued to Europeans and natives as well as to Asiatics, and would aim at removing the anomalies inherent in the present system of provincial legislation. This recommendation we endorse, subject of course to the proviso that the proposed legislation will not substantially weaken any of the safeguards to the trading rights which Indians now enjoy. We accept the main lines of the proposed legislation as sketched out by the Commission in paragraph 205 of their Report, but suggest for consideration a few alterations with regard to the points mentioned in the following paragraphs.

9. In the first place, we attach the utmost importance to the suggestion of the Commission that the licensing authority should not be permitted to withhold a licence arbitrarily or without recording the reason for its refusal and the evidence on which such refusal is based. The grounds on which a licence may be withheld should be specified in the law, which should make it plain that the nationality of the applicant is not in itself a lawful reason for the rejection of his application. The Commission have accepted the three definite grounds for refusal, already prescribed in Transvaal Ordinance No. 9 of 1912. Their proposal extends the power of the licensing authorities in the Transvaal by bringing general dealers' licences under their control, but in view of the safeguards which it provides against the abuse of the wide discretion at present vested in such authorities in the Cape Province and Natal, we support it. Since, however, Indians in the Transvaal do not enjoy even the municipal franchise, we suggest that the provision of the Licences Amendment Ordinance No. 16 of 1920 in the Cape Province, which requires that every application made to the local authority for a certificate for a licence must be granted unless it is opposed by a majority of members present, such majority also forming a majority of the whole number of the members constituting that body, might with advantage be embodied in the new law in cases where applications for licences or appeals come before a licensing body. We also think it very necessary that the New Act should be so drafted as to make it clear that the condition of the issue of a new licence which lays down that the class of business proposed to be carried on must be suited to the locality applied for, shall not be utilized in order to enforce a policy of segregating Indians in separate locations. As the Commissioners themselves remark, indiscriminate segregation of Asiatics in locations, "apart from its injustice and inhumanity, would degrade the Asiatic and react upon the European." Subject to the above remarks, we have no objections to urge against the recommendations of the Commission regarding renewals and transfers of licences and the grounds on which such renewals and transfers may be refused.

10. With regard to the right of appeal, the recommendation of the Commission is that an appeal shall lie from the decision of the licensing body or officer in cases where sanction is refused to the issue of a licence or to the transfer of a licence to another person or to other premises on the ground that the applicant is not a fit and proper person to hold such a licence or carry on such business, and in all cases where the renewal of an existing licence is refused. This appeal should be to a special Appeal Board, consisting of three persons of independent judgment appointed by the Administrator of the Province, whose decision shall be final. It is, however, understood that the right of appeal to the Supreme Court against the refusal of a licence on grounds which are arbitrary or capricious or outside the statute, will not be modified or withdrawn. The present position is that in the Transvaal when a licence is refused by the Council in cases that fall under section 90 or 91 of the Transvaal Local Government Ordinance 9 of 1912, an appeal against their decision lies to a magistrate. In the Cape Province, there is no appeal from the decision of the local authority, but the Administrator may grant a certificate if he is satisfied that it has been refused on the ground that there are already a sufficient number of general dealers within the particular area. In Natal, a licensing officer has absolute discretion to issue or refuse a licence, but his decision is subject to an appeal to the Town Council or Town Board, if the licence is sought for in a borough or township, and elsewhere to a special Board of three persons appointed by the Administrator. In addition, under Natal Act 22 of 1909, an appeal lies to the Supreme Court or to a Circuit Court in cases where the renewal of an existing dealer's licence has been refused. This appeal was provided under a special agreement with the Indian Government, and we cannot assent to its abolition until the new licensing bill has been passed into law, and we have had an opportunity of judging of its working in regard to Indian traders. We accept the proposals of the Commission as marking a distinct advance on the present position, but would urge that an appeal from the decision on the licensing body or officer should be permitted with regard to the suitability of the premises or class of business in respect of which the licence is applied for as well as on the point mentioned in paragraph 205 (5) (c) of the Report, whether the refusal is in respect of a new licence or of the transfer of an existing licence to another person or to other premises. The Commission hold that these are matters regarding which municipal bodies, as representatives of the public, acting on the advice of their Health officers and other officials, would be the best judges. It does not, however, seem to us sound that a Municipal Council should be able at its discretion to restrict the natural development of trade and commerce. Nor does it seem fair to the applicant that his case, as must often happen, should be adjudicated by his trade rivals. From many cases that have come before the Courts, and indeed on the admission of the Commission itself, it is clear that Municipal Councils do frequently refuse applications from Indians merely because they are Indians, and it is clear that there is a real danger that they may attempt to shelter themselves under the two non-appealable grounds of refusal in cases to which they are not strictly applicable. Since municipalities cannot well be deprived of the control of licences, they might at least be compelled to walk warily by the knowledge that their decision is subject to an appeal to an impartial tribunal. We would, moreover, observe that the argument put forward by the Commission in favour of leaving the final decision on these points to municipalities does not apply to the special licensing officers appointed outside municipal limits in Provinces where Divisional Councils do not exist, and would urge that in their case an appeal should lie in all cases in which an application is refused.

11. The Commission recommend that, except in the case of hawker's licences, the applicant for a new licence to trade must satisfy the licensing body or officer that he can read or write in one or other of the official languages. They consider that an elementary education test of this kind cannot be regarded as unreasonable, and that as far as Asiatics are concerned a large proportion of future applications for new licences would probably come from South African-born Indians, who have received a

certain amount of education. It is evident that a restriction of this sort will tell heavily against Indian traders, and, in our opinion, the requirements of the case would be sufficiently met if the licensee can prove that he has in his employment a clerk who is competent to maintain his accounts in one of the official languages. As the Commission remark in paragraph 139 of their Report, this is the practice in Natal at present, and we see no reason for altering it. While the educational facilities open to the Indian community are so scanty, we cannot agree that the time has yet come when this new restriction can reasonably be imposed on trading by Indians.

12. Sir Benjamin Robertson very rightly impressed on the Indian community in South Africa that it was their duty to look not to us but to the Government of the country in which they live for redress of their grievances, and to co-operate loyally with the Union Government in any measures which may be taken for their welfare. The measures which, in our opinion, are most likely to conduce to this end, have already been referred to. He suggested that if the need for a more constructive policy towards Indians were accepted by the Union Government, there would be advantages in entrusting the administration of Asiatic affairs generally to a responsible official in whom the Indian community had confidence. The Commission has approved of this proposal, and has recommended the appointment of an official whose business it should be to secure full statistical information on all matters specially affecting the Indian community, to keep in close touch with them, to see that the laws are applied in a just manner, to give a ready ear to any complaints or grievances, and generally to safeguard their interests. We would regard such an experiment with hopeful interest.

13. Your Royal Highness has already been good enough to undertake to forward to us copies of any Bill dealing with the recommendations of this Commission. We should be grateful if such copies could be furnished to us sufficiently in advance to enable us to communicate our observations on the draft before it is introduced in Parliament.

We have the honour to be,

Your Royal Highness' most obedient Servants,

(Signed) READING.

„ RAWLINSON.

„ W. H. VINCENT.

„ MUHAMMAD SHAFI.

„ W. M. HAILEY.

„ B. N. SARMA.

„ T. B. SAPRU.

„ C. A. INNES.

FROM HIS ROYAL HIGHNESS THE GOVERNOR-GENERAL OF SOUTH AFRICA.
No. 15-1115, DATED THE 25TH APRIL 1922.

With reference to the despatch No. 307-R. A. of 1921, dated the 27th December 1921, signed by Your Excellency and members of your Council, I have the honour to transmit, for the information of the Government of India, a copy of a minute (No 297 of the 21st April 1922) from my Ministers regarding the position of Indians in the Union.

B 9
Copy.

PRIME MINISTER'S OFFICE,
CAPE TOWN,
21st April 1922.

Minute 297.

With reference to His Royal Highness the Governor-General's Minute No. 15-1106 of the 8th February [not received] 1922, enclosing a despatch from the Government of India, dated the 27th December last, in regard to the recommendations of the Asiatic Enquiry Commission, Ministers have the honour to recommend that a reply should be sent in the following terms:—

Ministers recognize that the position of the British Indians in the Union of South Africa is a matter of special interest to the Government of India, and they realize that any grievances which British Indians residing here may feel are reflected in India, and are used there to embarrass the Government of India. For that reason Ministers have always received with the greatest attention any representations coming from the Government of India concerning any particular measures affecting British Indians here and they will continue to do so.

The despatch in question however deals not with particular measures affecting Indians here but with the whole policy of the Union Government, and it is couched in a tone of criticism and instruction in regard to fundamental questions of South African policy which, in the opinion of Ministers, is likely to cause serious misunderstanding on the part of the people of South Africa, and to endanger the good relations which have always existed between the two Governments, the continuance of which is pre-eminently desirable.

In reference to paragraph 2 of the despatch, in which the Government of India comments on the attitude adopted by the representatives of South Africa at the recent Imperial Conference, Ministers desire to state emphatically that their colleagues at that Conference did no more than state what has been, and is, the policy of the Government, and that that policy is the only one which the present Government of the Union or any other Government which is likely to be in office here, in the near future, could possibly adopt.

Ministers note that that policy, in the opinion of the Government of India, is mistaken and unjustifiable and they note, also, the arguments by which that opinion is supported. They would, however, ask the Government of India to believe that their policy in this matter has been adopted after full consideration of the position of Indians in the Cape Province and in other Provinces of the Union, and with a full sense of their responsibility both to the people of South Africa and as the Government of one of the Dominions of the Empire.

The claim of British Indians residing in the Union to be accorded full political rights is one which has never been recognised by the Government of the Union, and one which raises the most difficult and delicate questions which any South African Government could be called upon to deal with. Ministers desire most earnestly to impress upon the Government of India that in the present condition of public feeling in South Africa the assertion of that claim by British Indians here and its official endorsement by the Government of India add materially to the difficulties which the Government has to encounter in arriving at a reasonable and fair solution of outstanding difficulties. Such a condition of public feeling may be difficult for the Government of India to understand but it is one which no South African Government can ignore.

Ministers note the views of the Government of India in regard to the report and recommendations of the Commission on Asiatic Affairs, and they also note the advice of the Government of India set out in paragraph 4 of the

despatch. These opinions, however, and that advice are based on the principle that the Indian community should ultimately be "merged in the general body of citizens, on an equal footing" and that principle as has been indicated is one which Ministers are unable to accept.

Ministers desire to add that they do not contemplate introducing legislation during the present session of Parliament dealing with Asiatics. When any such legislation is contemplated they will be glad to furnish the Government of India with copies of the proposed legislation at as early a date as circumstances will permit.

J. C. SMUTS.

FROM HIS ROYAL HIGHNESS THE GOVERNOR-GENERAL OF SOUTH AFRICA,
DATED CAPE TOWN, THE 12TH MAY 1922. (CONFIDENTIAL.)

I have the honour to transmit, for Your Excellency's information, a copy of a despatch which I have addressed to the Secretary of State for the Colonies reporting upon a recent discussion in the House of Assembly on a motion introduced by a private member in favour of the compulsory segregation of Asiatics.

A press report of the debate is also enclosed.

(Copy.)

SOUTH AFRICA.

Confidential.

GOVERNMENT HOUSE,

CAPE TOWN,

12th May 1922.

SIR,

Segregation of Indians urged upon Government.—With reference to my despatch Confidential (4) of the 13th May 1921, I have the honour to report that a motion urging the Government to adopt a system of compulsory segregation of Asiatics has been discussed in the House.

2. The mover, Mr. Mackeurtan, said that the Indians in Natal were increasing in numbers and acquiring property at an alarming rate. There were now 160,000 Indians in that Province and only 138,000 Europeans. When the reduction of rents was demanded in accordance with the Rents Act it was significant that the largest number of proprietors affected were Indians, one of whom owned no fewer than 200 houses in the borough of Durban. At Stangar the Municipal voters of Asiatic origin outnumbered the Europeans. This condition of affairs, he maintained, was aggravating racial antagonism. The Provincial Council had attempted to mitigate specific grievances by passing the Township Franchise, Dealers' Licensing and similar Ordinances but the Union Government had taken no effective steps to deal with the problem as a whole. In his opinion there were only three courses open to the Government. To continue the present policy of *laissez faire* would not help. Compulsory repatriation with compensation could not be applied to Indians born in the country who had acquired South African nationality and of whom there were a vast number. There remained only segregation. It was an unpleasant method to adopt but the only one, he thought, that seemed to offer a solution of the question. It was a policy that had been advocated by Lord Milner, who also favoured certain areas being set aside for white people.

3. *Nationalist views.*—Other speakers moved amendments with the object of making Mr. Mackeurtan's proposals more stringent. A Nationalist member criticized the Government for not adopting a definite Asiatic policy. He thought the question could be satisfactorily settled without compromising Imperial interests or causing concern outside the Union.

4. *Policy of the Government.*—The Minister in reply said that the position was not as critical as members and the country imagined. Ten years ago the Indians in Natal outnumbered the Europeans by 50 per cent. Now they were about equal in that Province, while elsewhere the proportion was negligible. The Government was encouraging voluntary repatriation.

1. Towards repatriation.

Indians were being granted a free passage and financial assistance up to £20 each. Last year 3,427 had returned to India under the voluntary scheme and this year 719. The opposition of the Indian Association and not that of the sugar planters was responsible for this decrease. He reminded members that the Asiatics in Natal did not all come from British India and that any unjust action taken against them would provoke opposition from other countries outside the Empire. Moreover, two-thirds of the Indians in Natal were born in this country and could not be compulsorily repatriated.

5. Continuing the Minister declared the system of complete segregation was impracticable. Even if they acquired the necessary land—and that

2. Segregation.

was not an easy thing to do—would the Indians consent to settle on it? He was in favour of encouraging a measure of urban segregation, provided proper arrangements were made, because a good deal of harm, had undoubtedly resulted from the inter-mixture of Europeans and Asiatics in town districts. But he did not agree with the proposal to set aside all moral obligations and attempt to enforce compulsory segregation upon the Indians. The problem demanded more sympathetic treatment.

6. *Attitude of Indian Government defended.*—The Indian Government adopted the attitude that it was bound to make representations to the Union Government on behalf of Indians who complained of unfair treatment so long as South Africa denied them political rights. If, on the other hand, we were prepared to accord them these rights, the Indian Government would wash its hands of them as they should then be in a position to redress their own grievances like any other citizen of the Union. This, he thought, was not an unreasonable attitude. The Indians themselves asked to be accorded equal political status.

Demand for political equality.

This the European people, he felt sure, were not prepared to concede, at any rate for a very long time to come.

7. From this it will be seen that, apart from the adoption of a scheme of voluntary and assisted repatriation and the encouragement of a measure of urban segregation, the Union Government does not propose to interfere to any extent with the existing privileges of Asiatics in South Africa.

8. I have forwarded a copy of this despatch to the Viceroy of India, together with a press report of the debate, copies of which accompany my despatch No. of (Not received by us).

I have, etc.,

ARTHUR FREDERICK,

Governor-General.

The Right Honourable
Winston S. Churchill, M.P.,
etc., etc., etc.,
Colonial Office,
London.

Extract from the "Cape Times", dated the 10th May 1922.

* * * * *

UNION'S ASIATIC PROBLEM.

SEGREGATION DEBATE IN ASSEMBLY.

Menace to Natal.

GOVERNMENT OPPOSES DRASTIC ACTION.

"That this House requests the Government to consider the advisability of the early introduction of legislation which will provide for the allocation to the Asiatic community of any one or more of the Provinces of the Union, separate and distinct areas, rural and urban, within its Province, where that community may develop in accordance with its needs and standards of civilization, due regard being had to the interests of the present and future European and native population."

In moving the motion in the House of Assembly yesterday :

MR. MACKEURTAN (UMBILO, S.A.P.) referred to the question of race antagonism that existed, and quoted a statement from an address delivered by Lord Milner in regard to the position. There were two classes of civilisation living side by side, and it was a fact that racial antagonism had been deepening during the last 12 months. The Provincial Council of Natal had passed two Ordinances in an endeavour to deal with the matter, and owing to the unsatisfactory position that had arisen at Stangar, where it was found that the Municipal voters of Asiatic origin outnumbered the Europeans, it was decided to put the Municipal franchise on the same footing as the political.

There was also an endeavour on the part of the Provincial Council to deal with the question of Asiatic licences. They had tried to combat the growing racialism, and in spite of that, racial antagonism had deepened on other grounds. There were grounds which operated in the minds of the people. It was a fact that the largest number of people who had been called upon to reduce rents in accordance with the Rents Act were Indians, one of whom owned no fewer than 200 houses in the Borough of Durban. That operated in the minds of people and caused antagonism. A more significant feature occurred the other day when the Town Council of Durban held a land sale in Umbilo, in what had hitherto been a white residential neighbourhood. One or two lots were put up and were bought by Europeans. One or two men then went to the front, and it was discovered that the purchasers of those lots were Asiatics. The Europeans walked up and stopped the sale.

MR. BOYDELL: Direct action.

MR. MACKEURTAN: "Yes, direct action in a good cause." He then went on to say that people in Natal were looking for a lead in trying to deal with matter of that kind. Nothing had been done by the Government. Efforts had been made by the Provincial Council, with a result that racial feeling had deepened, and now the Municipality of Durban was introducing a measure into the Council. The Municipal Council had tried to do something and so had the Provincial Council, but Parliament had done nothing.

Of course, he realized that there was another factor, and that was the position of India. He did not under-estimate the gravity of the position in India.

Three Courses Open.—

He went on to say that in this state of affairs they had three courses open to them. The first was to endeavour to repatriate the Indians. They might be able to repatriate under compensation those who were not born in

South Africa, but it was impossible to repatriate the Indian who was born here. He had become a South African national. As over half the Indians in Natal were South African born, they could not deal with this question by means of repatriation. They had 160,000 Indians in Natal to-day as against 138,000 whites. The second alternative was to do nothing. To do nothing would not help them.

There seemed to be a middle course which, however unpleasant it might be, did seem to offer a solution of the question. That was segregation. The segregation which he advocated in this motion was not absolute segregation, that was there was no desire whatever to interfere with liberty of movement and personal freedom. The idea was social and trade segregation. He suggested that the municipalities should be approached and asked whether they were prepared to set aside segregation areas.

Mr. MARWICK (ILLOVO, S.A.P.) supported the motion.

The People's Trust—

SIR ABE BAILEY (KRUGERS ORP, S.A.P.) moved as an amendment to add at the end:

“and also (a) materially to increase its efforts to ensure the departure of Asiatics from the Union, and (b) to tighten up the operation of the immigration laws as regards Asiatics, and to resist by all means within its power any attempt to relax their operation in this respect.”

In speaking to the amendment, Sir Abe Bailey asked if these Asiatics were desirable and beneficial as residents of South Africa. His reply was in the negative. Were they a source of weakness and danger to South Africa? His reply was that they were. He went on to say that every Indian in South Africa took the place of a white man. He took the livelihood away from the white man, and forced the latter to leave the country. What, he asked, was to become of the 43,000 children born in this country last year? What was their future and prospects, and what hope was there for them? Were they to be the salaried clerks of Asiatics or the aliens of this country? They certainly would not be able to grasp an opportunity, because there would be no opportunity for them if the Indians were allowed to remain. The only thing the people of this country would then be able to say to those people from India was “You are the winners; we are the fools.”

The Commission recommended voluntary segregation. What was voluntary segregation? He would like to know. They also recommended that they should settle from 20 to 30 miles from the coast. The position was that they were taking up the best land in Natal for the development of the sugar industry. A policy of segregation had been laid down by Lord Milner, who also laid down that certain areas should be reserved for white people.

“My policy,” said Sir Abe, “is to reserve the whole of South Africa for white people and the natives.”

Did not go Far Enough—

BRIGADIER-GENERAL BYRON (BORDER, S.A.P.) said that, although he supported the motion and the amendment, his difficulty was due to the fact that in his judgment neither of them went far enough.

The question for us was, were we prepared to give full citizen rights to the Indians in our midst who had thrown in their lot with this country? He did not think there was any political party, as far as he was aware, that would agree to that. What was the remedy, then? He did not think the remedy would be found in segregation. That was only a very small instalment in dealing with a big question, and he thought we must face the matter as an international question greatly affecting us in South Africa, and come to a definite arrangement that the Indians must be repatriated from this country *en masse* or *en bloc*. We were not satisfied to have them here as

equal citizens with ourselves. Would it not be a wise thing if we could exchange the 168,000 Indians in this country for the 2,000 or 3,000 men of our own race who were now in India, men of very high standing, men likely to make first class citizens in this country, and men not likely to reduce employment but to give employment in this country?

Mr. Robinson's Amendment.—

MR. ROBINSON (DURBAN, CENTRAL S.A.P.) moved, as a further amendment to Mr. Mackeurtan's motion, to add at the end:

“Provided that there shall be no compulsory segregation or repatriation of Asiatics, but that Government shall proceed on the lines laid down in recommendations 2, 3, 4, 5 and 6 of section 225 of the Report of the Asiatic Inquiry Commission.”

The seriousness of the menace was so patent that it seemed to him almost unnecessary that it should be argued. He thought, however, that too much stress was usually laid on the question in so far as the Arab trader was concerned. The real trouble came with reference to the balance of these men, the 130,000 Asiatics in Natal who were not traders. There were not more than 10,000 so-called Arab traders. It was from the ranks of Indians born in Natal that the clerks, solicitors, advocates and doctors were growing up.

Proceeding, Mr. Robinson asked how the proposal was going to be carried out. How were they going to ship 160,000 people from their shores, many of whom had been born in the country? And should they do it? The people who spoke about segregation utilized the services of those Indians, but when they entered into commerce, then they talked about segregation. He quoted from the Commission's Report to show the condition of Krugersdorp and other places. The position was shown to be bad. That was inevitable in any place where people were put in compounds or bazaars. Where people were segregated they were bound to become degenerate. He had more sympathy with the amendment that wanted to make a clean sweep of them than with the half-hearted policy of segregation. Where were they going to segregate them? Certainly not on the Berea. Some merchants had gone to live on the Berea. That was not so much for the sake of living there as to get a hold on the property, but by doing that they were doing themselves harm, because it aroused feeling against them. The present was a period of conferences, and they must try to get a conference with these people. Some time ago the Government induced a good many to go back to India; but something had happened to stop that. If a serious effort were made by the Government to induce these people to leave or to keep them in certain trading and living districts, they would go a long way towards ameliorating the position and save themselves from the ignominy of attempting an undertaking that would not be successful.

MR. HUNTER (STAMFORD HILL, S.A.P.) said if people agreed not to sell property to Indians they would help materially. The Commission that dealt with the question got very little help from the sugar planters of the Chambers of Commerce of either Durban or Maritzburg. The Indians had been brought here and they could not be sent away against their will. They had established themselves here and had families, and they should take care that they did nothing unjust. Compulsory segregation was not just. Britain was always justly proud of the fair play and justice and freedom she extended to colonists, and this country must see that it did nothing to injure that fair name.

“*Wild and Whirling Words.*”—

MR. MERRIMAN (STEHENBOSCH, S.A.P.) said they had been discussing a very important subject, and they had heard some important speeches. Sir Abe Bailey had said that the Asiatic must go. He (Mr. Merriman) remembered in 1903 when the hon'ble member was equally emphatic in saying that the Asiatic must come. (*Laughter.*) It was then said that without the Chinese the mines could not flourish.

SIR ABE BAILEY: They went back again.

MR. MERRIMAN: My hon'ble friend did not want them to go back. He said they must come and they must stay. (*Laughter.*) It was a humble Boer who carried that out later on, not my hon'ble friend here.

Mr. Merriman went on to say that many of them who had travelled through the Garden Colony had said over and over again that it was not a good thing for the country to have the Indians there, and had urged the people in Natal to send them back again. But the Natal people said: "No, the Asiatic must stay; we cannot turn out sugar unless we have the Asiatic." Now, having got all they could out of the Asiatic, they said they would kick him out. "Perish the Empire, but save Natal!" now seemed to be the cry. He would urge members not to be led away by the wild and whirling words of the member for Krugersdorp. We had brought these people here and must treat them in a humane and reasonable way. The idea of a small community on a question like this raising issues which might be of the greatest moment struck him as one of the most foolish things in the world.

The Nationalist Standpoint.—

MR. P. W. LE ROUX VAN NIEKERK (WATERBERG, NAT.) said the Government appeared to have no settled policy on the Asiatic question. He thought the matter was capable of settlement without compromising the interests of the Imperial Government or causing any concern outside South Africa. He urged the repatriation of Indians who were not born in this country, and suggested that a substantial bonus might be offered to those willing to go. There was a chance to do something to-day, whereas in ten years' time the difficulties would become insurmountable.

The Minister's views.—

MR. DUNCAN (MINISTER OF THE INTERIOR) said they should not think they were dealing only with the British Indian. In South Africa undoubtedly the majority of the Asiatic population came from British India, but they did not all come from British India. Let Hon'ble Members be quite sure about this, that, if any action were taken against the Asiatic population here which was unjust, they would have to deal not merely with protests from the Government of India, which was one of our fellow Governments inside the Empire, but they would also have to deal with protests from other Asiatic Powers. The Government of India naturally took great interest in the welfare of the Indian people here. They took up what seemed to him to be a perfectly fair, logical and intelligible point of view. They said: "If you are prepared to give these Indians political rights in South Africa, then we shall wash our hands of them; they can protect themselves like other citizens of the country. But as long as you deny them political rights"—as (added Mr. Duncan) we did deny them political rights outside the Cape Province—"then we think it our duty, if they have grievances in regard to the manner in which they are treated, which they have no means of redressing themselves, to hear their grievances and make representations in regard to what we think right and just."

Political Equality.—

The question of political equality was one that had been raised and was being raised. The Indians here put forward their request to be accorded full political rights. That we, the European people in South Africa, he did not think, were prepared to accede to, anyhow, for a very long time to come. The only answer we had to give to that claim or demand was, at any rate for a long time to come, a negative one.

South Africa, he went on to say, had to take up a different stand to other countries. Members were apt to forget that the proportion of population between the Asiatic and the Europeans of Natal was far less serious than it was ten years ago. Then the Asiatics outnumbered the Europeans by about 50 per cent. But now they were about equal. Outside of Natal, the proportion was negligible. They had heard that the system of repatriation had been stopped by the sugar industry. That was not true. As a

matter of fact, it was being pressed more vigorously than ever. The Indians were assisted in the way of free passages and a little money up to £20. Last year 3,427 had been repatriated under the voluntary scheme, and this year 719. Immigration was now stopped, except in the case of the wives and children of some of the residents. The position was that it was not the sugar planters who stopped the repatriation, but it was the Indian Association. They had to remember that this was a world-wide problem. But the fact was that the figures of the Asiatic problem were not so large. Outside of Natal, it was not of urgent pressure. The Commission that had inquired into the position of small traders in many of the towns reported that it was not so grave as had been made out. Mr. Mackeurtan advocated the segregation of the Asiatics in certain places. Was that a practical solution? Had those who had suggested it gone into it? Suppose they got the land—and that was not easy—would the Asiatics go there? The system of compulsory segregation was an illusion. Was it conceivable that they were going to send out men who were born in the country—whose fathers and grandfathers had been born here? Where could they send them? Would India take them? Two-thirds of the Indians of Natal were born there. A good deal of harm had been caused in town districts by the inter-mixture of Asiatics and Europeans, and if separate places could be provided for them, it would be a good thing. He was in favour of encouraging a measure of urban segregation, provided proper arrangements could be made. But complete segregation, or compulsory expulsion, were out of the question. He did not agree with the idea of setting all moral considerations aside, and do what they liked. They wanted a more sympathetic attitude.

MR. STRACHAN (MARITZBURG, LABOUR) thought the Minister had made out a good case for the Government doing nothing at all in tackling a difficult problem. He moved the adjournment of the debate.

This was agreed to, and resumption set down for the 16th.

The House rose at 6 o'clock.

DESPATCH TO HIS ROYAL HIGHNESS PRINCE ARTHUR OF CONNAUGHT, K.G.,
 K.T., G.C.M.G., G.C.V.O., C.B., A.D.C., GOVERNOR GENERAL OF THE
 UNION OF SOUTH AFRICA, No. 436-R. A., DATED SIMLA, THE 6TH
 SEPTEMBER 1922.

SUBJECT:—*Position of Indians in the Union of South Africa.*

YOUR ROYAL HIGHNESS,

We have the honour to acknowledge receipt of your despatch No. 15-1115, dated April 15th, transmitting for our information a copy of a minute from your Ministers regarding the position of Indians in the Union. We note that the Union Government are unable to accept the views which we expressed in our despatch No. 307-R. A., dated December 19th, on the Report of the Asiatic Enquiry Commission and the suggestions which we put forward, more particularly in paragraph 4 for improving the condition of the Indian community generally. We observe that exception has been taken to our despatch on the ground that it is couched in a tone of criticism and instruction in regard to fundamental questions of South African policy and that it has been suggested that this attitude is likely to endanger the good relations which have always existed between the Government of India and the Union Government.

2. We must in the first place express our disappointment that our representations on behalf of His Majesty's Indian subjects have not obtained a more favourable reception and regret that the intention of our despatch should have been misunderstood. When we wrote that despatch we had reason to believe that the recommendations of the Asiatic Enquiry Commission were under the consideration of Your Royal Highness' Government, and it appeared to us that a full exposition of our views might be helpful to them in determining their attitude on a most difficult and delicate question. So long as Indians in South Africa are denied an adequate and constitutional method of seeking redress of their grievances by means of the

franchise, we are, as we have previously stated and as your Government have recognised, unable to divest ourselves of a certain measure of responsibility for their welfare. Our despatch dealt only with the policy of the Union Government in its relation to the status and welfare of the Indian community in South Africa, and we do not understand how the good relations which have always existed between the two Governments, to the maintenance of which the Government of India attach as much importance as the Union Government, can be endangered by a frank interchange of views on a question which vitally concerns both as members of the same Empire.

3. The present position seems to be this. The Asiatic Enquiry Commission have found that Indians have certain definite and justified grievances regarding the matters to which the Commission's enquiry was restricted. Apart from these they suffer under political and social disabilities, of which they are tending to become more impatient than formerly. Public opinion in this country has also become acutely alive to these grievances and disabilities, and is pressing more insistently than ever before for a reasonable and fair solution of them. On the other hand a strong party in South Africa seems determined, if possible, still further to restrict the rights and privileges of the domiciled Indian community. We are in the dark as to the intentions and policy of the Union Government, and have merely been informed that they do not contemplate introducing legislation dealing with Asiatics during the present session of Parliament. The policy advocated by us, which, we note, the Union Minister of the Interior, Mr. Duncan, has described as "perfectly fair, logical and intelligible," has been formally rejected by the Union Government. We entertain no doubt that the Union Government intend, so far as circumstances allow, to make an attempt to remedy at least those main grievances to which the Asiatic Enquiry Commission drew specific attention, and we should be grateful if they would give us some indication of the policy which they propose to adopt with regard to these grievances in the immediate future. We think that we ought to inform Your Royal Highness' Government that a purely negative attitude, such as that outlined in paragraphs 4 to 7 of your confidential despatch, dated May 12th, 1922, to the Secretary of State for the Colonies, is not likely to satisfy Indian public opinion either here, or so far as our information goes, in South Africa, and we feel that we should be failing in our duty if we do not lay stress on the fact that if the impression is allowed to become wide-spread in this country that Your Royal Highness' Government do not intend to take any action in the matter, reactions may be provoked which in the future may become a source of grave embarrassment to both our Governments.

We have the honour to be,

Your Royal Highness' most obedient Servants,

(Signed) READING.

„ RAWLINSON.

„ W. H. VINCENT.

„ MUHAMMAD SHAFI.

„ B. N. SARMA.

„ T. B. SAPRU.

„ C. A. INNES.

„ E. M. COOK.

FROM HIS ROYAL HIGHNESS THE GOVERNOR GENERAL OF SOUTH AFRICA,
No. 15-1139, DATED THE 21ST DECEMBER 1922.

With reference to the despatch No. 436-R. A. of the 6th September 1922 signed by Your Excellency and Members of your Council on the subject of the position of Indians in the Union, I have the honour to transmit, for the information of the Government of India, a copy of a Minute (No. 984 of the 15th December 1922) from my Ministers dealing with the points raised in the despatch under reference.

(Copy).

Minute 984.

PRIME MINISTER'S OFFICE,

CAPE TOWN,

15th December 1922.

Ministers have the honour to acknowledge Your Royal Highness' Minute No. 15/1130 of the 11th October last transmitting a despatch from the Government of India on the position of Indians in the Union, and beg to offer the following observations thereon:—

1. In the first place Ministers would take this opportunity of stating that they fully realize the interest taken by the Government of India in this question and their sense of responsibility for the welfare of the Indian population in those Provinces of the Union where the law does not accord to them the privilege of the franchise. It was to this point that the statement of the Minister of the Interior quoted in the despatch was directed, and not, as would appear from the quotation—founded presumably on an imperfect report—to an expression of approval of the actual proposals of the Government of India.

2. Ministers note that the Government of India express disappointment at what they term the "purely negative attitude" outlined in Your Royal Highness' despatch of 12th May last. Ministers had hoped that the last quoted despatch had sufficiently explained the reasons for that attitude. There is, as the Government of India acknowledge, "a strong party in South Africa determined still further to restrict the rights and privileges of the domiciled Indian community". If the Government of the Union has been able to keep that movement in hand and prevent it from finding expression in unreasonable Union or Provincial legislation, it is only because it has maintained a strictly negative attitude in regard to the demands of the Indian community for enlarged privileges and ultimately for complete social and political equality. Ministers would ask the Government of India to accept their assurance that even if they personally favoured a policy of enlarged privileges to the Indian community, any measures introduced at the present time having that object in view, not only would meet with certain defeat, but would aggravate to a dangerous extent the feelings of hostility towards the Indian community which are already very general among the European population.

3. The Government of India refer more specifically to the report of the Asiatic Inquiry Commission which as they state "found that Indians have certain definite and justified grievances regarding the matters to which the Commission's inquiry was restricted". They ask for some indication of the policy which this Government proposes to adopt in the immediate future with regard to "the main grievances to which the Asiatic Inquiry Commission drew specific attention".

4. In order to avoid misunderstanding on this point, Ministers desire to recapitulate the recommendations of the Asiatic Inquiry Commission. These fall under the following main heads:—

- (i) Repatriation.
- (ii) Ownership and occupation of land.
- (iii) Trading licences.
- (iv) Immigration.

The recommendations are set forth in summary form in paragraph 225 of the Report.

5. The Union Government has not so far put forward any measures based on the Commission's report because it did not appear likely that such measures would materially assist a settlement of the question either in the direction desired by the Government of India or in that desired by those who are in favour of further restrictions. Ministers certainly did not gather from the views expressed by the Government of India in their despatch of 27th December 1921 that the recommendations of the Commission were acceptable to them on any of the matters dealt with, and they are somewhat at a loss as to what particular recommendations the Government of India have in mind in alluding to the "definite and justified grievances" found by the Commission.

6. Of the recommendations referred to in paragraph 4 of this Minute, those included under Heads (i) and (iv) give rise to no difficulty. They express what has been and is the policy of this Government.

7. As regards the recommendations dealing with the ownership and occupation of land, it will be noted that the Commission unanimously advise against the repeal of Law 3 of 1885 (Transvaal) and of the restrictions contained in the Transvaal Gold Law (Act 35 of 1908) and in Act 37 of 1919. These restrictions constitute the main grievance of the Indians in the Transvaal, but the Commission do not recommend their relaxation, except to the extent that areas should be set apart in municipalities in which Asiatics should be allowed to own or occupy land if they choose to reside there. The policy of segregating the European, Asiatic and Native populations in urban areas is one which commends itself to Ministers and for which there is a growing demand in the country. But in the opinion of Ministers, which is supported by all past experience, it can only be successfully carried out if accompanied by a prohibition in the case of each race against acquiring ownership or occupation of land in the municipality outside the allocated area. In the case of the Indians in the Transvaal this prohibition already exists, and accordingly, as is indicated by the Commission, it would be comparatively easy to apply the policy in that Province. But if it is to be applied in Natal, where the demand for it is most urgent, it will have to be accompanied by a prohibition against the acquisition or occupation of land by Asiatics outside the areas allocated to them, and the Union Government have, so far, hesitated to take this step.

8. As regards the ownership of land outside townships in Natal the Commission (with one dissenting member) recommended that the right of Asiatics to acquire and own land for agricultural purposes should be confined to the coast belt. This recommendation Ministers do not approve and have no intention of carrying out.

9. The Commission recommended the retention of existing restrictions in Zululand and the Transkeian Territory.

10. There remain the recommendations in connection with Trading licences which the Government of India in their despatch of 27th December 1921 state that "are able to accept with fewest reservations". The Government of the Union has not put forward any legislative proposals embodying these recommendations, because legislation in connection with such licences is one of the matters entrusted to Provincial Councils, and, although an Act of the Union Parliament would override any provincial legislation, it has been and is the policy of the

Union Government to refrain, except for very grave and urgent reasons, from asking Parliament to legislate on matters which by the Constitution are placed under the jurisdiction of the Provincial Councils. A provincial Ordinance, however, does not become law without the assent of the Governor General in Council, and Ministers have used the opportunity thus given to them to secure as far as possible that any Provincial legislation should be on the lines indicated by the Commission. It was for this reason that the Ordinance passed by the Provincial Council of Natal this year dealing with trading licences in rural areas was, on the advice of Ministers, reserved by the Governor General for further consideration. Subsequently, as the result of discussion with Ministers, the Provincial Administration have agreed to introduce it in a modified form which will embody, as regards applications for new licences, renewals or transfers, the provisions indicated in (4), (5), (6), (7) and (8) of paragraph 205 of the Commission's report, and will also preserve the right possessed by certain existing licence holders of appeal to the Court against the refusal of an application for renewal. The provisions of this Ordinance will be of general application and not confined to Asiatics.

11. The recommendation of the Commission contained in paragraph 222 that a special officer should be appointed to administer Asiatic affairs is one which commends itself to Ministers, but hitherto the financial position of the Government has been such that they have not felt justified in the creation of a new department of this nature. They have not, however, lost sight of the suggestion.

12. Ministers have dealt in detail with the recommendations of the Commission so as to remove any possible misunderstanding in the minds of the Government of India as to the attitude of this Government in regard to the position of the Indian community here. The problems arising from the relations of European and Asiatic in the Province of Natal, where the Indian population exceeds the European, and both are vastly outnumbered by a semi-barbarous native population, are most difficult, and only time and patience can lead to a satisfactory solution, if such a solution is possible. The situation might at any time become dangerously acute if the Indian community were to press their demands for social and political equality. It is the policy of the Union Government to avoid anything which would tend to aggravate the anti-Asiatic feeling which prevails among a large section of the European population, and to move cautiously in the directions indicated in this despatch. They are not prepared and do not think it advisable to commit themselves to any more far reaching statement of policy.

(Signed) J. C. SMUTS.

DESPATCH TO HIS ROYAL HIGHNESS PRINCE ARTHUR OF CONNAUGHT
K.G., Kt., G.C.M.G., G.C.V.O., C.B., A.-D.-C., GOVERNOR GENERAL
OF THE UNION OF SOUTH AFRICA, No. 661, DATED SIMLA, THE 23RD AUGUST
1923.

SUBJECT.—*Position of Indians in the Union of South Africa.*

YOUR ROYAL HIGHNESS,

We have the honour to acknowledge the receipt of your despatch No. 15-1139, dated the 21st December 1922, forwarding a copy of a Minute from your Ministers dealing with our despatch No. 436-R.A., dated the 6th September 1922, regarding their policy towards Indians in the Union of South Africa.

2. We fully recognise the difficulties with which the Union Government are confronted in dealing with the Asiatic problem, and we appreciate their anxiety not to take any steps which might have the effect of aggravating the anti-Asiatic feeling in the Union. In particular, we desire to express our satisfaction that the Union Government do not intend to carry out the recommendation made by the Asiatic Enquiry Commission in paragraph 199 of their report that the right of Asiatics in

Natal to acquire land should be restricted, to the coast belt, and are glad to note that they view with approval the proposal to appoint a special officer to administer Indian affairs.

3. We accept the assurance given by the Ministers in paragraph 2 of their Minute that any measures introduced at the present moment with the object of improving the social and political status of the Indian community would not only meet with certain defeat but would also dangerously aggravate the feelings of hostility towards them which are already general among the European population and we share the hope suggested by the Ministers in paragraph 12 of their Minute that time and patience will lead to a solution of the difficult situation in Natal. We desire, however, to take the opportunity of repeating our opinion that the suggestions made in paragraphs 75 to 80 of Sir Benjamin Robertson's statement before the Asiatic Enquiry Commission for the elevation of the social and educational condition of the Indians and endorsed in paragraph 4 of our despatch No. 307, dated the 27th December 1921, if carried cautiously into effect, could scarcely fail in time to mitigate the difficulties of the present situation. We trust that our suggestions may receive sympathetic consideration.

4. With reference to paragraph 5 of the Minute, we would explain that in paragraph 3 of our despatch of 6th September 1922 we did not ask that the recommendations of the Asiatic Enquiry Commission should be given effect to, for it is evident from our despatch of the 27th December 1921, that they were acceptable to us only to a limited extent. The "definite and justified grievances" to which we alluded were certain grievances such as those referred to in paragraphs 121-123 and 182 of the Commission's Report and we wished to know what action the Union Government proposed to take with regard to them. The Ministers have now explained their general policy towards Asiatics as far as possible, and we are grateful to them.

5. We regret that we have not been able to persuade the Union Government to modify the terms of the Rural Dealer's Licensing Ordinance and other Ordinances recently passed by the Natal Provincial Council on the lines which we suggested. We feel confident, however, that so long as they continue in operation in their present form, care will be taken to ensure that the interests of Indian residents in the Province are adequately protected. We have noted with particular regret that since last December Your Royal Highness' Government have felt compelled to take a step which they previously hesitated to take, in the direction of segregation on racial lines, and that the Minister of the Interior announced in the House of Assembly on April 17th last that, while complete segregation must be dismissed as a hopeless speculation, a measure of urban segregation, trade and residential, was practicable and would be provided for in a bill which he hoped to introduce next session. The purpose of the bill would be to empower urban authorities, with the previous approval of the Union Government to set aside separate areas for Europeans and Asiatics and to enforce a system of segregation which will make it unlawful for people of other races to occupy land set aside for a particular race.

6. Our general attitude is well set forth in paragraphs 65 to 72 of the statement made by Sir Benjamin Robertson before the Asiatic Enquiry Commission. We touched on the subject in paragraph 7 of our despatch No. 307-R.A., dated December 27th, 1921, but in view of the fact that the Asiatic Enquiry Commission definitely recommended that there should be no compulsory segregation of Asiatics, we did not then develop our objections in detail. The announcement of April 17th last leads us to believe that it might be useful to invite the attention of Your Royal Highness' Government to the objections of principle to racial segregation which are entertained in India.

7. In the first place, segregation on racial lines implies a stigma of racial inferiority, and if enforced on Asiatics by the Europeans in whose hands the ultimate power resides, cannot fail to provoke their resentment. They will fear that in practice the policy of segregation will be administered in a spirit of racialism rather than of even-handed justice, and that

the tendency will be to assign inferior localities or insufficient areas for their accommodation or inadequate municipal conveniences. These fears do not appear to us to be groundless judging from the deplorable condition of the Asiatic locations at Germiston, Boksburg and Vrededorp, a description of which is contained in paragraphs 121 to 123 of the report of the Asiatic Enquiry Commission. It appears to us that social convenience could be more effectively obtained by mutual consent than by measures of compulsory segregation, more particularly since the rights in land already acquired by Indians, from which they can scarcely be expropriated, probably render such a policy impracticable in many places.

8. If the object of such segregation is to prevent deterioration in the sanitary conditions, commercial values, and general amenity of the quarters preferred by Europeans, we would urge that these objects can equally well be secured by imposing a relatively higher standard in sanitary, building, and police regulations in such quarters than it might be thought necessary to enforce elsewhere. In practice compulsory segregation is bound to involve hardship to members of the Indian community who would presumably in future be prohibited from occupying trading premises in the more eligible quarters merely by reason of their Asiatic race, and however capable they might be of conforming to European standards. Even if, as we assume, the position of existing license holders is adequately safeguarded, licenses for trading outside the assigned area will gradually lapse, and no fresh outside licenses will be issued. Indians will come to regard themselves as the victims of trade rivalry, and will fail to understand why for instance a European and Indian firm, which are alike dealing mainly with European customers should be made to trade in different quarters. An artificial barrier between two traders doing the same class of business is likely, from the strictly commercial point of view, to cause inconvenience and sometimes serious hardships.

9. We have a difficulty in understanding the intention in regard to Indian students, merchants and tourists who are permitted to visit South Africa temporarily in accordance with the Reciprocity Resolution of the Imperial Conference of 1918, which was accepted by the representative of the Union Government. We presume that such persons will not be required to live in locations set apart for Indians, but will be allowed freedom of movement and residence during their stay in the country. To segregate them would be to defeat the object with which they are admitted and to adopt a measure hardly consistent with the terms of the resolution.

10. The course of recent events in South Africa has already been a source of embarrassment to us in this country and we trust that it may not yet be too late for the Union Government to reconsider its policy with regard to segregation and to adopt measures which will secure the objects which they have in view by the alternative methods which we have indicated or in other suitable ways.

We have the honour to be,

Your Royal Highness' most obedient Servants,

(Signed) READING.

„ MUHAMMAD SHAFI.

„ W. M. HAILEY.

„ B. N. SARMA.

„ B. P. BLACKETT.

„ A. C. CHATTERJEE.

„ D. T. CHADWICK.

LETTER FROM THE IMPERIAL INDIAN CITIZENSHIP ASSOCIATION, BOMBAY,
TO THE SECRETARY TO THE GOVERNMENT OF INDIA, REVENUE DEPARTMENT,
DELHI, DATED BOMBAY, THE 28TH MARCH 1923.

A Cape Town telegram, dated the 21st March 1923, says:

“ ASIATICS IN SOUTH AFRICA.

PROPOSAL TO ALLOCATE ISOLATED AREAS.

Expected discussion in House of Assembly.

(Reuter.)

Cape Town, March 21.

Mr. MacKeurtan, Ministerialist, has given notice of a motion in the House of Assembly requesting the Government to consider the advisability of the early introduction of legislation providing for the allocation to the Asiatic community of any one or more of the provinces of the Union and separate and distinct areas, rural and urban, within any such province where that community may develop in accordance with its needs and standards of civilisation, due regard being had to the interests, present and future of the European and the native population.”

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TELEGRAM FROM THE VICEROY AND GOVERNOR-GENERAL OF INDIA, SIMLA,
TO GOVERNOR-GENERAL OF SOUTH AFRICA, CAPE TOWN, No. 382-EMI,
DATED THE 20TH APRIL 1923.

I understand that MacKeurtan's motion regarding segregation of Asiatics has been discussed in House of Assembly and should be grateful if you will kindly send as soon as possible copy of the proceedings and advance copy of residential and trading segregation bill foreshadowed by Minister of Interior.

TELEGRAM FROM THE GOVERNOR-GENERAL, SOUTH-AFRICA, TO THE VICEROY,
DATED CAPE TOWN, THE 23RD (RECEIVED 24TH) APRIL 1923.

Your telegram dated 20th April. Report of debate already sent. Bill has not yet been drafted. Copies will be sent to you as soon as available.

LETTER FROM THE GOVERNOR-GENERAL OF THE UNION OF SOUTH AFRICA, TO
HIS EXCELLENCY THE VICEROY OF INDIA, DATED CAPE TOWN, THE 20TH
APRIL 1923. (*Confidential.*)

I have the honour to transmit, for Your Excellency's information, a copy of a despatch which I have addressed to the Secretary of State for the Colonies reporting upon a recent discussion in the House of Assembly on the Asiatic problem in South Africa.

A press report of the debate is also enclosed.

SOUTH AFRICA.

Confidential.

GOVERNOR-GENERAL'S OFFICE,
CAPE TOWN,
19th April 1923.

MY LORD DUKE,

With reference to my despatch Confidential of the 12th May 1922, I have the honour to report that the annual discussion on the Asiatic problem in South Africa took place in the House of Assembly last Tuesday.

2. Mr. Mackeurtan, who opened the debate, told the now familiar story of the steady invasion of European spheres of employment by Indians and advanced the customary demand for the maintenance of Western civilization in South Africa and the segregation of the Asiatic.

3. The Government of India, the speaker declared, is making representations to us asking for the franchise but we will never agree to that so long as the Indian is allowed to intermingle with our people. But their only hope of getting representation is for them to agree to segregation in their own areas. Subject to this condition he was in favour of their being granted a measure of local autonomy and some form of Municipal Government.

4. The labour Leader supported Mr. Mackeurtan's motion but at the same time warned the House against adopting methods calculated to bring the Union "into conflict with powers in Asia whom we cannot afford to ignore". He concluded by urging the Government to consider whether it might not ultimately pay South Africa to spend ten or more millions "to ransom Natal for civilization".

5. The Minister of the Interior began his reply to the debate by pointing out that a satisfactory solution of the Asiatic problem was rendered difficult because they were not dealing with foreign people coming into the country but with a people that had been settled in South Africa for years. He was convinced that insurmountable obstacles stood in the way of absolute segregation, and, even if it were found possible to set up a sort of Asiatic state in Natal where Indians could live according to their own ideals, many existing troubles would still remain.

6. The Minister then made an important announcement in reference to the future policy contemplated by the Government. While complete segregation must be dismissed as a hopeless speculation he considered a measure of urban segregation, trade and residential, was practical and would be provided for in a Bill which he hoped to introduce next Session. The details of the Government's scheme were as yet indefinite but its general principles had been decided upon. When any urban authority desires to set apart areas where Europeans and Asiatics can live separately, it would be invited to submit proposals for this purpose to the Union Government and if the Government is satisfied that the scheme is feasible the urban authority concerned will be empowered to put into operation "a system of segregation which will make it unlawful for people of other races to occupy land set aside for a particular race".

7. "Existing property and licenses", concluded the Minister, "will have to be respected. We cannot approach this question as though these people were mere pawns in a game. Personally I do not think we will ever find a cut and dried solution to a question like this. It is one of those problems which will have to be dealt with by just living through it and I am one who believes that those qualities which have distinguished the European race up till now will bring us safely through this crisis".

8. I have forwarded a copy of this despatch to the Viceroy of India, together with a press report of the debate, copies of which accompany my despatch No. 158 of the 20th April.

I have the honour to be,

MY LORD DUKE,

Your Grace's most obedient, humble Servant,

(Sd.) ARTHUR FREDERICK,

Governor General.

His Grace the Duke of Devonshire, K.G., G.C.M.G., G.C.V.O.,
 etc., etc., etc.,
 Colonial Office,
 London.

"Cape Times", Wednesday, April 18, 1923.

ASIATICS AND SEGREGATION.

Mr. Mackeurtan's Motion.

Mr. Mackeurtan (S. A. P., Umbilo) moved:

That this House requests the Government to consider the advisability of the early introduction of legislation which will provide for the allocation to the Asiatic community of any one, or more of the Provinces of the Union, separate and distinct areas, rural and urban, within any such Province, where that community may develop in accordance with its needs and standards of civilisation, due regard being had to the interests of the present and future European and native population.

He said that was the third year in succession that that motion had been moved in that House. He considered that that was a national matter, and should be dealt with quite apart from politics, because it concerned Western civilisation in that country. In bringing forward that motion he would like to make it perfectly plain that he did not wish to deal with it on the ground of any alleged inferiority of the Indians. He quite realised that the Indian had a much older civilisation than our own, yet it was not a question of the past, but a question of the future, and he brought the motion forward because he believed in the predominance of Western civilised ideals in this country, and because he believed it was his duty to try to provide for the future of the children.

The Asiatic problem did not arise in the Cape as it did in Natal, and any remarks he intended to make were not directed to the Cape, any more than to the Orange Free State, where, owing to the foresight of the Republican officials, that problem did not exist. (Nationalist cheers). It was not a question of Japanese or Chinese, but one of Indians and their descendants, who were at present living in Natal.

He hoped that they had heard the last of what their forefathers had done in Natal, and introduced Indians there for economic needs. If their fathers had eaten sour grapes, must the children's teeth be set on edge? If they invited a lodger to their house and he became dominant, were they not to deal with him because they had invited him to come?

Trading and Landowning.

Then it was said that the problem of Asiatic trading in Natal was due to certain white people; but should they neglect the interest of their children because of others' misdoings? In the Transvaal no Asiatic could own land, but there the question of trading licences was one of great importance and urgency. In Natal the Indians might own land anywhere, but the question of trading licences was, to some extent, regulated by the licensing officers, as they had absolute discretion in the granting or refusal of licences.

In Natal it was more a question of land. In the Union there were 165,000 Asiatics, of which no fewer than 141,000 were in Natal, as compared with the 136,000 Europeans in Natal. In Durban alone there were 52,000 Asiatics and 57,000 Europeans. No doubt it would be said that since 1911 the increase in the European population of Natal was much larger in percentage than that of the Asiatic population; and that was so. But the Asiatic increase had been enormously in females, and it was easy to see the potentialities which such an increase would bring about.

But suppose the increase amongst the Asiatics had been as great as among the Europeans. The trouble was not so much about the population as that the Indian was entering far more than ever before upon different avocations, tradings and callings. In the rural districts of Natal trade was in the hands of the Asiatics, and in 1919 there were nearly 1,000 Asiatic traders as against 600 Europeans there. The Asiatics owned over one

million worth of property in Durban. In Stanger the Asiatics on the voters' roll outnumbered the Europeans and were in a position, therefore, to control the Government of the township.

Ousting of White Workers.

Mr. Mackeurtan went on to read a statement of a man who had been in Natal for over 30 years with regard to Indians ousting white workers from different employments by their low standards, so that to-day they had a practical monopoly. The Hon. Member said that from his own knowledge he could say that that was perfectly true. He had found a large number of decent respectable European men could not get employment because of Asiatics.

"Unless something is done", he said "to check this, there is going to be an end to the predominance of Western civilisation as far as the Province of Natal is concerned, and nothing could stop it."

He went on to say that in 1912 the Government restricted immigration for which they were duly grateful, but had passed an Indian Relief Act, which did away with some of the safeguards. Then the Government had tried voluntary repatriation, but it had not been worth very much, yet was worth something. All sorts of interests had come in to thwart it. As far as the sugar interests were concerned, although he held no brief for them, he was informed that they were now practically independent of the question of Indian labour.

The Municipality of Durban had introduced an Ordinance which had received the assent of the Government, which provided that when municipal land was sold it might be purchased either by Europeans only, or other land only by Asiatics. He went on to refer to two Ordinances now before the Provincial Council of Natal, the first of which, the Licensing Ordinance, he said, was well meant, but the discretion of the licensing officer to grant licences was going to be limited; and did that not make the position more difficult, instead of making it better?

Mr. Duncan (Minister of the Interior) said that that was not the case.

Township Franchise.

Mr. Mackeurtan replied that he was taking the Ordinance as it stood at present. He went on to refer to the Township Franchise Ordinance, the effect of which was, he said, that Asiatics might get the franchise; and it seemed to him to be a retrograde step. No Asiatic was entitled to be put on the electoral roll, and therefore, no Asiatic could be on the township roll, because one had to be on the electoral roll before one could be put on the township roll. He acknowledged that he was going counter to a judgment given by a Natal Judge, but he begged to disagree with that, although he did not know whether his view of the law was correct. However, it would be a good thing if that Ordinance was held over until the point in question was finally settled.

Coming to segregation, Mr. Mackeurtan said he admitted it was not a complete remedy, but it had this to recommend it: that it would enable these people to make a living. They could not repatriate their own nationals, and as a practical matter it was out of the question. There was a middle course which was segregation. By that he did not mean that these people should be placed in unhealthy slums, but they must provide them with clean, adequate healthy areas, if segregation was to be worthy of the name.

"The Government of India", continued Mr. Mackeurtan, "is making representations to us, asking for the franchise. We will never agree to that so long as the Indian is allowed to intermingle with our people, and it will be a very evil day for South

Africa if these political rights are ever granted, when the present position of affairs exists. But if you put these Indians in areas of their own, there is no reason why they should not have some form of local autonomy and some form of municipal government; and I would say that their only hope of getting representation is for them to agree to segregation in their own areas".

Imperial Problems.

Mr. Mackeurtan added that he would ask the Government to adopt the Asiatic Commission's report of 1921 in so far as it recommended that Asiatics should be allowed only within 20 miles of the coast belt. Dealing with the question of the Imperial position, he admitted its difficulty, and could see what the standpoint of Britain was; but the people of South Africa were beginning to ask, must they for all time listen to the Government of India? There was a time when patience was getting exhausted.

There were expressions he said used at meetings in Natal to-day which went too far, yet he could not help but entertain feelings of considerable sympathy with those who made them. They saw the Asiatics peacefully penetrating and eating the Europeans out, and the danger to our children was apparent. He would like the rights of South Africa to be asserted in regard to that question, and to see that we were able to deal with our population according to our ideals. If the Minister facilitated that he would earn the lasting gratitude of the people of Natal, but if he did not, then he (the Hon. Member) would not be prepared to answer for the consequences.

Segregation Necessary.

Mr. Marwick (S.A.P., Illovo), in seconding, said the object of the motion was to bring under the control of the Government or local authorities the Asiatics. During the present session the House had considered the Native Urban Areas Bill, which dealt with the segregation of the natives, and the analogy of the action proposed in that Act with what was proposed in the present debate was surely sufficient to satisfy the House that they were asking for no new thing when pressing for the segregation of the Asiatics.

In regard to the Native Urban Areas Bill, the whole of the evidence in Select Committee showed that there was no dissentient voice in regard to the principle of urban segregation. Segregation of the races was acknowledged to be necessary and was acknowledged by the Asiatic Commission, which reported in 1921 in regard to the Asiatics themselves. The only point on which they differed was as to the method of segregation. The Commission agreed on the principle of voluntary segregation, and that decision was based on the evidence of persons who the Hon. Member and those who agreed with him regarded as unreliable witnesses.

The position of preference which the Indians at present occupied in Natal was a matter of considerable feeling among the Europeans. While the natives who did not contribute to income-tax were obliged to pay a tax for their huts, the Indian had to pay no such tax whatever. The municipal franchise was evidently to be extended to the large class of Indians who were educated and the large majority of Indians in Natal to-day were educated. Yet the natives would not be granted a similar right.

Mr. Duncan: Why not?

Backward Education.

Mr. Marwick: Because their education is very backward, and they have not received the same facilities as the Indians. The demand of the Indians for equal rights in South Africa has proved to have very unsubstantial

foundations, because in India the effort made to secure democratic representation for the Indians had very largely failed. The demand to accord the Indians equality of status in South Africa was surely an extravagant one when no less than one-fifth of the population were regarded as "untouchable."

There was no doubt that in the Province of Natal the future of the European community was in the hands of the Indians at the present moment, and unless some relief were granted the Province would become an Indian colony. Within a measurable period the smaller townships in Natal would be dominated by members of this race, and the whole government of the Province would eventually come under a kind of semi-Eastern control.

Mr. Grobler (Nat. Restenburg), in expressing sympathy with the motion, pointed out that but for the British intervention there would not have been one single Asiatic in the Transvaal. When the Transvaal Republic entered into a Convention with Britain, the Transvaal Government had had no idea of Asiatics being allowed to enter. When Asiatics did, however, enter, a law was passed in 1885 excluding Asiatics with the consensus of the English Government, but on the Asiatics protesting to England, the latter held that the law was in conflict with the London Convention.

That was how the situation had developed in the Transvaal. To-day many towns and villages of the Transvaal were flooded by Asiatics, and without desiring to do any injustice to the Asiatics, he supported the suggestion that Asiatics should be segregated into certain parts on the outskirts of towns and villages.

No Panic Measures.

Mr. Feethan (S. A. P., Parktown) said that the mover of the motion had asked them to disregard ethical and historical considerations and go ahead with the work of maintaining the dominance of Western civilisation in this country. If Western civilisation was based on those considerations, how could we approach that question and at the same time be regardless of those same considerations, which were the basis of our civilisation? The situation was a very difficult one, but he considered we should not adopt panic measures, because that would show a lack of confidence in ourselves.

The last census figures in Natal showed that the situation, instead of getting worse, was improving, and that the rate of increase in the Indian population was so much diminished that they were likely to increasingly fall behind in the race. The problem could only be solved by both parties being taken into account. The suggestion of repressive measures aroused bitter resentment and provoked stubborn opposition, as experience had always taught them that in their dealings with Asiatics. Only by consultation and co-operation could a solution be found that would recommend itself to the country.

They had to face the situation by asking the Asiatics who were concerned to discuss the question, and they would never settle it by approaching it only from the one side. It was not a limited local problem: what they did reacted elsewhere: what was done elsewhere reacted here. They were not concerned in South Africa with the Indian Government, but with the Indian people, and the Indian Government was speaking as the mouthpiece of the Indian people. The question raised by Mr. Mackeurtan was more an industrial one than a political question.

It was important that they should not do anything which would outrage the feelings of the people of India, who felt deeply any indignities put upon Indian people elsewhere. It would be easier to deal with the Government of India if it were still a part of the British Empire. South Africa could never be indifferent to the outlook of India, which was far too important and near a neighbour, and would one day be a self-governing neighbour.

" Beyond Moderation "

Mr. Strachan (Lab., Maritzburg (N)) said that Mr. Feetham was obviously not well acquainted with the Asiatic position in Natal; it had gone beyond moderation, and the people were aroused against that Asiatic question. The real reason why the agitation was growing so strongly in the towns was the large number of Indian traders. The argument of Britain or India and South Africa, trotted out by Mr. Feetham, had been trotted out too often, and would not " go down " any longer. At a public meeting in the Capital of Natal it had been said that England must choose between India and Natal.

When the Government was faced with a question which required real statesmanship, it, like other Governments, appointed a Commission; and since Union £161,000 had been spent on Commissions, to which the Government had not paid any attention—the figure was the same as the Asiatic population in South Africa, curiously enough. The Prime Minister, when he was in Natal, said that the Government intended to " embark upon a vigorous policy " of repatriating Asiatics, but when he went away he forgot all about it.

" Allowed to Develop "

The policy of the Government was " to allow the situation to develop "—and it would develop with even more disastrous consequences than the situation which had been " allowed to develop " on the Witwatersrand. There were those who believed that in 25 years the City of Durban would be one huge Indian bazar; and the Government would be asked to keep in repair the deserted graves of the descendants of the Europeans!

So long as the Asiatic remained a labourer in Natal, there had been little agitation in favour of his voluntary or compulsory repatriation; it had started only when the Asiatic began to compete in trade and took up capital. The competition between European and Asiatic was decidedly unfair: the Asiatic assistant did not get one-quarter the pay a European shop assistant got; the Asiatic shopkeeper lived on the premises: the European did not.

He moved the following amendment:

" And also to include in such legislation provision for maintaining European standards of civilisation by the adoption of the principle of equal pay for equal work; and, further, that the Government be requested to embark on a more vigorous policy of encouraging and inducing the repatriation of Asiatics."

In the printing industry in Natal, he said, the Indians were being permitted to undercut South African artisans. The latter were not frightened of any Indian when it came to man to man in regard to work, but when the Indian was given a job at 30s. a week in preference to a South African who should have had a position at, say, £6 10s. then they perceived the great danger which confronted them.

Colonel Creswell (Lab., Stamford Hill), in seconding, said a policy of drift in regard to the question had been allowed too long, and should be put a stop to. We should be careful in approaching this matter, and we should be careful to avoid leaving in the minds of Asiatics in Asia that we were unreasonable people, pursuing unnecessarily harsh courses. There was no question of the Asiatics possessing an inferior civilisation, theirs was an entirely different civilisation to our own. If we were prepared to spend £6,000,000 in regard to Rhodesia, as was the case last year, was it not worth while to spend, if necessary, millions of money in order to ransom back Natal for South Africa?

Minister and Moderation.

Mr. Duncan (Minister of the Interior) said he still believed that moderation was the best way to deal with that most delicate question. It was no use raising any wind storms. (Hear, hear.) These difficulties did not arise because South Africa was a part of the British Empire. South African

interests would be regarded first, but it would have to be recognised that in dealing with that matter they would have to take into account not only other Dominions of the Empire, but foreign Powers as well.

“ Our difficulty,” he said “ is that we are dealing with a race which has been in South Africa for years, has settled here, and the great majority of whom were born here, and have no other country but South Africa.”

The Asiatic, he proceeded, lived under economic conditions which were different to those that applied to the European. He worked for less and lived under a different standard altogether. All these were points that had to be considered. The Licensing and Township Franchise Ordinances had been referred to. These Ordinances had been passed by the Natal Provincial Council but had not been assented to by the Government.

The Minister had visited Natal, a conference had been held there, and as a result draft Ordinances were now before the Provincial Council of that Province. With regard to the Licensing Ordinance, if an applicant was turned down on the ground that he was not a fit and proper person, he had the right to appeal from the licensing authority to a Provincial Board. It had been said that such a procedure was weakening the authority of the licensing authority, but he (the Minister) did not agree.

The law in Natal was that the Act of 1881 did not exclude the Asiatic from township franchise.

Repatriation.

Since January, 1914, under the Indenture Repatriation Scheme, 11,900 Indians had gone back to India, and under the voluntary Repatriation Scheme 14,405 had returned. Since the beginning of the present year 1,250 Indians had been repatriated.

He was glad that Mr. Mackeurtan had recognised that compulsory repatriation was impossible: it was equally impossible to say that Indians should not take up certain trades. Let them not live in a fool's paradise with the word “ segregation ”: a great many difficulties which there were would remain even under segregation. Were the Europeans to be removed from the coast belt of Natal?

Mr. Mackeurtan said that he had not advocated that.

Mr. Duncan: Well, what is the use of talking of segregation if you do not intend to carry it out? Let us stop talking segregation if you do not propose to adopt it. Segregation for the Union is impossible. You will not get the result you desire.

Segregation, he went on, would not prove satisfactory in urban areas if voluntary: it could only be carried out under some form of compulsion or other there. A measure of urban segregation could and should be put into practice, it seemed to him, and power might be given by that House that, where an urban authority desired the separation of Europeans and Asiatics, both for residential or trading purposes—and if the Government was satisfied with the scheme and that it was necessary under the circumstances—for such a measure to be put into force. It was not only the Indian people outside the Union who had to be taken into consideration in dealing with that difficult question, but, as Mr. Feetham had said, they must also consider the Indian population in the Union. He considered that they would overcome these difficulties as they had overcome other problems, but it would take time; but with justice and faith they would see it through.

He accepted the motion under certain conditions*.

On the motion of Mr. Nicholls (S. A. P., Zululand) the debate was adjourned until May 3.

Mr. Boydell (Lab., Greyville) protested against the adjournment if it meant the shelving of the debate for that year.

Mr. Mackeurtan also appealed for further facilities to discuss that matter, saying that Parliament should express its views.

General Smuts said that the Government could not, he regretted, give further facilities, owing to the lateness of the session.

The House adjourned at 6-25 P.M.

LETTER FROM THE VICEROY AND GOVERNOR-GENERAL OF INDIA, TO HIS ROYAL HIGHNESS MAJOR-GENERAL PRINCE ARTHUR OF CONNAUGHT, K.G., P.C., K.T., G.C.M.G., G.C.V.O., C.B., A.-D.-C., GOVERNOR GENERAL OF THE UNION OF SOUTH AFRICA, DATED THE 25TH JUNE 1923. (*Confidential*).

I have the honour to acknowledge, with thanks, the receipt of Your Royal Highness' confidential letter of the 20th April 1923, together with its accompaniments, on the subject of the recent discussion in the House of Assembly on the Asiatic problem in South Africa.

2. The Government of India, as Your Royal Highness is aware from paragraphs 7 and 9 of their despatch No. 307-R. A., dated the 19th December 1921, entertain the strongest objection to the segregation of Indians whether compulsory or voluntary in any form, and had noted with satisfaction the statement in paragraph 7 of the minute of Your Royal Highness' Government dated the 15th December 1922 that the Minister hesitated to take any steps to enforce segregation in Natal. They have therefore noted with great regret the announcement made by the Minister of the Interior to the effect that a Bill will shortly be introduced providing for the urban segregation of Europeans and Asiatics both trade and residential. They intend to address Your Royal Highness further on the subject.

TELEGRAM FROM THE SECRETARY TO THE GOVERNMENT OF INDIA, DEPARTMENT OF EDUCATION, HEALTH AND LANDS, DELHI, TO THE GOVERNOR GENERAL OF THE UNION OF SOUTH AFRICA, PRETORIA, No. 34, DATED THE 12TH JANUARY 1924.

We learn from Reuters Cape Town that a Bill entitled Class Areas Act of 1924 has been published in Gazette. We should be much obliged if you will kindly send us copy as soon as possible and meanwhile telegraph a summary of the main provisions. We should also like to know when Bill will be introduced and considered.

TELEGRAM FROM THE GOVERNOR GENERAL OF SOUTH AFRICA, TO HIS EXCELLENCY THE VICEROY, DATED CAPE TOWN, THE 18TH JANUARY 1924.

Your telegram of 12th January. Text of the Bill follows by mail. Summary begins. When urban local authority intimates areas within its limit is wholly or for the greater part occupied for residential or trading purposes or both by particular classes of persons or that an area is available for exclusive occupation of such, Minister may appoint commission to investigate and report upon the extent and nature of area, number, dimensions, situation and nature of the sites occupied or available, whether the areas would afford proper and adequate facilities, on provision for water, lighting, sanitary, and other services, general desirability application to particular areas and any other matters he may deem desirable. Within 6 months of the Commission's Report Governor General may proclaim such areas, class residential or class trading or both. More than one area may be so defined. An area may be defined in Transvaal on land under mining title, notwithstanding the existing law. After the proclamation, acquisition of the leases or renewal of the leases of immovable property and the issue of trading licences in class areas prohibited to other than classes concerned and to classes concerned elsewhere in the urban areas. Rights to renewal of terms of the existing leases and the

renewal of the trading licences in existence at the date of the proclamation safeguarded. Governor General may in the general interest give the exemption for trade outside the class areas. Governor General may suspend operations if satisfied as to class areas' inadequacy or unsuitability. Provision made for Advisory Boards in class areas. "Class of persons" include any European or other having common racial characteristics except natives. Saving includes the power of Governor General to grant letters of exemption. Summary ends. Impossible forecast of the date of introduction of the bill but understand that progress not likely to be rapid.

2. Ministers wish to assure the Government of India that it is desire and intention to apply measure if it becomes law, in spirit of fairness to interest and reasonable requirements of the Indians and of other races or the classes to whom it may be applied. It might be, as will be observed, general in its application and is intended (in conjunction with a law passed last session on the subject of residential quarters for natives in the urban areas) to provide for a measure of social separation in towns between classes of persons who owing to difference of race, colour, or civilization do not assimilate. Minister considers adequate power are reserved to the Union Government to prevent these provisions being used as an instrument of local race prejudice or commercial rivalry. It is not the intention of the Government that it should apply to temporary residents such as those mentioned in paragraph 9 of your despatch dated 23rd August. It is the intention of the Minister to afford the representatives of the Indian community here the full opportunity for discussing the provisions of the Bill.

TELEGRAM TO THE GOVERNOR GENERAL OF SOUTH AFRICA, PRETORIA, No. 67,
DATED THE 24TH JANUARY 1924.

Thanks for your telegram of 18th instant communicating Summary of Class Areas Bill. We are awaiting the full text. Should the bill be proceeded with we shall be glad to be informed by telegram of the date when it will be introduced.

No. 15-1182.

GOVERNOR GENERAL'S OFFICE,
CAPE TOWN,
18th January 1924.

MY LORD,

I have the honour to refer to Your Excellency's despatch of the 23rd August last regarding the position of Indians in the Union and to explain that Ministers delayed dealing with the points raised in that despatch owing to the meeting of the Imperial Conference. In view of the discussions which took place there, my Ministers do not think it necessary now to touch upon the general question of the social and political status of Indians in South Africa.

In your despatch, however, particular reference was made to the intention of this Government, as announced in Parliament, to introduce a measure providing for the segregation of Europeans and Asiatics in urban areas. Ministers accordingly forward, for the information of the Government of India, two copies of the proposed measure which will be introduced during the coming session. A summary of the provisions of this bill has been communicated to you in my telegram of to-day's date.

My Ministers wish to assure the Government of India of their desire and intention to apply the measure, if it becomes law, in a spirit of fairness to the interests and reasonable requirements of Indians and of other races or classes to whom it may be applied. It is, as will be observed, general in its application and is intended (in conjunction with a law passed last session

on the subject of residential quarters for natives in urban areas) to provide for a measure of social separation in towns between classes of persons who, owing to differences of race, colour or civilisation, do not assimilate. Ministers consider that adequate powers are reserved to the Union Government to prevent these provisions being used as an instrument of local race prejudice or commercial rivalry. It is not the intention of the Government that it should apply to temporary residents such as those mentioned in paragraph 9 of your despatch under reference.

My Ministers propose to afford the representatives of the Indian community here full opportunity of discussing the provisions of the bill.

I have the honour to be,

My Lord,

Your Excellency's most obedient Servant,

J. ROSE INNES,

Acting Governor General.

His Excellency the Right Honourable

The Earl of Reading, G.M.S.I., G.M.I.E., G.C.B., K.C.V.O.,

&c.,

&c.,

&c.,

Viceroy of India,

Delhi,

Bill to make provision for the reservation of residential and trading areas in urban areas for persons, other than natives, having racial characteristics in common.

(To be 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:—

Request by urban local authority for application of Act. 1. Whenever an urban local authority shall intimate to the Minister—

(a) that any area within its limits is wholly or for the greater part occupied for residential or trading purposes or both such purposes by a particular class of persons, or that an area within those limits is available for the exclusive occupation for residential or trading purposes or both such purposes by a particular class of persons; and

(b) that it is desirable that the provisions of the Act should be applied in respect of such area,

it shall be lawful for the Minister to appoint a commission consisting of not more than three persons (hereinafter called the Commission) to investigate and report upon the desirability of applying to such area and to the urban area within which it is situated the provisions of this Act.

Duty and powers of commission.

2. (1) It shall be the duty of the commission to enquire and report upon the

following matters:—

(a) The extent and nature of the area which was the subject of intimation under section one of this Act;

(b) the number, dimensions, situation and nature of sites occupied or available therein for residential or trading purposes or both such purposes as the case may be;

(c) whether there would be afforded by the area proper and adequate facilities for residences or trading sites or both as the case may be for the particular class of persons concerned;

- (d) whether due and proper provision exists or is assured for water, lighting, sanitary and other necessary services within the area;
- (e) whether it is desirable that the provisions of this Act should be applied in respect of the area; and
- (f) any other matter which the Minister or the commission may deem necessary or desirable.

(2) The commission shall have all such powers, jurisdiction and privileges as were conferred upon the commission referred to in Ordinance No. 30 of 1902 of the Transvaal, and all and several the provisions of that Ordinance shall *mutatis mutandis* apply in respect of the commission and its proceedings.

3. (1) At any time within six months after the receipt of the report of the commission, the Governor General may by proclamation in the *Gazette* declare that, on and after a date to be mentioned in the proclamation, the area defined therein shall be class residential area, or class trading area, or a class residential and trading area within the urban area.

(2) More than one area within the urban area may, by any such proclamation be defined as class residential areas, or as class trading areas, or as class residential and trading areas as the case may be.

(3) Notwithstanding anything to the contrary contained in the Precious and Base Minerals Act of the Transvaal (Account No. 35 of 1908) or any amendment thereof, or in any other law, a class trading area may be established under this Act on land within an urban area which, in terms of the said Act No. 35 of 1908 or any amendment thereof, is proclaimed land or land held under mining title.

4. From and after the date mentioned in any proclamation issued under this Act establishing a class residential area or a class residential and trading area, it shall not be lawful save as provided in section ten of this Act—

- (a) for any person other than a person of the class concerned to acquire immovable property or a lease or renewal of lease of immovable property within any such area; or
- (b) for any person of the class concerned to acquire immovable property or a lease or renewal of lease of immovable property anywhere within the urban area save within the limits of the class residential area or of the class residential and trading area, as the case may be:

Provided that nothing in this Act contained shall apply to the renewal of a lease of immovable property where a right to such renewal is held under a lease existing at the date aforesaid.

5. (1) From and after the date mentioned in any proclamation issued under this Act establishing a class trading area or a class residential and trading area, it shall not be lawful for any licensing court, board or authority, or for any person authorized to grant or issue licences or permits to carry on any trade or business within the urban area—

- (a) to grant or issue to any person other than a person of the class concerned any licence, permit or other authority to carry on any trade or business within the class trading area or class residential and trading area as the case may be; or
- (b) to grant or issue to any person of the class concerned any licence or permit to carry on any trade or business within the urban area elsewhere than in the class trading area or class residential and trading area as the case may be:

Provided, however, that if the Governor General is satisfied that it is in the general interests of the public that it should be permitted to persons of the class concerned or any restricted number of such persons to carry on any particular trade or business within the urban area elsewhere than in the class trading area or class residential and trading area, as the case may be, he may by proclamation in the *Gazette* for such period as he may therein fix, exempt persons of the class concerned or a restricted number of such persons from the operation of paragraph (b) of this sub-section in respect of that particular trade or business.

(2) Nothing in this section contained shall be deemed to prohibit the grant to any person holding, at the date mentioned in any proclamation issued under this Act, any licence, permit or other authority to carry on any trade or business, or a renewal of such licence, permit or other authority.

6. (1) Whenever, in the opinion of the urban local authority concerned, any area established under this Act as a class residential area or a class trading area or a class residential and trading area, proves inadequate for, or unsuitable to, the requirements of the population of that class in the urban area, and the urban local authority deems it desirable to extend any such area or to create a new class residential area or class trading area or Asiatic residential and trading area, the urban local authority may communicate its opinion to the Minister, who thereupon may take all such steps as he may take upon receipt of an intimation under section one of this Act.

(2) All and several the powers exercisable under this Act in respect of the establishment of a class residential area or a class trading area or a class residential and trading area shall be exercisable in respect of the establishing of a new area or the extension of any existing area of like character.

7. (1) If at any time the Governor General is satisfied that a class residential area or a class trading area or a class residential and trading area established under this Act is inadequate for or unsuitable to, the requirements of the population of that class in the urban area concerned, and that, by reason of the delay which would necessarily take place in removing the causes of the inadequacy or unsuitability, serious prejudice would be suffered by that population unless the provisions of this Act in respect of such inadequate or unsuitable area be suspended, he may, by proclamation in the *Gazette* declare that, from and after a date to be therein mentioned, the provisions of this Act shall be suspended in respect of the class residential area or class trading area or class residential and trading area concerned.

(2) From and after such date the provisions of this Act shall in all respects cease to apply to the area, deemed to be inadequate or unsuitable and, in respect of such inadequate or unsuitable area, to the other parts of the Urban area within which it is situated.

(3) The Governor General may, whenever he may deem fit, re-proclaim as a class residential area or a class trading area or a class residential and trading area, as the case may be, any area which has been the subject of a suspending proclamation under sub-section (1) of this section, or to proclaim as a class residential area or a class trading area or a class residential and trading area under this Act any area which wholly or partly includes any area which has been the subject of a suspending proclamation under sub-section (1) of this section.

8. Any class residential area, or class trading area, or class residential and trading area established under this Act for any Asiatic race shall for the purposes of section two (b) of Law No. 3 of 1885 of the Transvaal be deemed to be an area within which, in terms of that law, fixed property may be owned by Asiatics.

Class area for Asiatics to be area in which under Law 3, 1885 (Transvaal) Asiatics may own fixed property.

9. (1) For every class residential area, or class trading area, or class residential and trading area established under this Act there shall be an advisory board consisting of not less than three persons of the class concerned resident within the urban area, in addition to a chairman who in the case of a non-European class area, may be a European. The mode of election or selection of members of any such board, the period and conditions of office of members, and the procedure of the board shall be defined by regulations made by the urban local authority and approved by the Minister.

(2) It shall be the function of an advisory board established under this section to advise the urban local authority in respect of any matter referred to it by such authority for advice, and no by-laws or regulations particularly affecting the interests of the class or persons concerned shall be made or withdrawn by an urban local authority unless the advice of such advisory board shall first have been obtained in respect of the making or withdrawal, as the case may be, of such by-law or regulation.

10. (1) Subject to the provisions of sub-section (3) of section *three* and of section *eight* of this Act, nothing in this Act contained shall be deemed—

Savings and exemptions.

- (a) to affect the operation of Law No. 3 of 1885 of the Transvaal or any amendment thereof; of section *two* of Act No. 18 of 1913; of Act No. 37 of 1919; of Chapter No. CXIII of the Orange Free State Law Book or any amendment thereof; or of any other law prohibiting, restricting, regulating, or in any way affecting, the ownership or occupation of immovable property or trading by Asiatics or by coloured persons; or
- (b) to prohibit the acquisition by the Government or any urban local authority for educational, municipal or any other public purpose of the ownership or occupation of any immovable property; or
- (c) to prohibit the acquisition at any time of land or interests in land or the lease or occupation of any immovable property by devolution or succession on death whether under a will or on intestacy; or
- (d) to prohibit any executor of a deceased estate or any trustee in insolvency from holding any immovable property or trading under any licence where power to do any such thing is conferred upon him by any law; or
- (e) to invalidate or affect in any manner whatever any agreement or other transaction for the sale or purchase of land lawfully entered into prior to the date mentioned in any proclamation under this Act establishing a class residential area or a class trading area or a class residential and trading area.

(2) Nothing in this Act contained shall be deemed to affect any officer of the consular service or any person to whom the Governor General may grant letters of exemption from the operation of all or any of the provisions of this Act.

11. In this Act, unless inconsistent with the context—

Interpretation of terms.

- “class of persons” includes any European persons or any other persons having, in the opinion of the Minister, common racial characteristics, but does not include any natives as that term is defined in section *twenty-nine* of the Natives (Urban Areas) Act, 1923 (Act No. 21 of 1923).
- “Minister” means the Minister of the Interior or any other Minister to whom the Governor General may assign the administration of this Act.
- “urban area” means an area under the jurisdiction of an urban local authority.

"urban local authority" means any municipal council, borough council, town council or village council, or any town board, village management board, local board or health board.

12. This Act may be cited as the Class Areas Act, 1924.

Short title.

TELEGRAM FROM THE GOVERNOR GENERAL, CAPE TOWN, TO THE SECRETARY TO THE GOVERNMENT OF INDIA, DEPARTMENT OF EDUCATION, HEALTH AND LANDS, DATED THE 5TH MARCH 1924.

Your telegram of 24th January. First reading of the Class Areas Bill will be taken to-day, second reading probably some time next week.

TELEGRAM TO THE GOVERNOR GENERAL OF SOUTH AFRICA, CAPE TOWN, No. 257, DATED DELHI, THE 14TH MARCH 1924.

We thank you for your telegram, dated 5th March, regarding Class Area Bill. In view of the urgency of the matter we venture to place before you certain representations relating to its provisions for your consideration. In the first place, it appears to us that clause 11 of bill extends its scope beyond municipal areas to which in the light of General Smuts' minute No. 984, dated 15th December 1922, we thought the Union Government intended to confine segregation. This will widen effect of measure. Secondly, in paragraph 2 of your communication of 18th January, we were assured that bill was only intended to provide for social separation in towns and was not to be used as instrument of local race prejudice or commercial rivalry. We regret our inability to accept principle of social separation, but, even if it is accepted it would not justify enforcement of separate trading areas in cases where Indians do not reside in their shops. So long as trading areas are not used for residential purposes, there is in our opinion no cases for commercial segregation and we doubt if the practical difficulties in the way of introducing any such measure and the real injustice which would result therefrom have been fully appreciated. Thirdly, the effect of segregation on the value of property should be carefully considered. By restricting the market for property, its value will in many cases be reduced. In case an Indian owning house outside the proclaimed area, which he uses for trading purposes, is refused renewal of his trading license in order to make him move his business within the class area he is likely to be put to loss on account of forced sale of property. Fourthly, since urban authority proposing segregation will usually be also licensing authority, we fear temptation to enforce segregation by refusing renewals of licence to persons trading outside specified area may prove too great. The safeguard provided by Natal Act 22 of 1909, does not exist in other provinces. There is no specific provision in the bill requiring the Commission to satisfy itself regarding communications and the easy accessibility of a proposed area for trading, and since limits of urban area can be indefinitely extended under the bill, it is possible that Indians may be relegated to localities which are far away from main trading centres of a city. Refusal to renew licences outside such areas may in many cases deprive Indian traders of means of livelihood. Fifthly, the bill does not provide that commission shall include person belonging to and representing class affected and judicial officer as Chairman of commission. We consider it important that such provision shall be made. Finally, we wish to draw your attention to our general objections to principle of compulsory segregation which were stated in our despatch No. 661 of 23rd August 1923, which we consider are still valid. We earnestly hope that in the interests of solidarity of Empire it may be found possible even at this stage to drop bill or radically modify it.

TELEGRAM FROM THE GOVERNOR-GENERAL, UNION OF SOUTH AFRICA, TO VICEROY, DATED CAPE TOWN, THE 22ND MARCH 1924.

Your telegram dated 14th March. Class Areas Bill. Ministers state clause 11 of Bill will not be extended beyond municipal areas including areas

sufficiently urban in character to be administered by various forms of urban Government mentioned in last paragraph of clause. Second point in your telegram seems to arise from a misconception of terms of my telegram dated 18th January. It was not intended to convey the impression that the Bill was to be restricted to residential separations only, separation of trading premises being equally necessary to prevent social and racial friction which at present exists and in many places such separation already existed in fact. In regard to third point attention is directed to sub-clause 2 of clause 5 of Bill which provides that existing licence-holders outside areas will be entitled to renewal of their licences. Ministers state with reference to 4th question raised that it is intended that Bill should only apply to Transvaal and Natal. In the former Province licences are issued by Receiver of Inland Revenue and in regard to Natal the right of renewal is safeguarded by Act XXII of 1909 in force in that Province. Protection against possibility of Indians being relegated to unsupportable localities is provided for by fact that Government has to approve areas selected after proposals of urban local authorities have been investigated and reported upon by Commission which will hear all objections.

As regards 5th point question of composition of Commission will be a matter for careful consideration by Government.

Ministers add in conclusion in view of strong feeling aroused in Union in favour of Bill which has been accentuated by visit of Mrs. Naidu who came to Union on invitation of Natal Indian Congress, the Government sees no likelihood of the Bill being withdrawn.

Confidential.

GOVERNOR-GENERAL'S OFFICE,
CAPE TOWN,
22nd February 1924.

MY LORD,

I have the honour to transmit herewith, for Your Excellency's information, a copy of a despatch which I have addressed to the Secretary of State for the Colonies containing a report on an interview between the Minister of the Interior and a deputation representing the principal Indian Associations in the country on the subject of the Class Areas Bill.

I have the honour to be,

MY LORD,

Your Excellency's most obedient Servant,

(Sd.) ATHLONE,

Governor-General.

His Excellency the Right Honourable

The Earl of Reading, G.M.S.I., G.M.I.E., G.C.B., K.C.V.O.,

etc., etc., etc., etc.,

Viceroy of India,

Delhi.

SOUTH AFRICA.

Confidential (2).

GOVERNOR-GENERAL'S OFFICE,
CAPE TOWN,
22nd February 1924.

SIR,

I have the honour to enclose, for your information, press reports of a reply made by the Minister of the Interior to a deputation representative of all the principal Indian Associations who assembled in Cape Town to protest against the Class Area Bill.

2. In addition to giving them a detailed explanation of the manner in which the individual clauses will operate, Mr. Duncan advised the Indians

to reconcile themselves to the fact that there is in South Africa a "predominating majority of the European people who are not willing to share their political privileges with the people of Asiatic race or even the civilized members of some races of South Africa". The Minister emphasized that he was not concerned with the rights and wrongs of this attitude on the part of the Europeans. The Government, he explained, did not create public sentiment and could not abolish it; nor was it possible for this or any other Government to ignore its existence. He impressed upon them that, because the European population held these views so strongly, some measure of segregation in urban areas was inevitable. It was essential that the Asiatics and other people concerned should realise that the Government was compelled to satisfy, within reason, the demands of the Europeans and that it was possible to do so without imposing undue hardship or any mark of dishonour upon other races. He willingly acknowledged that the Indians possessed a civilization that had made its mark on the world and one which was entitled to every respect. But it differed fundamentally from that of the European races and he could not see how the Bill, which aimed at providing adequate and decent (though separate) residential and trading areas for all classes, could possibly be regarded as a stigma upon any of the communities affected.

3. The Government, he continued, proposed to appoint Commissions composed of trustworthy men—including a member selected specially for his acquaintance with the customs and aspirations of the Indian community—to ensure that no degrading or unfair conditions were enforced and to see that the area set aside for any particular section of the community was ample in dimensions and adequately equipped with living accommodation and municipal amenities.

4. In conclusion he assured them that, far from experiencing any hardships from the application of the measure, he was convinced that an improvement would gradually be effected in their conditions of life. That they could rely upon the Government to protect them from oppressive legislation was, he claimed, supported by the manner in which the Natal Provincial Council had been repeatedly restrained from depriving Indians of the franchise they were entitled to under existing laws. The Advisory Boards set up under Clause 9 of the Bill were designed to give Indians a liberal say in the management of Municipal affairs within their areas. "Representative institutions", said Mr. Duncan, "often grow up out of Advisory Boards—they should not be regarded as an attempt to prevent Indians from obtaining the Municipal franchise".

I have the honour to be,

SIR,

Your most obedient, humble Servant,

(Sd.) ATHLONE,

Governor-General.

The Right Honourable J. H. Thomas, M.P.,

etc., etc., etc.,
Colonial Office,
London.

"Cape Times," February 16th, 1924.

CLASS AREAS BILL.

INDIAN DEPUTATION TO MR. DUNCAN.

MINISTER AND "WHIPPED UP" AGITATION.

"You Are Not Treating Me Fairly."

Yesterday afternoon a large and very influential deputation of Indians waited upon Mr. Patrick Duncan, Minister of the Interior, with the object of laying before him their views in connection with the Class Areas Bill.

The deputation, which was introduced by Dr. Abdurahman, was from the South African Indian Congress, which is a central body representative of the following organisations: Cape British Indian Council, British Indian Association of the Transvaal, the Natal Indian Congress, and the Natal Indian League.

Yesterday the deputation was only partially heard. On Monday morning the Minister will meet the delegates again.

"Whipped up into a State almost of Frenzy."

After Dr. Abdurahman, in a speech reported below, had introduced the deputation, Mr. Duncan said:

"Before the deputation addresses me I should just like to say this: When I agreed to receive this deputation this afternoon, when Parliament is sitting, I did not realise that you were going to read statements which will certainly take an hour, or even more; therefore, I only want to ask you to make the representations that you have to make as briefly as possible. I may be called away at any moment to vote, and I want to take some part in the debate that is going on.

"One other point I want to mention. I do not think that you representatives of Indian bodies have treated the Government or myself fairly in regard to this matter. Before this Bill was published, I sent a copy of it to the British Indian Association in the Transvaal, and asked it to circulate it, or copies of it, to other Indian bodies.

"My idea was that before the Bill came into Parliament I might have the benefit of consulting the representatives of the Indian people, so that, if there was something they felt as a grievance and something I could remove from the Bill the thing might be done."

"People Are Whipped Up,"

"But no notice whatever was taken of the Bill; instead, meetings are held all over the country; people are whipped up into a state almost of frenzy, and told that they will be ruined body and soul, and that their livelihood will be taken away; that there should be passive resistance and the like. And then you come to me!

"What does it matter what I say about the Bill, when you have told the people that they must resist it to their last drop of blood? Surely this is not the way to treat a matter such as this! I wanted to have the fullest consultation with the Indian people, and now the thing is impossible.

"It is no use my saying anything. You have said that this Bill is intended to drive them out of the land. You have not treated me or the Government fairly in this thing. You might have taken advantage of my offer, and if you found that you could get no concession, and all my explanation failed to remove your objections to the Bill, it was your duty, and your right, to go to your people and urge them to do all they could to oppose it. That is the position I want to put before you.

"However, I have undertaken to see you, and will do so, and I will give every consideration to the points you have put before me. Would it not be possible, however, for the spokesmen to put their points in a few words, and leave me to read the statements for myself?

"NOT OUR FAULT."

Mr. Naidoo and Publication of Bill.

Mr. Naidoo, Secretary of the Transvaal British Indian Association, said that the Bill had been sent to him with a covering letter on December 20, and immediately after he had had the copies made and sent them to Natal. Before time had been given to consider the Bill and to discuss it amongst themselves it had been gazetted and made public property.

They had thought that the Bill would not be gazetted in such a hurry, and that an opportunity would have been afforded the Indian community to discuss the matter with Mr. Duncan before further steps would be taken. "So that," concluded Mr. Naidoo, "the fault is not ours. The Cape coloured community and the Jewish community were up in arms against the Bill, and so was the Indian community."

Mr. Duncan: But the Bill has not been presented to Parliament yet.

Mr. Naidoo: It has been gazetted.

Mr. Duncan: Yes, naturally.

Mr. Naidoo: This Bill is aimed at the further encroachment of Asiatics. In the Transvaal you have all the measures already that are necessary in order to prevent Asiatic encroachment.

Dr. Abdurahman at this stage suggested, in view of what Mr. Duncan had said, that the deputation might wait on the Minister again on Monday, which would give the latter an opportunity of reading the documents submitted.

The deputation concurred.

Mr. Duncan said he thought it would be better. He would like a little more time to go through these documents, and he thought it would be more satisfactory.

No Oppression Intended.

"Let me say," proceeded Mr. Duncan, "so that you may keep this in mind, too, that this Bill is not intended as a measure of oppression against the Indian or any other class of people. It is intended to give effect to a desire that has been pressed upon the Government for a long time, that there should be some power to provide for separate areas in towns where European and other classes of people can live separately, so that they should not be all mixed up together.

"Now, in regard to the Transvaal, the position was this in the old days, that by the law of 1885 of the Republic the Government was empowered to lay out areas, called bazaars or sometimes locations, where the Indian people could live. Under that law the Government had to go to a municipality and make an arrangement with it for some place to be set apart. Now the municipal authorities, as I need not tell you, are not always well disposed towards the Indians, and are sometimes jealous of the Indians"—("So is the Government," interposed a member of the deputation)—"and therefore it was not possible to get a Town Council in many cases to set apart ground to give the Indian facilities to live according to their own ideas and carry on trade.

In Much Better Position.

"The position under this Bill is that it cannot be put into force unless a municipality comes to the Government and says, 'we want to set apart a separate area,' and the Government has to appoint a Commission to see that this proposal of the municipality is a fair one, that the land which it proposes to set apart is where Indians or anybody else of the community can reasonably live according to their best ideas, and can carry on trade; and unless the Government is satisfied on that point, it refuses.

"So that, unless a municipality can put good conditions before the Government, it will not get its approval, so that you are in a much better position than under the old law of the Transvaal. And not only that, but when that has been done and when the area is marked out, the people who are to live in that area, whether Indians or anybody else, have the fullest rights to hold and to acquire property there.

"So I want you to look upon this Bill calmly, and not think that it is intended for the destruction of the Indian community. I want you to see what are really, in your consideration, the bad points in the Bill, and what

points there are which you think make for the oppression of the Indian people, or whatever section of people are concerned; and attack it from that point of view.

“ But do not make up your minds that it is intended for the oppression or the destruction of the Indian people. On these points I will meet your wishes as far as I can, but as far as the principle of the Bill is concerned it is just as I have told you.”

It is expected that the deputation will meet Mr. Duncan on Monday morning at 10 o'clock.

DR. ABDURAHMAN INTRODUCES DEPUTATION.

Strong Views.

Dr. Abdurahman in introducing the deputation, said it was one of the most influential that had ever had the opportunity of waiting upon a Minister. The reason was not far to seek: it was because the Indians felt that the Class Areas Bill was a measure that would affect them more than any other legislation since Union. He desired to thank the Minister for what he had promised to do for the coloured people of South Africa so far as they would be affected by the Bill. So far as his organisation (the A. P. O.) was concerned and the feelings of the other coloured people in the Union, their sympathies were whole-heartedly with the Indians. The Bill had agitated the minds of the coloured people as a whole.

Other grievances would be laid before the Minister within the next month or two by other coloured people, and he hoped, as they hoped, that General Smuts would receive them. That was indicative of what the Bill had done already, before it had gone into the House or become law. He was speaking not as an Indian, but as a coloured man and, as a late Chief Justice had advised others to make common cause with the Uitlanders, he was making common cause with the coloured people.

A Non-British Act.

They felt that one section of non-Europeans were going to be singled out, a non-British act was going to be done to them; something upon which, if contemplated by the Free State or Transvaal before 1902, they would have the strongest representations made by His Majesty's representatives and the Imperial Parliament.

When the law of 1885 was attempted to be put into operation just before the outbreak of war, he remembered the action taken by the Imperial Parliament with regard to that law. Eventually it was decided to hold it back and not put it into force. The Imperial Government had always taken a deep interest in its coloured subjects prior to the Transvaal or Free State forming part of the Union. Now to a large extent, they had entirely to rely on the generosity of men like Mr. Duncan. He knew that the Minister would grant them a great deal of consideration, because the matter was of such grave importance.

The Bill had come as a shock and surprise to him, because he was one who had dined with the rich and slept with the native. Not many years ago, in the interest of the present Government, he had made a tour of the country. During the day time he had dined with the white men, and at night slept in a Kafir hut. Never did he think that the present Government, which he had helped to put into power, would attempt such an act.

They were now introducing legislation of the very worst kind towards one section of the non-Europeans. During the last four or five years not only Indians, but natives and the coloured people generally, had watched the trend of legislation in this country, and hardly ever had legislation been introduced which would give more liberty and more freedom towards the non-Europeans. This was one of the things which in connection with what they saw in the Press made them think that there was a very bad time in store for

non-Europeans. That would be no good for South Africa, Europeans or coloured.

He was a South African to the back-bone, and he could say, it was no good for them (Europeans) or for their children.

With regard to the Cape Province, it was almost impossible to make the Bill apply.

The Bill and Elections.

He for one would not sit down under it, because if he did he would be a traitor to the non-Europeans, who he had induced to support the Government—a Government which now sought to put them under such disadvantages.

If this Bill was carried into effect there was not a single man in the community, in Cape Town, Port Elizabeth, or the Western Province, who would be returned to-morrow in the event of an election fought on the Class Areas Bill.

Mr. Duncan: You will probably get someone worse.

Dr. Abdurahman: Not very much worse than at the present time.

Continuing, Dr. Abdurahman said the Bill could not be applied in the Cape Province because it was impossible to the vast majority of Indians who were married to Malays and Christian women. The majority could not speak the Indian language, and they were regarded by them as forming a portion of the coloured community. To impose the Bill would not be fair to him personally, because he had gone out of his way to induce other Indians to espouse the cause of the present Government. In the Free State there was no need for it as there were no Indians there. With regard to the Transvaal any one who knew it—and no one knew it better than Mr. Duncan—knew what the Indians suffered. He wondered sometimes that the Indians up there were so law abiding as they were.

Indians in the Transvaal.

The Transvaal had practically got every law which man could possibly wish to restrict the movements of the people and exterminate them financially. They had the laws if they wished to put them into operation to-morrow. With regard to Natal, the whole matter was pure sentiment and nothing else.

“It is one of the most dangerous things to introduced legislation upon, and as sure as the sun shines and there is a living God that legislation will recoil upon your heads,” said Dr. Abdurahman, with great intensity and feeling.

Continuing, the speaker said they had more unemployment here in the Cape Province amongst the Europeans and where they had so few Indians. “I go so far as to say that the Indian is not the only one competing with the Englishman or Dutchman. There are others allowed to come to this country who have not rendered the same services to the Empire as the Indian Empire has. The Indians at one time rendered incalculable service to South Africa when they came and worked for Natal. If a mistake has been made in introducing them, who must pay for it; the people who brought them here should suffer a little more than they are suffering at the present time. I hold that the payment should not be exacted from the Indian.”

Lease Renewals.

There was one clause in the Bill to which he took very deep exception. That was, if a man had not got the option to renew his lease it *ipso facto* ceased to exist. He asked if that was British justice. If the Bill came into operation the Indian trader could not renew his lease for two or three years.

Mr. Duncan: He has no right now if the owner does not wish it. In any case he can go to another place.

Concluding his remarks, Dr. Abdurahman asked the Minister to give the deputation a patient hearing: it was an exceptional Bill and an exceptional occasion, and he trusted that he would be indulgent with them.

“Cape Times”: February 19th, 1924.

MISAPPREHENSIONS ON CLASS AREAS BILL.

MR. DUNCAN EXPLAINS MATTERS TO DEPUTATION.

NO INTENTION OF UNJUST TREATMENT.

Indian Speakers who were Dissatisfied.

The large deputation which waited on Mr. Duncan (Minister of the Interior) on Friday with regard to the Class Areas Bill, had another long interview with the Minister in the Provincial Council Chamber yesterday afternoon. At one time it appeared as if there would have to be another adjournment, but after 2½ hours the proceedings concluded. Mr. Duncan having touched on some general points, replied to various matters dealt with in a long typed statement which had been handed to him on Friday; after which a few speakers replied to the Minister. There were 64 in attendance, excluding the Minister, his officials and Mr. Hosken.

Mr. Duncan: I have read through the statement which you have submitted to me, and I would just like to say something with regard to it first. The statement seems to me to show a certain amount of misunderstanding as to the object of the Bill and the actual provisions of the Bill. The Bill does not refer to Asiatics or Indians, but to a class. But I do not want to make any point about that, because I think that you are right in supposing that if the Bill is to be put into operation at all, it will be mainly with regard to the Asiatic community.

What I would like to put before you is that the European community of South Africa is a very small one compared with the great mass of the native population, who were here before we came here, and there is a very large section of the European community—I do not say whether it is right or whether it is wrong—in fact, the predominating majority of the European people—who are not willing to share their political privileges with the people of Asiatic race, or even the civilised members of some races of South Africa.

I am stating that as a fact, and I am not saying whether it is right or wrong. It is a fact; and it is impossible for any Government—this Government or any other one which may take its place to ignore that position. What the Government has to do, in my opinion—while it did not create that opinion and cannot abolish it—is to see that the people who are settled here—and many of them have been settled here for long and are law-abiding citizens—should be dealt with in fairness and with justice, particularly when they do not have direct representation in the legislature of the country which other citizens have.

In Close Association.

It is all the more necessary for the Government in this case to see that these people are treated with fairness and justice. Now, there is another thing which you and I and the Government must recognise, and that is that the European peoples and the non-European peoples in this country are living together in close association and are trading in close association and there are certain measures of social friction.

It is bad thing to have European and Asiatic people in communities living all mixed up together, and it will be less trouble to have them separated. That is the feeling very strongly held in many parts of the country, and, as you know, even with no law in force laying down separate areas, you will find in many places, as a matter of fact, that the two communities do not live together and that they do live in separate areas.

It is to give effect to that feeling and to remove that cause of friction that this Bill has been introduced. In this statement that I have before me, attention is called to the remarks made by the Asiatic Commission in regard to Vrededorp in Johannesburg, and that it is held up as an example of what will happen if the Asiatics and Indians are compelled to live in a separate area.

Just the Opposite.

It is just the opposite, and to prevent places like this from springing up, that this Bill has been introduced. Its whole object is to remove the possibility of the Asiatic, or any class of people to whom this Bill may be applied, being forced to live in particular areas unsuitable to receive them and to carry on trade without a reasonable chance of success.

Mr. Duncan repeated what he had said on Friday about the old Republican law in 1885, saying that in regard to the present Bill it would only come into force if a local authority applied to the Government, and satisfied the Government, that the area set aside was fair and reasonable. Either the Bill would not come into force at all, or, if it did, it could only be if the municipality had satisfied the Government with regard to the suitability of the area that had been set aside.

"I regret to say," proceeded Mr. Duncan, "that this Bill has been described by many speakers in different parts of the country as one which imposes some dishonour on certain classes of people, and that it is a stigma on their sense of respect and sense of honour that they should be asked to live in a separate area from the European people, or that any class or people to whom this Bill may apply will be subject to something which will impose a stigma or a mark of dishonour upon them.

"To my mind, this is an entirely wrong impression, and is not justified. It depends altogether on what particular provision is made. If an attempt is made to push a particular set of people, say the Indian people for the sake of argument, into some particular place where they cannot live decent lives and where they cannot have any hope of making a decent living, that will undoubtedly tend to reduce their self-respect and lower them as a section of the community, and that might be said to be a reflection or stigma on their self respect."

Different, but Honourable.

"I personally recognise that the Indians have a civilisation of their own, and other Asiatic races, too—a civilisation that has made its mark on the world and is entitled to every respect. It is different to European civilisation, but there is no stigma attached to it.

"This statement from the Natal Association seems to attack the Bill from a point of view with which I cannot agree. If the Government carries it out as it will—at any rate as long as I have anything to do with it—and provided adequate areas are set apart, then I cannot see how it will impose any stigma or degradation on any particular section.

"Then I will also ask you to remember that the Government has on several occasions shown that it feels that trust placed upon it to see that you are not treated unfairly. An Ordinance has passed through the Natal Provincial Council three times. This year it has been passed for the third time, removing Indian voters from the townships roll and preventing their being replaced. The Government is not giving its consent to that. It would have been far easier for the Government to let that Ordinance go through if it was shewing no regard for the Indian people."

Referring to the statement placed before him from the S. A. Indian Congress and coming to the provisions of the Bill, Mr. Duncan said that as to the statement that it was "class legislation," he admitted it.

As to the local authorities having the initiative and that "it stood self-condemned," he held the opposite view. Local authorities could not proceed one step in that respect without satisfying the Commission which the Government could appoint.

The "Compound" Bogey.

Dealing with the statement that Indians would be put into close compounds like those on the Rand mines, Mr. Duncan said that he could not conceive any Government that would put the Indian people into close compounds. It did no good criticising the Bill in exaggerated terms like that. They terrified those who took as correct what "you tell them." There was no word of truth in it that the Indians would be put into mining compounds.

The next statement he would deal with was that it would be "lawful" for the Minister to appoint a Commission, but that he would not do it. "Of course the Minister will appoint that Commission when application is made: that is the whole object of the Bill," said Mr. Duncan.

Then it was said that the Government would appoint a Commission which would always agree to the proposal of the local authorities. That was not his (Mr. Duncan's) conception of the Bill, or that of any other reasonable man.

The idea was to have an officer with Indian experience to sit on that Commission who had the necessary experience and knowledge, and to advise the Government whether the proposals of local authorities were reasonable or not.

What "May" Means.

Regarding Section 3 (which provides, *inter alia*, that at any time within six months of the receipt of the Commission's report the Governor-General may proclaim such area, as previously referred to in the Bill, a class residential area or class trading area, or both), the fear had, he said, been expressed that the "may" meant "must." If they once believed that, they could not possibly look to the Government for justice and fair treatment. It was no use arguing if they started from that point of view.

He was asking them to consider it from the point of view that the Government was there to look at it from a reasonable point of view and from that of fair play, and that the Bill was carried out with justice and reason.

Dealing with the provisions of the Bill stating that no person other than a person of the class concerned shall acquire immovable property or a lease or a renewal of a lease within a proclaimed area, and it shall be unlawful for any person of the class concerned to acquire any immovable property or a lease or a renewal of a lease outside the proclaimed area, Mr. Duncan stated that where a property was held under a lease which held an option of renewal, the Bill would not prevent this renewal.

It was said that it might become a hardship for a man if there was no renewal of a lease, and the Bill prohibited him from getting a renewal. Well, that raised a large number of somewhat difficult points, and he was prepared to consider that matter. He confessed that, as the Bill stood, it referred only to where there was a renewal of an existing lease.

No Greater Disability.

With reference to the argument that no Indian lease would last longer than ten years he did not take that view at all. As far as he could see, there was nothing that imposed a greater disability on leases of property than they were under now as far as the Transvaal was concerned. With regard to the Bill not providing for compensation, he could only say that there was no compensation for the man who has a lease on property for a certain number of years, and there was no option to renew if he had to move and go inside one of these areas. He did not see why there should be any claim for compensation if you had to go to premises somewhere else even in these areas.

With regard to the objections to section 5, it was a misunderstanding of the Bill as it stood. The power to grant exemption to people of that class was given, not to the Municipality, but the Government.

As to the allegation that separate class areas would be taken away because, others wanted them, it was the most fanciful and improbable interpretation of Clause 6 that they could have. The purpose of the clause was that if a class area was not big or adequate enough for the people who lived there the area might be enlarged or extended, subject to the proposal being satisfactory and reasonable. The people who were living there would have the fullest opportunity of being heard.

As to the deproclamation of a class area, Mr. Duncan explained that if the Government was not satisfied that such an area was suitable or adequate it could be deproclaimed, and the effect of that was that the people were not confined to that area, but could go to any area they liked. They could urge the Urban authority to make some provision for the people in such area.

The Advisory Boards.

Coming to Clause 9, dealing with the establishment of the Advisory Board, Mr. Duncan said it was to give the people of such an area some management in their own affairs, and he thought it would have been welcomed by the Indian people in particular, especially where they did not have any municipal franchise, and that it would enable them to express their views on the conditions of the area in which they lived.

But, not, it was set down in that statement that that was "another act of injustice" on the part of the Government. The regulations, it was true, were made by the local authority, but they had to be approved of by the Minister. But in the statement it was represented that the urban authority had the whole say in the making of these regulations.

"My own view" said Mr. Duncan, "is that representative institutions have often grown up out of Advisory Boards, and that it is not an attempt to prevent people from getting the Municipal franchise."

"You have to accept conditions in South Africa in regard to the relations between the European and non-European races as they are to-day. I will not say for a moment that you are not entitled by every lawful means in your power to change that sentiment of the European people in regard to the incomers of other races: but I do say to you that you must realise what these conditions are and that the Government of the country has to take into account the sentiment of the different sections of the people, and in this country, above all, the Government has to take account of the predominant sentiment of the European.

"Whether it is morally right or not we have to take into account that such exists. My belief and my opinion is that this Bill will be a change for the better, and in that spirit it has been put forward."

Livelihood Wanted.

Mr. P. S. Aiyar said that the Indians had no intention of challenging the supremacy of the European race, as might be thought by some. They wanted to have their means of livelihood assured. If they noted how the Indians had been treated since Union had been established they had strong reasons for being anxious as to what might be done in future. The Imperial Government had been told that they would be treated in a broad and chivalrous spirit; but nothing of the sort had been done. Promises which had been made had not been kept. There had been inter-Provincial restrictions, and now they had that Class Area Bill. If that sort of thing was going on, where was it going to end? They were totally opposed to the Bill.

Another speaker said that the Europeans were responsible for bringing the Indians to South Africa, and the latter were entitled to the rights and privileges which the Europeans were enjoying to-day; if that was not so, it was due to the Europeans not being true to their great traditions. The Prime Minister in 1913 had announced that Indians were entitled to certain rights.

He asked whether it was not rather late in the day to divide a huge community like South Africa in the way in which it was proposed to do.

The Bill had been introduced to avoid friction, but that friction, he held, had arisen from the side of the European. The Indians had always been peaceful and law-abiding. As to the object of the Bill being to enable Indians to live decently, that might be the Minister's opinion; but he (the speaker) had his opinions, too, and he considered it a dishonour to have to go and live in a particular place, although in itself it might be a very good place.

They could not accept segregation that was forced upon them—it was derogatory to their national honour. They could not sell their heritage for a mess of pottage. The Minister had said the Bill was not a stigma upon them, but there they had the representatives of 160,000 people in South Africa who said it was. The Minister had said they must accept things as they found them, and the Europeans had created certain things, and deprived them (Indians) of their honour. The deputation, to his mind, presupposed that there were injustices, and it was the duty of the Government to see that these were removed.

British Subjects.

Mr. A. Christopher (Joint Secretary of the Natal Indian Congress) said that the Minister had referred to the predominating sentiment amongst the Europeans, but where had many of the Europeans come from? They had not been British subjects before they came to South Africa; and yet they now took a part in that predominating sentiment and took a share in the views which were held in regard to the Indians who were British subjects. There was no desire to do the right thing by the Indians, and no means was provided in the Bill if Indians in class areas desired to come to the Government. Had the assurance of one Minister the force of law?

Mr. Duncan: The Government can promise only for itself; not for a successor.

Mr. Christopher went on to say that if the urban authority sat tight what could the Administrator or any other authority do to force it? With reference to the fear that that was the beginning of the taking away of their franchise, he said that since the agreement between Mr. Gandhi and General Smuts, rights had been frittered away.

Another speaker expressed the view that the Bill was the result of trade jealousy in Durban and elsewhere.

Recollections.

Dr. Abdurahman, M.P.C., in thanking Mr. Duncan, said that the late Mr. Sauer had held exactly the same views, in regard to the Native Land Act, as Mr. Duncan now did with regard to the present Bill. Let them ask the first native they met about the working of that Act?

The Act had worked just opposite to what well-wishers of the natives, such as Mr. Sauer and others, expected. If they expected that that Bill settled the relations between Whites and Asiatics, they were making a big mistake. As they saw in other countries, the whole basis of authority had changed, and was changing. In conclusion, the speaker explained that that was the first time he had approached the Minister with an Indian deputation.

Mr. Duncan said that he would lay before the Government what they had said. The Government had committed itself to go on with a Bill of that kind. He advised the deputation to look at the Bill as it stood, and not to object to things which were not in it.

In reply to one of the deputation, Mr. Duncan said it was understood, that the Bill would not be introduced during February.

Dr. Abdurahman, in his speech on Friday, spoke of the present Chief Justice (Sir James Rose-Innes), and alluded to a speech Sir James had made in 1900—not a "late" Chief Justice, as reported.

TELEGRAM TO THE GOVERNOR GENERAL OF THE UNION OF SOUTH AFRICA,
No. 14-C., DATED SIMLA, THE 8TH APRIL 1925.

We have the honour to address you regarding position of Indian community in South Africa. During last four years it has frequently formed subject of representations on our part both in its general aspect and with reference to particular measures such as Durban and Natal Land Alienation Ordinances, Natal Rural Dealer's Licensing Ordinance, Class Areas Bill, and more recently Natal Boroughs and Township Ordinance. Last enactment though provincial in scope has given rise to feelings of profound apprehension in this country and, so far as we are aware, among Indian community throughout Union as to latter's future. Provisions of Mines and Works Act Amending Bill, which we understand has now been referred to a select committee of Union Assembly, and private bill introduced by Mr. Collins, which was designed to restrict still further Indian trading rights in Transvaal but which we learn has now been withdrawn, have, in conjunction with avowed determination of a strong party in South Africa to curtail Indian civil and economic privileges as much as possible, deepened sentiments of uncertainty and alarm.

2. We think it will serve no useful purpose to attempt to analyse causes and consequence of present situation. We recognise that Your Excellency's Government are bound to take account of public opinion in South Africa and that at least in two provinces an important section of electorate is not friendly to Indians. We are also anxious not to aggravate a delicate situation by indulging in generalisations about aims and motives. The problems of South Africa, we believe, are probably racial only on surface. They rest on differences in history, outlook and civilisation of constituent elements of its population which penetrate deeper than colour of their skins. To solve these problems can be no easy task. All that we wish to urge is that a satisfactory and permanent solution can be possible only if leaders of races concerned will exercise to their utmost qualities of mutual understanding and forbearance. We are confident that such a solution is as anxiously desired by Your Excellency's Ministers no matter from what political party they may be drawn, as it is by Government and people of India.

3. Our interest in Indian question in South Africa requires no justification. In their minute No. 984, dated 15th December 1922, Ministers of Your Excellency's predecessor observed that they fully realised 'the interest taken by Government of India in this question and their sense of responsibility for welfare of Indian population in those provinces where the law does not accord to it privilege of franchise'. We take liberty to assume that this is also view of Your Excellency's present Ministers. For our part we are less anxious to lay stress on our responsibility than on our earnest desire to assist in finding a satisfactory and abiding solution of Indian problem. In aiming at this objective we are inspired by a larger ideal than mere protection of interests of Indians in South Africa. That ideal, is maintenance of relations of cordiality and good will between India and South Africa. We trust that proposal which we now make will be received and considered in same spirit.

4. In our opinion an essential preliminary to formulation of a comprehensive Indian policy in South Africa which will be acceptable to more reasonable sections of all parties concerned is a conference in which representatives of Your Excellency's Government and of Government of India should participate. Unless opportunity is provided for a full, frank and personal discussion between accredited spokesmen of these two Governments requisite conditions for a ready understanding of divergent points of view and for prompt adjustment thereof in a spirit of compromise will not be established. Correspondence can never be an adequate substitute for personal discussion especially when both distance and psychological difficulties tend to delay a settlement. During his visit to South Africa last September Mr. Thomas, then His Majesty's principal Secretary of State for Colonies, made an informal suggestion more or less to this effect in a speech which he delivered at Pietermaritzburg. It was also pressed upon us by a remarkably representative deputation consisting of members of Indian Legislature and

prominent European businessmen and members of the Indian commercial community who waited upon His Excellency the Viceroy last January to draw attention to seriousness and urgency of this problem. We had hoped that Your Excellency's Government would take official cognisance of Mr. Thomas's suggestion. As they have done so we now venture to take initiative and put it forward ourselves for their favourable consideration. We are not committed to any particular form or venue for this conference. We would prefer that it should be held in South Africa which is scene of action and where views of parties directly affected can most quickly be ascertained; but if for any reason Your Excellency's Government do not favour idea we shall be glad to invite your representatives to India or depute our delegates to any other convenient centre such as Geneva for purposes of discussion. Thus, during forthcoming session of Assembly of League of Nations representatives of two Governments could confidentially exchange views on this important question.

5. We do not propose at this stage to indicate in any detail scope of these discussions. In our opinion economic and educational issues are of immediate practical importance and if Union Government consider that such a course would help in the acceptance of principle of our suggestion we would be willing to consider desirability of excluding question of political equality from purview of proposed conversations. Educated opinion in India looks upon realisation of this ideal as a matter of vital national concern and our readiness not to raise this question for the present is an earnest of sincerity of our desire to arrive at a common basis of discussion. If none of these suggestions commend themselves to Your Excellency's Ministers, we shall be glad to explore any other avenue that holds out prospects of a settlement which will ensure progress and contentment of Indian community in South Africa on a permanent footing and in a manner consistent with their national self-respect. We would repeat what we have already said that our main anxiety is to seek a settlement. We are not committed to any particular method.

6. There is one aspect of question on which we would like to dwell before we conclude. In Your Excellency's telegram dated 15th December 1924, we were informed that main reason which had led your Prime Minister to advise you to assent to Natal Township and Boroughs Ordinance was constitutional impropriety of vetoing a measure which a provincial council was competent to pass, which was provincial in its implications and scope and which did not anticipate intentions of Federal Government. It would be presumptuous for us to question view of so high an authority on a point of domestic constitutional convention and we hope that our observations on subject will not be misunderstood. All that we wish to urge is that any piece of legislation that adversely affects existing Indian rights, even if its operation is to be strictly confined to boundaries of one province, has wider repercussions. It disturbs domiciled Indian community throughout Union; it agitates opinion all over India; it affects relations of two countries as a whole. We venture, therefore, submit that such measures should be adjusted not in light of strict constitutional principles but in broader light of imperial and international considerations.

TELEGRAM FROM THE GOVERNOR GENERAL, SOUTH AFRICA, TO HIS EXCELLENCY THE VICEROY, DATED CAPETOWN, THE 16TH (RECEIVED 17TH) JUNE 1925.

Your telegram dated 8th April. My Ministers have asked me to convey to you their observations on proposed conference to discuss position of Indians in South Africa in following terms. In response to communication from Government of India Ministers wish to express their sincere appreciation of very friendly spirit which pervades that document and of sympathetic understanding of their peculiar difficulty and evident desire on part of Government of India not in any way to complicate a delicate situation.

In connection with reference in paragraph 3 of communication Ministers gladly endorse sentiment that it is only natural for Government of India to take an interest in welfare of Indians and generally in Indian questions in South Africa especially in view of possible effect of position in South Africa on disposition of people of India. They cannot therefore regard any representation and suggestion which Government of India may make otherwise than in a friendly light and as actuated by a sincere desire to promote welfare and contentment of Indians generally as well as good relations between their respective countries. Ministers further gladly recognise that although ultimate responsibility and decision in regard to South African problem rests with South Africa alone a friendly exchange of views between Government of India and South Africa on particular aspect of Indian question may lead to a better understanding of each others standpoint and assist materially in its solution.

Such a conference as suggested in 4th paragraph of communication between representatives of Government of India and South Africa respectively has had most serious consideration of Ministers who feel however that difficulties surrounding this line of action are such that they find themselves unable to agree to it however much they would like to meet wishes of Government of India. Practically all parties in South Africa agree on broad principles that by strict prohibition of Indian immigration and by means of active repatriation that Indian population in South Africa shall be reduced as nearly as possible to irreducible minimum. For years this has actually been recognised and unchallenged policy of successive Governments whatever measure of success may have been which has attended their efforts. Under the circumstances it is evident to Ministers and they would desire to impress this on Government of India that feeling in South Africa in connection with political, economic and racial status of Indians bear a direct relation to and is almost entirely dependent upon effectiveness or otherwise of repatriation. In view of this it must further be evident that public opinion in South Africa will regard with gravest suspicion such a conference as suggested which does not explicitly open prospect of such a reduction of Indian population as will be considered satisfactory and will almost certainly look upon it as an interference from outside. If a satisfactory and effective process of repatriation could be initiated Ministers feel assured that alarm of European population will be so considerably allayed that public opinion will come to look much more favourably upon existing and future rights of Indians that has hitherto been the case. Any helpful suggestion which Government of India might, at any time, put forward in this respect will be cordially welcomed by Ministers.

TELEGRAM TO THE GOVERNOR GENERAL, SOUTH AFRICA, No. 403-Os., DATED SIMLA, THE 14TH JULY 1925.

We thank you for your telegram dated 16th June, in which you communicate views of your Ministers on proposal for conference adumbrated in our telegram of 8th April. We deeply appreciate courteous and friendly tone of communication though we cannot disguise our profound disappointment at conclusion at which your Ministers have arrived. In view however of their apparent and earnest desire to grapple with Indian problem in a broad and sympathetic spirit, and their invitation to us to offer suggestions on the question of repatriation, we venture to renew the suggestion in the hope that it may be reconsidered, in the light of the observations set out below.

2. So far as we can gather the main objection to our proposal is that public opinion in South Africa will view with gravest suspicion and as an interference from outside any conference which does not explicitly open prospect of a reduction of Indian population by strict prohibition of immigration and active repatriation. So far as prohibition of immigration is concerned Government of India acquiesced in principle in 1918 when right of each community to regulate composition of its population by means of suitable immigration laws was explicitly recognised and it was never our

purpose to re-open that question. In regard to repatriation, we are quite willing to explore this question with your Government and indeed this is a subject which the conference we suggest could usefully discuss. But as responsible opinion in South Africa recognises, repatriation by itself cannot provide effective solution of problem of European and Asiatic competition in economic sphere which is in the main responsible for present tension between two communities since nearly 63 per cent of resident Indian population was born in South Africa and the majority of that element regard that country as their home, and are hardly likely to return to India unless compelled to do so. If as we are confident your Ministers do not contemplate to make repatriation obligatory methods of improving present situation other than encouragement of resident Indians to return voluntarily to India will have to be explored. Thus the possibility of diverting Indians into channels of activity where they may not come into intimate or extensive competition with the European or of so regulating the conditions of employment as to render competition in spheres where it is unavoidable strictly equal and fair deserves careful investigation. It was with a view to assist in this task and work out a scheme which could be commended to both communities as offering basis for settlement safe and honourable to both communities that we asked for a conference. We venture to think that if the scope of the proposed discussions were fully explained and it were made quite clear that they did not commit the Union Government to the acceptance of any agreement that may result from them without consultation with the South African Parliament and public the conference could probably meet without rousing misgiving or suspicion.

3. We are repeating the suggestion with a single-hearted desire to secure a speedy, complete and amicable solution of a problem which for years has been a progressive source of danger to the continuance of friendly relations between the two countries, and we earnestly hope that Your Excellency's Government will consider it in the same broad and friendly spirit.

TELEGRAM TO THE GOVERNOR-GENERAL, SOUTH AFRICA, No. 433-Os., DATED 27TH JULY 1925.

We have seen report in Press that on 23rd July Minister of Interior introduced in South African Assembly bill embodying Asiatic policy of Your Excellency's Government. We shall be grateful if summary of main provisions could be telegraphed to us as soon as possible and copies of full text of measure together with text of speeches made at introduction stage posted by next mail.

2. Report states that bill passed first reading and no further stages will be taken during current session of parliament. Could you kindly let us know whether this is correct?

TELEGRAM FROM THE GOVERNOR-GENERAL, SOUTH AFRICA, DATED THE 29TH JULY 1925.

Your telegram dated 27th July. Area Reservation and Immigration and Registration (Further Provision) Bill embodying policy of Government towards Asiatic problem read a first time in the House of Assembly on 23rd July. House prorogued on 25th July and Bill remains at this stage until next session. Minister of Interior in introductory remark said that interval would provide opportunity for constructive criticism which would be welcomed. He added that Bill will not or must not be taken as closing door to any negotiation or communication which may pass at present or in future between Union Government and Government of India in regard to Indian question. Copies of Bill and of Minister's statement as reported by press have been sent by post and summary of main provisions of Bill will be telegraphed as soon as possible.

TELEGRAM FROM THE GOVERNOR-GENERAL OF SOUTH AFRICA, PRETORIA.
DATED THE 13TH AUGUST 1925.

With further reference to your telegram dated 27th July Ministers point out that Area Reservation and Immigration and Registration (Further Provision) Bill is of an intricate nature and consequently it would be difficult to prepare summary without going into considerable detail and resulting document would be of great length. Copy of Bill despatched to you on 28th July and as no further action in regard to passage through Parliament of Bill can take place until the next session Ministers suggest that request for summary be waived as they think that it will be more satisfactory for your Government to consider Bill in unabridged form in which it should be in your hands very shortly.

"Cape Times", Friday, July 24, 1925.

ASIATIC BILL.

Dr. Malan (Minister of the Interior) moved for leave to introduce a Bill to make provision for the reservation of residential and trading areas in the urban areas for certain persons having racial characteristics in common; to amend the Immigrants Regulation Act, 1913 (No. 22 of 1913), the Indian Relief Act, 1914 (No. 22 of 1914), and the Asiatic Registration Amendment Act (Transvaal), 1908 (No. 36 of 1908); and to amend or repeal certain laws.

Dr. Malan: The introduction of this Bill is, as Honourable Members will know, an undertaking on my part about a year ago during the last session of Parliament. During that session a motion was introduced dealing with the Asiatic question by the Honourable Member for Illovo, and replying on that occasion I undertook I would go into the whole of the Asiatic question during the recess as thoroughly as I could, and that I would introduce during this session of Parliament legislation dealing with that problem. I am very sorry I could not have the Bill ready before the very end of the session. I say I am sorry for that because I realise, especially after having gone into the question personally, that the Asiatic problem is indeed a very pretty pressing one in the country, and that delay will certainly, in future, not make the solution of the question easier for us.

BILL BEFORE THE COUNTRY.

On the other hand, I am not sorry that legislation is introduced at this late stage, because it is, of course, impossible to carry the Bill further than just the first reading now. In the meantime in the recess, before the Bill can be brought up again next session, the country as a whole will have the fullest opportunity of knowing what the policy of the Government is in regard to the Asiatic problem, and I personally, and the Government with me, will certainly follow the criticism, especially constructive criticism, which is brought forward in connection with this Bill, and I must say that personally I shall be very glad to adopt any helpful suggestions which may be brought forward during the recess.

I consider the Asiatic question, just as the native question is, as a problem not for one political party, but a problem for the whole country, and a question which should be solved, as far as possible, above the arena of party strife. We should keep it, as far as possible, above party divisions.

I am not going at this stage to make any second reading speech on this Bill, especially as the Bill is not yet in the hands of Honourable Members, but perhaps Honourable Members will allow me to make a few remarks of a general character.

A MIDDLE COURSE.

In the first place I want to say that the Bill, as Honourable Members will have an opportunity of seeing later on, will certainly not satisfy extreme sections in the country. In this Bill I tried to steer the safe and

the sane middle course. The radical element in the country will certainly think that this Bill is too weak and moderate, and on the other hand that element in the country which is faint-hearted, or weak, will certainly think that this Bill is going quite too far, that it is too radical, and that in certain senses it will be oppressive.

I must say that the Bill frankly starts from the general supposition that the Indian, as a race in this country, is an alien element in the population, and that no solution of this question will be acceptable to the country unless it results in a very considerable reduction of the Indian population in this country.

But, on the other hand, the method of dealing with this question will not be the employment of any forcible means. The method which this Bill will propose will be the application of pressure to supplement on the other hand, the inducement which is held out to the Indians to leave the country. The Bill, to a certain extent, follows well-known lines. To a certain extent we go on the path which has been trodden before by my Honourable friends opposite, but the Bill does not rest there—it goes a good deal further.

LAND OWNERSHIP.

The Bill tries, to a much larger extent than was done by the Class Areas Bill of the previous Government, to carry out the recommendations of the Asiatic Inquiry Commission.

We are dealing in this Bill not only with residential or commercial segregation, but also with land ownership, especially in Natal.

In addition to that, the Bill proposes, in certain respects, to amend the Immigrants Regulation Act. We find that there is a considerable influx of Indians still continually going on, especially the influx of Indian women, and the amendments which we propose in this Bill will go very far to put an effective stop to that.

There is one omission which I think certainly will be noted by Honourable gentlemen when they read the Bill, and that is that this Bill, except in a general way, does not deal with the issue of trading licences. By another Bill which has passed, or which is being dealt with by Parliament just now, we will establish uniformity in regard to licences issued in the country, but that uniformity only consists in the fixing of the amount to be paid for these licences, and the issue of the licences to particular persons remains as before, in the hands of the Provincial Administrations. So also the issue of trading licences to Asiatics will remain in the hands of the Provincial Administrations, just as before.

INDIAN SUSCEPTIBILITIES.

I would just further make this general remark, that in this Bill we are trying to respect, as far as possible, the susceptibilities of the Indian population. We follow the example of legislation which has been passed by this House on previous occasions, and throughout the Bill we do not mention the name of the Asiatic as a class at all, except where it must be done in cases where we refer to existing laws which deal specifically with Asiatics as a class.

I may just conclude by making two points quite clear. I wish to be very clearly understood on these two points. The first is that—

the introduction of this Bill will not or must not be taken as closing the door to any negotiations or communications which may pass at present, or in the future, between the Union Government and the Government of India in regard to the Indian question.

COMMUNICATIONS WITH INDIA.

As I have stated on a former occasion, this Government have been approached by the Government of India with a view to arranging between the two Governments a round-table conference on the treatment of Indians in South Africa. These negotiations are not yet closed, though they have

taken a very definite course. The introduction at this stage of this proposed legislation must not be taken as closing the door to further communications between the two Governments about this particular point. On the contrary, I think that the statement, as embodied in this Bill, of the Asiatic policy of the present Government, will very materially help further communications which there may be between the two Governments.

General Smuts : Can you tell us how far the negotiations have gone?

Dr. Malan : It is very difficult at this stage to make any statement on that point. I do not think it is to the public interest to do so just now.

IN OPERATION NEXT MONTH.

The other point upon which I wish to lay emphasis is this—and I give it as an intimation to everyone interested in the Bill—that according to the Bill as it stands now it will come into operation on August 1 of this year—within a fortnight's time. Whatever the time may be when this Bill may be passed by the Union Parliament, this order to come into operation on August 1 will stand. I think it is necessary, at this stage, to make this announcement, because in the Bill certain vested interests are protected, and if the Bill does not come into operation or is not made retrospective afterwards to come into operation on August 1, 1925, I am afraid there will be a general scramble amongst the Indian population for the creation of vested interests, and in that way the problem which we wish to solve will be made infinitely more complicated, and, therefore,

I wish it to be understood that, whenever this Bill is passed, it will come into operation as from August 1 of this year.

This, I think, is all I wish to say at this stage, and I move the first reading of the Bill.

The motion for leave to introduce the Bill was put and agreed to.

Mr. Speaker : Will the Minister now move the first reading?

Dr. Malan : I move.

The motion was agreed to and the Bill read a first time.

Mr. Speaker : What date for second reading?

Dr. Malan : Next Monday. (Laughter.)

TELEGRAM FROM THE GOVERNOR GENERAL, SOUTH AFRICA, PRETORIA, DATED 24TH SEPTEMBER 1925.

Your telegram, dated 14th July. Indian question in South Africa. My Ministers very much regret their reply has been delayed so long. They wish however to assure the Government of India that this delay was due entirely to circumstances over which they had no control.

2. In the light of the views expressed in your telegram, my Ministers have very earnestly reconsidered their previous attitude with regard to holding of a conference on Indian question. They regret, however, that they cannot find sufficient reasons for departing from their views as conveyed in my telegram, dated the 15th June. Being in close contact with the public feeling in South Africa and knowing as they do how holding of a conference on the Indian question without limiting the scope of such conference to some definite and concrete questions is likely to be looked upon and resented by the people here as an interference from outside, my Ministers are satisfied by deciding as they have, they merely give expression to great masses of responsible public opinion in the country.

3. My Ministers further wish to express their satisfaction and gratitude for readiness of Government of India to explore with them the possibility of more effective repatriation scheme which will result in a considerable reduction of Indian population in South Africa and which, if successful, is sure to facilitate enormously a generally acceptable and final solution of the general question of political, social and economic status of

that residue which cannot be repatriated. In this connection my Ministers wish to point out that the extent to which repatriation is possible is not necessarily limited to number of Indians born overseas, as is evidently supposed by Government of India, as official figures show more than one-third of Indians hitherto voluntarily repatriated are South African born.

4. The question whether conversations between Government of India and Union Government with regard to repatriation shall be carried on through ordinary *channel* or at a conference as proposed must, in the views of my Ministers, depend upon the nature and practicability of any concrete proposals which during the preliminary discussions might tentatively and provisionally be brought forward. In order to give the Government of India some indications of the lines on which the Union Government have been thinking, my Ministers state that for a considerable time they have contemplated the possibility of supplementing the inducements now offered to voluntary repatriates by land settlement schemes in India or some adjacent territory together with such other provision for those who do not intend to settle on the land as may prove to be practicable. Such a scheme or schemes can naturally only be undertaken with the co-operation of the Government of India, which co-operation together with further suggestions will be heartily welcomed by my Ministers.

5. With regard to the points raised by the Government of India as to "the possibility of diverting Indians into channels of activity where they may not come into intimate or extensive competition with the Europeans or of so regulating the conditions of employment as to render competition in spheres, where it is unavoidable, strictly equal and fair", my Ministers will gladly welcome any concrete suggestion which the Government of India might desire to make. They further wish to state that if further discussions about repatriation, as indicated above, might point the way to the holding of a conference definitely restricted in scope, they will raise no objection to the inclusion of this particular aspect of the question within the range of the conference.

TELEGRAM TO THE GOVERNOR GENERAL, CAPE TOWN, No. 606-Os., DATED
SIMLA, THE 9TH OCTOBER 1925.

Your telegram, dated September 24th. Indian question in South Africa. We greatly regret that we have been unable to persuade Your Excellency's Ministers to agree to a conference, as we had hoped that the limitations on its scope suggested in our telegram of July 14th, would have assisted them in acceding to our wishes.

Paragraph two.—The Government of India are as ever ready to help the Union Government in finding a just and satisfactory solution to this difficult question, but they feel it only right to point out that a misunderstanding has arisen regarding the intention underlying the reference to repatriation in my telegram of July 14. It was not our intention to suggest that we were willing to co-operate with Your Excellency's Ministers in exploring the possibility of more effective repatriation with the object of bringing about a considerable reduction in the Indian population in South Africa. All that we meant was that while repatriation would never by itself afford a solution of the problem, the existing scheme of repatriation on a purely voluntary basis might be re-examined with a view to ascertaining what difficulties had arisen in its working and how these difficulties could best be smoothed away. Conference of which the main object was to expedite Indian repatriation was not contemplated by us.

Paragraph three.—Your Excellency's Ministers refer to the ultimate possibility of a conference regarding repatriation in certain circumstance; but the Government of India feel that they are not in a position to enter into a discussion of the repatriation question without fuller knowledge of local conditions than they at present possess. We note with satisfaction that Your Excellency's Ministers would welcome any concrete suggestions

which we have to offer either on this question or on the general question of mitigating direct competition between Europeans and Indians. We should be glad to avail ourselves of this offer, but feel that as a preliminary to entering into such a discussion, it is essential that we should be equipped with full and up to date knowledge of local conditions. We should, therefore, like, if your Government see no objection, to send a deputation to South Africa with instructions to collect information regarding the economic position of Indians and to investigate their general condition. We are anxious that this preliminary investigation should be completed as soon as possible in order that no avoidable delay may occur in arriving at a satisfactory conclusion. We trust that your Ministers will be able to accept this suggestion and hope that by this means we may be able to be of real assistance to them. As the object of our deputation would be to suggest an alternative solution of the Indian question to that embodied in the Areas Reservation and Immigration and Registration (Further Provision) Bill, we trust that your Government will have no objection to postponing further progress with that Bill until our considered suggestions are before them.

TELEGRAM TO HIS EXCELLENCY THE GOVERNOR GENERAL OF SOUTH AFRICA,
CAPE TOWN, No. 609-Os., DATED SIMLA, THE 12TH OCTOBER 1925.

Reference Areas Reservation and Immigration and Registration (Further Provision) Bill, copies of which were received with Your Excellency's despatch, No. 15/1262 of 28th July. We have carefully examined above Bill and, as foreshadowed in my telegram of 7th September, beg leave to make following observations on it.

1. According to statement made by Minister when introducing it, Bill assumes that Indian is an alien element in population of Union and is designed to reduce that element considerably. We question whether the Indian population, of which more than 60 per cent. is South African by birth, can justly be regarded as alien element. Bulk of them have been settled in Union for long periods, have in their own respective spheres contributed to development of country, and proved their value to the other elements in the population. They have acquired vested interests and established manifold associations severance of which will be a source of distress to many and great economic dislocation and loss. As British subjects resident in South Africa they look, and, we submit, are entitled to look, upon Union Government as the trustee of their interests equally with other elements in the population.

2. *Chapter I—(a)* As regards residential and commercial segregation Bill in the main reproduces provisions of the Class Areas Bill of the late Government. Our objections to the principle of racial segregation were set forth in paragraphs 7 to 9 of our despatch of August 23rd, 1923, and to the provisions of the Class Areas Bill in our telegram of March 14th, 1924, No. 257. In our opinion those objections have lost none of their force. Materially application of these provisions will entail loss on Indian community by reducing value of immovable property now owned by Indians outside areas to be set apart for them and restrict their opportunity for trade. Socially Indian community will regard measure as inflicting humiliation, sense of which, we fear, will be aggravated by clause 12 of new bill which excludes classes known as Cape Coloured and Cape Malaya from its scope.

(b) Clause 10 is evidently based on recommendation made by majority of Asiatic Inquiry Commission but is wider and more drastic in that it is evidently intended to apply not only to agricultural land and purports to restrict the right of Asiatics to acquire immovable property within reserved belt from non-Asiatics, except within urban class areas set apart for them. To prohibit acquisition of agricultural land except from existing Indian holders would increase congestion in areas round Durban and at such places as Stanger where it is already so great that the Indian cultivator can hardly

obtain a living from the small patch which he cultivates. As Indians in coast belt are largely descendants of agricultural labourers introduced some generations ago such prohibition will be a source of great hardship to them. In Minute No. 984, of your predecessor's Minister, dated 15th December 1922, we were informed that the recommendation of the Commission did not commend itself to them. We earnestly hope that in light of the consideration now put forward as well as those advanced in paragraph 6 of our despatch, No. 307-R. A. of 19th/27th December 1921, your present advisers will consent even now to revise decision in matter.

3. *Chapter II*—(i) Clause 16 (c) of Bill will have effect of restricting further entry of Asiatics lawfully resident in other parts of Union into Natal and Cape of good Hope. The reasons for proposing this provision are unknown to us, but we venture to point out that the restriction of freedom of Inter-provincial movement must seriously affect vested interests. Again imposition of time limit in respect of entry into Union of wives and children of lawfully resident Indians prescribed in (ii) of proviso to clause 17 is scarcely in consonance with terms of paragraph 3 of reciprocity resolution of 1918, which did not contemplate any such limitation and which representatives of South Africa accepted. In view of disparity between two sexes of resident population, it will inflict great hardship on unmarried Indians.

(ii) Sub-section (e) which clause 17 of Bill substitutes for present sub-section (e) of section 5 of Immigrants Regulation Act (No. 22 of 1913), empowers Ministers to withdraw from Asiatics, born of parents lawfully resident in any province of the Union, domicile that they have already acquired or may hereafter acquire in another province. Here again we fear that existing rights will be seriously prejudiced.

4. *Chapter III—Registration*.—We have no comments of principle to make in regard to provisions in this chapter.

5. In our previous telegrams we have drawn attention to widespread apprehension which recent developments in regard to position of Asiatics in Union have created in India. Terms of new bill, text of which, has been published in newspapers, are regarded here as deliberately harsh and oppressive towards Indians. We have always pleaded with utmost earnestness for comprehensive consideration of Asiatic problem in broad and dispassionate spirit with a view to finding some solution acceptable to all communities in South Africa. In our opinion bill will destroy hope of ever arriving at such solution and will have most harmful reaction on public opinion here. A conference on lines suggested in our telegrams of 8th April and 14th July would in our opinion have provided best opportunity for exploring situation but we have learnt with regret from your telegram of 24th September that idea does not commend itself to your Ministers. We trust, however, that they will accede to request made in our telegram dated 9th October to send a deputation to South Africa to collect information regarding economic and general conditions of Indian community so as to enable us to suggest solution of this difficult problem less unacceptable than that embodied in the bill, and will also agree to postpone further progress of measure until our alternative proposals are before them.

TELEGRAM FROM GOVERNOR GENERAL, SOUTH AFRICA, TO VICEROY, DELHI,
DATED PRETORIA, THE 10TH NOVEMBER 1925.

10th November. In reply to your telegram, 9th October 1925, 606/0, my Ministers state that they very much regret that Government of India find it impossible to co-operate with them in devising some more effective scheme of voluntary repatriation. They do so more especially because as they have previously pointed out there exists no better and surer means of favourably influencing the attitude of European population and thus of eventual furthering general interest of Indians in South Africa than the reduction of present Indian population to irreducible minimum. They feel

that it is not necessary to add that any assistance which the Government of India might still be able and willing to render to ensure the more effective working of existing repatriation arrangements will be heartily welcome.

(ii) Ministers have very carefully and sympathetically considered request to postpone their proposed legislation until the Government of India shall have taken certain steps as outlined in your last communication. If such postponement is to mean that Asiatic question will not be effectively and if possible finally dealt with during the forthcoming session of parliament as seems likely to be the case, they very much regret that they will be unable to meet the wishes of the Government of India. In this connection they desire to point out that their proposed legislation is not only generally considered to be very urgent, but that it is also admittedly long overdue. Apart from the fact that present Government have publicly undertaken to introduce their Bill and have actually done so during the last session but were unable to pass it, similar legislation, as must be well known, was already attempted in the form of Class Areas Bill by my Ministers' predecessors and would probably have been enacted by this time if dissolution of Parliament and a change of Government had not intervened. Furthermore my Ministers wish to point out that on broad lines the Area Reservation and Immigration and Registration (Further Provision) Bill follow the recommendations of the Asiatic Enquiry Commission which reported as far back as March 1921, and that of these recommendations the Government of India cannot have been unaware, nor were their views in this connection unrepresented as throughout that Commission Enquiry they were officially represented by Sir Benjamin Robertson, late Chief Commissioner of the Central Provinces, India, accompanied by Mr. G. L. Corbett of Indian Civil Service.

(iii) With regard to the proposal to send a deputation to South Africa for the purpose of investigation my Ministers state that if Government of India consider this to be best and most desired method of obtaining such first hand information as they require no objection will be raised by them against proposed course of action. Ministers naturally realise that under certain circumstances and without exercise of all due discretion it is possible that an enquiry of this nature may exercise a disbursing effect on the minds of Indian population in South Africa and may in the beginning increase the Union Government's difficulties and lead to profound irritation on the part of the European population but in spite of this they have sufficient confidence in good intention and discretion of the Government of India to concur in the action they desire.

(iv) With reference to the contents of your later telegram, dated 12th October 1925, No. 609, my Ministers wish to assure the Government of India that their observations on various provisions of Area Reservation and Immigration and Registration (Further Provision) Bill will have their fullest and most earnest consideration.

TELEGRAM FROM VICEROY (DEPARTMENT OF EDUCATION, HEALTH AND LANDS),
TO THE GOVERNOR-GENERAL, SOUTH AFRICA, PRETORIA, No. 667-O. S.,
DATED THE 18TH NOVEMBER 1925.

Your telegram dated 10th November 1925. We are most grateful to Your Excellency's Government for agreeing to our sending deputation to South Africa to make certain inquiries. Deputation will consist of one senior British Official of the Indian Civil Service and two prominent Indian non-officials who either have been or are members of the Indian Legislature, as members, one officer of the Indian Civil Service as Secretary and possibly one clerk. We shall communicate to you the names of the gentlemen composing the deputation as soon as they have been selected. Its defined purpose will be to inquire into and report to us on economic position and general condition of Indians in South Africa and Your Ministers may rest assured that we fully appreciate the importance of selecting representatives who will exercise due discretion in the conduct of such an enquiry.

2. We are trying to arrange that deputation should sail from Bombay per S.S. "Cargola" on 25th November. It is possible that special facilities in regard to its travelling and accommodation in South Africa may be required. We shall address you again on this point as soon as personnel of deputation is settled, and trust that Your Excellency's Government will be ready to assist us.

3. It was not our intention to suggest that no attempt should be made during forthcoming session of the Union Parliament to deal with Indian problem. It would be sufficient if next stage in the progress of the Areas Reservation and Immigration and Registration (Further Provision) Bill could be postponed until we have had time to consider report of our deputation and make representations in light of that report. If, as we anticipate, deputation complete their work rapidly, we should be in a position to formulate our conclusions early in the New Year. If after consideration of our views Your Ministers decide to proceed with Bill, they would still, we believe, have sufficient time before end of session. We shall therefore be grateful if Your Ministers would agree to defer action relating to Bill for short time to enable us after receipt of views and suggestions of deputation to submit representations for your consideration.

4. We thank you for assurance that remarks on the provisions of the Areas Reservation and Immigration and Registration (Further Provision) Bill communicated in our telegram No. 609 of the 12th October, will receive fullest and most earnest consideration of Ministers. *Ends.*

PART II.

PRIVATE DRAFT ORDINANCE.

(PROPOSED TO BE INTRODUCED BY MR. G. H. HULETT, M.P.C.).

"No person shall be qualified to have his name entered on the Town Roll referred to in section 7 of Law 11 of 1881, or to be a voter within the meaning of the said law who (not being of European origin) is a native or descendant in the male line of natives of countries which have not, prior to the coming into force of the South Africa Act, 1909, possessed elective representative institutions founded on the Parliamentary franchise."

Natal Law No. 11 of 1881.

7. Within ten days after the date when a Township shall have been proclaimed under this Law, the Magistrate to frame Town Roll of voters. Magistrate, and in the first week of the month of May, in each succeeding year the Local Board, shall prepare a Town Roll, and shall enter therein the names of all male persons possessing within the Township a qualification entitling them to vote for a Member of the Legislative Council.

8. The Town Roll shall be exhibited for seven days upon a Notice Board, which the Magistrate shall cause to be erected, and which the Local Board when appointed shall maintain.

9. Within a week after the expiry of the said term of seven days the Magistrate shall hear and determine all appeals in respect of wrong entries in, or omissions from, the Town Roll, and thereupon the Town Roll so settled shall be in force until the new Roll shall have been finally determined, and a certified copy of the Roll shall be lodged with the Chairman of the Local Board.

10. The persons whose names appear on the Town Roll shall be voters within the meaning of this Law.

11. Within fourteen days from the date when the Town Roll shall have been finally determined, a meeting of the persons whose names are on the Town Roll shall be held for the purposes of electing a Local Board, and such meeting shall be convened, as regards the first meeting by the Magistrate, and as regards subsequent meetings by the Local Board, upon seven clear days' notice given in a local newspaper, and upon the Notice Board of the Township.

12. At each meeting mentioned in the last preceding clause the voters who shall attend such meeting shall, under a chairman elected by themselves, elect a Local Board of five Members for the twelve months, commencing on the first day of July next, after the date of such meeting: Provided that the first Local Board in each case may hold office till the 30th day of June, in the next ensuing year.

Natal Act No. 8 of 1896.

ACT, to amend the law relating to the Franchise.

Whereas it is expedient to amend the Law relating to the Franchise:

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

Repeal of Act 25, 1894.

1. Act No. 25, 1894, shall be and the same is hereby repealed.

2. Save those who come under the operation of section 3 of this Act, no persons shall be qualified to have their names inserted in any List of Electors, or in any Voters' Roll, or to vote as Electors within the meaning

Disqualification as Electors of persons belonging to countries not now possessing elective institutions founded on Parliamentary Franchise.

of section 22 of the Constitution Act of 1893, or of any Law relating to the election of members of the Legislative Assembly, 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, unless they shall first obtain an order from the Governor-in-Council exempting them from the operation of this Act.

Exemption by Governor in Council.

3. The provisions of section 2 of this Act, shall not apply to persons of the class mentioned in that section whose names are rightly contained in any Voters' Roll in force at the date of the promulgation of this Act, and who are otherwise competent and qualified as electors.

Given at Government House, Natal, this 23rd day of May 1896.

By command of His Excellency the Governor,

JOHN ROBINSON,

Colonial Secretary.

TELEGRAM FROM VICEROY, COMMERCE DEPARTMENT, DATED 7TH MAY 1921.

474-S. We gather from Indian opinion Durban of 8th April, that it is proposed to introduce in present session of Natal Provincial Council draft Ordinance, amending Local Townships Law 11 of 1881, in such a way as to deprive Indians of their existing right to vote in townships. We should be glad to have early information regarding measure.

PARAPHRASE TELEGRAM FROM SECRETARY OF STATE TO VICEROY, COMMERCE DEPARTMENT, DATED 25TH MAY 1921.

2619. Your telegram No. 474-S. of 7th May. Private draft Ordinance amending Natal Law XI of 1881, being introduced in Provincial Council. Colonial Office asked to telegraph for information as to attitude of authorities and scope of Ordinance.

India Office to Colonial Office.

INDIA OFFICE,
26th May 1921.

J. & P.-3067.

SIR,

* * * * *

The Ordinance in question aims at amending section 7 of Natal Law XI of 1881. That section provides for the preparation of a town roll containing the names of persons qualified to vote for a member of the Legislative Council. Section 10 further provides "the persons whose names appear on the town roll shall be voters within the meaning of this law," and section 11 and subsequent sections provide for the election of a Local Board by persons whose names are on the town roll.

It appears therefore that the private draft Ordinance aims at taking away existing qualifications for voting at the election of Local Boards in townships from natives (and their descendants) of countries "which have not prior to the coming into force of the South Africa Act, 1909, possessed elective representative institutions founded on the Parliamentary franchise."

Mr. Secretary Montagu is uncertain as to the precise meaning of the words last quoted, but he would be glad if a telegram could be addressed to the Governor-General asking His Royal Highness to enquire what change in the present position of Indians as regards the municipal franchise in townships would in the opinion of the Natal Administration be effected, in the event of this private Ordinance being passed, and to ascertain the attitude of the Natal Administration and of the Union Government, on the question.

I have, &c.,

L. J. KERSHAW, *Secretary,*

Industries and Overseas Department.

The Under Secretary of State,
Colonial Office.

India Office to Colonial Office.

INDIA OFFICE,
2nd June 1921.

J. & P.-3483.

SIR,

* * * * *

I am directed by the Secretary of State for India to state that his attention has been drawn to a report in the newspaper *Indian Opinion* of 29th April 1921, that the Natal Municipal Association are considering the promotion in the Provincial Council of a draft Ordinance, the effect of which would be to disqualify for enrolment as burgesses, persons disqualified for the Parliamentary franchise by virtue of Act 8 of 1896.

Mr. Secretary Montagu would be glad if, in telegraphing to the Governor-General of the Union in the sense suggested in the letter from this Office referred to above, Mr. Secretary Churchill would include an enquiry as to the alleged promotion of such a draft Ordinance and as to the attitude of the Natal Administration and of the Union Government.

I am, &c.,

J. C. WALTON,

for Secretary,

Industries and Overseas Department.

The Under Secretary of State,
Colonial Office.

Governor-General of South Africa to Colonial Office.

(Confidential.)

GOVERNOR-GENERAL'S OFFICE,
CAPE TOWN,
7th July 1921.

SIR,

I have the honour to report that an Ordinance entitled the Townships Franchise draft Ordinance was introduced in the Natal Provincial Council

this Session. Mr. Hulett, when moving the second reading of the Bill on 27th May, explained that the Ordinance proposed to amend the Local Townships Law of 1881, so as to prevent males who were natives, or descendants of natives, of countries which had not prior to the passing of the South Africa Act of 1909, possessed elective representative institutions from being placed on the Township roll without an order from the Executive Committee exempting him from the operations of this Ordinance.

2. Continuing, Mr. Hulett said that, until recently, few Indians had availed themselves of their right to the Township Franchise under Law 11 of 1881. The legislation before the Council had, however, been rendered necessary by the attitude taken up by a section of the Asiatic community, especially those residing in the smaller coastal townships, who were beginning to assert their electoral rights and who "had now stated their intention of exercising the Township Franchise, sitting on the Board with Europeans, and ultimately taking over the reins of Local Government." The speaker instanced Stanger as a particularly notorious example, and contended that the only townships not in need of the Ordinance were South Barrow and Port Shepstone, where there was practically no Asiatic population.

3. Mr. Cox in seconding the motion observed that the Ordinance was necessary as a matter of self-preservation. He reminded the Council that an Indian delegate to the Imperial Conference had refused to take part in the proceedings unless Indians were accorded equal rights in all British Dominions. This, he concluded, was an "impossible attitude," and it was the duty of the Council to safeguard the rights of the small European communities in Natal.

4. The Administrator opposed the measure indicating the injustice that would be done to Asiatics already on the roll. He drew attention to the fact that all previous restrictive Acts had preserved the existing rights of Asiatics. The only district where the question was urgent was Stanger, and even there, although the Asiatics were in a majority and could have elected an Indian Board, they had declared their intention of leaving the control of local affairs in the hands of Europeans, and no Indian was elected. He urged the Council not to have recourse to retrospective legislation.

5. The second reading was, nevertheless, carried, but subsequently Mr. Hulett moved that the order for commitment be discharged, and that the Ordinance be referred to a Select Committee. The motion was agreed to, and a Select Committee, under the chairmanship of Mr. Hulett, proceeded to take evidence from certain Indians representing the Asiatic petitioners in opposition to the Ordinance. On 28th June, they submitted a majority report recommending the insertion of a proviso to clause 1 to the effect that any person who was on the Town Roll on the 1st day of January 1921, and who still possesses the qualification referred to in section 7 of Law 11 of 1881 shall continue to be entitled to be enrolled as a voter.

6. Captain Byron presented a minority report contending that no evidence had been adduced to prove that the measure was urgent or even necessary, and that its immediate advantages were insignificant in relation to the importance of the principles involved. In view of the fact that the Ordinance seriously infringed the rights of a large section of the community, whose status within the Union was to be the subject of early legislation by the Government, he recommended that it be not proceeded with this session but he referred to the Minister for the Interior for consideration by the Union Government with the Asiatic problem as a whole.

7. Mr. Hulett in presenting the report, moved that the draft Ordinance as amended by the Select Committee be substituted for the draft Ordinance which had already been read a second time. The motion was agreed to, and in Committee the Administrator repeated his previous arguments against the measure, adding that it would embarrass the Union Government. He read a telegram from the Minister for the Interior asking if the Council intended to proceed with the Ordinance as the Imperial Government had been enquiring into certain aspects of the Bill.

8. A vigorous debate followed. The Administrator repudiated an accusation that he was "acting on instructions," and was supported by Captain Byron, who urged upon members the necessity of considering the matter from a "world point of view." Supporters of the measure declared that the question involved was not one of justice but of self-preservation. Mr. Hulett quoted from a Gandhi pamphlet entitled *National Independence*, to illustrate the aggressive attitude of the Indians. After further discussion the Ordinance passed through Committee without amendment and was read a third time.

I have, etc.,

The Secretary of State,
Colonial Office.

ARTHUR FREDERICK,
Governor-General.

Paraphrase telegram from the Governor-General of the Union of South Africa to the Secretary of State for the Colonies, dated 14th July 1921.

14th July. As Law Adviser is of opinion that Natal Township Franchise Ordinance, 1921, is *ultra vires*, I have on Minister's advice withheld assent. Pending official announcement please regard this as confidential.—
ARTHUR FREDERICK.

Paraphrase telegram from Secretary of State to Viceroy, Revenue and Agriculture Department, dated 23rd August 1921.

4317. Your Commerce Department telegram No. 1516, dated 14th July. Official announcement has now been made that Governor-General of South Africa has withheld his assent to Natal Townships Franchise Ordinance, 1921.

PRESS COMMUNIQUE.

Simla, the 26th August 1921.

The Natal Township Franchise Ordinance, 1921, was recently passed by the Natal Provincial Council amending the Natal local Townships law of 1881 in such a way as to prevent Asiatics in future from acquiring the municipal franchise in Natal.

The Government of India at once telegraphed to the Secretary of State energetically protesting against this legislation.

An official announcement has now been received that the Governor-General has withheld his consent to the Ordinance.

R. B. EW BANK,

Deputy Secretary to the Government of India.

DRAFT ORDINANCE.

(PROPOSED TO BE INTRODUCED BY MR. G. H. HULETT, M.P.C.)

"To amend the Local Townships Law No. 11, 1881, in regard to the qualification of Voters in Townships."

BE IT ENACTED by the Provincial Council of the Province of Natal as follows:—

1. From and after the passing of this Ordinance no person shall be qualified to have his name entered on the Town Roll referred to in Section 7 of Law 11 of 1881 or to be a voter within the meaning of the said law who (not being of European

origin) is a native or descendant in the male line of natives of countries which have not, prior to the coming into force of the South Africa Act, 1909, possessed elective representative institutions founded on the Parliamentary franchise. unless he has first obtained from the Governor-General in Council an order exempting him from the operation of this Ordinance: Provided that any person who was on the Town Roll on the First day of January 1922 and who still possesses the qualification referred to in Section 7 of Law No. 11, 1881, shall continue to be entitled to be enrolled as a voter.

2. This Ordinance may be cited as the "Township Franchise Ordinance, 1922."

LETTER FROM THE SECRETARY, INDUSTRIES AND OVERSEAS DEPARTMENT,
INDIA OFFICE, NO. I. & O.-896—22, DATED THE 5TH APRIL 1922.

SUBJECT:— * * * * * *The Natal Township Franchise Ordinance; reported into the Provincial Council.*

* * * * *

* * * * * I am directed to forward, for information, copy of the following papers on the above subject:—

From Indians Overseas Association, dated 22nd March 1922, and enclosure.

To Colonial Office, dated 1st April 1922.

INDIANS OVERSEAS ASSOCIATION,
47-48, DANES INN HOUSE,
265, STRAND, LONDON, W. C.-2,
March 22nd, 1922.

Sir,

I have the honour to enclose herewith a copy of a telegram received by my Association from the Peter-Maritzburg Branch of the Natal Indian Congress, dated the 21st instant.

2. My Committee beg to request that the Secretary of State in Council will take this matter up at an early date with the Colonial Office, with a view to avoid further friction in Natal.

I have the honour to be,

SIR,

Your obedient Servant,

H. S. L. POLAK,

Honorary Secretary.

The Under Secretary of State,
India Office,
S. W.-1.

Copy of telegram received by the Indians Overseas Association from the Natal Indian Congress, P^rMaritzburg, dated the 21st (received the 22nd) March 1922.

Township Bill depriving Indians of Township Franchise * * * * *
* * * * * being re-introduced Natal Council now similar measures vetoed last year. Indians seriously view bills as depriving existing rights appeal through you Imperial "Government Intervention."

Industries.

I. & O.-896.

1st April 1922.

SIR,

* * * * *

I am directed by Viscount Peel to transmit for the information of Mr. Secretary Churchill copy of a letter, dated the 22nd March 1922, which has been received from the Indian Overseas Association, with enclosure, from which it appears that similar bills are now being introduced again in the Provincial Council.

* * * * *

I am,

SIR,

Your obedient Servant,

L. J. KERSHAW,

Secretary, Industries and Overseas Department,

The Under Secretary of State,
Colonial Office.

TELEGRAM TO THE GOVERNOR GENERAL OF THE UNION OF SOUTH AFRICA, CAPE TOWN, NO. 261-R.A., DATED THE 26TH MAY 1922.

We understand that * * * * * Natal Township Franchise Ordinance which were passed in Natal Provincial Council last year, but did not receive Your Royal Highness' assent, have been reintroduced. The Secretary of State for India has suggested to us that we should telegraph any observations that we wish to offer on this subject to Your Royal Highness' Government direct.

2.— * * * * *

Paragraph 3.—We do not know on what grounds your Law Adviser held last year that the latter Ordinance was *ultra vires*. But here too it is possible that the addition made in the draft Ordinance has altered the position. Recent anti-Indian legislation in Natal has roused very bitter feelings among Indians. This further curtailment of their rights and differentiation in status between domiciled Indians and their European fellow subjects, before Union Government have declared their attitude regarding report of Asiatic Enquiry Commission, cannot fail to provoke resentment here and to react on the good relations that subsist between this Empire and the South African Union. No evidence has reached us to show that Indian community in Natal has ever abused their right of exercising Municipal franchise. We feel confident that Your Royal Highness' Government will appreciate the importance which we attach to preventing any legislation which may prejudice final decision regarding status of Indians in South Africa.

LETTER FROM THE ASSISTANT SECRETARY, INDUSTRIES AND OVERSEAS DEPARTMENT, INDIA OFFICE, LONDON, NO. I. & O.-1334-22, DATED THE 11TH MAY 1922.

SUBJECT.—*Indians in Natal: New draft Township Franchise Ordinance*

* * * * *

* * * I am directed by the Secretary of State to forward, for information, copy of the letter from Colonial Office dated 9th May 1922 and enclosed draft Ordinance on the above subject.

18345-22.

COLONIAL OFFICE,
DOWNING STREET, S. W.-1,
9th May 1922.

SIR,

* * * * *

I am directed by Mr. Secretary Churchill to transmit to you, for the information of Viscount Peel, copies of a new draft Township Franchise Ordinance * * * * * which has recently been published by the Natal Provincial Administration.

2. As regards the former it will be observed that its terms are identical with those of the previous Ordinance, except for the substitution of the Governor-General in Council for the Executive Committee of the Province as the authority empowered to grant exemption from its provisions.

* * * * *

I am, etc.,
(Sd.) C. T. DAVIS.

FROM THE ASSISTANT PRIVATE SECRETARY TO THE VICEROY, OFFICE MEMORANDUM No. 1891, DATED THE 10TH JUNE 1922.

Transferred to the Secretary to the Government of India in the Revenue and Agriculture Department.

A formal acknowledgment has been sent to the enclosed.

NATAL INDIAN CONGRESS.

TELE. & CABLE ADDRESS :

" NICELY. "

169a, GREY STREET,
DURBAN, NATAL,
12th May 1922.

DEAR SIR,

We are sending you copies of :

- | | | | | | | |
|--|---|---|---|---|---|---|
| 1. (a) | * | * | * | * | * | * |
| (b) | * | * | * | * | * | * |
| (c) | * | * | * | * | * | * |
| 2. (a) Townships Franchise Ordinance. | | | | | | |
| (b) Natal Indian Congress Petition against it. | | | | | | |
| 3. (a) | * | * | * | * | * | * |
| (b) | * | * | * | * | * | * |
| 4. (a) | * | * | * | * | * | * |
| (b) | * | * | * | * | * | * |
| (c) | * | * | * | * | * | * |

DRAFT TOWNSHIPS FRANCHISE ORDINANCE.

This Ordinance passed by Natal Provincial Council last year notwithstanding opposition of Indian community but vetoed by Governor-General.

Re-introduced this year and is being passed without reference to Select Committee. Indian Community has no opportunity to give evidence before Provincial Council though petitioning against Ordinance.

* * * * *

We hope that you will see your way to give the matters brought to your notice the publicity they call for and such action as you can take at your end to help protect the existing rights of Indians in Natal.

We are,

Yours sincerely,

(Sd.) A. CHRISTOPHER,

(Sd.) SORABJEE RUSTOMJEE,

Honorary Secretaries, Natal Indian Congress.

TO THE CHAIRMAN AND MEMBERS OF THE PROVINCIAL COUNCIL OF NATAL.

The Petition of the undersigned humbly sheweth:—

1. That your Petitioners are the President, and the Honorary Secretaries of the Natal Indian Congress, having its headquarters in Durban.

2. That the Natal Indian Congress with its Branch at Pietermaritzburg represents the British Indian Community in the Province of Natal.

3. That your Petitioners beg to state that an ever-growing number of the British Indian Community is constituted of British Indians born in the Union of South Africa.

4. That your Petitioners view with deep concern and dismay the draft Ordinance entitled "To amend the Local Township Law No. 11 of 1881" in regard to the qualification of voters in Townships proposed to be introduced by Mr. G. H. Hulett, M.P.C., into the Provincial Council of Natal, providing for the disfranchisement of persons who (not being of European origin) are natives or descendants in the male line of natives of countries which have not prior to the coming into force of the South Africa Act, 1909, possessed elective representative institutions founded on the Parliamentary franchise.

5. That your Petitioners strongly, but with respect, object to the said Ordinance on the following, among other, grounds, namely,—

- (a) That it is submitted that the proposed Ordinance is *ultra vires* the power of the Provincial Council.
- (b) That it is unreasonable and arbitrary to seek to dispossess non-Europeans residing in Townships and conforming to the obligations and responsibilities under laws operating in such Townships in common with the European section of the Burgesses, of their existing and future rights to vote in Townships.
- (c) That the grounds of disqualification make racial discrimination between sections of Burgesses resident in a Township and substantially affect and interfere with the existing and future rights and interest of Indians.
- (d) That your Petitioners would urge upon the Council that the saving clauses in the proposed Ordinance do not in themselves justify the existing and future rights of the British-Indian Community being taken away in a British Country.
- (e) That an Ordinance similar in terms to the proposed Ordinance which is now being introduced into the Provincial Council was vetoed by the Governor-General of the Union of South Africa last year.

Your Petitioners pray to be heard in person or by Counsel in support of this Petition, or be permitted to give evidence before a Select Committee.

Wherefore your Petitioners respectfully pray that the said Ordinance may be rejected.

And for which your Petitioners as in duty bound will ever pray.

Dated at Durban, Natal, this 25th day of March 1922.

(Sd.) ISMAIL GONRA, *President.*

(Sd.) A. CHRISTOPHER,

(Sd.) SORABJEE RUSTOMJEE,

Honorary Secretaries, Natal Indian Congress.

169-(A) Grey Street, Durban.

TELEGRAM FROM THE SECRETARY, THE IMPERIAL INDIAN CITIZENSHIP ASSOCIATION, BOMBAY, DATED THE 10TH JUNE 1922.

* * * * *

Town Franchise Ordinance equally subversive of long standing rights of the Indian community in Natal. Committee is convinced that this Ordinance has created intense anti-Imperial feeling throughout the length and breadth of India and earnestly solicits timely interference by the Government of India and the Secretary of State for India as absolutely necessary to avert the most disastrous consequences.

FROM THE ASSISTANT SECRETARY, INDUSTRIES AND OVERSEAS DEPARTMENT, No. I. & O.-1334-22, DATED THE 25TH MAY 1922.

Indians in Natal. New Draft Townships Franchise Ordinance.

* * * * *

I am directed by the Secretary of State for India to transmit, for the information of the Government of India copy of the following papers on this subject:—

From Colonial Office, dated the 16th May 1921 and enclosure.

To Colonial Office, dated the 18th May 1922.

Attention is invited to the debate in the Union Senate on 22nd March 1922 (the *Cape Times* report of which is enclosed in the Colonial Office letter of 16th May) with reference to the Union Government's action in withholding assent to the Natal Ordinance of 1921 regarding the Township Franchise. It will be observed that the Ministers of the Interior in the course of this debate indicated, with reference to Section 147 of the South Africa Act, that the reason why the Ordinance of 1921 was held to be *ultra vires* was that it purposed to confer on the Executive Committee of the Province the power of exemption from the disqualifications sought to be imposed by the Ordinance. The Government of India will have noticed that, in the new Ordinance promulgated this year, the Governor-General in Council has been substituted for the Provincial Executive Committee as the authority empowered to grant such exemptions.

20130-1922.

COLONIAL OFFICE,
DOWNING STREET,
16th May 1922.

SIR,

With reference to the letter from this office of the 8th April I am directed by Mr. Secretary Churchill to transmit to you, to be laid before Viscount Peel, an extract from the *Cape Times* of the 23rd March, containing a

Report of a Debate in the Senate, regarding the refusal of the Government of the Union of South Africa to assent to the Electoral Ordinance passed by the Provincial Council of Natal.

2. It is requested that the extract may be returned to this office after perusal.

I am, etc.,

(Sd.) C. T. DAVIS.

The Under Secretary of State,
India Office.

Extract from "Cape Times", Thursday, March 23rd, 1922.

NATAL ORDINANCE VETOED.

MATTER RAISED IN THE SENATE.

Problem of how to deal with Asiatic.

In the Senate yesterday.

Senator Reitz moved: "That the Governor-General in Council has acted in a manner detrimental to the interests of the Province of Natal in particular, and of South Africa in general, by refusing to give its assent to the Electoral Ordinance (amending the Townships Act, No. 11 of 1881) passed by the Provincial Council of the Province of Natal.

He said that Natal saw the danger of Asiatic immigration, and eventually tried to prevent it—the future influx into the towns of Indians—and to prevent their getting control of the municipalities.

Senator Churchill: Rather late in the day.

Senator Reitz: I would like to hear what was the motive in vetoing a useful law like that? I am glad to see the national feeling growing in India, so long as it is restricted to its own country and keeps its hands off mine.

He read a newspaper extract to show how the value of property owned by Asiatics in Natal had grown. He wanted to know whether in the present instance the Ministry had acted in the interests of South Africa, first, and whether it was not the interests of the Empire first.

Mr. Duncan (Minister of the Interior) said that in vetoing the Ordinance Ministers were acting in the interests of the country and not of those countries outside South Africa. The Government of Natal had before Union allowed the Indians to be brought into that part of the country, and even when the Government of India was against it. The Union Government was in favour of the Indians returning to India, and was encouraging them to do so, but there were people who liked the Indians to remain, as they were useful as labourers. However, their sons would not all be labourers, and then there would be a desire to send them back to India.

The Ordinance had no reference whatever to Indians who were coming into the country, as no more were coming in; it had reference to those in the country, and had the effect of taking away the vote of Indians who owned property. The Ordinance had been vetoed because the Government was advised that it was outside the power of the Provincial Council—it was not because of anything Mr. Lloyd George's Government had requested.

He quoted section 147 of the South Africa Act. The Executive Committee of the Province did not have the power which the Ordinance proposed to grant to it of exempting certain persons with regard to voting power, and for that reason the Government was advised that it could not give its assent to the Ordinance.

White Workers Menaced.—Senator Fraser said that the Indian apart from the sugar fields was a menace to the white worker in Natal. The only people practically who had benefited were the sugar planters, not the

whole population, and he thought it would have been better to have no sugar industry there if there were no Asiatics. He was afraid that the Indian menace was being felt only now that the Asiatic was encroaching in the towns. He would support the motion.

Senator Winter said that in view of the statement of the Minister, he could not see how any member could support the motion, as the powers of the Provincial Council in that particular matter were null and void, and had the Ordinance not been vetoed, it would only have led to much litigation. He felt with Senator Reitz, but would ask him to withdraw the motion.

Senator Churchill said that the Indian menace had been realized in Durban 40 years ago, and Senator Fraser seemed to be a newcomer to judge by his remarks. In 1893 he (Mr. Churchill) had done his best to keep Indians off the voters roll, and he had Mr. Escombe and Sir John Robinson behind him. They had been opposed by Downing Street in the steps against the Indians, and feeling in Natal had become very strong. On Union coming about, it was hoped that the Indian question would be dealt with and it was one of the reasons why in Natal they favoured Union, knowing that in that respect they would have the assistance of the Transvaal and the O. F. S. and possibly of the Cape also. The real menace was the Asiatic trader, not the labourer.

Senator Stuart said that they might pay Asiatics to return to India, but the Government could not force them to go. The Minister had clearly explained that the Ordinance was *ultra vires*, and that being so, if they voted for the motion it was a direct condemnation of the Government, which had acted only according to the constitution.

Senator Potgieter said that he accepted that it was impossible to agree to an Ordinance which was against the constitution, but the Government had a sufficiently large majority, and would get the support of the country in dealing with the Asiatic menace. Why did it not deal with it?

Senator Reitz in reply said that it was true that they could not force these Asiatics to leave the country, but the Government could show that it was master in its own country, and he knew that the people of Natal were also against that Asiatic menace. He thought it was just as well that he had brought that matter forward, and not in a non-committal way, so that the Minister and the Natal members had "come out of their shell."

The motion was negatived by 20 to 13 votes.

I. & O.-1334-1922,

18th May 1922.

SIR,

I am directed by Viscount Peel to acknowledge the receipt of your letter * * * * * transmitting copies of the new draft Townships Franchise Ordinance * * * * * which has recently been published by the Natal Provincial Administration.

2. As regards the former Ordinance it is understood that when the Governor-General withheld his assent to the Natal Townships Franchise Ordinance of 1921 the reason was that in the opinion of the Union Law Advisers that Ordinance was *ultra vires*. It is observed that the terms of the present Ordinance are identical with those of the previous one, except for the substitution of the Governor-General in Council for the Executive Committee of the Province as the authority empowered to grant exemption from its provisions. I am to enquire whether the report of the Union Law Advisers on the Ordinance of 1921 has been received at the Colonial Office. Lord Peel would be glad to receive a copy of it or any information showing what were the points in regard to which that Ordinance was held to be *ultra vires* and whether the change made in the present Ordinance has been introduced with a view to meeting those points.

3. Mr. Churchill is aware that the Government of India would desire to make the most urgent representations against the enactment of any Ordinance which would have the effect of depriving the Indian community in Natal of the right to the township franchise that it at present enjoys. The representatives of India at the Premiers' Conference last year took advantage of the presence of General Smuts at the Conference to make personal representations to him in regard to the Ordinance which had been passed by the Natal Council at that time, and urged that His Royal Highness the Governor-General should be advised not to assent to the Ordinance. Attention is also invited to the telegram from the Viceroy, dated 14th July 1921, copy of which was communicated to the Colonial Office with India Office letter No. I. & O.-979-21, dated the 7th September 1921.

4. It is presumed that on receipt of Mr. Churchill's despatch to the Governor-General, No. 122, dated 8th April 1922, if not before, copies of the present Bills will have been despatched direct to the Government of India but, as that Government may not yet have received the Bills and had time to consider them, Lord Peel would suggest, for Mr. Churchill's urgent consideration, that a telegram should be addressed to the Governor-General enquiring what is the attitude of the Union Government to the draft Townships Franchise Ordinance in its present form, and whether in the event of its being passed by the Provincial Council the Governor-General in Council would again be prepared to withhold his assent, in view of the serious Imperial considerations involved, and urging that a decision to assent to the Ordinance should at any rate not be taken until the Union Government are in receipt of the views of the Government of India.

I am,

SIR,

Your obedient Servant,

(Sd.) F. W. DUKE.

The Under Secretary of State,
Colonial Office.

TOWNSHIPS FRANCHISE DRAFT ORDINANCE.

Speech of Mr. William Doull (Messrs. Livingstone and Doull, Durban) at the Bar of the House of the Natal Provincial Council on Tuesday, May 30th, in support of the Petition of the Natal Indian Congress against the above Ordinance.

Mr. Doull said,—

“ Mr. Chairman and Members of the Provincial Council, I have been instructed on behalf of the Natal Indian Congress to appear before this Council to-day to represent to the Council the objections held by the Indian Community to the Townships Franchise Draft Ordinance. The Indian Community regret that the matter was not referred by his Council to a Select Committee so that they might themselves personally have expressed their objections, but they do appreciate the fact that the Council has afforded them this opportunity of laying these objections before you. The Ordinance in question purports to amend Law 11 of 1881, but it is obvious from the terms of the Ordinance that in effect it repeals the right of Franchise presently held in Townships by the Indian Community. The repeal of that right is regarded with the utmost concern by the Indians. They feel that the taking away of this right, which is practically the only right of representation

which they held in this Province, is one which causes not only to themselves but to their successors a grave injustice. They feel aggrieved by the proposed Ordinance in view of the fact that they consider the removal of this right constitutes a great injustice to them; and in considering whether they have any justification for that grievance I propose shortly to refer to the circumstances under which the Indians have come into this country, because one must take into consideration those circumstances in ascertaining whether the proposed Ordinance is equitable or otherwise.

It is known to all the Members of this Council that the Indians have not come voluntarily to this country but came originally at the express invitation of the then Natal Government. At the time in Natal when the original decision was arrived at to import Indian labour it was unanimously agreed amongst all the leaders of the industries in Natal that without satisfactory labour it was impossible for this country to make progress. Negotiations were entered into between the Government of Natal and the Government of India, and ultimately arrangements were made for the importation of Indians as labourers. They have come here, settled here, have had children here, and at the present time the bulk of the Indian population consists of the descendants of the men who were invited to come here for the country's benefit. Not only were the Indians originally asked to come and specially imported under Government supervision but so anxious was the Government of that time that the Indians should continue here that inducements were held out to them by the offer of free grants of land to settle in the country, and a number of grants of land were actually made in some instances. It is true the offer did not continue in existence for many years but the fact that it was made shows that at the time when the importation commenced there was an intention to allow them to remain in the country. At the present time, as I have before stated, the bulk of the Indian population consists of those immigrants and their descendants, and those descendants are now, I believe, representing the fourth generation in this country. The only country they know is Natal; India to them is little more than a name, and if the Ordinance in question is passed the result will be that men who were born in this country will be deprived of a right which, it is contended, is not prejudicial to the Europeans. Now, so far as is known to the Indian Community, there is no direct evidence before this Council of any objection to the present Law, *viz.*, that the Indians shall have the right of Franchise in Townships, but on the other hand if the Ordinance is passed there will be, and there is, a serious objection on the part of the whole of the Indian Community to the passing of that Ordinance, and as I believe the Indian Community represent something like one-half of the population—possibly a trifle more—the result will be that at least one-half of the population will labour under a great grievance. In so far as the Law of 1881 is concerned the Indian Community submit to you that no injury or prejudice has at any time been sustained, European or otherwise, as a result of the power held by Indians. I believe I am right in stating that there is one Township in Natal Stanger, where the Indian vote predominates to the extent of 75 per cent. against the European 25 per cent. and it is significant that in that particular Township none but Europeans, have ever been elected to the Local Board. That shows that the Indians are not abusing the power which they hold, and one would expect that until there is some abuse of power or that grave injury is being occasioned to any section of the community, matters might be allowed to continue as they are. That the Indians have been of great economic value to the Province is admitted by practically everybody. Many industries which have been built up in Natal have unquestionably been built up as a result of the importation of the Indians. It is respectfully submitted that, bearing in mind that the Indians have been specially invited here, that they have been specially invited to settle here, and that they are unquestionably a big asset to at least some of the industries of Natal, it is not to be wondered at that if this Ordinance should be passed there will be a feeling of grievance on the part of that particular community. From the speeches of Members of this Council at the Second Reading of this Ordinance, it would appear as though the Council had been influenced to some extent by what is called the Disloyalist Movement in India,

and I have been specially instructed to draw the attention of the Council to the misapprehension under which those Members are labouring who expressed such a view. Assuming that there were a Disloyalist Movement in India, one might point out that that might merely be a symptom of the general unrest prevailing throughout every country in the world. South Africa is not free from that unrest as is evidenced by the fact that during the past seven or eight years we have experienced two open rebellions. The participations in those rebellions are not being penalized by taking away from them the right of Franchise. However that may be, the Indian Community state that there is no such movement in India as a Disloyalist Movement. The movement in India, on the propaganda of Mr. Gandhi, is a movement for a Dominion Status within the Empire—it is not a movement for the breaking away from the Empire, and I respectfully submit to you that a movement for a Dominion Status cannot possibly be characterised as a Disloyalist Movement. The movement in question is undoubtedly supported by the Indian Community in Natal; they frankly admit that, and in doing so they support it to a very large extent for what they consider their own self-preservation. The feeling is held among the Indian Community in Natal that owing to the absence of electoral representation they are powerless against any legislation which might be passed in this country. Self-preservation is a law of nature. They say that if India attains to Dominion Status, whatever grievances they may have they may be able to submit them to India for the purpose of having the support of that country towards their rectification, and it is for that reason more than any other that the movement in India is supported. In any case, it is submitted that whether there is a Disloyalist Movement in India or not does not affect the question of the passing of this Ordinance. If there is a Disloyalist Movement in India, surely it is not suggested that the passing of this Ordinance will kill it. If anything, it would tend to create a Disloyalist Movement in this country, would it not? If there is no Disloyalist Movement in India, then the passing of this Ordinance will mean the punishing of people here for a misapprehension by this Council as to the true state of affairs in India. With regard further to the question of disloyalty, it is in evidence that in every war in this country since the entrance of Indians to Natal they have participated. In the late war, as early as the 31st August 1914, they held a mass meeting in Durban at which it was decided that they should offer their services to the Government either as combatants or in any other capacity. That offer was duly transmitted to the Government which turned it down for the time being, but in the following year notified the Indian Community that it was prepared to accept their services as Stretcher Bearers.

A number were speedily enlisted and served in one of the African campaigns. After their return they again offered their services to the Government either in Europe or in any other part of the world. At first they were accepted for Europe but were afterwards transferred to East Africa. So far, therefore, as the local Indians are concerned, there is ample evidence to show that they have been in every way loyal and have offered assistance to the Government to the utmost of their ability. In view of these facts, one can readily understand their concern that so soon after the termination of hostilities there should be a proposal to dispossess them of the only civic right which they possess. It is submitted further by the Indian Community that the Ordinance in question cannot be passed without the abrogation of principles which have been enunciated by practically every public man in the country. In other words, the proposed Ordinance would have the effect of taxing the Indian Community without giving them representation. Practically all parties are agreed that there should be no taxation without representation. It is contended by the Indian Community that there is no substantial ground whatever for the proposed Ordinance. On the other hand, they have shown themselves law abiding and loyal. They are not asking that something new should be granted to them, but merely that the rights which they have enjoyed for the past forty years and which they have at no time abused shall be continued. The feeling has crept in amongst the Indians that the Ordinance in question is based on class prejudice or colour, but even

assuming that to be the case, it is submitted to you, gentlemen, that some prejudice should be shown to exist to some portion of the population before a measure such as this is passed. Until it can be shown that some one is prejudiced or injured by the rights at present enjoyed, then it is submitted respectfully to you that there is no justification for the passing of the Ordinance in question.

The Indians are here and we have to make the best of it. If this Ordinance is passed, we are going to create a discontented section of the population; a section which is represented by a large proportion of the population, and as I have already stated until it can be shown that the right enjoyed at the present time is detrimental and prejudicial to the European population, it is surely better to allow that right to continue than to create a feeling of grievance among a large proportion of the Community of the Province.

It is further submitted that the present time is particularly inopportune to raise a question such as the passing of the present Ordinance. It is within the knowledge of all you gentlemen present that Parliament will at an early date be dealing with the Asiatic question. When the question of the Asiatic Enquiry Committee report comes to be dealt with, very much larger issues have to be gone into. It is quite possible that the investigation and settlement of this question will create a feeling on the part of the Indian Community, and I suggest that it would be to the interests of all concerned if a minor matter such as this could have been postponed until the larger issues had been dealt with, and satisfactorily or otherwise settled, and this small matter delayed until they could approach the Union Government in regard to the larger issues that have to be raised. In view of the fact that the Union Government will soon have to be dealing with much larger issues, it is surely in the interests of all parties that this matter be shelved until the larger issues have been determined, and that issue not approached while labouring under the grievance concerned in this particular Ordinance. There is also a further aspect of the case which I think it right to bring to the notice of the Council, and it is the Imperial aspect; at the present time the question of Township Franchise is of comparatively small importance to the European, but if taken from the Indian, you may be fully satisfied that the matter will not rest there. They are bound to bring this as a further grievance before the Government of India. That they will have a grievance will certainly be considered by the Government of India, and what is to-day a comparatively trivial and unimportant matter may lead to grave complications between the Imperial Home and possibly the Union Governments. The removal of this right, practically the last right of the Indians in Natal, will be keenly felt by the Indians. If it is reported to India, the matter is bound to be taken up there. We should know the conditions with which the Imperial Government has to contend. Here we will have a further cause by genuine grievance, and I would urge upon you that no valid reason has been given for the taking away of a right which they held; the taking away of a right which will probably cause grave Imperial complications. If there were evidence before the Council that the holding of the right is prejudicial to the population, then the Council could say it was bound to cancel this right, because of the prejudice resulting from it. No prejudice can so far be shewn. They have shewn they are not desirous of abusing their privileges. In many towns and townships they can put a large number of names on the voters roll than actually exists, but now the voting power which they enjoy will be taken from them. And until it can be shewn that they are abusing the power they hold, then the Council are premature in endeavouring to take away the right in question. Stanger is a large township and no township approaches it so far as the Indians are concerned and it has almost come to be regarded as a centre of the Indian population. Now if the other townships approached the Township of Stanger and until it is shewn that the Indian is abusing the power which he holds, I would submit to you that the taking of a right from the Indians is unjustified and at any rate premature.

There is also the question of the legality of the proposed Ordinance, but as I understand from the newspaper reports that apparently the Council has

been advised that they have the necessary authority to pass the Ordinance, I do not propose to lay particular emphasis on the point. I suggest that very grave doubts exist as to whether the Council has the right to pass the Ordinance or not. I take it that the Council is acting under the provisions of the Financial Relations Act of 1913, which gives the Council power for the establishment and administration of townships. To establish a township is one thing, to maintain one is another, but neither to establish or maintain can give power to take away. That is in fact what the Council propose to do by the passing of the Ordinance. There is little doubt that if the Ordinance is passed, the legality of it will subsequently be contested in the Court on the grounds that the Council is acting *ultra vires*. If the Council has been advised then it is idle for me to argue the point. If there is any doubt of the power of the Council to pass the legislation, then it is another factor which should be taken into consideration, when deciding whether this Ordinance should be further proceeded with or not. Finally, I would just like to emphasise that the passing of the Ordinance would be a very grievous injury indeed to them. You will be taking from them a right which they have enjoyed for many years and never abused, or caused any injury to any of the population of Natal.

That right, the last right of representation which the Indian holds in Natal, and the passing of the Ordinance will create a feeling that there is an effort by the Europeans to crush them utterly and make their lives intolerable in this country. If that feeling is created, they are bound to appeal to the Government of India, and if they appeal to India their case will be taken up by the Government of that country and it is likely that the Government of India will consider that the Indians have a just grievance and the matter will be taken before the Imperial Government. I would like to urge upon you on behalf of the Indian Community to carefully consider the whole of the circumstances surrounding the proposed Ordinance. If it is felt by them that if the present right is allowed to continue, no one will have any grievance, but if the right is taken away they will have just grievance which they feel particularly keenly. I trust therefore that the Council will carefully consider the case from the Indian aspect of the case, and decide that the matter be proceeded with no further. I thank you for allowing me to appear before you to address you.

TELEGRAM FROM THE GOVERNOR GENERAL, SOUTH AFRICA, DATED PRETORIA,
THE 28TH JULY 1922.

July 28th.—The Ordinance referred to in your telegram dated 26th May has been presented for assent and on advice of my Ministers in Executive Council I have reserved it for further consideration. * * *
* * * * * Despatch follows by mail.

TELEGRAM FROM GOVERNOR-GENERAL OF SOUTH AFRICA, DATED PRETORIA,
THE 4TH AUGUST 1922.

* * * * *
August 4th.—Following is summary of my despatch as requested :
* * * * *

- (2) Townships Franchise Ordinance is reserved for further consideration. Ministers propose to appoint an officer to enquire into conditions existing in Natal Townships to ascertain what steps, if any, should be taken regarding restriction of the franchise specially affecting Asiatics.

FROM HIS ROYAL HIGHNESS PRINCE ARTHUR OF CONNAUGHT, K.G., K.T., G.C.M.G., G.C.V.O., C.B., ETC., ETC., GOVERNOR-GENERAL OF THE UNION OF SOUTH AFRICA, TO THE RIGHT HONOURABLE THE EARL OF READING, G.C.B., G.C.I.E., ETC., ETC., VICEROY AND GOVERNOR-GENERAL OF INDIA, DATED PRETORIA, THE 29TH JULY 1922.

With reference to Your Excellency's telegram of 26th May * * * and in confirmation of my telegram of 28th July, I have the honour to enclose, for the information of the Government of India, a copy of the Townships Franchise Ordinance * * *

* * * * *

4. In so far as the Townships Franchise Ordinance is concerned, Ministers advised reservation for further consideration, and in the meantime they propose to appoint an officer to enquire into the conditions existing in the townships in Natal, so that they may satisfy themselves what steps, if any, should be taken in regard to restrictions of the franchise specially affecting Asiatics. *

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TELEGRAM TO THE GOVERNOR-GENERAL, SOUTH AFRICA, CAPE TOWN, No. 354-EMI., DATED SIMLA, THE 17TH APRIL 1923.

* * * * *

2. We learn from *Reuter's* telegrams that Natal Administration is introducing new Township Franchise Ordinance based on simple educational test. If this is so, we should be grateful if you would kindly send us, for our information copy both of proposed Ordinance and of report of officer who was appointed to enquire into conditions in townships in Natal. We assume that rights of existing voters will be safeguarded and hope to telegraph our views on receipt of papers.

TELEGRAM TO THE GOVERNOR-GENERAL OF SOUTH AFRICA, CAPE TOWN, No. 454-Os., DATED SIMLA, THE 7TH MAY 1923.

Reference our telegram of April 17th. We have now received *Natal Official Gazette*, dated March 15th, containing text of certain draft Ordinances, of which four affect Indians:—

(1) * * * * *

(2) * * * * *

(3) Ordinance to amend Local Township Law, 1881. Please see paragraph 2, of our telegram of April 17th. We recognise Ordinance as revised is not open to same objections as that which Your Royal Highness reserved for further consideration last year. But it does not confer on Governor General in Council right of granting exemptions as previously proposed, and it vests officer preparing Town Roll with unfettered discretion apparently subject to no appeal to decide whether applicant can read or write one of the official languages. We suggest that section 9 of Natal Law 11 of 1881, may be amended so as to allow appeals on this point.

(4) * * * * *

TELEGRAM FROM THE GOVERNOR-GENERAL OF SOUTH AFRICA, DATED CAPE TOWN, THE 29TH MAY 1923.

Your telegram, dated 7th May, 454-Os. * * *
 * * * * *
 * * * * *
 * * * * *

Ordinance to amend Local Township Law has not been proceeded with and it is understood that action is to be taken in courts with a view to testing certain decisions on existing law.

* * * * *
 * * * * *

No. 64-1710.

GOVERNOR-GENERAL'S OFFICE,
 CAPE TOWN.
 20th April 1923.

MY LORD,

At the request of my Ministers, I have the honour to transmit to Your Excellency two copies of—

- (1) * * * * *
 (2) * * * * *

(3) an Ordinance to amend the Local Township Law No. 11, 1881, in respect of the qualification of voters,

which has recently been introduced into the Natal Provincial Council.

I take the opportunity to acknowledge the receipt of your telegram of the 17th April which I have referred to my Ministers for consideration and advice.

I have the honour to be,

My LORD,

Your Excellency's most obedient servant,

ARTHUR FREDERICK,
Governor General.

His Excellency the Right Honourable
 The Earl of Reading, G.M.S.I., G.M.I.E.,
 etc., etc., etc.,
 Viceroy of India,
 Delhi.

DRAFT ORDINANCE.

[AS SET DOWN FOR SECOND READING.]

"To amend the Local Township Law, No. 11, 1881, in respect of the Qualification of Voters."

BE IT ENACTED by the Provincial Council of the Province of Natal, as follows:—

Qualification of voters in township.

1. The following words occurring in Section 7 of the Law No. 11, 1881—

"persons possessing within the township a qualification entitling them to vote for a member of the Legislative Council,"

are hereby repealed, and the following shall be substituted therefor :

" every person who, being a British subject of the age of twenty-one years and upwards, is—

- (a) The owner of immovable property within the township of the value of £50 or more; or
- (b) The renter of immovable property within the township of the yearly value of £10 or more; or
- (c) Resident within the township and in receipt of an income, inclusive of allowances, equal to £8 per month, or £96 per annum, and who has made application in the prescribed manner :

Provided always that no person shall, save as it specially excepted, be qualified to be enrolled or to be a voter for a township who is unable, by reason of deficient education, to read and write at least one of the official languages of the Union to the satisfaction of the person preparing the Town Roll in terms of Section 7 of the Principal Law, or, in case the Roll is prepared by the Local Board or an official thereof, to the satisfaction of the Magistrate.

2. Where two or more persons jointly own or rent any immovable property within a township, each such person shall, for the purposes of this Ordinance, be deemed to be the owner or renter of immovable property or the value corresponding to his share of the ownership, occupation or renting.

3. The qualification referred to in Section 4 of Law No. 11, 1881, and the Parliamentary qualification referred to in Section 1 of the Women's Franchise Ordinance No. 12, 1914, shall mean the qualification set forth in Section 1 of this Ordinance.

Any question arising at a meeting held under Section 2 of the Principal Law as to the qualification of any person to vote thereat shall be decided by the Chairman, whose decision shall be final.

4. The provisions of Sections 1 and 2 of this Ordinance and of Section 3, in so far as it relates to the Women's Franchise Ordinance, shall not apply to any person who, at the date of the commencement of this Ordinance, was registered as a voter upon the Town Roll of any township, so long as such person continues to hold within the township any qualification which, up to the said date, entitled him to such registration, and the qualification of any such person for registration upon such roll shall be judged of in all respects as if the foregoing sections of this Ordinance had not been passed.

5. (1) Every person claiming enrolled in virtue of the qualification mentioned in Sub-section (c) of Section 1 shall, in the month of January, February or March in each year in which enrolment is claimed, deliver to the person preparing the town roll an application signed by him, in the form of the Schedule of this Ordinance.

In the case of a first roll, such application shall be addressed to the Magistrate within one week after the proclamation of the township.

(2) Any person who wilfully makes a false statement in such application shall be liable to a fine not exceeding Fifty Pounds, and shall, on conviction, be disqualified for five years from being enrolled on the town roll of any township.

6. (1) Notwithstanding the foregoing provisions of this Ordinance, the following persons shall not be qualified for enrolment on the town roll :—

- (a) Persons who have been convicted of treason, felony or other infamous offence and have not received a free pardon; or, until the lapse of five years from the expiration of the sentence,

convicted of a crime punished with imprisonment with hard labour, without the option of a fine, unless in any of such cases a free pardon has been granted;

- (b) Aliens who have not been naturalised;
- (c) Persons declared to be lunatics or of unsound mind.

(2) Persons incurring any of the foregoing disqualifications shall cease to be voters within the meaning of the Township Laws.

SCHEDULE

To the Officer charged with preparing the Roll for the Township of (or, in the case of a first Roll) To the Resident Magistrate for the District of 19..... (Date).

I request that you will enrol my name in the Town Roll for the Township of in terms of Section 1, paragraph (c) of the Township Franchise Ordinance, 1923,

I am a British subject of the age of twenty-one or upwards, and reside in the said Township.

My income, inclusive of allowances, is equal to £8 sterling per month, or £96 per annum.

My full name is.....

My place of abode is.....

My business or quality is.....

Signature of Applicant.

LETTER FROM THE HONORARY SECRETARIES OF THE NATAL INDIAN CONGRESS, DATED THE 12TH NOVEMBER 1923.

A draft Ordinance to amend the Local Townships Law, No. 11 of 1881 in respect of the qualification of voters has just been published. Mr. G. H. Hulett proposes to introduce this draft Ordinance into the Natal Provincial Council which meets on the 20th November. As you are aware this is the fifth time, it is being brought forward.

Will the Government of India be pleased to make immediate representations to the Union Government as the matter is very urgent?

AGAIN THE TOWNSHIP FRANCHISE ORDINANCE.

The Natal Provincial Gazette, dated November 8th, contains the text of the now very famous Draft Ordinance "to amend the Local Township Law No. 11, 1881, in respect of the Qualification of Voters" proposed to be introduced by Mr. Geo. H. Hulett, M.P.C., in the forthcoming session of the Provincial Council. The form of the Ordinance, it will be noticed, is changed to some extent, but the effect of it will be the same. It reads as follows:—

Be it enacted by the Provincial Council of the Province of Natal, as follows:—

1. The following words occurring in Section 7 of Law No. 11, 1881—
"persons possessing within the township a qualification entitling them to vote for a member of the Legislative Council,"

are hereby repealed, and the following shall be substituted thereof:—

“every person who, being a British subject of the age of twenty-one years and upwards, is—

- (a) The owner of immovable property within the township of the value of £50 or more; or
- (b) The renter of immovable property within the township of the yearly value of £10 or more; or
- (c) Resident within the township and in receipt of an income, inclusive of allowances, equal to £8 per month, or £96 per annum, and who has made application in the prescribed manner:

Provided always no male person shall be placed on the Town Roll who is not entitled to be placed on the Parliamentary Voters' Roll of the Province of Natal, nor shall a female who (not being of *European origin*) is a descendant in the male line of a person who is debarred by law from being placed on the Parliamentary Voters' Roll aforesaid, be entitled to be placed on the Town Roll aforesaid.

2. Where two or more persons jointly own or rent any immovable property within a township, each such person shall, for the purposes of this Ordinance, be deemed to be the owner or renter of immovable property or the value corresponding to his share of the ownership, occupation or renting.

3. The qualification referred to in Section 4 of Law No. 11, 1881, and the Parliamentary qualification referred to in Section 1 of the Women's Franchise Ordinance No. 12, 1914, shall mean the qualification set forth in Section 4 of this Ordinance.

Any question arising at a meeting held under Section 2 of the Principal Law as to the qualification of any person to vote thereat shall be decided by the Chairman, whose decision shall be final.

4. (1) Every person claiming enrolment in virtue of the qualification mentioned in Sub-section (c) of Section 1 shall, in the month of January, February or March in each year in which enrolment is claimed, deliver to the person preparing the town roll an application signed by him, in the form of Schedule of this Ordinance.

In the case of a first roll, such application shall be addressed to the Magistrate within one week after the proclamation of the township.

(2) Any person who wilfully makes a false statement in such application shall be liable to a fine not exceeding Fifty Pounds, and shall, on conviction, be disqualified for five years from being enrolled on the town roll of any township.

5. (1) Notwithstanding the foregoing provisions of this Ordinance, the following persons shall not be qualified for enrolment on the town roll:—

- (a) Persons who have been convicted of treason or felony and have not received a free pardon; or until the lapse of five years from the expiration of the sentence; convicted of a crime punished with imprisonment with hard labour, without the option of a fine, unless in any of such cases a free pardon has been granted;

(b) Aliens who have not been naturalised;

(c) Persons declared to be lunatics or of unsound mind.

(2) Persons incurring any of the foregoing disqualifications shall cease to be voters within the meaning of the Township Laws.

PROVINCIAL COUNCIL.
TOWNSHIP FRANCHISE ORDINANCE.

The first session of the 5th Provincial Council of Natal opened last Tuesday. After the Administrator's speech and the election of the new Executive Mr. Hulett asked leave to reintroduce his draft Ordinance to Amend the Local Township Law, and urged that the measure should be passed by the Council before the Union Parliament met in January. He asked the Administrator to adjourn the Council to December 4 to allow 14 days' notice of the reintroduction of the draft Ordinance for the benefit of those who wished to raise objection.

Mr. Cox seconded the resolution.

The Administrator expressed regret at his inability to comply with Mr. Hulett's request, and recalled the report which was brought up by the Committee appointed to deal with the Ordinance, in which it was recommended that no action be taken pending the testing of the Estcourt judgment of the Supreme Court in the Appellate Court. That resolution was carried by the Council, Mr. Hulett and Mr. Coleman dissenting. It was hardly right to say that he (the Administrator) had prevented discussion by proroguing the Council, because the motion to suspend the standing rules and orders was lost, and a further opportunity afforded by him to Mr. Hulett to save the adjournment of the House was not accepted. His Honour appealed to members to leave the matter over until February, until they reassembled again. General Smuts was now returning to the Union, and as the Imperial Conference had dealt with the matter of India's status in the Union it would be advisable to hear the Prime Minister's views on the question.

Mr. Coleman contended that the Council had been returned with a mandate from the people to pass this measure. The speaker was called to order by the Chairman as he was proceeding to discuss many phases of the Indian question.

Mr. Van Rooyen supported Mr. Hulett.

Mr. Russell agreed with the sentiments of the previous speakers, and expressed readiness to deal with the question as early as possible. He moved that the Council stand adjourned till December 4.

Mr. Clarkson seconded, and hoped that members could not find the date inconvenient.

Eventually, on presentations of the Administrator, the Council adjourned till January 8.

NATAL INDIAN CONGRESS PETITION.

The following petition from the Natal Indian Congress and a similar one from its Maritzburg Branch were presented through Mr. Haycock protesting against Mr. Hulett's proposed draft Ordinance:—

To the Chairman and members of the Provincial Council of Natal:—

The petition of the undersigned humbly sheweth:—

1. That your petitioners are the President and Honorary Secretaries of the Natal Indian Congress and its Branch Committee at Pietermaritzburg, represent the Indians of Natal, among whom are included Indian voters in the several Townships of Natal.

2. That your petitioners beg to protest for the fourth time against the draft Ordinance entitled "To amend the Local Townships Law No. 11 of 1881 in respect of the qualification of voters" on the following, among other grounds, namely:—

(a) That the proposed Ordinance seeks to disenfranchise Indians from holding the Township Franchise hitherto enjoyed by them.

- (b) That it deprives Indians of their existing rights under Law No. 11 of 1881.
- (c) That Indians being statutorily disqualified from placing their names on the Parliamentary Voters' Roll, they will be completely excluded from claiming as owners or renters of immovable property the Township Franchise under the proposed Ordinance, if it becomes Law.
- (d) That the proposed Ordinance, if passed, by taking away the Township Franchise from Indians will submit them to Township taxation without Township representation.

Wherefore your petitioners pray to be heard in person or by Counsel in support of their petition or be permitted to give evidence before a Select Committee.

Dated at Durban, Natal, this 20th day of November, 1923.

(Sd.) AMOD BAYAT,

President.

(Sd.) A. CHRISTOPHER,

(Sd.) SORABJEE RUSTOMJEE,

Hon'y. Secretaries,

Natal Indian Congress.

TELEGRAM TO HIS MAJESTY'S SECRETARY OF STATE FOR INDIA, No. 13 (A),
DATED, DELHI, THE 16TH JANUARY 1924.

* * * * *

We have received copies of Hulett's fresh draft Ordinance to amend local Township Law, 11 of 1881, and of Indian Congress petition to Provincial Council on subject. We understand proviso to clause 1 of the proposed ordinance seeks to disenfranchise Indians enrolled since 1896, from township franchise, and to deprive them of rights hitherto enjoyed by them. We venture to doubt whether it can be established that the proposed legislation is necessary from any point of view and it will certainly be harmful both to Indian and to Imperial interests. General Smuts in his speech at Maritzburg on July 16th, stated that there was no case for proceeding with this legislation pending decision of some point in connection with old Natal law which was before Appellate Court. We have not heard from you as to how matters stand on this point, and are unaware whether difficulty referred to by Smuts has yet disappeared or not. Report of Enquiry Officer appointed by Union Government shows that the number of Asiatic voters in most townships and municipalities is comparatively insignificant. He also found no evidence of the abuse by Asiatics of their present franchise rights. By their previous attitude, for which we are grateful, the Union Governments have shown that they disapprove of the principles of this bill, and we trust that you will do what you can to induce them to maintain the same attitude if bill should, unfortunately, be passed.

TELEGRAM FROM THE SECRETARY OF STATE, No. 99, DATED LONDON, THE 5TH
(RECEIVED THE 6TH) FEBRUARY 1924.

Your telegram of January 16th. Colonial Office have not yet received Hulett's Bill or Indian petition. I have no later information than General Smuts' speech of July 16th last, and statement in telegram from Governor General, South Africa, addressed to you May 29th last, that recent draft Ordinance [*viz.*, that (3-C.) printed on page 14 of my predecessor's despatch No. 6-Overseas, June 28th last], had not been proceeded with and that it was understood that action was to be taken in courts to test decisions on existing law.

It seems doubtful whether Union Government would advise assent to any amending law pending action to test meaning of existing law.

TELEGRAM FROM THE GOVERNOR-GENERAL, SOUTH AFRICA, DATED CAPE TOWN, THE 12TH FEBRUARY 1924.

12th February. On the advice of my Ministers I have reserved Natal Township Franchise Ordinance for further consideration.

Confidential.

GOVERNOR-GENERAL'S OFFICE,
CAPE TOWN,
13th February 1924.

MY LORD,

With reference to my telegram of the 12th February, I have the honour to transmit herewith, for Your Excellency's information, a copy of a despatch which I have addressed to the Secretary of State for the Colonies, regarding the reservation of the "Ordinance to amend the Local Township Law No. 11 of 1881, in respect of the qualification of voters." recently passed by the Provincial Council of Natal.

I have the honour to be,

MY LORD,

Your Excellency's most obedient Servant,

ATHLONE,

Governor-General.

His Excellency

The Right Honourable

The Earl of Reading, G.M.S.I., G.M.I.E., G.C.B., K.C.V.O.,
etc., etc., etc.,

Viceroy of India,

Delhi.

SOUTH AFRICA.

Confidential.

GOVERNOR-GENERAL'S OFFICE,
CAPE TOWN,
13th February 1924.

SIR,

I have the honour to inform you that, acting upon the advice of my Ministers, I have reserved for further consideration the "Ordinance to amend the Local Township Law No. 11 of 1881, in respect of the qualification of voters" recently passed by the Provincial Council of Natal.

2. The Minister of the Interior had indicated to the Provincial Administrator the lines upon which the Council might modify the original Ordinance to make it acceptable to the Union Government and the draft Ordinance forwarded with my despatch No. 168 of the 20th April 1923, to a large extent satisfied these stipulations. The Ordinance was, however, not proceeded with that Session.

3. It is a matter for some surprise that when the Ordinance made its re-appearance this year its provisions should have been of a much more drastic character. A comparison between Clause one in both Ordinances

will show that the simple education test incorporated in the 1923 Ordinance has been eliminated from the new Ordinance in favour of the much more exacting expedient of making the Parliamentary Voters Roll the basis of qualification for Township franchise—a pretension which Ministers are not prepared to countenance.

4. The Union Government's opposition to the Ordinance is aggravated to an even greater extent by the total omission of Clause 4 of the 1923 draft Ordinance which retained for citizens upon whom township franchise had already been conferred the right to continue to vote in Municipal elections.

5. Copies of the 1924 Ordinance are enclosed herewith for your information and that of the Secretary of State for India.

6. I am sending a copy of this despatch to the Viceroy of India.

I have the honour to be,

SIR,

Your most obedient, humble Servant,

(Signed) ATHLONE.

Governor-General.

The Right Honourable J. H. Thomas, M.P.,
etc., etc., etc.,
Colonial Office,
London.

No. 2, 1924.

ORDINANCE

“To amend the Local Township Law No. 11, 1881, in respect of the Qualification of Voters.”

BE IT ENACTED by the Provincial Council of the Province of Natal, as follows:—

Qualification of voters in township. 1. The following words occurring in Section 7 of Law No. 11, 1881—

“persons possessing within the township a qualification entitling them to vote for a member of the Legislative Council,”

are hereby repealed, and the following shall be substituted therefor:

“every person who, being a British subject of the age of twenty-one years and upwards, is—

- (a) The owner of immovable property within the township of the value of £50 or more; or
- (b) The renter of immovable property within the township of the yearly value of £10 or more; or
- (c) Resident within the township and in receipt of an income, inclusive of allowances, equal to £8 per month, or £96 per annum, and who has made application in the prescribed manner:

Provided always no male person shall be placed on the Town Roll who is not entitled to be placed on the Parliamentary Voters' Roll of the Province of Natal, nor shall a female who (not being of European origin) is a descendant in the male line of a person who is debarred by law from being placed on the Parliamentary Voters' Roll aforesaid, be entitled to be placed on the Town Roll aforesaid.

2. Where two or more persons jointly own or rent any immovable property within a township, each such person shall, for the purposes of this Ordinance, be deemed to be the owner or renter of immovable property of the value corresponding to his share of the ownership, occupation or renting.

Joint ownership or occupation.

3. The qualification referred to in Section 4 of Law No. 11, 1881, and the Parliamentary qualification referred to in Section 1 of the Women's Franchise Ordinance No. 12, 1914, shall mean the qualification set forth in Section 1 of this Ordinance.

Any question arising at a meeting held under Section 2 of the Principal Law as to the qualification of any person to vote thereat shall be decided by the Chairman, whose decision shall be final.

4. (1) Every person claiming enrolment in virtue of the qualification mentioned in Sub-section (c) of Section 1 shall, in the month of January, February or March in each year in which enrolment is claimed, deliver to the person preparing the town roll an application signed by him, in the form of the Schedule of this Ordinance.

In the case of a first roll, such application shall be addressed to the Magistrate within one week after the proclamation of the township.

(2) Any person who wilfully makes a false statement in such application shall be liable to a fine not exceeding Fifty Pounds, and shall, on conviction, be disqualified for five years from being enrolled on the town roll of any township.

5. (1) Notwithstanding the foregoing provisions of this Ordinance, the following persons shall not be qualified for enrolment on the town roll:—

General disqualifications.

- (a) Persons who have been convicted of treason or felony and have not received a free pardon: or until the lapse of five years from the expiration of the sentence, convicted of a crime punished with imprisonment with hard labour, without the option of a fine, unless in any of such cases a free pardon has been granted;
- (b) Aliens who have not been naturalised;
- (c) Persons declared to be lunatics or of unsound mind,

(2) Persons incurring any of the foregoing disqualifications shall cease to be voters within the meaning of the Township Laws.

SCHEDULE.

To the Officer charged with preparing the Roll for the Township of(or, in the case of a first Roll) To the Resident Magistrate for the District of.....19.....(Date).....

I request that you will enrol my name in the Town Roll for the Township of.....in terms of Section 1, Paragraph (c) of the Township Franchise Ordinance, 1924.

I am a British subject of the age of twenty-one or upwards, and reside in the said Township.

My income, inclusive of allowances, is equal to £8 sterling per month, or £96 per annum.

My full name is.....
My place of abode is.....
My business or quality is.....

Signature of Applicant.

TELEGRAM FROM NATAL INDIAN CONGRESS, DURBAN, TO VICEROY, SIMLA,
DATED THE 11TH AUGUST 1924.

Boroughs Ordinance 18 of 1924. Disenfranchising Indian Natal Municipalities passed by provincial council notwithstanding protests Indian Community Bill waiting assent Governor General appeal India Government protest and intervene our behalf.

TELEGRAM TO HIS EXCELLENCY THE GOVERNOR GENERAL, UNION OF SOUTH AFRICA, PRETORIA, NO. 612, DATED SIMLA, THE 26TH AUGUST 1924.

Kindly refer to correspondence resting with Your Excellency's despatch of 13th February 1924, regarding Ordinance to amend Natal Local Township Law, XI of 1881, in respect of qualifications of voters. We understand that the Boroughs Ordinance, No. XVIII of 1924, has been passed by Provincial Council, but has not yet received Your Excellency's assent. We are not aware of circumstances in or source from which this Ordinance originated, but would respectfully invite attention to clause 13 which so far as enrolment of Burgesses in future is concerned, makes Parliamentary roll basis for borough franchise, a position which your former Ministers were not prepared to countenance as regards "townships". We also venture to point out that since clause 5 of Ordinance enables any township constituted under Law XI of 1881 to be proclaimed a borough under conditions that may easily be fulfilled, clause 13 may ultimately become operative in all Municipalities in Natal. We gratefully acknowledge fact that in past attitude of Your Excellency's Government towards similar measures has been favourable to protection of existing Indian rights and trust that the same generous attitude will be adopted towards present Ordinance. We shall, however, be glad to know of the action Your Excellency's Ministers propose to take in the matter.

TELEGRAM FROM THE GOVERNOR GENERAL OF SOUTH AFRICA, CAPE TOWN,
TO VICEROY, SIMLA, DATED THE 8TH SEPTEMBER 1924. (CONFIDENTIAL.)

Your telegram dated 26th August and my letter dated 27th August confidential 15/1226. In regard to the abridgment of the rights of Indians in Natal involved by Clause No. 13 of the Boroughs Ordinance, 1924, which has recently been passed by the Provincial Council of Natal, my Ministers point out that the Ordinance has been reserved for further consideration and add that the reasons which prompted them in making this recommendation were mainly the receipt by them of representations in regard to certain sections of the Ordinance but notably from the Indian Congress, Natal in connection with Section 13 as it was held by the Indian community that this section would operate very harshly against that community and more especially as it sought to introduce legislation which had been embodied in a previous ordinance, namely, the Townships Franchise Ordinance which was not assented to when it was passed by the Provincial Council, Natal in the previous Session.

Ministers also had representations from the Congress asking that a deputation might wait upon them to discuss clauses in the Boroughs Ordinance to which Indian community took exception; but as the Ministers were unable fully to consider the desirability of the provisions of the ordinance and to discuss the details thereof with any deputation during the present Parliamentary Session they decided to hold over the full discussion until they return to Pretoria after the present session closes. The representatives of the Indian Congress, Natal have been advised that the deputation will be received later on and Ministers state that when the representations of the deputation have received their consideration they will be prepared to make recommendations as to final action to be taken in regard to the Ordinance.

No. 15/1226.
Confidential.

GOVERNOR-GENERAL'S OFFICE,
CAPE TOWN,
27th August 1924.

MY LORD,

With reference to my Confidential despatch of the 13th February 1924, I have the honour to transmit, for Your Excellency's information, a copy of a despatch which I have addressed to the Secretary of State for the Colonies regarding the reservation of "The Boroughs Ordinance 1924" recently passed by the Provincial Council of Natal.

I have the honour to be,

MY LORD,

Your Excellency's most obedient Servant,

ATHLONE,

Governor-General.

His Excellency

The Right Honourable

The Earl of Reading,

G.M.S.I., G.M.I.E., G.C.B., K.C.V.O.,

etc.,

etc.,

etc.,

Viceroy of India,

Delhi.

SOUTH AFRICA.

Confidential.

GOVERNOR-GENERAL'S OFFICE,
CAPE TOWN,
August 1924.

SIR,

I have the honour to transmit, for your information, copies of "The Boroughs Ordinance 1924" passed by the Provincial Council of Natal which on the advice of my Ministers I have reserved for further consideration.

2. My Government has taken this action in deference to the protests of the Indian community whose objections are chiefly directed against Clause 13 of the Bill, which restricts the Municipal franchise to possessors of the Parliamentary voters' qualification, although this is modified in some degree by a proviso that those whose names were on the Municipal Voters' Roll on the 1st August 1924, shall retain their existing rights. In this connection I would remind you that Indians in Natal, though not possessing the Parliamentary franchise, have always enjoyed the rights of Municipal voters. The Indians claim further that the Ordinance curtails their rights as regards the sale of land and the grant of licences but these are matters of minor importance. I enclose a copy

16th August 1924.

of a letter addressed to the Secretary for the Interior by the Natal Indian Congress dealing exhaustively with these points.

3. The passing of this Ordinance is the latest of the series of attempts, which have been made by the Natal Provincial Council to impose disabilities on the Indians in that Province and I would refer you to my despatch Confidential of the 13th February 1924, regarding the reservation of the Local Townships Ordinance, 1924, in which it was sought to incorporate a clause of similar effect without any qualification. An opportunity will be afforded to the Indians during the recess of making representations to the Government, and, as the Ordinance in terms of Clause 1 does not come into

force until the 1st August 1925, my Ministers have ample time to go into the matter with the Provincial Administration.

4. A copy of this despatch has been forwarded to the Viceroy of India.

I have the honour to be,

SIR,

Your most obedient, humble Servant,

(Sd.) ATHLONE,

Governor-General.

The Right Honourable J. H. Thomas, M.P.,
etc., etc., etc.,
Colonial Office, London.

(Copy.)

NATAL INDIAN CONGRESS.
175, GREY STREET, DURBAN,
16th August 1924.

THE SECRETARY FOR THE INTERIOR, CAPE TOWN.

SIR,

C.T. 135.

We beg to acknowledge yours herein of the 5th instant on the subject of the Boroughs Ordinance No. 18 of 1924, recently passed by the Natal Provincial Council. Your communication was duly placed before our Congress and we have been advised to forward for Minister's consideration the points following which, among others, constitute the objections of the Community represented by our Congress to the provisions of the Ordinance aforesaid.

Before enumerating such objections however, our Congress desires to observe that the fact of the Ordinance having been under discussion with the Natal Authorities for a considerable time, would appear to it to be additional reason why our Community should be afforded somewhat extended consideration in their deliberation of the situation so suddenly arising.

As regards your observation that "it is extremely inconvenient to have a request for an interview put forward after the Ordinance has been passed by the Provincial Council of Natal", our Congress cannot see how it possibly could have moved for an interview before the Ordinance had, as a matter of fact, passed through the Provincial Council. But the fact is, so soon as the Draft Ordinance was made public in the Provincial Gazette, and even before the discussion thereof, our Congress laid its protest before the Provincial Council and thereafter sought for and secured an interview with the Administrator who advised us to bring our objections in evidence before the Select Committee appointed hereafter. Our Congress duly abided by the advice proffered by His Honour, but it remains now to be stated with regret, that all such our representations before the Select Committee would appear to have ended abortively, by reason of the Ordinance being passed into law as originally drafted word for word, in so far as the same differentially affects the Indian community.

1. *Chapter IV, Section 13, sub-section (1). Qualification of Burgesses.*—Anent Section 13, sub-section (1) our Congress objects that its provisions are directed to the categorical removal of the right enjoyed by the Natal Indian Community since the date of the first inception of municipalities within this Province. Our Congress denies *in toto* the authority of the Provincial Council to claim or to exercise such powers of destruction of pre-existing rights under any known law operating within the Union. It is not the purpose of our Congress' present representation to

embark upon any profound disguise of law on the subject, save and except that our Congress would reiterate that the Natal Provincial Council by promulgating Section 13, sub-section (1), has assumed unto itself powers unknown to it under the Parent Act constituting such Council, *i.e.*, the South Africa Act. Section 13, sub-section (1), provides that every person being the owner of rateable property of the value of £50 or who occupies property of the rental value of £10 per annum may be enrolled as a burgess qualified to exercise the municipal vote subject at the same time to such person being entitled to exercise the Parliamentary franchise.

Now by the Natal Act No. 8 of 1896, Natal Indians have been arbitrarily dis-enfranchised as being the descendants of a people not in the enjoyment of representative parliamentary institutions. This enactment was passed while Natal was yet an independent State in South Africa. By the passage of the South Africa Act, the Natal Act merged into the Parent Act and has become, as it were, an integral part of it. After Union, and by the passage of the South Africa Act, Natal ceased to be an independent State, and therefore on and after the date of the South Africa Act, the present Province of Natal cannot now, as it were, build upon powers that she enjoyed as an independent State before the Union. Secondly, it should not be difficult to see that Section 13, sub-section (1), presumes to legislate for the Union Parliament in that the person qualified as a provincial voter is, *ipso facto*, qualified as a Parliamentary voter, and the sub-section boldly relates to the Parliamentary voter by its reference that persons disentitled to exercise the Parliamentary vote shall not be entitled to exercise the municipal vote. Our Congress submits that the lack of Parliamentary qualifications on the part of Indians cannot be made the starting off ground for legislation directed to destroy local municipal rights. Any legislation relating to and being associated with the parliamentary franchise, it is respectfully submitted, can be adumbrated and initiated by the Union Legislature alone.

Our Congress therefore most emphatically holds that Section 13, sub-section (1) of the Ordinance is wholly *ultra vires* of the powers of the Natal Provincial Council.

Finally as respecting this sub-section, it is pointed out that the provisions thereof are designed to operate retrospectively. The conclusion of clause (b) of the sub-section reads "provided however that no person who at the 1st day of July 1924 was enrolled as a burgess of any Borough shall be disqualified for or disentitled to such enrolment for non-compliance with the foregoing provision in regard to parliamentary qualifications". The operative effect of the words under quotation marks is clearly this, that in view of the Ordinance coming into force on the 1st day of August 1925, all Indians enrolling themselves as between the 1st day of July 1924 and the 1st day of August 1925, shall on the date of promulgation, *ipso facto*, cease to enjoy the franchise and automatically drop out of the Burgess Roll. Our Congress protests that there is no precedent for legislation of the nature operating and taking effect retrospectively, but as our Congress, as set out above, is confirmed as to the invalidity of the section as affecting the Indian community, it will not enlarge upon this aspect of retrospective operation of the law.

* * * * *

We beg to remain,

SIR,

Obediently Yours,

(Sgd.) SORABJU RUSTONYU,

(Sgd.) V. S. C. PATHER,

Jt. Honry. Secretaries, Natal Indian Congress.

TELEGRAM TO HIS EXCELLENCY THE GOVERNOR GENERAL, UNION OF SOUTH AFRICA, PRETORIA, NO. 859, DATED THE 13TH DECEMBER 1924.

Kindly refer to Your Excellency's confidential despatch No. 15-1226, dated 27th August 1924, regarding reservation of the Borough's Ordinance, 1924, passed by Provincial Council of Natal. We now understand from report sent by Reuters that Union Cabinet propose to deal immediately with the Ordinance in question which recently formed subject of representations by Indian deputation principally from Natal. We shall be grateful if as requested in concluding sentence of our telegram No. 612, dated the 26th August 1924, Your Excellency will inform us of the action which your ministers propose to take in the matter.

TELEGRAM FROM THE GOVERNOR GENERAL, PRETORIA, DATED THE 15TH DECEMBER 1924.

Confidential. Your telegram dated 13th December, No. 859, regarding the Natal Borough's Ordinance has been referred to Ministers and their reply will be communicated to you when received, but in the meantime it may be of interest to you to learn explanation given by my Prime Minister in conversation of Government's reasons for their deciding to recommend that assent should be given to the Ordinance. Prime Minister said that he was reluctant to curtail in any way the powers of dealing with purely domestic questions conferred on the province by the South Africa Act.

Only in the event of Provincial legislation affecting the Union as a whole or if the Union contemplated legislation dealing with same subject did he consider it was justifiable to veto the provincial legislation. Case of Borough's Ordinance presented none of these features as the only province which could possibly be affected was Transvaal and the Union Government were unable to deal with Asiatic questions by legislation in immediate future. Ordinance has been assented to.

NATAL RURAL DEALERS' LICENSING ORDINANCE.

Ordinance No. 9 of 1921.

ORDINANCE to amend the Laws relating to the grant of Licences to Wholesale and Retail Dealers in the Rural Districts of Natal.

Be it enacted by the Provincial Council of the Province of Natal, as follows:—

1. This Ordinance may be cited as "The Rural Dealers' Licensing Ordinance, 1921," and shall come into force on the 1st day of November 1921.
Short Title and Commencement.
2. This Ordinance shall extend to so much of the Province as lies outside the boundaries of Boroughs and Local Townships, and nothing therein contained shall apply to or affect Boroughs or Local Townships.
Scope of the Ordinance.
3. The expression of "The Administrator" as used in this Ordinance means the Administrator acting under the authority of the Executive Committee. "Licence" means any licence to which Act No. 18, 1897, applies.
Short terms used.
4. (1) Licensing Boards for hearing and determining applications for licences shall be constituted in each county throughout the Province, save as is provided in regard to the territory of Zululand. The Northern Districts as defined in Natal Act No. 1 of 1903 shall for the purposes of this Ordinance be constituted as one county.
Licensing Boards.

One such Board may be constituted for a county or combined counties, or Boards may be appointed for different parts of a County.

(2) Sections 4 and 6 of Act No. 18, 1897, in so far as they relate to the area to which this Ordinance applies, the proviso of section 5 (1) of Ordinance No. 6, 1916, and sections 6 and 7 of the same Ordinance, are hereby repealed. Reference in Act No. 18, 1897, and any amending laws to Licensing Officers or Boards shall be construed as references to Licensing Boards under this Ordinance. The words "the next section" occurring in section 5 of Act No. 18, 1897, shall be altered to "section 2 of Act No. 22, 1909".

5.—(1) The Administrator may divide any county or any other area previously served by one Licensing Board into two or more areas or combine two or more such areas contained in one county, and may appoint fresh Boards for the newly-defined areas. In either case the existing Boards shall be dissolved as from the date fixed for the establishment of the new areas.

Re-arrangement of areas.

(2) The Administrator may also alter the boundaries of any existing areas, and it shall be in his discretion according to the circumstances to dissolve the existing Boards and appoint new ones or to allocate the existing Boards to the altered areas.

6.—(1) Each Licensing Board shall consist of a chairman and four other members appointed by the Administrator.

Constitution of Boards.

(2) No person shall be qualified for appointment as a member of a Licensing Board unless he is a resident, owner or renter of a house or land in the county or area and is enrolled as a voter for Parliament.

7.—(1) Licensing Boards shall be appointed for successive terms of three years.

Duration of Boards: Vacancies and absence from meetings.

(2) When a vacancy occurs through the resignation of a member or otherwise, the Administrator shall appoint a qualified person to fill the vacancy till the end of the current term.

(3) Should a member be unable to attend meeting or be recused or otherwise disqualified from sitting upon any application, the Administrator may, without obtaining the authority of the Executive Committee, appoint any person to act in his place.

8. All appointments of Licensing Boards, with the names of the chairman and their members; all appointments made to fill vacancies; the creation of all areas, and a description of the boundaries of all new or altered areas (unless such an area includes an entire county) shall be published in the Provincial Gazette, with a notification of the date on which anything so done is to take effect, and such publication shall for all purposes be sufficient proof of the matters notified.

Gazetting appointments and areas.

9.—(1) The Boards shall meet as often as may be required for the despatch of business.

Meetings.

(2) A meeting shall be duly constituted by a quorum of four members, notwithstanding that owing to a vacancy the Board may not at the time be fully constituted.

(3) In the absence of the chairman a member may be chosen by those present to act as chairman.

(4) No members shall sit upon any case in which he is directly or indirectly interested, or if an applicant or objector is his tenant or employee or that of his firm or partner, or if the premises in question are upon or within five miles from any premises licensed under Act No. 18, 1897, owned or occupied by him or his firm or partner.

10. All applications for licences shall be addressed to the officer appointed for that purpose by the Administrator.

Application for licences.

11. Any person resident within the area of the Board or within five miles from the premises sought to be licensed, or owning or occupying similarly licensed premises within the same distance, or an officer of police on

Objections.

behalf of the police department, may lodge objections and oppose any licence, on compliance with the rules in that behalf.

12. The Board may in authorising a licence direct it to be suspended for the erection or completion of buildings according to approved plans, with any modifications that may be authorised, or pending the execution of repairs or of any necessary alterations in the existing premises.

Suspended Licences.

13. If an application has been refused, no further application for a licence for the same premises may be brought till after the expiration of 12 months from the date of the application which has been refused.

Restriction upon renewed applications.

14.—(1) No licence shall be issued unless and until its grant has been authorised by the Board.

Issue of licences.

(2) Licences shall be signed and issued by the Receivers of Revenue upon a certificate from the proper officer that the licence has been approved.

A suspended licence shall not be issued until the chairman of the Board, or in his absence, another member on his behalf, certifies that the required conditions have been complied with, nor in the case of an appeal, till the appeal has been determined.

15. The following words shall be added to section 2 of Act No. 22, 1909 :—

Application by objectors for re-hearing.

Any person alleging that sufficient notice of the application has not been given in terms of the rules, shall also, if he would have been entitled to lodge objections, be entitled to apply for an order directing the application to be re-heard on proper notice.

16. Appeals shall be lodged and set down for hearing within such limit of time as the rules may prescribe, unless in any case the Court sees fit to grant an extension of time for appealing.

Time limit for appeals.

17. The chairman or other member of a Licensing Board may attend at the hearing of an appeal or other legal proceeding relative to the action of the Board, and may make any explanations asked for by the Court, but the Board and its members shall not be deemed a party to an appeal.

Attendance of members of Boards before the Court.

18. Subpoenas under section 4 of Ordinance No. 6, 1916, may be signed by any member of a Licensing Board.

Subpoenas.

19. The reference in section 7 of Act No. 18, 1897, to the Insolvency Law shall be altered to section 139 of the Insolvency Act No. 32, 1916, or any amendment thereof, as regards the keeping of proper books or records in the English or Dutch language.

Amended reference to Insolvency Act.

20. The taxation of costs in terms of section 5 (3) of Ordinance No. 6, 1916, shall be by the taxing officer of the Magistrate's Court.

Taxation of costs.

21. The rules under Act No. 18, 1897, may provide for matters of every kind incidental to the administration of this Ordinance.

Rules.

Such rules may require the deposit of the licence money at the time of application, and its return if the licence is refused.

22. The territory known as the Province of Zululand shall be excluded from the operation of this Ordinance in so far as it relates to Licensing Boards, references to which in other parts of this Ordinance shall accordingly be construed in relation to the existing licensing authorities.

Special provision in regard to Zululand.

The Administrator may, however, by proclamation bring any part of Zululand not included in the Native Reserves under the operation of the clauses of the Ordinance relating to Licensing Boards, and upon the taking effect of such proclamation Licensing Boards shall be substituted for the

pre-existing licensing authorities in the district so proclaimed, sections 4 and 6 of Act No. 31, 1905, being to that extent superseded for the purposes of licences coming under Act No. 18, 1897.

PARAPHRASE TELEGRAM FROM THE GOVERNOR-GENERAL OF THE UNION OF SOUTH AFRICA TO THE SECRETARY OF STATE FOR THE COLONIES, 6TH AUGUST 1921.

Executive Council Minute has been signed by me to-day withholding assent to Natal Rural Dealers' Licensing Ordinance, 1921. When it was before Natal Council this Ordinance aroused considerable Indian resentment.—ARTHUR FREDERICK.

India Office to Colonial Office.

I. & O. 1532.

INDIA OFFICE,

23rd September 1921.

SIR,

I am directed by the Secretary of State for India to acknowledge receipt of your letter of * * * and of the enclosed copy of the Natal Rural Dealers' Licensing Ordinance, which is returned herewith as requested.

* * * * *

* * * Mr. Secretary Montagu would be glad to receive as early as possible, for transmission to the Government of India, any further information that may be available as to the objects of the introduction of the Ordinance, the nature of the objections which are understood to have been expressed by the Indian community in Natal, and the considerations which influenced the Governor General in Council to withhold his assent. If information on these points is not available Mr. Montagu would suggest for Mr. Churchill's consideration that, with a view to amplifying the information which may be gathered from the Ordinance itself, a telegram should be despatched to the Governor-General requesting His Royal Highness to report by telegraph.

It is observed that, if the Ordinance had become law, clause 4 (2) would have repeated section 6 of Natal Act No. 18 of 1897 and sections 6 and 7 of Natal Ordinance No. 6 of 1916, which relate to appeals from the refusal of licences.

I am, etc.,

L. J. KERSHAW, *Secretary,*
Industries and Overseas Department.

The Under Secretary of State,
Colonial Office.

Colonial Office to India Office.

No. 48028.

DOWNING STREET,

3rd October 1921.

SIR,

I am directed by Mr. Secretary Churchill to acknowledge the receipt of your letter I. and O. 1532 of the 23rd September, regarding the Natal Rural

Dealers' Licensing Ordinance, and to request you to inform Mr. Secretary Montagu that the Governor-General of the Union of South Africa is being asked by telegraph to supply the information desired.

I am, etc.,

HENRY LAMBERT.

The Under Secretary of State for India.

Colonial Office to India Office.

No. 55700.

DOWNING STREET,

15th November 1921.

SIR,

With reference to your letter I. and O. 1532 of the 23rd September, I am directed by Mr. Secretary Churchill to transmit to you, for the information of Mr. Secretary Montagu, an extract from a telegram from the Governor-General of the Union of South Africa regarding the Natal Rural Dealers' Licensing Ordinance.

2. A copy of the opinion of one of the Union Law Advisers on this Ordinance, in view of the terms of which generally assent to the Ordinance was withheld, is also enclosed.

I am, etc.,

H. J. READ.

The Under Secretary of State for India.

ANNEX 1:—*Extract from a telegram from the Governor-General of the Union of South Africa to the Secretary of State for the Colonies, 7th November 1921.*

Your telegram of 30th September. Object of Natal Rural Dealers' Licensing Ordinance is stated to have been vesting of licensing authority in district Boards instead of single officer. Representatives of Natal Indian Congress attended before Select Committee, and their views are summarised in following four points in written statement submitted to Committee:—

1. That the Chairman of the Licensing Board should be a Magistrate or an Advocate.
2. That the consideration of any application should be guided by a code of regulations and should not be left to discretion of the officer administering the law.
3. That there should be a right of appeal in all licensing cases to the local division of the Supreme Court.
4. That in the case of refusal of any application reason for such refusal should be filed for record within a specified time.

* * * * *

ANNEX 2:—*The Rural Dealers' Licence Ordinance (Natal), 1921.*

Section 2 of this Ordinance clearly limits its area of operation to that part of the Province of Natal which lies outside boroughs and local townships; yet subsection (2) of section 4, by applying the words "in so far as they relate to the area to which this Ordinance applies" only to sections 4 and 6 of Act No. 18 of 1897, and not to the other provisions repealed by the subsection, namely, the proviso of section 5 (1) and sections 6 and 7 of Ordinance No. 6 of 1916, suggests the idea that the parts of Ordinance No. 6 of 1916 mentioned are repealed in every respect. In any question arising at law as to this inconsistency the Courts would probably say that the provision of section 2 is effective, and that, notwithstanding the contrary suggestion in subsection (2) of section 4, the parts indicated of Ordinance No. 6 of

1916 are repealed only in so far as their applicability to areas outside boroughs and townships is concerned. It is regrettable, however, that the ambiguity should have occurred.

Accepting it then that the intention is to confine the operation of the repeals enacted by subsection (2) of section 4 of the Ordinance only to areas outside boroughs and local townships, the question falls for consideration whether the Ordinance takes away any right existing at the commencement of the Financial Relations Act No. 10 of 1913 to appeal to a Court of Law against the refusal to renew any license to trade which was in existence on that date. If the Ordinance does this, it is *ultra vires* as being repugnant to the provision of subsection (3) of section 11 of that Act.

In this connection the matter of the repeal of section 6 of Act No. 18 of 1897 and sections 6 and 7 of Ordinance No. 6 of 1916 demands consideration. The first of these provisions enacts that in respect of a Licensing Officer's decision against the grant of a wholesale or retail licence there shall be a right of appeal by the applicant, or any other person having an interest in the question, to the Town Council or the Town Board, or if the licence is sought for elsewhere than in a borough or township, to the Licensing Board of the Division appointed under the Liquor Act, 1896. Section 6 of Ordinance No. 6 of 1916 grants a similar right of appeal against a Licensing Officer's decision in the matter of the transfer of a licence. By section 7 of Ordinance No. 6 of 1916 the Administrator is empowered, upon a resolution to that effect being passed by the Executive Committee, to proclaim that appeals from decisions of the Licensing Officer shall be heard and determined by a Board appointed by him for the whole Province or for any specific part of the Province instead of by the Licensing Board appointed by section 6 of Act No. 18 of 1897.

It appears that the substantial difference between the law previously existing and that now proposed to be put into operation is that whereas in areas outside boroughs and townships applications for wholesale or retail licences were made to a Licensing Officer with appeal to a certain Board, applications will now have to be made directly to a local Board constituted for the area in which the licence is desired, consisting of chairman and four other members appointed by the Administrator. Applications for licences are to be addressed to the Officer appointed for that purpose by the Administrator, and the Board are to meet as often as may be required for the despatch of business.

Thus far it does not appear that this enactment conflicts with the provision of subsection (3) of section 11 of Act No. 10 of 1913. The Board to which appeal might previously have been made from the decision of a Licensing Officer was not a Court of Law within the meaning of that subsection, but an administrative body. Whether an applicant for a licence under the new provisions is likely to suffer any prejudice by reason of the fact that instead of his application being adjudicated upon in the first instance by a Licensing Officer—presumably a public officer free from local prejudices—with appeal to the Liquor Licensing Board of the area or a Board constituted by the Administrator under section 7 of Ordinance No. 6 of 1916, he must now make his application directly to a local Board specially constituted for the area by the Administrator, which may to a large extent reflect the popular feeling of the area, is another matter which, however, does not touch the legal question involved.

The right of appeal to the Supreme Court or to a Circuit Court against a decision given against the applicant for the renewal of a licence or to an unsuccessful objector before the Appeal Board granted by section 2 of Act No. 22 of 1909, was, it seems, proposed by the framers of the Ordinance to be retained; but the drafting of the Ordinance is so faulty as probably to result in a construction which might deprive an applicant for a wholesale or retail licence in a rural area of such right of appeal. For this right of appeal given by section 2 of Act No. 22 of 1909, is, in the express terms of that section, against a decision given under section 6 of Act No. 18 of 1897; but section 6 of Act No. 18 of 1897, in so far as rural areas are concerned, is repealed by subsection (2) of section 4 of the new Ordinance. It was

evidently thought by the framers of the new Ordinance that the provision made in subsection (2) of section 4, that reference to Licensing Officers or Boards in Act No. 18 of 1897, or its amendments should be construed as references to Licensing Boards under this Ordinance, combined with the provision that the words "the next section" occurring in section 5 of Act No. 18 of 1897, should be altered to "section 2 of Act No. 22 of 1909," would result in the retention, so far as rural areas were concerned, of the right of appeal granted by section 2 of Act No. 22 of 1909. But the fact remains that the appeal granted under section 2 of Act No. 22 of 1909, is one against a decision given under section 6 of Act No. 18 of 1897, which section, so far as rural areas are concerned, is repealed.

The tendency of the Courts to adhere to the literal meaning of statutory provisions even where such meaning might vary from what is elsewhere indicated in the statute as the actual intention of the legislature was well exemplified in the case of *Ree v. James* (1917, C.P.D. 596). The Cape legislature, in passing the Native Voters Relief Act, No. 39 of 1887, provided in section 6 a penalty for anyone who should personate any registered voter in applying for the certificate provided in the fourth section of the Act. But the certificate in question was mentioned not in the fourth section of the Act but in the fifth section, and the Court quashed a conviction under section 6 for this offence of personation, holding that on the literal construction of the section no offence was created. In the result the public mischief which the section was designed to meet continued until the matter was rectified by the Legislature by Act No. 24 of 1920.

If then on a true construction of the provision now under consideration, the right of appeal to a Court from the Board's decision hitherto open to applicants in rural areas for the renewals of wholesale and retail dealers' licences is withdrawn, the provision is *ultra vires* as being in conflict with subsection (3) of section 11 of Act No. 10 of 1913. But it is probable that redress against such an invalid provision would be extended by the Courts, for at the instance of an unsuccessful applicant for renewal before the Board, who was prepared to test the matter by appealing under the hitherto existing provision of section 2 of Act No. 22 of 1909, the Courts would investigate the matter and in all probability rule the provision withdrawing the right of appeal to be *ultra vires*. In the ultimate result, therefore, the present right of appeal would remain.

Sections 15, 16 and 17 of the proposed Ordinance are *ultra vires*. The Council has no power to establish or alter any procedure of the Supreme Court. See *Germiston Municipality v. Angehrn and Piel* (1913, T.P.D. 135).

Section 20 of the Ordinance is *ultra vires*. It is not competent for the Council to impose duties upon the Taxing Officers of Magistrate's Courts.

The Ordinance, it may be added, is not open to successful attack at law on the ground that it treats of a matter specially or differentially affecting Asiatics.

C. LANSDOWN.

Department of Justice, Pretoria,
22nd July 1921.

Colonial Office to India Office.

DOWNING STREET,
30th November 1921.

No. 59133.

Sir,

I am directed by the Secretary of State for the Colonies to transmit to you, for the information of Mr. Secretary Montagu, a copy of the paper

noted below on the subject of the proposed Rural Dealers' Licensing Ordinance (Natal).

I am, &c.,

J. E. MASTERTON-SMITH.

The Under Secretary of State
for India.

From the Governor-General of the Union of South Africa, No. 723, dated 7th November 1921 (with enclosure).

ANNEX:—

No. 723.

GOVERNOR-GENERAL'S OFFICE,
PRETORIA,
7th November 1921.

SIR,

In confirmation of my telegram of the 7th November, I have the honour to transmit the accompanying copy of a minute by the Secretary for the Interior regarding the proposed Rural Dealers' Licensing Ordinance (Natal) which has been forwarded to me in response to my enquiry as to what reply Ministers desired should be returned to your telegram of the 30th September.

I have, &c.,

ARTHUR FREDERICK,
Governor-General.

The Secretary of State,
Colonial Office.

Enclosure in above.

DEPARTMENT OF THE INTERIOR,
PRETORIA,
31st October 1921.

No. 11/84/25.

SIR,

With reference to your minute No. P.M./181/7/20 of the 7th instant, relative to the Natal Rural Dealers' Licensing Ordinance, I have to inform you that the Provincial Secretary, Pietermaritzburg, advises me that the object of this amending legislation was to abolish the existing practice of a single officer dealing with these licences and to vest such authority in District Licensing Boards. During each of the sessions of the Natal Provincial Council from 1917 onwards, the question of amending the Retail Licensing Laws of the Province was urged, and in July 1920, a formal resolution was tabled that legislation should be introduced, if possible, during that session. The Ordinance, as originally introduced in the session of 1920, included municipalities and local townships and provided for the constitution of a Licensing Board for the whole Province of Natal or separate Boards for different areas, with the right of appeal to a special Board to be appointed by the Administrator. Important amendments were, however, introduced when the Ordinance was in Select Committee, and the Ordinance as finally submitted is the Rural Dealers' Licensing Ordinance, 1921, to which His Royal Highness the Governor-General in Council withheld his assent on the 6th August 1921.

With regard to the attitude of Indians, the Provincial Secretary states that it is well known that for many years past the Indian community has consistently raised objections to Natal Act No. 18 of 1897, which, in the case of rural areas, empowers the Licensing Officer to grant or refuse licences in his discretion, subject only to a right of appeal to the Board constituted

under Act No. 38 of 1896 (Natal). The right of appeal to the Supreme Court in the case of the renewal of licences was conceded by Act No. 22 of 1909 (Natal), and this right was reserved in the draft amending Ordinance in question. Representatives of the Natal Indian Congress attended before the Select Committee to give evidence, which took the form of a written statement, and the views of the Congress are summarised in the following four points given at the end of the statement, viz. :—

- (1) That the Chairman of the Licensing Board should be a Magistrate or an Advocate.
- (2) That the consideration of any application should be guided by a code of regulations and should not be left to the discretion of the officer administering the law.
- (3) That there should be a right of appeal in all licensing cases to the local division of the Supreme Court.
- (4) That in the case of refusal of any application reasons for such refusal should be filed for record within a specified time.

Assent was withheld generally in view of the reports of Mr. Lansdown's report, and there is no objection to a copy of that report being communicated to the Government of India.

I am, &c.,

H. B. SHAWE,

Secretary for the Interior.

The Secretary to the Prime Minister,
Pretoria.

* * * * *

LETTER FROM THE SECRETARY, INDUSTRIES AND OVERSEAS DEPARTMENT,
INDIA OFFICE, No. I. & O.-896—22, DATED THE 5TH APRIL 1922.

SUBJECT.—*The Natal Rural Dealers' Licensing Ordinance* * * * * *
* * * * * *reported re-introduction into the Provincial Council.*

* * * * * I am directed to forward,
for information copy of the following papers on the above subject :—

From Indians Overseas Association, dated 22nd March 1922, and
enclosure.

To Colonial Office, dated 1st April 1922.

INDIANS OVERSEAS ASSOCIATION,
47-48, DANES INN HOUSE,
265, STRAND, LONDON, W. C.-2,
March 22nd, 1922.

SIR,

I have the honour to enclose herewith a copy of a telegram received by my Association from the Peter-Maritzburg Branch of the Natal Indian Congress, dated the 21st instant.

2. My Committee beg to request that the Secretary of State in Council will take this matter up at an early date with the Colonial Office, with a view to avoid further friction in Natal.

I have the honour to be,

SIR,

Your obedient Servant,

H. S. L. POLAK,

Honorary Secretary.

The Under Secretary of State,
India Office,
S. W.-1.

COPY OF TELEGRAM RECEIVED BY THE INDIANS OVERSEAS ASSOCIATION FROM THE NATAL INDIAN CONGRESS, P' MARITZBURG, DATED THE 21ST (RECEIVED 22ND) MARCH 1922.

* * * * * Licensing Bill
operating in rural districts abolishing rights of appeal to board being re-introduced Natal Council now similar measure vetoed last year. Indians seriously view bill as depriving existing rights appeal through you Imperial "Government Intervention."

Industries.
I. & O.-896.

1st April 1922.

SIR,

With reference to the letter from this Office, * * * * *
relating to the Natal Rural Dealers' Licensing Ordinance * * * * *
* * * I am directed by Viscount Peel to transmit for the informa-
tion of Mr. Secretary Churchill copy of a letter, dated the 22nd March 1922,
which has been received from the Indians Overseas Association, with en-
closure, from which it appears that similar bill is now being introduced
again in the Provincial Council.

I am,
SIR,

Your obedient Servant,

L. J. KERSHAW,

Secretary, Industries and Overseas Department.

The Under Secretary of State,
Colonial Office.

LETTER FROM THE ASSISTANT SECRETARY, INDUSTRIES AND OVERSEAS DE-
PARTMENT, INDIA OFFICE, NO. I. & O.-1081-22, DATED THE 13TH APRIL
1922.

SUBJECT.—*The Natal Rural Dealers' Licensing Ordinance* * * * * *
* * * * * reported re-introduction into the Provincial
Council.

With reference to Sir L. Kershaw's letter of the 5th April No. I. & O.-
896-22, I am directed to forward, for information, copy of the letter from
the Colonial Office, dated the 8th April 1922, and enclosure, on the above
subject.

15707-22.

DOWNING STREET,

3th April 1922.

SIR,

I am directed by Mr. Secretary Churchill to acknowledge the receipt
of your letter I. & O.-896-22 of the 1st April regarding the re-introduc-
tion of the * * * * * Natal Rural
Dealers' Licensing Ordinance.

2. * * * * *
Mr. Churchill has addressed to the Governor-General of the Union of
South Africa a despatch, of which a copy is enclosed, regarding these
particular Ordinances.

I am, etc.,

(Sd.) C. T. DAVIS.

The Under Secretary of State,
India Office.

UNION OF SOUTH AFRICA.

No. 122.

DOWNING STREET,
8th April 1922.

SIR,

* * * * *
 * * * * * I have the honour to request you to inform your Ministers that according to a telegram from the Natal Indian Congress, Peter-Maritzburg, to the Indians Overseas Association, a copy of which has been received at the India Office, the Natal Rural Dealers' Licensing Ordinance is being re-introduced into the Provincial Council.

2. In this connection I have to refer to my despatch Dominions No. 32 of the 27th January, and to state that the Secretary of State for India would be obliged if your Ministers could arrange to send to him, and also to the Government of India direct, copies of this Bill, with any other information on the subject that may be of interest, and to keep him and the Government of India informed of the position.

I have, etc.,

WINSTON S. CHURCHILL.

Governor General

Major General

His Royal Highness

Prince Arthur of Connaught,

K.G., K.T., G.C.M.G., G.C.V.O., C.B.,

etc., etc., etc.

No. 18345.

DOWNING STREET,
9th May 1922.

SIR,

* * * * *
 * * * * * I am directed by Mr. Secretary Churchill to transmit to you for the information of Viscount Peel, copies of a new draft Rural Dealers' Licensing Ordinance, which has recently been published by the Natal Provincial Administration.

2. * * * * *
 * * * * *
 * * * * *

3. As regards the latter it will be observed that the point mentioned in the legal opinion on the previous Rural Dealers' Licensing Ordinance, a copy of which was enclosed in the letter from this Department of the 15th November 1921, as to the right of appeal, has been met by an express provision extending the right of appeal granted in Act No. 22 of 1909 to appeals against decisions of a Licensing Board appointed under the Ordinance.

4. Of the sections (Nos. 15, 16, 17 and 20) which were definitely stated to be *ultra vires*, Nos. 16 and 17 do not appear in the new draft. Section 15 has been expanded. Section 20 has been amended to meet the objection made.

5. Otherwise the terms of the new draft follow the lines of the previous Ordinance.

I am, etc.,

C. T. DAVIS.

The Under Secretary of State
for India.

ANNEX 1:—

ANNEX 2:—

DRAFT ORDINANCE "To amend the Laws relating to the grant of Licences to Wholesale and Retail Dealers in the Rural Districts of Natal."

Be it enacted by the Provincial Council of the Province of Natal as follows:—

1. This Ordinance may be cited as "The Rural Dealers' Licensing Ordinance, 1922", and shall come into force on the 1st day of November 1922.
Short Title and Commencement.
2. This Ordinance shall extend to so much of the Province as lies outside the boundaries of Boroughs and Local Townships, and nothing therein contained shall apply to or affect Boroughs or Local Townships.
Scope of the Ordinance.
3. The expression "The Administrator" as used in this Ordinance means the Administrator acting under the authority of the Executive Committee. "Licence" means any licence to which Act No. 18, 1897, applies.
Short terms used.
4. (1) Licensing Boards for hearing and determining applications for licences shall be constituted in each county throughout the Province, save as is provided in regard to the territory of Zululand. The Northern Districts as defined in Natal Act No. 1 of 1903 shall for the purposes of this Ordinance be constituted as one county.
Licensing Boards.

One such Board may be constituted for a county or combined counties, or Boards may be appointed for different parts of a county.

(2) Sections 4 and 6 of Act No. 18, 1897, in so far as they relate to the area to which this Ordinance applies, the proviso of section 5 (1) of Ordinance No. 6, 1916, and sections 6 and 7 of the same Ordinance, are hereby repealed. Reference in Act No. 18, 1897, and any amending laws to Licensing Officers or Boards shall be construed as references to Licensing Boards under this Ordinance. The words "the next section" occurring in section 5 of Act No. 18, 1897, shall be altered to "section 2 of Act No. 22, 1909", and the reference in the last-mentioned section to any decision given under section 6 of Act No. 18, 1897, shall for the purposes of this Ordinance be construed as a reference to a decision of a Licensing Board under this Ordinance.

5. (1) The Administrator may divide any county or any other area previously served by one Licensing Board into two or more areas or combine two or more such areas contained in one county, and may appoint fresh Boards for the newly-defined areas. In either case the existing Boards shall be dissolved as from the date fixed for the establishment of the new areas.
Re-arrangement of areas.

(2) The Administrator may also alter the boundaries of any existing areas, and it shall be in his discretion according to the circumstances to dissolve the existing Boards and appoint new ones or to allocate the existing Boards to the altered areas.

6. (1) Each Licensing Board shall consist of a chairman and four other members appointed by the Administrator.
Constitution of Boards.

(2) No person shall be qualified for appointment as a member of a Licensing Board unless he is a resident, owner or renter of a house or land in the county or area and is enrolled as a voter for Parliament.

Duration of Boards: Vacancies and absence from meetings.

7. (1) Licensing Boards shall be appointed for successive terms of three years.

(2) When a vacancy occurs through the resignation of a member or otherwise, the Administrator shall appoint a qualified person to fill the vacancy till the end of the current term.

(3) Should a member be unable to attend a meeting or be recused or otherwise disqualified from sitting upon any application, the Administrator may, without obtaining the authority of the Executive Committee, appoint any person to act in his place.

8. All appointments of Licensing Boards, with the names of the chairman and their members; all appointments made to fill vacancies; the creation of all areas, and a description of

Gazetting appointments and areas.

the boundaries of all new or altered areas (unless such an area includes an entire county) shall be published in the *Provincial Gazette* with a notification of the date on which anything so done is to take effect, and such publication shall for all purposes be sufficient proof of the matters notified.

9. (1) The Boards shall meet as often as may be required for the despatch of business.

Meetings.

(2) A meeting shall be duly constituted by a quorum of four members, notwithstanding that owing to a vacancy the Board may not at the time be fully constituted.

(3) In the absence of the chairman a member may be chosen by those present to act as chairman.

(4) No member shall sit upon any case in which he is directly or indirectly interested, or if an applicant or objector is his tenant or employee or that of his firm or partner, or if the premises in question are upon or within five miles from any premises licensed under Act No. 18, 1897, owned or occupied by him or his firm or partner.

10. All applications for licences shall be addressed to the officer appointed for that purpose by the Administrator.

Application for licences.

11. Any person resident within the area of the Board or within five miles from the premises sought to be licensed, or owning or occupying similarly licensed premises within the same distance, or an officer of police on behalf of the police department, may lodge objections and oppose any licence, on compliance with the rules in that behalf.

Objections.

12. The Board may in authorising a licence direct it to be suspended for the erection or completion of buildings according to approved plans, with any modifications that may be authorised, or pending the execution of repairs or of any necessary alterations in the existing premises.

Suspended licences.

13. If an application has been refused, no further application for a licence for the same premises may be brought till after the expiration of 12 months from the date of the application which has been refused.

Restriction upon renewed applications.

14. (1) No licence shall be issued unless and until its grant has been authorised by the Board.

Issue of licences.

(2) Licences shall be signed and issued by the Receivers of Revenue upon a certificate from the proper officer that the licence has been approved.

A suspended licence shall not be issued until the Chairman of the Board, or in his absence another member on his behalf, certifies that the required conditions have been complied with, nor, in the case of an appeal, till the appeal has been determined.

Application by objectors for re hearing. 15. The following words shall be added to section 2 of Act No. 22, 1909:—

Any person alleging that sufficient notice of the application has not been given in terms of the rules, shall also, if he would have been entitled to lodge objections, be entitled to apply to the Board for the application to be re-heard on proper notice. The Board may thereupon direct that its previous decision be suspended, and may upon the re-hearing decide upon the application *de novo*.

16. Subpoenas under section 4 of Ordinance No. 6, 1916, may be signed by any member of a Licensing Board.

17. The reference in section 7 of Act No. 18, 1897, to the Insolvency Law shall be altered to section 139 of the Insolvency Act, No. 32, 1916, or any amendment thereof, as regards the

keeping of proper books or records in the English or Dutch language:

18. The taxation of costs in terms of section 5 (3) of Ordinance No. 6, 1916, shall be by such officer as the rules may direct.

19. The rules under Act No. 18, 1897, may provide for matters of every kind incidental to the administration of this Ordinance.

Such rules may require the deposit of the licence money at the time of application, and its return if the licence is refused.

20. The territory known as the Province of Zululand shall be excluded from the operation of this Ordinance in so far as it relates to Licensing Boards, references to which in other parts of

this Ordinance shall accordingly be construed in relation to the existing licensing authorities.

The Administrator may, however, by proclamation bring any part of Zululand not included in the Native Reserves under the operation of the clauses of the Ordinance relating to Licensing Boards, and upon the taking effect of such proclamation Licensing Boards shall be substituted for the pre-existing licensing authorities in the districts so proclaimed, sections 4 and 6 of Act No. 31, 1905, being to that extent superseded for the purposes of licences coming under Act No. 18, 1897.

NATAL INDIAN CONGRESS.

169a GREY STREET,
DURBAN, NATAL,

12th May 1922.

DEAR SIR,

We are sending you copies of:

- 1. (a) Rural Dealers' Licensing Ordinance, 1922.
- (b) Natal Indian Congress' Petition against it.
- (c) *Natal Mercury* of 11th May 1922 containing Report of Second Reading.

* * * * *

RURAL DEALERS' LICENSING ORDINANCE, 1922.

This Ordinance passed last year by the Natal Provincial Council notwithstanding opposition of the Indian community but vetoed by Governor-General. Re-introduced this year has passed Second Reading without Select

Committee being appointed on it, with result community though petitioning against Ordinance not given opportunity to give evidence against it; Provincial Executive saying the same Ordinance before Select Committee last year. Indian community then gave evidence against it. Ordinance now before Provincial Council though said to be amended at suggestion of law advisers to the Crown is practically the same Ordinance as that of last year, and its passage in the Provincial Council appears to be *pro forma*. Full powers are placed in hands of five electors who must be Voters and as an European alone can be a Voter the Board will be an European manned Board. The decision of the Board will be final and in effect it will be a law unto itself. And there are no provisions made as to the grounds on which a licence may be refused or for the right of appeal to Supreme Court. Even the Asiatic Inquiry Commission recommended that right of appeal be given and the grounds on which a licence may be refused be laid down in Law.

This Ordinance perpetuates the disadvantages to Indians of the existing Licensing Laws. It amends them only in so far as to take away the existing right of Appeal from a Licensing Officer to an Appeal Board. This Ordinance places Indians at mercy of Europeans and in practice Indians will in due course be wiped out in the country districts and generally it will bring ruin to Indian Traders in Natal, reducing them to hewers of wood and drawers of water. Boards of the proposed nature have rendered Indians helpless to protect themselves and we have a glaring case in the Immigrants Appeal Boards from which there lie no appeal to any Court of Law.

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We hope that you will see your way to give the matters brought to your notice the publicity they call for and such action as you can take at your end to help protect the existing rights of Indians in Natal.

We are,

Yours sincerely,

(Sd.) A. CHRISTOPHER,

(Sd.) SORABJEE RUSTOMJEE,

Honorary Secretaries, Natal Indian Congress.

DRAFT ORDINANCE.

“ To amend the Laws relating to the grant of Licences to Wholesale and Retail Dealers in the Rural Districts of Natal.”

TO THE CHAIRMAN AND MEMBERS OF THE PROVINCIAL COUNCIL OF NATAL.

The petition of the undersigned humbly sheweth :

1. That your petitioners are the President and Honorary Secretaries of the Natal Indian Congress having its headquarters in Durban.
2. That the Natal Indian Congress with its Branch at Pietermaritzburg represents the British Indian Community in the Province of Natal.
3. That your Petitioners beg to state that an ever-growing number of the Indian Community is constituted of British Indians born in the Union of South Africa.
4. That your Petitioners strenuously but with respect protest against the provisions of the Draft Ordinance entitled “ To amend the Laws relating to the grant of Licences to Wholesale and Retail

Dealers in the Rural Districts of Natal" on the following among other grounds :—

- (a) That the proposed Ordinance supersedes the existing Licensing Officer for the whole of the Province, abolishes the Licensing Appeal Board, and creates a new Licensing system, taking away existing rights of applicants.
- (b) Your Petitioners submit the creation of a Board constituted of a Chairman and four members with the qualification of voters is not an improvement in the existing Licensing system, nor equitable to applicants, especially Indian applicants.
- (c) That your Petitioners venture to suggest that the grounds on which a licence may be refused should be laid down in law, and the right of appeal from a decision of a Licensing authority should be to the Supreme Court of the Province.

Your Petitioners pray to be heard in person or by Council in support of this Petition, or be permitted to give evidence before a Select Committee.

Wherefore your Petitioners respectfully pray that the said proposed Ordinance may be rejected.

And for which your Petitioners as in duty bound will ever pray.

Dated at Durban, Natal, 25th day of March 1922.

(Sd.) ISMAIL GORA, *President*.

(Sd.) A. CHRISTOPHER,

(Sd.) SORABJEE RUSTOMJEE,

Honorary Secretaries, Natal Indian Congress.

169A GREY STREET,
DURBAN.

Cutting from the Natal Mercury dated the 11th May 1922.

* * * * *

NATAL PROVINCIAL COUNCIL.

YESTERDAY'S SITTING.

RURAL DEALERS' LICENCES.

In moving the second reading of the Rural Dealers' Licensing Draft Ordinance, Mr. F. C. Hollander said it might be desirable that he should recount the history of the measure. Last year, in response to a considerable measure of public opinion, an Ordinance was brought forward in which a new principle was contained, to the effect that the granting of licenses should be considered by licensing boards instead of the licensing officer. The old Ordinance went before a Select Committee, and was almost unanimously passed by that Council, and under the terms of the Act of Union it was transmitted to the Government. The Governor-General, however, withheld his assent to the measure, and the Executive Committee asked for the reasons. They were advised that the law advisers of the Crown had taken exception to certain legal points, which they stated required amending. It was a matter for satisfaction, said the speaker, that the suggested change in the matter of granting licenses was not taken exception to. The new Ordinance was a draft of the old measure amended under the suggestions put forward by the law advisers for the Crown. The speakers gave the

House the assurance that the main principles underlying the draft Ordinance which had been passed by the Council had been

IN NO WAY INTERFERED WITH.

There was, however, to be no appeal from the Appeal Court, and the greatest care had been taken to obviate any change affecting the principle of the measure adopted twelve months ago. He thought if the measure was passed, as he had no doubt it would be passed, it would bring about an entire change of the licensing system of the rural districts of Natal, and would give residents of the districts some form of supervision and control over the trading going on around them. He thought it would prove a beneficent and necessary piece of legislation.

Mr. J. McAUSLIN seconded the motion.

Mr. COLEMAN said he thought members would generally approve of the Ordinance, but he thought most of them took exception to the clause of the old Ordinance that the Licensing Board should consist of a chairman and four other members approved by the Administrator. In these days the board should be elected by the people and not nominated by Government. He would like the Administrator to explain why the elective principle had not been introduced into clause 6.

Mr. W. COX said he was glad to find the Ordinance

HAD NOT BEEN MUTILATED

as a result of the suggestions put forward by the Law Advisers of the Crown. Referring to the remarks of the previous speaker, Mr. Cox said the committee which dealt with the matter were satisfied that it was better for the appointment of licensing boards to be left in the hands of the Executive Committee, as they could imagine what position would arise if boards were elected in some of the country districts and they would get men on the boards whom the members who had spoken would be the last to desire. He thought it would be better for economical reasons for boards to be appointed for each magisterial division.

Mr. C. F. CLARKSON congratulated the Executive on having all their principles embodied in the previous Ordinance contained in the present one. The provision of the boards was quite ample, and he was satisfied the people of the divisions who were willing and anxious would be asked to sit on the boards. He was satisfied that the Ordinance would place in the hands of the people most affected a decision as to whether licences should be granted in their district or not.

Replying to the debate, Mr. F. C. HOLLANDER said, with regard to point of Nominated Boards, that the Executive Committee had decided that it was impossible to carry out the elective principle in a measure of that kind. He was satisfied that the principle of nominating was a sound one, and that men appointed would thus be representative of the districts which they represented. Dealing with the criticism of the member for Ixopo, Mr. Hollander pointed out that it would be too costly to appoint boards for each of the 36 magisterial districts. He thought in this connection that if the Ordinance were given a trial in its present form, it was an honest and legitimate attempt to deal with existing licences in rural districts.

The second reading was then agreed to without any amendment.

Colonial Office to India Office.

No. 20130.

DOWNING STREET,
16th May 1922.

SIR,

* * * * * I am directed by Mr. Secretary Churchill to transmit to you, to be laid before Viscount Peel, an extract from the *Cape Times* of the 23rd March, containing a report of a debate in

the Senate, regarding the refusal of the Government of the Union of South Africa to assent to the Electoral Ordinance passed by the Provincial Council of Natal.

2. It is requested that the extract may be returned to this Office after perusal.

I am, etc.,
C. T. DAVIS.

The Under Secretary of State
for India.

ANNEX:—*Extract from "Cape Times", Thursday, 23rd March 1922.*

In the Senate yesterday,

Senator REITZ moved: That the Governor General in Council has acted in a manner detrimental to the interests of the Province of Natal in particular, and of South Africa in general, by refusing to give its assent to the Electoral Ordinance (amending the Townships Act, No. 11 of 1881) passed by the Provincial Council of the Province of Natal".

He said that Natal saw the danger of Asiatic immigration, and eventually tried to prevent it—the future influx into the towns of Indians—and to prevent their getting control of the municipalities.

Senator CHURCHILL: Rather late in the day.

Senator REITZ: I would like to hear what was the motive in vetoing a useful law like that. I am glad to see the national feeling growing in India, so long as it is restricted to its own country and keeps its hands off mine.

He read a newspaper extract to show how the value of property owned by Asiatics in Natal had grown. He wanted to know whether in the present instance the Ministry had acted in the interests of South Africa first, and whether it was not the interests of the Empire first.

Mr. Duncan (Minister of the Interior) said that in vetoing the Ordinance Ministers were acting in the interests of the country and not of those countries outside South Africa. The Government of Natal had before Union allowed the Indians to be brought into that part of the country, and even when the Government of India was against it. The Union Government was in favour of the Indians returning to India, and was encouraging them to do so, but there were people who liked the Indians to remain as they were useful as labourers. However, their sons would not all be labourers, and then there would be a desire to send them back to India.

The Ordinance had no reference whatever to Indians who were coming into the country, as no more were coming in; it had reference to those in the country, and had the effect of taking away the vote of Indians who owned property. The Ordinance had been vetoed because the Government was advised that it was outside the power of the Provincial Council—it was not because of anything Mr. Lloyd George's Government had requested.

He quoted section 147 of the South Africa Act. The Executive Committee of the Province did not have the power which the Ordinance proposed to grant to it of exempting certain persons with regard to voting power, and for that reason the Government was advised that it could not give its assent to the Ordinance.

Senator FRASER said that the Indian, apart from the sugar fields, was a menace to the white worker in Natal. The only people practically who had benefited were the sugar planters, not the whole population, and he thought it would have been better to have no sugar industry there if there were no Asiatics. He was afraid that the Indian menace was being felt only now that the Asiatic was encroaching in the towns. He would support the motion.

Senator WINTER said that, in view of the statement of the Minister, he could not see how any member could support the motion, as the powers of the Provincial Council in that particular matter were null and void, and, had the Ordinance not been vetoed, it would only have led to much litigation. He felt with Senator Reitz, but would ask him to withdraw the motion.

Senator CHURCHILL said that the Indian menace had been realised in Durban 40 years ago, and Senator Fraser seemed to be a newcomer, to judge by his remarks. In 1893 he (Mr. Churchill) had done his best to keep Indians off the voters' roll, and he had Mr. Escombe and Sir John Robinson behind him. They had been opposed by Downing Street in the steps against the Indians, and feeling in Natal had become very strong. On Union coming about it was hoped that the Indian question would be dealt with, and it was one of the reasons why in Natal they favoured Union, knowing that in that respect they would have the assistance of the Transvaal and the Orange Free State, and possibly of the Cape also. The real menace was the Asiatic trader, not the labourer.

Senator STUART said that they might pay Asiatics to return to India, but the Government could not force them to go. The Minister had clearly explained that the Ordinance was *ultra vires*, and that being so, if they voted for the motion it was a direct condemnation of the Government, which had acted only according to the constitution.

Senator POTGIETER said that he accepted that it was impossible to agree to an Ordinance which was against the constitution, but the Government had a sufficiently large majority, and would get the support of the country in dealing with the Asiatic menace. Why did it not deal with it?

Senator REITZ, in reply, said that it was true that they could not force these Asiatics to leave the country, but the Government could show that it was master in its own country, and he knew that the people of Natal were also against that Asiatic menace. He thought it was just as well that he had brought that matter forward, and not in a non-committal way, so that the Minister and the Natal members had "come out of their shell".

The motion was negatived by 20 to 13 votes.

India Office to Colonial Office.

INDIA OFFICE,
18th May 1922.

I. & O. 1334.

Sir,

I am directed by Viscount Peel to acknowledge the receipt of your letter of 16th May, No. 20130, and of 9th May, No. 18345, transmitting copies of the * * * * * new draft Rural Dealers' Licensing Ordinance which has recently been published by the Natal Provincial Administration.

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3.	*	*	*	*	*	*
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4.	*	*	*	*	*	*

5. As regards the Rural Dealers' Licensing Ordinance also, Lord Peel would suggest that the Union Government should be requested by telegraph not to come to any final decision in the matter until the Government of India have had an opportunity of addressing them, should they so desire. The whole question of the licensing laws throughout the Union was dealt with in the Despatch recently addressed by the Government of India to the Union Government, copy of which was communicated to the Colonial Office with India Office letter No. I. and O.-209, dated 2nd February 1922. Lord Peel would suggest that the Union Government might be asked to telegraph

information (repeating it to the Government of India) as to whether there is any opposition on the part of the local Indian community towards this Ordinance in its present form, and if there is any substantial opposition, to consider the desirability of not sanctioning any particular amendment of the licensing law in Natal pending a comprehensive consideration of the whole question of the licensing laws throughout the Union as the result of the recommendations of the Asiatic Enquiry Commission.

6. * * * * *
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 * * * * *

I am, &c.,

F. W. DUKE.

The Under Secretary of State,
 Colonial Office.

TELEGRAM FROM VICEROY, REVENUE AND AGRICULTURE DEPARTMENT, TO SECRETARY OF STATE FOR INDIA, DATED 22ND MAY 1922.

252-R.A. * * * * * We have not received yet two draft Ordinances direct from Union Government, but we have seen revised Natal Rural Dealers' Licensing Ordinance in *Indian Opinion*, dated 3rd March. It appears from Shaw's letter dated 31st October 1921, received with I. and O. letter dated 7th December, No. 2548, that grounds on which Governor-General withheld assent to this Ordinance were those given in Lansdown's memorandum, received with I. and O. letter dated 18th November. We hope that in revised Ordinance an attempt has been made to meet the objections taken by Lansdown; we are doubtful, therefore, if the Governor-General will be able to withhold assent on same grounds as last year. The revised draft Ordinance is of general application, and does not differentially affect Indians except by excluding them, under section 6 (2), from appointment on Licensing Board; but it is open to objections urged by Natal Indian Congress, as summarised in Governor-General's telegram of 7th November last. We would suggest that, if the Ordinance is passed, the Governor-General might be possibly induced to withhold his assent on the general ground, among others, that it deals with a subject on which the Asiatic Enquiry Commission has made specific recommendations, which are still under consideration, and are forming subject of correspondence between us and Union Government. In particular, attention may be invited to para. 204, in which they advocate a uniform licensing law throughout Union in place of provincial legislation.

2. * * * * *
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 3. * * * * *
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4. We are telegraphing substance of observations made in para. 1, * * * * * direct to Union Government, as suggested by you, and should be grateful if you can do anything further in support of our representations regarding all three Ordinances.

TELEGRAM FROM SECRETARY OF STATE TO VICEROY, REVENUE AND AGRICULTURE DEPARTMENT, DATED 3RD JUNE 1922.

2143. Your telegram dated 22nd May, No. 252. I had already asked Colonial Office to address Union Government in sense suggested in paras. 1 * * * * *

TELEGRAM FROM VICEROY, REVENUE AND AGRICULTURE DEPARTMENT, TO SECRETARY OF STATE FOR INDIA, DATED 26TH MAY 1922.

259-R.A. In continuation of our telegram dated 22nd May, No. 252-R.A. Natal Draft Ordinances. Following sent to Union Government to-day:—

“ We understand that Natal Rural Dealers’ Licensing Ordinance *
* * * * *

which was passed in Natal Provincial Council last year but did not receive Your Royal Highness’ assent, has been re-introduced. The Secretary of State for India has suggested to us that we should telegraph any observations that we wish to offer on this subject to Your Royal Highness’ Government direct..

“ 2. It appears that an attempt has been made to revise former Ordinance, so as to meet objections detailed in Landsdown’s Note dated 22nd July 1921. The revised Ordinance differentially affects Indians by excluding them, under section (62), from appointments on Licensing Board, and remains open to objections urged by Natal Indian Congress, and detailed in your telegram dated 7th November. The Ordinance deals with a subject on which the Asiatic Enquiry Commission has made specific recommendations. In particular, we would invite attention to para. 204 of their Report, in which they advocate a uniform licensing law throughout the Union, in place of provincial legislation. While the general policy to be adopted still forms subject of correspondence between us and Union Government, we trust that it may be possible to prevent any local legislation adversely affecting Indian community.

“ 3. * * * * *
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* * * * *

TELEGRAM FROM VICEROY, REVENUE AND AGRICULTURE DEPARTMENT, TO SECRETARY OF STATE FOR INDIA, DATED 17TH JUNE 1922.

304-R.A. Your telegram dated 3rd June, No. 2143. Natal Draft Ordinances. Following telegram, dated 10th June, received from Imperial Indian Citizenship Association:—

“ Committee, Imperial Indian Citizenship Association, strongly protests against Rural Dealers’ Licensing Ordinance, Natal, and emphatically urges Government to impress upon His Royal Highness the Governor-General of South Africa, the necessity of disallowing both Ordinances, being contrary to Smuts-Gandhi Agreement of 1914, and to the spirit of Imperial Cabinet’s recent resolution regarding equality of status, and subversive of all ties of mutual goodwill within the Empire. All India indignant at this deliberate attempt to throw Indian population of Natal into a position of helotry and helplessness, knocking down all hope of a peaceful settlement of the Indian problem in South Africa engendered by Viceroy’s sympathetic reply to South African Indian Deputation in March last. Rural Licensing Ordinance clearly abolishes all safeguards for justice and sympathetic treatment against arbitrary refusal of licences to Indians for pursuing ordinary avocations of life, and opens the door for relentless persecution, with a view to compel expatriation or annihilation of adverse Natal Indians:

* * * * *
* * * * *

Committee is convinced that these Ordinances have created intense anti-Imperial feeling throughout the length and breadth of India, and earnestly solicits timely interference by the Government of India, and the Secretary of State for India, as absolutely necessary to avert the most disastrous consequences.”

FROM THE HONORARY SECRETARIES, NATAL INDIAN CONGRESS, DATED DURBAN, THE 3RD JUNE 1922.

We attach hereto:—

(a) Rural Dealers Licensing Ordinance as amended in the Provincial Council

(not yet sanctioned by Governor-General).

Copy of original Ordinance already sent to you.

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*	*	*	*	*	*
*	*	*	*	*	*

We shall be glad of your perusal of the foregoing and for any help you can render therein on our behalf.

(No. 4, 1922.)

DRAFT ORDINANCE.

(AS READ A THIRD TIME AND PASSED.)

“To amend the Laws relating to the grant of Licences to Wholesale and Retail Dealers in the Rural Districts of Natal.”

BE IT ENACTED by the Provincial Council of the Province of Natal as follows:—

1. *Short title and commencement.*—This Ordinance may be cited as “The Rural Dealers’ Licensing Ordinance, 1922,” and shall come into force on the 1st day of November 1922.

2. *Scope of the Ordinance.*—This Ordinance shall extend to so much of the Province as lies outside the boundaries of Boroughs and Local Townships, and nothing therein contained shall apply to or affect Boroughs or Local Townships.

3. *Short terms used.*—The expression “The Administrator” as used in this Ordinance means the Administrator acting under the authority of the Executive Committee. “Licence” means any Licence to which Act No. 18, 1897, applies.

4. *Licensing Boards.*—Licensing Boards for hearing and determining applications for Licences shall be constituted in each county throughout the Province, save as is provided in regard to the territory of Zululand. The Northern Districts as defined in Natal Act No. 1 of 1903 shall for the purposes of this Ordinance be constituted as one county.

One such Board may be constituted for a county or combined counties or Boards may be appointed for different parts of a county.

5. Sections 4, 5 and 6 of Act No. 18, 1897, and Section 2 of Act No. 22, 1909, in so far as they relate to any area or any case to which this Ordinance applies, and Sections 6 and 7 of Ordinance No. 6, 1916, are hereby repealed, and the following is enacted in lieu thereof:—

(1) *Licensing Board’s Discretion.*—Every Licensing Board constituted under this Ordinance shall, within the area for which it is appointed, have a discretion to issue or refuse a wholesale or retail Licence.

(2) A decision come to by such Licensing Board as to the issue or refusal of a Licence shall not be liable to review, reversal or alteration by any Court of Law, save as is in the next subsection provided; but nothing in this section shall be deemed to limit the jurisdiction hitherto possessed by any Division of the Supreme Court to set aside on the grounds of irregularity or otherwise the proceedings of any Licensing body.

- (3) *Appeal in certain cases.*—It shall be competent for the applicant for the renewal of a Licence, or for a person who has duly lodged an objection to such renewal, to appeal to the Provincial Division of the Supreme Court or a Local Division thereof against any decision given by a Licensing Board under this section, and the Court may order that the renewal applied for be granted or that it not be granted, or may in any case remit the case for re-hearing.

The Court may also in its discretion award the costs of the appeal against either of the parties thereto.

6. *References to Licensing Officers and Board.*—The references in Section 7 of Act No. 18, 1897, and in any other Law Licensing Officers and Licensing Boards shall, for the purposes of Licenses to which this Ordinance applies, be construed as references to the Licensing Boards constituted under this Ordinance.

7. *Costs.*—The proviso of Section 5 (1) of Ordinance No. 6, 1916, is hereby repealed.

8. *Re-arrangement of Areas.*—(1) The Administrator may divide any county or any other area previously served by one Licensing Board into two or more areas or combine two or more such areas contained in one county, and may appoint fresh Boards for the newly-defined areas. In either case the existing Boards shall be dissolved as from the date fixed for the establishment of the new areas.

(2) The Administrator may also alter the boundaries of any existing areas, and it shall be in his discretion according to the circumstances to dissolve the existing Boards and appoint new ones or to allocate the existing Boards to the altered areas.

9. *Constitution of Boards.*—(1) Each Licensing Board shall consist of a Chairman and four other members appointed by the Administrator.

(2) No person shall be qualified for appointment as a member of a Licensing Board unless he is a resident, owner or renter of a house or lands in the county or area and is enrolled as a voter for Parliament.

10. *Duration of Boards: Vacancies and Absence from Meetings.*—(1) Licensing Boards shall be appointed for successive terms of three years.

(2) When a vacancy occurs through the resignation of a member or otherwise, the Administrator shall appoint a qualified person to fill the vacancy till the end of the current term.

(3) Should a member be unable to attend a meeting or be recused or otherwise disqualified from sitting upon any application, the Administrator may, without obtaining the authority of the Executive Committee, appointed any person to act in his place.

11. *Gazetting appointments and areas.*—All appointments of Licensing Boards, with the names of the Chairman and their members; all appointments made to fill vacancies; the creation of all areas, and a description of the boundaries of all new or altered areas (unless such an area includes an entire county) shall be published in the provincial *Gazette*, with a notification of the date on which anything so done is to take effect, and such publication shall for all purposes be sufficient proof of the matters notified.

12. *Meetings.*—(1) The Boards shall meet as often as may be required for the despatch of business.

(2) A meeting shall be duly constituted by a quorum of four members, notwithstanding that owing to a vacancy the Board may not at the time be fully constituted.

(3) In the absence of the Chairman a member may be chosen by those present to act as chairman.

(4) No member shall sit upon any case in which he is directly or indirectly interested, or if an applicant or objector is his tenant or employee or that of his firm or partner, or if the premises in question, are upon or

within five miles from any premises licensed under Act No. 18, 1897, owned or occupied by him or his firm or partner.

13. *Application for Licences.*—All applications for licences shall be addressed to the officer appointed for that purpose by the Administrator.

14. *Objection.*—Any person resident within the area of the Board or within five miles from the premises sought to be licensed, or owning or occupying similarly licensed premises within the same distance, or an officer of police on behalf of the police department, may lodge objections and oppose any licence, on compliance with the rules in that behalf.

15. *Suspended Licences.*—The Board may in authorizing a licence direct it to be suspended for the erection or completion of buildings according to approved plans, with any modifications that may be authorized, or pending the execution of repairs or of any necessary alterations in the existing premises.

16. *Restriction upon renewed applications.*—If an application has been refused no further application for a licence for the same premises may be brought till after the expiration of twelve months from the date of the application which has been refused.

17. *Issue of Licences.*—(1) No licence shall be issued unless and until its grant has been authorized by the Board.

(2) Licences shall be signed and issued by the Receivers of Revenue upon a certificate from the proper officer that the licence has been approved.

A suspended licence shall not be issued until the Chairman of the Board or, in his absence another member on his behalf certifies that the required conditions have been complied with, nor, in the case of an appeal, till the appeal has been determined.

18. *Application by objectors for re-hearing.*—The following words shall be added to Section 2 of Act No. 22, 1909.—

Any person alleging that sufficient notice of the application has not been given in terms of the rules, shall also, if he would have been entitled to lodge objections, be entitled to apply to the Board for the application to be re-heard on proper notice. The Board may thereupon direct that its previous decision be suspended, and may upon the re-hearing decide upon the application *de novo*.

19. *Subpœnas.*—Subpœnas under Section 4 of Ordinance No. 6, 1916, may be signed by any member of a Licensing Board.

20. *Amended reference to Insolvency Act.*—The reference in Section 7 of Act No. 18, 1897, to the Insolvency Law shall be altered to Section 139 of the Insolvency Act No. 32, 1916, or any amendment thereof, as regards the keeping of proper books or records in the English or Dutch language.

21. *Taxation of costs.*—The taxation of costs in terms of Section 3 (3) of Ordinance No. 6, 1916, shall be by such officer as the rules may direct.

22. *Rules.*—The rules under Act No. 18, 1897, may provide for matters of every kind incidental to the administration of this Ordinance.

Such rules may require the deposit of the licence money at the time of application and its return if the licence is refused.

23. *Special provision in regard to Zululand.*—The territory known as the Province of Zululand shall be excluded from the operation of this Ordinance in so far as it relates to Licensing Boards references to which in other parts of this Ordinance shall accordingly be construed in relation to the existing Licensing authorities:

The Administrator may, however, by proclamation bring any part of Zululand not included in the Native Reserves under the operation of the clauses of the Ordinance relating to Licensing Boards, and upon the taking effect of such proclamation Licensing Boards shall be substituted for the pre-existing Licensing authorities in the district so proclaimed, Sections 4 and 6 of Act No. 31, 1905, being to that extent superseded for the purposes of Licences coming under Act No. 18, 1897.

COPY OF TELEGRAM TO THE SECRETARY OF STATE FOR INDIA, No. 359-R. A.,
DATED THE 18TH JULY 1922.

Reuter Cape Town wired on July 14th that Union Government has disallowed Natal Rural Dealer's Ordinance. * * * * *
Can you confirm officially?

TELEGRAM FROM THE GOVERNOR-GENERAL, SOUTH AFRICA, DATED PRETORIA,
THE 28TH JULY 1922.

July 28th.—Two Ordinances referred to in your telegram dated 26th May have been presented for assent and on advice of my Ministers in Executive Council I have reserved them for further consideration. * * * * *

TELEGRAM TO GOVERNOR-GENERAL OF SOUTH AFRICA, PRETORIA, No. 405-R.
A., DATED THE 2ND AUGUST 1922.

We are glad to learn that Your Royal Highness has not yet assented to the two Ordinances mentioned in your telegram of July 28th, although we had hoped that Reuter's report that you had vetoed these two Bills was accurate. * * * * *

TELEGRAM FROM GOVERNOR-GENERAL OF SOUTH AFRICA, DATED PRETORIA,
THE 4TH AUGUST 1922.

August 4th.—With reference to your telegram dated 2nd August, No. 405-R, A., Natal Ordinances. Following is summary of my despatch as requested:—

- (1) *Rural Dealers' Licensing Ordinance.*—My Ministers consider abolition of Provincial Appeal Board contrary to their general policy towards Asiatic traders. Asiatic Commission recommended Board in connection with issue of licences. Board exists at present and Government not prepared in the circumstances to recommend assent to Ordinance.

* * * * *

FROM THE SECRETARY, NATAL INDIAN CONGRESS, DATED DURBAN, THE 16TH
FEBRUARY 1923.

1. We have the honour to enclose herewith copy of a report of the Durban Town Council bearing on the question of the proposed Licensing Ordinance. The report explains itself but we are opposed to this Ordinance in its amended form as strongly as we were against that passed and vetoed last year.

2. We are addressing our objections to the Union Government which according to the enclosed report is prepared to consent to the Royal Assent being given to it if the same be passed in its amended form by the Provincial Council.

3. Statutory grounds, desirable as they are generally speaking, without for the moment discussing the reasonableness or otherwise of any of such grounds, the creation of a Provincial Appeal Board is undesirable; for that matter any appeal board; unless such an appeal board be the Supreme Court.

4. In the Immigration Law the jurisdiction of the Courts was ousted and Appeal Boards were substituted; with the result Indians have never been satisfied. The only body which can give satisfaction to anybody dealt with under any law is the Supreme Court of the land; as the last resort.

5. We shall forward you a copy of our objections to the Union Government and shall be grateful for any representations the Government of India in the meantime may be pleased to make on our behalf.

LICENSING ORDINANCE.

The General Purposes Committee of the Durban Town Council reported on the 30th January 1923 as follows :—

We have considered the following joint report of the acting Town Clerk and Licensing Officer :—

“ We understand that during the forthcoming session of the Provincial Council it is intended to re-introduce the Licensing Measure for the extra-urban districts of Natal which was vetoed by the Governor-General last year.

The Indian community last year successfully petitioned against the Ordinance on the ground that no appeal board was provided. To meet this objection the Provincial Executive at a recent meeting with Union Ministers agreed to amend the draft Ordinance and have in turn received the assurance that when passed in its amended form the Royal Assent will be given to it.

The Ordinance will provide for the setting up of Trade Licensing Boards in extra-urban districts. The Board will be entitled to refuse or grant a license at their discretion subject to appeal to a Central Board, which however will be unable to override a decision given on certain statutory grounds, viz., necessity, suitability of premises, suitability of applicant.

The Province excluding the Town is becoming too populous to be successfully controlled by one licensing officer sitting at Maritzburg and the new procedure should prove a great improvement on the old. The Town Council when the time arrives should ask to be allowed representation on the Boards dealing with our sub-urban areas.

On the passing of this Ordinance the extra-urban districts will in some respects be better placed than the towns as regards licensing procedure and especially as regards appeals. We suggest that the Town Council make representations to the Administrator to insert a clause in the draft Ordinance making it possible for the Town Council to bring the Borough within the operation of certain sections of the Ordinance, i.e., those relating to statutory objections and those dealing with appeals.

We believe that the Council would be glad to be relieved of its present duty of sitting as an appeal court for which it is for many reasons not well suited; and that the substitution of the proposed Central Appeal Board would be a step in advance. And we certainly think that the inclusion of the suggested 'statutory reasons' would be more satisfactory to all concerned including applicants than the very really vagueness of our present Licensing Act which dates from 1897.

We append a suggested draft clause which we recommend be submitted to the Administrator with a request that it be included in the Ordinance. As will be seen if the clause be adopted would in no sense bind the Council to alter its present procedure but would enable it to do so if it so desires after seeing how the new Ordinance works in the extra-urban areas.

‘ It shall be lawful for any Town Council or Local Board to apply to the Honourable the Administrator asking that the provisions of sections.....(setting up a Provincial Board of Appeal and naming the grounds on which a license can be refused) shall apply to the area under its control; and in that event the Administrator shall notify by Proclamation in the *Provincial Gazette* that sections.....of this Ordinance have been extended to include such area and thereafter the said sections of the Ordinance shall have the force of law within such areas; and appeals from decisions of the Licensing Officer of such area shall be made to the Provincial Appeal Board established under section.....of this Ordinance.’

We concur with the views expressed by the two officials mentioned and Committee recommends that the above draft clause be approved by the Council and submitted to His Honour the Administrator with a request for its incorporation in the proposed licensing ordinance."

* * * * *

TELEGRAM TO THE GOVERNOR GENERAL, SOUTH AFRICA, CAPE TOWN, No. 354-EMI., DATED SIMLA, THE 17TH APRIL 1923.

Your Highness' despatch No. 15-1139, dated December 21st, 1922. We have seen copy of report submitted by Durban Town Council to Administrator of Natal regarding proposed revision of Rural Dealers' Licensing Ordinance. While their proposals follow generally the lines foreshadowed in paragraph 10 of your Ministers' Minute, dated December 15th, 1922, we note that they recommend that Central Board should not be empowered to override decision of Licensing Boards when license is refused on the ground that applicant is unsuitable person. This recommendation, which is likely to injure Indian interests, is contrary to recommendation in paragraph 205 (8) of Report of Asiatic Enquiry Commission, and we assume that it will not be accepted by Union Government. We would invite attention to the latter part of paragraph 10 of our despatch 307, dated December 19th, 1921,* and would urge that there is strong case for extending right of appeal, when licenses are refused under paragraph 205 (5) (a) and (b) of the Report. We trust also that the objection to paragraph 9 (2) of the Ordinance as now drafted taken in paragraph 2 of our telegram, dated May 26th, 1922, will be sympathetically considered.

* * * * *

FROM THE SECRETARY, NATAL INDIAN CONGRESS, DATED DURBAN, THE 1ST APRIL 1923.

* * * * *

The following resolutions were passed :—

1. That this Mass Meeting of Natal Indians protests against the proposed Ordinance to amend the laws relating to wholesale and retail country licenses in that it seeks, among other things, to supersede the existing licensing authority by a licensing board to be constituted of parliamentary voters and as Europeans alone are eligible to the parliamentary vote they alone would be appointed to the board and the proposed Ordinance does not allow of appeal in all cases to an appeal board, a right at present enjoyed; and this meeting appeals to the Natal Provincial Council to grant the right of appeal in all cases to the Provincial Division of the Supreme Court or to a local Division thereof.

* * * * *

TELEGRAM TO THE GOVERNOR GENERAL OF SOUTH AFRICA, CAPE TOWN, No. 454-O., DATED SIMLA, THE 7TH MAY 1923.

* * * * *

(2) Rural Dealers' Licensing Ordinance. We understand this has been passed by Natal Provincial Council. We trust that views expressed in our telegram of April 17th, will be considered before Your Royal Highness assents to this bill, and that rules prescribed by Administrator under section 12 (2) will ensure that qualifications of members of Board of Appeal will not be inferior to those of present Board mentioned in paragraph 207 of Asiatic Enquiry Commission's Report.

* * * * *

TELEGRAM FROM THE SECRETARY, NATAL INDIAN CONGRESS, DATED DURBAN, THE 2ND MAY 1923.

Land Ordinance passed establishing principle of segregation in Boroughs and Townships. This and Rural Licensing Ordinance before Governor General for sanction. Congress deputation proceeding Friday to Cape Town represent Indian views Government against sanctioning Ordinances. Natal Indians appeal India and Indian Government for pressure instanter on Union Government to refuse sanction. If Ordinances sanctioned Indians ruined doomed.

FROM THE SECRETARY, NATAL INDIAN CONGRESS, DATED DURBAN, THE 29TH APRIL 1923.

* * * * *

The Rural Dealers' Licensing Ordinance which has been passed by the Natal Provincial Council notwithstanding the strong opposition of the Indian community has been forwarded to the Governor-General for assent.

An Indian deputation from here is about to proceed to Capetown to interview the Responsible Minister with a view to getting the Government to disallow the Ordinance. The Ordinance takes away the existing right of appeal in all cases to an Appeal Board and allows an appeal only in cases of renewals and where a license is refused on the ground that the applicant is not a fit and proper person to hold such license or to carry on such business. And the Licensing Officer is superseded by Boards constituted of Five Parliamentary Voters, Europeans in whom is vested the power of discretion with only a limited power of appeal to an applicant.

This Ordinance if passed in its present form with these two provisions in particular, it will be but a question of time before every Indian trader in the Rural areas is wiped out.

* * * * *

TELEGRAM FROM THE GOVERNOR-GENERAL OF SOUTH AFRICA, DATED CAPE TOWN, THE 29TH MAY 1923.

* * * * *

Rural Dealers' Licensing Ordinance has been passed by Natal Provincial Council and is now under consideration by Ministers. It formed subject of interview with a representative of deputation of Natal Indians and Minister of Interior at which position was fully discussed. The New Ordinance requires Licensing Boards to record evidence taken on an application and reason for refusal and gives an appeal where refusal is based on personal grounds. This is in accordance with recommendation of Asiatic Enquiry Commission. Appeal Board must consist of three persons one of whom has held office as a Judge or Magistrate or is an Advocate of Supreme Court. Ministers consider that this Ordinance must now be given a fair trial and they will enquire carefully into any complaint that may be made in this connection.

* * * * *

TELEGRAM FROM THE GOVERNOR-GENERAL OF SOUTH AFRICA, DATED CAPE TOWN, THE 30TH MAY 1923.

My telegram, dated 29th May. On the advice of my Ministers in Council, I have assented to * * * * * Rural Dealers' Licensing Law Amendment Ordinance of Natal.

GOVERNOR-GENERAL'S OFFICE,
CAPE TOWN,
20th April, 1923.

MY LORD,

At the request of my Ministers I have the honour to transmit to Your Excellency two copies of—

- (1) * * * * *
- (2) "The Rural Dealers Licensing Law Amendment Ordinance, 1923."
- (3) * * * * *

which has recently been introduced into the Natal Provincial Council.

I take the opportunity to acknowledge the receipt of your telegram of the 17th April which I have referred to my Ministers for consideration and advice.

I have the honour to be,

MY LORD,

Your Excellency's most obedient Servant,

ARTHUR FREDERICK,
Governor General.

His Excellency

The Right Honourable
The Earl of Reading,

G.M.S.I., G.M.I.E., G.C.B., K.C.V.O.,
&c., &c., &c.,

Viceroy of India.

Delhi.

[No. 5, 1923.]

DRAFT ORDINANCE.

[AS SET DOWN FOR SECOND READING.]

"To amend the Laws relating to the grant of Licences to Wholesale and Retail Dealers in Rural Districts."

BE IT ENACTED by the Provincial Council of the Province of Natal, as follows:—

1. This Ordinance may be cited as "The Rural Dealers' Licensing Law Amendment Ordinance, 1923," and shall come into force on the 1st day of November, 1923.
Short title and commencement.
2. This Ordinance shall extend to so much of the Province as lies outside the boundaries of Boroughs and Local Townships, and none of its provisions, and no repeal or amendment of any existing law herein contained, shall apply to or affect Boroughs or Local Townships.
Scope of the Ordinance.
3. The expression "The Administrator" as used in this Ordinance means the Administrator acting under the authority of the Executive Committee. "Licence" means any licence to which Act No. 18, 1897, applies, and includes the transfer or renewal of a licence.
Short terms used.

4. Rural Licensing Boards for hearing and determining applications for licences shall be constituted in each county throughout the Province, save as is provided in regard to the territory of Zululand and in regard to the combination of counties or the creation of areas. The Northern Districts as defined in Natal Act No. 1, of 1903 shall for the purposes of this Ordinance be constituted as one county.

Licensing Boards.

One such Board may be constituted for a county or combined counties, or Boards may be appointed for different parts of a county.

5. (1) The Administrator may divide any county or any other area previously served by one Licensing Board into two or more areas, or combine two or more such areas contained in one county, and may appoint fresh Boards for the newly-defined areas. In either case the existing Boards shall be dissolved as from the date fixed for the establishment of the new areas.

Re-arrangement of areas.

(2) The Administrator may also alter the boundaries of any existing areas, and it shall be in his discretion according to the circumstances to dissolve the existing Boards and appoint new ones or to allocate the existing Boards to the altered areas.

6. (1) Each Licensing Board shall consist of a Chairman and four other members appointed by the Administrator.

Constitution of Boards.

(2) No person shall be qualified for appointment as a member of a Licensing Board unless he is a resident owner or renter of a house or land in the county or area and is enrolled as a voter for Parliament.

7. (1) Licensing Boards shall be appointed for successive terms of three years.

Duration of Boards.

(2) When a vacancy occurs through the resignation of a member or otherwise, the Administrator shall appoint a qualified person to fill the vacancy till the end of the current term.

Vacancies and absence from meetings.

(3) Should a member be unable to attend a meeting or be refused or otherwise disqualified from sitting upon any application, the Administrator may, without obtaining the authority of the Executive Committee, appoint any person to act in his place.

8. All appointments of Rural Licensing Boards, with the names of the Chairman and their members; all appointments made to fill vacancies; the creation of all areas, and a description of the boundaries of all new or altered areas (unless such an area includes an entire county) shall be published in the *Provincial Gazette*, with a notification of the date on which anything so done is to take effect, and such publication shall for all purposes be sufficient proof of the matters notified.

Gazetting appointments and areas.

Meetings.

9. (1) The Boards shall meet as often as may be required for the despatch of business.

(2) A meeting shall be duly constituted by a quorum of four members, notwithstanding that owing to a vacancy the Board may not at the time be fully constituted.

(3) In the absence of the Chairman a member may be chosen by those present to act as Chairman.

(4) No member shall sit upon any case in which he is directly or indirectly interested, or if an applicant or objector is his tenant or employee or that of his firm or partner, or if the premises in question are upon or within five miles from any premises licensed under Act No. 18, 1897, owned or occupied by him or his firm or partner.

(5) The decision of the majority of the members presented shall be the decision of the Board, but in the event of an equal division the decision of the Chairman shall be that of the Board.

10. Sections 4, 5 and 6 Act No. 18, 1897; Section 2 of Act No. 22, 1909; and Sections 6 and 7 of Ordinance No. 6 of 1916, in so far as they relate to any area or any case to which this Ordinance applies, shall cease to have effect, save so far as may be required for the proper construction of Section 22 of this Ordinance.

11. (1) Every Rural Licensing Board shall, within the area for which it is appointed, have a discretion to refuse a wholesale or retail licence on any of the following grounds:—

- Licensing Board's discretion.
- (a) That the premises in respect of which the licence is applied for are not suitable;
 - (b) That the class of business proposed to be carried on in such premises is not suited to the locality in which the business is to be carried on;
 - (c) That the applicant is not a fit and proper person to hold such a licence or carry on such a business.

(2) A Rural Licensing Board hearing any application for the grant, transfer or renewal of a licence shall record any evidence given for or against the application, and where the application is refused, the reasons for the refusal.

(3) Subject to the provisions of Section 12 of this Ordinance, the decision of a Rural Licensing Board, or of the majority of its members, on any application made to it for a licence or for the transfer of a licence shall be final and not be liable to reversal or alteration by any Court of law.

12. (1) Any person whose application for a licence has been refused by a Rural Licensing Board on the ground that the applicant is not a fit and proper person to hold the licence applied for or to carry on the proposed business, and any person whose application for the renewal of a licence has for any reason been refused by a Rural Licensing Board shall have a right of appeal from the decision to a Board of Appeal, to be known as the Rural Licensing Board of Appeal, which shall be appointed by the Administrator for the whole Province or for any specific part of the Province.

(2) A Rural Licensing Board of Appeal shall consist of three persons, one of whom shall be designated by the Administrator as Chairman. The qualifications of members of the Board, their tenure of office, their remuneration, the method of filling vacancies, and the procedure of the Board shall be fixed by rules prescribed by the Administrator.

(3) The decision of a Rural Licensing Board of Appeal or of the majority of the members upon any matter brought before it shall, save as in Section 13 of this Ordinance is provided, be final and shall not be liable to reversal or alteration by any Court of law.

13. It shall be competent for the applicant for the renewal of a licence, or for a person who has duly lodged an objection to such renewal, to appeal to the Provincial Division of the Supreme Court or a local division thereof against any decision given or appeal brought in the matter under Section 12 of this Ordinance, and the court may order that the renewal applied for be granted or that it be not granted, or may in any case remit the matter to the Rural Licensing Board or to the Rural Licensing Board of Appeal for re-hearing or re-consideration.

14. Nothing in this Ordinance contained shall be deemed to limit the jurisdiction of any Division of the Supreme Court to set aside, on the grounds of irregularity or otherwise, the proceedings of any Rural Licensing Board or any Rural Licensing Board of Appeal.

Power of review not affected.

15. The references in Section 7 of Act No. 18, 1897, and in any other law to Licensing Officers and Licensing Boards shall, for the purposes of licences to which this Ordinance applies, be construed as references to the Licensing Boards constituted under this Ordinance.

References to Licensing Officers and Board.

16. The proviso of Section 5 (1) of Ordinance No. 6, 1916, is hereby repealed.

Costs.

17. All applications for licences shall be addressed to the officer appointed for that purpose by the Administrator.

Application for Licences.

18. Any persons resident within the area of the Board or within five miles from the premises sought to be licensed, or owning or occupying similarly licensed premises within the same distance, or any officer or member of a Police Force, may lodge objections and oppose any licence, on compliance with the rules in that behalf.

Objections.

19. The Board may in authorising a licence direct it to be suspended for the erection or completion of buildings according to approved plans, with any modifications that may be authorised, or pending the execution of repairs or of any necessary alterations in the existing premises.

Suspended Licences.

20. If an application has been refused by a Rural Licensing Board no further application for a licence for the same premises may be brought till after the expiration of twelve months from the date of the application which has been refused.

Restriction upon renewed applications.

21. (1) No licence shall be issued unless and until its grant has been authorised by the Board.

Issue of License.

(2) Licences shall be signed and issued by the Receivers of Revenue upon a certificate from the proper officer that the licence has been approved.

A suspended licence shall not be issued until the Chairman of the Board, or in his absence, another member on his behalf certifies that the required conditions have been complied with, nor, in the case of an appeal, till the appeal has been determined.

Application by objectors for re-hearing.

22. The following words shall be added to Section 2 of Act No. 22,

1909 :—

Any person alleging that sufficient notice of the application has not been given in terms of the rules, shall also, if he would have been entitled to lodge objections, be entitled to apply to the Board for the application to be re-heard on proper notice. The Board may thereupon direct that its previous decision be suspended, and may upon the re-hearing decide upon the application *de novo*.

Subpoenas.

23. Subpoenas under Section 4 of Ordinance No. 6, 1916, may be signed by any member of a Licensing Board.

24. The reference in Section 7 of Act No. 18, 1897, to the Insolvency Law shall be altered to Section 139 of the Insolvency Act No. 32, 1916, or any amendment thereof, as regards the keeping of proper books or records in the English or Dutch language.

Amended reference to Insolvency Act.

25. The taxation of costs in terms of Section 5 (3) of Ordinance No. 6, 1916, shall be by such officer as the rules may direct.

Taxation of Costs.

26. The rules under Act No. 18, 1897, may provide for matters of every kind incidental to the administration of this Ordinance.

Rules.

Such rules may require the deposit of the licence money at the time of application, and its return if the licence is refused.

27. The territory known as the Province of Zululand shall be excluded from the operation of this Ordinance in so far as it relates to Licensing Boards, references to which in other parts of

Special provision in regard to Zululand.

this Ordinance shall accordingly be construed in relation to the existing licensing authorities.

The Administrator may, however, by proclamation bring any part of Zululand not included in the Native Reserves under the operation of the clauses of the Ordinance relating to Licensing Boards, and upon the taking effect of such proclamation Licensing Boards shall be substituted for the pre-existing licensing authorities in the district so proclaimed, Sections 4 and 6 of Act No. 31, 1905, being to that extent superseded for the purposes of licences coming under Act No. 18, 1897.

FROM THE GOVERNOR GENERAL OF SOUTH AFRICA, PRETORIA, No. 15-1164, DATED THE 23RD JULY 1923.

With reference to my despatch of the 20th April and my telegram of the 30th May, I have the honour to transmit to Your Excellency one copy each * * * * Rural Dealers' Licensing Ordinance as passed by the Provincial Council of Natal and assented to.

[Assented to by the Governor-General-in-Council, on the 30th May, 1923.]

[Promulgated 14th June, 1923.]

[No. 4, 1923.]

ORDINANCE.

"To amend the Laws relating to the grant of Licences to Wholesale and Retail Dealers in Rural Districts."

[Same as on pages 121—124.]

DURBAN LAND ALIENATION ORDINANCE.

NATAL INDIAN CONGRESS.

Tel. and Cable address:

"NICELY."

169a GREY STREET,
DURBAN, NATAL,
12th May 1922.

DEAR SIR,

We are sending you copies of:

- * * * * *
- * * * * *
- * * * * *
- * * * * *
- * * * * *

3. (a) Durban Land Alienation Ordinance.

(b) Natal Indian Congress Petition against it.

* * * * *

DURBAN LAND ALIENATION ORDINANCE.

This Ordinance and our petition against it is now before the Provincial Council and a Select Committee is to sit on the Ordinance.

* * * * *

We hope that you will see your way to give the matters brought to your notice the publicity they call for and such action as you can take at your end to help protect the existing rights of Indians in Natal.

We are,

Yours sincerely,

(Sd.) A. CHRISTOPHER,

(Sd.) SORABJEE RUSTOMJEE,

Honorary Secretaries, Natal Indian Congress.

PRIVATE DRAFT ORDINANCE.

(PROPOSED TO BE INTRODUCED INTO THE PROVINCIAL COUNCIL BY MR G. H. HULETT, M.P.C.).

"To grant additional Powers to the Town Council of the Borough of Durban in respect of the alienation of, or other dealing, with immovable property belonging to the said Borough."

Preamble.—Whereas it is expedient to grant to the Town Council of the Borough of Durban additional powers in respect of the alienation of, or other dealing, with immovable property belonging to the said Borough:

Be it therefore enacted by the Provincial Council of the Province of Natal as follows:—

Conditions of sale or lease of Land.—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 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.

TO THE CHAIRMAN AND MEMBERS OF THE PROVINCIAL COUNCIL OF NATAL.

The Petition of the undersigned humbly sheweth:—

1. That your Petitioners are the President and Honorary Secretaries of the Natal Indian Congress having its headquarters in Durban.

2. That the Natal Indian Congress with its Branch at Pietermaritzburg represents the British Indian Community in the Province of Natal among whom are the Indian Ratepayers and Burgesses as well as the Indian Community in the Borough of Durban.

3. That your Petitioners beg to state that an ever-growing number of the Indian Community is constituted of British Indians born in the Union of South Africa.

4. That your Petitioners view with alarm the provisions of the Private Draft Ordinance proposed to be introduced into the Provincial Council

"To grant additional powers to the Town Council of the Borough of Durban in respect of the alienation of, or other dealing, with immovable property belonging to the said Borough".

5. That your Petitioners strongly but with respect object to the said proposed Ordinance on the following, among other grounds, namely,—

- (a) That it is submitted that the proposed Ordinance is *ultra vires* the powers of the Provincial Council.
- (b) That it is unreasonable and arbitrary to seek to differentiate between ratepayers and burgesses in the Borough who are subject and conforming to the same obligations and responsibilities under the Borough Laws and to attempt to deprive them of their existing and future rights in regard to ownership and/or occupation of Borough Lands.
- (c) That the policy of racial segregation contemplated in the said Ordinance is detrimental and retrogressive.
- (d) That the provisions of the proposed Ordinance do not in themselves justify the measure.

Your Petitioners pray to be heard in person or by Counsel in support of this Petition, or be permitted to give evidence before a Select Committee.

Wherefore your Petitioners respectfully pray that the said Ordinance may be rejected.

And for which your Petitioners as in duty bound will ever pray.

Dated at Durban, this 3rd day of May 1922.

President.

Honorary Secretaries, Natal Indian Congress.

169 (A), Grey Street, Durban.

TELEGRAM FROM VICEROY, REVENUE AND AGRICULTURE DEPARTMENT, TO SECRETARY OF STATE FOR INDIA, DATED 22ND MAY 1922.

252 R. A. * * * * *

3. We note also, from *Indian Opinion*, dated 14th April, that Durban Town Council is promoting private draft Ordinance, enabling them, when selling or leasing immovable property, legally to restrict ownership or occupation to Europeans, Asiatics or natives. Object of such legislation would apparently be to carry out gradual policy of segregation, as recommended in paragraphs 200 and 201 of Asiatic Enquiry Commission's Report. Our objections to this proposal are stated in paragraph 7 of our Despatch, dated 19th December, to Governor General, and we would urge that legislation should not be accepted until decision is arrived at on general policy.

* * * * *

India Office to Colonial Office.

I. & O. 1582.

India Office,
20th June 1922.

* * * * *

4. A telegram has also been received from the Government of India in which they observe that, according to the newspaper *Indian Opinion*,

dated 14th April, the Durban Town Council are preparing a private draft Ordinance, enabling them, when selling or leasing immovable property, legally to restrict ownership or occupation to Europeans, Asiatics or natives. The Government of India remark that the object of such legislation would apparently be to carry out a gradual policy of segregation as recommended in paras. 200 and 201 of the Report of the Asiatic Enquiry Commission, on which they have already commented in para. 7 of their Despatch, dated 19th December 1921, addressed to the Governor-General of the Union of South Africa. The Government of India urge in their telegram that legislation of this character should not be accepted until a decision is arrived at on the question of general policy arising out of the recommendations of the Commission.

5. I am to enquire whether Mr. Churchill considers that the objections which he feels to addressing the Union Government in regard to the other two Ordinances would apply also to an enquiry as to the position in regard to this particular Ordinance now reported to be in contemplation, which would appear to him at differentiation between Europeans, Asiatics and natives, and might accordingly perhaps be considered to be *ultra vires* in view of the terms of section 147 of the South Africa Act. If in these circumstances Mr. Churchill feels able to approach the Union Government regarding the Durban Ordinance, Lord Peel would suggest that a telegram of enquiry might be addressed to the Governor-General as to this Ordinance and the probable attitude of the Union Government on the question of giving or withholding assent to it in the event of its being passed.

* * * * *

I am, &c.,
J. C. WALTON.

The Under Secretary of State,
Colonial Office.

TELEGRAM TO THE SECRETARY OF STATE FOR INDIA, LONDON, No. 323-R.A.,
DATED THE 29TH JUNE 1922.

Your telegram 2357, dated 19th June, Natal Ordinances. We presume that decision of Colonial Office not to intervene in regard to Rural Dealers' Licensing Ordinance and Township Franchise Ordinance will apply to Durban Land Alienation Ordinance also. We think it important that Union Government should not be in a position to state that no protest against this ordinance has been received from Government of India. We have, therefore, reconsidered our decision, communicated to you in telegram dated 8th June, not to address that Government direct, and are telegraphing to them on lines of paragraph 3 of our telegram to you, dated 22nd May 1922.

TELEGRAM TO THE GOVERNOR-GENERAL, SOUTH AFRICA, No. 324-R.A.,
DATED THE 29TH JUNE 1922.

Continuation my telegram, dated 26th May 1922. Government of India understand that a private ordinance entitled Durban Land Alienation Ordinance, enabling the Town Council when selling or leasing immovable property to restrict ownership or occupation to Europeans, Asiatics or natives, has been introduced in Natal Provincial Council. Object of such legislation would apparently be to carry out gradually policy of segregation. Views of Government of India are stated in paragraph 7 of their despatch of 19th December, addressed to you. They suggest that the ordinance is

capable of being used in order to favour one class of rate-payers at the expense of Indians and earnestly trust that legislation will not be accepted before decision is arrived at on general policy.

TO THE UNDER SECRETARY OF STATE FOR INDIA, INDUSTRIES AND OVERSEAS DEPARTMENT, INDIA OFFICE, LONDON, NO. 184-EMIGRATION, DATED SIMLA, THE 29TH JUNE 1922.

SUBJECT.—*Durban Land Alienation Ordinance.*

With reference to the telegram from His Excellency the Viceroy, No. 323-R.A., dated the 29th June 1922, I am directed to forward, for information, a copy of the telegram No. 324-R.A., dated the 29th June 1922, addressed by the Government of India to the Governor-General of South Africa regarding the above.

TELEGRAM TO GOVERNOR-GENERAL OF SOUTH AFRICA, PRETORIA, NO. 405-R. A., DATED THE 2ND AUGUST 1922.

* * * * * With regard to Durban Land Alienation Ordinance, Reuters have reported that assent was granted on condition that if Indians are not allowed to purchase certain land, they should be entitled to buy suitable land elsewhere in townships. Will you kindly telegraph whether this is correct and if so communicate to us the substance of the conditions imposed? Would it also be possible to telegraph abridged version of despatch? In view of anxiety here we should be grateful.

TELEGRAM FROM GOVERNOR-GENERAL OF SOUTH AFRICA, DATED PRETORIA, THE 4TH AUGUST 1922.

August 4th.—With reference to your telegram dated 2nd August, No. 405-R. A., Natal Ordinances. Following is summary of my despatch as requested:—

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|-----|---|---|---|---|
| (1) | * | * | * | * |
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| (2) | * | * | * | * |
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- (3) *Durban Land Alienation Ordinance.*—Ministers stated when recommending for assent that they proposed to inform Administrator of Natal that they consider it reasonable that in giving his approval to racial restrictions introduced into land sales he should see as far as possible that Asiatics are given reasonable opportunity for acquiring adequate residential sites. No. 3 answers question put in your telegram.

FROM THE SECRETARY, NATAL INDIAN CONGRESS, DATED DURBAN, THE 1ST APRIL 1923.

We are sending under separate cover copy Gazette containing Draft Ordinances which are referred to in the enclosed notice of a meeting held to-day.

The following resolutions were passed :—

3. That this Mass Meeting of Natal Indians urges its strenuous objection to the proposed Ordinance to grant additional powers to Town Councils and Local Boards in respect of the sale or lease of immovable property on the grounds that it lays down the principle of segregation and is inequitable.

TELEGRAM TO THE GOVERNOR-GENERAL OF SOUTH AFRICA, CAPE TOWN, No. 454-O., DATED SIMLA, THE 7TH MAY 1923.

We have now received Natal official Gazette, dated March 15th, containing text of certain draft Ordinances, of which four affect Indians;—

(1) Additional Powers to Town Councils and Local Boards in respect of sale and lease of immovable property. Our objections to principles of this Ordinance are stated in our telegram 324, dated June 29th, 1922. We have been informed that at land sales held at Durban up to date only Europeans have been allowed to bid, and should be glad to know what steps have been taken by Administrator to give effect to suggestion, contained in paragraph 5 of Your Royal Highness Despatch, dated 29th July, 1922.

- (2) * * * *
- (3) * * * *
- (4) * * * *

TELEGRAM FROM THE GOVERNOR-GENERAL OF SOUTH AFRICA, DATED CAPE TOWN, THE 29TH MAY 1923.

(1) Your telegram, dated 7th May, 454-O. In reference to Power of Town Councils and Local Boards regarding sale and lease of land, Ministers understand that two sales have taken place in Durban since Ordinance was passed last year and that it is correct that only Europeans have been allowed to purchase. Ministers communicated with Provincial Authorities in Natal and are still in correspondence on the matter. They are not disposed, however, to conclude from facts of two sales having been held as stated that Durban Corporation is not likely to act with reasonable fairness.

* * * * *

NATAL PUBLIC HEALTH COMMITTEE'S ORDINANCE.

FROM J. C. WALTON, ESQ., ASSISTANT SECRETARY, INDUSTRIES AND OVERSEAS DEPARTMENT, INDIA OFFICE, NO. I. AND O.-1452-23, DATED LONDON, THE 24TH MAY 1923.

I also enclose an extract (clause 8) from a Draft Ordinance published on the same date to establish Public Health Committees.

* * * * *

Extract from Draft Ordinance "To establish Public Health Committees".

* * * * *

8. No person shall be nominated, elected or appointed as a member of Committee for any area who is not a registered Parliamentary voter residing or carrying on business within the electoral district in which the sub-area is situated, except as is otherwise specially authorised, or who is—

- (1) An officer in the service of the Committee;
- (2) An unrehabilitated insolvent;
- (3) An alien who has not been naturalised;
- (4) A person declared to be a lunatic or of unsound mind;
- (5) A person who has been convicted of treason or other infamous offence or, within the previous five years, of a crime punished by imprisonment without the option of a fine.

TELEGRAM TO THE GOVERNOR-GENERAL OF SOUTH AFRICA, CAPE TOWN,
No. 454-O., DATED SIMLA, THE 7TH MAY 1923.

* * * * *

(4) Public Health Committee's Ordinance. The definition of voters in section 1 and provisions of section 8 exclude Indians from taking part in elections for these committees or serving on them. These committees have wide powers of levying rates, and we submit that Indian rate-payers have reasonable claim to elect or serve on these committees.

TELEGRAM FROM THE GOVERNOR-GENERAL OF SOUTH AFRICA, DATED CAPE TOWN, THE 29TH MAY 1923.

* * * * *

The Public Health Committee Ordinance is still before the Provincial Council. No reference was made to it by deputation of Indians already mentioned although they were dealing with Provincial Council legislation affecting them nor have Ministers received any representation from Indians on the matter.

LETTER FROM THE NATAL INDIAN CONGRESS, DATED THE 25TH NOVEMBER 1923.

* * * * *

Regarding Health Committee. Also herewith the Ordinance as now Law published in *Natal Provincial Gazette*.

* * * * *

[Assented to by the Governor-General-in-Council, on the 1st June, 1923.]

[No. 7, 1923.]

ORDINANCE.

"To establish Public Health Committees."

BE IT ENACTED by the Provincial Council of the Province of Natal, as follows:—

1. *Short title*.—This Ordinance may be cited as "The Public Health Committee Ordinances, 1923."

2. *Meaning of terms.*—In this Ordinance—
- “Administrator” means the Administrator acting on the advice of the Executive Committee;
 - “Committee” means a Public Health Committee constituted under this Ordinance;
 - “Gazette” means the *Natal Provincial Gazette*;
 - “Public Health Act” means Act No. 36, 1919;
 - “Voters” means registered Parliamentary Voters.

(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.

3. *Proclamation of areas.*—The Administrator may proclaim any area, not being an area for which he is the appointed local authority in terms of Section 8 of the Public Health Act, nor forming part of a borough or local township, to be an area within the operation of this Ordinance.

4. *Altering areas, etc.*—The Administrator may by like proclamation, and subject as aforesaid, extend the boundaries of any area, combine two or more areas, sub-divide the same or otherwise vary the boundaries as he may deem advisable, due regard being had as far as possible to local conditions.

5. *Promulgation.*—Every proclamation under this Ordinance shall be published once in the *Gazette* and twice in a daily paper circulating in the proclaimed area.

6. *First meeting for election of Committee.*—Within two months of the proclamation of an area the Administrator shall by notice similarly published convene a meeting of the voters of the area for the purpose of electing thereat by ballot a Committee of five or seven members, as may be determined by resolution of the meeting. Such members shall be nominated at such meeting by voters present thereat, such meeting to be held not earlier than three weeks nor later than six weeks from the date of the first publication of the notice.

7. *Magistrate to preside.*—The meeting shall be presided over by a Magistrate or other officer appointed by the Administrator.

8. *Qualification for membership of Committee.*—No person shall be nominated, elected or appointed as a member of Committee for any area who is—

- (1) An officer in the service of the Committee;
- (2) An unrehabilitated insolvent;
- (3) An alien who has not been naturalised;
- (4) A person declared to be a lunatic or of unsound mind;
- (5) A person who has been convicted of treason or, within the previous five years of a crime punished by imprisonment without the option of a fine.

9. *Procedure at and conduct of elections.*—(1) the Administrator may make regulations for all matters of procedure in connection with elections.

(2) It shall be the duty of the presiding officer to satisfy himself that no person takes part in an election meeting who is not qualified as a voter for the area. The decision upon this and upon any matter of procedure and the result of the election shall rest with him.

(3) If the number of nominated candidates be the same as the number of vacancies such candidates shall be deemed elected and the meeting shall not be held, or, in the case of a first election, no ballot shall be taken.

(4) If the number of nominated candidates be less than the number of vacancies such candidates shall be deemed elected, the meeting or ballot, as the case may be shall not be held, and the Administrator shall appoint members to fill the vacancies.

(5) Each voter present at the meeting shall be allowed to vote for as many candidates as there are vacancies but not to give more than one vote for any one candidate.

(6) In the event of an equality of votes for two or more candidates the presiding officers shall decide the election by lot.

(7) Should there be less than ten qualified persons present at the place appointed for an election within fifteen minutes after the appointed time, then the Administrator may by proclamation appoint a Committee; or so many members as were required to be elected, for the area in default, to which Committee or members the provisions of this Ordinance shall apply in the same way as if it were an elected Committee or they were elected members.

(8) The presiding officer shall on the day following the meeting report the proceedings thereof to the Administrator with the full names of the persons elected.

10. *Procedure when election is declared void.*—If any election be declared void the Administrator may take steps, as nearly as may be in conformity with the provisions of this Ordinance, for the election, or in the case of default the appointment, of members of the Committee.

11. *Filling casual vacancies.*—Whenever an election is required to fill a casual vacancy the same procedure shall *mutatis mutandis* be followed as in the case of an annual election, but it shall not be necessary to fill such vacancy if the next succeeding annual election is to be held within three months.

A member so elected shall hold office for the unexpired term of office of his predecessor.

12. Every Committee shall at the first meeting after each election elect a Chairman from their number.

13. *Chairman.*—(1) Annual elections of members of the Committee shall be by ballot, and take place on the first Wednesday of August. If the first Committee shall have been elected later than the first week in February, the first annual election shall take place in August of the following year, until which time the first Committee shall hold office.

(2) *Annual elections.*—At the first annual election the three members of Committee who received the fewest number of votes at the original election shall retire; at the second annual election the remaining members shall retire, and so on alternately year by year.

(3) Not less than three weeks before the time for election the Chairman shall, by notice in a daily newspaper circulating in the area and in any other way decided by the Committee, summon a meeting of voters to be presided over by the Chairman of the Committee (or in his absence an elected Chairman) for the purpose of election of members of the Committee, at the same time calling for nominations of candidates.

Such nominations shall be signed by three voters, accepted by the candidate, and be lodged with the Chairman of the Committee not less than seven days prior to the date of the election meeting.

14. *Rules of procedure.*—The Committee shall decide their own rules of procedure, and shall meet at least once in each month.

15. *Incorporation of Committee.*—The Committee shall be a body corporate with perpetual succession and with power to sue and be sued.

16. *Ordinance to conform to Public Health Act.*—The powers and authority conferred by this Ordinance on Committees shall in all cases be construed in conformity to the provisions of the Public Health Act.

17. *Powers and duties of Committee.*—The Committee shall within its area exercise all or any of the powers and carry out the duties conferred or imposed on local authorities under the Public Health Act, including the levying of rates and imposition of fees and charges for services rendered on, and, recovering such rates, fees and charges from the owners or occupiers of, immovable property within such area.

18. *Special powers.*—The Committee shall in particular have power and authority for the following purposes within the area under its control:—

- (a) To ensure proper sanitation, in respect both to public places and private premises.
- (b) To forbid insanitary practices.
- (c) To prevent the keeping or use of premises, houses, sheds, yards and all other places in a way likely to spread disease or to endanger the health of the occupants or neighbours.
- (d) To compel the use of sanitary conveniences; to regulate their position, construction and clearing; to allow and regulate, or to forbid the use of cesspools in connection with sanitary conveniences; to prescribe the number of sanitary conveniences to be constructed in relation to the number of persons using buildings or dwellings.
- (e) To regulate the class and character of future buildings, the materials to be used and the methods of construction.
- (f) To forbid the erection of buildings, huts, sheds, and the like, or of additions thereto or renewals, without the prior approval of a proper officer, or upon any plot of ground not laid out and approved in conformity with Sub-section (g); to require the submission of plans and information in regard to any such thing, to prevent any such erection otherwise than in accordance with the approval of such officer, both as to plan and as to material and method of construction; to remove or cause the removal, at the cost of the responsible person, of anything so built or constructed without the necessary approval.
- (g) To prevent the crowding of buildings; to regulate their ventilation and sanitation, to prescribe the maximum number of dwellings to be allowed on any given extent of ground, the minimum areas to be built on, and the minimum width of roads or rights of way and frontages thereto; to regulate the air and ground spaces required between or around buildings.
- (h) To ensure the sanitary occupation of premises, and to regulate the number of persons allowed to inhabit or congregate or sleep in any house, building or room; to enforce all reasonable requirements for ensuring the objects of this clause.
- (i) To regulate the disposal of refuse and all descriptions of refuse and waste matter.
- (j) To prevent the overcrowding and compel the sanitary use and cleanly condition of sties, kraals and other places where animals are kept; to regulate and, where deemed necessary, to restrict or prohibit the keeping of animals on premises.
- (k) To prevent the exposure and compel the proper burial or disposal of carcases or other things likely to be unhealthy to the public.
- (l) To assign places as cemeteries and to prevent bodies being buried elsewhere; to compel the timely and sanitary burial of corpses, subject always to the requirements of the law in regard to such matters.
- (m) To control the supply of water and to prevent the pollution of any water supplied for use.
- (n) To control the supply of milk and to prevent its adulteration; to regulate dairies or other places within the area from which milk is supplied, and to compel compliance with requirements for ensuring its being pure and wholesome and not exposed to the risk of infection.
- (o) To enter into agreements with any other local authorities for mutual co-operation in carrying out any service, work or undertaking in the competence of the Committee, or for its being carried out by the officers or agents of any local authority.

19. *Regulations made by Committee.*—(1) The Committee may make regulations for any matters within their authority and for giving full effect to their powers and the enforcement of this Ordinance or any powers which may be conferred upon the Committee by any other or future law.

(2) Such regulations may prescribe penalties for any breach thereof, not exceeding a fine of Five Pounds, with the alternative of imprisonment with or without hard labour for a term not exceeding one month.

(3) The regulations may define matters of procedure in respect to prosecutions for contraventions, and any other matters incidental to the enforcement of the Ordinance or the Regulations.

(4) No regulation shall be in force unless and until it has been approved by the Administrator, who may give any directions he thinks proper for its being made public before approval. Any regulations so approved shall be published in the *Provincial Gazette* and publicly exhibited at the Committee's office for not less than one week after such publication.

20. *Formation of funds.*—(1) The rates, all fines imposed for breaches of the regulations, and any other sums collected as charges or otherwise received, shall be paid into a fund under the control of the Committee, to be used for defraying the expenses lawfully incurred by the Committee in the exercise of its powers and duties.

(2) *Charges.*—All charges imposed by the Committee shall be impartially made according to tariffs set forth in the regulations.

21. *Accounts and Audit: Regulations.*—The Administrator may by general regulations prescribe the manner in which the Committee's accounts shall be kept and audited, and by such regulations impose any requirements which he may deem necessary for ensuring a satisfactory system of accounts and audit.

22. *Power to borrow.*—The Committee may borrow money for any purposes within its authority subject to the approval of, and on the terms and conditions imposed by, the Administrator.

23. *Quorum: Decisions of Committee.*—All matters before the Committee shall be decided by the votes of a majority of those present at a meeting, for which three members shall form a quorum.

In the event of an equality of votes the Chairman of the Committee or of the meeting shall have a casting vote.

24. *Cases in which members are recused.*—No member of a Committee shall vote upon any matter in which he or any of his family, or any partner, has an interest other than such as is common to the inhabitants of the area.

25. *Staff: Contracts.*—The Committee may appoint and pay officers and staff, and may enter into contracts for necessary services or supplies.

26. The Administrator may, with the consent of the Committee, appoint medical officers and sanitary inspectors and may assign such officers and inspectors to serve one or more areas proclaimed under this Ordinance. The salaries and expenses of such officers and inspectors shall be chargeable against the fund under the control of the Committee of the area served in such proportion or proportions as may be agreed.

27. *Remedy for defaults of Committee.*—If a Committee neglects to provide sufficient rates or to pass the necessary regulations, or otherwise to discharge its duties, the Administrator or any voter may apply to the Provincial Division of the Supreme Court for a *mandamus* for any such purpose.

28. *Procedure where Committee cannot be formed in ordinary course.*—If owing to unwillingness of qualified persons to serve as members of a Committee, or repeated failure to elect a Committee or from any other cause serious difficulty arises in constituting a full Committee under the Ordinance for any area, the Administrator may, after not less than one month's notice in the *Gazette*, and in a newspaper, appoint a Committee, or so many members thereof as may be required, from persons selected in his discretion.

Repeal.—Persons so appointed shall for the purposes of the Committee be in the same position as elected members.

29. *Commencement of Ordinance.*—This Ordinance shall come into operation on a date to be fixed by Proclamation.

* * * * *

DEFINITION OF TERMS.

2. In these Rules—

Licence means a wholesale or retail licence coming under Act No. 18, 1897, and being a licence to which Ordinance No. 4, 1923, applies. It includes the renewal or transfer of a licence.

New Licence means any licence other than the renewal or transfer of a licence as hereinafter defined.

Renewal of Licence means the grant of a licence similar to and operating from the expiry of a licence current at the date when application for the renewal is made and granted to the same person and, except in the case of a hawkker, for the same premises as before.

Transfer of a Licence means the transfer of the operation of a licence to other premises than those named in the licence.

Licensing Board means a Rural Licensing Board constituted under Ordinance No. 4, 1923.

District means the county or other area for which a Licensing Board is constituted.

Clerk, except where otherwise indicated, means the person appointed to receive applications made to a Licensing Board.

Magistrate means the Resident Magistrate having jurisdiction over the place where a licence is to operate.

Clear Days means that the prescribed number of days is to be reckoned exclusively of the first and last days and of Sundays or public holidays.

LODGING APPLICATIONS.

3. Every application for a licence shall be made to the Licensing Board for the area in which the licence is to operate, and shall be lodged with the Clerk.

NEW LICENCES, OTHER THAN HAWKER'S LICENCES.

4. Every person desiring to obtain a new licence shall make his application in the form of Schedule No. 1, together with the appropriate declaration required under the Firms Act 35, 1906, and, in the case of firms of persons trading under a firm name, the certificate issued by the Registrar of Deeds and any subsequent certificates necessary under the said Act or any amendments thereto.

5. The applicant (except where the application relates only to a change in the ownership of a licence) shall attach to his application a ground plan, drawn to scale or showing approximately the dimensions, of the premises in respect of which the licence is applied for, and must give on the application form a full and correct description of the position of the premises.

6. The applicant shall also publish a complete copy of the application twice in a newspaper published in one of the official languages of the Union and having a *bona fide* daily or weekly circulation in the area in which the licence is required. The first of such publications shall be made within three clear days after lodging the application with the Clerk and the second publication shall be made on the seventh or eighth day following the date of the first publication. The applicant shall forward copies of the newspapers containing the notices to the Clerk.

7. All applications and any plans which may be required shall be lodged in triplicate.

RENEWAL OF LICENCE.

8. Every application for the renewal of a licence shall make his application in the form of Schedule No. 2 in the manner prescribed in Rules 4 and 7. Applications must be lodged with the Clerk between 1st November and 31st December of the year preceding that for which the licence is required.

TRANSFERS.

9. Every person desiring to obtain transfer of a licence to new premises shall make his application in the form of Schedule No. 3, and shall lodge same in triplicate, and shall attach thereto the appropriate declaration required under the Firms Act, and shall also comply with Rules 5, 6 and 7. The applicant shall produce to the Board the written consent of the owner of the new premises to his occupation thereof.

HAWKER'S LICENCES.

10. A hawker shall make his application in the form of Schedule No. 4 and shall comply with Rule No. 6. He shall also make his application for renewal of his licence and for a supplementary licence on the same form. Application for renewal must be made between the 1st November and 31st December of the year preceding that for which the licence is required.

OBJECTIONS.

11. Objections to any application for a new licence or the transfer of any licence must be lodged in duplicate with the Clerk or Magistrate within two weeks from the date of the first publication of the application. Objections lodged with a Magistrate shall forthwith be forwarded by him to the Clerk.

12. Objections to the renewal of any existing licence must be lodged in duplicate with the Clerk not later than the 15th December of the year for which the licence is current. If no application for renewal is made, the Clerk shall advise all objectors to that effect.

13. (a) An objector shall state in writing the ground and nature of his objections. Any documents in support thereof shall be lodged in duplicate within the time within which objections are required to be lodged. One copy of such objections and documents shall be forwarded to the applicant by the Clerk.

(b) Any objections or documents in support thereof lodged after the due date shall not be taken into consideration by the Licensing Board.

GENERAL RULES.

14. Upon receipt of any application the Clerk shall forward to the Magistrate two copies of the application, and in the event of a new licence or transfer to new premises two copies of the plan. The Magistrate shall cause one copy of each to be forthwith posted on the notice board at his Court and the other copy to be filed of record in his office, and shall forthwith acknowledge their receipt to the Clerk, at the same time certifying that the copies have been respectively posted and filed as aforesaid:

15. The Licensing Board shall be at liberty to obtain from a health officer, sanitary inspector or police officer of the District a report for its guidance in respect of the building and premises for which any licence is sought, the living accommodation, the goods storage accommodation, and the sanitary arrangements in connection therewith, or upon the manner or sanitary conditions under which the applicant has previously carried on his business.

16. After the expiration of three weeks from the date of the first advertisement of any application for a new licence or the transfer of a

licence the Licensing Board may, in the absence of any objections duly lodged, consider the application and give its decision thereon.

17. In any opposed application, or wherever the attendance of an applicant required, the Clerk shall notify the parties of the place and time appointed for the hearing. Such notice shall, in the former case, be given so as to reach the addressees not less than four clear days before the hearing.

18. An applicant or an objector requiring the attendance of any witnesses at the hearing shall forward to the Clerk the names and addresses of the witnesses so required, together with such sum of money for conduct money and witness fees as the Clerk considers reasonable to meet their expenses, and the Clerk shall thereupon prepare and obtain the issue of the necessary subpoenas in the form of Schedule 5.

Such subpoenas shall be forwarded for service to the Messenger of the Magistrate's Court.

HEARING AND DECISION.

19. An applicant shall, when thereto required by the Licensing Board, appear personally and produce his books of account and such other documents or evidence as may be necessary to show to the satisfaction of the Board that he is able to fulfil the conditions laid down by Section 139 of Act 32 of 1916 or any amendment thereof as regards the keeping of such books of account or records in the English or Dutch language, and any other evidence that he may desire to bring in support of his application, a note of which evidence shall be taken down by the Board in writing.

20. The proceedings in opposed cases, or in any case where an applicant is required to attend and give evidence, shall be open to the public.

21. The clerk shall keep a separate record of every application. Such record shall show the names of the parties and of objectors, the nature of the application and the course of proceedings.

22. In terms of Section 11 of Ordinance No. 4, 1923, the Board will record the evidence given for and against every application.

A minute of the Board's decision, and, where an application is refused a minute of the reasons for refusal, shall be drawn up at or before the close of the sitting, and shall be signed by the Chairman of the Board or by the member who acted as such at the hearing of the application.

23. When an application has been approved the Clerk shall forward to the applicant the certificate of authority for issue of the licence, to be produced by him to the District Receiver of Revenue.

24. No such certificate shall, in the case of a suspended licence, be granted until it has been certified in terms of Section 19 (2) of Ordinance No. 4, 1923, that the required conditions have been complied with, or, in the case of an opposed licence, within fourteen days after the Licensing Board has notified its decision, or in any case during the pendency of an appeal.

25. The Licensing Board may, in granting costs under Section 5 of Ordinance No. 6, 1916, direct them to be taxed on any of the scales applicable to Magistrates' Courts.

Such costs shall be taxed by the Clerk, who shall be guided as far as possible by the practice of taxation in the Magistrates' Courts.

A writ of execution for the recovery of costs shall be in the form of Schedule No. 6.

26. Any licence holder who may destroy, lose or mislay the licence issued to him may, upon payment of 1s., procure a certified copy upon application to the District Receiver of Revenue.

APPEALS.

27. Any person having, under Section 12 of Ordinance No. 4, 1923, a right of appeal to the Board of Appeal may, within fourteen days after the Licensing Board has notified its decision, give notice in the form of Schedule No. 7 to the Clerk of his intention to appeal against the decision.

With the notice of appeal the appellant shall also put up five copies of his reasons and grounds of appeal, together with any documents in support thereof.

28. The Clerk, immediately upon receiving notice of appeal, shall inform the Clerk of the Appeal Board, and shall furnish him with one copy of the appellant's reasons and grounds of appeal and any documents accompanying them.

He shall also, as soon as may be, lodge with the Clerk of the Appeal Board the record of the application and the proceedings therein, and, when the application has been refused, the Board's reasons for its decision; all of which shall be open to inspection by the appellant and respondent.

29. The Clerks of the Appeal Board shall fix a date for the hearing of appeals and shall attach a list of the appeals, with the dates fixed for the hearing of each, to the door of the Board room seven clear days before the appointed date.

The Clerk shall also give notice in writing to the appellant and respondent (if any) and to the Clerk of the Licensing Board of the place and date fixed for the hearing of the appeals seven clear days before the appointed date.

30. (a) The proceedings of the Board of Appeal shall be open to the public.

(b) The Clerk of the Board of Appeal shall keep minutes of the proceedings.

(c) The record of the application shall be produced before the Board. No fresh evidence, oral or documentary, shall be taken at the appeal.

(d) The appellant and respondent shall be entitled to be heard upon the appeal, personally or by counsel.

(e) At the hearing of any appeal the Chairman of the Licensing Board or any member on his behalf shall be entitled to attend and to make any statement or explanation which he may consider necessary or which may be required by the Appeal Board.

(f) The Board may adjourn the hearing from time to time.

31. In any case in which the Appeal Board refuses the renewal of a licence, it shall, before the close of the sitting, record the reasons for the refusal under the signature of the Chairman of the sitting.

32. The Clerk of the Board of Appeal shall notify the decision in each case to the Licensing Board.

SCHEDULE No. 1.

APPLICATION FOR NEW LICENCE.

To the Licensing Board for the District of

I/We hereby apply for a new Licence, as follows:—

1. Name of Applicant or Style of Firm
2. Full Names of all Partners (if any)
3. Nature of Licence
4. Period for which Licence is sought
5. Premises sought to be licensed
6. Magisterial District
7. Postal address of Applicant

I/We attach hereto ground plan of the premises.

Date19.....

Signature

SCHEDULE No. 2.

APPLICATION FOR RENEWAL OF LICENCE.

To the Licensing Board for the District of.....

I/We hereby apply for the renewal of a Licence, as follows :

1. Name of Applicant or Style of Firm
2. Full Names of all Partners (if any)
3. Nature of Licence
4. Period for which Licence is sought
5. Premises sought to be licensed
6. Magisterial District
7. Postal Address of Applicant

Date.....19

Signature

SCHEDULE No. 3.

APPLICATION FOR TRANSFER OF A LICENCE TO NEW PREMISES.

To the Licensing Board for the District of

I/Wehereby apply for a transfer of a Licence to new premises, as follows:—

1. Name of applicant or Style of Firm.....
2. Position of present premises
3. Position of proposed new premises
4. Nature of Licence
5. Magisterial District
6. Period for which Licence has to run

I/We attached hereto a ground plan of the new premises.

Date.....19

Signature

SCHEDULE No. 4.

APPLICATION FOR A HAWKER'S LICENCE.

To the Licensing Board for the District of

I/Wehereby apply for a Hawker's Licence, as follows:—

1. Full names of persons, Principal or Partner and of any Agent for selling to be inserted in Licence
2. Number of Servants, Carriers or Drivers to be employed in the business
3. Number of Pack Horses or other Pack Animals to be used in the business
4. Number of Vehicles (other than those propelled by hand) to be used in the business
5. Description of Vehicles, stating whether of two or more wheels...
6. Period for which Licence is sought
7. Magisterial District for which licence is sought.

Date.....19

Signature

SCHEDULE No. 5.

SUBPENA.

.....Applicant.
.....Objector.
To.....

You are hereby summoned to appear personally before the Licensing Board for the District of at on the day of next at o'clock in the forenoon as a witness in the above application on behalf of...

Dated this day of 19.....

.....
(Signature of Member of the Licensing Board)-

SCHEDULE No. 6.

WRIT OF EXECUTION FOR COSTS.

Rural Licensing Board for the District of
In the matter of:—

.....Applicant-
.....Objector-

To the Messenger of the Court of the Resident Magistrate for the District of

An order was made in this matter on the day of 19..... whereby the was/were ordered to pay certain costs, which have been taxed at the sum of £.....

You are hereby required to demand payment by the said..... of the said sum, and, failing payment, to take action as may be required by law for the due levy and recovery thereof.

Dated at this day of 19.....

.....
(Signature of Member of the Licensing Board.)

SCHEDULE No. 7.

NOTICE OF APPEAL.

To the Clerk of the Licensing Board for the District of
..... 19.....

SIR,

I/We hereby give notice that it is intention to appeal against the decision of the Licensing Board, pronounced upon the day of 19..... upon the application made by for a Licence for the premises known as or, the transfer of the Licence granted for the premises known as.....

Signature.....

Dated at this day of 19.....

FROM THE ASSISTANT SECRETARY, INDUSTRIES AND OVERSEAS DEPARTMENT,
No. I. AND O.-4317-23, DATED INDIA OFFICE, THE 5TH DECEMBER, 1923.

SUBJECT:—*Indians in Natal. Natal Public Health Committee's Ordinance
No. 7 of 1923.*

* * * * *

I am directed by the Secretary of State for India to forward, for information; copy of letter from Colonial Office dated the 1st December 1923 and enclosures on the above subject.

58047-1923.

SUBJECT:—*Natal Public Health Committee's Ordinance, No. 7 of 1923.*

REFERENCE TO PREVIOUS CORRESPONDENCE:

Letter to the Colonial Office of the 2nd July 1923 (No. I. & O. 2062).

Transmitted by direction of the Secretary of State for the Colonies.

Colonial Office,

Downing Street,

1st December, 1923.

TO HIS MAJESTY'S UNDER SECRETARY OF STATE FOR INDIA, INDUSTRIES
AND OVERSEAS DEPARTMENT, INDIA OFFICE, LONDON, No. 62, DATED 7TH
FEBRUARY 1924.

SUBJECT:—*Natal Public Health Committee's Ordinance, No. 7 of 1923.*

I am directed to acknowledge the receipt of Mr. Walton's letter No. I. and O. 4317-23, dated the 5th December 1923, with which was forwarded a copy of the Natal Public Health Committee's Ordinance, No. 7 of 1923.

2. The Bill as originally drafted by the Government of the Union of South Africa debarred Indians from voting for members of Committees contemplated under it or from becoming members of such Committees themselves. In view of the representation made by the Government of India (*vide* the Government of India's telegram No. 454-O., dated the 7th May 1923, to the Governor General of South Africa, a copy of which was forwarded to the India Office with my letter No. 140, dated the 10th May 1923), the Government of the Union of South Africa have modified Section 8 of the Bill so as to omit the particular words that disqualified Indians from becoming members, but in view of the definition of "voters" in Section 2 and the provisions of Section 6 no material advantage to Indians can be expected from the modification referred to above and the Government of India observe with regret that the Ordinance has become law in its present form.

FROM THE SECRETARY, ECONOMIC AND OVERSEAS DEPARTMENT, INDIA OFFICE,
WHITEHALL, LONDON, S. W.-1, No. E. & O.-4511/25, DATED 31ST JULY
1925.

INDIANS IN NATAL.

(1) *Natal Ordinance to amend Public Health Committee Ordinance, 1923.*

* * * * *

SIR,

With reference to the letter from this Office, No. I. & O.-4317/23 dated 5th December * * * * I am directed by the Secretary of State for India in Council to forward, for information, copy of the papers noted below, on the above subject.

From Dominions Office, dated 23rd July 1925 and enclosure.

* * * * *

SUBJECT:—*Natal Ordinance to amend the Public Health Committees Ordinance, 1923.*

32001/25.

Reference to previous correspondence :

Letter from the Colonial Office of the 1st December 1923 (58047/23).

Transmitted by direction of the Secretary of State for Dominion affairs, (No. 4, 1925.)

Dominions Office,

Downing Street,

23rd July 1925.

NATAL (4 of 1925).

[Assented to by the Governor-General-in-Council, on 31st March, 1925.]

[No. 4, 1925.]

ORDINANCE.

“*To amend the Public Health Committees Ordinance, 1923.*”

BE IT ENACTED by the Provincial Council of the Province of Natal, as follows :—

1. This Ordinance shall be construed jointly with the Public Health Committees Ordinance No. 7, 1923, herein referred to as the principal Ordinance.

2. (1) Any proclamation issued under Section *three* or *four* of the principal Ordinance shall declare the number of members of Committee and subdivision of areas which shall constitute the Committee of such area there- by constituted or affected. Such number shall, subject to the later provisions of this Ordinance, be either five or seven.

(2) Where existing areas are combined as one area, or an existing area is divided into two or more areas, the former Committees shall be dissolved as from the date when the proclamation takes effect.

(3) The rights and obligations of the outgoing Committees shall devolve upon the Committees which succeed them.

In the case of the subdivision of an area the Administrator may, by notice in the *Provincial Gazette*, make suitable provision for adjusting and apportioning such rights and obligations between the future Committees.

3. Sections *six* to *thirteen* inclusively of the principal Ordinance are hereby repealed, and the election of members of Public Health Committees shall be regulated by the provision hereinafter made.

4. (1) Within two months after the constitution of a new area the Administrator shall take steps for the election of members to form the Public Health Committee.

(2) In cases involving the dissolution of former Committees such steps may be instituted in anticipation of the taking effect of the proclamation, in order that the Committees may be formed immediately upon the establishment of the new areas.

(3) For the purposes of such first elections the Administrator may appoint officers to carry out the various duties, including those hereinafter assigned to the Chairman, and may make any modification of the prescribed procedure that may be found necessary.

5. An annual election of members of the Committee to fill vacancies caused by retirement and any casual vacancies then existing shall take place in the first Wednesday of August in each year:

Annual elections.

Provided that if the election of a first Committee, or a whole Committee, shall have taken place later than the first day of February the annual election shall not be held until August of the following year the Committee continuing to hold office in the meantime.

6. Whenever a member of the Committee vacates his seat by effluxion of time, or if any election is declared by the Court to be void, the Chairman shall take immediate steps for the election of a member to fill the vacancy, provided that no election shall be necessary if such vacancies, not being more than two in number, occur within three months from the ensuing annual election.

Casual elections.

The member so chosen shall hold office for the unexpired term of office of his predecessor.

7. (1) Not less than three weeks before an election the Chairman of the Committee shall, by notice published in a daily newspaper circulating in the district, and in any other way decided by the Committee, summon a meeting of voters for the purpose of electing members of the Committee, specifying the time and place for the meeting, and at the same time calling for nominations of candidates to be lodged with him by a certain day and time, being not less than six or more than eight days before the day appointed for the meeting.

Notice of election.

(2) If owing to resignation or other circumstances there be no Chairman the Administrator may appoint a person to act as such for the giving of notice and for any other necessary duties until a Chairman is chosen.

Nominations.

8. No person shall be elected unless he has been nominated by three voters and the nomination papers, signed by them and accepted in writing by the candidate, has been lodged with the Chairman within the time limited by the notice.

9. No person shall be capable of being nominated, or of being elected or appointed or of holding office as a member of the Committee who is—

Disqualifications.

- (a) an officer or employee of the Committee;
- (b) an unrehabilitated insolvent;
- (c) an alien who has not been naturalised;
- (d) a person declared to be a lunatic or of unsound mind;
- (e) a person who has been convicted of treason or, within the previous five years, of a crime punished by imprisonment without the option of a fine.

10. (1) If the number of duly nominated candidates be equal to or less than the number of members to be elected, the Chairman shall publicly declare them to be elected as members of the Committee, and shall transmit their names to the Administrator for publication in the *Provincial Gazette*.

Election where number of candidates equals or is less than the number of vacancies.

(2) If the number of duly nominated candidates be less than the seats to be filled, the Administrator, upon being duly notified, shall by notice in

the *Provincial Gazette* appoint so many members as are required to complete the Committee, subject however to the provision hereinafter made for altering the number of members in such cases.

(3) In the cases aforesaid the meeting called for the election shall not be held.

11. The Administrator may make regulations for any necessary matter of procedure in connection with elections.

Regulations for procedure.

12. The meeting for the election of members shall, except as provided in regard to first elections, be presided over by the Chairman of the Committee, or in his absence a Chairman elected by the meeting, and it shall be his duty to satisfy himself that no person takes part in an election who is not qualified as a voter for the area.

Chairman to preside at meeting.

The decision upon this question and upon the quorum, the proceedings, and the result of the election shall rest with him.

13. Should there be less than ten qualified voters present within fifteen minutes after the appointed time for the meeting, it shall not be further proceeded with, and the Administrator upon being duly notified thereof, may by notice in the *Provincial Gazette* appoint so many members of the Committee as are required to complete the Committee, subject however to the provision hereinafter made for such cases.

14. (1) The elections at the meeting shall be by ballot, each voter present being allowed to vote for as many candidates as there are vacancies, but not to give more than one vote for any candidate.

Mode of election.

(2) In the event of an equality of votes for two or more candidates the Chairman shall decide the election by lot.

(3) The Chairman shall on the day following the meeting report the proceedings to the Administrator with the names of the elected members for publication in the *Provincial Gazette*.

15. Every Committee shall at the first meeting after the first or an annual election, or whenever it may become necessary, elect a Chairman, who shall hold office as such until the election of his successor.

Election of Chairman.

In the absence of the Chairman the remaining members of a Committee may choose one of their number to act in his place for the occasion.

Acting Chairman.

16. (1) In the case of a Committee consisting of five members the Administrator may, if an increase appears desirable, by proclamation increase the number of members to seven, with effect from the next annual election.

Provision for increasing or reducing number of member.

(2) In the case of a Committee consisting of seven members, if at any election the number of candidates does not suffice to constitute a Committee of more than five members, and if the Chairman is unable to tender the names of sufficient qualified persons willing to be appointed, the Administrator may, in place of appointing members to complete a Committee of seven, by proclamation reduce the number of members of the Committee to five.

17. (1) At the first annual election the three members of a Committee who received the fewest votes at the first election shall retire; at the second annual election the remaining members shall retire, and so on alternately year by year.

Term of office: retirement by rotation.

(2) Any cases which cannot be so decided shall be decided by the Chairman by lot.

(3) The rota of members for retirement shall be decided by the Chairman as soon after assuming office as possible.

Any rota heretofore decided by the Chairman of any Committee shall be deemed valid, and the annual retirement of members shall continue according to such rota.

18. (1) The occurrence of vacancies upon a Committee shall not be deemed to affect its authority or invalidate its acts pending the election or appointment in due course of members to fill the vacancies, provided that the quorum of three members required by Section *twenty-three* of the principal Ordinance be maintained.

(2) If owing to vacancies, illness or absence of members, or other cause difficulty is found in carrying on the work of a Committee, the Administrator may appoint persons temporarily to act as members of the Committee.

19. Whenever a Public Health Committee, acting in pursuance of Section 25 or 26, or other like provision, of the Public Health Act, 1919, has caused any person to be placed in a hospital or place of isolation, whether within or without the Committee's area, the Committee shall be entitled to recover from such person, or as the case may be from any relative or legal representative who may be liable for his maintenance, or from such person's estate, the costs incurred for his removal to such hospital or place and for his maintenance, nursing and medical treatment, and, in the event of his death, the cost of the removal and burial of the body.

The Committee may similarly recover any cost paid by it to another local authority in terms of the first proviso of Section 26 of the said Act.

20. In the event of legal proceedings being instituted wherein the constitution or authority of a Public Health Committee is disputed, it shall be lawful for the Administrator from time to time to advance from the Provincial Revenue Fund such sums as are required to enable the Committee to maintain or defend such proceedings at any stage thereof, upon such terms as to repayment or otherwise as he may consider proper.

The Administrator shall also be empowered, if it appears that such proceedings affect Public Health Committees in general, to apportion the sum repayable equally among all the Committees which were constituted at the time when the proceedings were begun. The amounts so apportioned to each Committee shall be a debt due by it, repayable as prescribed by the terms of the advance or as may be otherwise arranged by agreement.

SOUTH AFRICAN MINES AND WORKS AMENDMENT BILL.

TELEGRAM TO THE GOVERNOR-GENERAL, SOUTH AFRICA, No. 67 (OVERSEAS),
DATED DELHI, THE 29TH JANUARY 1925.

We understand Your Excellency's Government has gazetted Bill to amend Mines and Works Act to take power to prohibit issue of certificates of competency to Natives or Asiatics in certain occupations in specified provinces and generally to apportion work as between natives and Asiatics and other persons in respect of mines or machinery. We shall be grateful if main provisions of Bill or, if measure is short, its full text could be telegraphed to us.

TELEGRAM FROM THE GOVERNOR-GENERAL OF SOUTH AFRICA, DATED CAPE TOWN, THE 3RD FEBRUARY 1925.

Your telegram dated 29th January, 67. Following is text draft bill to amend the Mines and Works Act omitting preamble. *Begins.* 1. Section 4 Mines and Works Act 1911 (Act No. 12 of 1911) is hereby amended

by addition to end of sub-section No. (1) of following words " the regulations under paragraph (n) may provide that in such provinces or areas as may be specified in regulations certificates of competency in any occupation referred to in that paragraph shall not be granted to Natives or Asiatics and regulations under any other paragraph of this sub-section may restrict certain classes of work to, and impose duties and responsibilities on, persons other than Natives and Asiatics subject to such persons furnishing such proofs of efficiency as may be prescribed, and may, subject to such proofs of efficiency, generally apportion works as between Natives and Asiatics and other persons respectively in respect of mines, works or machinery."

2. This Act may be cited for all purposes as Mines and Works Act Amendment Act, 1925 and shall commence and come into operation on a date to be fixed by Governor-General by proclamation in Gazette. *Ends.*

TELEGRAM TO THE GOVERNOR-GENERAL OF THE UNION OF SOUTH AFRICA,
No. 155, DATED DELHI, THE 21ST FEBRUARY 1925.

We thank you for your telegram dated 3rd February containing text of Bill to amend Mines and Works Act, 1911. We have carefully examined its provisions and venture to make certain representations for consideration of your Government.

Paragraph 2.—Firstly, we apprehend that rules made under amended Act may adversely affect Indians employed in coal mines and sugar works, of whom there would appear to be several thousand, and thus impose a fresh and tangible economic hardship on community. Secondly, aforesaid rules would operate to narrow still further field in which future generations of Indians may find employment. Thirdly, as population locally called coloured appears to be excluded from scope of Bill, we fear that Indian sentiment would be deeply hurt by discrimination involved. Fourthly, we beg to point out that as introducing principle of segregation in sphere of industry, measure is open to same general objections as were stated in our despatch No. 661 of 23rd August 1923. Lastly, as you are probably aware, enactment of Natal Boroughs Ordinance has caused profound disappointment in this country, and if present Bill becomes law, it would serve to deepen prevailing pessimism as to future of Indians domiciled in Union. In the circumstances we earnestly hope that it may be found possible to abandon measure or alter it so as to spare Indian susceptibilities and safeguard Indian interests.

LETTER FROM THE INDIA OFFICE, LONDON, No. E. & O.-1103/25, DATED THE
10TH MARCH 1925.

SUBJECT.—*Indians in South Africa.*

South African Mines and Works Amendment Bill.

* * * * *
I am directed by the Secretary of State for India in Council to forward, for information, copy of the paper noted below, on the above subject.

Extract from the Report of the Low Grade Mines Commission.

COPY EXTRACT FROM THE UNION OF SOUTH AFRICA.

Report of the Low Grade Mines Commission.

VII.—*The more efficient utilization of the Native Labour Force available.*

161. Colour Bar.—In paragraph 44 of our Interim Report we stated that we were not in a position to report on the colour bar, the removal of which was one of the suggestions made to us for alleviating the position of

the Low Grade Mines. Having heard further evidence and, having given the question of the position of natives in the gold mining industry, with special reference to the Low Grade Mines, our most careful consideration, we are now able to report upon this question and to submit definite proposals and recommendations.

162. The Mines and Works Act, 1911, provides in section four (1) that the Governor General may make regulations, not inconsistent with the Act, in respect of, or in connection with certain matters of things therein specified. In the first chapter of the Mining Regulations, which deals with definitions, it is provided that in the Cape and Natal Provinces certain positions of responsibility must be held by a "competent" person and in the Transvaal and Orange Free State by a "white" person.

This does not mean that the mere fact of being a white person constitutes competency in the Transvaal and Orange Free State, for regulation 158 (13) prescribes that the Manager may not permit incompetent persons to be employed on work upon which safety depends, and the positions referred to all come within this category.

163. Regulation No. 285, Part IV, Chapter XXVII, dealing with the issue of certificates of competency reads:—

"Certificates shall not be granted to any coloured person in the Transvaal and Orange Free State and certificates granted to any coloured person in any other Province shall not be available outside such Province."

While section four (2) of the Act gives power to make different regulations for different provinces or mining districts of the Union, neither it nor any other portion of the Act authorises the enactment of Regulations discriminating between persons simply on account of their colour. This differentiation, not being authorised by the terms of the Act, is considered by many and, apparently, rightly so, to be *ultra vires*. It is, however, in operation.

164. In annexure G we give a complete list of the provisions contained in the Mining Regulations which constitute the legal colour bar in the Transvaal and Orange Free State. These provisions are, however, only part of the colour bar operating against the employment of natives in certain classes of work. Custom and the constant efforts of the Trade Unions have secured a considerable extension of the white man's prerogative. In Annexure H we give a list of 51 occupations on the mines, including all officials. In 32 of these, comprising 7,057 persons, the employment of white men is prescribed by the Regulations, but not in the 19 others, comprising 4,020 persons. Yet the colour bar is as rigorously applied in these as in the others.

165. Custom, public opinion and Trades Unions are therefore at least as powerful as doubtfully legal provisions in establishing and maintaining an effective colour bar. This is corroborated by the evidence given before us of the position at the De Beers mines, Kimberley. Although no legal restrictions are in force here, the colour bar is as vigorously and effectively maintained as on the Witwatersrand mines, and any infringements upon it would be as strongly opposed by the white workmen. The natives have, however, opportunities for earning better wages, which, on the average, are higher than in the gold mining industry and, as there are no low grade diamond mines precipitating a crisis as on the gold mines of the Rand, the urgent necessity for curtailing costs and increasing efficiency has not arisen, and is not even remotely anticipated.

166. The removal of the restrictions from the Regulations, while meeting, to a very considerable extent, some of the strong objections brought against them by numerous witnesses, would not, therefore, in itself, bring about any appreciable change in the effective colour bar.

167. The principal obstacle in the way of employing competent natives on skilled or semi-skilled work in the mining industry is thus the objection of the white worker, who resents any attempt to employ natives on any but rough and unskilled work, fearing that if they are allowed to enter into

competition with him the result would be to reduce his wages, and to supplant white by cheaper coloured labour. This point of view is strenuously maintained, and several witnesses representing the views of the white workers, have said that rather than give way on the colour bar they would prefer to see the low grade mines closed down, despite the resulting unemployment and misery which such a calamity would cause; other witnesses again have urged that these mines must be kept working at all costs. Various views and suggestions have been placed before us in connection with the difficulties to be dealt with, both as regards those contained in the Regulations and those enforced by custom and maintained by public opinion.

168. These suggestions may be conveniently summarised as follows:—

- (a) Amendment of the Mining Regulations in such a manner as might be found necessary to permit of the more effective employment of Natives.
- (b) Maintenance of the existing Mining Regulations and the effective colour bar restrictions as at present maintained by custom.
- (c) Removal of all the restrictions in the Mining Regulations and the employment of natives on any class of work (skilled or unskilled) subject to the condition that their rates of pay shall not be less than those of the white employees performing similar classes of work.
- (d) Repeal of the Regulations, provided the effective colour bar restrictions are maintained as rigidly as at present.
- (e) Repeal of the Regulations and modification of the effective restrictions now operating so as to permit of the employment of natives on skilled and semi-skilled work, with higher wages than they are now able to earn.
- (f) Other witnesses advocated the employment of natives on the largest possible scale in all the low grade mines, on any work they are capable of doing, with a minimum of white supervisors, at wages higher than they can now earn, but lower than those paid to the white workers whom they would displace the latter to be employed in the high grade mines, and the number of natives there reduced.

169. In our *interim* report (paragraphs 32-36) we recommended that methods of working should be altered and the Mining Regulations be amended if necessary for that purpose so that a larger proportion of the time actually spent underground by natives could be made available for work, with beneficial results to the industry as well as to the natives, who would then be able to earn higher wages. Such alterations of work and amendments of the Regulations may or may not affect the colour bar as at present in force, but would in any case only touch the fringe of the industrial and social question involved.

170. The question goes much deeper and involves consideration of the whole labour system on which the industries of the Union have been built up. In mining, as in most other industries, a more or less practicable *modus vivendi* has been arrived at, but the boundary line between the employment of black and white labour is highly artificial and liable to alteration from time to time. While the position of the supervising or highly skilled white is a perfectly definite one as against the unskilled native doing rough work, that of the unskilled white is not so obvious. He can hardly be considered to be the equal in efficiency of a native who by experience and practice has acquired proficiency in his particular class of work. The labour of such a native is therefore clearly of greater value to an employer than that of the unskilled white man, and if there were no artificial restrictions the latter would be driven to the wall. His standard of living is higher than that of the native and where a skilled native would be content to take 5s. per day, because that would enable him to live in comfort according to his standard, the inferior white man will demand a higher rate of pay for the same work, less well done, because he cannot live in decency on less.

171. It is on this account that the white man looks upon the colour bar restrictions as a protection against what he considers to be unfair competition. We have on the one side a considerable body of more or less skilled and partly educated natives who clamour for opportunity to improve their pay and their station in life, and on the other a large number of whites who, through no fault of their own, have had no training in any particular trade. They claim protection against the competition of natives who are still in an inferior stage of civilisation, and are strongly supported in this attitude by their more fortunate skilled fellow-workmen. Both sides have given evidence that unless their desires are given effect to, there will be struggles and explosions of a violent character, and there is already sufficient indication in recent happenings on the Witwatersrand that this is only too true.

172. The Commission has given this matter the most serious consideration, but before stating the conclusion it has formed, it is desirable to refer briefly to the remarks and views of other investigators who have preceded us in an enquiry into this subject.

173. The Transvaal Indigency Commission, 1906-08, in its report paragraph 52, said:—

“ It has been clearly proved to us that the restriction of the native to the sphere of unskilled work cannot be permanent. His intense desire for education is everywhere the subject of comment.”

In paragraph 53 it stated:—

“ The result of this desire for education is that the native is rapidly qualifying himself to enter into competition with the white population in the skilled trades.”

174. The Economic Commission, 1914, in paragraph 57 of its report, said:—

“ While holding the view that in the future a natural outlet for the talents of the skilled and educated native will be furnished by the development of his own people, your Commissioners are of opinion that there should be no legal barriers to prevent natives, or others of the non-white population, from engaging in any work above the grade of unskilled.”

175. The Relief and Grants-in-aid Commission, 1916, in paragraph 73 of its report, stated:—

“ We also agreed with the Indigency Commission in rejecting the proposals that Government should assist to improve the white man's position by—

(a) the establishment of a minimum wage for all workers, white or black;

(b) fixing the ratio between the number of white and coloured labourers in all employments;

and we agree with the reasons given by that Commission for rejecting these proposals. Such artificial methods will do more harm than good. So far from remedying the evil, they may aggravate it. They encourage the white man to rely upon artificial aids rather than upon his own resources. They also interfere with those economic principles on which alone a true and lasting solution of the problem must depend.”

176. The report of the Native Grievances Inquiry Commission, 1913-14, stated in paragraph 280:—

“ The real grievance of the native on this point is the colour bar, which blocks practically all his opportunities of promotion. He argues, and I see no flaw in his reasoning, that if he can do the same work as white men, there is no reason why he should not receive the same remuneration. That in many instances he can do it, and, in some instances, is actually doing it, admits of no doubt.

177. Mr. J. B. Moffat, in his report on the partial cessation of the Municipal sanitary services at Johannesburg on 6th and 8th June, and the threatened strike by natives on 1st July, 1918, said:—

“ The Government should relieve itself from the odium attaching to it in the matter by withdrawing the colour bar provisions from the Regulations and thus show that it, at least, is no party to obstacles being placed in the way of natives rising to positions to which their industry and ability entitled them. The question of the extent to which use is to be made of the natives' capacity for classes of work from which they are now excluded will be a purely economic one, to be dealt with by the mine owners.”

178. While not agreeing entirely with the reasoning advanced by our predecessors in this enquiry, we are of opinion that the legal restriction now in force should be abolished. From the point of view of abstract justice as between man and man, there is nothing to be said in their favour. If, in spite of this, the majority of the white people of South Africa wish to maintain the legal restrictions, they have obviously the power of doing so, but it is doubtful that such is their desire. In this respect the question has a political complexion, with which we have nothing to do.

179. It may be argued that, if the larger section of the people wish to and are able to enforce an effective colour bar, this may as well be incorporated in legal enactments, since, whether it is just or not, it is the will of the people. It is, however, doubtful whether the majority of white South Africa supports the colour bar, and even if it did, it might yet hesitate to incorporate this feeling in a statute or other legal provision which conflicted with its sense of justice. The colour bar is in any case bound to be equally effective even if the legal restrictions are removed. We have already pointed out that this has been the case at Kimberley, where there is no legal colour bar, and it is safe to assume that the experience of the Witwatersrand will prove to be no different.

180. Since it is not at all likely that a removal of the legal colour bar will have any noticeable effect on the relative position of white and black workers in the mines, it may be argued that the explosion on the part of the natives, which we have already intimated as possible, will not thereby be prevented. We think, however, that the removal will satisfy a number of educated natives to whom the legal colour bar is a great source of irritation.

181. It has been pointed out that the employment of a proportion of natives on skilled and semi-skilled work would widen or maintain the scope for more skilled white workers and, if by such employment the Low Grade Mines can be kept working, this would certainly be the result. The number of natives who could pass the necessary tests and be promoted is not large and if proof of their fitness to advance is required, it is provided in the fact that despite regulations and public opinion they now, not infrequently, perform skilled and semi-skilled work.

182. If there were no legal colour bar, the boundary line of the employment of natives would be more elastic and could be altered, by mutual agreement between employers and workmen, to meet the circumstances of the case. Such variation is rendered very difficult when the colour bar is prescribed by statute or by regulation. In the case of a low grade mine, the continued existence of the mine may be only possible by extending the scope of the employment of natives to a wider extent than is necessary or customary elsewhere. A legal colour bar would prevent this being done until the law could be amended. This is too slow and cumbersome a procedure, and for it should be substituted the quick but satisfactory method of discussion and arrangement between employers and workmen.

183. There is no reason to anticipate that the employment of the skilled white workman on the mines will, in any way, be jeopardised by the removal of the existing colour bar restrictions as he can, and will, be able to hold his own against the native who is not, and will not, be able to assume serious

responsibility or compete successfully with him. In the Southern States of the United States of America there is no colour bar, and, while it is authoritatively stated that the Negro can hold his own there in the unskilled and semi-skilled occupations, he is not able to do so in the skilled trades and has actually lost ground in open competition with the white man. The evidence has, however, disclosed the fact that there are white workers in the mines who are inefficient and it is on their account that competition is feared. As long as this class of man is protected by the existing restrictions, so long is it likely to remain inefficient, while the risk of being displaced by natives would have a stimulating effect.

184. Various witnesses have testified to the fact that the employment of inefficient white miners and gangers has an immediate and detrimental effect on the amount of work performed by the natives under their charge. Cases have been quoted where experienced and long service natives have had to show white men their work and practically train them. This is unavoidable to a certain extent and is moreover no hardship or injustice to the native. In many walks of life, the man who is qualifying for a higher position has at some stage or other to receive instruction at the hands of persons in a lower rank. The mining engineer has to be taught some of his work by the miner, the mechanical engineer by the fitter, and if the white miner has to be taught partly by the native, that is equally unavoidable in many cases. When he has been trained, even by the native, it is at any rate to be expected that he will be better fitted to occupy the higher position than the native for it is generally admitted that the average white man has qualities of reliability and resourcefulness which the native only rarely possesses.

185. In order to safeguard the interests of the white worker and also to prevent constant friction in the administrative routine of the industry, it will be necessary that any alteration of the present system, with a view to the better utilization of the native labour force, be adopted after consultation and in agreement with the Trade Union Organisations. We are convinced that it will be in their own best interests if the white workers consent to some relaxation of the colour bar. Some of the witnesses have stated that they would rather see all the low grade mines close down than have any relaxation, but it is obvious that the harm done to themselves, not to speak of the general community, would be vastly greater if the mines closed down than if it were found necessary in order to keep the mines running to replace some of the white men by natives. We are of opinion, however, that much more is to be expected from a reorganisation of work than from such replacement, and that it will only be necessary to a very limited extent.

186. When two races, differing so much as the white and black, have to live and work in the same country, the stronger, the white race, should scorn to take advantage of their strength, and should view the aspiration of the inferior race, which is largely inarticulate in the government of the country, with sympathy and tolerance, and give heed to its cry of despair, which was voiced by some native witnesses. They expressed the pathetic hope that the labours of this Commission would produce some satisfactory result, and not pass into oblivion, as has been the case with so many others.

187. The stronger race has, however, also a duty to fulfil towards that lower stratum of itself which is thrown into direct competition with the native. It cannot afford that this section, which is said to number nearly ten per cent. of the total white population of the Union, should be lowered by such competition to the inferior stage of civilization at which the native stands. The maintenance of its own position in the scale of civilisation is thereby threatened. While raising the native, the superior race should, at the same time, be solicitous of maintaining its own people at the higher standard. Unfortunately it has not succeeded in doing so in the past.

188. To stand entrenched behind artificial barriers may appear to be an admission of weakness and undoubtedly creates irritation and race hostility. Barriers of some kind, however, seem necessary in the best interests of both sections, but it is doubtful whether the form which they now take is the best to adopt. A territorial separation is advocated by some as being more suitable, but whatever the solution of the problem, it is obvious

that it requires serious attention. It is much better to face the difficulties and endeavour to adjust them fairly, rather than drift as we are doing. We are merely waiting for the native to take matters into his own hands and attempt to force an issue. Many witnesses have testified that this will inevitably be the case, and the consequences cannot be appreciated or circumscribed.

189. While to the casual onlooker it may seem that colour prejudice is a growing evil in South Africa, which is accentuated whenever economic problems come under discussion, the unprejudiced observer must admit that indications are not wanting of an earnest desire for fairer treatment of the natives and the solution of their grievances on as liberal lines as the manifest difficulties will permit. That these enlightened views, now held by most of the leading public men, are becoming more general even in centres where opinions have hitherto been most hostile, is apparent, and cannot fail to have a steadying and beneficent effect in concentrating effort on a satisfactory solution of the complex and outstanding problem involved in the government of the native races of South Africa.

TELEGRAM FROM GOVERNOR GENERAL, SOUTH AFRICA, DATED CAPETOWN,
THE 11TH JUNE 1925.

Your telegram dated 21st February. Mines and Works Act Amendment Bill has now passed through Select Committee. Principles of bill which second reading in House of Assembly had affirmed remain unchanged, but wording of bill has been altered and Asiatic and Native are no longer directly referred to. Bill now lays it down that regulations may provide that certificate of competency shall be granted only to (a) Europeans (b) and (c) those classes of persons known as "Cape Coloured" or "Cape Malayan". No reason to suppose that any further change will be made in bill.

Note.—The Government of India were of opinion that modification communicated in the last telegram did not meet the economic and other objections referred to in their telegram No. 155, dated the 21st February 1925, and the new provision which excluded Asiatics from classes to whom certificates of competency under the Act might be issued was bound to cause deep and widespread resentment in India. The bill was rejected by the Senate.

NATAL TOWNSHIP FRANCHISE ORDINANCE.

TELEGRAM TO THE GOVERNOR GENERAL OF THE UNION OF SOUTH AFRICA,
No. 310, DATED THE 19TH MAY 1925.

We have seen a report that Your Excellency's Government has given assent to Natal Township Ordinance which, like recent Boroughs Ordinance, purports to prevent Indians in future from acquiring right to vote at elections for town boards, and was passed by Provincial Council on 24th March. We had hoped that in view of our earnest endeavour to secure amicable settlement of whole Indian question by mutual consultation further legislation adverse to Indian interests would be deferred. We should be grateful of official information as to whether Ordinance has received assent and if not would urge that it should be reserved for consideration pending decision on our telegram of April 8th. Decision depriving Indians in Natal of their only remaining franchise rights would further embitter feeling in India; we would also venture to emphasise fact that total number of Asiatic voters in townships in 1922, was only 346 and numbers were negligible except at Stanger and Verulam.

TELEGRAM FROM THE GOVERNOR GENERAL OF THE UNION OF SOUTH AFRICA,
DATED THE 20TH MAY 1925.

Your telegram dated 19th May 310-Overseas. Natal Ordinance to amend local township laws in respect of qualifications of voters was assented

to on 21st April. I am forwarding your telegram under reply to my Ministers for consideration in connection with your telegram of 8th April.

TELEGRAM FROM GOVERNOR GENERAL, SOUTH AFRICA, DATED THE 30TH MAY 1925.

Your telegram dated 19th May, 310-Overseas, regarding assent to Natal Township Ordinance. My Ministers ask me to inform you that your telegram dated 8th April, 14-C-Overseas, was only received by them on the 28th April and consequently when assent was given on 21st April to Townships Ordinance they were unaware of your proposal to form a Conference. They express hope that knowledge of this circumstance will remove any doubt which their action may possibly have raised as to their courtesy and good will and state that telegram of 8th April is now under consideration and they hope to send a reply at an early date.

TELEGRAM TO THE GOVERNOR GENERAL OF SOUTH AFRICA, No. 365, DATED THE 1ST JULY 1925.

We have seen draft Ordinance published by Natal Government to amend and consolidate the law relating to Townships and shall be grateful if you will inform us what progress has been made with the measure.

TELEGRAM FROM THE GOVERNOR GENERAL, SOUTH AFRICA, DATED THE 22ND JULY 1925.

Your telegram dated July 1st, 365. Draft Ordinance to consolidate and amend law relating to establishment of Township introduced into Provincial Council of Natal. Ministers state that according to the information received Ordinance has been referred to a Select Committee of the Council for consideration and report. The Council adjourned on the 20th May last until 11th August. It is expected that Select Committee will report within a day or two of the resumption of session and further stage of Draft Ordinance will then be proceeded with.

TELEGRAM TO THE GOVERNOR GENERAL OF SOUTH AFRICA, No. 471, DATED THE 14TH AUGUST 1925.

Correspondence resting with your telegram dated 22nd July. Draft Ordinance to amend and consolidate law relating to establishment of Township in Natal. Clause 10 (2) (a) of proposed measure purports to disfranchise Indians already on electoral roll of township. As we pointed out in our telegram, No. 310-Overseas, of 19th May, number of Asiatic voters affected is very small and provision if allowed to become law, is further calculated to embitter feeling in India in view of our earnest endeavour to secure amicable settlement of whole Indian question by mutual consultation we venture to hope that it will be found possible to omit this provision.

[Assented to by the Governor-General in Council, on 21st April, 1925.]

[No. 3, 1925.]

ORDINANCE.

“ To amend the Local Township Law No. 11, 1881, in respect of the Qualification of Voters.”

BE IT ENACTED by the Provincial Council of the Province of Natal, as follows:—

Qualification of voters in township.

1. The following words occurring in Section 7 of Law No. 11, 1881—

“ persons possessing within the township a qualification entitling them to vote for a member of the Legislative Council,”

are hereby repealed, and the following shall be substituted therefor:

“ every person who, being a British subject of the age of twenty-one years and upwards, is—

- (a) The owner of immovable property within the township of the value of £50 or more; or
- (b) The renter of immovable property within the township of the yearly value of £10 or more; or
- (c) Resident within the township and in receipt of an income, inclusive of allowances, equal to £8 per month, or £96 per annum, and who has made application in the prescribed manner:

Provided always no male person shall be placed on the Town Roll who is not entitled to be placed on the Parliamentary Voters' Roll of the Province of Natal, nor shall a female who (not being of European origin) is a descendant in the male line of a person who is debarred by law from being placed on the Parliamentary Voters' Roll aforesaid, be entitled to be placed on the Town Roll aforesaid; Provided also however that no person who at the 1st day of January, 1925, was enrolled as a voter upon the Town Roll of any township shall be disqualified for or disentitled to such enrolment in that township merely by reason of not being a British subject, or for non-compliance with the foregoing provision in regard to Parliamentary qualification, or on account of the racial disqualification above mentioned.

2. Where two or more persons jointly own or rent any immovable property within a township, each such person shall, for the purposes of this Ordinance, be deemed to be the owner or renter of immovable property of the value corresponding to his share of the ownership, occupation or renting.

3. The qualification referred to in Section 4 of Law No. 11, 1881, and the Parliamentary qualification referred to in Section 1 of the Women's Franchise Ordinance No. 12, 1914, shall mean the qualification set forth in Section 1 of this Ordinance.

Any question arising at a meeting held under Section 2 of the Principal Law as to the qualification of any person to vote thereat shall be decided by the Chairman, whose decision shall be final.

4. (1) Every person claiming enrolment in virtue of the qualification mentioned in Sub-section (c) of Section 1 shall in the month of January, February or March in each year in which enrolment is claimed deliver to the person preparing the town roll an application signed by him, in the form of the Schedule of this Ordinance.

In the case of a first roll, such application shall be addressed to the Magistrate within one week after the proclamation of the township.

(2) Any person who wilfully makes a false statement in such application shall be liable to a fine not exceeding Fifty Pounds, and shall, on conviction, be disqualified for five years from being enrolled on the town roll of any township.

5. (1) Save as is excepted by the last proviso of Section one, the following persons shall not be qualified for enrolment on the town roll:—

- (a) Persons who have been convicted of treason or felony and have not received a free pardon; or until the lapse of five years from the expiration of the sentence, convicted of a crime punished with imprisonment with hard labour, without the option of a fine unless in any of such cases a free pardon has been granted;
- (b) Aliens who have not been naturalised;
- (c) Persons declared to be lunatics or of unsound mind.

(2) Persons incurring any of the foregoing disqualifications shall cease to be voters within the meaning of the Township Laws.

SCHEDULE.

To the Officer charged with preparing the Roll for the Township of (or, in the case of a first Roll) To the Resident Magistrate for the District of 19.....(Date).

I request that you will enrol my name in the Town Roll for the Township of in terms of Section 1, Paragraph (c) of the Township Franchise Ordinance, 1925.

I am a British subject of the age of twenty-one or upwards, and reside in the said Township.

My income, inclusive of allowances, is equal to £8 sterling per month, or £96 per annum.

My full name is.....

My place of abode is

My business or quality is

Signature of Applicant.

LETTER FROM THE DOMINIONS OFFICE, No. 18576/25, DATED THE 7TH AUGUST 1925.

SUBJECT:—*Natal Draft Ordinance for the establishment of Townships.*

Reference to previous correspondence:—

Letter from the Colonial Office of the 6th June 1925.

Transmitted by direction of the Secretary of State for the Dominion Affairs.

2 copies Draft Ordinance.

DRAFT ORDINANCE.

[AS SET DOWN FOR SECOND READING.]

“For the establishment of Townships.”

BE IT ENACTED by the Provincial Council of the Province of Natal as follows:—

CHAPTER I.

INTRODUCTORY.

Short title.
and shall take effect upon the

1. (1) This Ordinance may be cited as
“The Townships Ordinance, 1925,”
day of 192 ..

(2) This Ordinance is divided into Chapters as follows:—

Subjects of Chapters.	Sections.
Chapters.	
I. Introductory	1—3
II. Constitution of Townships	4—9
III. Franchise and Elections—	
Franchise. Voters' Lists	10—16
Elections and Appointments	17—25
Term and Rotation of Office	26, 27
IV. Town Boards: Officers	28—37
V. Finance: Loans: Rates—	
Town Fund: Accounts	38—43
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VI. Roads, Streets and Public Places: Buildings—	
Roads, etc.	81, 82
Traffic, Order. Buildings and Premises	83—85
VII. Sale and Lease	86—94
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General	95—97
Sanitation	98, 99
Food	100—105
Nuisances	106—110
IX. Licences	111—120
X. General Provisions	121—138
XI. By-laws: Legal Proceedings	139—145

2. (1) The laws mentioned in the First Schedule are hereby repealed to the extent shown in the outer column of the Schedule.

Repeal.

(2) Such repeal shall not affect the status of any existing Township or of its Local Board, or anything done, established, constituted or enacted under the authority of any of the repealed laws, or any by-laws or regulations, or any office, appointment, contract, right or obligation, or anything having a legal status, authority of force under the said laws, all of which shall continue unchanged, but subject to the provisions of this Ordinance, and so that they be not repugnant thereto.

(3) References in other laws to township constituted under Law No. 11, 1881, or to their Local Boards, shall apply to Townships and Town Boards constituted under this Ordinance or brought within its operation.

3. In this Ordinance, unless a different meaning appears—

Meaning of terms.

“Administrator” means the Administrator acting with the authority of the Executive Committee;

“Board” means the Town Board constituted for a Township;

“Financial Year” means the year from the first day of July to the 30th day of June.

“Provincial Court” means the Provincial Division of the Supreme Court, or a Judge thereof;

“Voter” means a person enrolled on the current Voters' List of a Township,

CHAPTER II.

CONSTITUTION OF TOWNSHIPS.

4. The Administrator may by proclamation declare any area to be a Township within the meaning and operation of this Ordinance.

Proclamation of Townships.

Such proclamation shall define the area of the Township and assign a name to it.

5. (1) Every Township constituted under Law No. 11, 1881, shall upon the commencement of this Ordinance become a Township thereunder, and the Local Board thereof shall, as at that time constituted, become a Town Board under this Ordinance without change of membership until the election of a new Board in ordinary course, all lands and property vested in the Local Board, and all rights and obligations thereof passing to the Town Board as its legal successor.

(2) Any law specially passed in respect to a particular local Township shall apply to the Township under this Ordinance.

6. The Administrator may by proclamation declare any area or village previously constituted under Law No. 3, 1879 or under any local authorities law or the like, or two or more adjacent areas or villages so constituted, to be a Township under this Ordinance, and may by the same or a later proclamation make such provisions as appear necessary in order to adjust the transition.

The Town Board shall in such case be the legal successor of any previously established local authority.

7. (1) The Administrator may by proclamation extend the area of any Township to include a contiguous area defined in the proclamation.

Extension or amalgamation of Townships.

The provisions of Section *six* of the Borough Ordinance, 1924, are for this purpose incorporated, *mutatis mutandis*, with this section.

- (2) The Administrator may by proclamation unite two or more contiguous Townships as one Township, under such provisions as may appear proper in regard to the constitution of the Board for the combined Township until the next ordinary election, and other necessary adjustments.

Incorporation.

8. Every Township shall be a body corporate with perpetual succession.

9. (1) The Township shall be represented by a Town Board, the acts of which shall be acts of the Township, and in whose name the town may sue and be sued.

Town Boards.

(2) The Board shall, in the case of Townships previously constituted under Law No. 11, 1881, consist of seven members, and in other cases of either five or seven members as the Administrator may determine. The Administrator may also, when it appears expedient, increase the membership of a Board from five to seven.

(3) The Board shall, except in the case specially provided for, be elected by the voters enrolled on the current Voters' List.

CHAPTER III.

FRANCHISE AND ELECTIONS.

Franchise: Voters' Lists.

10. (1) Every person who, being a British subject of the age of twenty-one years or upwards, is—

Voters' qualification.

- (a) The owner of immovable property within a Township of the assessed value of £50 or more; or

- (b) The renter of immovable property within a Township of a gross annual value of £10 or more; or
- (c) Resident within the Township and in receipt of an income, inclusive of allowances, equal to £8 per month, or £96 per annum, and who has made application in the prescribed manner;

shall be entitled to be enrolled upon the Voters' List of the Township, and to vote at the election of members of the Town Board, or to be elected as such member, subject, however, as follows:

- (2) The following persons shall be disqualified from such enrolment, and shall not be entitled so to vote or be elected:—

Disqualifications.

- (a) Any male person who is not entitled to be placed on the Parliamentary Voters' Roll of the Province of Natal.
- (b) Any woman who (not being of European origin) is a descendant in the male line of a person who is debarred by law from being placed on the Parliamentary Voters' Roll of the Province of Natal.
- (c) Persons who have been convicted of treason, felony, or other infamous offence and have not received a free pardon; or, until the lapse of five years from the expiration of their sentence, of any crime for which the punishment was imprisonment with hard labour, without the option of a fine, unless they have received a free pardon;
- (d) Persons declared to be lunatics or of unsound mind.
- (3) Reference to the assessment of values shall not apply to the Voters' List first prepared after the proclamation of a Township.

Re. first lists.

- (4) Every person claiming enrolment under Sub-section (1) (c) shall, in the month of January, February or March in each year in which enrolment is claimed, deliver to the person preparing the Voters' List an application signed by him in the form of Schedule II. Any person who wilfully makes a false statement in such application shall be liable to a fine not exceeding Twenty Pounds, and shall, on conviction, be disqualified for five years from being enrolled on the Voters' List of any Township.

Enrolment under Sub-section (1) (c).

11. (1) When more persons than one are, otherwise than as members or shareholders of a company or other association having a joint-stock capital divided into shares, the owners or occupiers of any immovable property of such assessed value or gross annual value as aforesaid, as the case may be, then—

Joint qualifications.

- (a) Any one or more persons whose individual holding is sufficient in value to furnish a quota of £50 or £10 as the case may be shall be entitled to enrolment, provided there be no cause of disqualification;
- (b) Any persons whose individual holdings do not so suffice shall not be entitled to enrolment in respect of that property alone.

The values of the respective holdings shall, so far as they may be disclosed in any title deed, lease, or like document, be taken according to the proportions so shown.

(2) A husband and wife may both be enrolled in respect of the same property if the value or annual value would, under Sub-section (1), be sufficient to qualify two persons; otherwise the qualification shall only extend to the person in whose name the property is registered or by whom it is rented.

12. No person whose name is not enrolled upon the current Voters' List, or who incurs any disqualification shall be qualified to vote or to be

Unenrolled persons.

elected.

13. The Voters' Lists for Townships constituted under Law No. 11, 1881, shall continue in force as Voters' Lists for the purpose of this Ordinance until the annual lists hereinafter provided for are signed.

Voters' Lists of existing Townships.

14. (1) As soon as possible after the proclamation of any Township a person appointed by the Administrator shall frame a Voters' List containing the names of all persons qualified to be voters for the Township.

Voters' Lists for new Townships.

(2) As soon as the List is completed, the person so appointed shall exhibit upon a public notice board a notice in similar terms as nearly as may be to that provided for in the next section. At the appointed time he shall hear all objections or applications for the amendment of the list, and after making any necessary corrections he shall sign the Voters' List as revised.

(3) The Voters' List as signed shall be in force until the next Voters' List shall have been signed.

15. (1) A Voters' List shall thereafter be drawn up by the Board of every Township by the fifteenth day of April in each year: provided that if the first list for a newly-proclaimed Township was signed later than the first day of January, no further list shall be prepared in that year.

Annual Voters' Lists.

(2) The Board shall immediately after drawing up the list post on the notice board of their office a notice that the list is open for inspection at their office, during office hours, for a period of fourteen days, and that on a certain date, being not less than seven days from the expiration of that time, and at a stated place and time, all objections to the list or applications for amendment will be heard.

(3) The Chairman and two other members of the Board shall in open session hear all such objections and applications and determine thereon.

(4) The revised list shall be certified and signed by the Chairman not later than the 31st day of May, and the list as so signed shall be the Voters' List for the Township until the next annual list has been so certified and signed.

16. Nothing in the preceding sections shall be deemed to prevent the amendment of a Voters' List by order of the Provincial Court.

Amendment of List by the Court.

Elections and Appointments.

17. In every Township proclaimed under this Ordinance an election of members to form the Town Board shall take place as early as possible after the Voters' List has been signed. The election shall be held in the same manner as the annual elections, but with such modifications of the prescribed procedure as the Administrator may direct in order to meet the circumstances of a first election.

First elections.

18. In every Township an annual election shall take place in the first week of July for the election of the members of the Board or to fill vacancies, as the case may be:

Annual elections.

Provided that if an election of a whole Board has taken place before the first day of April in any year, no ordinary annual election shall be held during the same year, but the Board shall continue in office till July of the following year, the times appointed for the retirement of members being extended accordingly.

19. Not less than fourteen days before any election takes place, whether it be an annual election, or an election for filling casual vacancies, the Chairman of the Board shall publish in a newspaper a notice calling a meeting of the voters for the purpose of holding the election. A copy shall at the same time be posted on the town notice board.

Notice of election meeting.

The notice shall specify the place and the day and hour appointed for the meeting, the number of members to be elected, and the last day upon which nominations must be notified, with the hours during which nominations will be received.

20. (1) No person shall be capable of being elected unless he has been previously nominated by at least two voters and his nomination has been notified in writing under their signature to the Board at their office five clear days before the day fixed for the election.

Nominations.

Each nomination shall when received be posted on the town notice board.

21. A husband and wife shall not both be nominated or appointed as members of a Town Board, nor shall one spouse be nominated if the other holds office.

Disqualifications for membership.

If two spouses are nominated both the nominations shall be void, unless the withdrawal of one of the names is notified to the Chairman before the closing time for nominations.

22. (1) If the number of persons duly nominated be equal to or less than the number of members to be elected, the Chairman of the Board shall publicly declare the persons so nominated to be elected as members of the Board, and shall transmit their names to the Administrator.

Election without a meeting.

(2) If the number of persons so nominated be less than the number of members to be elected, the Chairman shall forthwith inform the Administrator of the number of vacancies remaining, and the Administrator shall, by notice in the *Provincial Gazette*, appoint from the voters willing to serve so many members of the Board as are required to fill the vacancies.

Appointment in case of insufficient nominations.

(3) In the cases provided for by this section the meeting called for the election shall not be held.

23. If the number of nominations exceeds the number of members to be elected, the election shall take place at the appointed time and place.

Meeting for election.

A quorum of ten voters shall be necessary to constitute the meeting, and if on the date first appointed a quorum is not present, the Board shall, by notice posted on the town notice board similar to the former notice, appoint a fresh date for the meeting, not being less than four or more than seven days after the date originally fixed.

24. (1) At such meeting the voters present shall, under a Chairman elected by themselves, elect so many members as are required to constitute the Board or to fill the vacant seats. The voting shall be by ballot, each voter being allowed as many votes as there are members to be chosen, but he shall not cast more than one vote for any one candidate.

The election.

(2) It shall be the duty of the Chairman of the meeting to prevent any person not enrolled as a voter from voting, and to ensure the proper conduct of the ballot.

(3) In the event of an equality of votes for several candidates among whom a less number of seats remain to be allotted, the Chairman shall determine by lot which of them shall be declared elected.

(4) The Chairman shall announce to the meeting the names of the persons elected, and shall inform the Chairman of the Board.

(5) The Chairman of the Board shall have the names of the elected members posted on the town notice board, and shall transmit them to the Administrator, who shall publish them in the *Provincial Gazette*.

(6) In the event of there being no quorum at the adjourned meeting above provided for, the Chairman of the Board shall as soon as possible

inform the Administrator, who shall, by notice in the *Provincial Gazette*, appoint from among the nominated candidates so many members as were required to be elected.

25. Whenever a member dies or vacates his seat otherwise than by effluxion of time, the Ghairman shall take immediate steps for the election of a member in his place; provided that no election shall be necessary if such vacancies, not being more than two in number, occur within three months of the ensuing annual election.

Filling casual vacancies.

Term and Rotation of Office.

26. (1) Save as is otherwise provided, members of a Town Board shall hold office for two years.

Duration of office.

(2) The term of office of any member shall begin from the day following that of his election or appointment and shall continue (unless terminated by death or other cause of vacation of office) till the day on which his successor is elected or appointed, both days being included.

(3) A member elected or appointed to fill a casual vacancy shall hold office for only the unexpired period of his predecessor's term. Where several concurrent casual vacancies are filled partly by election and partly by appointment, the elected members shall hold office for the longest unexpired terms, and any cases which cannot be so decided shall be determined by lot by the Chairman of the Board.

27. (1) In every Township hereafter constituted the Chairman of the Board shall, as soon as may be after assuming office, determine the first list

Retirement of members by rotation.

of members for retirement, and the members upon that list shall go out of office at the next annual election.

The persons so to retire shall be those who received the least number of votes, but if they cannot be so decided, the Chairman shall determine the list by lot.

In the case of a Board of seven members the first list shall consist of three, and in the case of a Board of five members, it shall consist of two.

The remaining members shall go out of office at the second ensuing annual election, that is to say, the year after the retirement of the first list, and thereafter the respective quotas of members shall retire in alternate years.

(2) In Townships constituted under Law No. 11, 1881, the rotation shall be unaffected by this Ordinance.

CHAPTER IV.

TOWN BOARDS : OFFICERS.

28. (1) At the first meeting of every new Board the members shall elect

Chairman.

a Chairman from among themselves, who shall hold office until the election

of his successor, and who shall preside at the meetings of the Board.

(2) After the Chairman has been elected, the members shall at the same meeting and in the same manner elect from among themselves a Deputy Chairman, who shall perform all the duties of the Chairman in his absence.

Any reference in this Ordinance to the Chairman shall include the Deputy Chairman when so acting.

(3) In the absence of both officers from a meeting of the Board the members present shall choose a Chairman for the occasion.

29. (1) Every Board shall meet as soon as practicable after election, and not less than once in every month.

Meetings.

(2) Four members shall constitute a quorum in the case of a Board of seven members, and three in other cases.

(3) The Chairman of the Board, or the Chairman of any meeting, shall be entitled to a vote and a casting vote.

30. The proceedings at meetings of the Board shall be public, and all questions coming before the meeting shall be decided by a majority of votes of the members present, which votes shall be given openly.

Proceedings to be public.

This section shall not apply to committees of the Board, or to the Board when sitting as a committee.

31. Minutes of the proceedings of every meeting of the Board shall be regularly entered in a book to be kept for that purpose, and shall be read and confirmed at the next meeting and be signed by the Chairman or acting Chairman. The minutes shall be open to inspection by the voters.

Minutes.

32. (1) A member shall not vote or take part in a discussion upon any matter before the Board or a committee in which he has, directly or indirectly, any pecuniary interest, including an interest in any such contract as is excepted by Section *thirty-five* (e), save where he is interested only as a voter or member of the public.

Recusation of members.

(2) No member shall act as advocate or in any other professional capacity against the Board.

33. (1) No act or proceeding of the Board shall be questioned on account of any vacancy in its body, or of any want of qualification of a member.

Validity and proof of proceedings.

(2) A minute of proceedings at a meeting of the Board, signed as required by the rules of procedure, shall be received in evidence without further proof.

34. The Board may make rules for the ordering of its proceedings, and for determining the duties of its officers and servants.

Rules of procedure.

35. (1) A member of the Board shall vacate his seat and cease to be a member if—

Vacation of office.

(a) He incurs any of the disqualifications or disabilities described in Section *ten*;

(b) He notifies to the Chairman that he refuses to accept office as a member or tenders to the Chairman a written resignation of his seat;

(c) He absents himself, without the consent of the Board, from three consecutive meetings of the Board;

(d) His estate is under sequestration or assignment or otherwise administered under the laws relating to insolvency;

(e) He or his wife (or as the case may be she or her husband) or a partner, or any person through whom he acquires a pecuniary interest, holds any office or place of profit under or in the gift or disposal of the Board, or becomes interested directly or indirectly in any contract with the Board, with the exception of the following kinds of contract:—

(i) A lease, sale, or purchase of land;

(ii) A loan of money, or any agreement or security therefor;

(iii) Advertisements on township matters;

(iv) Contracts with joint-stock companies in which the member is interested only as a shareholder, or with associations whose profits are not applied to the pecuniary benefit of its members;

- (v) Contracts on the ordinary terms for lighting, water supply and other public services;
- (vi) A purchase of goods or any work done by, for or on behalf of the Board not exceeding the aggregate of £20 at any one time, or £200 in the course of any financial year.
- (2) When a member of the Board vacates his seat, the Town Clerk shall forthwith report to the Chairman the occurrence and the occasion of the vacancy, and the Chairman or Deputy Chairman, as the case may be, shall at the next meeting of the Board declare the seat of such member to be vacant.

He shall also proceed as directed in Section *twenty-five*.

36. No member of a Board shall act as advocate or in any other professional capacity against the Board.

37. The Board may appoint, during pleasure, such officers and servants as it considers necessary for carrying out the purposes of this Ordinance.

There shall be a Town Clerk and a Treasurer, but both offices may in the Board's discretion be held by one person.

CHAPTER V.

FINANCE : LOANS : RATES.

Town Fund: Accounts.

38. (1) All moneys raised by the rates, and all fees, fines and other sums paid to the Treasurer on account of the Township, save those referred to in Sub-section (2), shall form a fund to be called the Town Revenue Fund.

References to expenditure from the Town Revenue Fund shall not however, unless so specified, include moneys belonging to loan or other special funds.

(2) All moneys raised by the sale of town even or of any portions of the town lands, or under the authority of special Loan Ordinances, or from mining royalties, together with all sums chargeable against the Revenue Fund for depreciation, shall form a fund to be called the Town Capital Fund.

(3) The moneys payable to the several funds shall be kept distinct in separate banking accounts.

39. The general expenses of township administration shall be defrayed from the Town Revenue Fund.

Such expenses shall include the reasonable cost incurred in the exercise of any powers or duties of the Board, whether their authority be derived from this Ordinance or from any other law; and this Ordinance shall be sufficient authority to the Board for such expenditure.

40. Any deficit on the revenue account of any Township at the date of the commencement of this Ordinance shall be made good in such equal annual instalments, not exceeding five, as the

Administrator may approve.

Provision for the first instalment shall be made in the first Estimate of Ways and Means after the commencement of this Ordinance, and thereafter annually until the total sum has been made good.

41. Any balance of money heretofore raised under the provisions of Section 45 of Law No. 11, 1881, or of Section 15 of Law No. 39, 1884, or of any moneys raised under the authority of special Loan Ordinances, which at the date of the commencement of this Ordinance have not been expended on the services for which they were raised, shall be paid into the Town Capital fund account at the bank.

42. (1) The Treasurer of every Township shall keep such books of account as may be necessary to maintain a proper record of all matters relating to the financial transactions of the Board, including all cash receipts and cash payments, the revenue earned but not received, and expenditure incurred but not paid; clearly distinguishing in each case between capital and revenue, and generally showing the assets and liabilities of the Township.

(2) Moneys raised for a specific purpose shall be kept apart from all other moneys, and shall not be used except for that purpose:

Provided that if any balance remains unexpended after such purpose has been completed, or abandoned, the Board may, with the Administrator's consent, apply it to any other purpose approved by him.

43. The Treasurer shall, not later than three months after the close of each financial year, cause the aforesaid books to be closed and balanced to the end of such year, and shall within one month thereafter prepare separate income and expenditure accounts and balance sheet of the Town Revenue Fund and of all other funds and accounts.

He shall also prepare an aggregate balance sheet wherein shall be included in summarised form the whole of the liabilities and assets of the Township.

Such accounts and balance sheets shall clearly distinguish between capital and revenue in each case.

AUDIT.

44. (1) The Auditor of Accounts of the Province for the time being shall audit the accounts and records of every Township.

(2) If, in the opinion of the Administrator, it is desirable or necessary, he may appoint one or more accountants qualified in terms of Act 35 of 1909 to audit in conjunction with the Auditor of Accounts the accounts of any particular Township specified in the appointment.

(3) The word "Auditor" as used in this Ordinance shall mean the said Auditor of Accounts and the persons appointed under Sub-section (2) hereof.

45. The Treasurer shall produce and lay before the Auditor the accounts and balance sheets referred to in Section *forty-three*, the minute books and all accounts of the Township, with all vouchers in support of the same, and all books, reports, certificates, papers and writings relating thereto.

46. (1) The Auditor shall, not less than once in every year, audit and examine the accounts and the Treasurer's balance sheet and accounts, and shall certify whether or not—

(a) The accounts of the Township are in order;

(b) Separate accounts of all trading undertaking (if any) have been kept, and that every charge which should appear has been dealt with;

- (c) The accounts present a true and correct view of the financial position of the Board, of its transactions, and of the results of the trading (if any);
- (d) Due provision has been made for the redemption of any monies borrowed by the Board, whether in the form of debentures, bills, or otherwise;
- (e) The amounts set aside for depreciation and obsolescence of plant are adequate;
- (f) The value of the Township assets has been fairly stated, and that the same are being dealt with in accordance with the statutory power, and that all items of receipts and expenditure and all known liabilities and assets have been brought into account;
- (g) All his requirements and recommendations, as Auditor, have been complied with and carried out:

Provided that in certifying with regard to the matters referred to in paragraphs (e) and (f) of this sub-section, the Auditor may accept as correct the certificates as to the value and estimated life of the plant furnished by the technical advisers of the Township and of the value of the Township assets furnished by the assessors or valutors of the Township duly appointed in that behalf, which certificates it shall be the duty of the Treasurer to obtain and submit.

(2) The Auditor, when certifying as provided in Sub-section (1), shall at the same time furnish to the Administrator and the Board concerned a report as to any matters of importance or interest arising out of the audit of accounts.

(3) Within twenty-one days after being received, the Auditor's certificate and report, together with the aggregate balance sheet and a summary of the accounts referred to in Section *forty-three*, shall be exhibited on the public notice board at the Town Office for a period of thirty days. The Treasurer shall publish a notice in a newspaper that the documents aforesaid are so exhibited and that a copy of each will be furnished without charge to any burgess on application.

47. (1) For the purpose of any audit under this Ordinance, the Auditor may hear and examine witnesses upon oath, and by summons under his hand require such persons as he may think fit to appear before him at a time and place to be stated if the summons, and to produce all such books and papers, and reports of departmental officers, as may be necessary for the audit.

(2) Any person who shall without lawful excuse refuse or neglect to attend in obedience to such summons or to be sworn or examined, or to answer such questions as are put to him to the best of his knowledge, shall be liable to a fine not exceeding £20 for every such offence. A conviction under this section shall not be deemed to excuse the person convicted from the obligation to do any act or thing required of him, or from being again liable to be convicted for any further or repeated commission of the act or offence.

(3) The above references to oaths include any form of declaration allowed by law to be administered to witnesses.

48. (1) The Auditor shall disallow every payment or exemption made without due authority according to law, and surcharge the same upon the persons making or authorising the illegal payment, and shall surcharge against the persons liable therefor the amount of every deficiency or loss incurred by the negligence or misconduct of such persons, or of any sum which ought to have been brought into account by any such persons, and he shall in every case certify the amount due from such person.

The pecuniary responsibility for a surcharge shall rest—

- (a) with the Treasurer, or officer acting as such, if the surcharge arises from a clerical arithmetical error in any account or other document prepared by him or passing through his hands (provided in the latter case that it was one which he was in a position to detect), or from the payment of a claim which had already been paid, or which is contrary to, or in excess of, the rates authorised by any law or regulation, except where payment was made upon explicit written instructions from the Board, given after the irregularity had been pointed out;
- (b) with the members of the Board or a committee thereof, when the payment has been made upon its instructions given as aforesaid.

(2) (a) If any person so surcharged shall fail to adjust or recover such surcharge within such time as may be allowed for its recovery, the Auditor shall forthwith report the surcharge and all necessary particulars to the Board and to the Administrator. The Board shall as soon as possible forward to the Administrator a recommendation thereon, and the Administrator, after due enquiry, may relieve the person in default of such surcharges or may sue or direct the Board to sue the person in default in any Court of competent jurisdiction for the recovery of any amount which, in his opinion, has been properly surcharged, and the Board, if so directed, shall sue such person according to law. Any such suit may be brought on behalf of the Administrator by the Provincial Secretary, and he shall be paid by the Board his reasonable costs and expenses incurred in such proceedings.

(b) No surcharge shall be made against any member of the Board or against any officer of a Township for authorising any particular payment in cases where such member or officer has acted in accordance with legal advice duly given in writing as to the authority for or legality of that payment.

(c) If any member of a Local Board liable to a surcharge ceases to be such member, he shall be discharged from such liability and surcharge unless the surcharge is made before the expiry of one year from the date on which he ceased to be a member of the Board.

(3) Any sum so recovered shall be paid to the Treasurer, and be by him brought to the proper account.

(4) For the purposes of this section, the persons making or authorising an illegal payment shall include all members of a Local Board or the members of any Committee of the Board who were present at the time when the resolution authorising such payment was carried and who did not cast their votes against that resolution and cause such votes to be recorded in the minutes, but shall not include the Board or a Committee thereof in its corporate capacity making or authorising such payment.

49. The Board shall, in respect of the service rendered by the Auditor, pay to the Administrator yearly, within three months from the date of the Auditor's signing his yearly certificate, such sum as the Administrator may from time to time determine, on the basis of the cost of the carrying out of the provisions of this Ordinance, not being more than one per cent. of the total expenditure of the Township which has been brought to account and certified by such Auditor for the financial year: provided that such shall not in any case be less than £5.

50 It shall be lawful for any Board, upon a resolution being passed at an ordinary meeting thereof, to have an examination or audit made of the Township accounts, or any part thereof, by such persons as they may think proper, but this shall not affect the holding of the audit hereinbefore provided for.

Independent audits.

LOANS.

51. A Board may from time to time borrow, on overdraft from a bank, sums not exceeding in the aggregate at one time one-half of the total ordinary income for the preceding year (or, in the case of a new Township, the estimated income for the current year), which may be required to defray the ordinary expenses of the Township.

Overdrafts.

Such an overdraft shall not, except with the consent of the Administrator, be carried forward for any period exceeding twelve months; provided that if at the date of this Ordinance an overdraft on revenue accounts exceeds the foregoing limit the Administrator may authorise the excess overdraft subject to such provision as he may direct for repayment of the excess by not more than five equal annual instalments.

52. The Board may, with the consent of the Administrator, borrow, by way of loan or of overdraft on current account, moneys required for works or undertakings; provided that the annual charges for interest on any such loans on overdraft, shall not, together with the interest on any overdraft under the preceding section, exceed in the aggregate at any one time one-fourth of the total yearly income of the Board, and provided further that no such consent shall be granted until the Administrator is satisfied that due provision will be made for the repayment of such loan or overdraft from the revenue of the Board, either by way of a Sinking Fund or of equal annual instalments, within the life of the work or undertaking.

Loan powers.

When applying for the Administrator's consent, the Board shall specify the particular works or undertakings for which the money is required and the estimated cost therefor, and the money shall be applied to no other purposes than those specified. The Board shall also furnish any information which the Administrator may require.

53. If the Board of a Township heretofore constituted seeks to utilise by way of capital expenditure upon any works or undertakings the proceeds of any sale of land before the purchase price has been paid, the Board may, with the consent of the Administrator, borrow money for such purpose on the security of the unpaid instalments of the purchase price.

Loans on the security of price of lands sold.

The powers under this section shall be additional to those exercised under the two preceding sections.

54. (1) Where money is required temporarily pending the issue of a loan authorised by a special law, to defray capital expenditure for the purposes of the loan, the Board may, under a special resolution passed for that purpose, borrow the money so required in one of the following ways:—

Borrowing in anticipation of an authorised loan.

- (a) On overdraft from a bank;
- (b) On temporary or fixed deposit with the Board;
- (c) By drawing and negotiating bills of exchange or promissory notes.

In so borrowing the Board shall not be restricted to the rate of interest prescribed by the law authorising the loan.

(2) Such borrowings may be made or renewed from time to time, and shall not exhaust the borrowing powers under the special law: Provided that the total amount of the authorised loan and the time fixed for payment shall not be exceeded.

(3) Loans raised under a special law for any period less than the time limited by such law may be renewed from time to time, provided that the total of the loan authorised and the time fixed for repayment shall not be exceeded.

(4) The provisions of Sub-sections (2) and (3) shall extend to such borrowings heretofore made or renewed.

(5) Borrowing under this section shall be deemed to be borrowing under the special law for the purpose of the Sinking Fund under that law.

55. Boards shall not have power to borrow money otherwise than as authorised by this Ordinance or by a special law.

Limitation of borrowing powers.

56. Before publishing the draft of an Ordinance for the purpose of authorising a loan, the Board shall take the following steps:—

Procedure before publication of Draft Loan Ordinance.

(a) A statement shall be prepared of the proposed works, undertakings and other purposes for which the loan is required, with an estimate of the probable cost of each, and notice shall be given in a newspaper in two different weeks, the last being not less than two months before the date for the first reading of the intended Ordinance, that the statement and estimates are open for inspection at the town office.

(b) The Treasurer shall draw up a report upon the proposal to raise the loan, showing also the financial position of the Township, and indicating any measures proposed for paying the interest upon the loan and providing the necessary sinking fund for its redemption. Such report shall lie open for inspection together with the statement above mentioned.

57. Provision shall be made for the redemption of every loan raised under the authority of a future Ordinance. Such redemption may be either by means of repayment by equal annual instalments or by a sinking fund established under this section.

Provision for re-payment.

58. (1) If redemption is to be effected by a Sinking Fund, the Treasurer shall keep a separate account of the Fund.

Sinking Funds.

(2) The Board shall in every year pay into Sinking Fund by equal instalments, from revenue, and from any other source directed by the loan Ordinance, such sum as will, with accumulations in the way of compound interest, be sufficient to pay off the loan within the period limited by the Ordinance.

(3) The first instalment in respect of moneys actually borrowed on loan account in any financial year shall be paid to the Sinking Fund on the 30th day of June next succeeding that in which such moneys were raised, and thereafter an instalment shall be paid on the 30th day of June of each year until the loan shall have been repaid or until the moneys in the Sinking Fund amount to a sum which, with the interest accruing, will be sufficient to redeem the loan at maturity.

(4) The instalments shall be computed on the basis of accumulating interest at the rate of interest payable on the moneys borrowed less one and one-half of one per cent., provided that should the average rate of interest actually earned by the Sinking Fund be under or above the assumed rate an adjustment shall be made so as to equate for the remainder of the loan term the instalments to be annually contributed to the Sinking Fund.

59. The Board shall invest all moneys paid into the Sinking Fund as and when received in one or more of the following securities, namely:—

Investment of Sinking Fund moneys.

- (a) Treasury Bills, Debentures, or other Securities chargeable upon the revenue of the Government of the Union of South Africa.
- (b) Treasury Bills, Bonds, or other securities of the Government of the United Kingdom or of any British Dominion Government, or of any British Colonial Government which has complied with the provisions of the Colonial Stock Acts of the United Kingdom.
- (c) Bills, Debentures, or other securities of any local authority in the Union of South Africa constituted by or pursuant to any general or special statute; or

- (d) Fixed deposit at interest with a banking institution within the Union, provided that the total sums so invested at any one time shall not exceed the sum of five annual instalments paid into the Sinking Fund, exclusive of interest.

RATES.

60. For defraying the general expenses of township administration the Board shall have power to levy an annual general rate upon all rateable property as hereinafter defined.

61. (1) For defraying the interest and charges upon loans for water supply and the cost of carrying out such supply, the Board shall have power to levy an annual water rate upon all rateable property with the consent of the Administrator and up to such limit as he may approve:

Provided, however, that except in those cases where property has become liable to rates under the Village Water Supply Laws (and to the extent only of the rates already so imposed) the water rate shall not be levied upon any property at a greater distance than 220 yards from a water main.

(2) The rates previously imposed under the Village Water Supply Laws and under the Weenen Act No. 24, 1910, shall be water rates within the meaning of this Ordinance and leviable thereunder: but this provision shall not affect the terms of the said Act of 1910, or of the third Section of the Water Supply Act No. 16, 1908, as amended by Ordinance No. 5, 1921.

(3) The consent of the Administrator shall be required for any proposed increase of an existing water rate.

(4) Any existing special law by which a limit is imposed upon the water rate of a Township shall to that extent be repealed.

62. (1) "Rateable Property" means any immovable property within a Township, subject to the special provisions and exemptions hereinafter mentioned.

(2) Rates may be assessed on immovable property as a whole, or the land, and buildings may be treated as separate rateable properties, in which case the rates may be diversely assessed on each, or the land alone may be treated as rateable property.

(3) 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.

(4) "Rateable Property" shall also include any property purchased from the Board and held by the purchaser on certificate of sale and purchase or other similar title and of which registration of transfer has not been passed by the Registrar of Deeds.

63. (1) No rates shall be imposed upon any land or building solely appropriated to the worship of God, or exclusively used for educational or charitable purposes or held in trust exclusively for religious, charitable or educational purposes, or upon any burial ground, infirmary or hospital: Provided that—

(a) Where any private profit or use is directly derived therefrom, the property or so much of it as is employed for such private profit or use shall be liable to rates;

(b) If during the currency of any financial year, any such property is let or employed or occupied for purposes other than those hereby exempted, the Board shall be entitled to impose rates thereon or on any portions thereof so used or employed or occupied, at a rate proportionate to the period of such letting, use or occupation, even though no private profit is derived from such letting, use or occupation.

(2) It shall be lawful for the Board to exempt from rates any land let under what is commonly known as an agricultural lease and use only for agricultural, pastoral and like purposes.

Such exemption may extend to stables, sheds, quarters for Natives and Indians employed for the purposes of the lease, and structures of a like kind, but not to dwelling houses, factories or the like or buildings used for other purposes than those of the lease.

Any exemptions from rates heretofore granted in such agricultural leases shall be deemed valid.

(3) A person who has paid the rates upon any property shall be entitled to obtain a refund thereof *pro rata* for any period during which such property or portion thereof was not liable to be rated.

(4) This section shall not be deemed to exempt any property from water and sanitary charges.

64. The rate-year shall be the same as the financial year, that is to say, it shall run from the 1st day of July to the 30th day of the following

June :

Provided that, as regards the first rates of a Township hereafter proclaimed—

(a) The rate period may begin at an earlier date fixed by the Board than the 1st day of July, and terminate on the 30th day of June in the following year; or

(b) If the period from the creation of the Township to the 30th day of the next June be four months or upwards, rates may be imposed for that period, calculated *pro rata* on a basis of not more than 3*l.* in the pound sterling for a whole year, either for the general rate or for the water rate.

65. (1) The Board shall annually frame an estimate of the revenue and expenditure for the coming financial year.

Estimates.

A notice shall be posted on the town notice board that the estimates will lie for inspection at the town office for not less than seven days following.

(2) Thereafter the Board shall revise and pass the estimates, which shall be signed by the Chairman, and no expenditure shall be incurred in excess of the sum provided in the estimates, nor shall any new expenditure be incurred on services for which provision has not been made therein, without, in either case, the consent of the Administrator, who shall require to be satisfied that funds are available for the purpose.

66. (1) The Board shall thereupon fix the general rate, and the water rate also, if any.

Fixing the rates.

(2) In each case a notice shall be posted on the town board stating the appointed rates and fixing a date upon which they shall become due, not being less than fourteen days from the date of the notice, or later than the 31st day of the following March.

67. (1) The rates shall be a charge upon the property the subject thereof.

Rates charged upon the property.

(2) The person liable for the payment shall be the registered owner of the property rated.

Owner liable.

VALUATION ROLL.

68. For the purposes of the rates the Board shall from time to time cause a valuation to be made of all rateable property, and shall also cause a Valuation Roll to be prepared, in which the value of buildings and improvements shall be stated separately from the value of the land.

Valuation.

69. (1) A further sum, to be known as the Building Clause Value, or Improvements Clause Value, may be added, in the circumstances, and in the manner following, to the value of rateable property ascertained in ordinary course as aforesaid.

The Board may, in any contract for the sale or lease of land, make the condition that unless buildings, or improvements of any specified kinds, are carried out within a time or times prescribed, an amount equivalent to certain stated values of buildings or improvements will, for all the purposes of the general rate and the water rate, be added to the ordinary valuation, and that such rates will be increased accordingly. And from the time or times so appointed the value of the property in question shall for the purposes of such rates be deemed to be increased, over and above the ordinary valuation, by the amount of the Building Clause Value or Improvements Clause Value, or both, as the case may be, and additional rates may be imposed on the increased value immediately upon the expiry of the time or times appointed as aforesaid proportioned to the then unexpired period of the financial year.

Such additional value shall, however, merge *pro rata* in the value of buildings or improvements that may subsequently be erected or made in terms of the contract.

(2) In any Valuation Roll published after the expiry of the times prescribed as aforesaid the value added under this section shall be specially shown.

(3) Any contract of a similar nature to the aforesaid which may have been hitherto made shall be valid and effectual for the purposes of this Ordinance.

(4) This section shall not be deemed to authorise the imposition of a water rate on property which would not be liable to it in ordinary course.

70. The Valuation Roll shall be posted on the town notice board for a month, and a notice thereof shall be published twice in the *Provincial Gazette*, calling for objections to any valuations to be lodged in writing with the Town Clerk by a stated date, not being less than twenty-one days after the first publication of the notice.

A similar notice shall be posted with the Valuation Roll.

71. (1) Any person aggrieved by any valuation, or by reason of his name not appearing or wrongly appearing, as a rate-payer, may, within the time so limited as aforesaid, and prior to the appeal provided for in Section 13 of Law No. 39, 1884, lodge with the Town Clerk a statement specifying the nature of his objection.

(2) The Valuation Roll shall, subject to any alterations made upon appeal, or under the provision above made for its alteration, be sufficient evidence of liability by the persons named therein for the rates assessed upon the valuation therein set out.

72. (1) The Board may at any time after the completion of the Valuation Roll—

- (a) Cause any rateable property omitted from the Valuation Roll or new buildings erected or completed subsequent to its publication to be valued and to assess and collect the current rates in respect thereof;
- (b) Remit any rate imposed on buildings which have been demolished since the making of the Valuation Roll, and in such other cases as may be approved by the Administrator;
- (c) Cause a valuation to be made of any rateable property which is sub-divided after the making of the Valuation Roll and apportion the valuation to the sub-divisions, and assess and collect the rates accordingly;

- (d) Cause a fresh valuation to be made of any rateable property which from any cause particular to such property arising since the last valuation thereof has materially increased or decreased in value;
- (e) Cause any error appearing in the Valuation Roll to be corrected by a valuer in any case where some clerical error or some error as to the nature of the interest valued has been made in such Roll, and to collect the correct rates due in respect thereof.

(2) Notice shall be given to every person who will become liable to pay new or increased rates under the authority of this section. The notice shall contain particulars in regard to the property affected and the new or increased rates payable, and shall mention the right of appeal and the time allowed for appealing. Such right of appeal, and the procedure relative thereto, shall be as laid down in regard to the original Valuation Roll.

RECOVERY OF RATES.

73. (1) The Treasurer shall be the collector of rates, and shall be empowered under that title to sue for and recover all rates due.

Rate collectors.

(2) The Collector shall leave with or cause to be delivered to the tenant in possession of each property, or to the owner, a notice giving particulars of the rates to be collected in respect thereof, and specifying the number and description of the property in the Valuation Roll, and the date fixed for payment.

(3) Any rates not paid by the appointed date shall be recoverable in manner hereafter specified.

74. (1) Within six weeks after the expiry of the due date the Collector shall lay before the Board a return specifying the names of all persons in default and the amounts of all rates unpaid.

Return of unpaid rates.

(2) After verification of such return, it shall be lawful for the Chairman of the Board to issue the requisition to the Magistrate provided for in Section 14 of Law No. 39, 1884.

Requisition for writ of execution.

75. In respect of any rates in arrear for the payment whereof the owner of the property rated is liable, the Collector, after notice to the owner of such rates being in arrear, may give notice to the occupier of the property in respect of which such arrears shall be due, to pay to the Collector all rent thenceforward, until satisfaction shall be made of such arrears; and thereupon every such occupier shall pay all rent accruing due after the service of such notice to the Collector and until full satisfaction of such arrears by the receipt of rent as aforesaid, together with a percentage at the rate of ten per centum thereon, the Collector is hereby empowered to exercise all remedies which may be enforced by a landlord against a tenant for recovery of rent in arrear, and the payment of so much rent as may be required to satisfy such arrear rates and expenses as hereinafter provided shall be deemed as payment of rent by the tenant to the landlord.

Seizure of rents.

76. When any owner or lessor of any property, shall, by virtue of this Ordinance, or by contract or otherwise, be liable to payment of any rates to be collected in respect thereof, and such rates shall be required from and paid by any other person, such person may set off the amount so paid against any rent due from him to such owner or lessor, and the receipt of such rates shall be a discharge *pro tanto* of rent.

If the rates so paid exceed the rent due, such person may either set off such amount against accruing rent, or recover it by action as for money paid; and if after notice shall have been given by such person to the owner

Set-off by person who has paid rates due by another.

or lessor of the rates demanded, there shall be no rent due from him in respect of the property rated, and such person shall have paid such rates, he may sue the owner or lessor for the amount as for money paid, and recover the same with full costs as between attorney and client.

77. Any property in respect of which any rate or part of any rate shall remain unpaid for one year after the end of the municipal year for which the same shall have been levied, and for satisfaction whereof no sufficient distress and sale can be made, shall thereupon become charged with such rates in arrear, together with interest at the rate of ten per centum per annum from the day when such became payable, which arrears and interest may be recoverable in manner following.

78. (1) After the expiry of such year, the Town Clerk may cause to be inserted in the *Gazette* and one newspaper circulating within the township, particulars of every such property and of the arrears of rates payable with interest in respect thereof, together with a notice requiring the owner or reputed owner, by name (if known), or otherwise whom it may concern, and the mortgagee or mortgagees (if any) to make payment of such arrears within six months from the publication of such notice in the *Gazette*, and notifying that in default thereof, application at the expiration of such six months will be made to the Provincial Court to order such property to be sold by public auction (subject to such further notice, if any, as such Court may deem necessary) in satisfaction of all rates and interest which shall be due in respect of such property up to and at the time of such application and of all rates that may accrue between the date of such application and such sale by public auction.

Notice as aforesaid shall be given by the Town Clerk in no case later than three years from the close of the year first above mentioned; and if upon the expiry of the notice the default still continues, it shall be the duty of the Board to make application to the Court and to prosecute the proceedings to their conclusion without further delay.

(2) The notice mentioned at the beginning of Section *eight* of Law No. 17, 1893, shall mean the notice referred to in the preceding paragraph hereof; and the reference at the end of the said section to the Colonial Treasury shall be understood to mean the same custody as in the case of other moneys similarly received.

Sessions *seven* and *eight* of Law No. 17, 1893, shall in other respects, where necessary, be construed in conformity with this part of the Ordinance.

79. All rates remaining unpaid at 31st July in each year shall become charged with interest at the rate of ten per centum per annum reckoned from the date when such rates become due and payable.

80. No transfer or cession of any immovable property situate in any township shall be passed before the Registrar of Deeds until the rates thereon are paid.

At the proper time in each year the Town Clerk shall give notice to the Registrar that the rates are then payable and of the date when they are payable.

A fee of Two Shillings and Six Pence shall be payable to the Council for each certificate given to the Registrar of the payment of rates.

CHAPTER VI.

ROADS, STREETS AND PUBLIC PLACES : BUILDINGS ROADS AND PUBLIC PLACES.

81. The Board shall be vested with and shall have the control and management of the streets, public places and public roads within the

Vesting in the Board.

township (save such roads as are maintained by the Provincial Administration, to which this chapter shall not apply), and the public places and works of the township.

82. For giving effect to such authority the Board shall have the following powers:—

- Powers in regard to roads and public places.*
- To cause all public streets, roads and places to be kept in good and sufficient order and repair, and to be lighted, hardened, drained and otherwise improved;
 - To take and purchase any land required for streets, roads, market places and public squares;
 - To lay off and construct roads, streets, market places, squares, parks, bridges, drains and the like;
 - To lay out, plant, and otherwise improve parks, recreation and other public grounds, and to regulate the use thereof; to plant trees in roads and streets;
 - To protect all public properties and the rights connected therewith, and to recover compensation for injury thereto, to set apart and protect common pasture grounds and to regulate their use, and to limit or prevent the use of any of the townlands as commonage;
 - To open up and work quarries, sand pits and the like, and to sell any of the products;
 - To construct or hire public offices and buildings; to regulate their use, or the letting or use of any public buildings or places;
 - To establish public cemeteries; to regulate and make charges for their use, to supervise and compel the proper use of other cemeteries or on proper notice, to require them to be closed if overcrowded or a danger to public health; to prevent the burial of corpses except in properly constituted cemeteries;
 - To require the carcasses of animals to be promptly buried in authorised places;
 - To cultivate or otherwise turn to account property owned or hired by the Board;
- The Board may, at the request of an owner or tenant of premises fronting a street—

- Construct and maintain culvert crossings, at his cost;
- Construct or pave the pathway fronting the premises, or part of its width, in a special manner and at his cost, in so far as it exceeds that of construction and pavement in ordinary course.

PUBLIC ORDER, TRAFFIC, BUILDINGS AND PREMISES.

83. The Board shall have authority to maintain good order and civic government within the township, and to protect the rights of the inhabitants.
- General and special powers.*
84. The Board shall have the following special powers:—
- To define the width and face-line of streets and thoroughfares;
 - To regulate traffic and prevent obstructions in streets, thoroughfares, roads and public places;
 - To prevent the crowding together of buildings, to regulate the size of ground allotted to any buildings, the extent and disposition of open spaces to be provided and the distances between buildings;
 - To regulate the class and character of future buildings, the materials for their construction, their ventilation and sanitation; the character of party walls, the position of servants' quarters, sanitary or other outbuildings, sheds and the like; the height and construction of shafts and chimneys of mills, factories and other buildings, and to compel the consumption of the smoke;

- To control and regulate in a similar manner the repair or reconstruction of, or additions to existing buildings, and to make such regulations with respect to existing buildings as may be necessary;
 - To regulate the construction and ensure the safety of hoardings, scaffoldings and other things connected with building operations;
 - To regulate the occupation of buildings and premises in order to prevent over-crowding or unhealthy conditions; to compel their proper and sanitary use and conditions;
 - To prevent the keeping of any premises, privy, drain or other place or thing in a foul or insanitary manner;
 - To prevent disorder in streets or other public places, or the making of excessive or unseemly noises;
 - To prohibit or regulate the use or cracking of whips, to prohibit the discharge of guns, catapults, and the like;
 - To prevent and extinguish fires;
 - To set aside stands in streets and thoroughfares for cars and other vehicles. No liability for any damage or loss to or in connection with vehicles at such stands shall attach to the Board;
 - To require the lighting of vehicles of all kinds between sunset and sunrise;
 - To restrict the keeping, and prevent the running at large, of ferocious or troublesome dogs or animals;
 - To prevent the carriage or exposure in streets or public places of persons suffering from contagious or infectious diseases;
 - To control public exhibitions and entertainments;
 - To regulate, and if need be restrict or prohibit, the keeping, storage, and conveyance of combustibles and explosives, including paraffin, petrol, and other inflammable spirits, oils or gases; to prevent the dangerous use thereof;
 - To regulate the disposal of refuse or rubbish or anything offensive, and to prevent its being deposited in streets or any other unauthorised places;
 - To regulate the kraaling or stabling of cattle, horses, swine, poultry, and other animals, and to restrict or prohibit the keeping of swine in certain areas; to prohibit the use of buildings, sheds, or other accommodation, for animals, or for any specified class of animal, without first obtaining the permission of the Board.
85. The by-laws may provide for the giving of notice and the submission of plans or descriptions for approval before any building (including additions) or reconstruction is begun, and for the right of inspection by or on behalf of the Board.

Building By-laws.

The following conditions shall apply in any such case:—

- (a) The proper officer shall signify in writing the approval or disapproval by the Board of any intended work within fourteen days after the deposit of the plans or description, with the reasons in case of disapproval;
- (b) If any work is commenced after notice of disapproval or before the expiration of fourteen days without such approval, or if any work is carried out not in conformity with such approval or with the by-laws, the Board may cause so much of the work as has been unlawfully executed to be pulled down or removed.

The expenses incurred by the Board in enforcing such requirements shall be recoverable from the person by whom the work was carried out, or from the person authorising its execution.

- (c) The existence of work in contravention of the by-laws or of the lawful requirements of the Board shall be deemed a continuing contravention of the by-laws but no prosecution shall take place after the expiry of a year from the completion of the unlawful or unauthorised work.

CHAPTER VII.

SALE AND LEASE OF LAND.

Powers of sale.

86. The Board may, with the consent of the Administrator—

- (a) Sell any land or building by public auction in order to raise money for any public work or other approved purpose.

The Administrator may, however, authorise the land or building to be sold by private bargain if, in any case, he is satisfied that the interests of the township will thus be better served than by a sale at auction;

- (b) Sell any land or building by public auction or private bargain or grant or otherwise alienate land or building for the endowment, erection or maintenance of educational or public institutions or under reservation for specified uses of a public nature and for the public advantage;

In any application for consent under paragraph (a) or (b) the purpose of the proposed alienation shall be explained.

- (c) Exchange any of the town lands or any buildings for other lands or buildings within the township;
- (d) Sell, exchange or otherwise deal with land or buildings where and so far as is necessary for the suitable adjustment of boundaries.

87. The Board may sell by private bargain to the owners of the adjoining land such strips of land as may be left between the old and new alignments of altered streets or roads.

Sale of strips on re-alignment.

88. The Board may, with the consent of the Administrator, lease any land or building by public auction for a term not exceeding ninety-nine years, subject to the like proviso as in paragraph (a) of Section eighty-six.

Powers of leasing.

Such lease may contain, *inter alia*, any of the following terms:—

- (a) An option to the lessee to purchase at a price and upon terms and conditions stated in the lease;
- (b) Contracting out of any liability on the part of the Board for buildings erected or improvements effected by the tenant, or a stipulation that they shall, at the end of the lease, revert to and become the property of the Board without payment or compensation.

89. (1) Notice of the intention to sell or otherwise alienate or to lease any land shall be posted on the town office notice board and advertised in a newspaper for at least a month before the intended sale, alienation, or lease.

Notice of proposed sale or lease.

(2) Where it is proposed to sell or lease without public competition, the reasons for that course shall be sufficiently stated in the notice.

(3) If any objections to the sale or lease are received, the application to the Administrator shall not be made until, after the expiry of the month's notice, the Board shall have ratified the proposal. The application shall state any objections which have been received.

(4) This section shall not, however, apply to sales or exchanges for the mere purpose of adjusting boundaries or the sale above referred to of strips between old and new alignments of streets or roads.

90. The Board shall have power—

- (a) To sell, let or otherwise alienate land or buildings to the Imperial Government or the Government of the Union of South Africa or the Provincial Administration by private bargain, or in any other way to deal with such lands as between themselves and such Governments or the Provincial Administration.
- Sales, etc., to Government.*
- (b) To let any part of the town lands or any other property upon a tenancy-at-will or upon any tenancy terminable at not more than three months' notice;
- Power to let on short terms.*
- (c) To lease plots of land for periods not exceeding twelve months to Native or other Coloured persons, on such portions of the town lands as may be set apart for such purpose. Such lease may be granted free of rates.

No requirements in regard to public competition, notice, and the Administrator's consent shall apply to leases under paragraphs (b) and (c) of this section.

91. The Board, in selling or leasing any immovable property, 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 the purpose 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 restrictions.

Conditions in regard to buildings: restriction of ownership and use or occupation.

92. All sales or leases of land or property by public auction shall be subject to the approval of the Board, which shall have the discretion to confirm or refuse to confirm any such sale or lease. Such confirmation or refusal shall be decided at the next ordinary monthly meeting or as soon thereafter as may be reasonably possible.

Approval of sale or lease by the Council.

93. Any quit rents payable to a local authority shall cease upon the land becoming subject to rates.

Quit rents.

94. (1) The Board may, with the consent of the Administrator, acquire immovable property by purchase or upon lease.

Acquisition of land.

(2) The Board may accept a gift or conveyance of immovable property either absolutely for the Township, or upon trust for charitable or other public purposes not connected with public worship, and hold the same upon such trusts or for such purposes as may be declared by the donors, and may administer, utilise and improve such premises.

(3) The trustees of any land previously held in trust for any township, village or settlement afterwards constituted as a Township under this Ordinance may transfer such lands to the Board subject to any special trusts in their deed of title, and upon conditions not at variance therewith.

CHAPTER VIII.

PUBLIC HEALTH, INCLUDING SANITATION AND FOOD : NUISANCES.

General.

95. The Board shall be empowered to regulate matters relating to the public health and food supplies of the Township, and to make By-laws for bidding or controlling all acts or things likely to be injurious to the public health, for ensuring the supply, manufacture and sale of sound and wholesome food, and for all other purposes of this chapter:

General powers.

96. The word "food" or "foodstuffs" includes anything used for eating and drinking, and anything used or any preparation for use, in the manufacture or cooking of foodstuffs but does not include drugs or water.

Meaning of "food" and "foodstuffs."

97. This chapter shall be construed in conformity with the Public Health Act, 1919, and, so far as is necessary, with the Adulteration of Food Act No. 45, 1901.

Construction.

Sanitation.

98. The Board shall have power to regulate and control the following matters, and to establish any necessary services in connection therewith:—

Powers for sanitation.

- The removal and destruction or disposal of night-soil and slops;
- Enforcing the provision of sufficient and approved privy and other sanitary accommodation for residence and employes, whether on the system of water-carriage, pails or cesspools;
- Providing at the public cost or that of householders, or requiring householders to provide, all necessary pails, with the right to interchange pails;
- Preventing the use of any privy or apparatus so as to cause difficulty in removals; enforcing the cleanliness and sanitary condition thereof;
- Contracts with householders for the removal, at their cost, of garden and stable refuse, and refuse from hostels and other establishments so far as the quantities exceed such as may be prescribed by By-law;
- Charges for extra services required.

Various services.

99. The Board may establish the following services:—

- Dipping tanks or other apparatus for the dipping or cleansing of animals;
- Public baths, washhouses and lavatories;
- Steam or other disinfecting stations;
- Fire brigades and apparatus;
- Ambulances.

Foods.

100. (1) The Board may make By-laws for the purposes mentioned in Part I of Schedule III.

Food By-laws; dairy regulations.

(2) The Board may by By-law adopt the dairy regulations as laid down in Part II of the said Schedule, which shall thereupon be enforceable as if they were By-laws.

101. (1) The Board shall keep a register of persons carrying on the trade of dairymen and milk dealers.

Dairy men and sellers of milk.

(2) It shall not be lawful for any person to carry on within the Township the trade of dairyman or purveyor of milk or to sell milk unless he is

registered as a dairyman or milk dealer and has obtained a licence in respect of the premises in or from which such business is to be carried on. Such registration and licence shall be taken out annually.

102. (1) The Board shall have the following powers for controlling the supply and sale of milk.

Milk supply.

- (a) To regulate the conveyance and distribution and to secure the identification of the source of milk or milk products distributed, offered for sale or sold within the Township;
- (b) To prescribe and enforce conditions under which milk or milk products produced or prepared within or without the Township may be introduced, stored or supplied within the Township;
- (c) To make provisions enabling the Board to fix standards of cleanliness of milk and to certify the quality of any milk and to prohibit the unauthorised use by the vendor of any terms employed by the Board in denoting such quality;
- (d) To prohibit the introduction, distribution, storage, sale or supply within the Township of any milk or milk products from any source within or outside the Township when it appears to the Inspector or other proper officer that the consumption of such milk products is likely to cause the outbreak or spread of disease;
- (e) To provide for the veterinary inspection of milch cows, and to require from time to time in respect of any milch cows from which milk is obtained or from the milk of which is prepared any milk product for introduction, storage, sale or supply within the Township, the production of a certificate of an approved veterinary surgeon showing that such cows have been tested by the tuberculin test and are free from disease.

103. The Board shall have the following powers for controlling the supply of meat:—

Meat supply.

- (a) To establish within the Township slaughter houses for the slaughtering of cattle and other animals for food, and to prohibit the slaughter of animals for food elsewhere in the Township;
- (b) To establish places for the examination by their officer of carcasses and meat brought into the Township;
- (c) To regulate the management and use of such slaughter houses and places of examination;
- (d) To regulate stock fairs at which slaughter stock is sold;
- (e) To impose further necessary restrictions or conditions upon the introduction of meat or carcasses;
- (f) To enter into agreements with owners of animals for compensating them in respect of animals or carcasses condemned for diseases specified by the By-laws, subject to any exceptions or conditions;
- (g) To establish or contribute to funds for such indemnities, and to require the owners of animals brought to the municipal abattoir to contribute to such funds according to a prescribed scale.

104. The Board shall also have power—

Inspection, examination and sale.

- (a) To authorise the proper officers to inspect and examine any animals, and to inspect, examine and cut into any carcasses or meat, or any article or package of food or foodstuffs to compel the sale to such officers of samples of any food or foodstuffs;

(b) To authorise the marketmaster or other official to sell animals for slaughter, carcases, and articles of food in a market or abattoir on prescribed terms and conditions.

105. The By-laws may impose charges for inspections and examination in connection with foodstuff and food supplies, cows and animals for slaughter.

Charges.

Nuisances.

106. The Board shall be empowered to prevent and abate all nuisances of a public nature or tending to prejudice the safety, peace, good order or health of the Township or the rights or reasonable comfort of the inhabitants, or any act, exhibition or publication contrary to public decency and morals, all of which shall be included under the term nuisance.

General powers.

107. The powers of the Board shall extend to places of public entertainment or resort or open to public view, or on which any nuisance is created or allowed to exist so as to affect or be likely to affect the public or the neighbourhood, and to houses or places used for immoral purposes, and shall include powers of entry and of taking action at the cost of the occupier or owner, as the case may be, for removing or preventing such nuisances.

—where operative; powers of entry, etc.

Such a nuisance as aforesaid shall be deemed to be a public nuisance.

108. (1) The following acts shall be public nuisances, punishable as contraventions of this section:—

Certain nuisances.

The keeping of disorderly houses of all kinds, including bawdy and gaming houses;

The exhibition of any immoral or offensive picture, placard, or other object whatever;

The public use of indecent words, gestures or practices;

Disorderly conduct, or conduct or language calculated to cause a breach of the peace, or subversive of public order.

(2) The By-laws may prohibit, or as the case may be, restrict, required to be remedied, or enforce proper conditions in regard to the following things:—

Matters subject to prohibition or control.

The firing of grass; the burning of rubbish;

The carrying on of any trade, calling, or manufacture producing a noisome smell, or otherwise offensive;

The public exposure of carcases or of any objects dangerous to health or personal safety;

The non-repair or dangerous condition of any building, bridge, drain, water course or other construction, or the leaving of any dead or insecure tree, unprotected holes and the like, or any other thing dangerous to the public.

(3) The Board may prohibit the exhibition or sale of any picture, book, article, bioscope film, show, or other thing which in their opinion is of an indecent, offensive, unseemly or objectionable character, and for that purpose may, by an order in writing under the hand of the Chairman, authorise the police to enter any premises and serve notice of such prohibition on the person making such exhibition or sale.

Prohibition of sale or exhibition of certain things.

Such order or a supplementary order may also authorise the police, if in his opinion it be necessary for the prevention of the sale or exhibition of anything so prohibited, to seize and take possession of any such things.

—seizure of prohibited things.

Any person acting in contravention of any such order in whole or in part shall be liable to be prosecuted and punished as for a contravention of the

Prosecution.

By-laws.

109. Whenever there is reason to suspect that premises are being used for immoral purposes or as gaming houses, or that any nuisance of a public nature exists there, an officer of police or the proper officer of the Board may, under an authority granted in writing for that purpose by the Chairman, enter such premises in order to trace such nuisance.

110. Any owner or lessee of premises shall be entitled, upon the conviction of an occupant for keeping or using the same as a brothel or for purposes of immorality, to obtain the summary ejectment of such occupant from the premises.

Brothels.

CHAPTER IX.

LICENSES.

111. (1) The Board shall have power to tax, by way of animal licences, the trades, callings and things enumerated in Schedule IV, within the limits of licence duty specified in the outer column thereof, and subject to any exceptions stated in the Schedule.

Licences.

(2) The Board shall be the licensing authority, and may appoint officers to receive applications and issue licences.

Licensing Authority.

112. (1) The By-laws may make any proper provisions in regard to licences, defining the nature thereof and the procedure in regard thereto and fixing the hours of business thereunder, subject to any law regulating shop hours, and for the conduct of licensed premises, and may fix the duties or licences, subject to the terms of Schedule IV.

(2) The By-laws may also prohibit or control trading in open spaces or passages, whether public or private.

113. (1) No licence shall cover more premises than one, or more than one person or firm.

Terms governing licences.

(2) All licences shall, except as otherwise provided, expire on the 31st day of December following their commencement.

(3) When a licence becomes payable after the 31st day of March the fee shall be reduced by one-fifth; if payable after the 30th day of June, it shall be reduced by two-fifths; and if payable after the 30th day of September, it shall be reduced by three-fifths provided that in no case shall a licence fee be so reduced to less than Five Shillings.

(4) Every person to whom a licence is granted shall exhibit his name or firm-name conspicuously over the premises licensed, in English or Dutch characters.

114. Any person who, without the necessary license, carries on any trade or calling, or does any act or employs any thing for which a licence has been duly prescribed, shall be guilty of a contravention of this Ordinance.

Trading without a licence.

115. This Ordinance shall not affect the provisions of the Dealers' Act No. 18, 1897, and its amendments, in regard to licences coming within their operation, but Section seven of that Act shall not apply to persons trading in open spaces or passages.

Reservation of Dealers' Act.

116. (1) The Board shall, as the licensing authority, have the control of buildings or places used for public entertainments.

Control of places of entertainment.

(2) No building shall be used for the purpose of public entertainments without a licence, which may impose such conditions as the Board may deem necessary, either as regards the building itself or the days and hours during which it may be used.

(3) The Chairman of the Board may authorise the police to prevent the use of any unlicensed building for the purpose of such public entertainment, and a building shall be deemed to be unlicensed if any condition upon which a licence may have been granted shall be broken.

(4) The Board may make By-laws for the purpose of minimising the risk of fire in buildings used for any public purpose.

117. (1) The Board shall be empowered to prevent entertainments of an unseemly, indecent or objectionable character, and for this purpose may, under the hand of the Chairman, authorise the police to enter any public building or other place, whether licensed or not, and summarily close such entertainment, and prevent any person or persons from carrying on the same.

(2) The Board may require all bioscope films to be submitted to them for inspection and for sanction before being exhibited.

118. The Board, through its proper officers, may control and, if deemed desirable, prohibit, the employment, professionally, of any child under six years of age in any theatre or place of public entertainment.

119. Any disobedience to or disregard of the provisions of the three preceding sections, or of any order or the like thereunder shall be punishable as a contravention of this Ordinance.

120. The Board may also issue license to dig clay, to quarry stone, gravel or sand, to cut wood, or to remove earth on the town lands, for such times, in no case exceeding five years, and upon such conditions and on payment of such royalty as the Board may determine.

CHAPTER X.

GENERAL PROVISIONS.

121. (1) Any powers given by this Ordinance for, and any references in the Ordinance to, works undertakings, buildings, and the like, and any authority given for an act, shall include everything required for carrying the same to completion with the necessary adjuncts, incidents, rights of access or entry at reasonable times, whether for carrying out the work or for inspection or repair or any other proper purpose; and the use, upkeep, working and maintenance of any such work or thing.

(2) Authority given for the taking or compulsory acquisition of land or of the user of land shall, unless otherwise indicated, be authority for a taking or purchase under the Lands Clauses Consolidation Law No. 16, 1872, which, except as to the limitation of time under Section 64 thereof, is incorporated herewith.

122. Subject to the terms of any special Law and to the acquisition, where necessary, of water rights and powers for instituting a special water supply scheme, the Board shall have authority—

(a) To establish or acquire waterworks for the supply of the Township;

(b) To provide for domestic, industrial and all other purposes a sufficient supply of water for the inhabitants of the Township and to regulate and control its distribution;

(c) To carry the water by pipes or other means to any part of the Township and to establish the equipment required for maintaining an efficient service of pure water, with compulsory powers for acquiring or using land for those purposes;

(d) To control and regulate the public water supply, and to divert or stop the same when necessary.

123. The officers of the Board may enter upon any premises to instal or inspect meters or instruments for measuring and registering the quantity of water supplied. Charges for the use thereof may be made by way of rental or otherwise.

124. The Board, by its proper officers, shall have the right of access at all reasonable times into privately owned houses or lands for the purpose of inspecting pipes, meters, and other apparatus, or for repairs and other work connected therewith.

125. Any person who pollutes any water forming the water supply, or mischievously does any damage to property connected therewith, shall be guilty of a contravention of this section.

126. (1) The Board may by By-law frame tariffs of charge for the supply of water by meter or otherwise from the water mains to any establishment or property where, in the opinion of the Board, the quantity of water consumed warrants a charge being so made.

Such charges may be based on the quantity of water supplied or be varied according to the purposes of the supply.

(2) Special contracts may be made with persons using large quantities of water.

(3) If the properties affected by this section are subject to a water rate, an equitable abatement shall be made in the charge or contract price so that double payment shall be avoided.

(4) The Board may regulate and control the water supply under this section, to impose reasonable conditions for such service, and to divert and stop the same when necessary.

127. (1) The Board may establish public markets, and impose such dues as may be reasonable upon animals or things brought there for sale.

(2) A marketmaster or other officer appointed by the Board may on the town market sell by public auction produce, livestock, skins, wool, leather or other South African products without being liable to an auctioneer's license or to any dues imposed upon auctioneers other than those payable under Ordinance No. 13, 1921.

No such exemptions shall be enjoyed by a person conducting a market for any profit or remuneration other than a salary paid by the Board.

(3) The By-laws may provide for the management and good order of market places and the conduct of sales thereat.

128. (1) The Board may charge for any services rendered or for the use of facilities supplied, whether their use be voluntary or be made obligatory; provided that they be not such as are in ordinary course provided at the cost of the township fund or of any special fund.

(2) All charges shall be uniformly imposed according to tariffs authorised by the By-laws.

129. (1) The Board may enter into contracts for any work, undertaking of service which it is empowered to carry out, including the employment of contractors.

(2) The Board may also contract with any public or urban authority, or with any person, for the execution outside the Township of any work or undertaking within the Board's authority.

130. Before entering into any contract for supplies or other purchases or for the carrying out of any work, or for the sale of movable property the Board shall, if the estimated cost, or in the case of a sale the value, exceeds £25, call for public tenders for such contract.

The Administrator may nevertheless authorise the Board to dispense with public tenders in cases in which by reason or urgency or otherwise, he is satisfied that it would be against the interests of the Township to put out the contract by public tender. Tenders may also be dispensed with in the case of contracts with the Government or other public authorities.

131. The Chairman may at any time summon a public meeting of the inhabitants for the discussion of any matter of public interest specified in the notice of the meeting, and he shall summon such meeting upon receipt of a requisition signed by such number of enrolled voters as may from time to time be fixed by By-law, and specifying a matter of public interest for discussion.

The expenses of the meeting may, if the Board so decide, be paid from the town revenue fund.

Administrative services.

132. The Board may incur expenditure for any of the following purposes:—

A table allowance to the Chairman, to be used at his discretion, not exceeding £50 per annum;

Table allowance.

The reasonable travelling and personal expenses of members and officers of the Board while on the business of the Board;

Travelling expenses.

The medical or funeral expenses of any employee of the Board who suffers injury or dies as the result of an accident occurring in the course of his employment, or as the result of illness contracted in consequence of such employment;

Medical and funeral expenses.

Taking, or contributing to the cost of, a census of inhabitants;

Pensions or gratuities to officers or servants of the Board on their retirement from the service of the Board, or to

Pensions and gratuities.

the widows or other dependants of deceased officers or servants: The basis upon which any such pensions or gratuities are to be granted and assessed shall first be approved by the Administrator: A pension so granted shall not be revoked or reduced during the period for which it was granted;

Contributions to any pension, provident, or benevolent fund intended for the benefit of officers or servants of the Board;

Provident Funds.

Pay to be granted to an officer or servant or to his wife or dependants nominated by him, during leave of absence granted to enable him to serve with the Union or Imperial Military

Pay during military leave.

Forces: such pay not exceeding his ordinary remuneration after deduction of his military pay and allowances;

Taking out policies of insurance with insurance companies in respect of—

Insurance.

Township buildings and property, movable or immovable, machinery and vehicles, against fire, riot, burglary, or accident;

Township animals against death;

Claims under the Workmen's Compensation Act, 1914, or any amendment thereof;

The fidelity of township employees;

Money in transit;

Third party risks as affecting any township undertaking;

Profits on any township trading undertaking including rents;

Compensation for animals or carcases destroyed under the authority of Chapter VI in reference to food;

Claims arising from risk in connection with any township undertaking;

Contribution with the approval of the Administrator, to any fund or enterprise—

(a) Of a national, imperial or colonial character officially established within the Empire for the relief of distress;

(b) Established by any Provincial or local authority within the Union of South Africa for the relief of distress due to a calamity occurring within its area.

133. The Board may, with the approval of the Administrator, expend or make grants of money for the following purposes:—

Other grants and similar expenditure.

The establishment of public libraries, art galleries, public gardens, museums, public entertainment, musical and otherwise, institutions for literary, scientific or artistic purposes;

Grants of money towards the establishment or maintenance of institutions or undertakings of the above and undermentioned kinds, not being of a private character:—

Educational institutions within or without the Township; Agricultural and horticultural societies;

Hospitals and other institutions for charity or the help of the aged, infirm, orphans, destitute or sick, recreation, and the like;

Reasonable expenditure for extending hospitality to visitors; publicity;

Promoting or opposing legislation affecting Townships;

Subscriptions to municipal associations;

The public interest of the Township and the improvement generally of the Township area.

134. (1) The Administrator may by proclamation extend to any Township the provisions of the Municipal Lighting Law No. 22, 1891, and of any laws amending or supplementing the same.

Application of Lighting Laws.

(2) Before adopting any scheme or the extension or substantial alteration of any scheme, under the said laws, the Board shall lay before the

Administrator a full account of the proposed scheme, including the intended arrangements for its working, together with estimates of the cost of the works, plant and buildings, and of the working costs, as also of the revenue expected to be derived.

(3) No works shall be undertaken nor any contract therefor be made until the Administrator shall have notified his approval of the scheme or of its extension or alteration.

135. The Board may sell the by-products of any works carried on by
Sale of by-products. them.

136. (1) Whenever any pauper or destitute person dies within a Town-
Burial of paupers. ship it shall be the duty of the Board to cause the body to be decently buried.

(2) The cost of interment shall in the first instance be borne by the township funds, but the Board shall be entitled to recover the cost from any property which may thereafter appear to belong to the deceased person's estate, or from anyone who would in ordinary course be liable therefor.

(3) In case of the refusal or neglect of the Board to effect such burial, the Magistrate may give directions for the burial, and the expenses may be recovered from the Board.

(4) This section shall not affect the manner of burial of persons who at the time of their death were inmates of a public hospital, gaol, or lunatic asylum.

137. If the exercise of the Board's powers in regard to the entry upon
Compensation for injury. land or premises or doing any work thereon or taking materials therefrom shall occasion loss or injury, the Board shall, if so required, make compensation therefor, the amount of such compensation, failing agreement, and if the amount claimed exceed the Magistrate's jurisdiction, to be determined by arbitration, save as may be otherwise provided by the Lands Clauses Consolidation Law in regard to cases coming within its operation.

138. (1) The Board shall have power to establish public pounds with
Pounds. authority to do such things as are necessary for maintaining an efficient pound system.

(2) By-laws may be made for establishing and carrying out such system and in particular for the following matters:—

- (a) The classes of animals liable to be impounded;
- (b) The cases in which such animals may be impounded;
- (c) The manner in which impounding is to be effected;
- (d) The charge of impounding animals, their herding or segregation, and their grazing or feeding;
- (e) Pound fees;
- (f) The assessment of damages caused by the animals impounded; the mode of assessing and the payment of such damages.

CHAPTER XI.

BY-LAWS: LEGAL PROCEEDINGS.

139. The Board may from time to time make By-laws for the good
By-laws. rule and government of the Township and for the suppression of nuisances, and generally for all purposes necessary or incidental to the exercise of the

powers and authority given to the Board by this Ordinance or by any other existing or future law, and for compelling the observance of any such laws.

140. The By-laws may impose such punishments as may seem proper for the breach of any such By-laws, not exceeding imprisonment with or without hard labour for a period of one month, or a fine of Five Pounds Sterling, or such imprisonment as aforesaid in default of payment of a fine.

Punishments for breach : Arrest, bail.

This provision shall, however, not affect any special punishment defined or authorised by the terms of a special law.

141. No new or amended By-law shall be made until a copy of the proposed By-law has been deposited at the Town Office for public inspection and a notice shall have been published in a newspaper and affixed to the notice board of the town office for at least seven days, setting forth its general purport and stating that a copy is open to inspection as aforesaid during office hours.

Enactment of By-laws.

142. No By-law shall come into force until it shall have been confirmed by the Administrator, and published in the *Provincial Gazette*.

143. (1) Where anything is by this Ordinance ordered or forbidden to be done, any person wilfully offending against such order or prohibition shall be guilty of an offence.

Contraventions of the Ordinance : Resisting officers.

(2) Any person wilfully resisting or hindering the administration, or resisting or hindering an officer or other authorised person in the execution of his duty thereunder, shall be guilty of an offence.

References to this Ordinance include any amendments thereof.

(3) Persons convicted of such offences shall, unless any other penalty is specially appointed, be liable to such punishments as are authorised to be imposed for contraventions of the By-laws.

144. (1) Any person appointed by the Board for that purpose may at his own instance, and without requiring any further authority, prosecute in the Magistrate's Court for contraventions of the By-laws or of this Ordinance or of any law administered by the Board, so far as such contravention may be cognisable by a Magistrate's Court.

Prosecutions : Fines.

(2) Fines for such offences shall be paid to the town fund.

145. (1) The Board shall be competent to sue or take legal proceedings for the recovery of any payment of charge, the enforcement of any legal claim, right or authority, to defend any proceedings, or to compound or compromise any suit or claim, or to submit to arbitration any matter not involving a decision upon the legal status, powers, or authority of the Board or the validity of its acts or By-laws.

Civil suits.

(2) The Board may sue or be sued under the style of the Town Board of the Township.

146. By-laws may be made for compelling occupiers of lands to keep their lands free from all weeds referred to in, or which may hereafter be brought under the operation of, the Burr Weed Law No. 38, 1874, and its amendments.

Noxious weeds.

SCHEDULE I.

REPEAL OF LAWS.

Law.	Subject.	Extent of Repeal.
Law No. 11, 1881	Townships	The whole.
Law No. 26, 1884	Barial of Paupers	The whole, so far as it applies to townships.
Law No. 39, 1884	Townships	The whole, with the exception of the following clauses:— (a) So much of Section <i>nine</i> and Schedule C. as refers to the under-mentioned Laws and their amendments:— Law No. 15, 1869, "Vagrant Law." Law No. 27, 1875, "Dog Tax." Law No. 24, 1878, "To provide for the better observance of the Lord's Day." Law No. 25, 1878, "To discourage gambling." (b) Section <i>ten</i> . (c) The following part of Section <i>twelve</i> — "A notice shall be inserted twice in the <i>Government Gazette</i> , setting forth that the annual valuation has been made and published, and calling for any objections against same." (d) Sections <i>thirteen</i> and <i>fourteen</i> . (e) Section <i>sixteen</i> .
Law No. 12, 1887	Townships: Borrowing Powers	The whole.
Law No. 17, 1893	Townships	The whole, except Sections <i>seven</i> and <i>eight</i> .
Act No. 20, 1894	Townships: Borrowing Powers	The whole.
Ord. No. 4, 1911	Townships	The whole.
Ord. No. 12, 1914	Townships: Women's Franchise	The whole.
Ord. No. 12, 1916	Boroughs and Townships: Audit	The whole, in so far as it applies to townships.
Ord. No. 14, 1916	Boroughs and Townships	The whole, in so far as it applies to townships.
Ord. No. 7, 1917	Boroughs and Townships	The whole, in so far as it applies to townships.
Ord. No. 8, 1917	Boroughs and Townships: Audit	The whole, in so far as it applies to townships.
Ord. No. 6, 1919	Boroughs and Townships: Audit	The whole, in so far as it applies to townships.
Ord. No. 10, 1920	Townships	The whole.
Ord. No. 3, 1923	Boroughs and Townships: Audit	The whole, in so far as it applies to townships.
Ord. No. 1925	Townships: Franchise	The whole.

A TRANSCRIPT IS APPENDED, FOR THE PURPOSE OF REFERENCE, OF SO MUCH OF LAWS No. 39, 1884, AND No. 17, 1893, AND ACT No. 34, 1896, AS IS EXCEPTED BY THE FOREGOING SCHEDULE FROM REPEAL.

Law No. 39, 1884, Section 9.—The Sections of the Vagrant Law No. 15, 1869, applicable to Boroughs under the Municipal Corporations Law No. 19, 1872, shall also be deemed to extend to Townships established under Law No. 11, 1881 (and all fines, fees and penalties for contraventions of the provisions of any of the Ordinances or Laws mentioned in the Schedule (marked C.) annexed to this Law, or any Law or Laws passed hereafter amending the same, committed within the limits of Townships under Law No. 11 of 1881, shall be collected and applied to such Township Funds, anything to the contrary in these several Ordinances and Laws notwithstanding.

Section 10.—The Local Boards established under Law No. 11, 1881, are hereby empowered to collect and apply the Tax charged and made payable under the Dog Tax Law No. 27, 1875, within any Township in the same manner, *mutatis mutandis*, as is provided in the said Law regarding Boroughs.

Schedule C. :—

Law 15, 1869, "Vagrant Law."

Law 27, 1875, "Dog Tax."

Law 24, 1878, "To provide for the better observance of the Lord's Day."

Law 25, 1878, "To discourage Gambling."

Section 12.—A notice shall be inserted twice in the *Government Gazette*, setting forth that the annual Valuation has been made and published, and calling for any objections against same

Section 13.—Section 41 of Law 11, 1881, is hereby repealed, and the following substituted therefor:—At any time within thirty days after the first publication, as aforesaid, of the valuation of the immovable property within any township, it shall be lawful for the owner or occupier of any property so valued, who shall consider himself aggrieved by any such assessment or valuation, to appeal against the same to the Resident Magistrate having jurisdiction, who is hereby authorised to hear and determine such appeal: Provided that three clear days' notice in writing of every such appeal, shall be given by the applicant to the Local Board specifying the time of the hearing thereof.

Section 14.—If after due notice being given for the payment of any rates due upon any immovable property, the person liable for the same shall refuse or neglect to pay the amount or amounts due, the Chairman of the Local Board shall address a requisition containing the name or names of such defaulter or defaulters and the amounts due, to the Resident Magistrate having jurisdiction who is hereby authorised and empowered to issue writs of execution for the recovery of the sums due; together with all costs payable for such process: Provided that the Local Board shall be responsible for all costs connected with the issuing and executing of the said writs should these be illegally or wrongfully applied for or put in force.

Section 16.—The Registrar of Deeds shall, on the first day of June, the first day of September, the first day of December and the first day of March, in every year, transmit to the Clerk of the Board of every township or to any officer in that behalf appointed by the Board, a list in writing setting forth the name of every person making transfer, the name of the transferee, and the amount of the purchase price in respect of all land transferred during the quarter so expired and situated and being within such township; Provided always that for every such transfer specified in such list the Board shall pay to the Registrar a fee of One Shilling.

Law No. 17, 1893, Section 7.—Any unoccupied houses, lands, tenements, or hereditaments, in respect of which any rate or part of any rate shall remain unpaid for five years after the same shall have become due and payable, and for satisfaction whereof no distress and sale can be made shall thereupon become charged with such rates in arrear, together with interest at 10 per cent. per annum from the day when such rate became payable, which arrears and interest may be recoverable in the manner following, that is to say—

At any time after the expiration of such five years the Town Clerk shall cause to be inserted in the *Natal Government Gazette* and two newspapers circulating in the township, particulars of every such unoccupied property, and of the arrears of rates payable, with interest in respect thereof, together with a notice requiring the owner or reputed owner by name (if known), or otherwise whom it may concern, and the mortgagee or mortgagees (if any) to make payment of such arrears within one year from the publication of such notice in the *Natal Government Gazette*, and notifying

that in default thereof application at the expiration of such year will be made to the Supreme Court or Circuit Court to order such property to be sold by public auction (subject to such further notice, if any, as such Court may deem necessary) in satisfaction of all rates and interest which shall be due in respect of such property up to and at the time of such application, and of all rates that may accrue between the date of such application and such sale by public auction.

Section 8.—If after the expiration of such notice, such arrears and interest with all expenses which may have been incurred shall still remain unpaid, the Supreme Court, or Circuit Court, or any judge of the Supreme Court may, on petition of the Town Board, and upon proof of such arrears and interest, and that the conditions herein prescribed have been fulfilled, summarily order any such houses, lands, tenements, hereditaments, or such part thereof as shall be sufficient to satisfy such arrears, interest and expenses, and rates subsequently accrued to be sold by public auction, and the proceeds to be paid into Court, and thereout direct payment to the Town Board of all rates in arrear, interest and charges, together with the costs of such petition, and all expenses of sale as a prior charge, and in preference to any mortgage, security or claim whatsoever (if any) affecting the property so sold, excepting such as shall be in existence at the date of the promulgation of this Law, and the said Court or any judge thereof is hereby further authorised to direct a conveyance in such form as shall be approved by the Master, to be executed by him, or some other officer of the Court, to the purchaser of the said houses, lands, tenements and hereditaments so sold, freed and discharged of any mortgage or encumbrance whatsoever, with the exception of existing mortgages as aforesaid, which conveyance shall vest in the said purchaser an indefeasible and legal estate in fee simple any outstanding legal estate or beneficial interest, or any law or practice notwithstanding, and the surplus (if any) of the proceeds of sale shall be deposited by the Master in the Colonial Treasury, subject to the rights of all parties interested.

Act No. 31, 1886: "To amend the Town Boards Law No. 17, 1893."

1. The words "within two calendar months," occurring before the words "after the expiration of such five years," in Section 7 of Law No. 17, 1893, shall be and the same are hereby repealed, and the following words deemed to be inserted in lieu thereof, namely:—"at any time."

SCHEDULE II.

APPLICATION FOR ENROLMENT.

To the Officer charged with preparing the Voters' List for the Township of.....19.....(date)

I request that you will enrol my name in the Voters' List in terms of the Townships Ordinance, 1925.

I am a British subject of the age of twenty-one or upwards, and reside in the said Township.

My income, inclusive of allowances, is equal to £8 sterling per month, or £96 per annum.

My full name is.....

My place of abode is.....

My business or quality is.....

Signature of Applicant.

SCHEDULE III.

Part I.—Food.

1. The registration and inspection of dairies.
 2. With respect to cowsheds and dairies from which milk is vended or sold within the Township; for the construction and cleansing of the cowsheds, for the health and conditions of the cattle therein; for the cleanliness of milk vessels used therein; for the cleanliness of the persons and clothing of those employed in handling the milk.
 3. Fixing the type of vessel for the conveyance or delivery of milk; for the protection of the milk against infection or contamination.
 4. The veterinary inspection of milch cows.
 5. Requiring in respect of any milch cow reasonably suspected of being infected with tuberculosis or of having been in contact with cattle so infected, and the milk or any product from the milk which is intended for introduction, distribution, storage, sale or use within the township, the production of a certificate of an approved veterinary surgeon showing that such cow has been tested by the tuberculin test and is free from tuberculosis.
 6. Prohibiting the sale of milk under any circumstances indicating a danger of its being tuberculous or otherwise contaminated.
 7. The use and management of depôts for the inspection of milk.
 8. Compelling the submission to an officer of the Board of all meat intended for human consumption within the Township, and the inspection, passing or rejection thereof by the Board as fit for human food, and for that purpose regulating the branding, stamping or labelling of such meat or dead animals, and for preventing the sale or use of such meat or dead animals for human consumption until the same have been inspected and passed as aforesaid.
- Any fees charged under this clause shall not exceed fifty per cent. of the fees charged in connection with the slaughtering and dressing of similar animals at the abattoir if there be such.
9. Prohibiting the introduction into the Township for human consumption therein of any carcase (other than game) or of any butchers' meat slaughtered outside the Township, except when accompanied by such unattached parts as may be specified.
 10. Prohibiting the introduction into the Township for human consumption therein of any unfrozen carcase (other than game) or unfrozen butchers' meat of animals slaughtered outside the Township unless such animals were slaughtered at approved places; provided that this and the preceding Clauses 8 and 9 shall not apply to meat or dead animals which may be conveyed into the Township by any person for consumption by such person or his household.
 11. Regulating the use and management of slaughter houses and depots, and prohibiting the slaughtering of animals intended for the food of man elsewhere in the Township than in such slaughter houses.
 12. Preventing the introduction, the possession, sale or offering for sale for the purpose of human consumption or the handling (otherwise than for the purposes of destruction) of diseased animals, diseased meat or fish or other articles of food or drink unfit for the use of man.
 13. Authorising the seizure and ensuring the destruction when necessary, in the opinion of the Medical Officer of Health, of any meat, fish or other article of food or drink which is diseased, unsound, unwholesome, or unfit for the use of man.

14. Permitting, at the owner's risk, such treatment in lieu of destruction of any diseased, unsound or unwholesome article of food as may render the same fit for the food of man.

15. Authorising the seizure and destruction of diseased animals when certified to be necessary by an approved veterinary surgeon.

16. Ordering the detention, pending examination or enquiry, of animals or articles of food or drink.

17. The control of bakehouses, pastry-cooks' and confectioners' establishment for the purpose of promoting cleanliness; the use of any bakehouse, store or other place where articles of food or foodstuffs are prepared, manufactured or stored for the purpose of sale as a sleeping apartment.

18. The use of any room where articles of merchandise are stored for the purpose of sale as a sleeping apartment.

19. The handling and distribution of foodstuffs.

20. Requiring and specifying labels to be attached to articles of food or to wrappers or receptacles containing such articles.

21. The periodical inspection and supervision of all persons handling and selling fruit, vegetables and foodstuffs,

22. Generally for the control of all foodstuffs sent into the Township for sale and—

(a) The inspection and examination of any animal, alive or dead, intended for the food of man which is exposed for sale or deposited at any place or in course of transmission, for the purpose of sale or of preparation for sale; and of any article, whether solid or liquid, intended for the food of man and sold or exposed for sale or deposited at any place or in course of transmission or of preparation for sale;

(b) The seizure and removal of any such animal or article apparently diseased, unsound or unfit for the food of men; and the destruction or treatment in a reduction plant of any such animal or article which shall be found to be unfit for the food of man.

Part 2.—Dairy Regulations.

1. Every dairyman or milk dealer shall make provision with respect to such premises to the reasonable satisfaction of the Medical Officer or other proper officer for—

(a) Efficient lighting and ventilation, including air space;

(b) A proper and sufficient supply of wholesome water, either constant or stored in suitable tanks which shall at all times be kept thoroughly clean;

(c) Proper and effectual drainage, for the purpose of which the floor shall be impermeable and so constructed as to have a sufficient fall to a channel which shall effectually carry away all urine or other liquid filth, and there shall be no inlet or opening to any drain within such dairy or cowshed.

2. It shall not be lawful for any dairyman to occupy as a dairy or cowshed any building, whether so occupied at the commencement of these regulations or not, if and so long as the lighting and ventilation, including air space, and the cleansing, drainage and water supply thereof are not such as are necessary or proper—

(a) For the health and good condition of the cattle therein; and

(b) For the cleanliness of milk vessels used therein for containing milk for sale; and

- (c) For the protection of the milk therein against infection or contamination.

3. Every dairyman or milk dealer shall to the satisfaction of the Medical officer or other proper officer—

- (a) Maintain his premises in a proper state of repair and keep them in a thoroughly clean and wholesome condition;
- (b) Cause all vessels used in his dairy, cowsheds, or milkshops to be well washed after use and thereafter sterilised with boiling water or steam, and thereafter protected from contamination till used again;
- (c) Take all proper precautions for preventing the infection or contamination by effluvia or otherwise of any milk kept in such dairy, cowshed, or shop.

4. No such person shall—

- (a) Keep any swine on the premises in respect of which he is licensed or in such proximity as shall appear to the Local Board to be insanitary;
- (b) Sell any milk showing any sign of variation in colour, taste, smell or general quality from the ordinary appearance of good milk;
- (c) Sell any milk from any cow within six days after the time of calving;
- (d) Allow any person (whether himself or another) suffering from or having to his knowledge been recently in contact with any person suffering from any infectious disease to take part or assist in the conduct of the trade or business as far as regards the production, distribution or storage of milk until in each case all danger therefrom of the communication of infection to the milk or of its contamination has ceased.

5. It shall be the duty of every dairyman or milk dealer to inform the Medical Officer or other proper officer without delay of the occurrence of any infectious or contagious disease or tuberculosis among any persons residing or employed on his licensed premises or among any cattle kept therein or handling the milk, and to comply with all the requirements of the said officers for disinfecting the premises and preventing the spread of such disease. Any person contravening the provisions of this regulation shall be liable, on conviction, for every such offence to a fine not exceeding Twenty Pounds, or, in default of payment, to imprisonment for a period not exceeding three months.

6. If at the time disease exists among the cattle in a dairy or cowshed or other building or place, the milk of a diseased cow therein—

- (a) Shall not be mixed with other milk; and
- (b) Shall not be sold or used for human food; and
- (c) Shall not be sold or used for food of swine or other animals unless and until it has been boiled;

and any person acting in contravention of this regulation shall be guilty of an offence.

7. No person shall sell within a township any milk (other than condensed milk), whether produced within the Township or imported from outside unless the dairy or cowshed from which the same was produced has been inspected and approved or is open for inspection by the Medical Officer or other person authorised thereto by the Local Board; and if any such dairy or cowshed outside the district does not fulfil the requirements of the Townships Ordinance or any by-law, the Board may forbid the sale of any milk produced on such premises in the manner aforesaid until such requirements are complied with.

SCHEDULE IV.

Licences.

	Limit of
	Annual Duty.
	£ s. d.
Baker	3 0 0
Butcher	3 0 0
Wholesale Dealer	5 0 0
Retail Dealer	2 10 0
Combined Wholesale and Retail Dealer	6 0 0
Dairyman or Milk Dealer	0 2 6
Miller of Corn and Grain	1 10 0
Hairdresser	0 10 0
Cobbler	0 10 0
Laundry	0 10 0
Hawker	1 10 0
(Monthly Licence, 3/-)	
Boarding or Eating House	3 0 0
Refreshment or Tea Room, where only light refreshments are served	1 0 0
(Day-to-day Licence, per day, 2/6)	
Public Billiard Table, each	7 10 0
Public Motor Garage	1 10 0
Vehicle propelled by animal power:	
Two-wheeled	0 5 0
Having more than two wheels	0 10 0
Cycle propelled by human power	0 2 6
<i>Note.</i> —Vehicles and Cycles shall require to be licensed only when owned by persons residing within the Township.	
Theatre, Bioscope or Music Hall, or other place of public entertainment	6 0 0
Monthly Licence	£41 10 0
Weekly Licence	0 15 0
Day-to-day Licence, per day	0 5 0
Travelling Shows and other entertainments conducted in the open, or in tents or other light moveable structures:	
Monthly Licence	£1 0 0
Day-to-day Licence, per day	0 3 0

Exemption.

No person shall be required to take out a licence for dealing in or hawking only fish, poultry, agricultural, farm or garden produce. A dealer or hawker who sells only milk or milk and cream will require a Milk Dealer's licence only.

TELEGRAM FROM THE GOVERNOR-GENERAL OF THE UNION OF SOUTH AFRICA,
DATED PRETORIA, THE 31ST OCTOBER 1925.

Your telegram dated 14th August, 471. Draft Ordinance to consolidate and amend law relating to establishment of townships in Natal. Ministers state that the Ordinance is standing over until next year and that steps will be taken to ensure that franchise rights of Indians at present on voters roll of township are adequately safeguarded.

Press Communiqué, dated the 13th November 1925.

The Government of India have been informed that the draft ordinance to amend and consolidate the law relating to townships in Natal is standing over until next year and that when it is proceeded with steps will be taken to ensure that the franchise rights of Indians at present on the voters roll of township are adequately safeguarded.

GENERAL DEALER'S (CONTROL) DRAFT ORDINANCE.

Extract paragraph from "Indian Opinion" of August 14th, 1925, page 202, on Asiatic Bill.

ASIATIC TRADERS IN THE TRANSVAAL.

In the Transvaal Provincial Council in moving the second reading of the "General Dealer's (Control) Draft Ordinance", the Administrator is reported to have said, the measure was put forward mainly to control the Asiatic trade in deference to representations made to restrict the issue of general dealers' licences. These requests were made by representatives of various municipalities.

The Executive Committee had felt that very careful steps had to be taken. It was hoped that the question of Asiatic trading would have been tackled by the Union Government. The Government had, however, decided that this aspect of the Asiatic problem must be left to the provinces. In framing the Ordinance they had taken into consideration the request of the Municipal Congress from last year and also the report of the Asiatic Commission.

Mr. Geo. Hills (Lab. Benoni) said it should be stated frankly that the Draft Ordinance was intended to apply to Asiatics, if that was the intention.

Mr. H. J. Lamb (S. A. P. Yeoville) was of the same opinion, and moved the adjournment of the debate, because members had not had time to consider the measure.

The motion was defeated by 25 votes to 15.

Mr. R. H. A. Rabbie (Nat. Wakkerstroom) said that through the competition of the Asiatics many white dealers had to close their business. The danger did not exist only in the large centres, but also in the up-country villages. He strongly supported the second reading.

The draft was read a second time and the committee stage fixed for Tuesday the 11th instant.

TELEGRAM TO THE GOVERNOR GENERAL, SOUTH AFRICA, CAPE TOWN,
No. 532-OS., DATED SIMLA, THE 11TH SEPTEMBER 1925.

We learn from newspaper reports that a bill affecting Asiatic traders, entitled General Dealer's (Control) Draft Ordinance, is before Transvaal Provincial Council and has passed stage of second reading. We should be glad to receive copy of Bill by post and would be much obliged if summary of its provisions could be telegraphed to us.

Cutting from Newspaper "Swarajya", Madras, dated 23rd September 1925.

LICENSING TRADE.

TRANSVAAL LAW.

Impending Anti-Indian Ordinance.

The following are important extracts from the text of the General Dealers' (Control) Ordinance which has been passed by the Provincial Council of Transvaal and is awaiting the assent of the Governor-General of the Union:—

From and after the date of the operation of this Ordinance no general dealer's license or a renewal thereof shall be issued by a receiver of revenue unless the applicant therefor produces with his application for such license a certificate under this ordinance.

Every application for a license shall state the class or nature of the business proposed and the place and the premises where it is intended that the business shall be carried on.

Every applicant for a license shall apply for a certificate—

- (1) in the case of a business within municipality to the local authority; and
- (2) in the case of a business within a declared area to the board.

The Administrator may from time to time by proclamation in the Provincial Gazette—

- (a) constitute for any area outside a municipality a board to be called a rural licensing board consisting of a magistrate who shall be the Chairman and not less than two nor more than four persons;
- (b) increase alter or diminish the area of jurisdiction of such board and at any time on due cause being shown abolish or disestablish such board.

Every applicant for a certificate shall cause a notice in the form prescribed by regulation to be inserted in the Provincial Gazette notifying that he has applied for such certificate. The local authority or board as the case may be shall not consider such application until the expiration of a period of fourteen days from the date of publication of such notice.

Grounds for Refusal.

Every local authority or board shall within the area of its jurisdiction have a discretion to refuse a certificate on any of the following grounds:—

That the premises where it is intended that the business should be carried on are not suitable for the purpose of the business where articles of food or drink are produced prepared used or sold for human consumption; also on any of the following grounds:—

- (a) That the applicant is by reason of uncleanness of his person or habit or methods unfit to be entrusted with the handling preparation or sale of such articles of food, drink or is otherwise not a desirable person to hold such a licence.
- (b) That the granting of such a licence in respect of the premises of which it is thought is calculated to cause nuisance or annoyance to persons residing in the neighbourhood.

A suspended licence may not be issued until the local authority or board certifies that the required conditions have been complied with or in the case of appeal has been determined.

The Provincial Division of the Supreme Court or a Local Division thereof shall have power to order that the licence the subject of the appeal be renewed with or without any such suspension as is authorized by sec. 11 hereof or the Provincial Division of the Supreme Court or a local Division thereof may remit the application to the local authority or board as the case may be for rehearing or reconsideration.

13. If an application has been refused by a local authority or by a board no further application for a licence for the same premises may be sought till after the expiration of six months from the date of the application which has been refused.

14. Any person alleging that the sufficient notice of an application has not been given in terms of the provisions of sec. five of this ordinance shall also if he would have been entitled to lodge objections be entitled to apply to the local authority or the board as the case may be for the application to be heard on proper notice. The Local authority of Board may thereupon direct that its previous decision be suspended and may upon rehearing decide upon the application *de novo* subject to the provisions of this Ordinance.

Any appointments of Members of Boards and filling of vacancies on such boards shall be published in the Provincial Gazette.

The Administrator may make alter and repeal regulations not inconsistent with the provisions of this Ordinance.

(a) In respect of matters which this Ordinance specially provides may be prescribed by regulation.

(b) Prescribing the form of certificate issued under the provisions of sec. 2 of this Ordinance and compelling the use of such form.

(c) Prescribing the forms of any application which may be made under the provisions of this Ordinance and compelling the use of such form.

(d) Fixing the period of office of members of Boards the method of filling vacancies the procedure to be followed by such Boards the number of members which shall constitute a quorum and the allowances to be paid to such members.

(e) Conferring upon a Board any or all of the powers exercisable by a local authority under any law in regard to the regulation of the erection or repairs of buildings intended for the business purposes.

(f) Generally for the better carrying out of the objects and purposes of this ordinance.

Any person resident within a municipality or a declared area or within five miles from the premises sought to be licenced or owning or occupying similarly licenced premises within the same distance or any member of a Police force may lodge objections to and oppose the granting of any licence on compliance with the rules in that behalf and the local authority or board may make regulations prescribing the procedure to be followed in hearing any objections lodged under the provisions of this section. Every local authority or board hearing any application for a certificate authorising the renewal of general dealers' licence shall record the evidence given for or against the application and where the application is refused the reasons for the refusal.

NO APPEAL AGAINST DECISIONS.

The decision of a local authority or board on any application made to it for a certificate authorising the issue of a general dealer licence shall be final and shall not be liable to review reversal or alteration by any court of law.

It shall be competent for the applicant for the renewal of a licence to appeal to the provincial division of the supreme court or a local division thereof against any decision of a local authority or board as the case may be and the court may order that the renewal applied for be granted or may in any case remit the matter to the Magistrate or to the board of appeal for re-hearing and consideration; provided that any application for the renewal of a licence issued between a first day of July 1925 and the date of the coming into operation of this ordinance shall be regarded and dealt with as an application for a new licence.

Any person who has lodged an objection to the granting of a certificate by the local authority or board shall have the right to be heard on any appeal.

The local authority or board may in authorizing a licence direct it to be suspended pending the erection or completion of buildings according to approved plans with any modifications that may be authorized or pending the execution of the repairs or of any necessary alterations of the existing premises.

TELEGRAM TO THE GOVERNOR GENERAL, SOUTH AFRICA, CAPE TOWN,
No. 596-OS., DATED DELHI, THE 6TH OCTOBER 1925.

Continuation of our telegram 532, dated 11th September. Transvaal General Dealers (Control) Ordinance. We learn from newspaper reports that Bill has passed and has been submitted for Your Excellency's assent. If this be the case, we would be grateful for opportunity to represent our

views, if on receipt of text of Bill we find it desirable to make representations, before assent is given. We feel especially concerned at reported absence from Bill of provision for appeal against refusal by local authority or board to grant a certificate authorising issue of new licence.

TELEGRAM FROM THE GOVERNOR GENERAL OF SOUTH AFRICA, PRETORIA, DATED
THE 15TH OCTOBER 1925.

15th October. Your telegram dated 11th September and your telegram dated 6th October. Transvaal General Dealers (Control) Ordinance, 1925. Ministers state that prior to passing of this Ordinance general dealers licences were issued by Receivers of Revenue on payment of prescribed fee and no provision existed for ensuring that premises or localities in which applicant proposed to carry on his business were suitable, that applicant was a fit and proper person to hold a licence, or that licences were issued only where no nuisance or annoyance was caused to persons residing in the neighbourhood. This position was unsatisfactory in that licences were issued without enquiry and present ordinance was passed in order to provide necessary machinery for better control. In this Ordinance provision is made in case of refusal of a local authority or Rural Licences Board to approve the issue of a renewal of an existing licence for appeal to the Supreme Court of South Africa.

The Ordinance is on lines of Natal Rural Dealers Licensing Ordinance of 1923, a copy of which was transmitted to Government of India under cover of despatch No. 15/1164 of 23rd July 1923. Assent was signified on 4th September last and copies of Ordinance being forwarded by post.

CONFIDENTIAL MEMORANDUM

SUBMITTED BY THE

GOVERNMENT OF INDIA DEPUTATION TO SOUTH AFRICA.

CONFIDENTIAL.

**CONFIDENTIAL MEMORANDUM SUBMITTED BY THE GOVERNMENT
OF INDIA DEPUTATION TO SOUTH AFRICA.**

In their telegram no. 606-Os., dated the 9th October 1925, the Government of India informed the Union Government that, as a preliminary to entering into any discussion regarding the question of repatriation, subject to the fundamental reservation that they could not acquiesce in any policy of reducing the Indian population to an "irreducible minimum", or on the general question of mitigating direct competition between Europeans and Indians in South Africa, they would like to send a deputation to South Africa to collect information about the economic position of Indians and to investigate their general condition. On the 10th November 1925, the South African Government communicated to the Government of India their readiness to receive such a deputation. Mr. G. F. Paddison, I.C.S., the leader of the deputation, the Hon'ble Syed Raza Ali, Member, Mr. G. S. Bajpai, I.C.S., Secretary, and Mr. C. S. Ricketts, Assistant, sailed for Durban by S.S. "Karagola" on the 25th November. The third member of the deputation, Sir Deva Prasad Sarvadhikary, who was appointed later, sailed by the S. S. "Karapara" on December 9th. Mr. Paddison and his party reached Durban on December 16th. Sir Deva Prasad Sarvadhikary landed at the same port two weeks later and joined his colleagues at Johannesburg, whither they had proceeded after completing their inquiry in Natal. The investigations of the deputation in Natal and the Transvaal were finished on January 6th. In respect of the Cape Province they were started on January 7th at Kimberley and completed on January 28th when the Hon'ble Syed Raza Ali and Sir Deva Prasad Sarvadhikary returned from East London after a visit of 10 days to the Eastern provinces. This terminated the first stage of the deputation's activity. Sir Deva Prasad had originally intended to visit Natal by himself but, owing to developments at Cape Town, was unable to do so.

2. The second stage embraced (i) the presentation of the Indian case against the Areas Reservation and Immigration and Registration (Further Provision) Bill before the Select Committee of the House of Assembly to which the measure was referred on February 17th before the second reading, (ii) the watching of evidence given before the Committee by other bodies and individuals, and (iii) the submission of a supplementary statement to counteract or explain testimony adverse to Indian interests. This stage finished on March 24th. The last stage consisted of negotiations of an informal character with the Hon'ble the Prime Minister, General Hertzog, and the Hon'ble the Minister of the Interior, Dr. Malan, which eventuated in the statement made by the latter in the House of Assembly on April 23rd, announcing the postponement of the Areas Bill pending a conference between the two Governments.

The detailed results of the investigations are contained in two interim reports dated the 14th January and 11th February respectively which we sent from Cape Town. The evidence given before the Select Committee was published in South Africa on the 3rd May and should soon be available. The account of the concluding informal negotiations with General Hertzog and Dr. Malan is contained in our telegrams dated the 2nd, 8th and 13th April. In the following memorandum we have merely attempted to give a connected account of the inner history of events, of our impressions and of the vicissitudes of fortune and to make a few suggestions which might prove useful to Government in their further negotiations with the Government of the Union of South Africa.

3. The deputation stayed in South Africa for a period of four months. When Mr. Paddison and his colleagues landed in Durban they were received with suspicion by the representatives of the Indian Community whose most powerful political organ, the South African Indian Congress, was frankly sceptical of the opportuneness of their visit and the value of their investigations. Happily this attitude of distrust and doubt was soon dispelled. We assured its representatives that the Government of India had sent us out with no other object than to help the resident Indian population. This assurance was accepted and the Congress,

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together with its affiliated bodies, gave valuable assistance in the collection of data. The Government of the Union attached a special officer to the deputation to give such help as might be necessary and did all that lay in their power to facilitate our task. Provincial Governments and local authorities also, on the whole, supplied without demur information that was readily available. But while their attitude was uniformly correct, it lacked cordiality. This was the logical outcome of the impression prevalent in official as well as European non-official circles that the Bill was a measure strongly desired by the electorate and destined to be placed, without substantial modifications, on the Statute Book before the end of the ensuing Parliamentary session. For, replying to the representatives of the Natal Indian Congress which waited on him on November 16th Dr. Malan had stated with regard to the general principle of the Bill: "I may just say in general that there is, as far as I can see, practical unanimity between all parties in South Africa and between all sections of the European community. No Government will be able to do what you ask me to do and that is to drop this Bill. If I dared to do it in the face of the feeling in the country, I think that would mean the end of the present Government." His claim in regard to the unanimity of European opinion was correct, for the South African party in its annual convention at Bloemfontein, and the Labour party in the annual session of its congress at Port Elizabeth, publicly pledged their support to the Bill. In a public speech which he delivered at Cape Town on the 10th December Dr. Malan stated with equal emphasis that the South African Government could not agree to a round table conference which the Government of India had suggested, as they were not prepared to make concessions. All that he was prepared to do was to recommend to Parliament that our deputation should be allowed to give evidence before the Select Committee, to which it was proposed that the Bill should be referred after it had been read a second time, and its principles affirmed by the House.

4. Of the strength of anti-Asiatic feeling in the country we soon received ample and varied testimony. The term "coolie" by which the Indian is generally designated is a term of contumely. The majority of Europeans treat him as a social 'pariah.' He is segregated on the railways and tram-cars. He is denied admission to hotels and places of amusement. In Natal and the Transvaal he is subjected to similar restrictions in post and telegraph offices and, if he visits them as a spectator, even in law courts. In the Transvaal he can no longer acquire immovable property and is practically confined in the mining townships to insanitary bazaars for trade as well as residence. In Natal and the Transvaal his presence as a neighbour is resented by a clamorous and powerful section of the European community. By way of illustration, we may cite the instance of Johannesburg, where the Indian community were unable to hire a house in the European quarter for the use of the Indian members of our deputation as no one was willing to let quarters for use by Asiatics. He (the Indian) is regarded as insanitary by instinct and impossible to improve. The licensing laws are administered with a frank determination to keep down the number of Indian traders. The Indian trader is alleged to undersell his European rival because his working expenses are smaller and he is satisfied with a lower rate of profit. Of recent years, white labour has raised the cry that the Indian is an unfair and menacing competitor in industry; unfair because he is said to work for a lower wage; menacing because his alleged cheapness, it is urged, enables him to displace the European. Many European gentlemen whom we saw described the Indian as socially unassimilable, economically dangerous and generally undesirable. The few who differed from the popular view and recognised his ready obedience to the laws of the country, his honesty and his economic utility to the community, whether as a trader or an artisan, were reluctant to say so publicly. They were afraid of the odium which they felt they would inevitably incur by too open a championship of an unpopular cause.

5. The reasons for this attitude are partly racial and partly economic. In South Africa almost every white person is endowed with a colour complex. In people of Dutch stock this manifests itself in a ready assumption of general superiority towards all non-whites, and an instinctive desire for social separation from them. This state of mind is the product of the history of Dutch colonisation in South Africa which began in ruthless warfare and ended in equally ruthless domination. True, the wars were waged against the aboriginal inhabitants of the country whom alone the Dutch conquered. But the average Boer is neither willing nor able to draw distinctions between the Indian and the native on grounds

of ethnology or history. To him all non-whites are alike; hence the old Grondwet which declares that there shall be no equality between coloured and white. In fact, he has a special grudge against the Indian because of the part which the Indian question played in the Boer War, and the assistance which India rendered to Great Britain in that struggle. The ideal of racial equality based on equality of standards of civilization makes no practical appeal to him, because of the numerical disparity between the white population of the Union and the native. By a rare though intelligible paradox, therefore, the desire for dominance is inspired by fear. The non-Dutch section of the white population, whose anti-white prejudice cannot be attributed to any historical reasons, share the Dutchman's fear of the consequences of conceding political and social equality to non-whites. This explains the phenomenon of the identity of outlook in regard to the Asiatic question between the Boer population of the Transvaal and the British population of Natal.

6. To these general factors which have contributed to the growth of anti-Indian feeling must be added certain specific charges which the European element of the population frequently make against the Indian. The most important of these is alleged unfair competition in trade—a charge which is widely exploited by interested alien competitors from eastern Europe and the Levant. In Natal, where the Indian has a large share of the native trade, he is regarded as a formidable rival to existing European traders and an insurmountable obstacle to European expansion in this special sphere of business. In the Transvaal, his dealings in the country districts with the rural Boer population are equally resented. That the Kaffir trade was captured by the Indian in the past, when the white man's attention was directed to more lucrative openings, that his popularity both with the native and the poorer elements of the white population is due to his courtesy, his readiness to give credit and his peculiar fitness to act as a cheap agent of distribution, that the person who will profit by his exclusion from trade is neither the consumer nor the white settler of Dutch or British parentage but Lithuanians, Czechoslovak and Greeks, that local authorities which administer the licensing laws of the country are already restricting further Indian expansion are facts which are either unknown or ignored. Emphasis is laid by the rivals and opponents of the Indian, only on his readiness to accept a lower margin of profit and his ability to exist on the proverbial "smell of an oil rag". This allegation has been sedulously disseminated and fostered by the anti-Asiatic league and other similar organisations until it has become with most Europeans a dogma of faith. The increase in the employment of Indians in one or two industries in Natal, viz., furniture and tailoring, gave birth to a similar fear among white workmen in Natal which anti-Asiatic propagandists persistently exploited until the repatriation of the Indian on payment of compensation was adopted by the Labour Party of the Union as its approved panacea for maintaining a white standard of living in South Africa. The insanitary or unsightly condition of the residences of the poorer Indian round about Durban was freely used as an argument to encourage the belief that the Indian is inherently unclean in his habits and will never mend his ways. And, as in the past, the Indian population of Natal outnumbered the white, this fact was made the foundation for the gloomy prophecy that the Indian would eventually eradicate the white man from Natal, if not from South Africa. To a population which, for generations, has been inconstant though, perhaps, sub-conscious fear of the possibilities of danger inherent in the numerical preponderance of the native population, this prognosis of the ultimate outcome of the continued presence of the Indian in South Africa represented no wild improbability. By dint of repetition it helped to create an atmosphere of panic in which the anti-Asiatic legislation of the past few years was introduced and passed. Even persons of education, experience and political influence who hold sober views on most questions had succumbed to this violent and unscrupulous propaganda. The Areas Reservation Bill was the inevitable product of this atmosphere. It was in this same atmosphere that we had to begin our task.

7. The collection of facts regarding the general position and economic condition of the Indian community in South Africa was our avowed and immediate objective. But we were aware that the Government of India still desired a conference. The spokesmen of the Indian community whom we met were equally anxious that an opportunity for settlement by discussion should, if possible, be found. Like the Government of India, they were fundamentally opposed to the principles of the Bill. Like the Government of India, they felt, what we had

all along realised, that unless some means could be found of delaying the progress of the proposed legislation beyond the introduction stage, the Bill would soon be passed, and possibly modified in the direction of greater stringency. As the Bill was to be reintroduced early in the new session of Parliament which was due to begin on January 22nd, 1926, we decided (i) to submit a preliminary report to the Government of India before the end of 1925, if possible, (ii) to complete our inquiry not later than the 31st January 1926, and (iii) to do as much unofficial propaganda in favour of a conference or, failing that, a respite as was consistent with discretion and possible within the limited time available to us.

8. As the segregational provisions of the Bill would mainly have affected the Indian community in Natal which has hitherto enjoyed unrestricted rights in regard to the acquisition and occupation of immovable property, we decided to communicate our main conclusions about this portion of the measure to the Government of India soon after completing our inquiries in that Province. Our investigations there showed us that (i) Indian trading both in urban and rural areas was strictly controlled by the local licensing authorities; (ii) that municipalities had already succeeded in introducing a substantial measure of commercial segregation in the towns; (iii) that in the sphere of industry the position of the European was generally improving which discounted the theory of Indian encroachment at the expense of the white working man; (iv) that the stories of Indian penetration into European residential areas and the resulting deterioration in the value of European property had been greatly exaggerated, and (v) that the proposal to establish a coast belt in Natal would prove disastrous to the small Indian cultivator, would intensify unemployment among 'poor-whites' by increasing the supply of cheap Indian labour from the ranks of displaced Indian squatters, and aggravate congestion round Durban. They also confirmed the opinion which we had first formed on purely *a priori* considerations, that commercial segregation in the form contemplated in the Bill would gravely affect existing Indian rights and spell ruin to many Indian traders by ultimate eviction from their present business quarters and consequent loss of custom. We used these arguments in our informal discussions with representatives of local bodies and private individuals, and several recognised their force. On the Durban Town Council they had the effect of materially strengthening the opposition of that body to clause 10 of the Bill. They also helped to secure for us the powerful support of the editor of the "Natal Witness" who, after his conversations with us, boldly attacked the Bill at every suitable opportunity. But it was soon evident that although our representations produced an impression on most of the people with whom he came into contact, the impression was not likely to be fruitful of results. Men admitted their ignorance but were generally unwilling to support us publicly. Apathy, or the fear of unpopularity, acted as a deterrent to the conversion of passive sympathy into active assistance. The Minister of the Interior was in Cape Town, and no prospect of placing our arguments before him was likely to offer itself until we reached the legislative capital of the Union early in January. That would have been too late for the Government of India to make effective representations to the Union Government to stop the progress of the Bill, or, if all attempts to achieve postponement failed, to secure a suitable opportunity for disputing its underlying principles. The need for making constructive suggestions at the first possible opportunity was, therefore, imperative. As our investigations in Johannesburg and neighbouring townships on the Rand disclosed a similarity between Natal and the Transvaal, both in respect of the existing position of Indian trading, and the probable effects of the relevant provisions of the Bill on Indian traders, we decided to suggest immediately to the Government of India that they should press the Union Government to hold a fresh authoritative inquiry into the economic position of the Indian community before proceeding further with the Bill. Glimmerings of our second suggestion that, failing a Commission of Inquiry, the Government of India should endeavour to have the Areas Reservation Bill referred to a Select Committee of the House of Assembly before the second reading, came to us early in our tour in Natal. From the rules of business of the Union Assembly, it was evident, that, if the Bill was referred to a Committee after the second reading, only its details could be discussed. The Government of India were strongly averse to do so as they felt that their readiness to enter into such discussion would be interpreted as acquiescence in the principles of the measure. The public in India held the same view; so did the Indian community in South

Africa. Even an anti-Asiatic like Mr. Kemp of Durban told us that to give evidence before the Select Committee appointed after the second reading would be a farce. It was obvious, therefore, that if all efforts to bring about postponement of the Bill failed, the next best course would be to get the Bill referred to Select Committee before the second reading so as to obtain an opportunity for challenging its basic principle and for proving that a conference was necessary to achieve a really satisfactory solution. While in Johannesburg, we saw Mr. Patrick Duncan who was Minister of the Interior in the Smuts Government, and he concurred in this view, though he expressed grave doubts as to whether the Union Government would agree to this exceptional procedure. His attitude of doubt was due to the refusal of Government in the preceding session to adopt a similar procedure in regard to the Colour Bar Bill. His Excellency the Governor-General, whom we interviewed in Pretoria, agreed that this special procedure should be our objective. He saw little chance of our inducing his advisers to agree to a conference which they had already twice refused, or to an inquiry which would only help to delay the impending legislation—a contingency which, in view of the strength of European feelings in South Africa on the Asiatic question, and their own election pledges to deal with the problem quickly, they were unlikely to regard with favour.

9. His Excellency's Ministers could not have been privy to the suggestion. They were under no necessity to put it forward. Public opinion was behind the Bill, and they had refused to follow a similar procedure in the case of the Colour Bar Bill over which opinion was sharply divided. The Government of India had given no definite reply to their offer to recommend that the deputation should be allowed to give evidence before the Select Committee, which they proposed to appoint after the second reading. They were unaware that the deputation had obtained information which might throw doubt on the necessity of the proposed legislation. Finally, the first draft of the Minister's reply to the Government of India's telegram of the 10th January, which the leader and secretary of the deputation were able to see confidentially through the courtesy of the Acting Secretary to the Governor-General, contained no reference to their readiness to follow such a procedure. That the offer was made at all was due entirely to His Excellency's intercession with the Prime Minister. When the first draft of the Cabinet's reply to the Government of India's telegram of the 10th January reached his office, Lord Athlone was away on tour. Fortunately, his Secretary, Mr. Smith, decided on his own responsibility not to repeat it to the Government of India until the Governor-General had seen it. The draft refused the Government of India's request for a conference as well as the suggestion for a fresh inquiry. It represented no advance on the Minister's earlier offer to allow the deputation to give evidence before the Select Committee of the House of Assembly after the House had accepted the principles of the Bill. The Government of India could not profit by such an offer, even if they were to accept it. On His Excellency's arrival in Cape Town, therefore, Mr. Smith advised His Excellency to make a personal appeal to the Prime Minister to offer, at least, to refer the Bill to a Select Committee before the second reading. Happily, His Excellency needed no special incentive to accept the advice. He had all along realised that the passage of the Bill into law would seriously affect the solidarity of the Empire; and was most anxious to do all that lay in his power to prevent such a catastrophe. The temper of the predominant partner in the Coalition Government was far from friendly to Imperial considerations. Lord Athlone could not, therefore, lay much stress on the probable consequences to the British Commonwealth of the enactment of the proposed law. But he knew that, although General Hertzog was no enthusiastic imperialist, his kindly and just instincts might, within limits, induce him to avoid a step in policy that was certain to cause grave offence to another people, and embitter relations with another country. He accordingly impressed on the Prime Minister that the Union Government had really made no concession to the Government of India whose requests for a conference or an inquiry were being refused, and urged that considerations of international courtesy required that they should at least be given an opportunity to argue their case against the Bill before Parliament was formally committed to accept its underlying principles. The Prime Minister promised to consult his colleagues. When we met Dr. Malan on January 29th to develop the arguments in favour of a fresh inquiry no decision in regard to the Governor-General's suggestion had been arrived at. All that the Minister of the Interior offered to do was to place a state-

ment of the facts adduced by us before the House. He suggested that we should draw up such a statement but we told him that we had neither authority to do so nor did we consider that it could form an adequate substitute for a conference.

10. Next day we met him and the Prime Minister at the latter's residence. We again pressed for a fresh inquiry, but the general trend of the conversation left only a faint hope that this might be conceded. At the same time, before we left, we felt certain that an offer to refer the Bill to Select Committee before the second reading would be made to the Government of India. Our arguments had evidently impressed on General Hertzog the strength and universality of feeling in India against the principle of segregation which, as we pointed out, was looked upon as a mark of deep national humiliation. He did not seem prepared at this stage to placate Indian feeling by eliminating this obnoxious principle from the Bill, but it was clear that if he could make some gesture which, without involving any surrender of principle, might help to assuage public sentiment in India, he would not hesitate to make it. To offer to refer the Bill to a Select Committee would constitute such a gesture, as it would demonstrate the willingness of his Government to let the Government of India plead their cause before the Union Parliament, and leave the decision to that body. The proposal that this course be followed was approved by the Nationalist caucus on the 2nd February and on the 5th February the offer was officially made to the Government of India. The auspicious initiative of His Excellency Lord Athlone had thus succeeded in avoiding a deadlock which would have altered the whole course of events.

11. The offer of the Union Government was conditional on the Government of India "intimating their willingness to avail themselves of the opportunity thus specially offered to place evidence before the Select Committee through their deputation in South Africa". The Government of India accepted, subject to the understanding, that the evidence of the deputation would be confined strictly to stating the Indian case against the Bill, on broad grounds of principle, and would not include discussion of modifications to or amendments of particular clauses. On the 17th February the Minister of the Interior announced in the House of Assembly the decision of the Government of the Union to refer the Bill to Select Committee before the second reading, and made the necessary motion which was unanimously carried. Three days later the composition of the committee was announced. It consisted of (i) six members of the Nationalist Party, including the Chairman, Dr. Malan, (ii) five members of the South African Party, (iii) three of the Labour Party, and (iv) one constitutional democrat. Dr. Malan's responsibility for the Areas Reservation Bill and his avowed determination to secure its passage through Parliament before the end of the session were sufficient indication of his probable attitude. His Nationalist colleagues, two of whom came from the Transvaal, were certain to follow his lead. Political expediency, party discipline and an almost pathetic disregard for outside opinion on matters which they thought concerned South Africa alone provided ample explanation of this probability. Prominent among (ii) was Mr. Patrick Duncan who, as sponsor of the defunct Class Areas Bill which was the lineal predecessor of Dr. Malan's measure, and as one of the majority who had voted for the reintroduction of the latter on February 8th, seemed equally difficult to convert, though our informal conversations with him had led us to believe that he was too fair-minded a statesman and too patriotic an imperialist to be impervious to reason. Of the two Natal representatives of his Party, one was Mr. Marwick, a notorious 'Indophile', and the other—as the proceedings of the Committee showed us later—was, at least at the outset, scarcely an 'Indophile'. The leader of the Labour element was Mr. George Reyburn, a Natal member who had just before the Parliamentary session commenced publicly stated that though the Areas Reservation Bill "might not be fair, he did not care". His colleague from the Transvaal was not likely to be too friendly. The only members on whose unqualified support we could completely rely were Sir Ernest Oppenheimer and Mr. Alexander, both of whom have always been opposed to class legislation in any form or shape.

12. The task of converting the Committee to our view, therefore, was indeed formidable. When the Areas Reservation Bill was introduced in the Assembly on February 8th, Mr. Alexander's motion against the first reading was rejected by 51 votes to 10. This gave some indication of the support which the principles of the measure were likely to receive in the House. The newspapers, with one or two

exceptions, had written in favour of its main principles. The general expectation was that these would remain substantially unaltered. Our written statement which was drafted in accordance with the instructions contained in the Government of India's telegram of the 16th February, was circulated to the members of the Committee before we were examined and was taken as read. The oral examination occupied four mornings. The Chairman's questions were intended to establish that, as the racial problems of South Africa were more complicated than those of the other Dominions, South Africa had need of and justification for exceptional legislation. Mr. Duncan suggested that residential segregation provided the best method of assuaging friction between the two communities, which was engendered by the instinctive prejudice of the white man in South Africa against living alongside coloured people. Mr. Lennox seemed to be under the impression that the Bill was calculated to solve the sanitary problem created by the presence of Indians in large numbers round about Durban. Mr. Marwick argued that the Indian was in every way an undesirable element in South Africa. The Nationalist Members from the Transvaal appeared to object to him on the grounds that he exercised a baneful influence on the native and, by coming into close contact with the poorer European, threatened to undermine the foundations of the social structure of South Africa. A few sought to justify the proposed restrictions on the acquisition of immovable property by Indians on the imaginary hypothesis, that Europeans were subjected to similar restrictions in India. Several invoked the equally imaginary restriction on the residence of Indians in cantonments in India, and the social separation imposed by custom on certain classes in that country, as conclusive justification for the pending legislation. Mr. Marwick laid special stress on the second argument. Most members shared the misapprehension that the Indian was steadily ousting the European from trade and industry, and that the existing laws were powerless to protect the white man in South Africa. Our oral evidence aimed at combating and correcting these erroneous impressions. Our success in this respect was considerable, and the subsequent testimony of *anti-Asiatic* witnesses failed to impugn the correctness of our contention, that neither the laws in force in India, nor the stress of Indian economic competition in South Africa, provided any justification for the Areas Reservation Bill. But our main effort was directed towards proving that, far from solving the sanitary problem in and round Durban, or accelerating the pace of repatriation to India, which the Nationalist and Labour members desired, the measure, if allowed to become law, would aggravate the former and retard the latter. In this aim also we were on the whole successful, for when the evidence closed only the Chairman, who had the author's partiality for the Bill, had any faith left in its efficacy to remedy the sanitary defects of Durban and its environs; and even he had some doubt as to whether the Indian's protest against the proposed law, which was intended to compel him indirectly to leave the country, would not take the form of a determination to suffer and endure in South Africa. That an outraged India would in no way co-operate to make the policy of repatriation effective all seemed convinced. As a corollary we urged that a settlement by consent would alone prove satisfactory, and strongly and repeatedly renewed the suggestion for a conference.

13. Mr. C. F. Andrews who supported us in his evidence with great ability and impressive earnestness and the Indian representatives of the Cape British Indian Union, the United Cape British Indian Association and the Cape Colonial-born Indian Association were the only other Indian witnesses. The South African Indian Congress and its affiliated bodies decided not to give oral evidence but contended themselves by submitting a written statement. The Hon'ble Syed Raza Ali was primarily responsible for inducing the Cape British Indian Union and the United Cape Indian Association to abandon their original intention to ask that the Cape province should be excluded from the purview of the Bill. He also helped the spokesmen of these two bodies to draw up their written statements. All the other evidence, whether tendered by municipalities or bodies like Young South Africa, and the Victoria Country Farmers Association was frankly hostile. The evidence consisted of a repetition of the usual charges, and a demand for drastic legislation against the Indian. Some of the witnesses had doubtless got private information as to the effect produced by our evidence, and spared no effort to magnify the strength of *anti-Asiatic* feeling, and the imperative need for early enactment of the Bill to pacify public opinion. Even the spokesmen of the Durban Town Council, which had twice affirmed its preference for a round

table conference, expressed the view that the passage of the Bill should precede such a conference.

14. This manifestation of popular feeling undoubtedly produced a reaction among the majority of the members of the Select Committee. They felt that, though the anti-Asiatic witnesses had indulged in much exaggeration, the electorate would hold them to account for ignoring the wishes of the European community whom they represented. Mr. Reayburn, who was one of our converts, frankly admitted this. Mr. Duncan, whose change of attitude in consequence of our presentation of the Indian case was sincere and permanent, also warned us that considerations of political expediency might, at the decisive moment, override the dictates of reason and the promptings of conscience. Sir Ernest Oppenheimer corroborated this view. The sense of discipline and the *amour propre* of the Nationalist Party were equally dangerous factors. Dr. Malan was publicly pledged to see the Bill translated into law before the end of the Parliamentary session. He could, therefore, count on the unquestioning support of the representatives of his own Party on the Committee as disciplined men, in any course that he should decide to recommend to that body. His decision to refer the Bill to Select Committee before the second reading had been criticised in an important Nationalist newspaper by an influential member of his own party as a feeble surrender to the Government of India, and the party generally was in favour of proceeding with the measure. It was evident, therefore, that the political susceptibilities of his party would be hurt if the Bill was postponed or any of its main provisions modified. In the last resort, he could also bring his colleagues of the Labour Party to heel by threatening them with a dissolution, if they or their party failed to support him. Labour would not be prepared to destroy the pact and face a General Election on the Asiatic issue.

15. These considerations were present to our minds. They were reinforced by information we received confidentially from friendly members like Sir Ernest Oppenheimer, Mr. Duncan and Mr. Alexander as to the trend of discussion in the Committee. These gentlemen were emphatic that unless the Government of India could make some friendly gesture, the Committee, whatever the personal conviction of individual members might be, would find themselves compelled to vote by a majority in favour of the principles of the Bill. Dr. Malan had indicated in the course of his statement which he made in the House of Assembly on February 17th that co-operation by the Government of India in a policy of substantially reducing the Indian population of South Africa was the only ~~course~~ ^{basis} on which he would be prepared to make any concession on the principles of the Bill, or enter into a conference. General Smuts and Sir Thomas Smart had impressed on Sir Deva Prasad Sarvadhikary that more effective repatriation alone would solve the problem. Our friends urged us to advise the Government of India to give some assurances in regard to repatriation. We explained to them the reasons why no such assurances could be given. The majority of Indians resident in the Union were South Africans by birth and complete strangers to India. The Government of India could not legitimately be expected to subscribe to a policy to which this portion of the Indian population might be opposed. The settlement of 1914 between General Smuts and Mr. Gandhi was regarded universally by Indians as an assurance that if there was no further influx of fresh immigrants from India, Indians lawfully resident in the Union would receive just and humane treatment. Two African statesmen, *viz.*, General Smuts and Mr. Burton, repeated the assurance when the question of the status of Indians in the dominions was raised by India's representatives at the Imperial War Conferences of 1917 and 1918. While India had faithfully carried out her part of the agreement in regard to fresh migration from India to South Africa, the status of Indians in the Union had steadily deteriorated since 1919. The Asiatic (Land and Trading) Amendment Act (Act 37 of 1919) had completely prohibited the acquisition by Indians of immovable property anywhere in the Transvaal except in areas that Government might assign to them for sanitary reasons; the Durban Borough Land Alienation Ordinance (No. 14 of 1922) and the Natal Borough and Townships Land Ordinance (No. 5 of 1923) had had the effect of imposing a similar disability on them in respect of leasing or purchasing fixed property belonging to municipalities in Natal; the Natal Rural Dealers Licencing Ordinance (No. 5 of 1923) had restricted their trading activities in rural areas in that province; and the Transvaal General Dealers (Control) Ordinance of 1925 was being administered in the same spirit. Finally, the Natal Boroughs Ordinance (No. 19

of 1924) and the Natal Townships Franchise Ordinance (No. 3 of 1925) had deprived him of the right to acquire the municipal vote in future. In view of this progressive curtailment of his rights, it was scarcely reasonable to expect the people of India, whom the Government of India represented, to agree to a policy of substantial reduction of the numbers of their nationals in the Union. Insistence on assurances in this behalf, we pointed out, would rightly be regarded in India as a demand for a fresh sacrifice which, if the progress of events since 1914 was any guide, might easily become the prelude to fresh demands in the future. For, if the caprice or changing moods of the politically predominant section of the population of South Africa were to govern the regulation of the Asiatic policy of the Union Government, no settlement could be final. The logic of these arguments was unimpeachable, and we made full use of them before the Select Committee when the deputation were re-examined after all the other evidence had closed. But we knew that they could not by themselves prove decisive, and that, if the Bill was to be stopped, some formula must be found which would satisfy not only the Government and people of India, but also the Government and Parliament of the Union. Such a formula could not be devised, either independently or in collaboration with us by an unwieldy Committee of 15. It could only be arrived at by informal but personal discussion between the representatives of the two Governments.

16. To enable the Government of India to take the initiative in the matter, we kept them informed of developments inside the Committee at convenient intervals. We knew confidentially that a suggestion that informal conversations to find a mutually acceptable formula should be started was the subject of private and personal correspondence between Their Excellencies the Viceroy and the Governor-General of the Union. On 27th March instructions were received that the Leader and Secretary of the deputation should interview the Prime Minister and Dr. Malan to explore the possibilities of arriving at an understanding. The first meeting was arranged for and took place on the 1st April; the second meeting took place on the 2nd when the formula which both Governments finally accepted was tentatively agreed upon.

17. The prompt conclusion of these negotiations was due mainly to three factors:—

- (1) The first factor was the attitude of the Select Committee towards the Bill. Dr. Malan had thought that after the evidence given by the various European witnesses, the majority of the Committee would vote in favour of the Bill. He accordingly brought in a motion that the principles of the Bill be affirmed. But he had miscalculated the effect of our evidence. Mr. Alexander made a counter proposal that the measure be postponed and Government be asked to explore other avenues of settling the Asiatic problem by means of a conference. Mr. Reyburn made a similar proposal on behalf of the Labour Members of the Committee. The South African Party members, thanks to the efforts of Sir Ernest Oppenheimer and Mr. Duncan, did not oppose either of these proposals. Dr. Malan saw that his motion was in jeopardy and adjourned the meeting, ostensibly because he had doubts as to the admissibility of the counter propositions, but really to take fresh stock of the situation. The Speaker ruled that the propositions of Messrs. Alexander and Reyburn were in order. This probably intensified Dr. Malan's fears as to the outcome of a free vote in Committee. As a Minister whose prestige and political reputation were certain to be profoundly affected by the decision of that body, he naturally resorted, in the circumstances, to party pressure to ensure that, if Government should finally decide to proceed with the Bill, the Labour members should support his proposal to approve its principles. He also played upon the fears of the two Natal representatives of the South African Party who were on the Committee, to make certain of their support in a similar contingency. But the knowledge that the real feeling of the majority of that body was in favour of a settlement by conference convinced him of the expediency of agreeing to a conference if one could be obtained on terms honourable to himself and to the Government of which he was a member.

- (2) The second factor was the attitude of the Prime Minister, General Hertzog. We have already described the impression which he left on us at our first meeting. He seemed generally anxious at the time not to hurt Indian national pride. Mr. Paddison had seen him once more informally to try and explain to him again that the provisions of the Bill were regarded by every Indian as a national humiliation, and that, if the measure became law, India would never forget the affront. Mr. Andrews, whose great assistance we hope to acknowledge elsewhere in this memorandum, had repeatedly used the same argument with him. It seems to have impressed him profoundly, and during the last informal conversations his great influence was invariably exerted in favour of an amicable settlement.
- (3) The Union Government had not correctly understood the real object of the Government of India in suggesting a conference. They were under the impression, as Dr. Malan had repeatedly stated, that, while the Union Government would be required to make concessions, the Government of India would yield nothing in order to facilitate a settlement which would also prove acceptable to the European population of South Africa. In this view they were confirmed by their misapprehension of the exact implications of the Government of India's readiness to examine the existing scheme of voluntary repatriation "on a purely voluntary basis, with a view to ascertaining what difficulties had arisen in its working and how these difficulties could best be smoothed away". As the speeding up of repatriation was the only solution of the Indian problem which the Minister of the Interior had seriously considered, this particular misunderstanding strengthened him and his colleagues in their resolve to resist a conference.

18. Our informal conversations with all sorts and conditions of men—members of Parliament, merchants, journalists, teachers in universities and representatives of various clubs and associations—had also helped to create an atmosphere of greater good-will and tolerance. Responsible and thoughtful persons had begun to grow sceptical of the efficacy of the proposed panacea and desirous of a friendly settlement. The British element especially had begun to realise that the passage of the Bill would have far-reaching and serious repercussions. To the Dutch this consideration appealed little, but some even among them had begun to wonder whether world-opinion would view with favour their obstinate persistence in a course which seemed to be ethically unjust.

19. The principal details of these conversations have already been reported to the Government of India, and it is unnecessary to recapitulate them. After the Government of India had signified their willingness to accept the formula, we thought it would be useful to ascertain the wishes of the Ministers in regard to the venue and date of the conference. We, therefore, arranged another meeting with General Hertzog and Dr. Malan. The results of this discussion were communicated in our telegram of 13th April. We need only add a few remarks on the subject of the proposed informal conversations during the next Imperial Conference in London, and the place where the final conference should take place. Though agreement to hold a conference has been reached, it still remains to define the scope and formulate the agenda of the proposed meeting. The task will not be easy. Public opinion both in India and in South Africa is highly sensitive on the Indian question in the Union, and in drawing up the agenda great care will be necessary to ensure that in neither country does it give rise to disappointment on account of its meagreness or to misgiving by reason of its vagueness. Moreover, the agenda cannot be satisfactorily settled without a preliminary exchange of views as to the main proposals which each party intends to bring up for discussion. We venture to think that a personal discussion between the representatives of the two Governments offers the best method of arranging these essential preliminaries without hitch or hindrance. For, as must be amply clear by now, telegraphic negotiations are far from perfect, and not infrequently give rise to misunderstandings. October would be a convenient time for such a discussion as both Governments should be in a position by then to suggest what subjects should be included in the agenda.

London will be a convenient venue as the representatives of both countries will be present there for the Imperial Conference. Both the Prime Minister and Dr. Malan fully appreciate the advantages of such informal meetings in London and would welcome them. We understood that General Hertzog, Mr. T. Ross, Minister of Justice—a fiery anti-Asiatic—and possibly Mr. Havengar, Minister of Finance, will represent the Union Government at the Imperial Conference.

20. As regards the venue of the proposed conference, our own view is that it should be held in India. There is appalling ignorance about India and her people, even among South Africans of education and influence, and a visit to this country would do a great deal to dispel the erroneous idea that she is merely a reservoir of cheap labour. A personal appreciation of India's resources and economic possibilities would also make them more solicitous of cultivating friendly trade relations with her. South Africa needs more markets for her minerals and her fruit, but the majority of South Africans have never seriously thought of India as an outlet for their products. A conference in India would enable the representatives of the Union Government to explain their point of view to a larger audience than a delegation from India can provide, and to learn at first hand how strongly Indians feel about the position of their fellow countrymen in South Africa. This should help to establish a wider and better understanding both among Indians and South Africans of their respective points of view, and create a greater readiness for an adjustment of outstanding difficulties in a spirit of reciprocal tolerance. There is this additional, though comparatively unimportant, consideration that in the past India has sent her representatives to South Africa to discuss this question, and might reasonably now expect the Government of South Africa to return the courtesy. The argument against holding the conference in India is that a settlement which is arrived at on Indian soil might prove less acceptable to South African opinion than one reached on their own. Support is lent to this argument by the suspicion entertained in certain quarters in South Africa that the diplomatic finesse and subtlety of the Government of India have on previous occasions proved a little too much for their representatives, and that in India, where the Indian Government will be able to mobilise all their talent, their advantage would be overwhelming. No responsible person, however, is likely to be swayed by this consideration. The other objection has greater force, but if, as is probable, the South African delegation is composed of representatives of all the political parties, there is little doubt that any settlement to which it might agree would be approved by the Union Parliament.

21. The main task of the conference will be to reach an agreement as to what constitutes the western standard of life, and to what extent and in what manner Indians can or ought to be made to conform to it. As the formula clearly postulates that the measures to be taken to safeguard this standard must be just and legitimate, suggestions of an extreme character, it may be assumed, will not be put forward by the representatives of the Union Government. No one can require the Indian to give up his religion or language or forget his customs, traditions and ideals. Up to the present, reduction of the Indian population seems to have dominated the thoughts of Dr. Malan to the exclusion of all others. Proposals to make repatriation more effective may, probably will, be made by him when the conference meets and will have to be considered on their merits. Subject to the condition that such proposals contemplate no coercion or undue influence, direct or indirect; that proper safeguards are provided against misrepresentation by over-zealous officials, or misunderstanding on the part of intending repatriates, we think that it should be possible for the Government of India to meet the Union Government in this matter without any sacrifice of the principles to which they have consistently adhered. In our opinion, an enhancement of the bonus now given to Indians to return to India, or the provision of a more regular and efficient steamer service for deck passengers, or the improvement of executive machinery inside the Union to expedite the disposal of applications for repatriation are not measures to which exception can legitimately be taken. If advisory committees of Indian gentlemen enjoying the confidence of their community could be associated at convenient centres with the local officials administering the repatriation policy of the Union, possibilities of coercion or fraud should be greatly obviated. If, as we suggest later on, the Union Government can be induced to receive an Agent of the Government of India who, among other things, would visit repatriation depots from time to

time and maintain touch generally with the Indian community, the chances of abuse should be reduced still further. It seems to follow that, if the voluntary reflux of Indians from the Union increases as the result of measures of the nature indicated to which the Government of India might agree, there would be no objection to arrangements being made in India to ensure that their reabsorption in the general body of the community is rendered as easy as possible. Social reassimilation Government could not assist; economic adjustment it should be in a position to facilitate.

22. But whatever revised scheme of voluntary repatriation may be adopted, it is certain that a large percentage of the Indian population of the Union will remain in South Africa. The real problem, therefore, will be to devise means of mitigating friction between this residuum and the European community. We cannot anticipate what concrete proposals the Union Government will put forward in this behalf; we can only indicate broadly the deficiencies from which the resident Indian population appears to be to suffer, and the main avenues of improvement.

23. The foremost need of the Indian community in South Africa is education. The educational facilities provided by the State are totally inadequate and, it must be confessed, the wealthier Indians have, with a few exceptions, shown little disposition to augment them by their own efforts. If the Union Government wishes to safeguard the western standard of life, it must teach the Indian to understand and appreciate that standard. On the other hand, if the Indian aspires to equality with his European fellow citizen, he must learn and endeavour to win his esteem. Education will be the best solvent of prejudice and the most powerful stimulus to uplift. Education will increase the Indian's efficiency as a worker, broaden his outlook, raise his standard of living. As the range of his needs and comforts widens, he will require more to live on and will insist on a higher rate of income, whether as a wage-earner or as a trader. His understanding of sanitary laws will be more intelligent and his readiness to observe them keener. If education is to be broadly and effectively disseminated, the State must pursue a more active and generous policy, and the more prosperous Indians must supplement its efforts with financial aid. In Natal, where the problem is most acute, prejudice against the Indian is unfortunately strongest, and 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. It is doubtful whether this attitude will rapidly alter. The Federal Government should, therefore, be prepared to step into the field. Whether the Government of India should assume any responsibility for expenditure in this connection is a matter in regard to which we do not feel ourselves competent to advise. The decision must depend on political and constitutional, no less than financial, considerations. We deem it our duty, however, to emphasise that the cause of Indians in South Africa cannot be better served than by whole-hearted endeavour to effect their educational improvement. If the Government and people of India could give some tangible proof of their readiness to help in this task, the results would be very beneficial. Assistance from any quarter and in any form in this imperative task cannot fail to be helpful. But even if the Government of India are unable to render financial aid, they could help materially by co-operating in the selection of teachers, and by lending men in their own employ for service in South Africa.

24. Our observations in the preceding paragraph relate mainly to school education. Facilities for collegiate or university education hardly exist for Indians in the Union. This deficiency must also be made good in time, but we don't think that the establishment of a college for Indians is either feasible or necessary at this stage. Until the foundations of an edifice have been truly laid, it is premature to think of the superstructure. For the few Indians who may be qualified for and anxious to pursue their studies after the school stage, opportunity should be provided by facilitating their admission into one or more of the principal universities by the construction of separate hostels, and by the appointment of special tutors. An alternative suggestion would be that qualified Indian students should be given scholarships to study in India or abroad; but we are not in favour of this. It would serve to perpetuate prejudices which should be allayed as quickly as possible.

25. The next great need is sanitary improvement. Hostile critics suggest that all Indians in South Africa are insanitary and are averse to sanitary

laws. No such generalisation could be true. The well-to-do Indian, especially of the second or third generation, has as high a standard of sanitary welfare as a European. But there are many who, out of ignorance or poverty, either do not or cannot attain to modern requirements in this respect. Those who can afford to but do not should be made to conform to the sanitary laws of the community in whose midst they reside. Our view is that if in towns like Durban, where there is a considerable Indian population, local bodies were to employ one or two officials with knowledge and understanding of Indian language and psychology, no coercion would be necessary to induce this class of person to obey the law. For those who are too poor to build good houses or maintain a high standard of cleanliness, the employer or the local authority should be required to make the necessary provision. Many employers of Indian labour are the worst offenders against sanitary laws so far as the housing of their Indian employees is concerned. The occupants of these tenements cannot be blamed for the conditions under which they have to live. The same is true of the poorer Indian who has to find a lodging for himself. This class is not peculiar to any country or race, and can be dealt with in the same way as slum-dwellers have been dealt with in civilised countries all over the world. The local authority or the State must assume responsibility for housing reform. The problem is pressing in the suburbs of Durban, and in some of the smaller townships like Stangar. If it were promptly and satisfactorily solved, it is probable that much of the prevailing clamour against the Indian in those parts would die down. The three essential requirements of such a solution are:—

- (i) a comprehensive and sympathetic policy of town planning;
 - (ii) funds to enforce the policy; and
 - (iii) an effective machinery for sanitary supervision in the important areas.
- One natural and important corollary of the principle that the Indian should conform to sanitary regulations is, that the authorities which have the power to make and enforce the regulations should know his wishes, understand his limitations and respect his interests. Now that the Indian in Natal has been deprived of his right to acquire the municipal franchise, he has no effective means of explaining his point of view, or securing redress for his grievances. In the Transvaal the consequential neglect of Indians in 'Asiatic' bazaars is notorious. Some means must be devised to remedy this state of affairs. We are not sure whether the provincial councils which are empowered to regulate their municipal franchise will be willing to restore the municipal vote to the Indian in Natal or confer it on the Indian in the Transvaal. The question should, in our opinion, be raised in the conference. The Union Government would probably be unable to see their way to help in securing municipal suffrage for the Indian in either or both provinces. In that case the alternatives of securing special Indian representation on a nominational basis, or the establishment of Indian advisory committees should be considered. The last suggestion is likely to prove more acceptable to the Union Government. If the Government of India should ultimately decide to accept it, provision should also be made to ensure that advice tendered by Indian advisory committees is not lightly set aside. One way of doing this would be to require local bodies to report to the provincial administrator all cases in which they do not accept the recommendation of an Indian advisory committee, with a statement of their reasons, and empower the administrator to compel the local authority to accept such recommendation if he should consider it desirable or necessary.

26. Allied to the question of sanitary reform is the question of residential separation. In so far as such separation is required by Europeans on sanitary grounds, sanitary reform on the part of the Indian should help to meet their objections. But it is probable that the instinctive dislike of many Europeans to have persons of colour living in their neighbourhood will be urged as a justification for confining Europeans and non-Europeans to different areas for the purpose of residence. In our first preliminary report we advised that the Government of India should not accept colour or race as the basis of differentiation and we adhere to that view. If the Union Government make some form of residential division the

sine qua non of a settlement, we recommend that the alternative suggested by us in that report, *viz.* that the standard of civilisation and life, not colour or race, should govern the conditions of residence, should be adopted.

27. On the question of economic competition between the Indian and the European whether in industry or trade it is difficult to make any definite recommendation, for the data are so uncertain. The finding of the Asiatic Inquiry Commission was that, while some Indian merchants spend as much as their European rivals, the majority of them have smaller overhead charges to meet and can therefore undercut the white trader. Indians whom we questioned on the subject vehemently denied this and said that the person who undersold both the Indian and the Britisher was the alien immigrant from Syria and Eastern Europe. We had not the means to sift the exact truth from such conflicting evidence. Only a meticulous inquiry could yield reliable results. In the case of those who keep no regular accounts, it is doubtful whether the real facts could even be correctly ascertained. In the case of those who keep accounts, the correctness of any comparison that might be made would be in strict proportion to the accuracy of the written accounts on which they are based. And, while many might be willing to make a correct return of their expenditure, few would be willing to disclose their percentage of profits. In our opinion it would be difficult, if not dangerous, to attempt to interfere too much with the natural laws of trade competition. A man's standard of profit is his own affair, and no one can effectively regulate it. And, unless the standard of profit is equalised, the equalisation of trade expenses will not make the conditions of competition equal. For this reason we are not in favour of the suggestion that a minimum wage should be prescribed for shop assistants. In the case of the smaller concerns, such a law could be easily evaded by assistants being made or shown as partners. In the long run, unfair competition between the Indian and the European, where it exists, will be removed by raising the Indian's standard of living. When his wants are as numerous as those of the Europeans, he will refuse to work for a smaller wage or be satisfied with a lower percentage of profit.

28. In paragraphs 22 and 23 of our first *interim* report, dated the 14th January we discussed the position of Indians employed in industry and the probable effects of the application of the principle of minimum wage to them. Our own view is that generally Europeans and Indians do different kinds of work, and that there is very little real competition between them. But the Pact Government passed a Minimum Wage Act last year, and its labour wing, which is obsessed with the idea that the coloured worker undercuts the European, is bound to work for as wide an application of its provisions as possible. The Government of India cannot now resist the extension of the new law to industries in which Indians are employed, should the Government of South Africa decide to do so. At the same time, as we pointed out, there is a danger that, unless the white Trade Unions to whose agitation the law owes its origin pursue a policy of sympathetic co-operation with the Indian workmen, the immediate effect of enforcing a higher minimum wage in certain occupations would be to throw the Indian out of employment. The policy now being embodied in the Colour Bar Bill, or the policy now being pursued by the Railway Department, hold out little promise that such co-operation will be forthcoming. But the advocates of an all-white wage standard in South Africa cannot have it both ways. If they insist that the coloured workman should demand the same wage as his white confrère, they must also be prepared to assist the coloured man with all their resources in securing favourable consideration for that demand. If they are not prepared to help him to obtain employment on a white-wage basis, they cannot with justice require him not to work for a smaller wage. It is not suggested that they should necessarily admit him to their Unions, though this would be the logical corollary of the professed brotherhood of labour, and would be the best way of assimilating the economic outlook and standards of the white and the non-white. Race feeling, especially in the Transvaal, may prove too strong for such fusion. But there could be no objection to co-operation with parallel or separate non-European trade unions in pursuit of a common wage ideal. We consider that these aspects of the industrial problem should be discussed at the conference.

29. The Asiatic Inquiry Commission recommended in 1921 that the Union Government should appoint a special officer to administer its Asiatic policy. Effect was not given to this proposal by the Smuts Government on the ground of financial

stringency. The desirability of appointing such an officer cannot be over-emphasised. At present there is no co-ordination of administration or policy. In the Transvaal there is a Registrar of Asiatics, and in Natal a Protector of Immigrants. In the Cape Province, the Principal Immigration Officer alone seems to have any concern with Asiatics. The Protector of Immigrants in Durban is responsible for the welfare of Indians still under indenture in Natal, and for maintaining touch with *ex-indentured* men and their descendants; but the other officers, as their designation indicates, deal merely with the movement of Indians to and from the Union or between provinces. The wants or welfare of the Indian community as a whole are not the concern of any one officer, unless it be the Secretary of the Interior who obviously has too many other duties to be able to bestow much attention on Asiatic affairs. No special knowledge of Indian psychology is necessary to make one appreciate that, for the average Indian who is instinctively accustomed to look to Government for redress, the absence of an official who is familiar with his ways, to whom he can have ready access, and who will give him a patient hearing, is a great hardship. In South Africa, where he has many disabilities and few rights, the need for such an official is all the greater. The cumulative effect of petty individual grievances is to produce general discontent, and no Government could really be anxious to foster such an attitude of mind. The Union authorities would have far less occasion to complain of Indian sullenness and intransigence if adequate provision were made to settle minor grievances promptly. Our suggestion, therefore, is that the functions of officers in provinces should be enlarged and, where necessary, the staff should be strengthened. A whole-time officer should also be appointed at head-quarters to supervise the work of local officers and act as the principal administrative link between the Government and the Indian community. If, as we hope, the conference results in the adoption by the Union Government of a comprehensive and humane Asiatic policy, the creation of such an office will become essential.

30. More important still is the appointment of an Agent of the Government of India in South Africa. As India now enjoys the status of a dominion so far as her relations with other dominions are concerned, there can be no constitutional objection to such representation. The present Nationalist Government is strongly in favour of dealing direct with other parts of the Empire and should not, in principle, be opposed to the establishment of a personal link to facilitate such dealings. The practical utility of the appointment to both Governments will be considerable. The Government of India will be able to receive regular, timely and first-hand knowledge about Indian affairs in the Union. They will also be able to use him as the channel of representation in regard to questions of importance which, until the Indian community in South Africa is effectively able to look after itself, are bound to arise from time to time. In this capacity he will also be useful to the Union Government who have now learnt to appreciate the value of personal discussion as a method of negotiation and a preventive of misunderstanding. He could also be of great assistance to them in the administration of their Asiatic policy, for with his wider Indian experience and better knowledge of Indian psychology, he would be the best man to advise them informally both on the principles and the details of their administration of Indian affairs. If it is understood that such advice will be tendered in a friendly spirit and without any obligation on the part of the Union Government to accept it, we have little doubt that it will be fully availed of. The South African is not resentful of good counsel; he is only opposed to interference in what he regards as his own affairs. If the appointment materialises and the Government of India also wish to establish closer touch with other territories like Northern and Southern Rhodesia which have a substantial Indian population, he might be made Agent-General for all these territories. From what we saw during our passage through the two Rhodesias, Tanganyika and Kenya, we venture to think that such an officer would prove helpful to the Indian community. These areas are within easy reach of the Union and could be visited by him in his spare time.

31. Before concluding we would like to record our grateful appreciation of the invaluable help we received from Mr. C. F. Andrews, Sir Ernest Oppenheimer and Messrs. Duncan and Alexander. Mr. Andrews, who was sent out to South Africa from India by the Imperial Citizenship Association of Bombay, has almost unique knowledge and experience of the Indian problem in South Africa. He has visited the country several times and was actively associated with Mr. Gandhi during the

closing stages of the passive resistance movement. As Mr. Gandhi's one-time lieutenant and a devoted champion of their rights, he enjoys the confidence both of the public in India and the Indians in South Africa. As a Christian Missionary he could obtain readier access to Dutch Ministers who exercise a profound political influence over their congregation than a mere layman. His association with the labour movement in India also gave him free entree to labour circles. Many prominent editors in the Union are personally known to him and extended to him the hospitality of their columns—a courtesy of which as a non-official he was freely able to avail himself. Of all these advantages he gave us the fullest benefit and utilised them with a devotion to the cause which is most praiseworthy. Unlike Mr. Andrews, Sir Ernest Oppenheimer had no previous connection with this controversy, nor any special interest in it. He has large business interests which fully occupy his time, and his present political activity is, in the main, a leisurely preparation for office which to a person of his intelligence and wealth must come in the fulness of time. Had he consulted his personal interests, it would probably have been easier for him to keep clear of this contentious issue. But he has been consistently opposed to all class legislation, and once we had convinced him that the Areas Reservation Bill was a bad example of such legislation which might have serious consequences for the Empire, his support of us became ungrudging and ceaseless. His financial influence and personal charm have made him many friends in both the Nationalist and South African Parties, and his influence with them was always exerted in the interests of an amicable settlement. It was largely as the result of his persuasion that, first Mr. Duncan and later General Smuts decided to work for the postponement of the Bill. Our debt to Mr. Duncan is indeed heavy. As the author of the Class Areas Bill, he was already committed to the principle of segregation when we met him. Owing to the calls of political work on his time he has ~~some~~ some years neglected his practice at the bar and is now largely dependent on his membership of Parliament for his livelihood. He might well have regarded a change of attitude over this question as inconsistent with his past conduct, and fraught with grave risk to his future political prospects. It is a great tribute to his elevation of character that neither consideration prevented him from exerting his acknowledged abilities and influence in our favour, once he had been convinced that justice was on our side. Mr. Alexander has always been a strong opponent of racial discrimination. When Dr. Malan reintroduced the Areas Reservation Bill on the 8th February, he opposed its reintroduction and was throughout our staunch ally and friend.

32. We have already invited the attention of Government in our report, dated 14th January, to the excellence of the work done by our Secretary, Mr. G. S. Bajpai, C.B.E., I.C.S. This high standard has been more than maintained during the preparation and presentation of the evidence before the Select Committee. We desire to place on record our high sense of appreciation of the marked devotion and ability with which he has carried out his work; never did he allow any question of personal inconvenience to interfere with his work which often went on till the small hours of the morning as well as on Sundays and holidays. His charm of manner and other valuable social qualities were of great use in the difficult and delicate task before us, and his tact, judgment and resourcefulness could not be over-estimated. His ready penmanship and drafting skill were of great assistance towards prompt and efficient work. His ungrudging and unfailing services, always readily and cheerfully rendered, were one of the most valuable factors in ensuring such success as may have attended our efforts. He never wavered—even at the most critical juncture and in the most untoward circumstances. Our gratitude to him is also personal for the admirable way in which the arrangements for our tour were planned and carried out.

Mr. C. S. Ricketts co-operated loyally and whole-heartedly in the department in his charge, and had often to work up to very late hours which he never grudged.

F. PADDISON

RAZA ALL

DEVAPRASAD SARVADHIKARI

G. S. BAJPAI,

Secretary.

S. S. KAKAPARA,

Dated May 14th, 1926.

CONFIDENTIAL.

D

[Property of the Government of India.]

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



**Selection of papers regarding the
Indian problem in the Union
of South Africa for the use
OF THE
Delegates of the Government of India
TO THE
Conference with the representatives
OF THE
Government of the Union
OF
South Africa.**

**SIMLA
GOVERNMENT OF INDIA PRESS
1926**

CONFIDENTIAL.

D

NATAL.

Dated Emigration Board, the 24th February 1872.

From—Sir T. W. C. MURDOCH,

To—R. G. W. HERBERT, Esq.

I have to acknowledge your letter [* * * *] with a despatch from the Lieutenant-Governor of Natal, enclosing reports from the Cooly Immigration Agent in Natal and several Magistrates, in answer to complaints made to the Protector of Emigrants at Calcutta by certain cooly emigrants who had returned from Natal to India.

2. These complaints refer generally to irregularity in the payment of wages and issue of rations, to assaults by the employers and similar matters, the truth of which it would have been easy to ascertain on the spot where the complainant would have been confronted with his employer, but on which it is difficult to arrive at a satisfactory conclusion when the only evidence is the assertion of the complainant made a long time after the event, and without the opportunity of supporting or refuting it by independent evidence. Some points, however, appear to be established.

3. *First.*—The complainants were ten in number. Of these five assert that they were promised £10 on their return to India at the end of their service. One of them, Vencatasawmy says “£10 and a free passage back to Madras”. Four of them allege that this promise was made by Apparow Moodelliar, the Interpreter, in the presence of Mr. Collins who engaged them; and the same thing is said by several of the coolies still in Natal. On the other hand Mr. Barton, who was Natal Emigration Agent when the people were engaged, denies that any such promise was made, and the Protector at Calcutta says that though they had frequent opportunities of expressing their grievances to him personally and freely, they did not complain to him of not having received any gratuity. The promise of such a gratuity would have been so inconsistent with the practice in Mauritius emigration, on the model of which that to Natal was conducted, that I cannot doubt there has been a misapprehension about it. Possibly something may have been said about a bounty to those who eventually give up their claim to back passage, which may have led to the mistake.

4. *Second.*—Balakistna and Moonesawmy, who worked for Mr. Lister, complained that he tied them up, beat them, and the latter said poured salt water over him. It is alleged in answer that these coolies were bad characters, but it is admitted that Mr. Lister had been convicted of assaulting several of his coolies and fined 5s. in three cases and 1s. in another case, and it is stated by the Magistrate, and confirmed by the evidence of coolies still in Natal, that he was in the habit of tying up his coolies to the verandah when he flogged them, and of throwing water over them, “but not salt water,” after their flogging. Mr. Lister’s conduct in flogging his coolies was entirely unjustifiable, and it is impossible not to contrast the trivial fines imposed on him with the punishment of two months’ imprisonment with hard labour and 20 lashes inflicted on Moonesawmy for beating a Kafir woman. If there were any probability that more coolies would be introduced from India, it would be right to direct the Lieutenant-Governor to exclude Mr. Lister from the list of those to whom they might be assigned. But as that is not the case, and there are now in the colony none but free labourers, the Government can hardly interfere with any who may choose to take employment with him.

5. *Third.*—As to the statement of Rajanam that his employer Mr. Kennedy did not give him proper rations and beat him, and that on his complaint to the Magistrate he could get no redress, it is stated that no trace of any such complaint can be found, and as Mr. Kennedy has left the district no information can be obtained.

6. *Fourth.*—Vencatasawmy complained that when sick “if they went to him and took medicine before him,” 1s. a day was stopped by their employer from their wages, but when absent without leave 2s. 6d. By the Ordinance No. 14 of 1859, Section 16, a Cooly absent from work “without lawful excuse” is, on conviction before a court, to forfeit two days’ wages; and by a subsequent Ordinance, No. 29 of 1865, lawful excuse is interpreted to mean leave of the employer, or a medical certificate that the absence is caused by sickness or other bodily infirmity. The

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coolies in question, if they absented themselves from work, would not come within the description of being absent with lawful excuse, and it was no doubt on this ground that their employer stopped their wages. But he was not entitled to do so without a conviction before some competent tribunal, and it is very undesirable that employers should be allowed to impose a penalty which, at some seasons of the year, it might be their interest to encourage their labourers to incur. How the employer could, under any circumstances, justify a stoppage of 2s. 6d. for a single day's absence, I am unable to understand.

7. *Fifth.*—Veeran said that his first employer, Mr. Greig, beat him on the head with an iron rod, and he and Ramasawmy say that Mr. Greig did not pay their wages. Mr. Greig is dead, and the Resident Magistrate says he is unable to verify the statements.

8. *Sixth.*—Baboo complained that his employer, Mr. Crozier, paid him wages for only 2 years and 9½ months, although he worked for him for 3½ years. The Resident Magistrate says Baboo was a man of bad character, and he encloses affidavits of two coolies, one of whom was Sirdar on the estate, to the effect that Baboo, though indentured for three years, served only for two; that he was ill-conducted and absconded, and that no wages were due to him. Mr. Crozier, however, it appears, became insolvent, and many months' wages were at that time due to the coolies employed by him.

9. *Seventh.*—Two other coolies complain of irregularity in payment of their wages, and allege that they complained to Mr. Mason, the Immigration Agent, but got no redress.

10. It seems clear from these papers that the system of supervision over cooly immigrants in Natal has been very lax. It does not appear whether the semi-annual inspection of estates on which coolies are employed has been carried out as required by the Ordinance of 1859; and it is alleged that the medical care of the people has been neglected. On this point I would beg to refer to a report from this Board of 7th December 1867, from which it will be seen that up to that date the provision of hospital accommodation had been avowedly insufficient, but that the mortality among the coolies had been very small. As no Indian emigrants have been introduced into Natal in 1866, there can be none there now who have not worked out their industrial residence. Nevertheless it would, I think, be desirable to obtain from the Lieutenant-Governor a report shewing the numbers now in the colony, their condition, and the mode in which, as a general rule, they are employed.

11. The only other point to be noticed is the reduction from 25s. to 10s. a month of the compensation to be paid for delay in providing return passages. This reduction which was made by Ordinance No. 20 of 1870 is not in itself unreasonable, as the former sum would, as the Lieutenant-Governor says, have the undesirable effect of enabling coolies to live in idleness while waiting for a ship. Even the reduced allowance is larger than the similar allowance in the West India Colonies. It may be a question how far the reduction can be fairly applied to coolies in the colony before 1870. In the present instance that question did not arise, the people while waiting having preferred to be lodged and maintained in the Government dépôt.

No. 18, dated the 10th May 1872.

From—The Government of India,

To—Her Majesty's Secretary of State for India.

* * * * *

4. During the period of emigration to Natal, there sailed from India 5,448 souls; and till the recent investigation, instituted on complaints preferred by some of these labourers on their return, we have had no communication from the Government of Natal touching the condition of Her Majesty's Indian subjects in that colony. We regret to have to say that the correspondence now furnished leads us to fear that (to use the words of Section 57, Act VII of 1871) "proper measures have not," in the colony of Natal, "been taken for the protection of emigrants during their residence therein". We should therefore, had not emigration to Natal ceased since 1866, have thought it our duty to consider the propriety of publishing notification under the section above cited, prohibiting for the present

emigration to that colony. Under present circumstances, however, such a notification might bear the appearance of an empty threat. But we cannot permit emigration thither to be resumed until we are certified that the colonial authorities are awake to their duty towards Indian emigrants, and that effectual measures have been taken to ensure that class of Her Majesty's subjects full protection in Natal.

No. 18, dated Natal, the 20th September 1872.
From—A. MUSGRAVE, Esq., Lieutenant-Governor of Natal,
To—The Secretary of State for the Colonies.

I have had the honour to receive Your Lordship's despatch * * * * * relative to the complaints of ill-treatment in Natal preferred by certain returned Indian emigrants, transmitting further correspondence with the India Office on the same subject, and directing me to supply you at my earliest convenience with the information called for in your despatch * * * * *

2. On receiving that despatch, Lieutenant-Colonel Miller, the Administrator of the Government during the time between Mr. Heate's departure and my arrival in the colony, had appointed a commission to examine and report upon the condition and treatment of immigrants now in the colony, and into the matter of the complaints made in India by some of those who have returned. This commission was composed of Mr. Gallway, the Attorney General, and Lieutenant-Colonel Banastre P. Lloyd, of the Bengal Staff Corps, still I believe Civil Commissioner of the Jhansie division in the North-Western Provinces of India, but who is at present on leave and residing in Natal for the benefit of his health. The advantage of the services of this latter gentleman has been very great. Being quite unconnected with the colony, his report may be regarded as entirely impartial, while his acquaintance with the Hindustani language and the habits and customs of the Indian races enabled him to render most important assistance in eliciting the truth.

I now enclose to Your Lordship copies of the report made by Mr. Gallway and Colonel Lloyd, from which I think it appears that the general condition of the immigrants is not unsatisfactory, and as a rule they are healthy and prosperous. Such a fact as that 231 depositors in the Native Bank hold between them to their credit nearly £6,000 is sufficient to shew that they have ample opportunity for doing well when thrifty and industrious. Most of the minor complaints have been already sufficiently answered. As to that which the Madras Government refers to as the most serious statement of all, with regard to the cases of alleged suicide, it appears from the report that only two have been authenticated, for which no cause could be traced, and the evidence taken goes to shew that both these men, "Vencamamoney" and "Verasawmy," were in ill-health and addicted to the use of opium. It is noteworthy that as stated in the report, at the time of these occurrences, about twenty free coolies were employed in the same estate who would not have been likely to engage themselves if the men had been subject to systematic ill-usage of any kind.

4. Still, although I am of opinion that upon the whole the immigrants have not much to complain of, as I have stated recently to the Legislative Council in my speech on opening the Session, I think it obvious that there has been negligence in administering the law intended for their protection, and that there are defects in the law which require to be remedied. In their address, in reply, the Council have pledged themselves without reserve to make such provision in these respects as shall seem adequate to Her Majesty's Government, and it is my intention to submit a Bill during this present Session to carry out the necessary improvements in the system for protecting both the present and any future immigrants.

5. I regard provision for the appointment of a really qualified officer as Protector of Immigrants as the most important of these. I have ascertained that the Legislature is prepared to give a salary of £500 per annum for such an officer, and I propose to have a permanent legal authority for this payment included in the Bill to be submitted. It was my intention to suggest to Your Lordship to request the Indian Government to recommend some fit person in whom they would have confidence to fill this appointment. But, since my communication with the Legislature upon the subject, I have had reason to suppose that Lieutenant-Colonel Lloyd

himself may be induced to accept it. His testimonials are of so high a character, and he is so well known to the Indian Government, that I cannot doubt that such an arrangement would be satisfactory to them and would receive Your Lordship's approval.

6. The appointment of such an officer, however, whoever he may be, will enable me to enforce more strictly and effectively than perhaps has hitherto been possible to the Government the existing provisions of the law; and by clothing the "Protector of Immigrants" with new powers recommended by the Commission, and not hitherto possessed by the "coolie Agent," a much improved system of administration, I trust, would be accomplished.

7. Many of the suggestions of the Commission may be carried into effect without alteration of the law, and to those I shall give my attention. Among such are the necessity for more regular periodical inspections, and the best provision we can make for schools. With regard to education, however, it will be seen

Mr. Brooks, 18th September 1872.

Education that some attempts in this direction have already been made. But no time should be lost in putting a stop to the floggings under the Masters and Servants Act, which in one district at least have been much too frequent. I disapprove of this punishment being allowed in any case of mere disputes between masters and servants, though I fear that there would be strong opposition in the Council to repealing the provisions of the Act, as it applies to the Kafir population. I hope, however, to carry the point with regard to the Indian immigrants. I may, however, mention that the Acting Magistrate, under whose administration these punishments were inflicted in the Inanda Division, is no longer employed as a Magistrate. I do not anticipate that the contrast with other divisions will any more be presented. Even without alteration in the law, I would take care to restrain any excessive rigor in the application of it. And I should further explain that the Inanda Division contains by far the largest proportion of sugar estates and of coolies employed upon them.

8. Better arrangements as to medical attendance, amelioration of the law as to deductions from wages and fines, registration of marriages, etc.; penalty for seduction; power to the Protector to settle disputes by arbitration in accordance with the Indian usage, all these are matters which it is proposed to deal with in the amending law, which I trust soon to transmit to Your Lordship.

9. With reference to the allegation by a large number of the immigrants that a gratuity of £10 was promised to them, the Commission recommend that in future the terms of engagements be written in the vernacular language of the immigrant, and a copy delivered to him under the signatures of the Agent and Protector of Emigrants previous to his departure from India. Provision to this effect, however, seems already to have been made in the Indian Immigration Act No. 7 of 1871, forwarded to me in your despatch No. 187 of 18th May last, and that Act gives (Section 56) powers to regulate the proportion of women to be taken with emigrants.

10. The complaints made by the immigrants of the cost of the preserved tamarinds used by them as food, could easily be met as far as the Government is concerned by remission of duty upon this article; but I should not expect that any difference would really be made in the cost to the consumer. The amount of duty, one penny per pound, would be much more likely to go into the pocket of the importer.

11. I trust that Your Lordship, as well as the India Office, will be satisfied from the report of the Commission that the Indian immigrants do not suffer any general ill-treatment or oppression, and from my remarks that the Government and Legislature of the Colony are prepared to do their best to correct such evils as have been detected.

Under these circumstances, I would strongly urge the claim of this colony to have any objection to re-opening immigration from India at once removed. As long ago as December of last year application for so many as 1,800 immigrants were registered, of which I transmit Your Lordship a schedule, and at that time the Crown Agents were requested in a letter from the Colonial Secretary of the 21st December 1871 to make application for Indian emigrants so soon as the proposed loan should provide the £20,000 assigned to this purpose by the Act No. 16 of 1871, "for the consolidation of the public loans of Natal." This amount is now lying in the hands of the Crown Agents, and I see no objection to Your Lordship's giving

authority for their complying with the instructions already forwarded to them. There is without doubt a pressing present demand for more labour in the sugar and coffee planting districts on the Coast which, so far as I can learn, is not likely to diminish in any case, and will certainly be increased if the commencement of Railway work draws away some of the supply now at the planter's command.

* * * * *

Mr. Musgrave's despatch encloses the report of the Commissioners appointed in obedience of Lord Kimberley's directions to enquire into the condition of Indian immigrants in Natal. The Commissioners were Mr. Gallway, the Attorney General, and Colonel Lloyd of the Bengal Staff Corps, who happened to be in Natal on leave. They took a considerable amount of evidence which is printed in the appendix, and the conclusions to which they came were that, generally speaking, the immigrants "are not and never have been subject to any systematic ill-treatment or oppression by their employers;" that isolated cases have occurred, but will be prevented under a better system of inspection; that steady and industrious men are in a position to acquire considerable property; and that as a general rule the climate suits them very well, especially the children; and that they are exceptionally healthy.

These conclusions appear to be borne out by the facts, but there are some facts on the other side which must not be passed over.

First.—It is admitted that there has been no effectual supervision of immigrants on estates. Mr. Shepstone, who was "Cooly Immigration Agent" under the law of 1859, says he never received the authority necessary to enable him to visit estates, and the Commissioners say that "since the passing of the law of 1870 the duty of inspection and report seems to have escaped the notice of the cooly agent." Thus, therefore, the most essential portion of the Immigration Law in the interest of the immigrant was allowed to become a dead letter.

Second.—The arrangements for medical attendance and hospital accommodation have been defective, arising, in great measure, as regards medical attendance, from the extent of the colony, the difficulty of communication, and the small number of medical men; fortunately the climate suits the Indians so well that there is rarely any sickness among them. It is said that among 6,445 immigrants who arrived in the colony the deaths up to the present time have been only 339, equal to 5.25 per cent.; as all arrived before 1866, so small a mortality is almost incredible. But on this point I may refer to my report of 7th December 1867.

Third.—When the Indian becomes a free labourer he falls under the Master and Servants Act No. 2 of 1850, which allows flogging as a punishment for neglect or refusal to work, and many other offences. In one district it appears that no less than 20 punishments of this description were inflicted on Indians. The Commissioners say it is doubtful whether the Indians are aware that as free labourers they become subject to such a punishment, and recommend that the cooly agent, when he gives them their papers, should explain the law and endorse it on the papers. The better way would be to exempt Indians from this provision of the Master and Servants Act. It cannot be doubted that such a liability, if known in India, would deter emigrants from going to Natal.

Fourth.—It is shown that the engagements made by employers with free Indians may be, and sometimes are, iniquitously unfair. Two such cases on estates Dinker Foutain and Springdale are quoted at page 306 of the *Natal Gazette*. It is, perhaps, difficult to deal with these, because the people being free the right of the Government to interfere between them and their employers may be questioned, but considering the comparative helplessness of Indians in a colony, where the language, the money, and the laws are unfamiliar to them, it is not unreasonable that they should be provided with exceptional safeguards in the bargains they make with employers.

The despatch and its enclosures should be sent to the India Office. The Lieutenant-Governor proposes to introduce a Bill into the Legislature for the better protection of immigrants, of which he sketches the outline. The most important provision would be the appointment of an efficient Protector required to make periodical visitations of estates on which Indians are employed, and authorized to intervene at once in any case of ill-usage of an immigrant, whether indentured or free, by his employer. This is one of the provisions which the Lieutenant-Governor proposes, and he says that the Legislature are prepared to attach a salary

of £500 a year to the appointment. The officer whose services he hopes to get is Colonel Lloyd, who acted as Commissioner in this enquiry; whose knowledge of the Indian language and intimacy with the Indian character would no doubt be very valuable. It appears, however, doubtful whether it would not be better that whatever legislation is necessary in Natal should be framed on the model of the Immigration Ordinance prepared by Sir G. Young and now under consideration in the West Indies. I am not aware whether the draft of that Ordinance has been communicated to the Lieutenant-Governor of Natal.

The Lieutenant-Governor urges strongly the re-opening of the immigration, having received, he says, applications for 1,800 immigrants. It is obvious, however, that these applications cannot be complied with till the law has been put in a more satisfactory state.

11th November 1872.

T. W. C. MURDOCH.

Dated Colonial Office, London, December 1872.

From—The EARL OF KIMBERLEY, etc., etc., etc.,

To—Lieutenant-Governor MUSGRAVE.

I have received your despatch No. 18 of the 20th of September, transmitting the report of the Commissioners whom you had appointed to enquire into the condition of Indian Immigrants in Natal. I have read this report with interest and I request you to convey to the Commissioners my appreciation of the care and ability with which they have discharged their duties.

The Commissioners have arrived at the conclusion that the condition of these immigrants is on the whole satisfactory, notwithstanding several deficiencies in the provision for their protection.

The Government of India are bound by the Indian Emigration Acts not to permit emigration to any country unless they are satisfied that proper provision has been made for the protection of the immigrants, and it is not likely that they will allow emigration to Natal to be resumed until the existing defects in the law have been remedied.

I await the receipt of the Bill to which you refer for giving effect to the recommendations of the report, before considering the details of the necessary legislation.

In the meantime, with reference to the loss of wages by certain immigrants, owing to the insolvency of their employer, I request your attention to paragraph 7 of the order of the Government of Madras, No. 408, of the 26th of March last. I concur in the opinion there expressed that these losses should be made good by the Colonial Government.

It is stated that in the Magisterial District of Inanda twenty-three Indian immigrants were flogged during the year 1871-72. It appears that immigrants who have completed five years' residence, and do not re-indenture, become subject to the provisions of the Masters and Servants Act, under which, if they misconduct themselves, they are liable to be flogged (Cap. 4, Section 3). I entirely concur in the suggestion of the Commissioners that Indian immigrants should be excepted from this punishment but it seems to me to be matter for consideration whether this enactment ought not to be amended on wider grounds. Under it, the servant who has been impertinent or negligent is liable, equally with one who has committed some violent or criminal act, to be imprisoned with or without hard labour, fined or flogged, at the discretion of the Magistrate. In my circular despatch of the 17th of January last, I stated that Indian immigrants ought not to be put to purely penal labour for mere breaches of their indentures. Neither do I consider that they or other servants ought to be subject to flogging for such offences. It seems that there was not any case of flogging of Indian immigrants in the other Magisterial Districts during the same period, and the Commissioners remark that "in the Inanda division the practice of flogging was carried by the Acting Resident Magistrate to an extent which cannot but compare unfavourably with the returns from the other Magistracies".

I request that you will report for what offences these floggings were inflicted, and that you will furnish me with a return of all flogging under the Masters and

Servants Act for the last three years, specifying the offences for which the punishment was inflicted, and making such observations as may occur to you on the subject.

* * * * *

Dated Colonial Office, Natal, the 21st December 1871.

From—D. ERSKINE, Esq., Colonial Secretary, Natal,

To—The Crown Agents for the Colonies.

In order to save time, the Lieutenant-Governor has requested the Secretary of State to communicate with you and with the Indian Government, on the subject of a renewed introduction of coolies into Natal in the event of the Law transmitted by this mail for consolidating the Debenture Loans of the Colony being assented to. I am directed, therefore, to request that, should the requisite funds be obtained under the provisions of that Law, you will be good enough to convey to the Secretary of the Bengal Government, the desire of this Government that a supply of coolies from that Presidency may be sent to this colony with as little delay as possible.

2. That Government will have been already applied to, should Earl Kimberley see fit to meet, in this respect, the wishes of this Government communicated to His Lordship by the present mail, to act for this Government by selecting and appointing, as a temporary measure, an agent through whom the recruiting, selecting and shipping of such coolies may be conducted.

3. The coolies are required for labour on the sugar and coffee estates on the coast.

4. I enclose, for transmission to India, should you be apprised of its having been assented to, a copy of the Consolidated Loan Law, and one of the dietary scale sanctioned by the Madras Government, and now in force in Natal.

5. It is calculated that the total cost of these coolies, with the necessary proportion of women and children, will not exceed eighteen pounds (£18) each, inclusive of agency expenses. This was the average cost of the last coolies introduced here. As the sum provided under the "Consolidation of Loans Law" is £20,000, and as £3 per statute male adult is repayable on assignment, I am to request that the number of coolies sent from India may be such as to bring their total cost on assignment at Natal within the specified sum, namely £20,000, and the sum which would accrue from these repayments, and it is considered, estimating the cost at £18 each, that 1,200 male statute adult coolies might be procured.

6. As applications have been made for at least 1,800 coolies, the Lieutenant-Governor wishes to have as many sent as possible provided the cost does not exceed the above sum on assignment here.

7. I am also to request that you will arrange for the payment by you of the expenses of all kinds to be incurred in this transaction, to be met out of the proceeds of the Consolidated Loans when raised.

8. I am also directed to state, for the information of the Indian Government that the wages to be paid in this colony to each male statute adult cooly will be as follows :

Year.	s.	Per month	} with rations.
1	10		
2	11	"	
3	12	"	
4	13	"	
5	14	"	

proper medical attendance and lodgings to be found by the employers for the coolies.

No. 16, dated Natal, the 23rd June 1873.

From—Lieut.-Col. T. MILLS, Administrator of the Government of Natal,

To—Her Majesty's Secretary of State for the Colonies.

I have the honour to acknowledge the receipt of Your Lordship's despatch * * * * * and to state that the planters in Natal are much pleased at the prospect of the resumption of coolie immigration.

2. I hope that the first instalment of coolies sanctioned, viz., 1,200, have been despatched ; but, should this not be the case, I beg to suggest that the Government of India should be requested to forward the coolies with the least possible delay, as the estates are suffering severely from the want of labour.

3. The Government of India has been requested to appoint an Agent in India as suggested by Your Lordship.

4. The Attorney General has been directed to prepare a Bill for submission to the Legislative Council, which is to meet shortly, embodying the alterations mentioned by Your Lordship, and there seems to be no doubt that they will be agreed to by the legislature.

5. Copies of the law referred to will be forwarded, as directed by Your Lordship, to the Government of India and the Agent for Natal.

No. 87, dated Durban, Natal, the 25th August 1873.

From—Sir B. C. C. PINE, K.C.M.G., Lieutenant-Governor of Natal.

To—The Secretary of State for the Colonies.

Having just returned from a personal tour of inspection through a considerable portion of the country of Victoria in this colony, I think I ought not to allow the mail, now on the point of departure, to leave without conveying to Your Lordship my impressions of the extreme fertility of this beautiful district, of its capabilities for further improvement and development, and above all of the pressing want, at the present moment, of further supplies of labour.

2. Perhaps in no part of the world is a finer tract of country to be found. Within the last twenty years very much has been done : the forest has been cleared, and fine sugar and coffee estates have been created in its stead ; mills have been erected at a large outlay of capital ; and yet from personal observation I am able to say 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 for carrying on the works.

3. All the intricate questions connected with the supply of labour will meet with the earnest consideration of this Government on the approaching assembly of the Legislative Council, and in this despatch time does not permit me to do more than briefly refer to the question of immigration from India.

4. Adverting to Your Lordship's despatch to my predecessor, No. 321, dated 26th April last, it is believed that every arrangement has been made, and all information supplied to the Indian Government requisite, to enable the agent to be appointed there by the local Government to take immediate action in collecting and despatching labourers.

5. A Bill to amend XII of 1872 will be submitted to the Legislative Council immediately on its assembling, and there is no doubt that all the amendments desired by Your Lordship and the Government of India will be made.

6. I would, therefore, most strongly urge upon Your Lordship the necessity of bringing to the notice of the Indian Government the pressing wants of the planters of this colony, and requesting that the least practicable delay may occur in despatching the supply of labourers indented for.

Dated Natal, the 4th December 1873.

From—D. ERSKINE, Esq., Colonial Secretary, Natal,

To—The Secretary to the Government of India.

* * * * *

I am to state that the urgency of the demand for labour in this colony cannot be over estimated, and to express the hopes of His Excellency that you will be so good as to do all in your power to facilitate and expedite the shipment of the emigrants.

* * * * *

No. 102 (Public—Emigration), dated India Office, London, the 24th September 1891.

From—The RIGHT HON'BLE VISCOUNT CROSS, G.C.B., Her Majesty's Secretary of State for India,

To—The Government of India.

I forward, for the information of your Government, a copy of a letter* from the Colonial Office enclosing a copy of a despatch from the Governor of Natal, with a copy of an address to him by the Legislative Council embodying resolutions on the subject of Indian immigration. I also transmit a copy of the reply† I have caused to be sent to the Colonial Office.

2. Your Excellency in Council will perceive that the Governor of Natal has been authorised to communicate direct with you on the subject of extending the term of service by a further period of five years.

The correspondence is of importance as showing the existence in Natal of a great deal of that jealousy of, and inclination to act unfairly towards, natives of India which has recently been seen to exist so strongly in the Transvaal and other parts of South Africa.

*Dated 27th August 1891, and enclosures.

†Dated 17th September 1891.

Dated Downing Street, the 27th August 1891.

From—EDWARD WINGFIELD, Esq., Under-Secretary of State for the Colonies,

To—The Under-Secretary of State for India.

I am directed by Lord Knutsford to transmit, for the consideration of the Secretary of State for India in Council, a copy of a despatch‡ from the Governor of Natal with a copy of an address to him by the Legislative Council embodying resolutions on the subject of Indian immigration.

I am to state that Lord Knutsford proposes to inform the Governor that the proposal that Indian immigrants should be compelled to return to India after the completion of their indentured service would be such an interference with the ordinary rights of British subjects that legislation in that sense could not be sanctioned.

Upon the question of extending the period of compulsory service under indenture to ten years, Lord Knutsford proposes, with the concurrence of the Secretary of State for India, to authorise the Governor to communicate direct with the Government of India.

‡ No. 161, dated 17th July 1891.

No. 161, dated Pietermaritzburg, Natal, the 17th July 1891.

From—HIS EXCELLENCY LT.-COL. SIR CHARLES BULLEN HUGH MITCHELL, Governor of Natal,

To—The Secretary of State for the Colonies.

I have the honour to forward to Your Lordship a copy of an address received by me from the Legislative Council embodying resolutions passed by that body as follows :—

“ That in the opinion of this Council it is desirable for the Government to enter into communication with the Indian Government with a view to obtaining its approval to such changes in the Indian Immigration Laws of Natal as will attain the following objects :—

- (a) that for the future Indians should continue in service during the whole of their residence in the Colony ;
- (b) that it is desirable for Indians, on the completion of their term of service, to return to India ;
- (c) that in the event of it being proved to be practicable to make such changes in the laws, the Council is of opinion that the grant from revenue should be discontinued.”

2. The question of the continuance of Indian emigration to Natal is one on which there has been much discussion during the present session. The tendency showed by the Indians to settle in South Africa and the consequent considerable increase in their numbers have excited the fears of those who desire that Natal shall be, to use the local phrase, "A white man's Colony," and the dislike of the mechanics and labouring classes, who see in the Indian a rival who in the near future may successfully compete with them in their crafts. There are others who believe that the presence of the Indian race is slowly but surely tainting the moral condition of the European and native population, and there can be no doubt that the dislike entertained by the neighbouring republics to the influx of coolies has intensified the feeling in Natal as to the undesirability of increasing the number in the Colony.

3. Every effort was made by a considerable and united minority in the Legislative Council to impede the passage of the Bill "to amend and consolidate the laws relating to the introduction of Indian immigrants into the Colony of Natal, and to the regulation and government of such Indian immigrants," which has, however, passed the Council, but has been sent by for some trifling verbal amendments.

4. Mr. Binns, as representing the majority that carried the Bill, was so impressed with the importance of arriving at some solution of the question that he proposed and carried the above-quoted resolutions in the House.

5. The point which has been most attacked has been the annual subsidy of £10,000 voted in the Supply Bill in aid of Indian immigration, the opponents of the present system contending that those who introduce Indian labourers should pay the whole cost of their introduction, while the supporters of the vote allege that the supply of Indian labour is necessary for the industries of the Colony; that the proportion paid by those to whom the labourers are first indentured, as those who retain their services for the first half of their stay when they are comparatively unskilled, should pay; and further that, if the revenue is to be relieved of all payment for the introduction of these people, those who employ their services during the remainder of their compulsory sojourn in Natal should pay a proportion of the cost of their introduction.

But to carry out this last contention it would be necessary that the terms of engagement made in India should be altered, and the emigrant be compelled to enter on a second term of indentured service at the expiry of his first five years.

6. A considerable proportion of the Indians do, as a matter of fact, re-engage for longer or shorter periods when their five years' compulsory service terminates, but the larger number of them prefer to seek their own living in the various ways open to them, and they thus come into competition with the white population. This has had the effect of considerably lowering the prices of garden produce, maize, etc., and is, therefore, of direct benefit to the community generally.

7. If the Government of India should be disposed to concede the question raised of a second compulsory period, I would suggest that the progressive minimum rate of wages which now obtains during the first years of indenture be continued during the second period. The labourers would thus commence their sixth year on a payment of 15s. per month, and in their tenth year of service of 19s. per month.

8. It is of course understood that the new system could only apply to emigrants engaged after the coming into operation of the new form of contract.

9. I should think it probable that such an alteration in the conditions of engagement would adversely affect recruiting in India, but with this view of the subject the Indian Government has of course no concern.

10. With regard to the proposal (b), namely, that Indians should be required to return to India at the termination of their service, I have to say that if the proposal were accepted in theory it would be difficult to enforce it in practice unless by the Statute Law of the Colony it were made a crime for a British Indian subject to break his contract by refusing to return to India at the termination of his engagement.

To such a law, even if it passed the Legislature of Natal, I find it difficult to think that Your Lordship would advise Her Majesty to give her assent.

11. The free Indians in Natal, numbering according to the recent census 30,393 (the indentured Indians number 10,749 souls), form on the whole an industrious and law-abiding section of the community. Their general usefulness cannot be denied,

and owing to the dislike of the native labourer to a continuous engagement, the Indians are simply invaluable to those cultivators and stock farmers whose success depends on steady labour.

12. The cry as to Natal's being a "white man's country" is untrue so far as regards the white man's capacity for field labour in a semi-tropical climate, and there can, I think, be no doubt that if the Colony is to prosper a supply of coloured labour will always be necessary. Accusations, more or less true, are brought against the Indian of filthy and immoral habits detrimental to the community at large, but these are disadvantages which must be faced if the advantages accruing from a steady labour-supply are to be continued. Moreover, I think that these accusations chiefly apply to the Indians who settle in, or in the neighbourhood of, the towns, and that the habits complained of might be dealt with by the Municipal authorities making and enforcing stricter sanitary and other regulations extending, if found necessary, to the segregation of the Indian portion of the population.

13. The question in the public mind has been somewhat complicated by the presence in Natal of a considerable number of Indian Banians (locally known as Arab traders). These people have however come into the Colony at their own cost in the exercise of their undoubted rights as British subjects. They have, it is true, almost superseded the small shopkeeper in the towns and the "Kafir trader" in the country districts, but the lowering of prices that has thereby been obtained has a certain advantage to the community generally. These men, moreover, have not, as I think, been attracted here by the presence of the emigrant Indian, but, as a class of the keenest traders in the world, they have been brought to Natal by desire to partake in the commercial expansion of the Colony. Their progenitors have for untold generations traded between India and the East Coast of Africa, and these men have, within the last 15 or 20 years, extended their operations to the South-East Coast.

No. 1402, J. & P., dated India Office, London, the 17th September 1891.

From—SIR HORACE WALPOLE, Under-Secretary of State for India,

To—The Under-Secretary of State for the Colonies.

In reply to Mr. Wingfield's letter, dated the 27th ultimo, transmitting a copy of a despatch from the Governor of Natal, with a copy of an address to him by the Legislative Council embodying resolutions on the subject of Indian immigration, I am directed by Viscount Cross to say that His Lordship concurs in the replies which Lord Knutsford proposes to give to the Governor of Natal.

Lord Cross, I am to add, greatly regrets the spirit of jealousy of, and inclination to act unfairly towards, natives of India who emigrate to Natal, the existence of which is shown by the resolution of the Legislative Council as explained by the letter of Sir C. B. H. Mitchell.

Report on subject of re-indenture of Indian immigrants for a second five years.

Towards the latter end of 1883 it was found necessary, owing to some little difficulty which existed in obtaining the required number of emigrants for Natal, to offer special terms with regard to wages, and our agents were accordingly authorised to make known that the rupee in Natal would be of the value of 2s. That the five rupees hitherto offered would be equal to 10s. in Natal, equivalent at that time to 6 rupees in India, increasing yearly up to 14s. in the fifth year, equal to rupees 8½ in India.

2. By adopting this course employers paid no more by way of wages from the fact that the rupee in Natal had all along been paid at 2s.

3. At the present time 10s. in India is of the value of 6 rupees 7 annas 9 pies.

4. Again, in 1889, it was considered advisable to increase the recruiting fee for Natal by 5 rupees at Madras, partly in order to recoup our recruiters for losses sustained through rejections of intended emigrants by Surgeon Superintendents of vessels (appointed in Natal), and also as an inducement to secure a better class of people.

5. At the present time labour is in great demand, and the demand for Indian labour is almost certain to continue for some considerable time, and any departure from the ordinary course likely to check emigration, if only for a time, should, I think, be carefully avoided.

6. The question raised of a second compulsory period of indenture is therefore quite a new departure in emigration from India; and, if enforced, will, I think, be a block, for a time at least, as no such stipulation exists in any of the other labour-importing colonies.

7. In Penang and Singapore the period of indenture is for three years; Mauritius, Fiji, St. Lucia, British Guiana, Trinidad, Jamaica, and Surinam, five years.

8. Free return passages are claimable from Surinam on completion of five years' indenture.

9. Penang, Singapore, and Mauritius do not provide free return passages. Immigrants returning to India do so at their own cost.

10. From Fiji, St. Lucia, British Guiana, Trinidad, and Jamaica free passages are provided after a continuous residence of 10 years. Immigrants may, however, return to India at their own expense on completion of their indentured term, five years; and emigrants to Natal are in this position also.

11. In Fiji and St. Lucia the minimum rate of pay is 13s. 6d. per month; British Guiana 16s., Trinidad 17s., Jamaica 11s., and Surinam 18s. 6d. These rates may, however, be considerably increased by task work. As a rule task work in these colonies is adopted in preference to time or day work.

12. Employers in Fiji, St. Lucia, British Guiana, Trinidad, Jamaica and Surinam are not called upon to provide their indentured Indians with food.

13. The average rate of pay in Natal and Mauritius for the period of indenture is 12s. per month. Only one advantage Natal has over Mauritius, and that is in respect to free return passages, all other conditions being about equal.

14. On completion of indenture in Natal, free Indians find no difficulty whatever in obtaining employment at wages varying from 16s. to 25s. per month as ordinary field hands with rations, skilled hands, sirdars, etc., at from £ 3 to £ 7 with rations.

15. The average rate of pay to the free Indian in Natal is about 20s. per month.

16. Should the Government of India be disposed to concede to a second compulsory period of five years, the progressive minimum rates of wages which now obtains during the first five years should, I think, be increased as an inducement to emigrate, commencing, say, at 11s. per month, increasing yearly up to 20s. in the 10th year.

17. The present actual cost to the employer, exclusive of food, medicine, and medical comforts, is 16s. 10d. per month per man during the first year of indenture, increasing 1s. yearly up to 20s. 10d. in the fifth year namely:—

Annual instalment £3-10

	s.	d.	s.	d.	s.	d.	s.	d.
Monthly	5	10	5	10	5	10	5	10
Wages	10		11		12		13	14
Medical fee	1		1		1		1	1
Total	16	10	17	10	18	10	19	10

18. If indentured for a second period of five years, instalments would then be extended over a period of ten years. By this means the General Revenue might possibly be relieved from the yearly contribution of £10,000.

19. The present cost of introduction and return is about £24 per male adult. Of this amount the employer pays £17-10 by annual instalments of £3-10 for five years, the balance being made up by the contribution from General Revenue.

20. An annual instalment of £2-10 would about cover the cost.

21. Employers would then pay for indentured labour as follows, monthly :—

	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.		
Proportion, annual instalment.	4	7	4	7	4	7	4	7	4	7	4	7	4	7	4	7	4	7		
Wages	11	12	13	14	15	16	17	18	19	20										
Medical fee	1	1	1	1	1	1	1	1	1	1										
Total	16	7	17	7	18	7	19	7	20	7	21	7	22	7	23	7	24	7	25	7

22. Under a new contract such as that proposed great dissatisfaction must naturally be expected from the position in which the Indians under that contract will find themselves at the expiration of their first years, and the position in which their fellow-countrymen, the free Indians, occupy in the Colony.

23. Indians first came to Natal under Law 14 of 1859, the period of service being three years.

24. On the expiration of that period the immigrants were required to enter into a new contract with the same or some other employer for a further term of not less than twelve months or more than two years.

25. Such further indenture could, however, be commuted or reduced by the immigrant on payment of a sum of £2-10 for each remaining year to complete an industrial residence of five years.

26. A large majority of the immigrants commuted their industrial residence on a payment of £5; others on payment of £2-10 for the fifth year, and only these, with very few exceptions, who were not in a position to make this money payment, remained in service.

27. Law 17, 1864, extended the period of indenture from three to five years.

28. Law 14, 1859, and 17, 1864, were repealed by Law 2 of 1870, the term of indenture, five years, being maintained.

29. Law 2, 1870, has also recently been repealed by Law 25, 1891, five years, indenture being maintained.

30. Law 19, 1874 (repealed), provided for a bonus of £10 being paid to any immigrant entitled to a free return passage upon condition that the immigrant receiving this amount entered into an engagement for a further period of five years, with a right to return passage at the expiration of that time. Very few Indians availed themselves of this offer.

31. Section 58, Law 2, 1870 (repealed), also provided for a bonus on reindenture for one year, the amount of bonus to be agreed between employer and Indian. This also proved a failure to induce the Indians to re-engage.

32. It has been my experience, and I think it is the experience of every employer of Indian labour in Natal, that the free Indian has a very great objection to re-engage for any period beyond that of a monthly servant.

* * * * *

L. H. MASON,

Protector of Immigrants.

The 2nd December 1891,

No. 2498/58.

To

HIS EXCELLENCY SIR C. B. H. MITCHELL, K.C.M.G.,

GOVERNOR OF NATAL.

Simla, the 18th October 1892.

Rev. & Agri. Dep'tt.
Emigration.

YOUR EXCELLENCY,

I have the honour to reply to your letter of the 4th January last, in which you ask whether the Government of India have any objection to the proposal of MCI66EHL,

the Colonial Legislative Council that Indian immigrants to Natal should be obliged to serve under indenture for two successive periods of five years instead of for one five year term as at present, and what, in the opinion of my Government, would be the effect of the change on the recruitment of emigrants for Natal.

2. The Governments of Madras and Bengal, from which provinces the whole of the emigration to Natal takes place, have been consulted. On consideration in Council of the opinions expressed by these Governments, I find it impossible to approve the proposals of the Natal Legislative Council, against which indeed, the Lieutenant-Governor of Bengal has entered a forcible protest.

3. The principal objections to the proposed change are that the term of indenture does not exceed five years in any other colony to which emigration from India is permitted; that in no other colony is re-indenture compulsory; and that the proposal would operate hardly on the Indian immigrant by depriving him of the option of returning to his home at the end of five years, while at the same time preventing him from making the best use of the second five years of residence which, under the law as it stands, he has to complete in the colony in order to secure the privilege of a free return-passage to this country.

4. There can be little doubt, in the opinion of my Government, that the change would very seriously affect the recruitment of labour in India for Natal, and that intending emigrants would go to other colonies in preference.

5. A copy of this letter has been forwarded to Her Majesty's Secretary of State for India.

—————

Memorandum with reference to suggested alterations in the conditions under which Indian labourers may be indentured in Natal.

1. At present the Indian on arrival in Natal is indentured to an employer for five years. He is paid at the rate of ten shillings per month during the first year, eleven shillings the second, twelve shillings the third, thirteen shillings the fourth, and during the last year of the term fourteen shillings.

In addition to wages the employer provides the Indian and his family (if any) with rations, lodgings, medical attendance, and medicines. Hospitals have also been erected for the special use of Indians.

2. On the expiration of the terms of indenture the Indian has to remain in the colony for a further period of five years, when he is entitled to return to India; a free passage being provided for himself and family (if any).

3. It was anticipated when the laws were originally enacted, that Indians would during the second five years (although free from indenture) continue to be in service, having the privilege to choose their own masters. In practice this has been the case to a limited extent only.

4. There is a provision by which at the end of the first period of five years the Indian may, with the consent of the Protector, return to India by paying his own passage, and this has occasionally been taken advantage of.

5. It is desired to alter these conditions as follows:—

- (a) At the end of the first term of five years the Indian to be re-indentured to an employer of his own choosing for a period of three years.
- (b) The rate of wages to be fifteen shillings per month for the first year, sixteen for the second, and seventeen for the third year; at the end of this period the Indian to have the right to claim a free passage to India at the expense of the colony.
- (c) In the event of his desiring to remain in the colony for a further period, that he be again re-indentured for a term of two years, with the same progressive rate of wages and the right to a free return-passage on completion of the term.
- (d) If he wishes to still further continue in service in the colony, that he be re-indentured for terms not less than one year or more than two

years, the rate of wages being twenty shillings per month: the right to a free return-passage being retained at the end of each term.

- (e) During all of the periods of re-indenture the Indian to have the rights and privileges which he has at present during the first term of indenture.
- (f) All indentures to be subject to the approval of the Protector of Immigrants.

6. In a country where the native population is in number so far in excess of the European, the unlimited settlement of Indians is not considered desirable, and there is a general wish that when they have completed their 1st period of indenture they should return to India. There are already about 25,000 free Indians settled in the colony, many of whom have allowed their right to a return passage to lapse; this is exclusive of a very considerable Banyan trading population.

7. There is a regulation at present in force under which emigrant vessels conveying Indians to Natal must take 40 women to every 100 men; and as there is at times great difficulty in recruiting women, causing detention of the people in depôt here, it is asked that the compulsory proportion of women be reduced to 30 instead of 40. This has, we are informed, already been allowed in the case of Mauritius.

HENRY BINNS,

CALCUTTA;

L. H. MASON,

20th January 1894.

Delegates from the Government of Natal.

Dated Calcutta, the 1st February 1894.

From—MESSRS. H. P. BINNS AND L. H. MASON, Delegates from the Natal Government,

To—The Secretary to the Government of India, Department of Revenue and Agriculture.

We understood Sir Antony MacDonnell to ask from us a statement of the reasons why public opinion in Natal desires a change in the immigration laws in the direction mentioned in our memorandum of 20th January.

The population of the colony is approximately as follows:—

Europeans	..	..	..	..	..	..	..	45,000
Indians	..	..	..	..	..	..	..	46,000
Natives	..	..	..	..	..	..	..	470,000

The number of Indians is inclusive of an estimated population of 5,500 Arabs. The term "Arab" is applied to the trading people who go from Bombay and ports on the East African Coast.

There is a strong feeling amongst the merchants and shopkeepers with regard to the Arabs who are all traders and not workers, but as they are mostly British subjects and do not go to the colony under any form of agreement, it is recognised that they cannot be interfered with.

It is true that many of those who have suffered from the trade competition of the Arabs complain of the presence of all Indians under the general head of "coolies" and they do not discriminate between the working Indian and the trader.

The coolie does not come into competition to any considerable extent with the European. Field work for Europeans is impossible on the coast where all the plantations are situated, and the number of house-servants, other than coolies and natives, has always been very small.

The figures given above indicate how large is our native population, and the number is being constantly added to, not only by natural increase, but by the influx of natives from the surrounding territories who appreciate the protection of British rule.

It is hardly to be wondered at when people see the natives so rapidly increasing, that there is already a great difficulty in finding sufficient land for them to live upon; and when the locations provided for their use are already overcrowded that there is some concern shown at the continued settlement of Indians in such large numbers.

If there was no native population there would be no reasonable grounds for opposition to the presence of the coolie.

If existing conditions continue, and immigration should be carried on upon the same scale as it has been of late years, we estimate that there will be in the colony, at the end of five years from the present time, a total coolie population of 53,000. In this calculation we have allowed for the same number returning to India as have done during the like period. And if the Arabs continue to go to Natal in similar numbers to what they have been doing, there will be an Arab population of 9,000,—a total of 62,000 Indians.

Although we are decidedly of opinion that up to the present the working Indians who have settled down have been of great benefit to the colony, we cannot avoid, having regard to the future, and in face of the great native problem yet to be solved in South Africa, sharing in the concern which is now felt. If a large proportion of the coolies had taken advantage of the return passage provided for them, there would have been less cause for alarm.

The immediate necessity for endeavouring to find a solution of this difficulty arises from the general consensus of opinion in the Colony decisively shown at the general election last year.

H. P. BINNS,

L. H. MASON,

Delegates for the Government of Natal.

Dated Calcutta, the 1st February 1894.

From—MESSRS. HENRY BINNS and L. H. MASON, Delegates from the Natal Government,

To—The Secretary to the Government of India, Department of Revenue and Agriculture.

With reference to our conversation of yesterday, and supplementary to our memorandum of 20th January, if it is considered absolutely necessary by the Government of India that under the proposed altered provisions the coolie should have the right to claim a return passage from our Government at the end of his first term of five years indenture, we are prepared to recommend the acceptance of this condition. But we fear that the additional cost which will thus be thrown upon the employers would be to them a very serious consideration.

H. P. BINNS,

L. H. MASON,

Delegates for the Government of Natal.

No. 182, dated Pietermaritzburg, Natal, the 1st December 1893.

From—His Excellency Sir WALTER HELY-HUTCHINSON, Governor of Natal,

To—The Right Hon'ble the Secretary of State, etc, etc.

Ministers have recommended me to appoint Messrs. H. Binns, M.L.A., and Mr. L. H. Mason, the Protector of Immigrants, to be delegates to proceed to India for the purpose of conferring with the Government there in regard to emigration from that country to this Colony.

The object of the mission is set forth in the Prime Minister's memorandum of which a copy is enclosed.

I telegraphed to Your Lordship yesterday notifying the appointment of the delegates and asking Your Lordship's good offices with the Government of India on their behalf.

Messrs. Binns and Mason will leave Durban for Bombay, *via* Aden, on the 5th instant.

I attach a copy of their commission.

Dated Prime Minister's Office, Natal, the 1st December 1893.

From—JOHN ROBINSON, Esq., Prime Minister, Natal,

To—His Excellency the Governor of Natal.

Ministers beg to submit, for the approval of His Excellency, the names of Mr. Henry Binns, M.L.A., and of Mr. Louis H. Mason, Protector of Immigrants, for appointment as delegates to proceed to India to confer with the Government there on matters relating to immigration from that country to Natal.

The two points upon which the delegates will be more particularly instructed to confer with the Indian authorities are—

- (1) The terms of indenture as at present provided for by law.
- (2) The return to India of all indentured immigrants on the completion of their terms of service. The delegates will also be directed to confer on any point concerning immigration in regard to which there may appear to be room for legislation or administrative improvement, or need of information.

Ministers propose that the delegates shall be appointed under a commission bearing the seal of the colony and should be fully accredited to the Government of India.

COMMISSION.

By His Excellency The Honourable Sir Walter Francis Hely-Hutchinson, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief in and over the Colony of Natal, Vice-Admiral of the same and Supreme Chief over the Native population.

To Henry Binns, Esq., Member of the Legislative Assembly of Natal and Louis Henry Mason, Esq., Protector of Immigrants for the Colony of Natal.

Greeting: Whereas it is expedient that I should appoint two fit and proper persons to proceed to India for the purpose of conferring with the Government there on matters relating to emigration from India to the Colony of Natal. Now know ye that I reposing great trust and confidence in your zeal, knowledge and ability, do by these presents appoint you the said Henry Binns and Louis Henry Mason to be my Commissioners for the purpose aforesaid. For your guidance in the discharge of the duty hereby entrusted to you instructions will be given to you on the subject by the Colonial Secretary of this Colony.

Given under my hand and the Public Seal of the Colony, at Government House, Pietermaritzburg, this first day of December, one thousand eight hundred and ninety-three.

Dated Colonial Secretary's Office,
Natal,

JOHN ROBINSON,
Colonial Secretary.

The 1st December 1893.

No. J. & P. 1, dated India Office, London, the 19th January 1894.

From—GEORGE W. E. RUSSELL, Esq., Under-Secretary of State for India,

To—The Under-Secretary of State for the Colonies.

I am directed by the Secretary of State for India in Council to acknowledge the receipt of Mr. Wingfield's letter of the 30th ultimo, giving the names of the two delegates appointed to confer with the Government of India on matters connected with the emigration from India to Natal and stating more fully the object of their mission.

MC166EHL

In reply I am desired to say that, provided the Government of India raise no objection, the Earl of Kimberley concurs in the proposal made by the Marquis of Ripon that all future correspondence with reference to Indian immigration in the Colony of Natal should pass between the Governor and the Government of India direct instead of through the Colonial Office, and the Government of India will be informed accordingly.

I am to add that on receipt of Mr. Wingfield's former letter of the 2nd ultimo, Lord Kimberley dispatched a telegram to the Viceroy of India of which a copy is enclosed.

Dated the 5th December 1893.

No. 29 of 1894.

GOVERNMENT OF INDIA.

DEPARTMENT OF REVENUE AND AGRICULTURE.

EMIGRATION.

To

THE RIGHT HONOURABLE H. H. FOWLER, M. P.,

Her Majesty's Secretary of State for India.

Simla, the 22nd May 1894.

SIR,

On the 5th December last Lord Kimberley intimated by telegram that two delegates from the Governor of Natal were on their way to India for the discussion of matters connected with emigration from India to Natal. The delegates, the Honourable H. Binns, of the Natal Legislature, and Mr. L. H. Mason, Protector of Immigrants, arrived in the middle of January and were afforded every opportunity of representing the views which they were instructed to put forward. While negotiations with the delegates were in progress, we received from Lord Kimberley a despatch, No. 4, dated the 24th January 1894, in continuation of the telegram already received, which forwarded correspondence with the Colonial Office on the subject of the delegation.

2. The second paragraph of the despatch just referred to intimated that Lord Kimberley had agreed to the proposal that all future correspondence should pass between the Governor of the Colony and the Government of India direct instead of through the Colonial Office. We have not, however, understood this to mean that any important change in the principles upon which emigration has hitherto been conducted should be made without the sanction of Her Majesty's Secretary of State, and in view of the fact that the discussions which have been held with the Natal delegates have led to proposals, concurred in by the Local Governments concerned, which involve an important alteration in the system of emigration to Natal, we have thought it desirable to submit the conclusions at which we have arrived for your consideration and approval.

3. Our letter of the 28th of February 1894, to the Governments of Madras and Bengal, which will be found among the papers appended to this despatch, explains the issues which arose in the course of discussion, as well as the views which we formed upon them. We invite your perusal of this letter. Briefly, however, we may state at once that the main point urged by the delegates was that, unless some arrangement could be made under which Indian coolies could be prevented or discouraged from settling as permanent residents in the Colony, there was strong reason to apprehend that emigration from India to Natal would at no very distant date be altogether closed. This result would, in the opinion of the delegates, be a calamity to the Colony, and in our own a loss to India. The reports elicited by the enquiries instituted by Lord Dufferin on the condition of the poorer classes in India led to the conclusion that every possible field that could be found for Indian labour should be thrown open or extended, and it would in these circumstances be a

material cause for regret if any outlet now existing should for any avoidable reason be closed. We were therefore anxious to arrive at some compromise which would at the same time meet the wishes of the Natal authorities, and secure the continuance of emigration to the Colony under conditions sufficiently favourable to Indian emigrants.

4. The reasons advanced by the delegates in support of their view were the growing jealousy of Indian settlers evinced by European colonists, and the difficulty of finding room for Indian settlers in a Colony already possessing a large native population. The arrangement they suggested for preventing the eventual settlement of Indian emigrants in the Colony was the inclusion in the original or renewed indenture into which they might enter, a condition binding them to return on the conclusion of the term of indenture. The compensating advantages offered, were the grant of a free passage at the end of each and every term of indenture, and at the end of the second term wages equivalent to the highest market wages for free labour.

5. The representation made by the delegates as to the jealousy felt by the European colonist to the Indian emigrant are supported by the fact which was brought to light in the course of our correspondence with the Queensland and South Australian Governments on the subject of emigration to Australia, that under no circumstances was emigration likely to be established in the Australian Colonies unless the permanent residence of Indian settlers could be prevented. This circumstance should, we think, be borne in mind in dealing with the present case. For, as we intimated in our letter to the Local Governments, if an arrangement can be made with the Natal authorities under which the settlement of coolies will be discouraged, it is possible that the example may be hereafter followed in Australia of which country the northern or sub-tropical regions afford an extensive and desirable field for Indian labour.

6. For the reasons which we have indicated we are prepared to accept the compromise to which the discussions have led. The one question of difficulty which is connected with the case is how to enforce the return of a coolie who refuses to carry out the condition in his indenture binding him to leave the Colony at its close unless re-indentured. As intimated in the final paragraph of our letter to the Local Governments, we cannot agree to any proposals which involve compulsion under penal laws. We believe, however, that refusals to return will probably be rare, and that they may be reduced to a minimum by imposing a tax on residence of such a character that it will prevent the settlement to any objectionable extent of Indian immigrants in the Colony. We should, as we have stated in our letter to the Governments of Madras and Bengal, ourselves prefer not to countenance any interference with the full freedom of the immigrant at the conclusion of his indenture; but in view of the real grounds which exist for apprehending the complete closure of emigration, if no restriction can be placed on settlement, and also of the desirability of establishing a system which may prove acceptable to the Australian Governments, we have consented to give our support to the compromise of which we have explained the material conditions. The modifications on the existing terms to which we are prepared to assent, are set forth in detail in the appendix to this despatch. They are, in the opinion of the delegates, likely to be accepted by the Natal Government, but we desire in the first place to solicit your own approval of them.

We have the honour to be,

SIR,

Your most obedient, humble Servants,

ELGIN.

G. S. WHITE.

A. E. MILLER.

H. BRACKENBURY.

C. B. PRICHARD.

J. WESTLAND.

A. P. MACDONNELL.

APPENDIX.

Modifications in existing terms for the conduct of emigration from India to Natal :—

- (i) Every Indian when first recruited for a term of five years shall be required by the terms of his contract either to return to India at the end of the period of contract or on the expiry of that period to enter into a further indenture in the Colony on the same conditions.
- (ii) If he desires to return on the expiry of the first period, he shall be provided with a free passage to his home in India.
- (iii) If he desires to remain in the Colony, he shall enter into an indenture for two years on the same terms, except as provided by clause (v) below, as those of the first contract, and on the conclusion of this and of each new period of indenture shall be at liberty to enter on a further indenture for a further period of two years on the same terms. After the first period of indenture the coolie shall be at liberty to choose his employer.
- (iv) If at the conclusion of any period of indenture he shall desire not to enter into any further indenture, he shall be returned to his home in India free of charge to himself.
- (v) The rate of wages for the second period of indenture shall be 16s. per mensem for the first, and 17s. per mensem for the second, year : the rate for the third period of indenture shall be 18s. per mensem for the first, and 19s. per mensem for the second, year : thereafter the rate shall be fixed at 20s. per mensem.
- (vi) If an emigrant declining to enter into a new indenture refuse to abide by the provision in his contract, which requires him to return to India at the conclusion of a period of indenture, he shall not be dealt with under the criminal law.
- (vii) During all the periods of re-indenture the Indian will have the rights and privileges which he has at present during the first term of indenture.
- (viii) All indentures entered into in the Colony will be subject to the approval of the Protector of Immigrants.

INDIA OFFICE ;

London, 2nd August 1894.

Public (Emigration),

No. 72,

TO HIS EXCELLENCY THE RIGHT HONOURABLE THE GOVERNOR-GENERAL OF INDIA
IN COUNCIL.

MY LORD,—I have considered in Council the letter from your Government, No. 29, dated 22nd May 1894, regarding a modification of the conditions under which labourers are recruited in India for work in the Colony of Natal.

2. I enclose, for the information of Your Excellency's Government, a copy of correspondence* on the subject which has passed between this office and the Colonial Office. It will be better that you should not suggest, or intimate any approval of, the imposition of a tax on emigrants who may refuse to return to India in compliance with their engagements. The point may be left to be raised by the Colonial Government, if necessary, but it is possible that the object in view may be more simply as well as more surely attained by requiring the emigrant to contribute from his earnings a certain proportion of the cost of a return passage, and by forfeiting such contribution in the event of his not fulfilling his undertaking to return within some reasonable period.

3. Subject to these observations I see no objection to the proposals favoured by your Government,

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble Servant,

H. H. FOWLER.

*To Colonial Office, dated 4th July 1894.

From Colonial Office, dated 10th idem.

No. 1020-J. & P., dated the 4th July 1894.

From—The Under-Secretary of State, India Office,

To—The Under-Secretary of State, Colonial Office.

I am desired by Mr. Secretary Fowler to transmit, for the consideration of the Marquess of Ripon, a copy of a despatch No. 29, Emigration, of 1894, from the Government of India, with its enclosure, relating to a proposed alteration of the conditions under which Indian labourers are engaged for work in Natal. It will be seen that strong objections are felt in Natal to any of these immigrants settling down in the colony and it is therefore proposed, at the end of any term for which they may have engaged, to give them the choice between a free passage back to India and a new indenture for a term of two years, their wages being raised at the rate of one shilling annually until they reach the maximum of 20 shillings a month.

As these proposals involve the exclusion of a class of Her Majesty's subjects from Natal, Mr. Fowler will be glad to have the opinion of the Marquess of Ripon upon them before he replies to the Government of India.

It will be seen that it is not at present proposed to interfere with any one but those Indians who have been recruited as labourers under an agreement binding them to return to their country or renew their indentures. The Government of India will stipulate, and it is understood that the colony is prepared to agree that this covenant shall not be enforced by any criminal law, and it seems to be contemplated that a special tax may be imposed on emigrants who remain in the colony contrary to the terms of their undertaking. When once such a tax has been imposed there might be considerable danger of its extension to free Indians who have come to the colony at their own expense, and without conditions for the purposes of trade. Mr. Fowler desires to be informed whether the Marquess of Ripon considers that any special caution should be conveyed to the Government of India against saying anything which might be construed into an approval of the contemplated tax.

Dated the 10th July 1894.

From—The Under-Secretary of State, Colonial Office,

To—The Under-Secretary of State, India Office.

I am directed by the Marquess of Ripon to acknowledge the receipt of your letter of the 4th instant, transmitting copies of a despatch from the Indian Government, with enclosures, with reference to the visit of the Delegates from Natal to the Government of India and the modifications proposed by them, on behalf of the Natal Government, in the conditions under which Indians are at present engaged for labour in the colony.

With reference to the suggestion of the Government of India that a special tax should be imposed on emigrants who remain in the colony on the expiration of their terms of indenture contrary to the terms of their agreements, I am to state that Lord Ripon considers that such a tax would be in effect a penalty for enforcing contracts voluntarily made by the coolies in India, and might be justified on that ground, but that it would not follow that the allowance of such a measure would preclude disallowance of a law imposing a special tax on free Indian emigrants to Natal.

Lord Ripon presumes that the Indian Government, in communicating to the Government of Natal their assent to the proposed modification of the existing terms, will not suggest or intimate any approval of the imposition of such a tax but will leave it to the Colonial Government to raise the point.

No. 2509/18.

To

HIS EXCELLENCY

SIR WALTER FRANCIS HELY-HUTCHINSON, K.C.M.G.,

GOVERNOR OF NATAL.

Dept. of Rev. & Agri.
Emigration.

Simla, the 17th September 1894.

YOUR EXCELLENCY,

With reference to your letter of the 4th December 1893, notifying the deputation of Messrs. H. Binns and L. H. Mason, as Delegates from the Government
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of Natal to confer with the Government of India on questions connected with the emigration of labourers from India to Natal, I have the honour to inform you that the Government of India have, in consultation with the Governments of Madras and Bengal and with the Delegates themselves, carefully considered the proposed alterations in the present system under which emigration is permitted.

2. These proposals are stated in a memorandum dated the 20th January 1894, which was submitted to the Government of India by the Delegates, and which also forms one of the enclosures of Your Excellency's despatch of the 23rd April 1894. It will be observed that the main object underlying the conditions is to secure an arrangement by which the Indian immigrant in Natal may be required to return to India after the completion of the term of indenture and by which he shall be unable to remain in the Colony otherwise than under indenture.

3. I should myself have preferred the continuance of the existing system under which it is open to an immigrant after the termination of his period of indenture to settle in the Colony in his own account; and I have little sympathy with the views that would prevent any subject of the Crown from settling in any Colony under the British flag. But in consideration of the feeling at present manifested in the Colony of Natal towards Indian settlers, I am prepared to accept the proposals (a to f) set forth by the Delegates in the memorandum of 20th January 1894 referred to in the preceding paragraph, subject to the following provisos, *viz.*—

- (a) that a coolie when first recruited should be required by the terms of his contract to return to India within or immediately on the expiration of the period of his indenture, unless he may prefer to enter into a further indenture on the same conditions;
- (b) that such coolies as may refuse to return should in no case be made subject to penalties under the criminal law; and
- (c) that all renewals should be for a period of two years, and that a free passage should be secured to the immigrant at the end of the first term for which his engagement is made, as well as at the end of every subsequent renewal.

4. The alterations in the existing system which I am prepared to sanction with the approval of Her Majesty's Government, may therefore be summarised as follows:—

- (i) Every Indian when first recruited for a term of five years shall be required by the terms of his contract either to return to India at the end of the period of contract or on the expiry of that period to enter into a further indenture in the Colony on the same conditions.
- (ii) If he desires to return on the expiry of the first period, he shall be provided with a free passage to his home in India.
- (iii) If he desires to remain in the Colony, he shall enter into an indenture for two years on the same terms, except as provided by clause (v) below, as those of the first contract, and on to conclusion of this and of each new period of indenture shall be at liberty to enter on a further indenture for a further period of two years on the same terms. After the first period of indenture the coolie shall be at liberty to choose his employer.
- (iv) If at the conclusion of any period of indenture he shall desire not to enter into any further indenture, he shall be returned to his home in India free of charge to himself.
- (v) The rate of wages for the second period of indenture shall be 16s. per mensem for the first and 17s. per mensem for the second year: the rate for the third period of indenture shall be 18s. per mensem for the first, and 19s. per mensem for the second, year: thereafter the rate shall be fixed at 20s. per mensem.
- (vi) If an emigrant declining to enter into a new indenture refuse to abide by the provision in his contract, which requires him to return to India at the conclusion of a period of indenture, he shall not be dealt with under the criminal law.

(vii) During all the periods of re-indenture the Indian will have the rights and privileges which he has at present during the first term of indenture.

(viii) All indentures entered into in the Colony will be subject to the approval of the Protector of Immigrants.

I shall be ready to permit the commencement of emigration on these revised terms as soon as I have been informed that they have been accepted by Your Excellency's Government and that the necessary changes have been made in the Colonial Laws.

5. The Delegates made a further proposal that the general rule under which the number of women recruited must not be less than 40 to every 100 men should be altered in the case of Natal so as to admit of the recruitment of 30 women to every 100 men. I find, however, that the number of females settled in the Colony is only about 45 per cent. of that of the males and under these circumstances I see no sufficient reason for exempting the Natal coolie emigration from the general rule above referred to.

No. 172, dated Calcutta, the 5th February 1897.

From—RAI ISSER CHANDER MITTER, BAHADUR, Honorary Secretary,
British Indian Association,

To—The Secretary to the Government of India, Home Department.

I am directed by the Managing Committee of the British Indian Association to submit, for the consideration of His Excellency the Governor General in Council, the following representations in connection with the grievances of British Indian subjects in the Colonies of Natal, the Cape of Good Hope, Zululand, the Transvaal, the Orange Free State and the Chartered territories in South Africa.

The total number of British Indians in South Africa, the Committee are informed, is about one lakh, and may be divided into three classes, namely, indentured labourers, labourers who, having served out their terms, have settled as freemen on their own account, and traders who have brought capital into the Colonies. From an Indian point of view, Natal is, however, the most important portion of South Africa, as it has an Indian population of 51,000 against a European population of nearly 50,000. Of the Indian population 16,000 are at present serving their indenture, 30,000 are freed labourers, who have settled on their own account, and 5,000 belong to the trading community. Each of these three classes appears to be labouring under certain grievances peculiar to itself, and my Committee are of opinion that the question of the speedy removal of those grievances, the most important of which are enumerated below, is one that is pre-eminently entitled to the serious consideration of the Government of India.

These grievances have had their origin in the intense and groundless prejudice of a section—a most influential section—of the local European community against the Indian, and their perpetuation is manifestly due to what now appears to be the settled policy of the authorities of the South African Colonies, namely, to get rid of all Indians unless they elect to remain in the Colony as indentured labourers. It seems that while the Colonial authorities have no objection to utilize Indian labour, they believe that for Indian traders and hawkers to remain any longer in the Colonies is detrimental to the interests of their white rivals, and they seem to be more or less jealous lest the Indians should acquire the faintest semblance of the shadow of political power in a distant land which the Indians, their British fellow-subjects and other Europeans have all made their common home, and in the development of which their labour, their enterprise and their capital have played no unimportant part.

This policy, my Committee observe, is being prosecuted with vigour, by means of harassing Regulations and class legislation and by the treatment of all Indians, irrespective of their wealth, intelligence, education and stake in the country, on the same footing as the natives of the Dark Continent, who are in no way connected with the Government of Her Gracious Majesty the Sovereign of Great

Britain and the British Empire. Beginning with Natal, my Committee understand that there is a law in that Colony under which an Indian cannot leave his house after 9 P.M. unless he can produce a pass signed by some official showing that he is out under instructions, or can give a good account of himself. This law is applicable to Indians and the African natives only, and its enforcement has often led to the humiliation and harassment of even the wealthiest of Indian merchants in the Colony. Such a law may be necessary in the case of indentured labourers to minimize the chances of desertion, but its application in the case of wealthy Indian merchants and freed settlers is, my Committee submit, extremely unjust and unwarrantable. Indians when driving cattle are required to be provided with certain passes, and there is a bye-law in Durban which provides for the registration of native African servants and "others belonging to the uncivilized races of Asia." No Indian is allowed to use a tram car or the first and second classes of the railway compartments, or a public hotel or a public bath; while the Vagrant Law is inconsistently so severe and oppressive that even respectable Indians, by reasons of their color, are put to much ill-treatment and ignominy.

Not content with such one-sided laws and bye-laws and regulations, the Natal Government has recently inaugurated a system of persecution by legislation which is avowedly intended to prevent in the course of a few years any Indian from remaining in the Colony except in the position of an indentured labourer. Hitherto the Indians have enjoyed the franchise rights under the general Franchise Law of the Colony, which requires ownership of immoveable property worth £250 on payment of an annual rental of £10 to qualify an adult male to be placed on the Voters' Roll. For the native Africans there is a special Franchise Law. In 1894, the European voters numbered 9,309, while the Indian voters numbered only 251, and of these 203 were living in the Colony at that time. Although the Indian population was slightly in excess of the European population, the European vote was 38 times as strong as the Indian vote. In spite of this hopeless disparity in numbers, the Natal Government introduced into the Legislative Assembly in 1894 a Bill disfranchising all Asiatics except those whose names were then rightly contained in any Voter's List, the preamble of the Bill putting forward as the sole justification for the measure the unfounded assumption that the Asiatics are not familiar with the working of elective representative institutions. The Bill was passed into law, but the enactment of the measure was strongly condemned by public opinion in England as well as in India. In deference to public opinion the Natal Government has repealed this Act, but it has at the same time been replaced by another measure which strongly partakes of the character of a remedy which only serves to aggravate the malady. This Act prevents "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" from being placed on the Voters' List, "unless they shall first obtain an order from the Governor in Council exempting them from the operation of this Act." Before being passed into Law, this Bill appears to have been submitted to the Right Honourable Joseph Chamberlain, Her Majesty's Principal Secretary of State for the Colonies, for approval, and the Colonial Secretary has apparently approved of the measure. My Committee, however, submit that the sanction of the Colonial Secretary could be obtained only on some misapprehension of facts, and that the objections to such a sweeping enactment are serious enough to justify the disallowance of the Act. This is a piece of class legislation which, in the opinion of my Committee, is not only unnecessary and unjust but in conflict with the Imperial interests of our Government. The Honourable Sir John Robinson, the Prime Minister, in moving the second reading of the Bill, justified it on the ground of the necessity of guarding against the danger of the European vote being swamped by the Indian vote. My Committee submit that this danger is purely imaginary and is not warranted by facts. Sir John Robinson justified his fears on the following facts, that the petition to Her Majesty's Government in connection with the Franchise Act was signed by nearly 9,000 Indians, and that there is an Indian Congress in the Colony which is led by able and educated men who also possess the power of the purse. As regards the first, my Committee submit that though the petition was signed by 9,000 Indians, this fact does not show that all the signatories were either anxious or qualified to have their names placed on the Voters' List. My Committee are credibly informed that out of the 9,000 signatories not a hundred, besides those whose

names were already on the Voters' Roll, possessed the legal property qualifications, considering the fact that very few of the Indians pay £10 per year in rents, and having regard to the comparative insignificance of the present number of Indian voters, my Committee submit that the apprehension of the European vote being swamped by the Indian vote is altogether groundless. My Committee would respectfully draw the attention of His Excellency the Governor General in Council to the following remarkable admissions made by a Natal Journal reputed to be the organ of the Government :—

We do not consider that the danger of being swamped is at all a likely one, as past experience has proved that the class of Indians coming here, as a rule, do not concern themselves about the franchise, and further that the majority of them do not even possess the small property qualification required.

As regards the aim and scope of the Natal Indian Congress, the Prime Minister said as follows in his speech in the Legislative Assembly :—

Members might not be aware that there was in this country a body, a very powerful body in its way, a very united body, though practically a secret body, he meant the Indian Congress. That was a body which possessed large funds, it was a body presided over by very active and very able men, and it was a body the avowed object of which was to exercise strong political power in the affairs of the Colony.

In connection with the charge that the organisation is a secret body, my Committee note that it has been subsequently withdrawn by the Prime Minister. As regards the statement that the object of the Congress is to secure political power, my Committee venture to assert that a reference to the well defined objects of the Congress will show that on this point also the Prime Minister was misinformed when he made his speech in the Legislative Assembly. Under these circumstances my Committee respectfully submit that the new Franchise Act cannot be justified either on the ground of expediency or on the higher ground of justice.

As regards the provision that the Governor in Council shall have the power to exempt certain Indians from the operation of the Act and to place their names on the Voters' Roll, my Committee are afraid that it will prove a dead-letter. A Natal paper (The *Advertiser*, 8th May 1896), referring to this clause, observes as follows :—

The clause is obviously inserted with the idea of leading the Imperial Government to suppose that this power of exemption would occasionally be used—sparingly perhaps, but still used. Yet the Attorney-General declared that the power for inclusion given in such circumstances in the present Bill would not, however, he wished to point out, be attained except through the Governor in Council. Every section of the community had begun to realize what the true meaning was of the responsibility of Ministers, and knew quite well that no Ministers could hold office 14 days if they took upon themselves the responsibility of watering the constituencies by the introduction of Indian electors. Further on he said, "there would be no other voice throughout South Africa than that the electoral rolls of the country should be absolutely confined to persons of the European race. If these ministerial declarations mean anything it is this, that Government have no intention to exercise their right of exemption."

My Committee are inclined to subscribe to this inference, and the new Franchise Act in their opinion simply means disfranchisement of the Indians whose names are not already on the Voters' Roll. They apprehend that the Colonial Secretary's consent to the measure could have been obtained only upon the wrong assumption that the Government of India will find it easy and convenient to assert the rights of its Indian subjects living in a foreign land.

Another grave objection to the Act is that, by reason of its ambiguous phraseology, it opens a wide door to expensive litigation which cannot fail to prove ruinous to the Indian community. The Act is applicable to "natives or descendants in the male line of natives of countries which have not hitherto possessed representative institutions founded on the parliamentary franchise." My Committee do

not venture to express any opinion as to whether, properly speaking, British India can be regarded as a country "which has not hitherto possessed representative institutions founded on the parliamentary franchise." But they note that, in the opinion of a large section of the public and the press in Natal, the new Act will not be applicable to the Indians inasmuch as India does possess "representative institutions founded on the Parliamentary franchise." In this connection my Committee get to draw the attention of His Excellency the Governor General in Council to the opinion expressed on this point by Mr. Laughton, an eminent lawyer in Natal. He says :—

Is there then a Parliamentary (or Legislative) franchise in India, and what is it? There is, and it was created by Acts 24 and 25 Victoria, chapter 140, by the regulations made under section 4 of the latter Act. It may not be founded on what we call a liberal basis; it may indeed be founded on a very crude basis, but it is the Parliamentary franchise nevertheless; and under the Bill, it is on it that elective representative institutions of India have to be founded.

The following lines taken from the weekly edition of the *London Times*, dated the 31st January 1896, are also to the point :—

The argument that the Indian in Natal cannot claim higher privileges than he enjoys in India and that he has no franchise whatever in India is inconsistent with the facts. So far as Government by voting exists in India, Englishmen and Indians stand on the same footing, and alike in the Municipal, the Provincial and Supreme Councils the native interests are powerfully represented. Nor does the plea that the British Indian is unacquainted with the nature and responsibilities of representative Government bear inspection. There is probably no other country in the world in which representative institutions have penetrated so deeply into the life of the people.

My Committee therefore submit that the result of the ambiguous wording of the Act will be endless litigation and agitation. The Indians protest against their disfranchisement, not because they are ambitious of acquiring political power in the Colony or because they want to increase the Indian vote, but simply because, being educated and intelligent men, possessing both wealth and stake in the country, they keenly feel the ignominy of disfranchisement.

The Immigration Law Amendment Bill which has also been passed by the Natal Legislature is similarly directed against the Indians. It proposes to keep the indentured Indians always under indenture, or, if they do not acquiesce in this prospect, to send them back to India at the end of the first indenture of five years or, if they persist in remaining in the Colony, to compel them to pay an annual tax of £3. This Bill has, my Committee regret to observe, already received the Royal assent, but nevertheless they are bound to record their emphatic protest against it. There is, my Committee submit, a general consensus of opinion even among the European settlers in South Africa that Indian immigration has brought wealth and prosperity to the Colony. Is it fair to the Indians or creditable to the great Government which holds its sway over them and which has introduced in India a new era of national intercourse and international commerce that these Indians should be turned away from the distant home which an enlightened Government has helped them to adopt, and after they have given their best five years to the Colony, formed new ties there and forgotten their kith and kin in the old country? My Committee would quote the following lines which express the opinion of an eminent Natalian on the benefits which resulted from Indian immigration :—

Indian immigration brought prosperity, prices rose, people were no longer content to grow or sell produce for a song. If we look to 1859, we shall find that the assured promise of Indian labour resulted in an immediate rise of revenue which increased four-fold within a few years. Mechanics who could not get away and were earning 5 shillings a day and less found their wages more than doubled, and progress gave encouragement to every one from the Burg to the Sea.

My Committee also beg to draw attention to the following lines taken from the article in the *Times* which has already been referred to:—

The question now before Mr. Chamberlain is not an academic one. It is not a question of argument but of race feeling. The Queen's Proclamation of 1858 gave the full rights of British subjects to the Indians, and they vote in England and sit in the British Parliament on the same terms as Englishmen. But these questions are inevitable in a vast Empire made up of many people, and as the steamship brings the component populations of Great Britain into close contact, they will present themselves in more acute forms. Two things are clear. Such questions will not settle themselves by being ignored, and strong Government at home affords the best Court of Appeal to adjudicate upon them. We cannot afford a war of races among our own subjects. It would be as wrong for the Government of India to suddenly arrest the development of Natal by shutting off the supply of immigrants, as it would be for Natal to deny the rights of citizenship to British India subjects, who by years of thrift and good work in the Colony have raised themselves to the actual status of citizens.

Lord Ripon, when he was in the Colonial Office, recognized this principle in a special despatch which contains the following important deliverance:—

It is the desire of Her Majesty's Government that the Queen's Indian subjects should be treated upon a footing of equality with all Her Majesty's other subjects.

My Committee submit that the future of emigration from India is intimately bound up with this question of the status of the Indian immigrants in South Africa, for if they are denied the rights of citizens there, then it will render the action of the British Indian Government incongruous in so far as that Government has extended its protection to the various emigration agencies in British India, and it is obvious that a similar treatment will be accorded to the Indian emigrants in all the other Colonies in which they occasionally come into competition with the European settlers. The Government of India is therefore directly interested in this question which, my Committee are confident, will receive due attention at its hands. It has hitherto been the pride of the British Indian subjects, like every other British subject and like the Roman citizen of old, that in whatever quarter of the globe his lot may be cast, the strong arm and the watchful eye of the Government of his native land will secure to him an uninterrupted enjoyment of his inalienable rights as a British subject. My Committee therefore deeply deplore and deprecate the attempt now being made in contravention of the policy of the Queen's Proclamation and the principle affirmed by the British Cabinet in respect of the South African Colonies to deprive the British Indian subject of those rights which are so highly prized by him and which are so essential to his welfare.

Nor is the lot of the Indian settler any better in other Colonies. In Zululand, which is a Crown Colony, Indians are prevented by regulations from owning or acquiring land in the townships of Eshowe and Nondwein, although they own land worth £2,000 in the township of Melmoth in the same country. My committee note that the matter is now engaging the attention of the Secretary of State for the Colonies. As this is a Crown Colony, surely the Indian is entitled to a liberal treatment. My Committee are informed that the country offers a good opening for the Indians, but they are so ill-treated that it is considered dangerous for them to go there to seek their future. In the Cape Colony anti-Asiatic legislation is impending, and the Cape Legislature has already passed a measure empowering the East London Municipality in that Colony to make bye-laws for the express purpose of compelling native Africans and Indians to remove to, and reside in, certain locations and prohibiting them from walking on footpaths. The Cape Government has further issued instructions that "no coolies or Arabs are to have trading licenses in East Griqualand." In the Transvaal the Indians cannot travel without a pass, and they cannot as of right walk on the footpath in Pretoria and Johannesburg. The gold mining laws prevent them from taking out mining license and render it criminal for them to sell or possess native gold. They cannot own landed property, nor are new licenses to trade issued to them. Then they have to

pay a special registration fee of £3. There is a law preventing the railway authorities from issuing first or second class tickets to the Indians, a tin compartment being reserved for the native Africans and the Indians. The present Secretary of State for the Colonies, while accepting the decision arrived at by the Arbitrators in 1894-95 that the Republic was entitled to pass those anti-Indian laws has however reserved his right to make friendly representations to the Transvaal Government from time to time. My Committee venture to think that, in spite of the present strained relations between the British Colonial Office and the Boer Government at Pretoria, if the representations made by the former to the latter be sufficiently emphatic, then the persecuted Indians may yet look forward to, at any rate, a partial redress of their grievances. In any case my Committee beg leave to point out that it would hardly be consistent with the prestige and position of England in the European concert to consent to any invidious political distinctions being made by the Boer Government as between the British and British Indian subject. They understand that the Boer Government contemplate the early adoption of the necessary steps to compel the Indian traders to close their places of business in the townships and to reside in fixed locations. There are hundreds of Indian stores in the Transvaal, and if their proprietors are compelled to shut them up and to trade and reside in certain locations, then they will be simply ruined. These locations, according to the description given of them by the British Agent, are hardly fit habitations for human beings. Referring to the removal of the Malays in Pretoria to the Transvaal locations, the British Agent writes as follows:—

To be forced into a small location on a spot used as a place to deposit the refuse of the town without any water except the polluted soakage in the gully between the location and the town must inevitably result in malignant fevers and other diseases breaking out amongst them, whereby their lives and the health of the community in town will be endangered (Green Book No. 2 of 1893, page 72). Nor can the Indian traders be certain of getting any compensation for being compelled to sell off their stores, as the Arbitrator, who was called upon to pronounce his decision upon this point, has relegated the task to the High Court of the Transvaal, and the law is found to be worded ambiguously. In the Orange Free State, the Indian traders have been driven away, and they have been put to a loss of £9,000 for which no compensation has been given to them. There is a law entitled "The law to prevent the inrush of Asiatic colored persons" which prevents any Indian from remaining in the State for more than two months unless he gets permission from the President of the Republic who cannot consider the application to reside, before 30 days have elapsed after the presentation of the petition and other formalities have been gone through. An Indian can on no account hold fixed property in the State or carry on any mercantile or farming business. In the Chartered territories which are at present ruled by a British nobleman, the white settlers have submitted a petition to Government requesting them to alter the law so as to prevent the Indians from getting trade licenses. On the other hand, the British Indians in Portuguese territories in South Africa, namely, in Delagoa Bay, Beira and Mozambique, have no grievances apart from the general population. In Delagoa Bay, my Committee are informed, the authorities so respect the Indian, that they do not allow him to travel third class with the native Africans, and if he is so poor that he cannot afford the second class fare he is allowed to travel second class, under a third class ticket. In other respects, too, the lot of the British Indian in Portuguese territories in South Africa is much better than in any other part of South Africa.

In conclusion, my Committee would once more urge upon the Government of India the desirability of securing the removal, so far as it lies in its power, of the grievances of the British Indian subjects in South Africa as enumerated above. These grievances are two-fold, *viz.*, those due to the intense local prejudice against the Indian community, and the legal disabilities imposed upon that community. My Committee are aware that there can be very little, if any, direct intervention with regard to the grievances of the first kind. But they are at the same

time of the opinion that the legal disabilities placed upon the Indian settlers are serious enough to call for the immediate attention of the Government of India. They respectfully submit that, should these grievances be left unredressed, then the Government of India would have to consider the propriety of stopping emigration to South Africa, except the Portuguese territories as was done in 1888 with reference to the French Colonies.

No. 23, dated Natal, the 26th February 1897.

From—THE HONOURABLE SIR WALTER HELY HUTCHINSON, K.C.M.G.,
Governor of Natal,

To—Her Majesty's Secretary of State for the Colonies.

I forward, for your consideration, a copy of a draft Bill "to place certain restrictions upon immigration", which ministers propose to introduce into the next Parliament.

2. The Bill purports to prevent the introduction into Natal of "undesirable immigrants", and has, I understand, been drawn on the lines of the United States legislation on that subject.

3. The most important clauses of the Bill are the second and third. The second clause defines the classes of persons to whom the Act, if passed, will not apply; the third clause defines the term "prohibited immigrant".

4. Her Majesty's land and sea forces, "the officers and crew of any ship of war of any Government", any person duly accredited to Natal by the Imperial or any other Government, persons specially exempted by a writing under the hand of the Colonial Secretary, persons holding certificates in the form prescribed by the Act, and "persons for whose immigration into Natal provision is made by law (*i.e.*, Indian immigrants or Europeans introduced into Natal under Law 21 of 1876) are exempted from the operation of the Law.

5. "Prohibited immigrants" are (besides idiots, insane persons, persons suffering from loathsome or dangerous contagious diseases, persons who have been convicted of felony or other infamous crime or misdemeanour involving moral turpitude, and prostitutes) persons who when asked to do so by an officer appointed under the Act "fail to write out and sign in the characters of any language of Europe" an application in a prescribed form, and persons who are unable to satisfy an officer appointed under the Act that they possess available means of subsistence to the value of not less than £25, and anyone whose passage has been paid for him in whole or in part.

6. The immigration of "prohibited immigrants" is forbidden, under penalties; they are placed (clause 9) under disabilities and the Government may convey them (clause 10) to a port in or near their native country, supplying them, if destitute, with a sufficient sum of money to maintain them for a month after disembarkation.

7. The main subject of the proposed Law is to prevent Natal from being flooded by undesirable immigrants from India; but it is also intended to protect the colony against the influx of undesirable characters from the South African Republic. Immigration "both by land and sea" of prohibited immigrants is forbidden.

8. The Bill does not contain a suspending clause. Should the Bill be passed, Ministers are anxious to bring it into effect without delay; and I therefore submit it for your instructions, under section VIII of the Royal Instructions of 20th July 1893. I am not quite certain that the Bill may not come under sub-section 5 of section VIII of the Instructions, and, in any case, it appears to me that sub-section (a) of clause 3 of the Bill may be held to bring it under sub-section 8 of section VIII of the Instructions.

9. I shall inform Ministers that I cannot assent to the Bill, as it stands, without instructions from you, unless a suspending clause be inserted in it; and that I have applied to you for instructions on the subject.

MC166EHL.

BILL.

(Proposed to be introduced into Parliament by His Excellency the Governor.)

“TO PLACE CERTAIN RESTRICTIONS ON IMMIGRATION.”

Whereas it is desirable to place certain restrictions on immigration :

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

1. This Act may be known as “The Immigration Restriction Act, 1897.”
2. This Act shall not apply to :—
 - (a) Any person possessed of a certificate in the form set out in the Schedule A to this Act annexed and signed by the Colonial Secretary or the Agent General of Natal or any officer appointed by the Natal Government for the purposes of this Act whether in or out of Natal.
 - (b) Any person of a class for whose immigration into Natal provision is made by law or by a scheme approved by Government.
 - (c) Any person specially exempted from the operation of this Act by a writing under the hand of the Colonial Secretary.
 - (d) Her Majesty's land and sea forces.
 - (e) The officers and crew of any ship of war of any Government.
 - (f) Any person duly accredited to Natal by or under the authority of the Imperial or any other Government.
3. The immigration into Natal by land or sea of any person of any of the classes defined in the following sub-sections, hereinafter called “prohibited immigrant,” is prohibited, namely :—
 - (a) Any person who when asked to do so by an officer appointed under this Act shall fail to himself write out and sign in the characters of any language of Europe an application to the Colonial Secretary in the form set out in Schedule B of this Act.
 - (b) Any person who is unable to satisfy an officer appointed under this Act that he is possessed of available means of subsistence of his own to the value of not less than twenty-five pounds.
 - (c) Any person who has been assisted in any way by any other person in respect of his passage to Natal.
 - (d) Any idiot or insane person.
 - (e) Any person suffering from a loathsome or a dangerous contagious disease.
 - (f) Any person who, not having received a free pardon, has been convicted of a felony or other infamous crime or misdemeanour involving moral turpitude, and not being a mere political offence.
 - (g) Any prostitute, and any person living on the prostitution of others.
4. Any prohibited immigrant making his way into or being found within Natal in disregard of the provisions of this Act shall be deemed to have contravened this Act and shall be liable, in addition to any other penalty, to be removed from the colony, and upon conviction may be sentenced to imprisonment not exceeding six months without hard labour, provided such imprisonment shall cease for the purpose of deportation of the offender, or if he shall find two approved sureties, each in the sum of £50, that he will leave the colony within one month.
5. Any person appearing to be a prohibited immigrant within the meaning of section 3 of this Act and not coming within the meaning of any of the sub-sections (d), (e), (f), (g) of said section 3 shall be allowed to enter Natal upon the following conditions :—
 - (a) He shall before landing deposit with an officer appointed under this Act the sum of £100,

- (b) If such person shall, within one week after entering Natal, obtain from the Colonial Secretary or a Magistrate a certificate that he does not come within the prohibition of this Act, the deposit of £100 shall be returned.
- (c) If such person shall fail to obtain such certificate within one week, the deposit of £100 shall be forfeited, and he may be treated as a prohibited immigrant.

Provided that in the case of any person entering Natal under this section no liability shall attach to the vessel or to the owners of the vessel in which he may have arrived at any port of the colony.

6. Any person who shall satisfy an officer appointed under this Act that he has been formerly domiciled in Natal, and that he does not come within the meaning of any of the sub-sections (d), (e), (f), (g) of section 3 of this Act, shall not be regarded as a prohibited immigrant.

7. The wife and any minor child of a person not being a prohibited immigrant shall be free from any prohibition imposed by this Act.

8. The master and owners of any vessel from which any prohibited immigrant may be landed shall be jointly and severally liable to a penalty of not less than One Hundred Pounds Sterling, and such penalty may be increased up to £5,000 by sums of £100 each for every five immigrants after the first five, and the vessel may be made executable by a decree of the Supreme Court in satisfaction of any such penalty, and the vessel may be refused a clearance outwards until such penalty has been paid, and until provision has been made by the Master to the satisfaction of an officer appointed under this Act for the conveyance out of the colony of each prohibited immigrant who may have been so landed.

9. A prohibited immigrant shall not be entitled to a license to carry on any trade or calling, nor shall he be entitled to acquire land in leasehold, freehold, or otherwise, or to exercise the franchise, or to be enrolled as a burgess of any borough or on the roll of any township, and any license or franchise right which may have been acquired in contravention of this Act shall be void.

10. Any officer thereto authorised by Government may make a contract with the master, owners, or agent of any vessel for the conveyance of any prohibited immigrant found in Natal to a port in or near to such immigrant's country of birth, and any such immigrant with his personal effects may be placed by a police officer on board such vessel, and shall in such case, if destitute, be supplied with a sufficient sum of money to enable him to live for one month according to his circumstances in life after disembarking from such vessel.

11. Any person who shall in any way assist any prohibited immigrant to contravene the provisions of this Act shall be deemed to have contravened this Act.

12. Any person who shall assist the entry into Natal of any prohibited immigrant of the class (g) in section 3 of this Act shall be deemed to have contravened this Act, and shall upon conviction be liable to be imprisoned with hard labour for any period not exceeding twelve months.

13. Any person who shall be instrumental in bringing into Natal an idiot or insane person without a written or printed authority, signed by the Colonial Secretary, shall be deemed to have contravened this Act, and in addition to any other penalty shall be liable for the cost of the maintenance of such idiot or insane person whilst in the colony.

14. Any police officer or other officer appointed therefor under this Act, may, subject to the provisions of section 5, prevent any prohibited immigrant from entering Natal by land or sea.

15. The Governor may from time to time appoint, and at pleasure remove officers for the purpose of carrying out the provisions of this Act, and may define the duties of such officers, and such officers shall carry out the instructions from time to time given to them by the Ministerial head of their department.

16. The Governor in Council may, from time to time, make, amend, and repeal rules and regulations for the better carrying out of the provisions of this Act.

17. The penalty for any contravention of this Act, or of any rule or regulation passed thereunder where no higher penalty is expressly imposed, shall not exceed a fine of £50, or imprisonment, with or without hard labour, until payment of such fine or in addition to such fine, but not exceeding in any case three months.

18. All contraventions of this Act or of rules or regulations thereunder and suits for penalties or other moneys not exceeding £100 shall be cognizable by Magistrates.

SCHEDULE A.

Colony of Natal.

This is to certify that

of

aged

by trade or calling a

is a fit and proper person to be received as an immigrant in Natal.

Dated at _____ this

day of _____

(Signature)

SCHEDULE B.

To the Colonial Secretary.

Sir,

I claim to be exempt from the operation of Act No. _____, 1897.

My full name is _____

My place of abode for the past twelve months has been _____

My business or calling is _____

I was born at _____

in the year _____

Yours, etc.

No. 24, dated Natal, the 26th February 1897.

From—THE HONOURABLE SIR WALTER HELY HUTCHINSON, K.C.M.G.,
Governor of Natal,

To—Her Majesty's Secretary of State for the Colonies.

I forward a draft of a Bill "to amend the Laws relating to Quarantine," which Ministers propose to introduce into the next Parliament. The Bill provides for the rejection of passengers from an infected place.

A similar provision exists in the Laws of Malta.

BILL.

(Proposed to be introduced into Parliament by His Excellency the Governor.)

"To amend the laws relating to Quarantine."

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

1. Whenever any place has been proclaimed, under Law 4, 1882, as an infected place, the Governor in Council may, by a further Proclamation, order that no person shall be landed from any ship coming from such place.

2. Any such order shall also extend to a ship having on board passengers who have come from a proclaimed place, notwithstanding that they may have embarked at some other place, or that the ship has not touched at the proclaimed place.

3. Any such order as aforesaid shall be in force until revoked by a further Proclamation.

4. Any person who shall land in contravention of this Act, shall, if practicable, be at once returned to the ship in which he came to Natal; and the master of such ship shall be bound to receive such person on board, and to convey him from the colony at the expense of the owners of the ship.

5. The master and owners of any vessel from which any person shall be landed in contravention of this Act shall be liable to a penalty of not less than One Hundred Pounds Sterling for each person so landed, and the vessel may be made executable by a decree of the Supreme Court in satisfaction of any such penalty; and the vessel may be refused a clearance outwards until such penalty has been paid and until provision has been made by the master for the conveyance out of the colony of each person who may have been so landed.

6. This Act and Laws 3 of 1858 and 4 of 1882 shall be read together as one Act.

No. 26, dated Natal, the 26th February 1897.

From—THE HONOURABLE SIR WALTER HELY HUTCHINSON, K.C.M.G.,
Governor of Natal,

To—Her Majesty's Secretary of State for the Colonies.

I forward the draft of a Bill "to amend the Law relating to licenses to wholesale and retail dealers," which Ministers propose to introduce into the next Parliament.

2. The Bill provides for the appointment of Licensing Officers, who will have a discretion to issue or refuse to issue a wholesale or retail license. The Licensing Officer's decision will not be liable to be reviewed, reversed, or altered by any Court of Law; but there will be an appeal in cases of licenses in Towns, to the Town Council, and in cases of country licenses, to the Colonial Secretary.

3. Clause 5 of the Bill contains what amounts to an educational test. Law 47 of 1887, section 180, contemplates that traders' accounts should be kept in the English language. I am informed that the experience of trustees in bankruptcy is, that a certain class of traders have kept their books in a foreign language, and that the books even when translated are unintelligible to Accountants, and render the detection of fraudulent practices impossible.

4. The present Bill forbids the issue of a license to any person who fails to show the Licensing Officer that he is able to fulfil the condition of keeping accounts in English.

5. The remaining provisions of the Bill do not call for any observations from me.

6. Should the Bill pass, I propose to assent to it, unless I receive instructions from you to the contrary.

BILL.

(Proposed to be introduced into Parliament by His Excellency the Governor).

"TO AMEND THE LAW RELATING TO LICENSES TO WHOLESALE AND RETAIL DEALERS."

WHEREAS it is expedient to regulate and control the issue of Licenses to wholesale and retail dealers not being Licenses under Act 38 of 1896:

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

1. Any Town Council or Town Board may, from time to time, appoint an officer to issue the Annual Licenses (not being Licenses under Act 38, 1896, required in the Borough or Township by wholesale or retail dealers).

2. Any person appointed to issue licenses for wholesale or retail dealers under Law 38, 1884, or any like Stamp Act, or under this Act, shall be deemed to be a " Licensing Officer " within the meaning of this Act.
3. A Licensing Officer shall have a discretion to issue or refuse a wholesale or retail license not being a license under Act 38, 1896, and a decision come to by a Licensing Officer as to the issue or refusal of a license shall not be liable to review, reversal, or alteration by any Court of Law, or otherwise than is in the next section provided.
4. There shall be a right of appeal from the decision of a Licensing Officer to the Colonial Secretary as regards licenses issuable under Law 38, 1884, or other similar Act, and in other cases to the Town Council or Town Board, according to the circumstances, and the Colonial Secretary, or as the case may be, the Town Council or the Town Board, may direct that the license, the subject of the appeal, shall be issued or cancelled.
5. No license shall be issued to any person who, when thereto required, fails to show to the satisfaction of the Licensing Officer that he is able to fulfil the conditions of the Insolvency Law 47, 1887, section 180, sub-section (a), as regards the keeping of such books of account in the English language as are usual and proper in the business to be carried on.
6. No license shall be issued in respect of premises which are unfit for the intended trade or unprovided with proper and sufficient sanitary arrangements, or not affording sufficient and suitable accommodation for salesmen, clerks and servants, apart from the stores or rooms in which goods and wares may be kept.
7. Any person who shall carry on any wholesale or retail trade or business, or who shall allow licensed premises to be in a condition which would disentitle him to a license, shall be deemed to have contravened this Act, and shall be liable to a penalty of £20 for each offence to be recovered by any Licensing Officer in the Court of the Magistrate.

No. 28, dated Colonial Office, Downing Street, the 10th April 1897.

From—THE RIGHT HONOURABLE J. CHAMBERLAIN, M.P., Her Majesty's Secretary of State for the Colonies,

To—The Honourable the Governor of Natal.

I have the honour to acknowledge the receipt of your despatches noted below transmitting the drafts of three Bills prepared by your Ministers for introduction into the present Session of the Natal Parliament, and entitle respectively: " A Bill to place certain restrictions on Immigration "; " A Bill to amend the Laws relating to Quarantine "; and " A Bill to amend the Law relating to Licenses to Wholesale and Retail Dealers ":

No. 23, dated 26th February.

No. 24, dated 26th February.

No. 26, dated 26th February.

From your previous despatches of recent date, I am aware that popular feeling in the colony has been considerably excited in view of the possibility of a large influx of those who are considered to be undesirable settlers, and also that the present Premier had pledged himself to introduce legislative measures directed against such immigration.

While I regret that provisions of such an exceptional character as are contained in these Bills should be considered necessary by your Government, I do not regard it as incumbent upon me to give you instructions to reserve these Bills for Her Majesty's pleasure.

I therefore informed you by telegraph on the 3rd instant that you may assent to them, if passed.

No. J. & P. 753-1897—240, dated India Office, London, the 21st July 1897.

From—SIR A. GODLEY, K.C.B., Under-Secretary of State for India,
To—The Under Secretary of State for the Colonies.

I am desired by Lord George Hamilton to acknowledge the receipt of Mr. Wingfield's letter of the 15th April, enclosing copies of three Bills introduced into the Natal Legislature and of a De-patch, from which it appears that, while regretting that provisions of such an exceptional character should be found necessary, Mr. Chamberlain has authorised the Governor to assent to them, if passed. Mr. Graham's subsequent letter of the 10th May has conveyed the further intelligence that two of the three Bills in question, namely, those relating to immigration and quarantine, have been passed and gazetted.

2. As regards the Quarantine Act, Lord George Hamilton has no observation to offer. It is assumed that any proclamation which may be issued, declaring Bombay or any other Indian port to be an infected place, will be revoked as soon as it can be shown that all danger of infection has ceased.

3. But against certain portions of the other enactments, I am to say that the Secretary of State for India in Council feels bound to enter a strong protest. In the letter of the 14th January last, cited in Mr. Wingfield's letter under reply, the Secretary of State for the Colonies declared himself to be very much opposed to any legislation specially directed against persons of a particular race or colour, but he intimated that he would not have the same reasons for objecting to any local measure imposing restrictions upon the immigration of indigent or ignorant persons, on the ground either that they were liable to become a charge upon the colony, or that they were being induced to emigrate without sufficient knowledge. As the Secretary of State for India was in agreement with these views, he did not then trouble Mr. Chamberlain with any exposition of his opinion as to the character of the legislation which might be accepted; for he did not anticipate that the Colonial Office would assent, without again consulting the India Office, to the passing of Bills which do affect the status and interest of particular races.

4. There can be no doubt that both the Immigration Act which has now been passed, and the Bill to amend the law relating to licenses, are primarily, and almost exclusively, aimed at British Indians. There are more than 40,000 such persons resident in Natal, and it has never been contended that there is danger of their becoming a burden on the Colonial revenues, nor has a single individual among them ever complained that the colony has hitherto offered less advantage than he was led to expect. Setting aside those still under indenture, upwards of 30,000 free Indians are settled in Natal. Some of these proceeded thither at their own cost in the exercise of their natural rights as British subjects, and in the full assurance that they would have that protection from Her Majesty's Government to which their status entitles them. Others were recruited at the instance of the Natal Government and under the official control of the Indian Governments, upon certain conditions which left them perfectly free to settle in Natal on their own account after they had served on indenture for five years. Both classes have acquired property and established business connections in the colony, and the reports bear constant witness to their prosperity, industry, and law-abiding character.

5. His Lordship must emphatically urge that as regards these individuals who have settled in Natal in the manner described and in reliance on the laws of that colony, no enactment should be passed which adversely affects their status or diminishes their political rights.

6. With this view, he desires me to call attention to sections 9 and 10 of the Immigration Restriction Act, 1897, which, if read with the definition of "prohibited immigrant" in section 3, go far beyond this, and if worked with any stringency would effect a violent confiscation of vested interest. Any person not possessing the qualifications prescribed in sub-sections (a) and (b) of section 3 might become a prohibited immigrant, and however long he may have been established in the colony, however extensive his business there may have become, he would be debarred by section 9 from carrying on any trade or calling, he could not acquire any interest in real property, nor could he exercise the franchise; while under section 10 he would be liable to summary deportation. The provisions of section 6 have not been overlooked, but no Indian could claim exemption under that clause

unless he has acquired a legal domicile in Natal and abandoned all intention of returning to his native country.

7. Lord George Hamilton does not suggest that the authorities in Natal would be disposed to exercise the powers entrusted to them in a way which is obviously unjust, but the history of the anti-Indian movement in the Transvaal shows how dangerous it is to rely on the forbearance of an executive upon whom pressure by agitation can be brought to bear. If, therefore, there is any reason for apprehending that the Act is capable of being applied retrospectively, so as to bring Her Majesty's British Indian subjects, already settled in Natal, under the operation of sections 9 and 10, it becomes the duty of the Secretary of State for India to press upon Mr. Chamberlain his opinion that the Act ought to be immediately amended, so as to make it clear that none of its provisions affect persons already in Natal. Even the corresponding legislation in Australia excludes from its operation persons already established in the country.

8. As regards the Bill relating to licenses to wholesale and retail dealers the objections are similar. It seems unjust to close an established business because its books are not kept in English. It should at all events be made clear that the trader himself need not be able to keep such books, and that the law will be satisfied if he provides a proper agency. His Lordship observes, moreover, that an Indian trader will have no right of appeal to any Court of Justice, the Town Council having been constituted the final authority to which he can resort.

9. His Lordship regrets that the legislature of Natal should think it advisable to place such restrictions on immigration as will have the effect of excluding many of Her Majesty's subjects; but he recognizes, nevertheless, that it is difficult to dispute the right of a self-governing colony to lay down reasonable restrictions as to admission to residence; and, provided that the law is applied equally to immigrants from all countries, and is not based on differences of race or colour, he does not propose to make any special protest against their action.

10. But as regards natives of India who have already been allowed to settle in Natal, or who may hereafter under the new immigration laws be permitted to do so, I am to say that Lord George Hamilton considers himself entitled to demand for them fair and equitable treatment, involving complete equality before the law; and, while he claims for them no privileges, he feels strongly that they ought not in any respect to be placed at a disadvantage as compared with the other inhabitants of the colony.

11. From a memorial which has been separately transmitted to the Colonial Office, as well as from other sources of information, it is plain that the whole subject is attracting much attention in India, where the general policy and pledges of Her Majesty's Government with regard to reciprocity of civil rights in all parts of the British Empire are being widely discussed and where Her Majesty's colonial subjects have no reason whatever to complain of unjust or unequal treatment. It is unnecessary for His Lordship to remind the Secretary of State for the Colonies that the Government of India have the power to stop at any moment the supply of indentured labour to any specified colony, but it may be well to state that this power of prohibition will undoubtedly be exercised in the future, as it has been in the past, whenever the Government of India have reason to believe that Indian immigrants are unfairly or oppressively dealt with.

No. 28 OF 1897.

ACT.

"To protect uncovenanted Indians from arrest in mistake for absconding indentured Indian servants".

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal as follows:—

1. *Uncovenanted Indians may obtain passes from Magistrate or Protector.*—Any Indian who has not been liable to service under indenture in terms of Law No. 25, 1891, or any Act amending the same, may on application through the Magistrate of his Division to the Protector of Indian

Immigrants, or to the Protector of Indian Immigrants direct, obtain a pass in the form provided in the Schedule to this Act, on satisfying the Magistrate, or the Protector of Indian Immigrants with the information required for the purposes of such pass, and upon providing a shilling stamp to be affixed to the pass.

2. *Exemption from arrest on production of pass.*—The possession and production of a pass under this Act shall be *prima facie* evidence of the status of the bearer of such pass, and of his exemption from liability to arrest under section No. 31 of Law No. 25, 1891.
3. *Duration of passes.*—No such pass shall be of force after the year in which it was issued, unless in each succeeding year it is endorsed by the Protector of Indian Immigrants, to whom it may be sent for that purpose through the Magistrate.
4. *No action for damages by Indian arrested without pass.*—If the Protector of Indian Immigrants, or any Magistrate, or Justice of the Peace, or any Police Constable, shall stop or arrest any Indian not carrying a pass granted under this Act, the Indian so stopped or arrested shall not be entitled to make any claim for wrongful arrest or detention merely on the ground that he was not an indentured Indian.
5. *Offences.*—Any person who obtains a pass by false representations or who allows any fraudulent use to be made of his pass, shall be guilty of an offence against “The Fraudulent Passes Act, 1895”.

SCHEDULE.

PASS UNDER ACT No. 28, 1897.

Counterpart of Pass.	Pass.
Name	Magisterial Division of
Sex	Name of Indian holding this Pass.
Native of	Sex
Father's Name	Native of (County and Village)
Mother's Name	Father's Name
Caste	Mother's Name
Age	Caste
Height	Age
Complexion	Height
Marks	Complexion
If married, to whom	Marks
Status	If married, to whom
Residence	Status
Employment	Residence
	Employment or means of subsistence
Date	Dated at
	of
	this
	189
	day

Protector of Indian Immigrants.

Given at Government House, Natal, this 29th day of May 1897.

By command of His Excellency the Governor,

THOS. K. MURRAY,

Colonial Secretary.

STATEMENT UPON ACT.

“To protect uncovenanted Indians from arrest in mistake for absconding indentured Indian servants”.

THIS Act was introduced by the Government to obviate certain difficulties which have arisen in connection with the Indian Immigration Law No. 25, 1891.

In order to check the practice of desertion which had become common among indentured Indian servants, that Law made such persons liable to arrest if found away from their place of employment.

But the want of any means for distinguishing between indentured Indian servants and Indians not in such service led to mistaken arrests.

In a recent case, the Supreme Court held that an Indian arrested in such circumstances could not recover damages for wrongful arrest.

The Act enables Indians not liable to service under indentures to obtain a pass requiring a shilling stamp, which will protect them from such arrest.

The Act is thus one for giving relief, and though its terms restrict the right of relief of those Indians to whom it refers, yet as this is merely incidental to the relief given, I have not considered it necessary to advise that the operation of the Act should wait for the signification of Her Majesty's pleasure.

I am of opinion that the Royal Assent may properly be given to this Act.

HARRY ESCOMBE,
Attorney-General.

NATAL;
The 20th May 1897.

NO. 79 OF 1897.

GOVERNMENT OF INDIA.

DEPARTMENT OF REVENUE AND AGRICULTURE.

EMIGRATION.

To

THE RIGHT HONOURABLE LORD GEORGE F. HAMILTON,
Her Majesty's Secretary of State for India.

Simla, the 11th November 1897.

MY LORD,

WE have the honour to acknowledge the receipt of Your Lordship's Emigration Despatch No. [* * * * *]—with which was forwarded a copy of Your Lordship's correspondence with the Colonial Office, regarding recent legislation in Natal and other colonies in connection with immigration.

2. We shall be glad if Your Lordship will in due course acquaint us with the answer of the Colonial Office to the letter No. 753-J. P., dated the 21st July 1897, addressed to it by Sir Arthur Godley, in which Your Lordship has pressed upon the Right Honourable the Secretary of State for the Colonies your opinion that the Immigration Restriction Act, 1897, of Natal ought to be immediately amended, so as to make it clear that none of its provisions affect persons already in Natal. We are entirely of Your Lordship's opinion that in respect of Natives of India who have already been allowed to settle in Natal, or who may hereafter under the new immigration laws be permitted to do so, the Government of India are entitled to demand for them fair and equitable treatment, involving complete equality before the law. Our Honourable Colleague Sir J. Westland dissents from this conclusion.

We have the honour to be,

MY LORD,

Your Lordship's most obedient, humble Servants,

ELGIN.
G. S. WHITE.
J. WESTLAND.
M. D. CHALMERS.
E. H. H. COLLEN.
A. C. TREVOR.
C. M. RIVAZ.

Dated Downing Street, the 2nd October 1897 (Confidential).

From—EDWARD WINGFIELD, Esq., Under Secretary of State for the Colonies,

To—The Under Secretary of State for India.

I am directed by the Secretary of State for the Colonies to acknowledge the receipt of your letter of the 21st of July (J. P. 753) on the subject of recent legislation in Natal affecting Indian immigrants.

2. In reply I am to transmit to you, for the information of Lord George Hamilton, a copy of correspondence noted below with the Premier of Natal (the Right Honourable E. Escombe) on the subject:—

Colonial Office, to Mr. Escombe, 28th July.

Mr. Escombe, to Colonial Office, 29th July.

3. I am also to transmit two memorials which have been received through the Governor of Natal from Indians in the Colony, together with a copy of the reply which the Secretary of State proposes to send to the Governor. The Secretary of State will, however, defer doing so until he learns whether Lord George Hamilton desires to make any observations upon the terms of the reply—

Memorials in original (to be returned).

Secretary of State, to Governor of Natal, October 7.

4. Adverting to the remark in your letter of the 21st of July that Lord George Hamilton did “not anticipate that the Colonial Office would assent, without again consulting the India Office, to the passing of Bills which do affect the status and interest of particular races”, I am to point out that the Acts now in question do not affect British Indians in respect of their race or colour; although the effects of the language test as applied to Indian immigrants would, doubtless, be to exclude many of them.

5. Some form of legislation in restriction of Indian immigration was inevitable in Natal; and the Secretary of State was of opinion that it was desirable that a law should be passed in that Colony in a form which was not open to the objection that it prescribed persons of a particular race or colour, not only in order to prevent legislation in Natal itself of a more obnoxious kind, but also because the Natal Law might be used in suggesting modifications of the Australian and New Zealand Bills dealing with the same subject.

6. I am to observe, moreover, that the language test is one which intelligent Indian immigrants will probably have no great difficulty in satisfying.

No. 16007-97, dated Downing Street, the 28th July 1897.

From—EDWARD WINGFIELD, Esq., Under Secretary of State for the Colonies,

To—The RIGHT HON'BLE HARRY ESCOMBE.

I am directed by Mr. Secretary Chamberlain to transmit to you a copy of an extract from a letter from the India Office on the subject of the Acts No. 1 and No. 18 passed during the recent session of the Natal Parliament, copies of which are enclosed for convenience of reference—

Natal Acts, 1 and 18 of 1897,

Mr. Chamberlain would be glad to receive your remarks upon the two questions raised by Lord George Hamilton as to whether the Immigration Restriction Act will affect persons already settled in the Colony, and so as to whether the condition of section 7 of the Act relating to Traders' Licenses will be satisfied if the trader employs a clerk or agent capable of keeping his accounts in English.

Dated Westminster, S. W., the 29th July 1897.

From—The RIGHT HON'BLE HARRY ESCOMBE,

To—The Under Secretary of State for the Colonies.

I beg to acknowledge the receipt of your letter of the 28th instant, with enclosures therein referred to, asking for my remarks upon two questions raised by

Lord George Hamilton as to whether the Immigration Restriction Act will affect persons already settled in the Colony, and as to whether the condition of section 7 of the Act relating to traders' licenses (returned herewith) will be satisfied if the trader employs a clerk or agent capable of keeping his accounts in English.

According to my reading of the above mentioned Acts Nos. 1 and 18 of 1897, I am of opinion that the answer to the first question is in the negative, and the answer to the second question is in the affirmative.

Draft.

I have the honour to acknowledge the receipt of your Despatches No. 62 of the 10th of April and No. 132 of the 9th of July transmitting two memorials, dated the 15th of March and the 2nd of July, respectively, addressed to me on behalf of the Indian community in Natal on the subject of recent legislation in the Colony.

2. I request that you will inform the memorialists that I have carefully considered both their memorials; but that, while Her Majesty's Government desire to uphold the rights of British Indian subjects, they cannot disregard the wish of British Colonists to prevent such an influx of Asiatics as might result in their becoming the predominant factor in the community.

3. You will point out to the memorialists, that the Immigration Restriction Act, the most important of those which they complain of, and which they ask that Her Majesty may be advised to disallow, does not affect British Indians as such, although it originated from the strong feeling which prevailed in Natal against an apprehended extensive immigration from India.

4. This Act prohibits the immigration of certain classes of persons, whom the Colonial legislature considers to be undesirable inhabitants—among others those who are not conversant with any European language. This disqualification will no doubt affect a large number of British Indians. I do not, however, consider it so unreasonable, in the circumstances of Natal, as to justify me in advising Her Majesty to exercise her powers of disallowance with regard to the Act.

5. The Quarantine Act does not apply exclusively to ships or persons coming from Indian ports, and while I regret the enactment of a measure so little in accordance with the principles now generally adopted in legislation on that subject, I cannot advise the disallowance of the Act.

6. With respect to the Act relating to Dealers Licenses the memorialists object—

- (1) to the provision making final the decision of the Town Council, Town Board, or Licensing Board, as to the issue or refusal of a license;
- (2) to that which requires an applicant for a license to shew that he can fulfil the condition of the Insolvency Law of 1887 which requires a tradesman's books to be kept in the English language.

7. The former of these provisions is a matter in which I could not properly advise interference with the decision of the Colonial Legislature, and the latter does not appear to me to be unjust to British Indians, if, as I understand will be the case, the condition is satisfied by the books being kept by a clerk or agent.

8. With respect to the Act to protect uncovenanted Indians, I have suggested that section 4, of which the memorialists complain, should be amended so as to limit it to cases of arrest on reasonable suspicion of being an absconding indentured immigrant.

9. I request that you will explain to the memorialists that, for the reasons which I have mentioned, I regret that I am unable to comply with their prayer that I should advise Her Majesty to exercise her powers of disallowance with respect to the Acts mentioned above.

No. 1978 J. & P., dated India Office, London, the 2nd November 1897.

From—SIR HORACE WALPOLE, K.C.B., Under Secretary of State for India,
To—The Under Secretary of State for the Colonies.

I am directed by the Secretary of State for India in Council to acknowledge the receipt of Mr. Wingfield's letter of the 2nd ultimo, No. 16805, with its enclosures,

relating to the Acts recently passed by the Natal legislature with the manifest object of excluding Indians from the Colony. One of the enclosures is a draft of the reply which Mr. Chamberlain proposes to send, subject to any observations which Lord George Hamilton may wish to make to two memorials (herewith returned) received through the Governor from the Indians residing in Natal.

2. As regards those parts of the draft reply which relate to the Quarantine Act and the Act to protect unindentured Indians from arrest, I am to say that Lord George Hamilton has no further remarks to offer. He still assumes that the proclamations declaring Indian ports to be infected by plague will be revoked as soon as all danger of infection has been removed.

3. As regards the Immigration Restriction Act, I am to say that Lord George Hamilton is glad to have the opinion of Mr. Escombe that it is not intended to affect persons who had immigrated before its enactment. Its provisions have now been more fully considered and His Lordship is advised that Mr. Escombe's interpretation of it is correct. On the assumption that it is also the interpretation which will be adopted and applied by the licensing and other authorities of the Colony, the Secretary of State for India does not propose to continue this part of the discussion.

4. There is, however, one limited class of cases in which the Act might operate very harshly and in a manner which was probably not intended. As pointed out in my previous letter on the subject the word "domiciled" is liable to be construed in its strict legal sense, and an Indian who had resided in Natal, and even acquired property or established a business there, and who has occasion to re-visit his native country for a temporary purpose, would probably be held to come under the purview of the Act and be refused re-admittance to the Colony, unless he could show that he had been legally domiciled there. This injustice would be readily removed by substituting the word 'resident' for 'domiciled' in section 6, and it is hoped that Mr. Chamberlain will see fit to require some such amendment to be made.

5. Next, with regard to the Trader's Licensing Act, I am to say that, while Mr. Escombe's interpretation that the condition of section 7 will be held to be satisfied if the trader employs a clerk or agent capable of keeping his accounts in English, diminishes the hardships to the well-to-do trader; it will not assist the class on whose account the Secretary of State for India is particularly apprehensive, namely, the petty trader who cannot afford to provide any skilled agency. This Act, it is observed, contains no saving clause in favour of persons already resident in the Colony, and Lord George Hamilton trusts that the Secretary of State for the Colonies will point out the strong reasons which exist for amending it.

A law which requires a license to be taken out for carrying on any wholesale or retail trade of whatever descriptions and leaves it in the absolute discretion of one or two authorities to grant or refuse such license as they think fit, unfettered by any rule or principle, is, he believes, without precedent.

Such a law would obviously be open under any circumstances to grave abuse, and the danger of its abuse is inevitably increased when it is liable to be used only against one section of the population, and when the final decision on any question arising under it is entrusted to a municipality or other local body.

6. It may be found impracticable to resist the passing of such a law against persons who immigrate into colony after it has been passed, and it may be argued that those who immigrate after it is passed do so with their eyes open. But Lord George Hamilton is convinced that those who are already settled in the Colony should be exempted from it, and that if, on sanitary grounds of the nature referred to in section 8 or for any other like reasons, a law is required for them, the grounds on which licenses may be refused to them should be specified in a separate enactment.

No. 23735—97, dated Downing Street, the 20th November 1897.

From—F. M. GRAHAM, Esq., Under Secretary of State for the Colonies,
To—The Under Secretary of State for India.

I am directed by Mr. Secretary Chamberlain to acknowledge the receipt of your letter of the 2nd instant relating to the three Acts recently passed by the
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Natal Legislature by which the immigration of Indians into that Colony is liable to be restricted. I am to transmit to you, to be laid before Lord George Hamilton, a copy of a despatch (To Governor, Natal, No. 101, 12th November 1897) which has been communicated to the Governor of Natal and which embodies the views expressed in your letter under acknowledgment with regard to the Quarantine Act and the Immigration Restriction Act.

As regards the Dealers' Licenses Act, Mr. Chamberlain desires me to point out that as the law of the Colony by the Insolvency Act No. 47 of 1887 already requires tradesmen to keep their books in the English language, it is difficult to object to a provision which makes ability to conform to the provisions of the law of 1887 a condition of receiving a license.

Mr. Chamberlain has not therefore felt himself able to act upon Lord George Hamilton's proposal that an amendment of the Act should be pressed for to prevent Indian traders already in the Colony at the time of the passing of the Act being brought under section 7.

Mr. Chamberlain trusts that the provisions of the Act will not be harshly enforced to the injury of those already settled in the Colony. But I am to add that a copy of the correspondence is being communicated to the Governor confidentially for the information of his Ministers, so that they may be aware that it is understood by Her Majesty's Government that vested interests will be respected.

No. 101, dated Downing Street, the 12th November 1897.

From—The RIGHT HON'BLE JOSEPH CHAMBERLAIN, M.P.,

To—The HON'BLE SIR W. HELY HUTCHINSON, G.C.M.G.

With reference to my despatches No. 99 and No. 100 of this date, I have the honour to request that you will inform your Ministers that while I desire to express my satisfaction that this legislation is couched in general terms and does not place any special stigma upon any class of Her Majesty's subjects, I still regret the necessity for its enactment.

2. The signification of Her Majesty's pleasure with regard to the three Acts dealing with the restriction of alien Immigration, Quarantine, and Dealer's licenses has been delayed owing to correspondence which has been passing respecting them between this Department and the India Office with reference to the interests of Her Majesty's Indian subjects to whom these Acts may be applied.

* * * * *

4. As regards the Immigration Restriction Act, I understand that the interpretation of sections 9 and 10, which will be adopted and applied by the licensing and other authorities of the Colony, will leave unaffected the vested rights of those persons who had immigrated before its enactment, there is however one limited class of cases in which the Act might operate very harshly and in a manner which I presume was not intended.

5. The word "domiciled" being liable to be construed in its strict legal sense, an Indian who had resided in Natal and even acquired property or established a business there, and who has occasion to re-visit his native country for a temporary purpose, might be held to come under the provisions of the Act and be refused readmittance to the Colony, unless he could shew that he had been legally domiciled there. All doubt on the subject would be removed by substituting the word "resident" for "domiciled" in section 6, and I should be glad if your Ministers would procure an amendment of the law in this respect.

Telegram, dated Pietermaritzburg, the 8th January 1897.

From—Governor of Natal, Pietermaritzburg,

To—Viceroy, Calcutta.

Emigration Agent for Natal at Calcutta calls attention to recruiting of emigrants for Natal in manner not prescribed by law. Emigrants, he states, are being sent to Natal paying their own passages and making no specific contracts. He also

draws attention to risk of introducing plague from Bombay through importations of Indians who have not been examined and passed by properly constituted medical authorities. The grave attention of my Ministers has already been directed to the danger of introducing bubonic plague from Bombay. Very strong agitation attended by popular demonstration is going on in the Colony against the influx of free Indians into Natal. I therefore at the request of Ministers have the honour to ask if your Government can assist Ministers in coping with the situation by making use of any powers which it may possess or which it may acquire in order to arrest emigration to Natal of free Indians from Bombay or other Indian ports.

Telegram, dated Pietermaritzburg, the 14th January 1897.

From—Governor of Natal, Pietermaritzburg,

To—Viceroy, Calcutta.

With reference to my telegram of 8th January Ministers request me to inform you that on 18th December Steamers *Naderi* and *Cowland* arrived here from Bombay with 611 free Indian passengers and were quarantined. Quarantine expired 10th January. Pratique given forenoon 11th January. Agitation referred to in my telegram of 8th January had spread and become much intensified, and large and unanimous European demonstration had been organised to prevent landing. Owners hesitated to bring steamers into harbour, but they were eventually brought in on 13th January. About noon, about 5,000 people had gathered at landing-place under leadership of organizing Committee to protest against the landing of the Indians. The Attorney General, however, who as head of the Police Department had proceeded to Durban to take charge of the arrangements for landing the passengers without disturbance, addressed the crowd and persuaded them to disperse. The Indian passengers were then quietly landed without resistance. Ministers regret that in one instance violence was employed towards an individual who by his action as an agitator had made himself specially obnoxious, but was not however seriously hurt. This incident did not occur at the ordinary landing-place, but within the municipal limits of the Borough of Durban in which the Government is not responsible for the control of police arrangements. Ministers think it important that the Indian Government should be also informed that in the interests of order it is desirable that the emigration from India of free Indians to Natal should be arrested.

Telegram No. 71, dated the 16th January 1897.

From—Viceroy, Calcutta,

To—Governor of Natal, Pietermaritzburg.

Your telegrams of eighth and fourteenth. Indian law does not restrict emigration unless emigrant is already under agreement to labour, and Government of India cannot prohibit departure to any port of Indians or any other class of Her Majesty's subjects who pay their own passages and embark without specific contract. Nor could they possibly propose to their Legislature to take such power, but they are taking steps to warn intending emigrants that their landing in Natal is likely to arouse strong popular feeling. As regards bubonic plague, Government control is limited to indentured emigrants. These all embark for Natal from Calcutta or Madras, where no plague exists. In case of free emigrants sailing from Bombay, length of voyage and quarantine imposed by Natal seem to afford ample protection.

Extract from "Natal Mercury", Weekly Edition, 23rd October 1896 (page 6627).

* * * While the planter strongly maintains that Indian labour immensely benefits the Colony, he is equally at one with those who objected to the importation of the free Indian. This, says the planter, is the man doing the mischief, and from whom no real benefits is derivable, and agrees that, if possible, means should be adopted to check him. He not only competes, but fails to distribute his profits in the Colony. In connection with the free Indian imports, I may mention an important feature which came to my knowledge. Those agents who are importing these men are actually offering them as labourers to the planters,

at a less rate and at lower wages than have to be paid for those obtained through the Indian Immigration Department. Thus it will be seen that by private enterprise Indian labourers are being brought to this Colony in competition with the official department. They are offered to the planters on an agreement for a certain number of years, such agreement to be ratified before a magistrate. Of course there is no authority over such men, the Protector would have nothing to do with them, and only the common law of the Colony would affect them or their employers. It is only fair to say that, despite lower wages, the planters are looking askance at these men, but they may be secured by the inexperience. A question suggests itself in connection with these men. How will they be affected, if at all, by the new Indian Immigration law? That law provides for re-indenture, return to India, or a penalty? How are those conditions to be applied to men introduced independently, and who, as we know, are coming in boat-loads of 300 to 500? If there is no application, it is probable there will be demand for amendment of the law to cover all Indian labourers employed on estates, farms, etc. In that way the difficulty may, perhaps, be met, but the alternative may be to drive these men to enter the competing ranks of shop-keepers and small farmers. Any way, this phase of the question is a new and interesting one * * *

Dated Colonial Office, the 14th January 1897.

From—The Under Secretary of State for the Colonies,

To—The Under Secretary of State for India.

I am directed by Mr. Secretary Chamberlain to transmit to you, to be laid before Lord George Hamilton, copies of the documents noted below on the subject of the immigration of British Indians into Natal—

Mr. Mitchell, to Under Secretary of State, 9th December.

Government of Natal, to Secretary of State, 9th January.

2. Mr. Chamberlain is anxious to learn to what extent it may be possible for the Indian Government under the existing law to restrict the immigration of inhabitants of British India to Natal from Bombay and other ports in the manner desired by the Government of that Colony.

3. If a large immigration to Natal continues to take place, there is a danger that the Colonial Government will be called upon by a strong body of local opinion to adopt special legislation against British Indians as such.

4. Mr. Chamberlain is himself very much opposed to any such legislation specially directed against persons of a particular race or colour, though he would not have the same reasons for objecting to local legislation imposing restrictions upon the immigration of indigent or ignorant persons, on the ground that they were liable to become a charge upon the Colony, or that they were being induced to emigrate without sufficient knowledge.

5. He would, therefore, be glad of any observations with which Lord George Hamilton could favour him and of any suggestions which the experience of the India Office in such matters may enable him to offer for dealing with the question raised by the Natal Government.

6. I am to add that the question is one of pressing importance.

No. 751, dated Calcutta, the 9th December 1896.

From—ROBERT W. S. MITCHELL, Esq., C.M.G., Emigration Agent for Natal,

To—The Under Secretary of State for the Colonies.

I have the honour to submit, for the information of the Right Honourable the Secretary of State for the Colonies, a copy of a Despatch No. 729 of the 5th instant, to the Governor of Natal, on the subject of the introduction from Bombay of Indian emigrants as ordinary third class passengers by direct steamers plying between Bombay and that Colony.

2. It is evident from the numbers proceeding to Durban in this manner, that they cannot be all required as domestics, and it would appear from the statement

made by the writer to *The Natal Mercury* to which I have referred; that Indian emigrants are being imported into Natal, and afterwards placed under contract as ordinary labourers on the plantations.

3. Such a trade is not only opposed to the spirit of the Indian Emigration Act, but must tend to bring legitimate emigration under Government supervision into disfavour here while it accentuates the feeling of hostility manifested in the Colony by a certain section of the inhabitants.

No. 729, dated Clacutta, the 5th Decembe: 1896.

From—R. W. S. MITCHELL, Esq., C.M.G., Government Emigration Agent for Natal,

To—C. BIRD, Esq., Government Secretary, Natal.

I have the honour to submit, for the information of His Excellency the Governor, the accompanying extract from the weekly edition of *The Natal Mercury* of 23rd October last, page 6627, from which it would appear that emigrants are being recruited here for the Colony in a manner not prescribed by the Act.

2. Not long ago, I observed in one of the Colonial papers that some 550 emigrants left Bombay by steamer in September last, paying their own passages to Natal.

3. It is possible that the emigrants referred to by the writer under the head of "Sugar and Tea" above referred to, are the persons described as paying their own passages from Bombay, who are imported and employed afterwards as ordinary labourers in the Colony.

4. I have thought it proper to bring this matter to His Excellency's notice before taking any action here.

5. Should my surmise be correct, the Government of India would, I am sure, at once put a stop to this trade in the interests both of the Colony and the individual emigrant.

6. The Indian Emigration Act, XXI of 1883, as modified up to the 1st December 1890, at paragraph 6, defines—

"(1) 'Emigrate' and 'Emigration' to denote the departure by sea out of British India of a native of India under an agreement to labour for hire in some country beyond the limits of India other than the Island of Ceylon or the Straits Settlements:—

"Provided that a domestic servant when accompanying his employer, shall not be deemed to emigrate within the meaning of the above definition.

"(2) 'Emigrant' means any native of India who emigrates, or has emigrated within the meaning of the above definition, or who has been registered under this Act as an emigrant and includes any dependent of an emigrant."

It might be argued that such persons having left India without making any specific contract, do not come within the purview of the Act, but I am inclined to think the Government of India would take a much wider view of the interpretation of these clauses, otherwise they would be inoperative in such cases.

7. I need hardly mention the risk of introducing the plague from Bombay through the importation of emigrants who have not been examined and passed by properly constituted medical authorities.

P.S.—Since writing the above, I have heard that a steamer arrived lately at Durban from Bombay with 593 emigrant passengers.

Extract from "Natal Mercury" weekly edition, dated the 23rd October 1896, page 6627.

SUGAR AND TEA.

"While the planter strongly maintains that Indian labour immensely benefit^s the Colony, he is equally at one with those who object to the importation of the free Indian. This, says the planter, is the man doing the mischief, and from whom no

real benefit is derivable, and agrees that, if possible, means should be adopted to check them. He not only competes but fails to distribute his profits in the Colony. In connection with the free Indian imports, I may mention an important feature which came to my knowledge.

“Those Agents who are importing these men are actually offering them as labourers to the planters at a less rate and at lower wages than have to be paid for those obtained through the Indian Immigration Department. Thus it will be seen that by private enterprise Indian labourers are being brought to this Colony in competition with the Official Department. They are offered to the planters on an agreement for a certain number of years, such agreement to be ratified before a Magistrate. Of course there is no authority over such men, the Protector would have nothing to do with them, and only the common law of the Colony would affect them or their employers. It is only fair to say that despite lower wages, the planters are looking askance at these men, but they may be secured by the inexperienced. A question suggests itself in connection with these men—How will they be affected, if at all, by the new Indian Immigration Law? That law provides for re-indenture, return to India, or a penalty. How are those conditions to be applied to men introduced independently, and who, as we know, are coming in boat loads of 300 to 500? If there is no application, it is probable there will be demand for amendment of the law to cover all the Indian labourers employed on estates, farms, &c. In that way the difficulty may perhaps be met, but the alternative may be to drive these men to enter the competing ranks of shopkeepers and small farmers.

“Any way this phase of the question is a new and interesting one.”

No. J. & P.-321, dated India Office, London, the 15th March 1898.

From—SIR HORACE WALPOLE, Under-Secretary of State for India,

To—The Under-Secretary of State for the Colonies.

I am directed by Lord George Hamilton to acknowledge the receipt of Mr. Graham's letters of the 15th and 16th February, enclosing among other papers reports by the Attorney General of Natal on the subject of certain Acts recently passed by the Legislature of that Colony.

I am in the first place to say that His Lordship thinks that the position will be most unsatisfactory if the Colonial Government cannot be induced to modify the word “domiciled” in section 6 of the Immigration Restriction Act, and to exempt old immigrants settled in the country from the necessity of obtaining licenses under the Licensing Act from local authorities.

In my letter of 2nd November last I referred to Mr. Escombe's opinion that the Immigration Restriction Act is not intended to affect persons “already settled in the Colony” as tantamount to saying that it would not affect persons who had immigrated before its enactment, and I stated that it was assumed that this interpretation would be adopted and applied by the licensing and other authorities of the Colony. The Attorney General not only does not confirm this assumption, but he demurs to the interpretation placed by this office upon Mr. Escombe's assurance.

I am to point out that the whole of that passage in my letter of the 2nd November was discussing the effect and application of the Act generally, quite apart from the special exception enacted by section 6 in favour of persons “formerly domiciled.” Notwithstanding the wide definition of “prohibited immigrant” contained in section 3, the Secretary of State for India was advised that the disabilities attached to such persons by section 9 could not apply to everyone falling within the words of the definition, but only to persons falling within those words who were not in the Colony when the Act passed, or who, if in the Colony at that time, might leave it and wish to re-enter its territory. This is the view which Mr. Escombe was understood to have intended to express, and I am instructed to ask for an assurance that it is adopted by the present Government, and will be applied and acted upon by the licensing and other authorities in Natal.

Lord George Hamilton in conclusion deems it desirable that the Government of Natal should be again reminded that, if an assurance of fair and equitable treatment cannot be secured for natives of India resident in that Colony, the Government of India may be reluctantly compelled in the interests of its subjects to suspend the supply of indentured labour to Natal.

Dated Colonial Office, London, the 19th March 1898.

From—Her Majesty's Secretary of State for the Colonies,
To—His Excellency the Governor of Natal.

I have the honour to inform you that I communicated to the Secretary of State for India Sir W. Hely-Hutchinson's confidential despatches of the 5th and 22nd of January last, containing reports by the Attorney General of Natal with regard to the legislation of the last session of the Natal Parliament which affects the position of Her Majesty's Indian subjects.

2. I am to transmit to you a copy of a letter from the India Office, (India Office to Colonial Office, 15th March), from which your Ministers will see that Lord George Hamilton presses for a modification of section 6 of the Immigration Restriction Act so far as it affects British Indians.

3. It is true that the word "domiciled" occurred in the draft of the Bill to which I authorised the Governor to assent in April; but at that time the text of the Bill had not been fully considered by the India Office, and I was anxious to meet the wishes of the Natal Government to bring the law into force without delay. Subsequently Mr. Escombe's statement in his letter of the 29th of July last was understood to concede the interpretation which the India Office desired to place upon the provision in section 6, and I did not hesitate to intimate to you that Her Majesty would be advised not to disallow the Act.

4. The object of the Indian Government is to secure that vested rights should be respected, and that no British subject, who immigrated into Natal from Her Majesty's Indian possessions previous to the passing of the Act and has resided there should be treated as "a prohibited immigrant" under the Act, and it seems to me that this concession may rightly be expected by the Indian Government at the hands of Natal, especially in view of the advantages which the colonists derive from the facilities afforded by that Government for recruiting indentured coolie labour for the Colony.

5. I trust that the Natal Government will be able to satisfy the wishes of the Indian Government in this matter and also in regard to the amendment of Act No. XVIII of 1897, which by your Despatch No. 173 of the 8th of November last I was informed that your Ministers would take into consideration before the next annual session of Parliament.

Dated Durban, the 28th January 1899.

From—Mr. M. K. GANDHI,
To—His Excellency the Governor of Natal.

MAY IT PLEASE YOUR EXCELLENCY,—

I have the honour to send, for transmission to His Excellency the Viceroy and Governor General of India in Council, a memorial, in triplicate, signed by Messrs. Mahomed Cassim Camrodeen, and others, with reference to the "Dealer's Licenses Act," with such remarks thereon as Your Excellency may be pleased to make.

Dated Durban, the 27th January 1899.

To—His Excellency the Governor General of India in Council.

The Memorial of the undersigned representing the British Indians residing in the Colony of Natal.

Humbly Sheweth,—

That your memorialists venture to draw Your Excellency's attention to a copy of the memorial addressed to Her Majesty's Principal Secretary of State for the Colonies, with reference to the Dealer's Licenses Act passed in the year 1897 by the Natal Legislature.

Your Excellency will notice therefrom, among other things,—

(a) that the Act complained of constitutes a present, real and tangible grievance, and in the way it is being worked, is calculated to tell very

seriously upon the acquired rights of the Indian traders residing in the Colony of Natal ;

- (b) that the interests at stake represent thousands of pounds ;
- (c) that the Natal Legislature has gone, as it is acknowledged by some of the Natal publicists, much further than even the South African Republic has ventured to go ;
- (d) that the operation of the Act has turned out to be contrary to the assurance publicly given by the Right Honourable Harry Escombe who carried the Act through, and was then the Prime Minister of the Colony, viz., that he had full confidence in the Town Councils and the Town Boards not disturbing the then existing trading licenses ;
- (e) that several Town Councils or Local Boards have already seriously interfered with the existing licenses, and threatened to do so yet more extensively.

Your memorialists have, under such circumstances, prayed for either such an amendment of the Act as to bring it in harmony with British principles of justice, or suspension of the supply of indentured labour to the Colony.

Your memorialists venture to think that the active and effective intervention of the Indian Government is necessary, if the rights of British Indians outside British India are to be rescued from extinction. Agreeably to the resolution of the Dundee Local Board, to wipe out as many Asiatics as possible, referred to in the Annexure, its Licensing Officer has, your memorialists are informed, refused to renew the licenses of seven or eight Indian storekeepers out of about sixteen. One of them who has been refused the license, is the largest Indian storekeeper in Dundee, having a stock of several thousands of pounds. The Licensing Officer at Newcastle has again refused to issue the three licenses—also referred to in Annexure—that were withheld last year. The applicants are still doing all they can locally to secure their licenses. The result is not therefore yet final. It however sufficiently shows the seriousness of the position. Applications in many other places in the Colony are still under consideration.

Whatever the ultimate outcome this year, the possibility of mischief under the Act is, in your memorialists' humble opinion, enormous, and your memorialists earnestly hope and humbly pray that the prayer contained in the Annexure will receive Your Excellency's sympathetic and early consideration.

And for this act of justice and mercy your memorialists as in duty bound shall ever pray, etc., etc., etc.

MAHOMED CASSIM CAMRODEEN & Co. and others.

Dated Durban, the 31st December 1898.

To—Her Majesty's Principal Secretary of State for the Colonies.

The humble petition of the undersigned
representing the British Indians residing
in the Colony of Natal.

Humbly Sheweth,—

That your petitioners hereby venture to approach Her Majesty's Government with reference to the Dealers Licenses Act, against which your petitioners unsuccessfully protested last year.

Your petitioners might have approached Her Majesty's Government earlier, but it was their intention, first, to watch the operation of the Act patiently for some time, and to see whether the fears anticipated in the memorial submitted to Her Majesty's Government embodying the above protest were well founded or not ; and secondly, to exhaust all the resources available in the Colony, and to obtain a proper judicial interpretation of the Act.

It is with great regret that your petitioners have to record that the fears expressed in the memorial above referred to have been more than realised, and that the judicial interpretation has been given against the British Indians in the Colony. In a case, hereinbelow referred to, Their Lordships of the Privy Council have decided that from the decision of the Town Councils or the Town Boards there is no appeal

to the Supreme Court of the Colony, under the above Act. This decision has paralysed the Indian traders. Consternation has seized hold of them, and there prevails amongst them a feeling of insecurity and a nervous fear as to what may happen during the ensuing year.

The troubles the Indian community is passing through are numerous. The working of the Immigration Restriction Act, against which also your petitioners ineffectually protested, is causing much vexation. Lately, the Government have passed Rules under it whereby a fee of one pound is required from each person not being able to pass the tests imposed by the Act, and wishing to sojourn for from one day up to six weeks, or to pass through the Colony for the purposes of embarkation. While a memorial was being prepared in connection with these Rules and other matters arising out of the above Act, the decision of the Privy Council came upon the Indian community like a bomb-shell, and all the other troubles dwindled into comparative insignificance in the face of the awful future awaiting the Indian traders. It has therefore become absolutely necessary to give the first place to the Dealers Licenses Act.

The only hope of the Indian traders in Natal now lies in the relief that might be granted through the intervention of Her Majesty's Government. Your petitioners venture to claim in all parts of Her Majesty's dominions the same privilege and rights that are enjoyed by Her Majesty's other subjects, in virtue of the Proclamation of 1858, and more especially in the Colony of Natal, in virtue of the following statement in your predecessor's Despatch with reference to previous memorials, *viz.*, "It is the desire of Her Majesty's Government that the Queen's Indian subjects should be treated upon a footing of equality with all Her Majesty's other subjects." Moreover, your petitioner trusts that Her Majesty's Government would be pleased to secure from the Colony of Natal which owes its present prosperity to the indentured Indians, a fair treatment for the free Indians in the Colony.

All over the world, whenever necessary, Indian soldiers have been fighting the battles of Great Britain, and Indian labourers have been opening up fresh fields for colonisation. Only the other day a Reuter's cablegram stated that Indian soldiers would be requisitioned to train up the natives in Rhodesia. Can it be that the fellow-countrymen of these soldiers and labourers are not to be allowed to earn an honest living in a portion of Her Majesty's dominions?

And yet, as will appear hereinbelow, there is an organised attempt being made in the Colony of Natal not only to *deny* to the Indian traders the right of earning an honest living, but also to *deprive* them of such right which they have been enjoying for years past in the Colony; and the instrument whereby the European colonists in Natal hope to achieve their purpose is the above Act.

The Durban Town Council consists of eleven councillors, and is the premier corporation in the Colony. Of these councillors, one is an avowed and out and out opponent of the Indians. He played a leading part in the demonstration against the landing of the passengers on board the *Courland* and the *Naderi* early last year. He was noted for his most violent speeches. He has carried his hatred of the Indians into the portals of the Town Council, and has so far invariably and irrespective of persons, opposed the granting of trade licenses to Indians. As there are only two classes of Europeans—the one violently against the Indians, and the other indifferent—this councillor, as a rule, carries the day before him whenever a matter concerning the Indians comes for disposal before the Council. The Licensing Officer appointed under the Act, is a permanent officer of the corporation, and is therefore, in your petitioner's humble opinion, more or less under the influence of the councillors. In a case presently to be referred to, Sir Walter Wragg, the first Puisne Judge, who was then acting for the Chief Justice, has thus observed about the danger of a permanent officer of a Town Council being appointed its Licensing Officer:—

"It has been suggested to the Court that an officer so appointed must have a certain amount of bias in his mind, because he was an officer permanently under the Town Council, and must be in the Council's confidence. His Lordship was not going to decide the matter on that point; but he could quite see that the licensing officer should be some person who was not in the Town Council service and who was not in the confidence of the Council."—(*The Natal Witness*, 31st March 1898.)

This Licensing Officer examines the pecuniary position of applicants for licenses, asks them questions as to their stock, capital, and generally inquires into their private affairs. He has made it a rule not to grant a trading license to any Indian who has not before held such a license in Durban, whether the applicant has held a license elsewhere in the Colony or not, whether he is an old resident or a new arrival, whether he is an accomplished gentleman knowing English or an ordinary trader, and whether the premises in respect of which the license is sought are suitable in every respect and have been before licensed or not.

Somnath Maharaj, an Indian, early this year, applied for a license to carry on a retail trade in the borough. His application was taken in. He was examined at length as to his position by the Licensing Officer. Nothing could be found against him. The Sanitary Inspector made a favourable report regarding the premises in which he intended to carry on his trade. The premises had just been vacated by an Indian storekeeper who had left for Johannesburg. The Licensing Officer, however, after having failed to find fault either with the person or with the premises, refused a license without giving any reason for his decision. The matter was heard in appeal before the Town Council. It was proved that the applicant had served the Colony for five years under indenture, had been resident in the Colony for thirteen years as a free Indian, had by dint of perseverance raised himself to the position of a trader, had held a license in Mooi River in the Colony over six years, had a cash capital of fifty pounds, held a piece of free-hold land in the borough, had his dwelling house separate and some distance from the intended store, and had engaged the services of a European book-keeper to satisfy the requirements of the Law. Three well-known European merchants certified as to his respectability and honest dealings. He was to trade in a locality mostly inhabited by Indians, and his custom was to be entirely Indian. Counsel for the applicant asked for the Licensing Officer's reasons for refusal, as well as a copy of the record of the application. Both these applications were rejected, and the Licensing Officer's decision was upheld by the Town Council. An appeal to the Supreme Court was noted against the decision—not on its merits, for, that Court had already by this time decided by a majority that in virtue of the Dealers Licenses Act it had no jurisdiction to hear license appeals on merits, but on grounds of irregularity, *viz.*, that reasons were refused, that a copy of the record was withheld from applicant's counsel, and that the councillors with the Town Solicitor, the Town Clerk, and the Licensing Officer, while the appeal was being heard, retired for secret deliberation into a private room. The Supreme Court entertained the appeal, quashed the proceedings of the Town Council, with costs, in favour of the appellant, and directed a rehearing. In giving the Court's decision the Acting Chief Justice remarked:—

“What struck one as being wrong in this case was that the copy of the record should be withheld. The application was made to the Council by the appellant for a copy of the record and reasons why the license had been refused. There was nothing wrong in the application. It was one which, in the interests of justice, should have been granted. But it was refused. And when the appellant's counsel came before the Council, he was in the dark as to the record, and he did not know what was operating in the mind of the Licensing Officer—— It seemed to him that the action of the Town Council in this case had been oppressive.....It seemed to him that the refusal of both requests was unjusticial and an improper proceeding.”—(*The Times of Natal*, 30th March 1898).

Mr. Justice Mason—

“considered the proceedings under appeal were a disgrace to the Town Council, and he did not hesitate to use his strong language. He considered under the circumstances that it was an abuse of words to say there had been an appeal to the Town Council.”—(*The Times of Natal*, 30th March 1898.)

The appeal was reheard before the Town Council. This time a copy of the record was given; and when called upon to give further reasons for his refusal the Licensing Officer stated:—

“that the applicant had no claim whatever upon Durban, as the class of trade he was engaged in was sufficiently provided for in the town and borough.”

The officer's decision was however upheld, a councillor moving "that it was undesirable that the license should be granted in view of the fact that the percentage of licenses already granted was in excess of the requirements of the population." The Council took no notice of the facts that only a few months before there was a storekeeper in the premises sought to be licensed, that the storekeeper had left Durban, that therefore there was no question of increasing the number of licenses, and that the landlords, who are Indians and were also represented, had too a claim for consideration at the hands of the Council. The premises in question, which are only suitable for a store, have to this day remained practically vacant, causing a loss to the owners of £35 to date. Your petitioners venture to annex hereto a report of the proceedings of the first hearing of the above appeal before the Town Council, which clearly shows its spirit (*vide* Appendix A).

Mahomed Majam and Company applied to the Licensing Officer for a trade-license, with respect to premises belonging to an Indian gentleman who owns large pieces of freehold property in Durban, and whose principal source of income is renting of his properties to tradesmen. The Licensing Officer refused to grant the license for reasons similar to those given in the case above referred to. The landlord appealed to the Town Council against the decision of the Licensing Officer. The Town Council dismissed the appeal. As a consequence he, the landlord, was compelled to reduce the rent of his property, and Mahomed Majam and Company are reduced to poverty, and have to live entirely on the work of one of their partners who is a tinsmith.

Hasan Mahomed is a hawker by profession. He has been a hawker before in Durban. He went to the Licensing Officer and from him to the Town Council, but was denied the privilege of hawking. He told the Council that to deny him that privilege was equivalent to asking him to court starvation. He had tried to earn his bread otherwise, but had failed, and was without capital to undertake anything else. He submitted to the Council that he did not come in competition with any European, that hawking was practically a speciality of the Indians who raised no objection to his getting the license: but all these representations were of no avail.

Mr. Dada Osman has been in the Colony for over fifteen years, has received a fairly good English education, was connected with the then premier Indian firm in South Africa, and has now a business in Umsinga, in this Colony, and another in Vryheid in the Transvaal. This year he sent for his wife and children from India. As he could not find suitable society for his wife in either of the above places, and in order to meet the extra expense required owing to the arrival of his family, he intended to settle in Durban, so that he could supply his business up-country with goods himself, and also do some business in Durban. So sure did he feel of securing the license that he rented a spacious building in a principal street in Durban a firm of Indian merchants, at £11 per month, bought over £100 worth furniture, and approached the Licensing Officer who, as usual, thoroughly went into his affairs, tested his knowledge of English as well as of book-keeping, and after having required Mr. Dada Osman to appear before him thrice, declined to entertain his application. Both the landlords and he appealed against the decision. Required by the Town Council the Licensing Officer gave the following reason:—

"The Act 18 of 1897, as I understand, was passed with a view of placing some check on the issue of trading licenses to certain classes of people generally regarded as undesirable. And as I believe I am right in assuming that the applicant in question is one that would be included in that class, and moreover as he has never before had a license in Durban, I have felt it my duty to refuse his license."

It was thus, in this case, for the first time that the real reason for the refusal of so many licenses was given in all its nakedness. A principal merchant of Durban Mr. Alexander McWilliam, said in his evidence before the Council:—

"I have known the applicant for a great number of years—12 or 14 years. I have dealt very largely with the applicant. He has owed me at times as much as £500. My dealings with him have been perfectly satisfactory. I found him to be a very good business man, and respectable. I have always been able to take his word for anything he says. As a ratepayer I should have no objection to his

getting a license. I do not know whether he is capable of keeping books, but he can express himself well in English in writing. I should imagine from the way he writes here and the way he conducts his business he would be able to keep books."

(Handed in a letter written by applicant.)

In addition to the fact related above about the applicant's position, the following was brought out in his (applicant's) evidence given in English :—

"My private family expenses are about £20 per month, apart from the store. . . . I have a house apart from the store. . . . My house and store are lighted by electricity. . . . I deal with S. Butcher & Sons, Randles Brother & Hudson, H. & T. McCubbin, L. Kehrmann, A. Fass & Co., M. Laurie, and others. I can write simple letter in English. I know book-keeping. I have kept books in Vryheid. I keep ledger, journal, day, cash stock, account, and invoice books. I know the single and double entry systems."

Mr. Abdul Kadir, the landlord, said :—

"I am manager to the firm of M. C. Cumroodeen & Co. . . . The store (in question) was licensed before. I. Timol had a license there . . . I own 3 or 4 properties in Durban, of the total value of about £18,000 to £20,000, on the valuation roll. Most of this property I hire out to tenants. If Dada Osman does not get his license, I shall lose rent. He is a very good tenant. . . . I have known him a long time. He is living well. He has plenty of furniture in his house. . . . I am not satisfied with the decision of the Licensing Officer."

The Council was reminded of the definition given by you to the Colonial Premiers, of "an undesirable person": viz., "It is not because a man is of a different colour from ourselves that he is necessarily an undesirable immigrant. But it is because he is dirty, or immoral, or a pauper, or has some other objection which could be defined by an Act of Parliament." But all this proved to be a mere cry in the wilderness. The Councillor who had borne the Demonstration Committee's flag in 1897, and was ready to return "by force if necessary" the Indian passengers on board the *Courland* and the *Naderi*, failed to be convinced that the action of the Licensing Officer was an error, and moved that his decision be confirmed. No one would rise to second the motion and for a moment it seemed as if the Town Council was ready to do justice. But Mr. Collins, another Councillor, came to the rescue, and seconded the motion in the following speech :—

"He was not surprised that there was a great deal of reluctance on the part of the Council to refuse the license. But he believed that the license would be refused, and the reason was not because the applicant or the premises were unsuitable but because the applicant was an Indian. What Mr. Gandhi had said was perfectly true, and he (Mr. Collins) felt some relief in saying that most of these licenses had been refused principally on the ground of the applicants being Indians. The Council was placed in a very unhappy position in having to carry out a policy which in the discretion of Parliament was considered necessary. Parliament, representing the community of Natal, had come to the conclusion that it was undesirable that the Indians should increase their hold on the trade of Durban. And it was on that account that they were practically called upon to refuse the licenses which were not otherwise objectionable. Personally he considered the refusal of the license a grievance to the applicant who was a most suitable person to appear before the Council to ask for a license. But it had been found expedient as a matter of Colonial policy, that these licenses should not be increased."—The *Natal Advertiser*, 13th September 1891.)

(It may be here remarked that Mr. Collins holds a prominent position among the public men of Natal. He has often occupied the position of the Deputy Mayor, and has more than once acted for the Mayor. Coming as it did from such a source the pronouncement was most painful, if also equally important. It is respectfully submitted that the Natal Legislature, if the then Prime Minister correctly

voiced its feeling, never meant as it would appear later, to go the length Mr. Collins did. The intention of the Legislature was to prevent *new comers* (by no means *all* new comers) being Indians, from obtaining licenses; and your petitioners venture to feel certain that had the view taken by Mr. Collins of the Act been placed before Her Majesty's Government, it would never have received the Royal assent, Mr. Collins evidently seems to think that the Parliament represents only the European community of Natal. Your petitioners can only say that it is lamentable, if it is true. The Indians were told differently when the attempt was made to disfranchise them entirely. Again, Mr. Collins thought the granting of the license in question would mean an increase: as a matter of fact the premises sought to be licensed had been licensed for the year; they had become vacant as the license-holder had suffered misfortune and stopped business. The present applicant, therefore, would not have added to the number of license-holders in the borough.)

Mr. Labistour, another Councillor, and a prominent local Advocate, was so disgusted with the whole procedure that he thus gave vent to his sentiments:—

“He had purposely refrained from attending the meeting owing to the anomalous policy pursued in appeals of that kind. He disagreed with the dirty work they (councillors) were called upon to do. If the burgesses wished all such licenses stopped, there was a clean way of going about the matter: *viz.*, getting the Legislative Assembly to enact a measure against the granting of licenses to the Indian community. But, sitting as a Court of Appeal, unless there were good grounds to the contrary, the license should be granted.”—(*Ibid.*)

Mr. Labistour having, as he said, come purposely late could not vote, and the motion was carried unanimously, and the appeal dismissed.

In your petitioners' humble opinion it is almost impossible to imagine a stronger case than the above, or greater injustice than that done by the Durban Town Council—a Town Council of a British Colony—sitting in appeal as a judicial body. It has put a premium upon insanitation and questionable trade practices. What incentive could your petitioners hold out to the weaker members of the Indian community? They, the weaker members, might say:—

“You ask us to adopt the modern sanitary methods, and live better; and you promise that the Government would deal fairly by us: we don't believe this. Does not your Dada Osman live as well as any European on the same platform? Has that meant anything to the Town Council? No; whether we live well or live ill we would fare neither better nor worse.”

The European Colonists have been proclaiming that they would have no objection to respectable Indians living in the modern style. Your petitioners have always contended that the objection on the ground of alleged insanitation is a mere fiction, and the Durban Town Council, it would appear, has proved the contention.

The Newcastle Town Council has, however, gone one better than the Durban body. Its Licensing Officer, apparently acting under orders, refused to grant the licenses this year, under the Act, to each and every one of the eight Indian storekeepers that had held the license last year. Such a wholesale refusal struck terror in the hearts of the Indian traders in the Colony. Suspension of the trade of these storekeepers would have not only ruined them and their dependants, but would also have resulted in the collapse of some houses in Durban, which support them. The assets of these men were then estimated at over ten thousand pounds, and hands directly dependant on them were over forty. At great expense, therefore, Mr. Loughton, a leading advocate, was engaged to carry the appeal to the Town Council; and as a result, six licenses out of nine (held by eight storekeepers) were granted. The remaining three, having been refused, the three holders thereof appealed to the Supreme Court, which, by a majority, threw out the appeal on the ground that in virtue of section 5 of the Act it had no jurisdiction to entertain it. As the matter was very important, and as the Chief Justice dissented from the other two Judges and favoured the contention of the appellants, the matter was taken to the Privy Council. A cablegram from the appellant's Solicitors in London states that the appeal has been lost. It must in justice be said that the Newcastle Town Council has been gracious enough to allow the three storekeepers, pending the appeal to continue their trade. Its policy, however, is

unmistakable. It would have wiped out the Indian from Newcastle if it could have done so with decency, and without stir, regardless of the consequences to the parties affected. The reasons given by the Licensing Officer for his refusal were the same with reference to all the above licenses: viz., "the report framed by the Sanitary Inspector in terms of section 4 of the rules under Act 18 of 1897, in connection with this application, being of an unfavourable nature, and the premises not being fit for the intended trade, as required by section 8 of the Act referred to, the application was refused by me." None of the applicants knew anything about the Sanitary Inspector's report, or the Licensing Officer's reasons before their licenses were refused; nor were they asked to make any improvements or alterations in their premises. The reasons were furnished by the Licensing Officer only after he was required so to do by the Town Council when the matter came before it in appeal. After the three applicants were refused their licenses, and they came to know why the licenses were refused, they offered at once to make such alterations in their premises as the Sanitary Inspector may suggest; but the Licensing Officer would not hear of it, and declined to entertain their applications on the ground that the Town Council had already decided to sustain his previous decision (*vide* Appendix B). It may be here remarked that the applicants never admitted that their premises were in an insanitary condition, and had produced medical evidence to prove that the premises were in a satisfactory condition. Your petitioners attach hereto (*vide* Appendix C) an extract from the record of Proceedings before the Town Council, which would show more fully the case for the three applicants. The Newcastle Town Council consists of eight councillors—a medical practitioner, a solicitor, a carpenter, a canteen-keeper, a miner, a bookseller, and two store-keepers. The Licensing Officer is also the Town Clerk who would be the Clerk of the Court when the Town Council sits in appeal against the decision of the Licensing Officer.

The Dundee Local Board, however, promises to outdo both the Durban and the Newcastle Town Councils. In November last, a trade license was granted by the Licensing Officer to a Chinaman, and a majority of the rate-payers appealed against the decision of that officer. The Local Board, by a majority of three to two, cancelled the license solely on the ground that the applicant belonged to the Chinese nationality. The applicant's solicitor in his notice to the Local Board of Appeal against the decision recited the following grounds of appeal:—

- (1) "That your Board, by reason of certain of the members on it being merchants and storekeepers and holders of retail licenses, was unable and could not possibly deal with the subject-matter of appeal without prejudice to Hoi-Lee & Co.'s interests,
- (2) That the constitution of your Board was such that several of the members of it were personally and directly interested pecuniarily in the refusal of the retail license to Hoi-Lee & Co., and should not therefore have sat on your Board and voted on the question.
- (3) That certain members of your Board who sat showed personal animus and bias against the firm of Hoi-Lee & Co., on account of the members being natives of China, and one in particular stated 'I would not even give a Chinaman the chance of a dog.'
- (4) That no evidence or legal proof was adduced by the appellant rate-payers that Hoi-Lee & Co. were undesirable persons to have in the community.
- (5) That no evidence or legal proof was adduced by the appellant rate-payers that the premises that had been licensed by the Licensing Officer were totally unfit and unsuitable for business purposes pending erection of the premises agreed to be erected by the landlord under his lease with the said Hoi-Lee & Co.
- (6) That the decision and resolution of the Board was inequitable and unjust both in Equity and Law."

What happened to the Chinaman who appears, from the record of the case, to be a British subject, is not unlikely to happen in the case of the Indians. The Supreme Court refused to entertain the appeal in the above case in virtue of the decision in the Newcastle case referred to above.

In November last, a meeting was convened by the Chairman of the Dundee Local Board at the request of the rate-payers "to discuss the advisability of allowing Asiatics to trade in the township." There are at present about ten Indian stores in Dundee. The following extract from the proceedings of the meeting would show how the Local Board proposes to deal with them next year:—

"Mr. C. G. Wilson (the Chairman of the Local Board) made a very good impression with his remarks. He defended the action of the Board in all matters, and said it was their endeavour, if possible, to rid the town of the Asiatic curse. They were not only a curse here, but to the whole Colony of Natal. He assured the meeting that their actions in the case of the Chinaman were disinterested and unbiased and they honestly did what they thought to be their duty to the towns, by cancelling the license. He hoped they (the rate-payers) would show, by strongly expressing their opinions, that they meant to abolish this curse.

"Mr. W. L. Oldacre (a member of the Board) said that he and other members of the Board did what they thought to be right; and assured the meeting that there was no bias attached to his proceedings, and they could depend upon him doing his duty as a member of the Board.

"Mr. S. Jones then proposed that the Local Board do all in its power to prevent the granting of further licenses to undesirables; that the *Licensing Officer also be instructed to this effect*; and that *steps be taken to cancel as many of these licenses as possible*.—This proposition was unanimously carried, amidst cheers.

"Mr. C. G. Wilson wished to thank the meeting for the decision arrived at, as it had greatly strengthened the hands of the Board, who could act upon the decision of the meeting.

"Several other gentlemen having spoken, Mr. Hastings proposed that the Town Clerk and Licensing Officer should be two separate persons,

"Mr. Wilson said he was of opinion that it would be far better to have the officers remain as at present; then if the Licensing Officer did not act as the Board did in matters such as these, they had their remedy."—(*The Natal Witness*, 26th November 1898.)

The undesirables referred to in the preceding extract are of course the British Indian traders of Dundee. Here there is a frank avowal of the policy the Dundee Local Board intend to pursue. The Licensing Officer has received, and is still further to receive, from the appellate body created by the Act, instructions as to what he is to do; and thus the aggrieved parties are to be deprived of the right of placing their case before two tribunals contemplated by the Act: *viz.*, the Licensing Officer and the Town Council or the Local Board as the case may be. These are only some of the instances that have come under your petitioners' notice which conclusively indicate the policy the various Town Councils and Local Boards would pursue if unchecked.

Your petitioners are free to acknowledge that the other Town Councils and Local Boards do not appear as yet to have shown any desire to act in an oppressive manner; though there too it is practically impossible to obtain new licenses even for old established Indians. The power, your petitioners were almost going to say the despotic power, given to them under the Act is there, and there is no guarantee that they will not copy the example set them by Durban, Newcastle, and Dundee.

In order to ascertain the views of the solicitors who have had anything to do with the working of the Act, a letter was addressed to them asking them to be good enough to give their experience of its working. Three out of the four gentlemen to whom the communication was sent, have returned their replies which are hereto attached (*vide* Appendices D. E. F.) Mr. Laughton, who dealt with the Newcastle and the Chinaman's cases, as also with that of Somnath Maharaj referred to above, remarks:—

"I regard the Dealers' Licenses Act a very discreditable and dishonest piece of legislation. Dishonest and discreditable because no secret was made that it was intended to apply to Indians and to them alone.

Indeed it was passed at a session of Parliament called about a month earlier than otherwise it would have been as a concession to an anti-Indian mob and yet, in order to gain the approval of the Secretary of State, the Act is made to apply to all.

“The effect of the Act is to place in the hands of the declared enemies of Indian traders the power to grant or refuse trade licenses; the consequence is as might be expected, and we all feel humiliated at what we see whether we admit it or not.”

Mr. O’Hea, another gentleman, who is also the Honorary Secretary of the Colonial Patriotic Union whose avowed object is to prevent the further influx of Asiatics, says:—

“I do not think this Law is being administered in accordance with the spirit of the Legislature. The then Prime Minister who introduced the Bill said its main object was to affect those persons dealt with under the Immigration Bill. Ships would not bring those persons if they knew they would not be landed; and the people would not come here to trade if they knew they could not get licenses.

“I had a case in point not long ago. A man of Chinese nationality, who had been thirteen years in the Colony, was refused a license for no other reason, I am convinced, than because he was a Chinaman. The statistics of Durban show that the town has more than doubled in extent and population within the past ten years; and yet this man who had linked his fortunes with the Colony—a man of unblemished character—who arrived when there were only about 40 human beings for every 100 there are to-day: this man’s character and long residence were ignored, and a means of earning an honest living in Durban was denied him. In like manner, I have seen that in Newcastle an Indian who had been 15 years resident in Natal, was refused a license which would have been granted to a European if he had been the applicant. This is not as it ought to be.”

Messrs. Renaud and Robinson say, among other things:—

“But to our mind the principle defect in the present Act is that no appeal being allowed from the Town Council’s decision injustice has been done and is likely to be done to applicants for licenses.”

While this was in print Mr. C. A. de R. Labistour’s opinion was received, which is annexed hereto (*vide* Appendix G).

“Consistency”, a correspondent of the *Times of Natal* (believed to be the Government organ) who it would appear from his letter (*vide* Appendix H), is a colonist of over 20 years’ standing, and a merchant, says:—

“By all means make them (Indian traders) adhere to the strictest sanitary regulations, keep their books in English, and otherwise do as English traders do; but when they have met these demands give them justice. No honest thinking man can say that the new Bill gives these people justice, or the community justice, because it puts into the hands of interested parties the power to push out competition which is beneficial to the multitude and enables these interested parties to fill their own pockets. . . . I saw in one of your contemporaries the other day that the Dundee Local Board had resolved not to renew any Arab licenses for the coming year, and had instructed the Licensing Officer accordingly. These men are the English merchants, and wish all the business to themselves, when the public will have to pay them any prices they ask. Surely it is time the Government gave these men the limit.”

The *Times of Natal*, dated the 21st December 1898, after dealing with the above letter, and justifying its opposition to the Indian traders on the ground of self-preservation, observes:—

“At the same time, we are far from desiring that these Indian traders should be treated hardly. We do not believe, however, that any considerable number of colonists wish to see the powers given under these laws

used oppressively. If it be true, as reported, that the Dundee Local Board has resolved not to renew any Indian licenses for the coming year, we would strongly urge upon the Board, in the interests of its own rate-payers and in the interests of the Colony generally, to rescind that resolution forthwith. The Board has power to refuse the renewal of these licenses, but it was never contemplated for a moment that this power would be exercised in this wholesale manner. Mr. Escombe was responsible for the Traders' Licenses Act, and he never dreamt that the power it confers would be used in this way. The Act was passed, not so much with a view to enabling the licensing bodies to deal with the Indians already trading in the colony, as to prevent others coming here to trade. In moving the second reading of the measure, Mr. Escombe explained that it was introduced at the request of the Town Councils, and said:—"There is no hesitation on their part in saying what their object is, and there is no objection on the part of the Government in admitting their proposal, to prevent certain persons coming to this country to compete with Europeans on unequal terms, and getting the licenses to trade which are required by the Europeans. Again, 'no people will come here to trade if they think there is a doubt as to their having a license. So that if the law is in the book, it will answer without much application.' It will thus be seen that while the Act gives extensive powers, the Minister responsible for it relied on the moral effect its existence would have, rather than upon the application of its provisions, to effect his purpose. This purpose was not to deprive traders already here of their licenses, but to prevent others coming here and getting licenses. It was not expected that the Boards and Councils, which were appointed courts of appeal under this Act, would misuse their powers as the Dundee Board threatens to do. Said Mr. Escombe in replying to the debate on the second reading:—"I have got no doubt that this Bill in principle can only be warranted by the serious danger threatening this land. But I have got that belief in the fairness of the municipal authorities and of the colony that I believe this Bill will be administered with what I call justice and moderation." The Dundee Board will do well to note those words, for so sure as it exercises its powers in the wholesale manner now proposed, so sure will it defeat the end we all have in view. By all means let the undesirables be weeded out, but the process must be very gradual, so as to accomplish what is desired without inflicting any great injustice. It may be said 'There is the Act, and we will enforce it.' Yes, there is the Act, but how long will the Act be there if injustice is inflicted under it? The fact that a very large number of voters draw on India for their labour supply must not be lost sight of, for in it the Indian Government have the means of screwing a good deal more out of this colony than many realise. Suppose the Indian Government were to say, 'You cannot have more labour until you repeal that Act under which our people have been grossly ill-treated,' what would be the result? We do not care to speculate on this. If Local Boards, Town Councils, and Licensing Boards are wise they will never do anything to put the employers of Indian labour to such a trial."

Your petitioners offer no apology for having given the long extract, as it is very important not only because of its source, but also because of the manner in which the subject has been dealt with. The good intentions of the Legislature are not in the Act itself though they might have been reproduced therein, which would have spared the Indian traders the anxiety as to their bread being suddenly snatched from their mouths. The Government organ has betrayed itself into an admission which is entirely inconsistent with its own admonition to the Dundee Local Board, and seems to be an insidious hint to the Board as to how they can achieve their end without attracting notice; for it too would have the undesirables "weeded out" by a "very gradual process." How can this attitude be compatible with the desire not to touch those that are already established? What the Dundee Board may fail to accomplish owing, to use the expression of the then Prime Minister, to

their "brutal frankness," the *Times* would have them accomplish indirectly and diplomatically so as to keep the real aim in the background.

A correspondent of the *Natal Mercury* (14th December 1898) signing himself A Colonist of close upon 20 years, thus writes :—

"Sir—I notice in your paper of to-day a letter from Newcastle, stating that the mighty Corporation of that town had won their case brought against them by one Vawda, to whom they had refused a license, and giving the information that the result will be welcome throughout the Colony. Vawda is an Indian who has been trading in Newcastle for the past 15 years, during which time he has been a good citizen; but, unfortunately for him, he has also been a successful merchant, a fact which evidently the members of the Licensing Board in Newcastle, who are merchants themselves, don't like. That the Corporation can be congratulated upon such a miserable misconstruction of their powers, or that the decision of the Privy Council will be welcomed by fair-minded people in Natal, is questionable.—I am, etc.,"

A Colonial of close upon 20 years."

The Transvaal Government have been trying to remove the Indians to locations; but even they are willing to give some time, however inadequate, to the Indians in order to enable them to remove their business without in their view incurring loss. Her Majesty's Government are naturally not satisfied with such a meagre concession, and it is within your petitioners' knowledge that an attempt is being made to induce that Government not to interfere with those that are already established. The Government of the Orange Free State, though quite independent, gave a year's notice to the Indian traders to close their businesses. The Colony of Natal which boasts of its being the most British Colony in South Africa, has acquired the power to deprive the Indian traders abruptly of the right of trading, and has attempted and threatens to exercise that power. The *Natal Advertiser* (dated 13th December 1898) thus notices the anomaly :—

"... We can only say that we deeply regret the decision (of the Privy Council)..... It is an Act which might have been expected from the Transvaal Raad. That body in the Aliens Exclusion Law, has ousted the jurisdiction of the High Court, and our readers will remember the outcry raised about it in the Colonies. But it is not one whit worse than this Act; indeed if there is any difference, ours is the worse, because it is likely to be much more frequently enforced. It is absurd to say that the Act would not have been effective if right of appeal to the Supreme Court had been allowed; surely that body could be trusted to exercise common sense..... Far better indeed that in one or two cases the latter (the desire of the municipalities) should have been overruled than that the principle should be laid down in a self-governing community under representative institutions that in any case affecting the rights of the citizen recourse to the highest judicial body in the State should be deliberately barred."

Your petitioners very much fear that the Government of the Colony are not likely to help your petitioners. The Rules (*vide* Appendix I) that have been passed under the Act, regulating the mode of obtaining licenses and appeals from the Licensing Officer have, in your petitioners' humble opinion, been framed in a manner to strengthen the Licensing Officer and the appellate body in the arbitrary powers given to them. It is but fair to state here that they were passed in September 1897; your petitioners however had hoped that the Colony having been invested with powers of exceptional severity, the Indian community would be allowed to have some rest, and that in isolated cases of hardship they would be able to obtain redress without the necessity of approaching Her Majesty's Government. That belief was strengthened by a speech made by the late Premier after his return from London, expressing the hope that those powers would be judiciously and moderately exercised. Unfortunately this has not been the case. It is for that reason that your petitioners raise objections to the Rules over a year after their publication. Be that however as it may, your petitioners submit that the absence of any provision made in the Rules as to requiring the Licensing Officer

to furnish reasons for his decision to the applicant has worked much mischief. So it struck Mr. Collins also. (Appendix A.)

What your petitioners fear most is the process of gradual weeding out referred to above. Those on the spot understand the process only too well. Many small storekeepers have been weeded out this year : some because they having hardly a gross outturn of ten pounds per month buying cash and selling cash, could not afford to keep any books at all, as is not unoften done even among small European storekeepers ; and some because they could not afford to comply with the requirements of the Sanitary Inspector, having connection not with the cleanliness of the premises but with their structural arrangements. If the Licensing authorities were year by year to wipe out some small Indian storekeepers, it would not require many years to bring down the larger houses without their having to refuse their licenses. Messrs. Mahomed Cassim Cumroodeen & Co., the first signatories hereto, for instance, have outstanding debts among nearly 400 Indian storekeepers and hawkers in Natal, to the extent of over £25,000 ; and own landed property in Durban tenanted by Indian storekeepers. If one-eighth of these storekeepers were to be refused their licenses, the firm's position would be damaged. They have already felt the pinch. They had to suffer owing to the refusal of the license to Mr. Dada Osman (above referred to). Mr. Amod Jeewa owns properties in East-court, Dundee, Newcastle, and Durban, which are almost entirely tenanted by Indian storekeepers, and most of which can be used for no other purpose. The shutting up of only a few of the businesses would mean practical ruin. These are but typical instances which can be multiplied.

Your petitioners have been taught to believe from their infancy that in all Her Majesty's dominions there is absolute security of life and property. So far as the latter is concerned that belief has received a rude shaking in this Colony : for, to be deprived of the means of making the only use available of one's property is, your petitioners humbly submit, little less than total deprivation thereof.

It has been suggested that in self-governing Colonies Her Majesty's power of interference is very limited. However limited it may be, your petitioners venture to think that it is not less for the self-governing Colonies than for the Transvaal. Unfortunately, your petitioners have to face an Act which has already been approved of by Her Majesty. But your petitioners apprehend that when Her Majesty was advised not to exercise the power of disallowing the Act it was little thought that the powers given thereby would be so abused as it is submitted they have been.

Your petitioners submit with the greatest deference that sufficient has been shown above to justify a strong remonstrance and advice to the Government of the Colony to so amend the Act as to render a recurrence of the injustice described above impossible, and thus to bring the Act in harmony with the noble British traditions.

But if this be not possible, your petitioners humbly venture to submit that the Colony should no longer be allowed to enjoy the privilege of using Indian labour which is acknowledged to be indispensable for its advancements. The *Times of Natal*, in the extract quoted above, anticipates a withdrawal of the supply of the indentured labour from India in the event of injustice being done by licensing authorities. The *Times* (London), the East India Association, Sir Lepal Griffin, Dr. Cust, the prominent bodies in India, and the entire Anglo-Indian and Indian Press have already suggested that remedy ; but so far Her Majesty's Government do not appear to have been pleased to accept it. Your petitioners humbly submit that it is impossible to make out a stronger case than herein for such withdrawal failing redress of acknowledged grievances.

How the next year will open for the Indian traders your petitioners do not know. Every storekeeper is however in a state of feverish anxiety. The suspense is dreadful. The larger houses, fearing that their customers (small storekeepers) might be refused their licenses, and having the only hope that they had of securing some check on the Licensing authorities taken away from them by their Lordships of the Privy Council, have become despondent and hesitate to clear their goods.

Your petitioners therefore respectfully venture to hope that your petitioners' prayer will receive the early attention of Her Majesty's Government.

And for this act of justice and mercy your petitioners as in duty bound shall ever pray, etc., etc.

MAHOMED CASSIM CAMROODEN & CO., and others.

APPENDIX A.

Extract from the Report of the Meeting of the Durban Town Council. (The Natal Mercury, March 3, 1898).

Mr. C. A. de R. Labistour appeared for the applicant, and said his client had ample capital to start in a decent way of business in the premises, which had been most satisfactorily reported upon by the Sanitary Inspector. The applicant was a capable business man.

Mr. Collins : Have we had the Licensing Officer's reasons ?

The Mayor : No.

Mr. Taylor : I don't think the Licensing Officer need give his reasons, unless requested to do so by a majority of the Council. All that we have to do is to decide whether or not we will confirm the Licensing Officer's decision. I move that we confirm it.

Mr. Henwood seconded the motion.

Mr. Collins moved, as an amendment, that the Licensing Officer be requested to give his reasons.

Mr. Ellis Brown seconded, remarking that it would be more satisfactory to have the reasons.

The amendment was rejected by four votes to three.

Mr. Collins pointed out that they were establishing a precedent, and he thought they were establishing an undesirable one. Of course, what was done in one case must be done in all, and under the circumstances, he would feel compelled to vote against the resolution.

The Mayor remarked that the Council had by a majority decided not to ask the Licensing Officer for his reasons.

The original motion was then put and carried, and the Licensing Officer's decision was accordingly confirmed.

AN INDIAN'S APPEAL REFUSED—MR. GANDHI PROTESTS.

An Indian, named Somnath Maharaj, appealed against the refusal of a license for premises belonging to the Natal Indian Congress, in Umgeni Road.

Mr. Gandhi, who appeared for the appellant and the owners, of the premises, said he had written to the Town Clerk for the reasons of the Licensing Officer for refusing the license, but had been told that the reasons could not be given.

In reply to a question from the Mayor, Mr. Gandhi said that the trustees of the Natal Indian Congress were the owners of the property.

Mr. Gandhi, resuming, said he also asked the Town Clerk for a copy of the record, and was told that he could not be furnished with it. He contended that he was entitled by law to have it, as the ordinary rules of procedure in appeal cases would apply before that tribunal, and he was also entitled to the reasons. There was nothing whatever in the Act to show that the ordinary rules of procedure were to be subverted. The 11th section of the Act provided for the rule, which had been framed thereunder, but he did not know that the rules were constitutional. He did not propose to read authorities, because it seemed to him that common sense would show that if a right of appeal were allowed the ordinary procedure would guide the conduct of such appeals. If that were not so, it would appear that the law had given a right to the subject with the one hand and taken it away with the other, for if he appealed to the Town Council and did not know why his license had been refused, and was not allowed to obtain a record of the application, then he had practically no right of appeal. If he was allowed to appeal, surely he was entitled to a complete record of the proceedings; and, if not, he was an outsider. Was the Council going to decide that he was an outsider, although he had large interests at stake? He was told "You may come, you may say anything you like, without knowing what the ins and outs of the case are," and he had come before them; but if there were any reasons they would be surprised upon him, and if there was a report from the Sanitary Inspector, it would be surprised upon him also. He submitted that he was entitled to a copy of the record of the Council's proceedings, and to the reasons, and if not, then the

right of appeal had been refused to him. His client was one of the burgesses, and as such was entitled to every consideration a burgess should receive at the hands of the Council; instead of which he was practically opposed by the whole municipal machinery, had to anticipate the reasons for which his license was refused, and had had to come to the Council, and then possibly, after spending a lot of money, would perhaps be told that the Licensing Officer's decision is upheld. Was this an appeal under the British Constitution?

Mr. Evans: Has the applicant had a license before?

The Mayor: He has kept a store in another part of the Colony, but he has only been in Durban three months.

Mr. Collins said Mr. Gandhi asked their decision on a point of law. They were a lay court, but he did not know that they were competent to give an answer without reference to their legal adviser. Under the law, the Council could require the Licensing Officer to state his reasons in writing, but he was bound to admit that he did not like the law on this point, as it did not seem to him to reflect true justice. However, the law must be abided by, but it also provided means by which the Council could rectify what appeared to him to be an injustice. It was competent for them to get the reasons of the Licensing Officer in writing and then to adjourn that meeting so as give the appellant an opportunity of answering them. He thought that line should be adopted and he accordingly moved that the Licensing Officer be asked to furnish his reasons.

Mr. Challinor seconded.

Mr. Evans said that as the reasons of the Licensing Officer were privileged to the Council, he thought they should have them in writing.

Mr. Ellis Brown: Yes; let them be handed round.

Mr. Clark moved that they retire to the Mayor's parlour for five minutes, in order to see the reasons.

Mr. Collins seconded, and remarked that he had often heard that justice was blind, but had never seen so forcible an illustration of it before. Some members of the Council were prepared to vote on the matter without knowing why the license had been refused.

Mr. Taylor agreed with Mr. Collins that justice was blind, but said there were councillors who could see the Licensing Officer's reasons without looking at a bit of paper. He was sorry there were those who were so ignorant that they could not see it.

The motion was carried, and the members of the Council then retired.

On returning to the Council Chamber,

Mr. Gandhi: I want a decision on the points I have raised.

The Mayor: The Council is against you.

Mr. Gandhi said that the only fault that could be found with his client was that he had a brown skin, and that he had never held a license in Durban before. He was told that the Council would refuse any application for new licenses, no matter whether the applicants had good business qualifications or not. If that was correct it was unjust, and if a man was not to have a license because he had a brown skin, such a decision savoured of injustice, and was certainly un-English. There was nothing in the law to show that licenses must be refused to persons because of their nationality. That tribunal should not be guided by what was said during the time of panic, but rather by the words of the late Premier, who said it should be borne in mind that the Town Council had given a giant's strength, but they should take care that they did not use it in that fashion. The applicant had been a store-keeper at Mooi River for six years, and was a thoroughly respectable man, whose straightforwardness and business capacity had been vouched for by four Natal European firms. He hoped the Council would grant the license.

Mr. Taylor moved that the decision of the Licensing Officer be confirmed.

Mr. Clark seconded the motion, which was carried *nem con.*

APPENDIX B.

Dated Newcastle, the 11th January 1898.

From—W. A. VANDERPLANK, Esq., Attorney for Suleiman Ebrahim, Sajad Meajan, and Abdool Rassool,

To—The Town Clerk, Newcastle.

I am instructed to forward to you the enclosed applications for retail shop licenses on behalf of Suleiman Ebrahim, Sajad Meajan, and Abdool Rassool.

These licenses were refused by you last month, on the ground, as I understand, that you did not consider the report of the Sanitary Inspector to be sufficiently favourable, and I am now directed to inform you that with the object of obtaining renewal of the licenses my clients will use every endeavour to meet the objection by carrying out such alterations as may be recommended by the Sanitary Inspector.

In the case of Sajad Meajan I understand that alterations have been made since the inspection by the Sanitary Inspector in December, and these alterations will, I believe, remove any objection which previously existed. In the other two cases I desire, if it should meet with your approval, to accompany the Sanitary Inspector on his visit, and to take a note of any objections he may make, with the object of rectifying any deficiency.

I trust that my clients will be able to satisfy you as the refusal of licenses is of very serious consequence to them.

A reply similar to the following was returned in each case—“The application of S. E. Vawda under date 15th December 1897, for a retail shop license in name of Suleiman Ebrahim for premises at Erf 37, Murchison Street, having been refused by me, and my decision thereon upheld by the Town Council on appeal, on the 8th January 1898, the annexed application is refused.”

T. MACKILLICAN,

Licensing Officer, Borough of Newcastle.

APPENDIX C.

Extract from a certified copy of the Minutes of Special Meeting of the Town Council of the Borough of Newcastle held in the Council Chamber on Saturday, January 1898, to hear the appeals against the decisions of the borough Licensing Officer appointed under Act No. 18 of 1897, with reference to the application of S. E. Vawda, two licenses, Abdool Rasool and Sajad Meajan—license to Vawda with reference to Erf 37, Murchison Street, and the licenses to Abdool Rassool and Sajad Meajan refused both by the Licensing Officer and the Town Council on appeal.

At the outset Mr. Laughton desires that his protest should be recorded against any officer of the Council being appointed to fill the position of Licensing Officer under Act 18 of 1897, and addresses the Council in support thereof.

Appeals.—Suleiman Essop Vawda, applications Nos. 20, 21—1898.

Mr. Laughton reads notice to applicant from Licensing Officer, dated the 23rd December 1897, and Sanitary Inspector's reports, viz. :—

Sanitary Report.

“I inspected the premises at 37 Murchison Street sought to be licensed as a retail shop, and, like all Arab's premises, are badly ventilated, otherwise the building is in fairly good condition; found them busily fitting up bedroom, but communication at present between store and bedroom direct. Great efforts have been made to make the building look clean and fit in view of anticipated inspection, one good resulting from the provisions of the Licensing Law.

JAS. MACDONALD,

Sanitary Inspector.

and Licensing Officers' decision, and reasons on application for license for premises at Erf 37, Murchison Street, and contended that the Sanitary Inspector's report was satisfactory, and that if not, the license might be issued conditionally.

Mr. Laughton further read notice to applicant, dated 23rd December 1897, Sanitary Inspector's report, *viz.* :—

SANITARY REPORT.

Saliman Essop Vawda.

The premises sought to be licensed in this case are situated at the corner of Scott and Allan Street, a conspicuous part of the town. The bedroom for assistants is the small store adjoining. The applicant himself living behind the large store. The store premises are commodious, but, like others, badly ventilated. The yard premises are small and cramped, where it is crowded kitchen, bathroom and closet. Three of the assistants now sleep on the premises recently acquired by applicant at 36, Scott Street otherwise the bedroom accommodation attached to the store would be insufficient and unsanitary.

JAS. MACDONALD,

Sanitary Inspector.

The 15th December 1897.

and Licensing Officer's reasons on the application for license for premises at Erf 33, Scott Street, and called Suliman Ebrahim Vawda who duly sworn stated :—

I am the applicant for licenses for premises at 37, Murchison Street, and 33, Scott Street, where I carry on business. I held three licenses last year, but only apply for two this year. I have been in Natal about 17 years and in Newcastle 10 years, I have held a license for 37, Murchison Street for seven years and for 33, Scott Street for about five years. The value of the stock in the two stores is about £4,500 ; the value of the outstanding liabilities due to the firm is about £700. I hold 37, Murchison Street on monthly tenancy and the lease of 33, Scott Street expires in six months' time.

By the Mayor.—I and Mahomed Essop Tomor are in partnership and have separately conducted the business in the same name.

Appeal.—Abdool Rasool. Application No. 9—1898.

Mr. Laughton read letter to applicant from Licensing Officer, dated 23rd December 1897 Licensing Officer's decision and reasons and sanitary report, *viz.* :—

Sanitary Report.

I examined the premises referred to in application which is a small store in decayed condition. No direct communication with bedroom,—occupied solely by applicant—and is kept fairly clean. Applicant is in the fruit trade which would probably form part of his business at this store—a feature that might have a different bearing on the sanitary condition of the premises under consideration, a month hence. Formerly the applicant occupied a small store next to Mahomed Saffee's as a fruit shop.

JAS. MACDONALD,

Sanitary Inspector.

and quoting section 8 of Act No. 18 of 1897, contended that the sanitary report did not show that the premises were unfit for the intended trade. He called :— Abdool Rasool who, being duly sworn, stated :—

I am the applicant for the license. I have been in the colony about ten years and in Newcastle 8 years. I have held a license for three years, two years at the fruit shop, 42, Scott Street, and one year at the present store. Neither the inspecting officer, nor any other officer of the borough has pointed out any objection to the premises to me, I do not know why my license was refused. The Licensing Officer has never been inside my premises. I have made no alterations since the inspecting officer visit my premises. The value of my stock is about £400.

By Councillor Hastie :—I have occupied the present premises for about one year.

Appeal.—Sajad Meajan. Application No. 10—1898.

Mr. Laughton read Sanitary Inspector's report, *viz.* :—

Sanitary Report.

I examined the premises sought to be licensed as a retail shop at 36, Murchison Street.

The premises are in a most unsanitary and filthy condition and have direct communication with bedroom occupied by himself, wife, daughter, and assistant.

JAS. MACDONALD,

Sanitary Inspector.

and submits Licensing Officer's decision and reasons a letter from the Licensing Officer to the applicant dated 23rd December 1898. He further calls Sajad Meajan, who being duly sworn, stated:—

I am the applicant for the license. I have been in Natal seven years and in Newcastle seven years. I have held a corporation license for five years for the same premises.

Since making the application for my license the Sanitary Inspector or other officer of the corporation has not pointed out to me why a license was refused to me. I do not know why the license was refused. Since making my application the Licensing Officer has not inspected my premises. The value of my stock is about £600. I, my wife, my daughter, and assistant do not occupy one bedroom as stated in the Sanitary Inspector's report, nor did they at the date of the report. The assistant occupies a separate room. I have made alterations in the premises since the date of the report. The closet has been removed to the far corner of my plot of group. I was not aware that the premises were in a filthy condition at the date of the report and was not informed so at the time by the Inspector.

By Councillor Kemp:—I made alterations myself without being told to do so.

Charles O'Grady Gubbins on further oath, states:—I inspected Sajad Meajan's premises to-day and found them in a satisfactory condition. There are two bedrooms very clean, and boarded, lined and ceiled.

From a sanitary point of view I do not think the license should be refused.

By Councillor Hastie:—I do not know how many occupy the bedrooms. The measurements of the rooms are 17' x 12' and the second 11' x 12' and 10' high.

NOTE.—The reasons of the Licensing Officer appear in the body of the memorial. Sajad Meajan has since the creditors having stopped custom, become insolvent.

APPENDIX D.

Dated Durban, the 24th December 1898.

From—F. A. LAUGHTON, Esq.,

To—M. K. GANDHI, Esq.

I have your letter of yesterday. I regard the "Dealer's Licenses Act" as a very discreditable and dishonest piece of legislation. Dishonest and discreditable because no secret was made that it was intended to apply to Indians and to them alone; indeed it was passed at a session of Parliament called about a month earlier than otherwise it would have been as a concession to an anti-Indian mob and yet, in order to gain the approval of the Secretary of State, the Act is made to apply to all.

The effect of the Act is to place in the hands of the declared enemies of Indian traders the power to grant or refuse trade licenses; the consequence is as might be expected and we all feel humiliated at what we see, whether we admit it or not.

APPENDIX E.

Dated Durban, the 23rd December 1898.

From—P. O'HEA, Esq.,

To—M. K. GANDHI, Esq.

re Dealer's Licenses Act.

In reply to your letter of this day's date, I do not think that this law is being administered in accordance with the spirit of the Legislature. The then Prime Minister who introduced the Bill said—"its main object was to affect those persons dealt with under the Immigration Bill. Ships would not bring those persons if they knew they would not be landed; and the people would not come here to trade if they knew they could not get licenses."

I had a case in point not long ago. A man of Chinese nationality who had been thirteen years in the Colony was refused a license for no other reason I am convinced than because he was a Chinaman. The statistics of Durban show that the town has more than doubled in extent and population within the past ten years; and yet this man who had linked his fortunes with the Colony—a man of unblemished character—who arrived, when there were only about 40 human beings for every 100 there are to-day—this man's character and long residence were ignored, and a means of earning an honest living in Durban denied him. In like manner, I have seen that in Newcastle an Indian who had been 15 years resident in Natal, was refused a license which would have been granted to a European if he had been the applicant. This is not as it ought to be.

APPENDIX F.

Dated Durban, the 31st December 1898.

From—Messrs. RENAUD and ROBINSON,
To—M. K. GANDHI, Esq., Advocate.

In reply to your letter of the 23rd instant *re* Dealer's Licenses Act.

We prefer to say nothing on the political aspect of the question.

We are of opinion that the Licensing Officer should be appointed from outside the permanent staff of the Town Councils or the Local Boards, as the case may be. There should be an appeal from his decision to the Town Council and from theirs to the Supreme Court.

We think that compensation should be awarded to landlords who by reason of the operation of the Act have lost their tenants.

There are several matters of minor importance which we think might be improved, but to our mind the principal defect in the present Act is that no appeal being allowed from the Town Council's decision injustice has been done and is likely to be done to applicants for licenses.

APPENDIX G.

Dated Durban, Natal, the 4th January 1899.

From—C. A. DE R. LABISTOUR, Esq.,
To—M. K. GANDHI, Esq., Durban.

Referring to our interview of this date on the subject of the Licensing Act 18, 1897, I can only state that from my experience the same although not so expressed is only intended to apply to Indians and Chinese—at any rate it appears to me to be so.

I have made several applications to the Licensing Officer for new licenses which have been rejected without reasons being given therefor and on appeals to the Town Council I have invariably found that body uphold the Licensing Officer's decision without previously calling upon him to furnish his reasons for such refusal.

I have not tried to ascertain the number of licenses refused to Europeans, but I am inclined to believe they were only refused to those whose character, etc., did not justify them holding one.

P. S.—The most inequitable part of the Act is that which precludes an appeal from the Town Council to the Supreme Court.

C. A. R. L.

APPENDIX H.

To the Editor, "Times of Natal."

I have to thank you for your attention to my letter in the *Times of Natal* of the 16th instant, under the heading "An Important Decision," and for your
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remarks in reply thereto. You say: "As to the butchers' ring, it is only necessary to point out that through it the cost of living has been very materially increased and meat, we have been told, put beyond the means of the poorer classes of the community. It is, therefore, menace to the welfare of the community."

I entirely agree with you. All combinations of this kind are morally wrong and a menace, because the few benefit while the multitude suffer. Further on you say: "In the other case the Indian traders have also become a menace, in that by reason of the fact that they can live so much cheaper than Europeans they are driving the latter out of trade, and out of the colony." It is one of our axioms that competition is the life of trade, and while admitting that all competition is a menace, I have to submit that the Indian traders are not a menace in the same way as the butchers' ring.

The Indian storekeepers, by causing strong competition among storekeepers are reducing the cost of all necessaries of life. In other words, they are benefiting the many at the expense of the few, which is exactly the opposite of the butchers' ring.

I well remember, twenty years ago when I came to the colony, we got 20 per cent. more profit than we get now—then the few benefitted and the many suffered; but competition, and principally Indian competition, has brought prices down all over the country; and now the many benefit while the few suffer, and this is how it should be.

You push these people out, and the multitude will again suffer by having to pay much larger prices for all they consume.

I remember, some sixteen years ago, falling out with an up-country townsman because I declined to join a ring of other storekeepers to charge 5s. a bag profit on flour. In those days such a combination, detrimental to the public, but beneficial to the pockets of the store-keepers, could have been carried out, but such a combination to-day would be utterly impossible. and if you could get such competition into the butchery business you would shortly hear less about the price of meat.

You appear to complain that these people can live cheaply. Yes, they can live cheaply—don't drink, give the authorities little trouble, and are, in fact, law-abiding subjects, and if they can sell cheaply by living cheaply the benefit is surely the public's.

By all means make them adhere to the strictest sanitary regulations, keep their books in English, and otherwise do as English traders do; but when they have met these demands give them justice. No honest-thinking man can say that the new Bill gives these people justice, or the community justice, because it puts into the hands of interested parties the power to push out a competition, which is beneficial to the multitude, and enables these interested parties to fill their own pockets. We have now sufficient rings—insurance rings and butchers' rings—and goodness knows where we will stop if the diffusers of knowledge and learning, like the newspapers, are on the wrong side.

I saw in one of your contemporaries the other day that the Dundee Local Board had resolved not to renew any Arab licenses for the coming year, and had instructed the Licensing Officer accordingly.

These men are the English merchants, and wish all the business to themselves, when the public will have to pay them any prices they ask.

Surely it is time the Government gave these men the limit.

We have entrusted you with great powers, but if you are to use them unjustly we will take them away from you.—Yours, etc.

DURBAN;

CONSISTENCY.

The 19th December 1898.

[This letter is dealt with in our leading article.—Ed. T. of N.]

APPENDIX I.

Government Notice No. 517, 1897.

The following Rules passed by His Excellency the Governor in Council, under section 11 of Act No. 18, 1897, are published for general information.

C. BIRD,

Principal Under-Secretary.

COLONIAL SECRETARY'S OFFICE, NATAL,

16th September 1897.

Rules under Act 18, 1897, for regulating the mode of obtaining Licenses, and for regulating appeals from the decisions of licensing Officers.

1. In these Rules

"Licenses," unless otherwise specified, means either a wholesale or retail license.

"New License" means a license in respect of premises for which there is not at the date of application an existing license similar to that applied for.

"Board or Council" means, as the case may be, the Licensing Board of the Division or the Town Council of a Borough, or the Local Board of a Township.

I.—Applications for licenses.

2. Every person desiring to obtain a new license or a renewal of an existing license shall make application in writing to the licensing officer of the division, borough or township. The application shall contain the particulars set forth in Schedule A.

3. An applicant for a new license shall attach to his application a ground plan drawn to scale, of the premises sought to be licensed.

4. Upon receipt of an application for a license the licensing officer shall be at liberty to obtain from the sanitary or other officer of the division, borough or township, a report for his guidance in respect to the sanitary arrangements of the premises proposed to be licensed.

5. The applicant shall, if thereto required, appear personally and produce to the licensing officer his books of account or such other documents or evidence as may be necessary to show to the satisfaction of that officer that he is able to fulfil the conditions laid down by section 7 of the Act, in regard to keeping his books of account in the English language.

6. The licensing officer shall endorse upon each application for a license his decision as regards the issue or refusal of a license.

7. The application, with the report of the sanitary or other officer and the remarks and decision of the licensing officer, shall form the complete record of proceedings in each case.

8. A license shall not be issued until the necessary stamps are tendered or the money paid.

II.—Appeals.

9. The applicant or any person interested may, within two weeks of the decision, give notice, in the form of Schedule B, to the Clerk of the Board or Council of his intention to appeal against the decision of the licensing officer.

10. A notice of the day fixed for the hearing of appeals, together with a list of the appeals, in the form of Schedule C, shall be fixed to the door of the Court House or Town Office for at least five days before the appointed date.

11. The Clerk, immediately upon receiving notice of appeal, shall require the licensing officer to forward to him the minutes of proceedings, and documents, or copies thereof.

12. The proceedings of the Board or Council shall be open to the public.

13. The Clerk shall keep minutes of the proceedings.

14. The record of the application shall be read before the Board or Council.
15. The appellant and any person interested shall be entitled to be heard upon the appeal, by himself, or by any person acting under his written authority.
16. The Board or Council may require the licensing officer to state in writing the reason of his decision upon any application. If in the opinion of the Board or Council further evidence is necessary, such evidence may be taken by the Board or Council on the same day or on any other day to which the hearing may be adjourned.

Schedule A.

To the licensing officer of the division of _____ (or borough or township of _____)

I (or we) hereby apply for a license as follows :—

Name of person or firm to be inserted in the license _____

Nature of license (whether wholesale or retail) _____

Period for which license is sought _____

Premises sought to be licensed _____

(If the application is for a new license, then add : I attach hereto a ground plan of the premises.)

(Date) _____ 189 .

(Signature) _____

Applicant.

Schedule B.

To the Clerk of the Licensing Board for the Division of _____ (or) to the Clerk to the Local Board of _____

(Date) _____ 189 .

SIR,

I (or we) hereby give notice that it is my (our) intention to appeal against the decision of the licensing officer upon the application of _____ for a (whole-sale or retail) _____ license for the premises known as _____

Schedule C.

Division (borough or township) of _____

Notice is given that an appeal has been lodged against the decision of the licensing officer upon the undermentioned applications for licenses.

The appeal will be heard by the Licensing Board (or Town Council or Town Board) at the _____ on _____ the _____ day of _____ 189 .

Name of person appealing.	Name of applicant for license.	Nature of license applied for.	Premises.

Clerk to the Licensing Board, (or) Town Clerk.

DEPARTMENT OF REVENUE AND AGRICULTURE.

EMIGRATION.

To

THE RIGHT HONOURABLE LORD GEORGE F. HAMILTON,
Her Majesty's Secretary of State for India.

Simla, the 12th July 1900.

MY LORD,

In view of the prospect of an early pacification of the territories hitherto comprising the South African Republics, and of the return of affairs in Natal to normal conditions, we deem it opportune to invite Your Lordship's attention to the numerous grievances experienced in the past by natives of India residing in Natal and in the Transvaal. These grievances have formed the subject matter of many communications between Your Lordship, the Colonial Office, and ourselves. Their existence has been acknowledged and deplored. In the case of Natal the obstacles in the way of redress have been due to the circumstance that the Colony is self-governing and that the laws which have given rise to complaint have hitherto represented the sentiments of the dominant majority of the European colonists. In the case of the Transvaal, the grievances of the Indian community formed part of the larger question of the rights of the Uitlander population and could not be separately remedied. We consider that on the termination of hostilities in South Africa, and while the recollection of the loyalty and valuable exertions of the Indian population of Natal and of the substantial service rendered to Natal by India in the War, is still fresh in the minds of the colonists, a most timely occasion of pressing for a just settlement of this question will have arisen.

2. The grievances of British Indians in Natal have arisen mainly from two Acts of the Colonial legislature, the Immigration Restriction Act No. I of 1897 and the Dealers Licenses Act No. XVIII of 1897. Sir Arthur Godley's letter No. J. and P.-753—1897—240 of the 21st July 1897 to the address of the Under Secretary of State for the Colonies conveyed Your Lordship's strong protest against certain portions of these enactments. The main objections raised were, that the laws were directed primarily and exclusively against British Indians, that the Immigration Restriction Act did not sufficiently safeguard the rights of Indians already in Natal, and if worked with any stringency would effect a violent confiscation of vested interests, and that the Dealers Licenses Act gave the Indian trader no right of appeal to any court of justice, but left him at the mercy of the Town Councils. We agreed with Your Lordship that if the apprehensions expressed in that letter as to the way in which these Acts might be administered were realised, the Indians in Natal would have very just cause of complaint. Further correspondence ensued, in the course of which Her Majesty's Secretary of State for the Colonies said that he trusted that the provisions of the Licenses Act would not be harshly enforced to the injury of those already settled in the Colony. As regards the Immigration Act assurances were received from the Government of Natal that it was capable of being and would be worked in a liberal spirit. These assurances were accepted as satisfactory, and thus the matter stood in July 1898.

3. In March 1899 we received a memorial from certain British Indians in Natal in which it was represented that the Licenses Act was being worked in more than one town in an unjust and inequitable manner. Similar representations were made to Her Majesty's Secretary of State for the Colonies, who admitted that the attitude adopted by the Town Boards and other licensing bodies as set forth in the petition was entirely contrary to the expectation of Her Majesty's Government, and at once pressed the Colonial Government for the enactment of a law amending the Dealers Licenses Act by giving an appeal to the Natal Supreme Court. The course of events in Natal has doubtless precluded any legislation in the direction

indicated. The information that we received as to the spirit in which the Immigration Restriction Act was being administered prior to the outbreak of hostilities was almost equally unsatisfactory.

4. We would now briefly refer to the main grievances brought to our notice. Under the Immigration Restriction Act, an Indian is allowed to enter Natal—(1) if he is in possession of a certificate in the form of schedule A : (2) if, appearing to be a prohibited immigrant he (a) before landing deposits £100 security, and (b) within a week obtains from the Colonial Secretary or a Magistrate a certificate that he does not come within the prohibition of the Act : (3) if he satisfies an officer appointed under the Act that he has been formerly domiciled in Natal and does not come within the meaning of any of the sub-sections (c) to (f) of section 3.

It is to the third of these provisions that we desire to invite attention. The correspondence on the subject of the interpretation of the word "domiciled" will be within Your Lordship's recollection, also the assurance of the Colonial Premier that it would be interpreted liberally. We understand that an Indian desiring to take advantage of this provision must first get a lawyer to draw up an affidavit to the effect that he was in the Colony doing some permanent business for a term of at least two years before the passing of the Act. This enables him to obtain a certificate of domicile for which a fee of 2s. 6d. is charged. The cost of the affidavit is mentioned as a grievance : but the main question is the interpretation of the word "domiciled," and the interpretation which, if our information is correct, is accepted at present is certainly not in accordance with the assurances of the Colonial Government and must give rise to considerable hardship. We recommend that an endeavour be made to induce the Colonial Government to widen the interpretation so as to include all those who were born and bred in the Colony or were actually resident therein at the time when the Act was passed or whose families were or had been domiciled there.

A further grievance relates to the rules for the grant of visitors' or embarkation passes to Indians desirous of visiting the Colony temporarily or of passing through it to a port of embarkation. We understand that a deposit of £10 is required from every person availing himself of such a pass. This requirement has been suspended during the progress of hostilities. It is one that must weigh very heavily on individuals of moderate means, and its abolition is earnestly desired.

5. With regard to the Dealers Licenses Act, the main grievances which the Indians in Natal have urged respecting it are the oppressive and biased manner in which its provisions are applied by the Licensing Boards, and the absence of any appeal from their decisions to the Supreme Court of the Colony. We consider it of the utmost importance that the amendment of the Act for the purpose of giving the right of such appeal should be again pressed on the Colonial Government. We make this recommendation on the assumption that the retention of the Act on the statute book of the Colony is inevitable. We need not disguise our feeling that in essentials it is an Act aimed against the trading enterprise and business capacity of Indians resident in Natal, in the interest of European traders who dislike the competition of their capable neighbours.

6. There are many other minor disabilities from which British Indians suffer but these are the most important. And while we consider it advisable to make specific recommendations with regard to them, we are inclined to hope more from a general change in the attitude of the European community in Natal towards Indians and from the substitution of sentiments of regard and confidence for the dislike and suspicion which have inspired the policy of the Colony of late years. Neither Your Lordship nor the Government of India can do much to bring this about, but it is at least right that the Secretary of State for the Colonies should be made acquainted with our view that the conspicuous loyalty and eminent services of the Indian population in Natal during the war entitle them to just and even generous treatment at the hands of the Colonial Government.

7. With reference to the position of British Indians in the Transvaal, we would only refer to the statement of the disabilities under which they suffered in the time of the South African Republic as set forth in Mr. Emrys Evans' report of March 1898, and express our hope that under the Government that may be

constituted by Her Majesty in that part of Africa, their claims may not be overlooked and that their legitimate grievances may be remedied.

We have the honour to be,

MY LORD,

Your Lordship's most obedient, humble Servant,

CURZON OF KEDLESTON.

E. H. H. COLLEN.

A. C. TREVOR.

C. M. RIVAZ.

T. RALEIGH.

E. FG. LAW.

No. 175 (Natal), dated Pietermaritzburg, Natal, the 23rd May 1902.

From—His Excellency Sir HENRY MCCALLUM, Governor of Natal,

To—The Viceroy and Governor General of India.

I have the honour to inform Your Lordship that during the recent session of the Natal Parliament my Ministers were asked to appoint a Commission consisting of two members to proceed to India to discuss matters affecting Indian Immigration to this Colony.

2. My Ministers will be glad to learn if the Government of India will consent to receive the two Commissioners whom it is proposed to appoint, and if so, whether a date could be named by which the Commissioners should arrive in India. It is suggested that they should reach India not later than December of the present year.

3. I shall feel obliged if Your Lordship will favour me with a telegraphic reply to this despatch.

Telegram No. 1597, dated Simla, the 14th July 1902.

From—Viceroy, Simla,

To—H. E. the Governor of Natal, Pietermaritzburg.

Your Excellency's letter of 23rd May. I shall be glad to receive proposed Commissioners. October would be most convenient for their visit, or if too early, I suggest February. Shall be glad to learn in advance nature of proposals to be put forward. My letter of 5th June has doubtless reached Your Excellency.

No. 692—67-14.

To

HIS EXCELLENCY

COLONEL SIR HENRY E. McCULLUM, K.C.M.G., R.E., A.D.C.,

GOVERNOR OF NATAL.

Dated Simla, the 25th April 1903.

YOUR EXCELLENCY,

With reference to the correspondence ending with your letter No. 391, dated the 11th October 1902, I have the honour to inform you that the Delegates appointed by the Government of Natal for the purpose of enquiring into matters affecting emigration from India to the Colony have laid before the Government of India various proposals which have been fully discussed with them. I forward, for Your Excellency's information, a copy of a memorandum dated the 9th February, in which the Delegates enumerated the five points which alone they desired to present for consideration. I also enclose a "Memorandum of Proposals", in which are set forth the concessions which my Government are prepared to make, and the conditions which they attach to them. As these

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proposals are subject to the approval of the Secretary of State, I request that this Memorandum may be treated by the Government of the Colony as strictly confidential until His Lordship's orders are known. It will, however, expedite the completion of the negotiations, if the Government of Natal will communicate direct to this Government any observations it may desire to make on the contents of the Memorandum, and will at the same time send a copy of its letter to the Colonial Office for transmission to the Secretary of State for India, to whom a copy of the present correspondence will be forwarded from this country without delay.

2. It will clear the ground for the discussion of the main question, if I first dispose of the minor points on which the Delegates, in their Memorandum of 9th February, have asked for some alteration in existing arrangements. Whilst unable to come to any final decision until they are in possession of the views of the Local Governments, with whom they have already communicated on the subject, the Government of India believe that they will probably be able to meet, if not altogether, at any rate to a considerable extent, the wishes of the Government of Natal in respect of the matters numbered 2, 3 and 5 in the Memorandum. With respect to point 5, emigration from Bombay is at present prohibited by a Notification under the Epidemic Diseases Act which was issued mainly in compliance with the desire expressed in Your Excellency's telegrams of 8th and 14th January 1897. The Notification in question has long since become ineffectual as a precaution against plague, the Natal Government has placed restrictions upon unindentured immigration into the Colony, and it is now proposed to cancel the Notification so as to permit of emigration from the Bombay Presidency.

In regard to point 4, which deals with the effect of Act X of 1902 on the emigration of special domestic servants and the refusal of the Protector of Emigrants at Madras to register men of this class, I am advised that the law has been interpreted quite correctly in Madras. It has hitherto been the custom in Natal to obtain through the official agency, that is through the Immigration Trust Board, three classes of immigrants firstly labourers, secondly artisans, hotel servants and the like, and thirdly private servants. Until the recent amendment of the Indian Emigration Act all three classes came alike under its provisions. By the new Act, the second class have been excluded from the general provisions of the Emigration Act and special arrangements have been made for their protection, while all restrictions have been removed from the emigration of the third class or private domestic servants. Advantage is taken by the Government of Natal of the fact that the second class are still subject to certain provisions of the Indian Emigration law, in order to retain them within the system of indentured labour; and though this procedure was not contemplated by the Government of India, they will not object to it. But as regards private servants, they are not prepared to alter their law so as to bring under its restrictions a class which a few months ago they deliberately decided to exempt them from; nor can they take any action in order to facilitate the extension of the system of indenture to a class of servants which they regard as outside its operation. It would appear that any inconvenience that may be experienced in the engagement of private servants in India for service in Natal is owing to the Colonial legislation for the restriction of immigration, and would furnish an argument for amending the Colonial law, rather than for altering the Indian Emigration Act.

3. I turn now to the really important change proposed by the Delegates, namely the compulsory repatriation of labourers on the expiry of the term of indenture or reindenture. It was agreed in 1894 that Indians when first recruited, should enter into an agreement either to return to India at the end of the period of contract, or to enter into a further indenture; but the Government of India stipulated that Indians not abiding by this contract should not be dealt with under the Criminal law; and the Colonial Government accordingly, when amending the Immigration Law by Act 17 of 1895, subjected indentured Indians who neither returned to India nor renewed their indentures to a special tax of £3 each, while at the same time it so framed the "conditions of service" under which the emigrant is engaged, as expressly to give him an option in the matter.

This tax has not succeeded in its object, which was solely to secure the return of the Indian to India, and it has since been extended to children of emigrants (with

certain exceptions) on their attaining their majority. But the Colony desires a more direct method of enforcing the return of the labourers to India; and the possibility of effecting this object has been fully discussed with the Delegates.

4. It would be impossible for the Government of India to agree to any arrangement under which the labourer should be kept indefinitely in a state of indenture, to be returned to India when unfit for further work, and when all his Indian associations had been broken by long absence. But if the period of service is not too prolonged, they think that a labourer who has definitely agreed to return at the end of it, and who fully understands the agreement, may properly be kept to the terms of his contract, provided that it can be enforced without any undue harshness. The possible methods of enforcing the contract have been very carefully considered in consultation with the Delegates, and the Government of India are satisfied that it is possible to attain the end in view, without any resort to penal laws or methods (to which, as in 1894, they entertain the strongest objection), by returning the immigrant to the care of the Protector on the expiry of each term of indenture. So far, therefore, as the interests of the emigrants are concerned, they are not indisposed to meet the wishes of the Government of Natal in the matter. They recognise, however, that the measure involves an important departure from previous procedure, that it is one for which there is no precedent, and that special and adequate justification must in consequence be forthcoming for what might otherwise be regarded as open to objection.

5. But the indentured coolie is not the only class of Indian who is represented in Natal. Besides a population of some 80,000 souls who are for the most part labourers whose term of service has expired, or their descendants, it is understood that there are in the Colony at the present moment some 10,000 "Arab" traders, of whom by far the greater number are of Indian extraction. I need not remind Your Excellency that my Government are as greatly interested in the fair treatment of the one class as of the other; and it is necessary, therefore, to regard the subject of the present discussion from a point of view which extends beyond the mere welfare of the indentured labourer and to treat it as a broad question of policy between the two Governments. As regards the treatment of emigrants in the strict sense of the term, the Government of India have no complaint to make. They cordially recognise that such persons are well treated and prosperous, and that the Indian labourer who chooses Natal is no subject for pity. It is for this reason alone that they are prepared to consider the question of repatriation. It is true that the effect of the small amount of emigration to Natal upon the condition of the millions of labourers of this country is insignificant, and that it would make but little difference to India if it were wholly discontinued. To the individual labourer, however, emigration is advantageous, and for this reason the Government of India are prepared to encourage it to countries where, as in Natal, he is well treated. This good treatment however has not extended to the free Indian in Natal, who I am constrained to say, has of recent years been treated with harshness, and in some cases with positive injustice. The Licensing Act has placed traders, however old a standing under the absolute power of Local Corporations, however petty, which have absolute authority to refuse licenses to trade, the pass laws have been worked with rigour, and not always with justice; various Statutes, and the rules framed under them, include the Indian in the same category with the Native African, than whom he stands on an immeasurably higher level of civilisation, and subject him to regulations which he regards as personal indignities; while the law of Natal, as it stands at present, forbids those who pride themselves upon being subjects of the British Empire to settle in a portion of His Majesty's Dominions, and imposes upon the time-expired labourer a pecuniary penalty for the offence of desiring to remain in the country where he has earned his money, and which he has made his home. No doubt some of the grievances complained of are sentimental rather than practical, but they are none the less keenly felt on that account; indeed, it is the distinction of colour upon which many of the regulations in question rest, which is resented even more than any practical inconvenience which may result from them. The complaints which reach this Government with increasing frequency and are characterised by increasing bitterness, show that its subjects in South Africa generally, and not least in Natal, are subjected to treatment in their daily life which is intensely irritating and has aroused a very widespread feeling of resentment—a feeling which is shared to the

full by their brethren in this country, and which it is impossible for my Government to disregard. This treatment extends to matters outside the law, but it receives countenance from many of the laws in force; and the Government of India would not be justified in altering existing arrangements to meet the wishes of the Government of Natal, unless the concession which they make are to be accompanied by such reciprocal concessions on the part of the Colony as may secure some substantial amelioration of the conditions of life of the free Indian in Natal. I desire to lay stress on the great importance which my Government attach to this matter.

6. I desire, also to make it clear to Your Excellency that the question involves possible eventualities which greatly transcend the scope of the subject immediately under discussion. The Government of India recognise that their object cannot be wholly attained by any changes in the law, still less by any changes which it would be possible for the Government of Natal to accept; though such changes will, apart from their direct effect, be of service in accentuating the necessity of fair treatment to persons coming from this country. For this reason they must, any arrangements into which they may now enter notwithstanding reserve to themselves full discretion to prohibit emigration altogether, should the continuance of the treatment which has caused so much well-founded irritation in this country render such a measure necessary in their opinion. They would greatly regret such a necessity, they hope that it may be found possible to avoid it, and they trust that the Government of Natal may be able to meet their wishes in the matter of the concessions for which they now stipulate; for it must be distinctly understood that they regard the present state of affairs as open to the most serious objection, and that it may not be possible for them, if the terms now offered are rejected, to continue existing arrangements upon their present footing. The treatment of Indians in South Africa has engaged their serious attention of recent years, and some little time ago they addressed a strong appeal to the Secretary of State for India, in the hope that the good conduct of the Indian population during the war, and the assistance then given from this country to the Colonies, might pave the way for a better understanding. They do not know whether their remonstrance was communicated to the Government of Natal; but if it was, they have been unable to perceive that it has as yet produced any effect. If the arrangements now proposed, under which the Government of India are making very substantial concessions by which the Colony will be greatly the gainer, should be equally inoperative, it will become necessary for them to reconsider the whole position.

7. On the other hand the Government of India are by no means insensible of the difficulties of the position in Natal; and in view of those difficulties, they have been careful to refrain from seeking any concession, which, so far as they are able to judge, there might be serious political difficulty in granting. They fully understand that the Immigration Restriction Law, which forms the most serious subject of complaint in this country, has a wider application than to India alone. The statistics supplied by the delegates show that people of all nationalities come under its provisions and though Indians are more affected by it than any other single people, still the Government of India recognise that to claim an exemption in their favour would be an interference in the general policy of the Colony which they would not be justified in demanding. Similarly, though the imposition of the license tax upon time-expired labourers forms the next most serious ground of complaint, and is regarded by my Government as open to many and serious objections, yet they have accepted it in principle, and will not now suggest its abolition so long as present conditions continue. So again, they recognise that some form of Pass Law is a natural accompaniment of a system of indentured labour. But they must press for the minor amendments which are enumerated in the Memorandum for the protection of their subjects in the Colony and the betterment of their conditions since they all relate to measures which they believe can be justified on their merits as eminently reasonable in themselves.

8. In regard to the indentured coolie, as he will now be required to return to India after his term of service, the Government think it right to stipulate for such arrangements as will prevent his landing penniless in this country. For this purpose they desire that provision be made for a system of deferred pay, and as they do not regard as desirable any lowering of the minimum wage, the

deferred pay must be an addition to that wage. Some increase in the minimum wage is fully justified by the increase in the wages of labourers in this country itself and the difficulty which is often experienced in obtaining the labour required for large industries, and by the high rates of wages obtaining in the Natal labour-market. Indeed, it is only in view of the urgent representations of the Delegates regarding the keenness of the competition to which some of the Natal industries, and notably the production of sugar, are exposed, that the Government of India have, with considerable hesitation, decided to fix the deferred wage at so low a pitch as one shilling per month. The employer will in all cases be responsible for remitting the deferred pay to the Protector; but the extra charge will fall upon him, only in the case of labourers drawing the minimum wage provided for in the contract. When the labourer enters into an arrangement dependent on the ordinary laws of supply and demand, as it is understood is almost always the case after, and sometimes during, the first period of indenture, and stipulates for wages higher than the sum of the minimum and deferred pays, the deferred wage will be considered in the bargain, and may if so agreed, be deducted from his pay. In such cases the Government of India would be glad to see rates of deferred pay doubled, if the Natal Government see no practical difficulties in the way of such an arrangement.

9. I now turn to the concessions asked for in favour of the free Indian. As the Government of India have agreed to the enforced repatriation of Indian labourers, persons emigrating under the new arrangements will necessarily be free from any liability to pay a license tax for leave to reside in the Colony. It is further proposed that the tax should be altogether abolished after ten years. The delegates were prepared to accept the immediate and complete abolition of the tax, if all labourers at present serving under indenture could be brought under the arrangements for compulsory repatriation which have been agreed to in the case of future contracts. But it was found that any such measure was impracticable, as the agreement now entered into gives the labourer a distinct option of settling in the colony on condition of his paying the tax. That option cannot now be withdrawn without a breach of faith, and the Government of India therefore do not press for the immediate abolition of the tax; but they consider that it may reasonably be removed ten years after the new arrangements take effect. Up to the present a comparatively small proportion—only 17 per cent.—of emigrants have re-indentured at the expiry of their first period of contract, and there can be little doubt that the proportion will be still smaller at the end of the first period of re-indenture, and that at the end of the second period of re-indenture the number of those who elect for further indentured service will be absolutely insignificant. The result will be that within a maximum period of nine years from landing, practically every emigrant will either have returned to India or have made up his mind to be free from indenture, even at the cost of paying the tax; so that the tax will by that time have exhausted its effect as an element in inducing the coolie to return to India, and will no longer operate to determine him to leave the Colony. Should the new conditions come into force in 1904, there can be no question of a tax on recruits going out after that date, and the latest recruits to whom the tax will apply will be those going out in 1903. But by 1913 these will all have left the colony or will have decided to stay even at the cost of paying, so that the tax will have entirely exhausted its effect, and its abolition will be a measure to which no reasonable objection can be made. The Government of India desire, therefore, that an undertaking to the effect that this will be done should be given as a condition precedent to their acceptance of the proposed arrangements for repatriation. This is a condition to which they attach the very greatest importance.

10. I think it unnecessary to deal at length with the amendment of the Wholesale and Retail Traders Licensing Act, as I understand that the Act has been found to operate unfairly to others than Indians, and that its amendment is already in contemplation. I may invite Your Excellency's attention to the correspondence that passed in 1899 between Sir W. Hely Hutchinson and the Colonial Office on this subject, which ended with a despatch from Mr. Chamberlain pressing for some such amendment of the law as is now proposed.

11. If the Government of India are correctly informed that Indians are not in practice subjected to the provisions of the Servants Registration Act, they fail to see why any mention should be made of them in the Act. The unfortunate wording of the Act has frequently been made use of in this country to illustrate the

manner in which Indians are treated and regarded in South Africa, and the Government of India must press for its alteration.

12. Respectable free Indians are not properly subject to arrest, either under the Vagrancy Act, which applies only to coolies, or under the Immigration Law, which provides for the arrest of immigrants only. If they are arrested wrongfully and maliciously and without adequate cause under any such law, the Government of India can see no reason why the law should not provide a summary remedy against the aggressor, such as the Vagrancy Act already provides in certain similar cases.

13. It is possible that difficulties may arise in the case of marriage between free and indentured persons under the new arrangements. I am informed that such marriages do not in fact take place between free women and indentured men, though they do occasionally occur between indentured women and free men. My Government were unable to accept any of the proposals put forward by the Delegates for dealing with such cases; and if any special provision were to be made for the matter, the only conditions to which they could agree would be, first that if a free woman were to marry an indentured man the marriage should not affect the status of the latter, but, that if he were to be repatriated against his will his wife and children would be entitled to free passages together with him; and secondly, that if a free man were to marry an indentured woman, the latter should be bound to work out her current indenture, but that after that she would be free to settle in the Colony without being subject to any special tax or other disability. The delegates accepted the first condition at once but urged against the second that, if marriage with a free man were to entitle a coolie woman to remain in the Colony, such marriages, whether real or only formal would so greatly increase in number, as very largely to annul the power of repatriation in the case of female adults. The objection seemed to us to be not without force; and as a fact, it appeared from the Protector's returns that the number of such marriages must be so small that they may safely be left out of account, provided that some dispensing power is reserved to provide against any occasional hard cases to which the enforcement of the power of compulsory repatriation might give rise. We have accordingly proposed that such a power should be conferred upon Your Excellency, or upon some high official in the Colony.

14. I must once more remind Your Excellency that the proposals which form the subject of this letter, while they represent what the Government of India are themselves prepared to accept, are purely provisional until they have received the sanction of the Secretary of State, to whose approval they are subject; and that whatever agreement may be arrived at as a result of the present negotiation, my Government must reserve to themselves the fullest liberty to take at any time such measures in regard to emigration to Natal, as they may think necessary in order to secure to their subjects proper treatment in that colony. In this connection I would ask that the signatories of the petition forwarded with Your Excellency's letter No. 149, dated the 19th February 1903 may be informed that their petition has been received and duly considered by the Government of India.

15. Finally, the Government of India desire most cordially to acknowledge the conspicuous candour and moderation with which Messrs. Shepstone and deGersigny have dealt with the difficult questions under discussion. These gentlemen will be able to inform Your Excellency of the very strong feeling which has been aroused in this country by the treatment of Indians in South Africa, and by the ill-will which has occasionally found expression in public speeches in the Colony. For my own part, I have gladly availed myself of the opportunity which the deputation from Your Excellency's Government has afforded me, of explaining to Your Excellency with fulness and frankness how the emigration question stands as regarded from the Indian point of view. It is my earnest hope that the present negotiations may inaugurate an improvement in the public feeling of the Colony towards the subjects of my Government. If that should be so, we shall have arrived at a result more valuable than any alterations in mere laws or contracts, and better calculated to perpetuate the reciprocal benefits which the two countries derive from the uninterrupted flow of emigrants from the one to the other.

I have the honour to be,

SIR,

Your Excellency's most obedient, humble servant,
CURZON.

D
MEMORANDUM OF PROPOSALS.

PART I.

The arrangements in connection with emigration to Natal to which the Government of India are prepared to give their assent, subject to the approval of the Secretary of State, and to the acceptance by the Government of Natal of the condition set out in Part II of this Memorandum, are the following :—

A.—Repatriation of emigrants.

The conditions of service of emigrants shall be amended as in the annexure to this memorandum, so as to provide for the detention of emigrants in the charge and at the cost of the Protector for not longer than three months between any two terms of indenture ; for their being sent back to India free of charge to themselves if they do not choose to re-indenture ; for the limitation of the total indentured service to eleven years ; for liberty to the emigrant to settle in the Colony, free from all special liabilities, if not repatriated on the expiry of that term ; and for the payment of deferred pay in excess of the minimum rate.

It is to be understood that the arrangements for the transit and detention of emigrants which are contemplated in paragraph 4 of the " Conditions as to residence, etc.," will be of a purely executive character, and quite distinct from the machinery provided for the purposes of police and criminal justice.

The emigrants will, of course, remain subject to the Pass Law ; and in the case of an absconder, the period during which he is absent from the charge of the Protector may be excluded from the calculation of the three months' limit.

NOTE.—It is considered that if an emigrant is to be compulsorily repatriated, it is necessary to ensure that he shall not be returned to his home in a destitute condition. It is with this object that deferred pay has been provided for. Its amount is small, but the Government of India are unwilling, on the one hand to suggest a higher increase in the present rates of pay than the Government of Natal might find it possible to accept, or on the other hand, to hamper recruitment in India by providing for a deduction from the minimum wages already in force.

B.—Minor points.

The Government of India must consult Local Governments before coming to a conclusion on the minor requests put forward by the delegates in their " Memorandum on points discussed at the interview of the 5th February 1903," viz.,—

- (1) Point 2 of the Memorandum : inconvenience caused by refusal to register at Madras emigrants who have come there from neighbouring districts.
- (2) Point 3 of the Memorandum : reduction in the percentage of women.
- (3) Point 5 of the Memorandum : opening of emigration from Bombay and Karachi.

It does not appear to the Government of India, on the information now available, that there should be any serious difficulty in meeting the delegates' requests on these points, at any rate to a considerable extent. Their decision will be communicated as soon as the replies of the Local Governments have been received.

NOTE.—It has been explained to the delegates that point 4 of their memorandum is based upon a misapprehension ; since so far from prohibiting the emigration of private servants, Act X of 1902 has made it absolutely free, by exempting them from the provisions of the Emigration Act.

PART II.

Conditions referred to in Part I.

(1) That the Natal Immigration Law be amended, so that the provisions of Section 6 of Act No. 17, 1895, and any similar provisions, which require the payment of a yearly sum by Indians in certain circumstances for a license to remain in Natal, shall not apply to Indians introduced under the new arrangements.

(2) That the Government of Natal undertake to repeal altogether the provisions requiring the payment of this yearly sum, on the expiry of ten years from the time when the new contracts, under which Indian immigrants can be repatriated, first come into force.

NOTE.—As the contract at present entered into by Indians in this country gives them the option of remaining in Natal on payment of the special tax, it is impossible to subject persons who have emigrated under the present arrangements to any form of compulsory repatriation. But, since the number preferring re-indenture to payment of the tax is exceedingly small, even on the expiry of the first indenture, and will be smaller and smaller after each term of re-indenture, it follows that in ten years time from the arrival of the

last of them, practically all the immigrants under the present system will either have left the colony, or will have decided to settle there whether the payment of the tax is enforced or not. The tax will then be useless as a means of enforcing their return to India, which is its only object.

(3) That Act No. 18 of 1897,—an “ Act to amend the Law relating to Wholesale and Retail Dealers,”—be amended so as to allow an appeal to the Supreme Court against orders refusing a license.

(4) That Indians be removed altogether from the operation of Law No. 21 of 1888—“ To facilitate the registration of native servants,” etc.,—and from any rules or bye-laws made under that Law.

NOTE.—The delegates have informed the Government of India that, so far as they know, there is in practice no registration of Indians under this Act; and such information as this Government has, goes to corroborate the statement. The exclusion of Indians from the operation of the Act should therefore present no difficulty; while it will remove the grievance caused by their being classed among “ uncivilised,” and together with “ barbarous or semi-barbarous ” races.

(5) That that portion of section 1 of Law No. 15 of 1869,—“ For the punishment of idle and disorderly persons,”—which provides a penalty, and for the summary assessment and recovery of damages, in certain cases of malicious arrest, be extended to all such arrests under those provisions of section 2 of the same Law which refer to “ coloured persons ” as such (so far, at least, as those provisions apply to persons of Indian extraction), or under any rules or bye-laws passed in pursuance of or for the purpose of carrying out those provisions; and

(6) That, by amendment of Act No. 28 of 1897—an “ Act to protect uncovenanted Indians from arrest, etc.,”—or otherwise, the provisions regarding a penalty and the summary assessment and recovery of damages which are referred to under the head last preceding, be extended to malicious arrests under cover of section 3F of Law No. 25 of 1891.

NOTE.—The provisions referred to under the last two preceding heads apply only to arrests made “ wrongfully and maliciously, and without probable cause ; ” they are reasonable in themselves; they already find a place in the Natal Statute Book; and their extension as desired will remove one of the great grievances felt by Indians in Natal. Especial importance is attached to the summary assessment and recovery of damages; since, in the case of poor persons, the remedy by regular suit is almost wholly illusory.

(7) That any official rule or law excluding Indians from Government schools be cancelled.

NOTE.—The delegates inform the Government of India that so far as they know there is no such rule and that exclusion is practically effected by the feeling among the boys themselves. On the other hand, it has been positively affirmed that such a rule exists. If so, its abolition, though it cannot affect the feeling just alluded to, will remove a reasonable grievance.

(8) That to provide for special cases of hardship that may arise, a power of dispensing with compulsory repatriation in individual cases be reserved to the Governor or other high authority in Natal.

ANNEXURE.

REVISED CONDITIONS OF SERVICE.

- *Period of Service.*—Five years.
- Nature of Labour.*—Agriculture.
- Number of days in which the Emigrant is required to work in each week.*—Six days in the week, Sundays and Holidays excepted.
- Number of hours in each day during which the Emigrant is required to labour without extra remuneration.*—Nine hours between sunrise and sunset.
- Monthly or daily wages or task work rates.*—Besides free rations and deferred pay—

	Rs.	A.	P.
For men of 18 and upwards minimum rate as follows :—			
First year, 10 shillings monthly equal to	..	7	8 0
Second year, 11 shillings monthly equal to	..	8	4 0
Third year, 12 shillings monthly equal to	..	9	0 0
Fourth year, 13 shillings monthly equal to	..	9	12 0
Fifth year, 14 shillings monthly equal to	..	10	8 0

The women are paid half wages and minors in proportion.

Other conditions if any—

Free house to live in and medical attendance.

Ration for an adult as mentioned below.

1½ lbs. (4½ ollocks) of rice daily, or for 3 days in the week, in lieu of rice,
2 lbs. (5½ ollocks) of maize meal.

Doll 2 lbs. (5½ ollocks) per month.

Salt 1 lb. (2¾ ollocks) per month.

Salt fish .. 2 lbs. (26½ polls) per month.

Ghee or oil .. 1 lb. (13½ polls.) per month.

Immigrants under 12 years of age will receive three-fourths of the above rations.

Conditions as to residence in Natal and return passages to India.

The emigrant shall be entitled to a free return passage to India after having completed a term of five years in Natal of industrial service under indenture. The emigrant shall not leave Natal without a written license; and no license to leave the Colony shall be granted to any emigrant who has not completed five years' residence in Natal, unless under a written order of the Indian Immigration Trust Board for his or her return to India.

2. After the expiration or other determination of the contract, the emigrant shall either return to India, or remain in Natal under indentures to be from time to time entered into: provided that each term of new indentured service shall be for not more than two years. And provided further that the minimum rate of wages for each year of indentured service after the first five years shall be 16 s. per month for the first year, 17s. per month for the second year, 18 s. per month for the third year, 19 s. per month for the fourth year, and 20 s. per month for the fifth and each succeeding year, in addition to deferred pay.

3. Every Indian desiring to return to India on the expiry of the first or any subsequent period of his service under indenture, shall be provided by the Indian Immigration Trust Board, with a free passage to India.

4. Subject to the provisions of paragraph 6 of these conditions, every Indian who emigrates under this agreement shall be at liberty, after expiry of each term of indenture, to choose the employer to whom he shall be re-indentured. To allow of his exercising this choice he shall, on the expiry of any term of indenture, unless already re-indentured, be sent free of cost to himself under due supervision to the charge of the Protector of Immigrants or his deputy, who shall detain him and his wife and children if any, free of cost to himself, in a suitable place provided for the purpose, and allow him a period of one month, if he desires it, in which to decide whether to re-indenture or return to India. If he is not re-indentured within that period, he may be required to return to India at the expense of the Trust Board. If no suitable transport is available to India, the Protector may detain the emigrant and his family in the manner described above for a further period not exceeding two months.

5. During each period of re-indenture, each Indian entering into such further indenture shall have all the rights and privileges which he had during his first term of indenture, and at the expiry of each term of re-indenture the provisions of the paragraph last preceding will apply.

6. After the completion of 11 years of indentured service, the Immigrant must, if so required, return to India at the expense of the Trust Board. Should he be permitted to indenture for a further period, or to remain in the Colony without indenture for more than three months after the expiry of his last indenture, he shall be entitled to settle in the Colony free from all liability to any special tax or to further indenture, and shall not be sent back to India against his will, nor shall he have any right of free passage to that country.

Deferred Pay

Is one shilling a month for a male, and six pence a month for a female adult which shall be paid by the employer to the Protector of Emigrants on account of each emigrant throughout the whole of each period of indenture or re-indenture. It will bear interest at Government rates. The total amount at each person's credit shall be at his disposal when he returns to India, or on the completion of eleven years' indentured service, should he not then be repatriated.

If an emigrant is, by agreement with his employer, drawing pay at fixed rates which are in excess of the minimum *plus* the deferred pay, the latter may, subject to the terms of the agreement, be deducted from the pay. In all other cases it shall be paid by the employer in addition to the pay.

No. 19 OF 1903.

GOVERNMENT OF INDIA.

DEPARTMENT OF REVENUE AND AGRICULTURE.

EMIGRATION.

To

THE RIGHT HONOURABLE LORD GEORGE F. HAMILTON, G.C.S.I.,
His Majesty's Secretary of State for India,

Simla, the 14th May 1903.

MY LORD,

Your Lordship is aware that for some years past the question of the emigration of Indian subjects to and of the treatment of Indian settlers in Natal have frequently been under consideration. The value of Indian labour under the system of indenture is highly appreciated in that Colony, which would readily employ a largely increased number of emigrants, provided that their introduction did not result in the settlement in the Colony of time-expired labourers to an extent which Colonial opinion regards as injurious; and in March last year we received from the Governor of Natal a Despatch requesting that that Colony should be placed upon an equal footing with Ceylon, Burma, and the Straits Settlements in so far as legal restrictions on emigration from India to the Colony were concerned. To this request we were unable to give a favourable reply, for reasons stated in a letter No. 1320-31/2, dated the 5th June 1902 from the Viceroy to the Governor, of which we forward a copy. Meanwhile on the 23rd May 1902 the Governor again addressed His Excellency the Viceroy, stating that it was proposed to appoint a Commission of two members to proceed to India to discuss matters affecting Indian emigration to the Colony. In reply we expressed our readiness to receive the Commission and it was finally arranged that their visit should be postponed to the beginning of the present year. Messrs. Shepstone and de Gersigny, the delegates appointed by the Colony, reached India towards the end of January, and the whole question of emigration to Natal was repeatedly discussed with them during the months of February and March. The instructions given by the Government of Natal to the delegates are contained in the enclosures of the Governor's letter No. 391, dated the 11th October 1902, which accompanies this Despatch; but in the course of the negotiations the delegates confined themselves to the specific points which are enumerated in the Memorandum attached to their letter of the 9th February 1903, a copy of which is also enclosed. The conclusions at which we arrived are contained in His Excellency the Viceroy's letter No. 692-67-14, dated 25th April 1903, to the Governor of Natal, and in its accompaniments. In accordance with the arrangements sanctioned in Lord Kimberley's Despatch No. 4-Public, dated 24th January 1894, we have addressed the Governor of Natal direct; but, as Your Lordship will observe we have requested that our proposals may be considered strictly confidential until Your Lordship's orders are known.

2. The most important proposal brought forward by the delegates had reference to the return of Indian emigrants from the Colony on the expiry of their period of indenture without any option of settling in South Africa, and the main object of their visit to this country was to ascertain whether the Government of India would agree to some arrangement which would, without interfering with the supply of labour from India to the Colony, place a check upon the settlement of Indian labourers in Natal. As originally put forward, the proposal was one for the termination of contracts of indenture in India instead of in the Colony; but in the form which it has finally assumed, it contemplates general repatriation after the period of indentured service has expired. It may be convenient, before we deal with this

important question of the repatriation of immigrants whether they desire to return to India or not, that we should briefly review the circumstances that have led up to the proposal.

3. Prior to the changes made as the result of the Commission appointed by the Natal Government in 1894, the terms under which Indian labourers were indentured for service in Natal bound them to serve for a period of five years under indenture, and to remain for a further period of five years in the colony, at the end of which time they and their families were entitled to a free passage back to India. It was found however that only a comparatively small number took advantage of the offer of a return passage, and that the Indians settled in the colony in such numbers as to create alarm in the minds of the colonists. Two delegates were therefore deputed to India in 1894, with the object of arranging that during his residence in Natal the Indian should be continuously under indenture, that at the end of each period of his indenture he should have a right to a free return passage to this country, and that if he did not reindenture he should be bound by his contract to return to India. It was distinctly stated that, unless some such arrangement could be arrived at, there was strong reason to apprehend that emigration from India to Natal would at no very distant date be altogether closed by action which public opinion would force upon the legislature of the latter country. These proposals were fully considered by Lord Elgin's Government, and the conclusions at which they arrived were communicated to the Secretary of State in Despatch No. 29, dated the 22nd May 1894. They substantially accepted the main proposals put forward on the part of the Colony, subject to the proviso that immigrants declining to enter into a new indenture and refusing to abide by the contract requiring them to return to India should not be dealt with under the criminal law. It was believed at the time that refusals to return to India would probably be rare, and it was suggested in the Despatch already referred to that they might be reduced to a minimum by the imposition of a tax on residence of such a character as to discourage the settlement of Indian immigrants in the Colony. The views of the Government of India, after they had received the approval of the Secretary of State, were communicated to the Governor of Natal in September 1894, the suggestion regarding the imposition of a tax being, at Mr. Fowler's request, omitted in addressing the Colonial Government.

4. That Government, however, adopted of its own motion this method of putting pressure on Indians to return to India, and framed a Bill to amend the Immigration Law of 1891, which rendered Indians who had immigrated under indenture liable to an annual tax of a definite sum (subsequently fixed at £3 sterling), if they failed to return to India or to become reindentured in Natal. At the same time, the "conditions of service" under which emigrants are engaged, were so modified as virtually to abolish the definite contract either to reindenture or to return, and to allow an option of remaining in the Colony on payment of the tax in question. This Bill was examined by the Government of India, and accepted by them as substantially embodying the revised conditions of emigration which had been decided on. In their despatch No. 42, dated the 30th July 1895 on the subject they stated that they had no objection to the liability to special taxation which an Indian incurred under the Bill on the expiry of his term of indenture; and this question was still more fully dealt with in a subsequent Despatch No. 5, dated the 22nd January 1896 of Lord Elgin's Government, in which the imposition of an annual tax on Indian immigrant settlers in Natal was accepted as the only alternative to the complete cessation of emigration from India to that Colony.

5. The first emigrants who arrived after the new law came into force reached the Colony in October 1898, and therefore the earliest date on which any Indians introduced under that law could have completed their first five years' indenture was in October 1901. During this interval the number of Indians settled in the Colony has been increasing rapidly. In 1894 the Indian population was put at 46,000, including 5,500 so called "Arabs," a term under which all traders of Asiatic origin are understood to be included, though the great majority of them are believed to be Indians. In 1901 the number of Indian immigrants and their descendants was estimated at 72,965, of whom 47,599 were free and 25,366 indentured, in addition to some 9,000 Arabs. At the same time, the coloured population of African extraction was estimated to exceed 7,50,000 (including the Africans in Zululand), while the whole white population numbered only some 64,000 souls.

From the reports of the Protector of Immigrants for recent years we find that the number of emigrants who landed in Natal and who returned to India in each year since 1895 are as follows :—

					Number of im- migrants including infants.	Number of re- turning Indians including infants.
1896 ..	..	..	..	..	3,771	296
1897 ..	..	..	..	..	6,051	418
1898 ..	..	..	..	..	5,939	188
1899 ..	..	..	..	..	1,300	503
1900 ..	..	..	..	..	5,435	448
1901 ..	..	..	..	..	7,345	629

From these figures some idea may be formed of the rapidity with which the number of Indians in the Colony has been increasing, but they relate almost entirely to a period before the special tax actually took effect. As regards the effect of that tax, the delegates inform us that the result of its working up to the present has been, that at the end of their first five years 20 per cent. of the Indians have re-indentured 11 per cent. have returned to India, while 51 per cent. are known to have remained in the Colony and 18 per cent. cannot be accounted for. The figures given by the Protector of Immigrants in his report for 1901, which is the latest we have received, give an even more unfavourable account of the working of the Law in the case of emigrants whose indentures expired in that year. Out of 644, such persons, only 53 elected to return to India, 101 accepted a fresh term of service, and 135 paid for licences to remain in the Colony, the remainder being at the close of the year on leave or otherwise unaccounted for.

6. The total numbers on which these conclusions are based are necessarily small; but there appears to be no doubt that the imposition of the tax of £3 will entirely fail in its object of preventing Indians from settling in Natal when their period of indenture has expired. This conclusion has been fully accepted in the Colony, and has led to a further amendment of the Immigration Law, so as to render liable to the tax not only the Indian immigrants themselves but their adult children as well. But it would seem from the papers [Secretary of State's despatch No. 93-Public (Emigration), dated 12th September 1902] now forwarded to us by the Government of Natal that the colonists do not anticipate that even this measure will be sufficient to prevent the settlement of time-expired immigrants on a large scale.

7. From those papers and from our discussions with the delegates, we understand that the position in the Colony as regards the immigration question is somewhat as follows. In earlier times the importation of Indians was chiefly made for the benefit of the Coast districts, and for forms of labour requiring persons accustomed to semi-tropical conditions. The feeling in the upland parts of the Colony was then, as it has always been in the towns, opposed to the immigration, and a Crown subsidy which had been granted in aid of the expense of importing labour was eventually withdrawn. With further experience, however, the value of Indian labour has become recognised in the upland tracts as well as in the coast districts; and at the present time we gather that the general feeling in the Colony outside the towns is much more favourable to the employment of Indian labour than was formerly the case. The demand for immigrants has in consequence greatly increased, and in 1902 the applications received from employers were for nearly double the number of labourers for whose recruitment the Immigration Trust Board had arranged. The industrial situation in the Colony makes their labour absolutely essential to planters, and this fact appears to be recognised by the politicians who at present, hold power in the Colony. Even however amongst those who are most in favour of Indian immigration, there is a strong feeling against the settlement of the Indians in the Colony. Such settlement, we are told, adds greatly to the administrative difficulties of the Trust Board and to the expense attending immigration, since special arrangements have to be made for policing the Indians, and for maintaining that control over their movements which is considered essential. It is found impossible, even with this control, to prevent many of them from crossing the border into the adjoining colonies, with the people or Governments of which there is thus always a possibility of friction; while the problem of

protecting the settled Indians in the event of any difficulty arising with the native population is also mentioned as a reason why all parties are agreed in deprecating an increase in the number of settlers. But we gather that the most serious element in the question arises from the attitude of the labour party. We do not understand that this party objects to the employment of Indian agricultural labour under indenture. But it is strenuously opposed to any increase in the free Indian population and, rather than allow such increase, would not hesitate to prohibit immigration altogether. Owing to the absence of manhood suffrage, the party is not (as it is in Australia) in political control of the situation; but it possesses great and increasing influence, especially in the towns, where it is in a position to bring effective pressure to bear upon the Government. Though the Colony, as a political whole, is said at present to be agreed as to the advantage of encouraging immigration, yet we are informed that the pro-immigration party has not ventured to suggest that the subsidy of £10,000 which was formerly granted in aid of the operations of the immigration Trust Board and subsequently withdrawn, should again be voted. Thus, whatever its voting power may be at present, it would appear that the opinion of the labour party is of sufficient weight to cause considerable anxiety to the planters and other employers regarding their future supply of labour; and the present renewal of negotiations is no doubt largely due to the necessity of conciliating that party in order to prevent objection to the expansion, or perhaps even to the continuance on its present footing of the importation of indentured labour.

8. When some special cause of agitation occurs, the power of the labour party, and the influence which its strength in the towns enables it to bring to bear on Government become evident, as is shown by the history of the Durban Riot of 1897 and of the legislation that followed. Your Lordship will recollect that in January of that year, the arrival at Durban of two steamers with some 600 free Indians on board led to an organised demonstration by some 5,000 people to protest against their disembarkation. The crowd eventually dispersed without disturbance, and no violence was done to the immigrants; but it was considered desirable by the Secretary of State for the Colonies and by Your Lordship that special efforts should be made to restrict the emigration from this country of persons not under agreement to labour in the Colony, while the Colonial Government introduced a series of restrictive Acts, which were designed partly to prevent the free immigration of Asiatics and partly to bring those who had already settled under stricter regulation, and which have since been the cause of numerous and not unreasonable complaints in this country.

9. The comprehensive legislation [Secretary of State's Despatch No. 25 (Public), dated the 28th August 1897] to which the Colony at that time thought it necessary to resort, and which contained various provisions that were from our point of view of an objectionable character, consisted of the following measures:—

- (1) The Immigration Restriction Act.
- (2) An Act amending the Law of Quarantine.
- (3) An Act amending the Law of Licenses of wholesale and retail Dealers.
- (4) An Act to protect Uncovenanted Indians from arrest.

10. Your Lordship at once objected to the Immigration Restriction Act (Letter No. J. and P.-253-1897, from Sir A. Godley to Under Secretary of State for the Colonies, dated 21st July 1897), as adversely affecting the status or diminishing the political rights of Indians who had already settled in the Colony and who had acquired property or established business connections there. The objection had special reference to the use of the word "domiciled" in section 6 of the Bill, which it was thought would unduly restrict the number of persons who were exempted from the operation of the Law. Correspondence (Sir A. Godley's letter, dated the 27th July 1898) on the subject ensued which eventually ended in the acceptance by the Secretary of State of the undertaking of the Natal Government that the Act would not be applied to Indians who were settled in the Colony when it was passed. We have not pursued the subject on the present occasion, because we believe that the pledge thus given by the Natal Government and accepted by Your Lordship has been honourably fulfilled, and that the present practice is not open to exception, and is even more liberal than would be, if strictly interpreted, any amendment of the Act itself which we could hope to secure. But the fact remains

that that practice is not justified by the letter of the law, and that political pressure might at any moment compel the Colonial Government to render it more stringent.

11. The Dealers' Licensing Act was not strongly objected to at the time, but after a short experience of its working, petitions against the manner in which it was being carried into effect by Town Councils and Town Boards throughout the Colony were made both to the Home and to the Indian authorities. The facts stated in those petitions, and not controverted by the Colonial Government, satisfied the Secretary of State for the Colonies that unless an appeal was allowed from the Town Councils and other Licensing Boards grave injustice was likely to be done to Asiatic traders, and he therefore in May 1899 (letter No. 12091, dated the 20th May 1899, from Under Secretary of State for the Colonies) informed the Government of Natal that the attitude adopted by certain Boards was entirely contrary to the expectation of Her Majesty's Government that the Act would be administered with justice and moderation, and suggested the introduction of a Bill allowing an appeal to the Natal Supreme Court from the decision of the Board. A warning was at the same time added that unless the suggested legislation was enacted emigration from India would probably be stopped, and that such action on the part of the Indian Government would be perfectly justifiable and indeed inevitable. No steps have as yet been taken by the Colonial authorities to comply with the wishes of the Home Government; but we are informed that public feeling in the Colony has condemned the present state of the law, and that measures are about to be taken to make the alteration desired.

12. The object of the fourth Act mentioned above was to afford a means of distinguishing between indentured and free Indians and to make provision for the issue of passes to the latter to prevent their arrest. It thus had the appearance of providing a safeguard to the free Indian against arrest, but it contained or provision which was liable to be used oppressively, since it deprived any Indian not in possession of a pass, and who happened to be arrested, of all right to damages on account of wrongful arrest or detention on the ground that he was not an indentured person and therefore not liable to arrest. By a subsequent Act (enclosures of despatch No. 73, dated 19th May 1898) a slight amendment was made in the Act, which gave some redress to an Indian unlawfully and maliciously arrested; but we do not regard the amendment as a sufficient guarantee for the fair treatment of free Indians, who are entitled under the law to move about without restriction; and the petitions which we have received show that the administration of the Pass law generally is a serious grievance to the Indian settlers.

13. The legislation of 1897 has led to strong and bitter feeling in this country, which has been intensified by reports of the ill-treatment of Indian subjects in other colonies in South Africa, and by the disappointment felt that little or nothing should have been done since the annexation of the Transvaal and Orange Free State to remove the disabilities to which Indians were subject under the Boer Governments. We addressed to Your Lordship an appeal on behalf of the Indians in our despatch No. 36, dated the 12th July 1900, in the hope that the loyalty of the Indian population during the war, and the recollection of the services rendered by India at that time, would pave the way for some remedy of the numerous grievances of which complaints were made, but so far as we can judge no improvement has resulted. Reports of indignities to which well-to-do Indians are subject both in Natal and elsewhere, and rumours that are spread from time to time of further anti-Indian legislation, have aroused a very strong feeling of indignation in this country amongst the educated classes, especially in Bombay, to which Presidency belong many of the more influential persons among the free Indians now residing in Natal and in South Africa. It is perfectly well understood amongst these classes that the discontinuance of immigration would be a serious blow to the prosperity of Natal; and appeals to us are incessant to procure the redress of their grievances by threatening to stop, and if necessary by actually stopping, the supply of labour from this country. This is a measure to which we should be exceedingly unwilling to resort. If we believed that it would result in the complete removal of grievances and the resumption of emigration as before, we should not hesitate to employ it should all other measures fail. But we greatly doubt whether any Natal Government would find it possible, in the present state of public feeling, to remove the existing restrictions upon the entrance into and residence in the Colony of Indian immigrants, even if the penalty of not doing so were to be the

cessation of the Indian labour supply, and the serious injury of the Colonial industries. And if we are right in this belief, to close emigration would be to deprive considerable numbers from among our poorest classes of the substantial benefits which they derive from it, in an unavailing endeavour to promote the interests of an infinitely smaller number of more intelligent persons, who have gone to Africa of their own pleasure in the pursuit of pecuniary gain. At the same time, the feeling to which we have referred is daily growing more bitter and more intense; and we do not conceal from ourselves the fact that we shall have to reckon with it if the present negotiations fail to secure better treatment for the Indians in the Colony.

14. The complaints to which reference has been made do not however affect the indentured Indian. From him there has been no complaint, and as far as our information goes, he is well treated and well cared for. The annual emigration to Natal of some six or eight thousand persons, or even of double that number, is not a matter that can by itself be of any great importance to this country; but it is not desirable to close any outlet to the surplus population of our congested districts, and the emigration is undoubtedly beneficial to the labourers themselves. Those who return bring comparatively large sums with them, and in 1902 the remittances of those who have settled in Natal, including traders, reached the substantial figure of £100,000. It is also no small benefit that a section of the labouring classes should find employment in a country where the conditions of life are less restrictive, and the standard of living higher than in their own.

15. In the last two paragraphs we have considered the matter from the Indian point of view alone. But action is equally possible on either side of the Ocean. It is as much within the power of the Natal Government to stop immigration as it is within our power to stop emigration; and we are constrained to recognise the fact that if emigration is to continue, and if reasonable treatment is to be secured for Indian settlers in Natal, measures must be taken to prevent that rapid increase in the numbers of the settlers which has been so marked in recent years. We realise that if those numbers should continue to increase greatly, the Colonial anti-Indian feeling would become intensified and would be more difficult to control, especially in the towns. The irritation excited against the Indian might take shape in measures or action which would cause increased ill-feeling and resentment in this country, and might even become a source of embarrassment to the Imperial Government. Whether the exclusion of Indians who are British subjects from South Africa under the Immigration Restriction Act as now enforced, or any similar statute that may be introduced, should be allowed, appears to be a constitutional question for the decision of His Majesty's Government. We propose, for reasons given in paragraph 7 of the letter to the Governor, to take no exception at present to this legislation, though in our Despatch No. 18 of this day's date we have indicated our opinion as to the direction in which, in fairness to His Majesty's Indian subjects, the test imposed by such an Act should be modified.

16. Having thus described the present position, and the circumstances which have led up to it, we now proceed to discuss the results of the present negotiations, and we deal with them here briefly, since they are set out in some detail in the letter to the Governor of Natal. In the matter of the repatriation of emigrant labourers, we now propose to go somewhat further than it was thought right to do in 1894. Reliance was then placed on special prohibitive taxation; but, as the papers now received from Natal show, the principle of liability to special taxation is a dangerous one to accept. Proposals have been made in the course of the discussions in the Colony, to raise the tax to a prohibitive amount and to make failure to pay it penal, with the scarcely concealed intention of facilitating the constant harassment of those labourers who might venture to settle in Natal. Even if the enhanced tax were recoverable by distraint alone, it would be ineffectual in the case of the well-to-do; while the poor man might be shadowed by the bailiff and sold up as often as he acquired anything saleable, with the avowed object of rendering residence in the Colony intolerable to him. We consider that there is less objection to accepting the principle that labourers who have emigrated under a temporary contract, and under engagement to return at the end of it, may be brought back to this country in accordance with their agreement, subject to the restrictions indicated in paragraph 4 of the Viceroy's letter to the Governor. We object as strongly now as before to the introduction of any special criminal law for dealing with labourers who fail to carry out their agreements to return. But we see

no objection to permitting the Colonial Government to forward labourers on the expiry of their term of indenture to the Protector under civil escort, nor can we see any hardship in keeping labourers who have already served for a term of five years or more, under further restraint for a maximum period of three months at a depot, until they have made up their minds whether to return to this country or to accept a fresh period of indentured service. Both the custody and the restraint would be identical with those to which they are already subject in this country during their transit to the port of embarkation, and in Natal until they are distributed to their employers. We adhere to the view expressed in paragraph 14 of the former Delegates' report, dated 23rd March 1894, and enclosure in paragraph 6 of our Despatch No. 29 of 22nd May 1894, that when once the contract is made definite, and the existing option done away with, the occasions for the exercise of compulsion will be exceedingly rare; a view which receives support from the fact, stated by the present Delegates, that compulsive measures under the present law of 1894 are virtually unknown. Finally, we regard the return of the emigrants to this country as being on the whole to the advantage of India, and we may quote here what we said in paragraph 2 of our Despatch No. 5, dated the 22nd January 1896:—

“As regards the interests of India and her people there is something to be said on both sides of the question. It is true that the quasi-compulsory return to their homes of time-expired emigrants lessens the permanent relief afforded by emigration to the over-crowded tracts in India. But on the other hand, when such emigrants settle down in the Colonies, the money saved by them is retained in the Colony instead of being sent or brought back to India; the increase in the number of Indians born in the Colony tends to decrease the demand for imported labour, and therefore the relief afforded to congestion in this country; while the coolie who returns to India is generally well-to-do, and throws no future burden upon his native country and his place in the Colony is taken by those who are a burden.”

17. We are not, however, prepared to accept any proposals that further restrict the liberty at present enjoyed by our immigrants to settle in the Colony, or indeed to make concessions of any sort to the Government of Natal, unless we can obtain in return some guarantee for the more fair and equitable treatment of the free Indians already settled there. In return for our agreement to the principle of repatriation, we accordingly stipulate for the eventual abolition of the license tax under the conditions mentioned in paragraph 9 of our letter to Natal. We also insist upon the amendment of the Traders' Licensing Act in the manner formerly proposed by the Secretary of State for the Colonies, which we understand is already under contemplation. We press for the removal of Indians from the Servant's Restriction Act where they are classed with barbarous races, a definition which has given rise to much ill-feeling in this country; and we stipulate that, following a precedent already adopted by the Natal legislature, a summary remedy should be provided for free Indians who are wrongfully arrested. We trust that these stipulations will diminish the more serious grievances of which complaints are so frequently made to us, and will serve to convince the people of Natal that the free Indians resident there must be treated with some measure of respect for their rights as British subjects, and that, should this result not be attained, the Government of India may find itself no longer able to permit the emigration of its subjects. We have refrained from pressing for any alteration in the word “domiciled” as used in the Immigration Restriction Act, for reasons already stated in paragraph 10 of this letter. We have also, on grounds which are fully stated in paragraph 8 of the letter to the Governor, thought it right to stipulate for the provision of deferred pay to labourers who are in receipt of the minimum pay fixed by their contract of service.

18. We do not think it necessary in this Despatch to discuss the minor points raised by the delegates. On these we must consult the local Governments concerned, and they are not of sufficient importance to require Your Lordship's special orders. We hope to be able to meet the wishes of the Colony on these minor points to the extent explained in our letter to the Governor; and the letters to the Governments of Madras, Bombay and Bengal, of which we enclose copies, will put Your Lordship in possession of our views. It will be necessary, if emigra-

tion is to be opened from the Bombay Presidency, to cancel the notifications (No. 836 dated the 6th March 1897 and No. 1038, dated 28th April 1898) issued under the Epidemic Diseases Act which prohibit emigration from that Presidency. These Notifications were issued as the result of the communications received from Your Lordship in January 1897, since which date circumstances have entirely altered. Plague has spread far beyond the limits of Bombay, the notifications are no longer required as measures of sanitary precaution, and their continuance, now that they have lost all significance in connection with their plague, is really a straining of the law. The local Governments have asked that they should be cancelled, and the Colonial Government has taken special measures to protect itself by legislation. We presume therefore that Your Lordship will see no objection to the withdrawal of the Notifications.

19. We trust that our proposals may meet with Your Lordship's approval. Your Lordship is aware that the Indian labourer is at present excluded by Colonial policy from many colonies where he could probably be employed with much profit to himself and much advantage to the colonist. In other parts of South Africa, and in those portions of Australia in which the Europeans cannot labour in the open air, there is a wide field for employment of Indian labour if satisfactory arrangements could be made for the return of the labourer on the expiry of his period of contract; and it is certain that the working of the proposed arrangements with Natal, if they should receive Your Lordship's sanction, will be watched with interest and attention by all those Colonies who are jealous of the Indian settler. Whether these arrangements will succeed in their object, it is impossible to say; but if they should do so, they are capable of extension to other colonies in a manner that might be of material benefit to this country. Finally, Your Lordship will observe that we have reserved to ourselves full discretion to withdraw from the arrangements into which we now propose to enter, should we at any time consider such action necessary in order to secure the proper treatment of our subjects in the Colony.

We have the honour to be,

MY LORD,

Your Lordship's most obedient, humble Servants,

(Signed) CURZON.

.. KITCHENER.

.. T. RALEIGH.

.. E. FG. LAW.

.. E. R. ELLES.

.. A. T. ARUNDEL.

.. DENZIL IBBETSON.

No. 73, dated Natal, the 1st March 1902.

From—COLONEL SIR HENRY E. McCALLUM, K.C.M.G., R.E., A.D.C.,
Governor of Natal,

To—His Excellency the Viceroy and Governor General of India.

I have the honour to inform you that correspondence has taken place with the Emigration Office, Madras, in respect to recruiting for Natal under the Indian Emigration Act and the operations of section 46 of that Act.

2. My Ministers desire me to represent to you that they are anxious that this Colony should be placed on an equal footing with Ceylon, Burma and the Straits Settlements so far as legal restrictions in India are concerned, and that they hope the Government of India will take the necessary steps to give effect to their wishes.

To

HIS EXCELLENCY

COLONEL SIR HENRY E. McCALLUM, K.C.M.G., R.E., A. D. C.,
GOVERNOR OF NATAL.

Simla, the 5th June 1902.

YOUR EXCELLENCY,

I have the honour to inform you that the Government of India have carefully considered the request conveyed in your letter of the 1st March 1902, that emigration from India to the Colony of Natal should be freed from the legal restrictions under which it is at present conducted, and placed on an equal footing in this respect with emigration to Ceylon, Burma and the Straits Settlements.

2. The relaxation of the provisions of the Indian emigration law which has been allowed in the case of the countries named is due to the existence of special conditions. Ceylon is geographically part of India and there is little intrinsic reason why emigration from one to the other should be subjected to special restrictions, any more than emigration from one district of Madras to another, or to Mysore. Burma is, and the Straits Settlements were till some 35 years ago, a part of the Indian Empire. In all these cases the sea voyage is short (at the longest six days), the emigration is of very old standing, extensive, and continuous, it had sprung up spontaneously as a natural result of easy intercommunication, and is still mainly or wholly unassisted; the term of contract (where it exists) is short, there is a constant stream of labourers going and returning between the two countries, the conditions in the country of emigration are completely known to the classes from whom emigrants are drawn, and any change for the worse in those conditions would instantly produce its effect upon the supply. Above all, there are no indigenous inhabitants of a colour similar to, but on a plane of civilization far lower than, that of the Indian emigrants, the latter are free to settle at pleasure in the country in which they have laboured, and when they have done so, they are treated as on an absolute equality with its inhabitants. Even in these circumstances, free emigration is allowed only from the south of India, and applications to extend freedom of emigration to other parts of the country have more than once been refused.

3. All these conditions are conspicuously absent in the case of Natal, and in some important respects exactly opposite conditions prevail. In particular, the settlement of labourers whose term of indenture has expired is discouraged and subjected to penalties, while all free immigrants are treated as being more or less on the level of aborigines with whom they have nothing in common but colour, and are subjected to special treatment which is degrading and injurious to their self-respect. Indeed so far as the recent legislation affects those who had been permitted and encouraged to settle and acquire property in the country before its introduction, I am unable to regard its provisions as otherwise than inequitable.

4. Having regard to these considerations the Government of India are not prepared to sanction in the case of the Colony of Natal any relaxation of the restrictions which are imposed under the existing law in India upon emigration to all countries similarly situated to Natal; and I am therefore compelled to express my regret that I am unable to further Your Excellency's wishes in this matter.

I have the honour to be,

SIR,

Your Excellency's most obedient, humble Servant,

CURZON OF KEDLESTON.

Dated Bombay, the 5th June 1902.

From—Messrs.

{	P. M. MEHTA, President,	}	Bombay Presidency Association,
	D. E. WATCHA, Honorary Secretary		
	A. YABJI, „		
	C. H. SETALVAD „		

To—His Majesty's Principal Secretary of State for India in Council.
London.

By direction of the Council of the Bombay Presidency Association we beg to draw Your Lordship's attention to a Bill which has passed its second reading in the Legislative Assembly of Natal, and which is termed "The Bill to amend the Indian Immigration Amendment Act."

The Bill in effect purposes to bring the major children (males 16 years and females 13) of British Indian Indenture, D, under the Act No. 17 of 1895 of the Natal Legislature, and would, therefore, like their parents, render them liable—

- (a) to return to India at the Colony's expense, or
- (b) to enter into indentured service, or
- (c) to pay the annual poll-tax of £3.

It is difficult to say whether the Bill will be finally passed by both the Houses and reach the Colonial Office for sanction. But, in view of the uncertainty of postal delivery of letters from South Africa, the Council deems it right, even at this somewhat premature stage, to enter its humble protest against this latest attempt of the Natal Government to impose restrictions of a harsh character on the liberty of the British Indians.

As Your Lordship is aware, it was with great reluctance that His Excellency Lord Elgin, the then Viceroy, sanctioned in 1894 the imposition on the indentured Indians of the £3 tax, euphemistically called a pass or license, to remain in the Colony. That tax is admitted to be severe enough, though the original proposal of the Natal Government was to secure permission to levy a £25 tax.

It is now evidently sought to reach the same figure as much as possible by taxing the children of the indentured men after they have attained the artificial majority.

The object of regulating by law the emigration of the labouring population of India, is, the Council understands, to foster foreign settlement and to protect such settlers. This object would be obviously frustrated if the labourers, after they have given, in the words of the Natal legislators, the best five years of their lives to the Colony, are compelled to return to India.

And if it is a hardship on the men who have been brought up in India to return to India, how much more so must it be for those who went to the Colony as infants or were born there. The object of the Bill cannot be mistaken. The tax is to be levied not for the purposes of revenue. The intention is to make it sufficiently severe to oblige those coming within the scope of the intended legislation to return to India.

Indeed, Europeans in Natal are endeavouring to secure such legislation as would make the indentures terminate in India. The Prime Minister of the Colony has, as it appears from recent cablegrams, stated that the stopping of Indian immigration would paralyse the industries of Natal. The Council asks respectfully whether the people who are so indispensable to the welfare of the Colony, and who have materially helped to make it what it is, to be singled out for special taxation.

The Council, moreover, begs to draw Your Lordship's attention to the fact that these very indentured Indians, at a time when their service was imminently required, voluntarily came forward to help the military authorities as stretcher bearers. The work of the Natal Volunteer Indian Ambulance Corps is well-known to Your Lordship. It has been favourably mentioned in despatches.

The Council ventures to think that such men deserve a better treatment than being subjected to an annual tax of the character above described.

The principle of the measure is so manifestly unjust that the Council does not consider it necessary to enter into an examination of its details.

Ever since the Colony has obtained self-government the Indian settlers there, whether free or indentured, have not had rest from "pin-prick" legislation of the character to which Your Lordship's attention has been drawn by various public bodies, including the Association.

If it is found difficult to restrain the self-governing Colony from riding rough shod over imperial consideration and treating British subjects as aliens, the Council of the Association, in common with the East India Association, which has only recently approached Your Lordship, respectfully considers that it is time Your Lordship should adopt measures to suspend State-regulated emigration from India to the Colony, the more so now, seeing that it is these very people who are touched by the Bill in question.

No. 1 (Confld.), dated Natal, the 13th August 1903.

From—HIS EXCELLENCY SIR HENRY, E. MCCALLUM, K.C.M.G., Governor of Natal,

To—His Excellency the Viceroy of India.

WITH reference to your Despatch No. 692—67-14 of the 25th April last, I have the honour to transmit to you copy of Minute dated 13th August 1903 by my Ministers dealing with the proposals set forth therein on the subject of Indian immigration into this Colony.

2. I have forwarded copy of this Minute to the Right Honourable the Secretary of State for the Colonies.

Minute by Ministers.

The proposals of the Viceroy of India deal with two classes of subjects. In fact, they have no bearing the one upon the other, but for purposes of negotiation on the treatment of one is made conditional upon the settlement of the other.

MEMORANDUM OF PROPOSALS.

Part I.

A.—Repatriation of Emigrants.

Ministers do not quite see how the detention of the emigrants for a period of, say, three months by the Protector can be ensured by executive action without the aid of the police power.

It is not clear by whom the cost of such detention is to be met: the Indian immigrant is to have free board, he will have no employer during such period of detention, and if the cost is to fall on the general funds of the Indian Immigration Board a re-adjustment of their assessments will be rendered necessary.

The right to settle at the end of the eleven years' period free from the annual tax more than counterbalances the repatriation scheme, but doubtless will be assented to by Parliament, though not without dissent from a minority.

No objection can be offered to the deferred pay proposal.

Part II.

1. Parliament may be expected to give effect to this condition.
2. The assent of Parliament to this repeal is very doubtful.
3. This condition in no way affects the Indians who come to Natal under indenture.

They very rarely enter upon a trading career bringing them under the Licensing Act 18, 1897.

Their wants are more than provided for by licenses already issued.

At present the local authorities exercise an administrative discretion not subject to revision by any judicial authority.

If an appeal to the Supreme Court is to be allowed, then the terms and conditions under which licenses are to be granted will have to be fixed and determined by legislative enactment. If any such attempt be made to legislate, Parliament is not likely to pass it, and if the absolute discretion now vested in local authorities be taken away, Parliament will be disposed to legislate against any new licenses being granted, while recognizing to a certain extent vested rights of present licensees to receive renewal licenses from time to time.

If the "Arab" traders at the present time have a grievance, Parliament is, if appealed to, more likely to increase than to mitigate such grievance.

The Act 18, 1897, does not impose any disabilities by name on "Arab" traders, and returns which have recently been obtained shew that the number of licenses issued to "Arab" traders under the Act has very largely increased throughout the country.

4. The amendment of Law 21, 1888, may seem a small matter as it has not been enforced as to Indians.

As to the trading classes, they do not come within the purview of the Act, and why they should complain it is difficult to say.

5. If the Indian population prefer a small amount of damages and a speedy remedy rather than be left to the larger damages and the delay of ordinary legal procedure, there will probably be little objection.

6. The remarks above apply.

7. The delegates were mistaken. The rule does exist and has been enforced.

This rule is no grievance inasmuch as in Pietermaritzburg and Durban high grade Indian schools have been opened and are maintained by Government.

The colour question cannot be overlooked in Natal.

All coloured classes are willing and anxious that their children should attend the Government schools on an equal footing with white children. At the same time the various shades of colour have the greatest objection to recognize equal rights amongst themselves.

It is hopeless to ask Parliament to remove such caste distinctions as to colour. No Government dare throw the doors of their schools open without distinction of colour to all children and any attempt to abrogate the present practice will in all probability lead to stringent legislation on the subject. If the question be mooted, it will not be left to the boys of white parents to make the presence of boys of coloured parents impossible in the schools.

8. This creates no difficulty.

Generally it may be said that the indentured Indian immigrant, whether as a labourer or as a peasant proprietor living on the soil and prospering by his beneficial occupation thereof after his term of indentured service is over, is not a problem that greatly troubles Government, Parliament, or people of Natal.

But the presence of 10,000 "Arab" traders claiming all the rights of British subjects is a matter of grave import to the Colony of Natal, and can never be a matter of indifference to a European population enjoying the rights of responsible Government.

Speaking generally: if the repatriation of the indentured Indian is only to be secured on the terms of the unrestricted admission of "Arab" traders into the Colony with all the rights of European British subjects and without any disabilities, small though they are, under which they labour at present, it appears to Ministers that the Government and people of Natal can only regard the price to be paid as too great for the concession which the Government of India is prepared to give.

As to Natal again, it cannot but be remarked that its laws do not bear so hardly on the "Arab" trader as do the regulations now in force in the adjoining Colonies of the Transvaal and Orange River, which are, as Crown Colonies, under the direct control of the Imperial Government.

The recent proposals as to Indian or "Arab" traders and their location in Bazaars in the Transvaal has led the Corporation of Durban to make suggestions as to this class of traders and occupiers of premises in Durban, and these proposals, if they are introduced in legislation—private or public and sought to be enforced, cannot expect to meet with the approval of the Indian Government, but will undoubtedly find warm advocates in the Natal Parliament.

Ministers have therefore arrived at the conclusion that the manner in which their negotiations have been met and the counter-proposals which are made conditions upon which alone the requests of this Government will be granted by the Government of India, render it imperative on the Government of this Colony to no longer press for those measures of relief as to indentured immigrants which are only to be obtained by such concessions to the "Arab" trading population as the people of this Colony will not favour or concede.

A. H. HIME,
Prime Minister.

The 13th August 1903.

Telegram dated the 7th October 1903.

From—Viceroy, Simla, To—Secretary of State, London.

Our Emigration Despatch No. 19, 14th May last. Government of Natal have replied to our letter of 25th April last, declining conditions under which we proposed to arrange for repatriation of indentured Indian emigrants. Copy of Minute of Prime Minister on the subject has been forwarded direct from Natal to Colonial Secretary. Do you desire to hear from us on the subject?

Telegram dated the 21st October 1903.

From—His Excellency the Governor, Natal, To—Viceroy, Simla.

21st October. 2. Refer to your confidential Despatch of 25th April, and my reply 13th August. As matter of greatest importance to South Africa, my Ministers advise me send copies High Commissioner. Have you any objection?

Telegram dated the 24th October 1903.

From—Viceroy, Simla, To—His Excellency the Governor, Natal.

Your telegram of 21st. I have no objection to copies of papers referred to being sent to High Commissioner, but consider that they should still be treated as confidential.

Telegram dated the 14th November 1903.

From Secretary of State, London, To—Viceroy, Viceroy's Camp.

Your telegram dated 7th October. Natal emigration. Present Natal Ministry endorse to views expressed in their predecessor's Minute of 13th August last. If you have any modified proposals to put forward, I should be glad to receive them.

Telegram dated the 19th December 1903.

From—Viceroy, Calcutta, To—Secretary of State, London.

Your telegram of 14th ultimo. We see no reason to modify our proposals regarding emigration from India to Natal. In agreeing on certain conditions to system of compulsory repatriation, we offered a valuable concession involving a new departure in our emigration procedure, in return for mitigation of certain grievances. Colonial ministers who themselves opened negotiations have declined our terms and in view of general tenor of their reply we see no advantage in further discussion as they evidently are unable to accept conditions which we consider essential. If anti-Indian feeling at Natal continues and legislation is made more stringent, it may become necessary to consider whether existing facilities for emigration from India to Natal should be maintained.

No. 177, dated Pietermaitzburg, Natal, 12th September 1904.

From—HENRY BALE, Esq., Administrator,
To—The Secretary of State for the Colonies.

I have the honour, at the request of my Ministers, to approach you with a view to obtaining a reduction in the proportion of women which, under the present

arrangement, accompany every shipment of Indian Immigrants, from 40 per cent. to 33 per cent.

2. Natal now contains a very large number of Indian women and the period of indenture having been reduced from ten to five years, there does not appear to be the same necessity for keeping the percentage of Indian women in every shipment of Immigrants as high as 40 per cent. A more cogent reason adduced by Ministers for the reduction of the per centage to, at most, 33 per cent. is that the recruiting of women is becoming each year more difficult and when, as happens at nearly every shipment, the full 40 per cent. of females is not obtained, a large number of desirable immigrants are prevented from coming.

3. My Ministers are also desirous that an Emigration Agency and Port of Embarkation should be established at Karachi in the Presidency of Bombay under regulations similar to those governing the Agencies at present established at Calcutta and Madras.

4. Immigration to Natal from the Bombay Presidency was permitted up to about the year 1895, but, at the request of this Government, was suspended by an Order in Council issued by the Authorities in India when Plague was raging. I understand that the withdrawal of this Order in Council is all that is necessary to allow of the recruiting of Indians from the Bombay Presidency and the establishment of an Emigration Agency at Karachi.

5. I shall be greatly obliged if you will submit the above two points for the favourable consideration of the Right Honourable the Secretary of State for India.

No. 4 of 1905.

GOVERNMENT OF INDIA.

DEPARTMENT OF REVENUE & AGRICULTURE.

EMIGRATION.

To

THE RIGHT HON'BLE ST. JOHN BRODRICK,

His Majesty's Secretary of State for India.

Calcutta, the 19th January 1905.

SIR,

We have the honour to acknowledge [the receipt of your Despatch No. 154, dated 4th November 1904, in which you refer, for our consideration, a proposal received from the Government of Natal that the proportion of women among indentured immigrants from this country should be reduced, and that an Emigration Agency should be established at the port of Karachi.

2. We desire in reply to invite a reference to the correspondence ending with our telegram of the 19th December 1903, and to say that, until the Government of Natal substantially modify their treatment of Indian immigrants into that Colony, we are not prepared to make any concessions with a view to facilitate the emigration of labourers under indenture.

We have the honour to be,

SIR,

Your most obedient, humble Servants,

CURZON.

KITCHENER.

E. R. ELLES.

A. T. ARUNDEL.

DENZIL IBBETSON.

H. E. RICHARDS.

J. P. HEWETT.

E. N. BAKER.

Dated Colonial Office, London, the 23rd February 1907. (Confidential).

From—His Majesty's Secretary of State for the Colonies,

To—His Excellency the Governor of Natal.

I have the honour to transmit to you copies of a number of questions which have been asked in the House of Commons on the subject of the position of Asiatic traders in Natal as affected by the administration of the Traders' Licensing Act (No. 18 of 1897), together with copies of the replies given.

2. In connection with this matter I would refer you to my despatch No. 137 of the 29th of December last, and I shall be glad to receive a report from you on the subject, with special reference to the particular cases raised in these questions.

3. I may remind you that in his despatch No. 45 of the 19th of May 1899 Mr. Chamberlain pressed for an amendment of the Act so as to confer the right of appeal to the Supreme Court from the decisions of the Town Councils, Town Boards, or Licensing Boards, and that he repeated on that occasion a warning which had previously been conveyed to the Natal Government to the effect that if fair and equitable treatment could not be secured to natives of India resident in the Colony, the Government of India might be reluctantly compelled to suspend the supply of indentured labour to Natal.

4. The Natal Government in reply informed the Secretary of State that they had addressed the Municipal and Town Licensing authorities asking for an assurance that there should be no interference with vested interests, and undertook that should there be any further just ground for complaint, they would introduce legislation to provide, where vested interests were at stake, for an appeal to the Supreme Court.

5. In your confidential despatch No. 1 of the 13th of August 1903 you forwarded a minute from your Ministers dealing with certain proposals with regard to Indian immigration into the Colony made by the Government of India, in which they expressed unwillingness to introduce legislation in the sense suggested and no amendment of the law has in fact since been made. It appears, however, that a serious cause of complaint still exists with regard to this matter, and in inviting the observations of your Ministers on the question I think it right to remind them of the history of the question.

Question No. 17, asked in the House of Commons by Dr. Rutherford, dated 18th February 1907.

To ask the Under-Secretary of State for the Colonies, whether his attention has been called to the agitation against British Indian traders in Natal and the danger to those British subjects from the power of local Town Councils to refuse renewal of trading licenses according to the Natal Traders' Licensing Act, 1897, which the Secretary of State for the Colonies warned the Natal Government would lead to serious steps unless the provisions of the Act were applied moderately and impartially; and whether he will address the Natal Government on the matter.

Answer.

See reply to question No. 18.

Question No. 18, asked in the House of Commons by Dr. Rutherford, dated 18th February 1907.

To ask the Under-Secretary of State for the Colonies, whether his attention has been called to the position of the British Indian trading community of Ladysmith, Natal, several of whom are threatened with ruin by reason of the threatened refusal of the licensing officer to renew their store licenses under the powers conferred upon him by the Natal Traders' Licensing Act of 1897; and whether, seeing that the licensing officer is the appointee of the Town Council which is largely composed of merchants and storekeepers in competition with British Indian traders, he proposes to take any action in the matter.

Answer.

I will answer these questions together:—A Bill, the effect of which would have been to exclude Asiatics from trading licenses, was recently introduced into the

Natal Legislature, but leave to introduce it was refused. With regard to the Act of 1897, the Secretary of State is already in communication with the Natal Government. Inquiry will be made as to the case of the particular traders referred to.

Question No. 77, asked in the House of Commons by Mr. Rees, dated 18th February 1907.

To ask the Under-Secretary of State for the Colonies, whether he is aware that under Act No. 18 of 1897, the Natal Traders' Licensing Act, a licensing officer appointed by the Town Council, or other local body, may refuse to grant or continue a trading license without any appeal except to such Town Council or other local body, and whether he will take such steps as may under present circumstances be possible in order to obtain fair and equal consideration for East Indian British subjects in Natal.

Answer.

The Act provides as stated. Representations have recently been made as to the effect of the Act, and I am in communication with the Governor of Natal on the subject.

Question No. 53, asked in the House of Commons, by Mr. Scott, dated 19th February 1907.

To ask the Under-Secretary of State for the Colonies, whether his attention has been drawn to a published notice of the 12th ultimo, to the effect that renewal of trading licenses will not be granted to Arab storekeepers after the current year, and that no transfer of such licenses will be granted during the same period; whether such Arab storekeepers are really British Indian subjects; and whether in view of the provisions of the Natal Dealers' Licenses Act, the Government will take steps to ensure equal protection of the vested interests of His Majesty's Indian subjects.

Answer.

No, Sir, I have not seen such a notice, but will make inquiries on the subject. I would refer the Honourable Member to my reply to questions with regard to the Dealers' Licenses Act yesterday.

Question No. 59, asked in the House of Commons by Sir William Evans-Gordon, dated 21st February 1907.

To ask the Under-Secretary of State for the Colonies, whether the attention of the Colonial Secretary has been drawn to the character of the recent application of the Municipal Corporations Act, 1897, in Tongaat village, Natal; whether he is aware that the licensing officer of that division declined to renew for this year the trading licenses of the larger portion of the Indian storekeepers on the ground of their having failed to keep their business books in the English language; and whether, seeing that the licensing officer is the nominee of the local Council or Board, which is the sole court of appeal from his decisions, and that the members of such Council or Board are chiefly storekeepers, he will take steps to protect such Indian subjects from such a punishment as the loss of their livelihood and total ruin.

Answer.

I would refer the Honourable Member to the reply given on the 18th to the Honourable Member for the Brentford Division of Middlesex, with regard to the Dealers' Licenses Act to which, I presume, it is intended to refer. Inquiry will be made with regard to the particular case referred to.

The Governor of Natal to the Secretary of State.

(Received 8th June 1907.)

(Confidential. No. 1.)

Government House, Pietermaritzburg, Natal,

18th May 1907.

My Lord,

On receipt of your telegram No. 1, of the 8th instant, informing me that the Prime Minister was unable to give your Lordship the information you required as

regards Indian traders' licenses, and that you desired me to report upon the matter, I requested Ministers to give me full particulars and a minute thereon in time for the outgoing mail.

2. I enclose a copy of a minute from the Acting Prime Minister, dated the 17th instant, and of the return referred to therein, showing all the Indian traders' licenses which have been refused this year, and which have been referred to generally and specifically in your Despatches (Confidential), of the 23rd February, No. 27, of the 15th March, and Nos. 30 and 31 of the 23rd March.

3. This return gives full particulars of the reasons which weighed with the Licensing Officers and the Licensing Boards in the decision arrived at by them in the several cases. I consider that in some cases such decision is open to criticism. I fully sympathise with the European storekeepers of the Colony in the almost impossible task which they have of competing against Indian traders and hawkers, but any action taken by the Government, or by the local authorities, should be directed towards refusing new licenses for new traders; those who have carried on business for many years, without let or hindrance, should not be suddenly deprived of their licenses on the plea only of insufficient book-keeping.

4. Without adequate warning that efficient book-keeping in English would be a *sine qua non* of new licenses, old and respectable traders have been refused renewal, an action which is open to most serious objection.

5. As regards the Ladysmith licenses in particular, I enclose, for your information, newspaper report which will show you that the action taken by the Licensing Board at Ladysmith was severely criticised by the Supreme Court. I also enclose a further newspaper cutting showing the reasons given for again refusing licenses when the matter was once more brought up before the Board in consequence of the decision come to by the Supreme Court.

6. As far back as the time when Sir Albert Hime was Prime Minister I saw how necessary it was in the cause of justice and good order that in the case of existing traders who were dependent for the maintenance of their business on the renewal of annual licenses that they should have the right of appeal to the Supreme Court, and that they should not be exposed to the vagaries of Local Boards, who are too often subject to local influences. My suggestion in this matter was not, however, adopted.

I have, etc.,
HENRY McCALLUM.

Ebrahim Mahomed Haffeejee, Mahomed Hoosein Vawda, and Amod Ebrahim Patel *versus* The Estcourt Local Board.

Broome, J., delivered the judgment of the Court.

The appellants are three Indians who had unsuccessfully appealed to the Magistrate of the Estcourt Division under section 9, Law 11, 1881 (Townships), in respect of the omission of their names from the Town Roll of voters in the township of Estcourt.

It was admitted at the hearing before the Magistrate that the appellants had not been exempted by the Governor from the operation of the Act 8, 1896, as provided in section 2 thereof, and that their names were not contained in any voters' roll in force at the date of the promulgation of that Act, namely, 27th May 1896.

The Magistrate in his reasons states that the appellants' counsel admitted that he did not rely upon section 2 of the Act 8, 1896, and this would appear to be the case in view of counsel's observation to the effect that the question of the appellants' position as electors in India did not enter into the proceedings, the appellants' contention being that they are not affected by the Act. The evidence taken by the Magistrate had reference to one only of the applicants before him, whose name was placed upon the roll, and who, therefore, is not a party to this appeal.

The Magistrate held that Act 8, 1896, governed the appellants' application and that, not being within the excepted cases specified in sections 2 and 3 of the Act, their names ought not to be placed upon the roll.

It may, for the purposes of our judgment, be conceded that the appellants, who are natives of India, belong to the class dealt with in Act 8, 1896, and it is admitted that they had not been exempted under section 2 from the operation of that Act, and that their names were not on any voters' roll in force on the 27th May 1896.

The grounds of review are that the Magistrate's application of this Act was erroneous, and that he ought to have allowed evidence to be taken before dismissing the application.

The question which presents itself for our decision is one of some importance, affecting as it must the municipal rights of a large number of persons. It involves primarily the constructions of section 7 of the Law 11, 1881 (Townships) dealing with the qualifications of voters, but we have also to consider the application and effect of other statutory enactments relating to the Parliamentary Franchise.

The persons who are declared by section 7 of Law 11, 1881 (Townships), to be entitled to have their names entered upon the Town Roll are "all male persons possessing within the township a qualification entitling them to vote for a member of the Legislative Council".

Now the qualifications entitling a person to vote at the election of a member of the Legislative Council (now Legislative Assembly) are as follow:—

"Every man, except as hereinafter excepted, above the age of 21 years, who possesses any immovable property to the value of 50*l.*, or who rents any such property of the yearly value of 10*l.*, within any electoral district, and who is duly registered in manner hereinafter mentioned, shall be entitled to vote at the election of a member for such district," (Charter of 1856).

Aliens and convicted persons are disqualified (section 12), natives are dealt with in a later statute (Law II, 1865), and a lodger's franchise is provided by Law 2, 1823, which also declares that persons belonging to a class which is placed by special legislation under the jurisdiction of special Courts, or is subject to special laws and tribunals, shall not be entitled to be placed on the voters' list or to vote at an election unless they possess letters of exemption granted by the Governor.

By section 6 of the Ballot Law, 1886, a person is not entitled to vote in any electoral district unless his name is on the voters' list for the time being in force in such district.

We proceed to consider section 7 of the Townships Law, 1887, as regards the qualification enabling a person to be entered on the Town Roll as a voter within the meaning of that Law. That section provides that within a specified time, in the case of a newly-proclaimed township, the Magistrate, and in each succeeding year, the Local Board, shall prepare a Town Roll, and shall enter thereon the names of all male persons possessing within the township a qualification enabling them to vote for a member of the Legislative Council. The Magistrate has to hear and determine appeals in respect of wrong entries in or omissions from the Town Roll, which, when so settled, comes into force, and (section 10) the persons whose names appear thereon shall be voters within the meaning of the Law.

We desire to affirm the opinion expressed by us during the hearing of the appeal that the Magistrate's revision of the Town Roll, being of the nature of a proceeding of an inferior tribunal, is subject to review by this Court by virtue of the powers conferred in section 8 of the Supreme Court Act, 1896.

It is clear that one of the qualifications entitling a person to the Parliamentary Franchise is that his name shall have been duly registered, in other words that it must appear on the voters' roll. If, therefore, section 7 of the Townships Act means that no person's name can be entered upon the Town Roll unless he possesses *all* the qualifications of a Parliamentary elector, the appellants can obtain no relief, inasmuch as they were not registered voters on the 27th May 1896 such registration being made a condition of the right to vote at a Parliamentary election by section 11 of the Charter of 1856, restricted as regards the class to which the appellants belong, by Act 8, 1896. If on the other hand, the qualification for exercising the municipal franchise in terms of section 7 is something less than is necessary for the Parliamentary Franchise, it will not be affected by a statute which merely prohibits voting at Parliamentary elections.

We are of opinion, after careful study of section 7 of the Townships' Law, that the latter is the true construction to be placed upon it. We are unable to adopt the view that the state of the franchise in 1881 has to be taken as the test applicable to the appellants' case. We think that what has to be looked at is the Parliamentary Franchise at the time when the Township Voters' Roll is prepared.

In the first place, it is only the names of all *male* persons who possess a voting qualification within the township that have to be entered in the Town Roll. Now, if it had been intended to make the *complete* qualification as a parliamentary elector, including registration, a condition precedent, the word "male" would have been rather altogether superfluous, because the Parliamentary Franchise extends only to men (Clause 11 of the Charter). Again, what is required is a qualification, not the qualification entitling him to vote. We regard this language as significant of an intention on the part of the Legislature to impose a special qualification in respect of the Town Roll, and not to adopt for that purpose the whole of the requirements necessary for the Parliamentary Franchise. "A qualification" must be "possessed within the township". The locative words "within the township" cannot, of course, refer to the sex or age of the voter, nor to his freedom from disqualification on the ground of his being an alien or convicted person. We are bound to give to the section a meaning which will afford an exact conception of the aim, scope, or object of the whole of the words used, and without doing violence to their literal construction. We have to ascertain that meaning by comparing it with other parts of the Law ascertaining also what were the circumstances with reference to which the words were used, and what was the object appearing from those circumstances which the Legislature had in view (per Lord Blackburn, *Wear Navigation Company v. Adamson*, 2 A. C. 743; per Halsbury L. C. *Eastman v. Comptroller of Patents*, A. C. 1898, 741).

The purpose of Law 11, 1881, was to encourage the establishment and local management of townships and by section 4, no person is entitled to vote at the preliminary meeting to decide whether or no the town shall be brought within the operation of the Law "unless he is upon the Electors' Roll for the County framed under the Charter of Natal, nor unless he possess within the town or village a qualification entitling him to be upon such Electors Roll". It will be seen that this section differs in its language from the ninth section, inasmuch as it refers to a double qualification—being upon the Electors' Roll for the County, and qualified within the township to be upon such roll. We think that if the Legislature had intended to import both these conditions into the seventh section, it would have done so in somewhat language, or at any rate, it would have expressed the former condition in clear and unambiguous terms.

It may be asked, "Why should the qualification be more exclusive in regard to a voter at the preliminary meeting than it is in respect of a voter on the Town Roll?" The answer to that may be that the Electors' Roll provided a convenient source of reference for determining on the spot the qualification of those present at the meeting and that the Legislature of that year (1881) may have considered that practically all those who possessed the local property qualification within the township would have had their names registered as voters for elections to the then Legislative Council, so that the qualifications required by both sections of the Law would be substantially the same. In this view of the Law, we are of opinion that the qualification referred to in the ninth section of Law 11, 1881 (Townships), is a property qualification within the township such as would entitle its possessor, if otherwise qualified, to vote at a parliamentary election.

It does not, moreover, appear to us probable that it was intended to create a narrower and more exclusive franchise for townships than that provided in respect of the Burgess Roll of a Borough by the Municipal Corporations Law, 1872, sections 12 to 14.

Having decided that persons might rightly claim to be put on the Township Roll under the Law of 1881, even though they were not registered as parliamentary voters, we come to consider whether the appellants, if they possess a qualification which, in the state of the law prior to 1896, would have entitled them to be put on the Township Roll, are affected by the passing of Act 8, 1896. Section 2 of that Act is as follows: "Save those who come under the operation of section 3 of this Act, no persons shall be qualified to have their names inserted in any list of electors, or in any voters roll, or to vote as electors within the meaning of section

22 of the Constitution Act of 1893, or of any law relating to the election of members of the Legislative Assembly, who (not being of European origin) are natives of descendants in the male line of natives of countries which have not hitherto possessed elective representative institutions founded on the Parliamentary Franchise, unless they shall first obtain an order from the Governor in Council exempting them from the operation of this Act." It seems to us that the Act must be construed as affecting only the Parliamentary Franchise. In the first place, it repeals Act 5, 1894, an Act, which dealt only with the Parliamentary Franchise, and it does not purport in terms to repeal any other law. At first sight it might appear that the words in Section 2 "no persons shall be qualified to have their names inserted in any list of electors, or in any voters' roll," are wide enough to include Township or Borough Voters' Roll. But the section goes on, "or to vote as electors within the meaning of section 22 of the Constitution Act of 1893, or any law relating to the election of members of the Legislative Assembly," and these words show that the Legislature had in view only the Parliamentary Franchise. Moreover, if "Voters' Roll" in Act 8, 1896, is to be construed as including Township Rolls, we should have the result that under section 3 a person of the class referred to, who could show that on the 23rd May 1896, his name was rightly included in a Township Roll, could, if otherwise qualified, claimed to be put on the Parliamentary Roll, even though he was not at that date on Parliamentary Voters' Roll. We do not think it likely that Parliament would make a Township Roll a test for its own franchise. As, therefore, Act 8, 1896, must be construed as dealing only with the Parliamentary Franchise, and as we have already shown that the possession of the Parliamentary Franchise is not the test for ascertaining whether a person is qualified to be put on the Township Roll, it follows that Act 8, 1896 can in no way affect the appellant's claim to be put on the Township Roll.

We are, therefore, of opinion that the Magistrate ought to have allowed evidence to be taken in order to determine whether the appellants possessed the necessary qualifications or not. The case must be sent back for such evidence to be taken, and for the Magistrate to determine the matter in the light of that evidence and of this judgment.

The Governor of Natal to the Secretary of State.

(Received 30th May 1908.)

(Confidential.)

King's House, Durban, Natal,

My Lord,

8th May 1908.

With reference to my Despatch No. 77, of even date, transmitting copies of three Bills relating to Indians which it is proposed to introduce into Parliament during the forthcoming session, I have the honour to point out that the one "To put an end to the further introduction of Indian Immigrants," is a measure of domestic legislation, intended to terminate a state of affairs that has been a cause of growing anxiety in South Africa and has even been quoted as an obstacle to the closer Union of the South African Colonies.

2. Prior to the end of 1860 there were no Asiatics in Natal. At the end of 1906, against a population of 94,370 Europeans there were 112,126 Asiatics, of which number no less than 101,963 were Indians who had arrived under indenture, or were descendants of persons who had so arrived. Of the total 112,126, 72,305 were persons no longer under indenture who, by reason of their lower standard of living, are in a favourable position to compete with the poorer classes of Europeans in fruit-growing, trading, etc. It is the fear of the growth of the number of these free Indians that has given rise to the movement which has produced the present Bill. It is interesting that, in connection with the settlement of the Asiatic registration question in the Transvaal in January last, persons of such opposite views as Mr. Smuts, the Colonial Secretary, and Mr. Gandhi, the Indian leader, alike inveighed against the importation of Indian immigrants into Natal. I enclose extracts from the *Rand Daily Mail* of the 29th January and 1st February, containing their remarks in this matter.

3. The Bill is likely to meet with considerable opposition on the part of the sugar and tea planters of the Colony who employ the greater proportion of the indentured Indian labour. Though I think these planters were prepared for the

introduction of some measure which would restrict and might ultimately entirely stop the importation of coolies, they are certain strongly to oppose the provision for the importation to end definitely on the 30th June 1911. Evidence of this is furnished by the fact that the Annual Conference of the Natal Agricultural Union, at their meeting at Pietermaritzburg on the 15th April last, passed a resolution impressing on the Government "the danger of stopping the supply of indentured Indian labour until the native question was dealt with and supply of native labour is available". The planters contend that at present native labour cannot be counted upon for that absolute regularity of attendance required by the various processes in the cultivation and manufacture of both sugar and tea, and that the expense of free Indian labour is such that, if it were largely employed, the cost of production would make it impossible for Natal sugar and tea to compete with the imported articles. The planters appear, however, to anticipate that greater use may gradually be made of native labour, and also that by more and more Indians re-indenturing the necessity for fresh importations will decline so that eventually, if the matter is treated cautiously, it will be possible to stop the importation without the industries, which have hitherto depended on it, being ruined.

4. The opposition of the planters on the coast, where agriculture is mainly confined to tea and sugar growing, is likely to receive some support from farmers up-country who have lately made an increasing use of Indians in the wattle-bark and other agricultural industries. Indentured Indians are also employed in some numbers in the coal mines, but there would probably be less difficulty in substituting native labour for them there. In the course of the debate on the Bill stress will no doubt be laid on the fact that the Natal Government railways employs nearly 1,500 indentured, in addition to about 2,000 free, Indians, and that by doing away with the former a considerable addition will be made to the working expenses of the lines.

5. While the object of the Bill considered above is to prevent the growth of the free Indian community by fresh importations from India who would eventually join its ranks, that of the Bills "To bring to an end the issue of new trading licences to Indians," and "To prohibit after a certain time holding of trading licenses by Indians," is first to check and then to stop the competition of free Indians with Europeans in one sphere of activity. The two Bills differ from each other in that the former, if fairly administered, would not affect vested interests. I am not certain as to the effect of the definition (b) of a "new licence," but it can hardly be intended to prevent the renewal of a licence in the case where premises have been improved. The determination of the question as to whether an application for a renewal of a licence is really an application for a "new licence" would apparently rest with the Licensing Officer of Sections 3 and 4 of Act No. 18 of 1897, against whose decision appeal will only lie to the authorities mentioned in Section 6 of that Act. With regard to these authorities I feel bound to refer your Lordship to my Despatch No. 73, dated the 7th instant, and to previous correspondence on the subject of the non-renewal of certain licences at Ladysmith.

6. The remaining Bill does not deal in any way with "new licences," and it is not clear for what purpose the definition of such licences has been included in it. It is concerned entirely with licences in which vested interests have existed for at least ten years, and proposes to extinguish those interests by payment of sums equal to three years' purchase of the net profits of the business. It is difficult why it has been decided to pay compensation on this basis, which is an obviously inadequate one, and why the net profits are to be calculated on those of the two years preceding the day on which the business must be closed if it has not been disposed of to a European. If it has not been sold in this way, it may reasonably be assumed that it has been carried on at a loss during those two years in the attempt to get rid of the stock for which no compensation is to be received. The proviso for arbitration would hardly seem to meet the general inadequacy of the basis of assessment proposed in the Bill. It would nearly appear as if the intention was to force holders of licences to dispose of their businesses to Europeans for whatever they can get for them during the period of grace, but it can scarcely be expected that purchasers will be desirous of anticipating the time when stocks will be practically valueless to their owners. The compensation clauses are illusory.

7. Both the Bills dealing with trading licences define these as "of any description for the purpose of trading," and it is evidently the intention to close all commercial pursuits in the Colony to Indians. It is in these pursuits that Asiatic competition is most felt at the present time, but it is clear, from the publications of the labour organisations in the Colony, but that it is equally the intention of the white men to allow no competition by Indian artificers or tradesmen. With a not inconsiderable section of the European population unemployed, it is scarcely to be wondered at that this population which governs the Colony should take such steps as are in its power to stop the employment of men of the non-governing race in positions Europeans desire to fill.

8. The question brought to prominence by the proposed introduction of the Bills which were published in the Natal *Government Gazette* of the 6th instant is one of the greatest difficulty. The second and third of these Bills assuming them to pass and not to be disallowed by His Majesty, would not, in my opinion furnish any final solution to this difficulty, while they would undoubtedly have an evil effect on the whole body of the Indian subjects of the King. Repatriation to India or removal to some Colony which Great Britain governs but does not colonise, of the bulk of the Indians outside of the tropics in South Africa, is the only solution which would be completely satisfactory to the white races in the sub-continent. It might be worth while for the United Kingdom to contribute financially and otherwise, to the gradual carrying out of a scheme with this in view under such conditions of full compensation for injury to vested interests as would prevent it becoming unduly harsh on the persons removed.

9. I annex extracts from the four Natal daily papers giving their first criticism of the Bills.

I have, etc.,
M. NATHAN.

ANNEX. I.

Natal. No. 125.

Downing Street,
22nd July 1908.

SIR,

I have the honour to acknowledge the receipt of your Despatch No. 77, of the 8th of May, transmitting copies of three Bills relating to Indian immigrants and Arab traders, which it is proposed to introduce into the Natal Parliament during the present session.

2. I have no observations to make upon the first of these Bills which is designed to put an end to the further introduction of indentured Indian immigrants, as the question is one which must be decided by the Parliament of the Colony. But the second and third Bills are open to objection of so serious a kind that I thought it right to warn you at once, in my telegram of the 6th ultimo, that I had grave doubt whether His Majesty's Government would be able to advise His Majesty not to exercise his power of disallowance in respect of them.

3. The Bills, as drafted, would, I may observe, apply to the subjects of Foreign Powers, inasmuch as the wide meaning assigned to the word "Indian" in the definition clauses would bring almost any Oriental within the scope of their provision, and might therefore give rise to representations from foreign governments. The number of persons of Asiatic birth not British Indians, in Natal is, however, as I understand, small, and the people mainly affected by the proposed legislation are British Indians.

4. Your Ministers will recognise that, even if, for the moment, account is not taken of the question of the relations between His Majesty's Government and the Indian Empire, the position of His Majesty's Government with regard to the Indians in Natal is one of peculiar responsibility. The grant of self-government to the Colony was not made until 1893, and many of the Indians now within its borders were introduced before that date, while the Colony was still administered under the direct authority of the Crown. The principle followed by His Majesty's Government in dealing with recent Asiatic legislation in the Transvaal has been to defer, with reluctance, to the feeling in favour of excluding further

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Asiatic immigrants, but at the same time to aim at securing fair and proper treatment for Asiatics already in the country. His Majesty's Government are under an especial obligation to ensure that this principle should be upheld in Natal.

5. The effect of the system of indentured Indian immigration is that, at the present time, according to the latest report of the Protector of Immigrants, there is a free Indian population in Natal of 61,441, and that there are no less than 22,788 Natal born Indians, a large proportion of whom presumably have no other home. There appear to be no statistics in the possession of this Department showing what proportion of this population is engaged in licensed trades, but it would seem that it must be very considerable. By the second Bill it is proposed to prevent the whole of this section of the Indian community from developing their own businesses or engaging their children in the same class of trade; by the third, to evict them in 10 years' time from the businesses which they have already built up, and, in order to enable them to start afresh in unfamiliar and uncongenial occupations, to provide compensation on a most exiguous scale. The proposed legislation affects not only the trading class, but the whole of the Indian community in Natal, whose wants are most adequately and naturally supplied by traders of their own nationality.

6. It would be a matter of the greatest difficulty to enumerate any conditions under which it would be possible to justify the interdiction of a particular class in the State from engaging in normal, legitimate and necessary occupations; and it would be still harder to justify dispossessing them from their existing means of livelihood, however, liberal might be the terms of compensation. But the imposition of such disabilities on a class which owes its presence in the Colony to the Colony's own necessities and whose numbers have been augmented by the voluntary action and indeed the settled policy of successive Colonial Governments, over a period of 15 years since the advent of self-government, would appear on its merits to constitute a hardship of a specially grievous character.

7. It is scarcely necessary to point out the disastrous effect of the proposed legislation on feeling in India, already deeply stirred by the Asiatic controversy in the Transvaal, and I do not desire to labour the point because I feel bound to inform you that the inherent defects to which I have referred will make it impossible for me to advise His Majesty to assent to these Bills in the event of their being passed by the Colonial Legislature.

I have, etc.,
CREWE.

Governor Sir M. NATHAN, K.C.M.G.,
etc., etc., etc.

No. 141 (Public), dated India Office, London, the 4th September 1908.

From—His Majesty's Secretary of State for India (Viscount Morley of Blackburn),

To—His Excellency the Right Honourable the Governor General of India in Council.

In continuation of my Despatch No. 179 (Public), dated the 15th November last, I transmit for the information of Your Excellency in Council, a copy of further correspondence noted below, regarding the position of British Indian traders in Natal. It will be for Your Excellency's Government to consider whether any changes in the system of permitting the recruitment of indentured labour for Natal may not have to be made.

From Colonial Office, dated the 3rd June 1908, with enclosure.

To Colonial Office, dated the 8th July 1908.

From Colonial Office, dated the 24th July 1908, with enclosure.

From South Africa British Indian Committee, dated the 4th August 1908, with enclosure.

From Colonial Office, dated the 12th August 1908, with enclosure.

ENCLOSURES.

Enclosure No. 1.

Colonial Office to India Office.

No. 19646.

Downing Street,
23rd June 1908.

Sir,

With reference to your letter of the 24th of August 1907 (J. and P. 2577), and previous correspondence, I am directed by the Earl of Crewe to transmit to you, for the information of Viscount Morley of Blackburn, a copy of a despatch from the Governor of Natal stating that it is not the intention of the Colonial Government to introduce any alteration in the Dealers' Licenses Act of 1897, but that, during the coming session of the Natal Parliament, a Bill will be introduced dealing with Municipal Corporations, the terms of which, it is hoped, will meet with the approval of His Majesty's Government.

2. I am also to enclose a copy of a telegram which Lord Crewe has addressed to the Governor in reply.

I am, etc.,
H. W. JUST.The Under Secretary of State
for India.

Annex 1.

Governor of Natal to Secretary of State.

(Received 30th May 1908.)

(No. 74.)

King's House, Durban, Natal,
7th May 1908.

My Lord,

I have the honour to state that Ministers here have expressed their regret that there should have been so much delay, in dealing with your Lordship's despatch No. 90, dated the 5th September 1907, transmitting a copy of a letter from the India Office regarding the Municipal Corporations Bill and the Dealers' Licenses Act, No. 18 of 1897. The delay has been occasioned by protracted correspondence with the Natal Municipal Association in respect of the clauses of the Bill to which exception had been taken by the India Office, and of an amendment to the Act to allow a right of appeal to the Supreme Court of the Colony on the part of persons whose licenses are withdrawn by Licensing Boards, which amendment had been suggested by that Office as a condition precedent to consent being given to the retention of the Section (22 c.) of the Municipal Corporations Bill, of which the effect was to disqualify Indian ratepayers from the exercise of the municipal franchise.

2. On the 19th March last the Municipal Association was informed that it was not the intention of Government to introduce any alteration of the Dealers' Licenses Act, no. 18, of 1897, and at the annual meeting of that Association, held at Newcastle on the 25th and 26th of the same month, it was unanimously resolved that the parts of the Municipal Corporations Bill to which objection had been taken by the Imperial authorities should be eliminated, and that the Bill so modified should be re-introduced during the next session of the Natal Parliament, with a view to its becoming law on the earliest possible date. At the same time the Association suggested that (*sic*) the later introduction of a separate Bill dealing with the question of Asiatic franchise.

3. In accordance with the resolution of the Association, the Government propose to introduce, during the coming session of Parliament, a Bill identical with that of which copies were covered by Sir Henry McCallum's despatch No. 210, dated the 15th September 1905, with the following alterations:—

Section 7.—Sub-sections 5 and 7 will be deleted.

Section 22.—Sub-section (c) will be deleted.

Section 182.—Sub-sections 37 and 38 will be deleted.

Sections 200 and 204.—The words “ or persons belonging to uncivilised races ” will be deleted.

Sections 207 to 212, both inclusive, will be deleted and the repeal of the Vagrancy Law, No. 15 of 1869, will be expunged from the first schedule.

Inasmuch as special Acts (Nos. 27 of 1906 and 26 of 1908) have been passed, giving special powers to the Corporations of Pietermaritzburg and Durban, a clause will be inserted saving the effect of these enactments.

4. Ministers point out that the proposed alterations remove the grounds of objections taken by Mr. Lyttelton and Lord Elgin to the Bill, and, “ as it is hoped that the Bill will be passed in the early part of the session, so as to come into operation before the new corporation year, which commences on the 1st August, Ministers trust that it will be possible to obtain the Secretary of State’s approval of the Bill by cable, as soon as it has gone through Parliament, assuming of course, that it is passed in the proposed form.” I propose, therefore, should I not be informed of your Lordship’s approval of the Bill with the proposed alterations in the meantime, to telegraph asking for that approval as soon as it has passed through both Chambers of the Natal Legislature.

I have, etc.,

M. NATHAN.

Annex 2.

Telegram.

The Secretary of State to the Governor of Natal.

(Sent, 4-35 P.M., 18th June 1908.)

18th June. No. 1. Your despatch, No. 74, 7th May.

I am glad to receive proposals of your Ministers, which generally appear to remove objections to Municipal Corporations Bill. I note, however, that it is now proposed to leave Law 15 of 1869 in force, section 5 of which contains definition of coloured person similar to that in section 7, sub-section 5, of Bill, to which objection was taken in Mr. Lyttelton’s despatch No. 104 of 9th December 1905, and in Lord Elgin’s despatch No. 23, 11th April 1906. In order to fully meet the objections taken by His Majesty’s Government, which apparently is the wish of the Municipal Association and of your Ministers, I trust that Ministers will see their way to introducing a clause amending Act of 1869 on lines stated in Governor’s telegram No. 1, 24th July 1907.

I am especially glad to learn that it has been decided by your Ministers to drop the provisions which would exclude Asiatics from Municipal franchise—
CREWE,

Enclosure no. 2.

India Office to Colonial Office.

J. & P. 2300.

India Office,

8th July 1908.

Sir,

With reference to Mr. Just’s letter, No. 19646, dated the 23rd June, I am directed by Viscount Morley to state, for the information of the Earl of Crewe, that he is gratified to learn that the Government of Natal have decided to introduce during the next session of the Natal Parliament a Bill dealing with Municipal Corporations, from which the provisions to which His Majesty’s Government have taken except on, especially that which would exclude Asiatics from the Municipal franchise, will be eliminated.

I am to ask that an opportunity may be given to the Secretary of State in Council for considering the Bill before it receives the approval of the Secretary of State for the Colonies.

I have, etc.,

COLLIN G. CAMPBELL.

The Under Secretary of State,
Colonial Office.

Enclosure No. 3.
Colonial Office to India Office.

(Confidential.)

Colonial Office, Dowling Street,
24th July 1908.

Sir,

The Under Secretary of State for the Colonies presents his compliments to the Under Secretary of State for India, and is directed by the Secretary of State to transmit, for the information of Viscount Morley of Blackburn, with reference to the letter from the Colonial department of the 23rd of June, a copy of the correspondence noted in the subjoined schedule on the subject of a petition from British Indian traders in the Klip River division of Natal, whose shop licenses the Ladysmith licensing authorities refused to renew under the powers vested in them by the Natal Dealers' Licenses Act of 1897.

Date.	Description.
7th May 1908, No. 73	From the Governor of Natal.
18th July 1908, Confidential (2) ..	To the Governor of Natal.

Annex 1.

The Governor of Natal to the Secretary of State.
(Received 30th May 1908.)

(No. 73.)

King's House, Durban, Natal,
7th May 1908.

My Lord,

With reference to your Lordship's Despatch No. 46, dated the 16th May 1907, on the subject of the refusal of the licensing authorities at Ladysmith, under the powers vested in them by the Natal Dealers' Licenses Act of 1897, to renew the shop licenses of certain British Indian applicants, which despatch crossed Sir Henry McCallum's of the 18th May 1907, containing full information with respect to these refusals, I have the honour now to transmit, in accordance with the prayer at its end, a petition in triplicate submitted to me in November last by the persons from whom renewed store-licenses were withheld.

2. I enclose a report on this petition furnished by the Minister of Justice at my request. To a question I put to the Prime Minister on the 30th November 1907, as to whether he desired that the petition should be accompanied by any expression of Ministerial views beyond those embodied in Mr Carter's report, Mr. Moor has given me no specific answer, but in returning the papers on the 30th ultimo he informed me of the decision of Ministers not to introduce into Parliament any amendment of the law in the direction of allowing a right of appeal to the Supreme Court by persons whose licenses are refused by the licensing authorities.

3. I am now causing the petitioners to be informed of the general effect of the Minister of Justice's minute, and at the same time acquainting them that their petition has been transmitted to your Lordship.

I have, etc.,
M. NATHAN,

Enclosure No. 1 in above.

To His Excellency Lieutenant-Colonel Sir Matthew Nathan, Royal Engineers
Knight Commander of Saint Michael and Saint George, Governor of Natal,
Vice-Admiral of the same and Supreme Chief over the Native population.

The Petition of the undersigned loyal Indian subjects of His Majesty the King residing in the Klip River Division of this Colony of Natal humbly sheweth :—
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I.

That your petitioners have resided within this Colony for many years and have hitherto, as law abiding subjects, carried on their calling of retail store-keepers.

II.

That in the year 1897 His Majesty's Government within this Colony owing to the alleged commercial ascendancy obtained within this territory by His Majesty's Indian subjects, introduced into the Legislature a Bill which with the consent of the Government of Her late Britannic Majesty, subsequently became the Act No. 18, 1897, still upon the Statute Book of this Colony.

III.

The said Act was passed by the Legislature of this Colony in order as stated by the late Right Honourable Harry Escombe, P.C., to control in an equitable manner the growing commercial influence which it was then feared was being obtained by the Indian storekeeper to the disadvantage of the European trader without, however, in order to escape the censure of class legislation, making any reference to the true object of the Act.

IV.

Your petitioners and their fellow tradesmen have not, nor ever had, any intention to in any way enter into competition with their fellow European Colonists but humbly submit that they are in a better position to supply the demands of the native population in the towns and more particularly in the outlying district of the Colony where it would be impossible for Europeans—owing to the increased railway facilities and the absence of old wagon transport—to earn a livelihood.

V.

Owing to the depression now obtaining in this Colony as a result of the late Boer War, during the progress of which your petitioners endeavoured to give and did give sincere evidence of their loyalty, the cry against the Indian trader is again being raised and receiving the support of His Majesty's Government within this Colony in a most unjustifiable manner to your petitioners' disadvantage amounting to persecution.

VI.

Your petitioners have reason to believe that during the year 1906, circular instructions were sent by the Government of this Colony to the various Licensing Officers within the control of the Government directing an interpretation to be placed upon the Act, 1897, to the effect that applicants for new licenses and renewals of old licenses should personally be in a position to keep books of account within the meaning of the Natal Insolvency Law.

VII.

Your petitioners had, during the currency of their license since the passing of the aforesaid Act, caused books of account to be kept by competent Indian book-keepers which had, until the present year, passed the scrutiny of successive licensing officers, but owing to the aforesaid instructions which your petitioners humbly submit the law does not justify, their licenses, notwithstanding their long existence, were refused.

VIII.

Your petitioners in the interests of their wives and children and others dependent upon them were compelled, at great expense, to appeal to the Court of Appeal provided for by the Act from which Court they received a very scanty hearing and, notwithstanding the protest of their learned counsel, were debarred from leading any evidence to support their own statements and were prevented to place on record the evidence previously taken before the Licensing Officer.

IX.

Your petitioners did, notwithstanding the jurisdiction of the Supreme Court being ousted by the Act 18, 1897, appeal to that Court and which Court, owing to the many irregularities, quashed the whole of the proceedings of the Board and your petitioners were granted leave to again bring their appeal to the Court of appeal provided for by the Act.

X.

Upon such appeal being again brought by your petitioners the Board showed a most remarkable ignorance of the elements of book-keeping, that the rough day book which your petitioners kept in their own language was not allowed to be referred to as being a book not generally used by tradesmen and in many other ways, conclusively proving that the Board sitting in judgment upon your petitioners were incompetent to express an opinion upon the remaining books of account kept by your petitioners and which were and are still generally used by the tradesmen in the line of business previously carried on by your petitioners.

XI.

The finding of the Board of Appeal was against your petitioners practically without assigning any reason and without reflecting the true question before the Court and in consequence of which your petitioners' counsel was unable to successfully argue a further appeal before the Supreme Court.

XII.

Your petitioners again endeavoured to be reinstated by applying for fresh licenses and made application to have produced at the hearing a copy of the instructions already referred to which, however, the Colonial Secretary refused and in which refusal the Supreme Court upon application declined to interfere.

XIII.

Your petitioners are now in the position of being practically homeless and without the means of supplying the wants of those dependent upon them or to pay their just liabilities, and will, without any fault of their own, be branded as untrustworthy and otherwise.

XIV.

Your petitioners fully recognise that the European Colonists are entitled by fair means to adopt any course which may tend to their own protection when justly necessary, but deny the right of attack by means which are unconstitutional and improper and such as have been adopted in order to crush your petitioners and to deprive them of a livelihood which at the best has been humble and done injury to no one.

Your petitioners also feel that they are being made to suffer for the shortcomings of others, and in the suppression of which your petitioners and their fellow Indian traders who have the interests of the Colony and the Empire at heart would gladly help.

Wherefore your petitioners humbly pray Your Excellency to take such course as Your Excellency may deem fit and proper in order to bring before His Majesty the King-Emperor your petitioners' grievances in order that they may be reinstated in their original position from which your petitioners humbly submit they have been unjustly deprived.

As your petitioners in duty bound will ever pray.

Dated at Ladysmith, Natal, in the month of October 1907.

"GHOORAHOO AND LALA."

"CASSIM AND MOOSA."

"CALOO HOUSEN."

"SUNTH SINGH."

(Indian characters.)

"FYZERALLI AND MOWLABOX."

(Indian characters.)

"MAHOMED AND AMOD."

"MOOSAJEE ISMAIL & Co."

"A. M. KHARVA."

"ISMAIL MOOSAJEE."

"VALLI RASOOL."

"AMEER AND HOUSEN."

Enclosure 2 in above.

MINISTER OF JUSTICE TO GOVERNOR.

MINUTE.

6th November 1907.

Of the allegations contained in this petition it seems to me that those only contained in paragraphs X, XI and XIV require notice. There is no proof of any kind offered to support the allegations in X, as to the incompetence of Appeal Board. Were such proof offered it might be the duty of the Government to enquire into that point. If the Board acted in an unjudicial manner and so went outside its powers an appeal would lie to the Supreme Court. As regards XI, the same remark holds good. If the Board acted illegally an appeal could be had to the Supreme Court.

The complaint in Section XIV, of "unconstitutional and improper means". I presume is founded on the foregoing and the general allegations contained in the petition, but in support of which no evidence precise or general is offered.

T. F. CARTER,

Minister of Justice.

6th November 1907.

Annex 2.

The Secretary of State to the Governor of Natal.

[Confidential (2).]

Downing Street,

18th July 1908.

Sir,

I have the honour to acknowledge the receipt of your Despatch No. 73, of the 7th May, transmitting a petition from certain British Indian traders residing in the Klip River division of the Colony, whose shop licenses the Ladysmith licensing authorities have refused to renew, together with a minute on the petition by the Minister of Justice.

2. In my telegram No. 1, of the 18th of June, I expressed my satisfaction at your ministers' decision to omit from the Municipal Corporations Bill the provisions which would exclude Asiatics from the Municipal franchise. The existing law on this point will therefore remain untouched.

3. I feel obliged, however, to express my regret that your Ministers continue to be unwilling to introduce into Parliament a Bill to give to Indians to whom licenses are refused by the local licensing authorities a right of appeal to the Supreme Court, for I regard such an appeal as necessary to secure a due protection of vested interests, and I am bound to record my agreement with the opinion given in the third paragraph of Sir H. McCallum's Despatch, Confidential, No. 1, of the 18th of May 1907, that traders who have carried on their business for many years without let or hindrance should not be suddenly deprived of their licenses on the plea only of insufficient book-keeping.

The plea is one which must hitherto have been condoned by the licensing authorities; and it will be within your Ministers' recollection that at the time when the Dealers' Licenses Act was under consideration, Mr. Escombe stated, in a letter of which a copy accompanied Mr. Chamberlain's confidential Despatch of 20th of November 1897, that he was of opinion that Section 7 of the Act would be satisfied if the trader employed a clerk or agent capable of keeping his accounts in English.

The petition itself, in my opinion, deserved more detailed consideration than the Minister of Justice appears to have given to it. The sixth paragraph, for instance, called for notice of some kind. As regards those paragraphs which are commented on in Mr. Carter's minute, I would observe that, although it is true that no evidence is adduced in the petition to support the allegation contained in paragraph 10, the specific statement that the Board refused to allow the production in evidence of the day books is one that might readily have been proved or disproved.

In paragraph 11 of the petition there is no suggestion that the Board acted illegally at the second hearing. But after the strong criticisms expressed in the judgment on appeal to the Court, the Board might reasonably have been expected to state in detail the grounds of their decision.

I request that you inform the petitioners that I have laid their petition before His Majesty, who was not pleased to give any special directions in the matter.

I have, etc.,

CREWE.

Enclosure No. 4.

South Africa British Indian Committee to India Office.

28, Queen Anne's Chambers,

Broadway, Westminster, S. W.,

4th August 1908.

Sir,

Dealers' Licenses Act, Natal.

My Committee have received a copy of certain correspondence that has passed between Mr. Moosa Hajee Adam, an extensive landed proprietor of Durban, Natal and the Durban Town Council.

I am desired to forward you the accompanying copy of this correspondence because it appears to my Committee to constitute most eloquent testimony to the harsh and differential administration of the Dealers' Licenses Act of that Colony.

I have, etc.,

L. W. RICH,

Secretary.

The Under Secretary of State
for India.

Annex 1.

Javaree Bazaar, Pine Street, Durban,
March 1908.

Sir,

I respectfully beg leave to place before you certain facts concerning myself, and generally concerning the Indians placed in similar circumstances, which it is necessary to bring before you and persons possessing administrative authority, so that the extremely harassing and unreasonable position in which I am placed at present may be realised and some method adopted to remove the hardships.

I propose to call your attention to some simple facts which are common knowledge to all, and request that you shall consider my unenviable and intolerable position and effect relief in the required directions.

I am a British Indian merchant, residing and having resided and carried on business in Natal for over 25 years. My permanent residence is in Natal and I have children in the Colony dependent upon me.

I am the owner of extensive landed property in the borough of Durban, and also in other parts of the Colony.

Since the Licensing Act of 1895 was enacted I have had generally about ten to twelve stores continually empty, as no Asiatic tenants could get licenses for my premises.

I pay annually to the Durban Corporation about 500*l.* in taxes, rates, rents, etc.

I held the "Kafir Market" in Queen Street, Durban, for some years, and I was the one to commence the idea of such a market for the natives, which the Durban Corporation deliberately and forcibly closed down and established a similar one themselves for their own benefit. The Durban Corporation has paid nothing to me as good will or compensation for the loss resulting to me through the Corporation taking over the "Kafir Market." I was deriving good profits from the

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"market" and was in a position to pay the Corporation its rates, etc., and other liabilities regularly, and of which income the Durban Corporation has deprived me.

In one of my premises, Javaree Bazaar, Pine Street, Durban, a store was empty for a considerable period, although many Indians took option of renting premises, and applied to the Durban Corporation for licenses, all of which were refused, but some months ago a Mr. Sparks tenanted the same store and applied for a license, which was granted him without hesitation. He has now vacated the store: Stores belonging to Europeans are licensed without delay.

Several of my stores are now empty, and how is it possible for me to find Sparks for all the stores?

When the times were good, and premises were licensed, I was able to pay my liabilities, and how is it possible to meet them now, when no licenses are granted to my premises, and are thus forced to remain empty.

The present order of things is that I must pay the Durban Corporation its rates, etc., and the Corporation is using all influence and power to deprive me of the income out of which I am to pay them their dues.

I appeal to you, gentlemen, as men imbued with the ideal of justice and fair-play, to consider the above facts, and to either buy in all my properties at the last Corporation value, in view of the gradual and evident ruin being brought about by the attitude of the Corporation, in which case I will leave the Colony for good, or to grant licenses to my premises.

I am pained, and am no longer able to keep things in order, in view of this oppression, and pray that you may relieve me in either of the two ways suggested.

Yours, etc.,

MOOSA HAJEE ADAM.

Annex. 2.

Borough of Durban Town Clerk's Office,
Durban, Natal,

8th April 1908.

Sir,

I beg to inform you that your letter dated March 1908, setting forth your position by reason of your inability to let your premises on account of the difficulty of obtaining licenses therefor, and asking the Council to either buy in your properties at the amounts given in the last valuation roll, or, alternatively, to grant licenses to your premises, was duly laid before the last meeting of the Town Council, which I was directed to point out to you that the Council is not in a position to direct the Licensing Officer on questions relating to the granting of licenses.

I would also remind you that many other burgesses find it impossible to let their premises at the present juncture. In view of these facts, councillors are powerless to accede to either of your suggestions.

Yours, etc.

WM. COOLEY,

Town Clerk.

MR. MOOSA HAJEE ADAM,

Annex. 3.

Javaree Bazaar, Pine Street, Durban,
28th May 1908.

Gentlemen,

Your letter dated the 8th April 1908, in reply to my application to either purchase my properties at last corporation value or to grant licenses to my premises, to hand the contents noted.

I think my letter of March 1901, which you appear to have considered, has not been sufficiently gone into, and I would beg that the same be fully considered

or re-considered. Your reply is vague and somewhat subtle as to the meaning it conveys. You state "that many other burgesses find it impossible to let their premises at the present juncture" which I do not dispute, but emphatically state that it is not the case with me. I have numerous tenants but their tenancy is prevented by your officials refusing to grant licenses.

Prior to receiving your reply above referred to, I saw the Licensing Officer on the subject of granting licenses to my premises several times. He referred me to the Mayor, saying that he had no instructions to grant new licenses to Asiatics, and that as soon as the Mayor requests him to grant any he will do so. I accordingly saw the Mayor, who, after seeing me referred me back to the Licensing Officer, saying that he was in charge of licensing matters. Answers identical to this were given me on the many other occasions I had called on these two municipal officers one referring me to the other. On the last occasion I saw the Mayor he suggested to me that if I saw all the other Indians and arranged to have an Indian bazaar or trade location, at which all Indian businesses could be confined, then he opined that there would be no trouble about licenses for Indians.

A few days after this, the Licensing Officer writes to one of the applicants for a license for one of my stores—the same suggestion that the Mayor has suggested to me—although the Licensing Officer says that his suggestion is unofficial, and that he had not seen any one over it. Whether it is a coincidence that the suggestion of the Licensing Officer and the Mayor should agree, or whether it emanated from one or other of the municipal officers I could not say, but the fact remains that the suggestion for an Indian bazaar is being seriously suggested by both the officers. It was hinted at my conversation with the Mayor, and also in the letter of the Licensing Officer, that unless the suggestion is carried through, there would be no consideration given to the Indian licenses.

I have thought over the suggestion, but the more I think over it, the more evident is the utter absurdity and impossibility of the suggestion. The Indian properties, businesses, buildings, and interests are not centred in any one particular part of the borough. How is it possible for the Indians to abandon their properties and concentrate in one given place? If the suggestion is to be carried out, it would necessitate the buying out of the Europeans and other property owners of the locality, whichever one may be selected. What prices would be demanded by these owners for their properties it is very difficult to foretell. Who will buy my properties and that of other Indians, those that are situate in the different parts of the borough for which you are not prepared to grant licenses? How is it possible for traders to cater at a place where it will not be convenient for or within reach of the purchasers and public? This would mean, if the Council intend the traders to maintain themselves at all, to have all Indians confined to a location, which, of necessity, should be situate alongside the Indian bazaar or trade location above referred to.

The only way—a just and reasonable way—for the Corporation to pursue, I think, in this matter would be to purchase my properties, as suggested in March 1908 by me. This will fulfil your desire to oust the Indians, but with justice, as you compensate him.

Although there is no law that forbids licenses to Indians, the Licensing Officer has taken it upon himself, with the instructions from some unknown party, to refuse, and to give as reason for his refusal that no new licenses will be issued to Asiatics.

What the Natal Legislature intends to enact—that is, for the compensation of the Indian traders after a certain period—I think unnecessary, as I have already made the suggestion, and am prepared to hand it over now without waiting for any period. I think it unjust that the people should be gradually ruined and extinguished by improper methods, before the time for compensation. It will be honourable and just to do so now when they have their businesses with them.

From the intolerable position the Indians are now placed in, they will readily follow my suit, and receive whatever they get as compensation and leave the country. This is the only alternative they have under the present circumstances.

The above subjects are of serious consideration, which I commend to you for your very deep consideration.

Two applicants for licenses by reputable Indians for stores in my premises were refused during last month. I only mention this to show you how determined and uncompromising is the attitude taken up by the Licensing Officer. One application was by Messrs. Osman Cassim & Co., of Durban, and the other by Tyab Brothers, my sons, who have traded in partnership with me for 15 years in Natal.

After very deep consideration of the cause and consequence of the attitude of the Licensing Officer, and the unreasonable methods adopted by your Council, I see nothing but a clear and determined attempt to ruin me gradually.

You are able, by the power you possess, to force my stores to remain empty, and which you have done and are doing. You are also able by legal progress to enforce payments of rates and taxes, though of the income from which I could pay you, you deny and deprive me. If this order of things continue for some years, you can clearly see I will have exhausted my capital in paying your rates, etc., and eventually appear a ruined man.

I have invested a very large sum of money in this Colony, and have taken up permanent domicile here for over a quarter of a century.

Without tenants and rents or any income at all, how could I comply with the sanitary requirements and other bye-laws.

I beg that your Council may be pleased to go into the matter fully, and seriously consider the whole position as affecting Indians, and the best and just method to relieve them from some of the hardships.

I respectfully ask that you may kindly reconsider your last decision arrived at previously.

Yours faithfully,
MOOSA HAJEE ADAM.

The Mayor and Councillors of the
Borough of Durban.

Annex. 4.

Javaree Bazaar, Pine Street, Durban,
22nd May 1908.

Dear Sir,

Upon your written request made on 20th instant. to call upon you in respect of my application for a wholesale license, I accordingly called and saw you to-day, when you informed me that you were not inclined to grant a license, but advised me that I should see the Mayor.

I have previously seen the Mayor, who informed me that you were in sole charge of licensing matter.

I therefore ask you that you definitely write me about my application.

Yours faithfully,
MOOSA HAJEE ADAM.

The Licensing Officer,
Borough of Durban.

Annex. 5.

Licensing Department,
Town Hall, Durban,
26th May 1908.

Sir,

I am in receipt of your favour, I confirm my verbal statement that I have refused your application for a license.

I am, etc.,
G. MOLYNEUX,
Licensing Officer of Durban.

Annex. 6.

Prime Minister's Office
Natal, Pietermaritzburg,
9th June 1908.

Sir,

In reply to your letter of the 12th March last, and subsequent correspondence, wherein you call attention to certain hardships under which you as an owner of property, labour, by reason of the refusal of the licensing authorities in Durban to issue trading licenses to Indians who are prepared to become your tenants, I have the honour to inform you that Government is precluded by section 3 of Act 18 of 1897 from exercising any jurisdiction over licensing authorities in boroughs or townships.

I have, etc.,
G. T. PLOWMAN,
Secretary, Prime Minister.

Mr. Moosa Hajee Adam.

Enclosure No. 5.

Colonial Office to India Office.

No. 28-120. (Confidential.) Colonial Office, Downing Street.
12th August 1908.

The Under Secretary of State presents his compliments to the Under Secretary of State for India, and is directed by the Secretary of State to transmit, for the information of Lord Morley of Blackburn, with reference to the letter from the Colonial Department of the 15th of June, a copy of the despatch noted in the subjoined schedule on the subject of the number of trading licenses held by Indians in Natal for each year since 1895.

Date.	Description.
10th July 1908 (Confidential)	From the Government of Natal.

Annex. 1.

The Governor of Natal to the Secretary of State.

(Received 1st August 1908.)

(Confidential.)

King's House, Durban, Natal,
10th July 1908.

My Lord,

As requested in your Lordship's confidential telegram of the 6th June, I have the honour to transmit herewith a statement showing the number of trading licenses held by Indians in Natal for each year since 1895. I am inquiring for, but have not yet received, information also called for by your Lordship, as to the total number of licenses held in those years.

2. The delay in furnishing the statement now enclosed has been due to the time that has been required to get the necessary figures from the boroughs and in some cases the records they have now furnished are incomplete.

I have, etc.,
M. NATHAN.

Enclosure in above.

Statement showing total number of trading licenses held by Indians in Natal for each year since 1895.

1895	1896	1897	1898	1899	1900	1901	1902	1903	1904	1905	1906	1907	1908
393	464	523	520	461	472	923	1,056	1,109	1,334	1,269	1,226	1,216	1,008

NOTE.

Mayor, Pietermaritzburg : Not possible to furnish returns prior to 1903.
 Mayor, Durban : Not possible to furnish returns for years 1895 to 1900.
 Newcastle, Mayor : No record prior to 1898.
 Magistrate, Umgeni : No record prior to 1898.
 Magistrate, Bergville : Cannot find record prior to 1904.
 Magistrate, Ladysmith : Cannot find record prior to 1904.
 Magistrate, Musinga : Records prior to 1900 (also 1902) destroyed by fire.
 Magistrate, Lower Tugela : No records prior to 1904.

25th July
 Confidential.

From the Government of Natal.

PROOF.
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THE GOVERNOR OF NATAL TO THE SECRETARY OF STATE.

(Received 15th August, 1908.)

(Confidential.)

King's House, Durban, Natal, 25th July, 1908.

MY LORD,

In continuation of my confidential despatch of the 10th instant, I have the honour to forward a return of the total number of trading licenses issued in Natal for each year since 1895. As will be seen from the detailed statement also transmitted, the general return is incomplete for the years prior to 1905, owing to some of the boroughs, townships, and magisterial divisions having no record for those years or for some of them.

I have, etc.

M. NATHAN.

Total number of licenses issued in Natal since 1895.

	Years.													Total.	
	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904	1905	1906	1907		1908
Indians.	393	464	523	520	461	472	923	1,056	1,009	1,225	1,269	1,226	1,216	1,008	11,765
Other than Indians.	356	383	418	1,028	1,106	1,256	1,447	1,531	1,924	1,930	2,390	2,252	2,123	2,034	20,472
Total	749	847	941	1,548	1,567	1,728	2,370	2,587	2,933	3,158	3,659	3,478	3,339	3,042	32,237

Detailed returns attached showing that in some divisions return cannot be given in respect of particular years.

India Office, London,
6th November 1908.

Public,
No. 177.

TO HIS EXCELLENCY THE RIGHT HONOURABLE THE GOVERNOR GENERAL OF INDIA
IN COUNCIL.

MY LORD,

* * * * *

2. In my Despatch No. 141 (Public), dated the 4th September last, I suggested that, with a view to securing more equitable treatment of Indians in Natal, Your Excellency's Government might take into consideration the question of making changes in the system of permitting the recruitment of indentured labour for that colony. I shall be glad to learn what conclusions you have arrived at. Your Excellency will observe that the Colonial Government has now withdrawn the Bill "to put an end to the further introduction of Indian labour," in view of the feeling that Indian labour is at present necessary to the agricultural prosperity of Natal, but is proceeding with the Bills affecting Indian trading licenses, to which, if passed, the Secretary of State for the Colonies will, as he has intimated to the Governor of Natal, be unable to advise His Majesty to assent.

I have, etc.,

MORLEY OF BLACKBURN.

The Governor of Natal to the Secretary of State.

{No. 164}

King's House, Durban, Natal,

MY LORD,

5th August 1908.

WITH reference to my Despatch No. 77, dated the 8th May 1908, transmitting for your Lordship's information, *inter alia*, copies of a Bill "to put an end to the further introduction of indentured Indian immigrants" I have the honour to report that this Bill was introduced into the Legislative Assembly on the 17th June; that the motion for its second reading was passed by 23 votes to nine on the 14th July; and that on the motion of the Colonial Secretary, carried by 26 votes to six, the order for the consideration of the Bill in Committee was discharged on 30th July.

2. In introducing the measure the Colonial Secretary stated that, in consequence of the arrangements by which the Transvaal gold industry monopolised the native labour from Portuguese territory, the Government did not at the present time see how they were going to procure native labour from outside the Colony, and he proposed the appointment of a Commission to consider the best way of dealing with the situation. Mr. Smythe, Leader of the Opposition, saw no objection to the appointment of a Commission, but considered that it would be short-sighted policy to pass the Bill as it stood, and so put a stop at once to the introduction of Indians, as this would tend to retard the expansion of industrial development. Sir Liege Hulett, who is largely interested in the tea and sugar industries of the coast districts, opposed the Bill as likely to ruin these industries. This view was taken by most of the other opponents of the measure who spoke, those on the opposite side arguing that if the introduction of indentured Indians ceased, the planters and others who had hitherto employed this class of labour would find they would carry on with natives, and that even if this were not the case, individual interests should suffer in the wider interests of the Colony. A considerable section of the speakers, though in favour of the principle of the measure, evidently shared Mr. Smythe's fear that it might be too sudden in its operation, and this feeling was reflected in the general acceptance of the proposal to withdraw the Bill, and to submit the subject of it to the consideration of a Commission. The Bill was withdrawn in the manner already stated.

I have, etc.,

M. NATHAN.

No. 11526—11528—82.

GOVERNMENT OF INDIA.

DEPARTMENT OF COMMERCE AND INDUSTRY.

EMIGRATION.

FROM

B. ROBERTSON, Esq., C.I.E., I.C.S.,
Secretary to the Government of India,

TO

THE SECRETARY TO THE GOVERNMENT OF BOMBAY,
 GENERAL DEPARTMENT.
 THE CHIEF SECRETARY TO THE GOVERNMENT OF MADRAS,
 PUBLIC DEPARTMENT.
 THE SECRETARY TO THE GOVERNMENT OF THE UNITED
 PROVINCES, REVENUE DEPARTMENT.

Calcutta, the 18th December 1908.

SIR,

The Government of India have had under consideration the question of prohibiting the recruitment of Indian indentured labour for service in the Colony of Natal. On more than one occasion in the past, the possibility has been indicated that such action might be forced on the Government of India. And in connection with certain correspondence on the subject of the administration of the Dealers' Licenses Act, the Secretary of State has suggested that the Government of India might take into consideration the question of making changes in the system permitting the recruitment of indentured labour for the Colony, with a view to securing more equitable treatment of Indians in Natal. This suggestion has received close attention from the Government of India, who have arrived at the conclusion that the time has come to suspend the recruitment of Indian labourers for service in Natal. Before, however, taking the action which is necessary to give effect to this conclusion, they desire to ascertain the views of the local Governments which are most interested in the proposed discontinuance of emigration to that Colony.

2. The general conditions of service to which Indian indentured labour is subject in the Colony need not be discussed in the present connection. But it is necessary to refer in some detail to one result of the present system, to which must largely be ascribed the difficulties which have arisen in regard to the treatment of the Indian population resident in the Colony. Prior to 1894, the terms under which Indian labourers were indentured for service in Natal, bound them to serve for a period of five years under indenture and to remain for a further five years in the Colony, at the end of which time they and their families were entitled to a free passage back to India. It was, however, found that only a comparatively small number took advantage of the offer of the return passage, and Indians began settling in the Colony in such numbers as to create alarm in the minds of the colonists. In 1894, the Natal Government proposed that, during his residence in Natal, the Indian should be continuously under indenture, that at the end of each period of his indenture he should have the right to a free return passage to this country, and that, if he did not re-indenture, he should be bound by his contract to return to India. These proposals were in the main accepted by the Government of India, subject to the proviso that immigrants declining to enter into a new indenture, and refusing to abide by the contract requiring them to return to India should not be dealt with under the Criminal Law. The Government of India were also prepared to agree to the imposition of a tax on residents sufficiently high to discourage the settlement of Indian immigrants in the Colony. No communication to this effect was made to the Natal Government, but the latter did as a matter of fact adopt this particular method of putting pressure on Indians to return to India. An act was passed by the Colonial Legislature in 1895, rendering Indians who had emigrated under indenture liable

to an annual tax of £3. In 1903, the whole question of emigration to Natal was exhaustively discussed with delegates from Natal, and this important question of the repatriation of emigrants was again brought prominently to the fore. Though the full effect of the Law of 1895 had not yet had time to make itself felt, the Colony had already, in 1901, recognised that the imposition of the tax of £3 would probably fail in its object of preventing Indians from settling in Natal, and a further amendment of the Immigration Law was introduced so as to render liable to the tax not only the Indian immigrants, but their adult children. In some quarters, it was anticipated that this amendment of the law would probably be no more successful than the previous steps taken by the Colonial Government. That this anticipation was correct is borne out by the statistics of the Indian population. In 1894, the number of Indians resident in Natal was put at 46,000 including 5,500 so called "Arabs". In 1901, the number of Indian immigrants and their descendants rose to 72,965, of whom 47,599 were free, the whole white population then numbering only 64,000 souls. The latest report from the Protector of Indian immigrants for the year 1907, places the total Indian population at 102,857, of whom 61,441 are free, against a European population estimated at the end of 1906 at under 95,000. New arrivals have in the three years ending 1907 aggregated 26,044, while in the same period the number of Indians repatriated amounted to 9,501.

3. The present position, then, is that there is in the Colony a preponderating proportion of free Indians, and that the number of these latter is, unless a modification is introduced in the existing system, likely to increase still further by accession from the ranks of indentured labourers. As His Excellency the Governor in Council/His Honour the Lieutenant-Governor is fully aware, the presence of this large free Indian population has been regarded with hostility by an important section of the colonists, who have succeeded in securing the enactment of a series of measures affecting the rights and status. On repeated occasions the Secretary of State and the Government of India have found it necessary to enter vigorous protests against the character of the legislation affecting Asiatics introduced into the Colonial legislature. Special reference need only be made to one measure in particular, viz., the Dealers' Licenses Act, an amendment in which has since 1899 been regarded as absolutely essential. Though no strong objection was taken to this measure at the time of its enactment, subsequent experience of its administration by Town Councils and Town Boards clearly demonstrated that grave injustice was being done to Indian traders. In view of certain facts stated in petitions submitted by the latter, and not controverted by the Colonial Government, Her Majesty's Government in 1899, addressed a strong representation to the Natal Government suggesting the introduction of a Bill allowing an appeal to the Supreme Court from the decision of the Licensing Boards. A warning was added that, unless such legislation was undertaken, emigration from India would probably be stopped, and it was stated that such an act on would be perfectly justified and indeed be inevitable. In 1903, when negotiations were opened with the delegates especially deputed by the Natal Government to discuss the whole question of emigration from India, the Government of India insisted upon the amendment of the Licenses Act in the manner proposed by the Secretary of State for the Colonies. The reply from the Colonial Government was an uncompromising refusal, and the history of recent legislation undertaken in the Colony discloses no reason for supposing that this attitude will be departed from or indeed be in any way modified. On the contrary, there is reason to fear that further restrictive measures are contemplated. Two Bills have been published having for their object the suspension of new issues of trading licenses to Indians and the withdrawal after a specified date of existing licenses.

4. It is more particularly in view of the continued failure to secure the necessary amendment of the Dealers' Licenses Act, that the question of prohibiting emigration to Natal has again been raised. After giving their best consideration to all the issues involved, the Government of India have formed the conclusion that emigration to Natal should be stopped. So long as Natal maintains her present attitude, they consider that they would not be justified in permitting the continuance of a system which must have the effect of increasing the number of Indians who may ultimately be affected by the measures adopted by the Colony. With a constantly increasing free Indian population, the divergence between the Indians' and the colonists' standpoints will necessarily become more marked.

the points of friction with the Colonial authorities must inevitably be multiplied, and the difficulties which have to be faced in ensuring fair treatment will similarly be aggravated. On the other hand, the feeling in India in regard to the general attitude of the Colonies towards Indians is likely to grow in intensity as measures are carried into effect in furtherance of the Anti-Asiatic policy. Finally, though the Government of India recognise the value which has always been attached to emigration to the Colonies, not only as a method of relieving congestion in certain tracts in India, but also as affording to the individual emigrant a means of bettering himself, they doubt whether those considerations have the same force in the improved industrial prospects of the present day as they possessed in the past.

5. Having formed this conclusion, the Government of India are now addressing the Secretary of State with a view to obtaining the sanction to the legislation which will be necessary to enable them to suspend emigration to Natal. Section 9 of the Emigration Act enables the Governor General in Council to suspend emigration to a country where proper treatment cannot be secured for the indentured labourers. No question has been raised as to the fulfilment by employers of the terms of the indenture; the point at issue is a wider one, which is not covered by the section of the Act, and power will have to be taken by amendment of the Act, to withdraw Natal from the list of countries to which emigration is lawful.

To Bombay 6. (Before, however, carrying this conclusion into effect, the Government of India desire to ascertain the views of His Excellency the Governor in Council/ both as regards the question as a whole, and more particularly as regards the probable effect of the stoppage of emigration on the interests of the traders who proceed to Natal as free emigrants. Most of these come from Bombay: they constitute the class known in the colony as "Arab" traders: and it is mainly the treatment of this latter class which has been the chief cause of agitation in this country.)

To Madras
United Pro- 6. (Before, however, carrying this conclusion into effect, the Government of India desire to ascertain the views of His Excellency the Governor in Council His Honour the Lieutenant Governor on the question as a whole, and particularly as to the effect of the stoppage of emigration, from the labourer's point of view I am to point out in this connection that though the present system enables a certain number of the labouring class to earn fair wages and to raise themselves to a different and higher standard of living, the alternatives open to them after expiry of their indentures are either to return to India when probably no longer suited to the conditions of Indian life or to accept for themselves and their children such restrictions as the colonists choose to impose.)

7. I am to add that it is proposed to fix the end of the present recruiting season, i.e., June 30th 1909, as the date for closing emigration to the Colony.

I have the honour to be,

SIR,

Your most obedient servant,

B. ROBERTSON,

Secretary to the Govt. of India.

No. 104 of 1908.

GOVERNMENT OF INDIA.

DEPARTMENT OF COMMERCE AND INDUSTRY.

EMIGRATION.

To

THE RIGHT HONOURABLE VISCOUNT MORLEY
OF BLACKBURN, O.M.,
His Majesty's Secretary of State for India.

Calcutta, the 24th December 1908.

MY LORD,

We have the honour to acknowledge receipt of the correspondence ending with your Lordship's despatch No. 177 Public, dated the 6th November 1908. In Your Lordship's despatch, dated the 4th September, the suggestion is made

that we should consider whether any changes in the system of permitting the recruitment of indentured labour to Natal may not have to be made. Before proceeding to state our views on this suggestion, we desire to acknowledge the efforts which have been made to secure the amendment of the Dealers' Licences Act. We observe that Your Lordship has left to the discretion of the Secretary of State for the Colonies the selection of the most suitable and effective means to bring about this reform, and we infer from the correspondence forwarded with Your Lordship's despatch of the 30th October 1908, that His Majesty will not be advised to exercise his power of disallowing the Municipal Corporations Bill.

2. We have carefully considered the question whether we should not take steps for the discontinuance of emigration to the Colony, and we attach a letter which we have caused to be addressed to the Governments of Bombay and Madras and of the United Provinces, which fully explains the conclusions at which we have arrived in the matter and the circumstances which have led us to these conclusions. We do not anticipate that the opinions of the Local Governments consulted will differ from ours, and we now have the honour to request Your Lordship's sanction to the introduction of the legislation which will be necessary to give effect to our decision to suspend emigration to the Colony from the 30th June 1909. The particular form in which the necessary legislation will be undertaken remains yet to be considered, and we shall submit proposals in this direction to Your Lordship in due course.

We have the honour to be,

MY LORD,

Your Lordship's most obedient, humble Servants,

MINTO.

KITCHENER.

H. ERLE RICHARDS.

C. H. SCOTT.

H. ADAMSON.

J. O. MILLER.

W. L. HARVEY.

G. F. WILSON.

P. X. Telegram, dated London, the 6th October 1909.

From—Secretary of State,

To—Viceroy.

Natal Immigration.—My telegram of the 24th ultimo. The Colonial Office report that Greene, Minister of Railways, Natal, thinks that he can induce his colleagues to introduce Bill giving right of appeal to existing license holders and to future grantees of licenses, but not appeal on question of grant or otherwise of fresh license. Condition on which measure would be passed is that question of prohibiting immigration should stand over until coming of Union Measures, 1910. Are you prepared to agree to such pledge? If you desire it, no objection to your proceeding with enabling legislation sanctioned in my telegram of September 22nd.

P. X. Telegram, No. 60, dated Simla, the 20th October 1909.

From—Viceroy,

To—Secretary of State.

Natal Emigration.—Your telegram of the 6th October. We have given careful consideration to Greene's proposal, but are decidedly of opinion that we should not accept it. As explained in Lord Elgin's Despatch of the 23rd February 1907, forwarded with Lyall's letter of 28th March 1907, on a previous occasion the Natal Government undertook to introduce legislation to provide for appeal to Supreme Court. Again in the course of negotiations of 1903 the Natal Delegates gave an assurance that no difficulty would be raised in respect of similar legislation.

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The Natal Government, however, subsequently expressed unwillingness or inability to introduce the legislation suggested. We consider, in view of past experience, that we should not be justified in postponing prohibition of Emigration to Natal. We shall telegraph to you, as soon as ready, the terms of the Bill to amend the Indian Emigration Act.

P. X. Telegram, dated London, the 22nd October 1909.

From—Secretary of State,

To—Viceroy.

Please see your telegram of the 20th instant regarding Natal Emigration. The Governor of Natal now asks the Colonial Office whether he may tell his Ministers that if the Natal Parliament actually passes bill giving dealers appeal to Supreme Court against withdrawal of licenses, then your enabling Bill to prohibit Emigration will not be used against Natal before South African Union comes into force. I am disposed to agree and I shall be glad of an immediate telegraphic reply.

P. X. Telegram, dated Alwar (Camp), the 27th October 1909.

From—Viceroy,

To—The Secretary of State.

Natal Emigration.—Please refer to your telegram of the 22nd October. Present proposal does not differ in substance from the offer made by Greene communicated in your telegram of 6th October. Our position has always been that appeal to the Supreme Court should lie against all decisions of Licensing Boards, and we are not prepared to accept as sufficient proposal to allow appeal against withdrawals of licenses only. When Act was passed its effect on Indian residents in Natal was repeatedly brought to the notice of the Colonial Office. Please refer to Godley's letter No. 753, dated July 21st 1897, and subsequent correspondence, particularly to Colonial Office letter of 20th July 1898 from which it was understood that License Act as well as Immigration Restriction Act would not be harshly enforced to the injury of those already settled in the Colony. As attitude of local bodies did not fulfil expectations, and was opposed to what was understood to be the object of law, an amendment of Act, as latter did not recognise vested interests, was pressed upon Natal Government in 1899 by the Colonial Office. Again in negotiation of 1903 we demanded that an appeal should lie against all decisions of local Committees. We object strongly to giving pledge desired unless right of appeal is permitted from all decisions of local Committees.

P. X. Telegram, dated London, the 28th October 1909.

From—Secretary of State,

To—Viceroy.

Your wire of 27th. Emigration to Natal. Right of appeal as to fresh licenses in my judgment is of much less importance than proposed right of appeal in regard to existing licenses. The latter will become in Natal of increasing importance in the future. I propose therefore to give assurance that until Union Government have come into existence and decided on future policy (which it is expected will not take more than a year) immigration of indentured Indians will not be stopped.

In the meantime, of course our assurance would not be operative unless the Natal Government pass the promised Act during the present session, of which there is still a faint hope in spite of some uncertainties. In view of what has been going on since 1860, you will perceive this provisional concession for a single year more cannot be regarded as very serious.

P. X. Telegram, No. 24 (Camp) Bhopal, dated the 11th November 1909.

From—Viceroy,

To—Secretary of State.

Please see your telegram of the 28th October. We note that you propose to accept offer of Natal providing for appeal against withdrawal of existing licenses

only. We gather that you expect a further communication from us before finally giving the Colonial Government assurance that indentured Emigration to Natal will not be stopped pending the inauguration of South African Union. We agree with Your Lordship that right of appeal is of most importance in case of existing licenses. But we do not think that this consideration would justify us in desisting from trying to get the best terms we can for Indians. Our demand as to right of appeal from all decisions of the Licensing Board is no more than what we have all along been asking for under threat of stopping Emigration to the Colony; and as it appears that Natal cannot do without Indian labour, the present seems a favourable opportunity for continuing to press for complete right of appeal. We trust that, in the interests of Indians settled in Natal, if assurance mentioned in your telegram has not yet been given, it may be withheld.

Telegram from the Governor of Natal to the Secretary of State for the Colonies.
(Received Colonial Office, 2-38-p.m., 19th May 1909.)

19th May. (Confidential.)

Your Despatch of 4th March (Confidential). Ministers desire consideration of proposal to suspend Indian emigration to Natal may be deferred pending decision as to adoption of draft of Act of Union. Referendum is to be taken on 10th June, and if majority of votes is recorded in favour of draft Act, representatives of Natal will proceed to England with delegates from other Colonies, and will be able to discuss matter fully with India Office.—NATHAN.

Colonial Office to India Office.

Downing Street,
25th June 1909.

No. 18498.

Sir,

I am directed by the Earl of Crewe to acknowledge the receipt of your letter (No. J. and P. 1900), of the 2nd instant, and to request you to convey his thanks to Viscount Morley of Blackburn for agreeing to the postponement until after the 10th instant of Indian legislation on the subject of the suspension of indentured emigration to Natal.

2. As Lord Morley is no doubt aware, the people of Natal have now decided in favour of joining the South African Union, and it appears desirable that the position should be further considered in view of this new fact. Under the terms of the draft South Africa Constitution Bill as it now stands the grievances of British Indian subjects in Natal, in respect of licensing and municipal legislation, will be matters to be dealt with by the Provincial rather than the Union Legislature. Lord Morley will, however, recollect that the possibility of amending the draft Act so as to bring matters affecting coloured persons under the Union Government is under consideration. If, however, this change is not made, it is in any case probable that the Union Government, if it desired to do so, would be in a position to put pressure on the Provincial Government in the direction of a more liberal policy in regard to Asiatics, and it might then be possible to obtain satisfaction of the demands of the Government of India without the necessity of recourse to the strong measure of suspending emigration to Natal. In any case, Lord Crewe is anxious that decisive action in the matter should be deferred until he had had an opportunity of discussing it with the South African delegates, who are due in England next month, and I am to express the hope that Lord Morley will agree to at least this further delay.

I am, etc.,

H. W. JUST.

The Under Secretary of State
for India.

MC160EHL

Telegram from the Officer Administering the Government of Natal to the Secretary of State for the Colonies.

(Received, Colonial Office, 5-45-p.m., 23rd July 1909.)

23rd July, No. 1.

Natal Indian Congress humbly appeal to Home Government protect British Indian subjects and interests under Union before Bill passes, otherwise will lead to serious consequences. Natal Indians over 110,000 and include prominent merchants, land-owners, farmers, professional and educated classes, who claim rights as Imperial citizens, free trading, travelling, and educational facilities now denied them in certain South African Colonies, implore principle equal rights for all civilised men irrespective of colour, emancipation from struggling hardships, finally leave ourselves in Emperor's hands strongly hoping that sense of justice where no representations should prevail. Cordially support Natal Indian delegates who left 8th July to interview you.—BALE.

Colonial Office to the Officer Administering the Government of Natal.

Natal. No. 157.

Downing Street,
31st July 1909.

Sir,

I have the honour to acknowledge the receipt of your telegram No. 1, of the 23rd instant, communicating representations from the Natal Indian Congress with regard to the position of British Indians under Union.

I should be glad if you would point out to the Congress that the provisions of the Act of Union, as approved by the Colonial Legislatures, represent a compromise between the various Colonies which has been arrived at with difficulty, and could not be modified by His Majesty's Government in any material respect without risk to the accomplishment of Union. Such a result, I may observe, would, in the opinion of His Majesty's Government, have adversely affected the interests of all the inhabitants of South Africa, whether white or coloured.

In these circumstances His Majesty's Government have found themselves unable, after careful consideration of the position, to modify the terms of the Act of Union in so far as they affect Indians beyond securing an amendment of Clause 147 to provide that the control of matters specially or differentially affecting Asiatics throughout the Union shall be vested in the Governor-General in Council.

I take this opportunity of acknowledging receipt of your telegram No. 1 of the 24th instant.

I have, etc.,
CREWE.

The Officer Administering
the Government of Natal.

India Office to Colonial Office.

J. and P. 2311.

India Office,
24th September 1909.

Sir,

I am directed by Viscount Morley, with reference to Mr. Just's letter of the 25th June (No. 18,498), on the subject of the proposed suspension of Indian indentured emigration to Natal, to state for the information of the Earl of Crewe that the immediate request which has been laid before him by the Government of India is merely for sanction to the acquisition of fresh powers which would enable them, in case of necessity, to suspend indentured emigration to any country overseas, for reasons other than the actual ill-treatment of indentured labourers. Lord Morley desires to say that the actual suspension of emigration to any British Colony will not be sanctioned without informing the Colonial Office, but he feels that he cannot oppose the desire of the Government of India to introduce enabling legislation.

Now that the entry of Natal into the South African Union has been definitely decided, he sees no adequate reason for further delay in the introduction of the general legislation suggested. His Lordship therefore has decided to accord his sanction thereto.

I am at the same time to transmit for Lord Crewe's consideration a copy of a further letter (No. 32, dated 20th May 1909), received from the Government of India on the education question in Natal.

I have, etc.,

COLIN G. CAMPBELL.

The Under Secretary of State,
Colonial Office.

India Office to Colonial Office.

India Office,
2nd December 1909.

J. and P. 4140.

Sir,

With reference to Mr. Just's letter of the 24th ultimo, No. 31, 174, I am directed by Viscount Morley to transmit for the information of the Earl of Crewe a copy of recent telegraphic correspondence noted below with the Government of India on the question of the suspension of Indian labour emigration to Natal:—

To Viceroy, dated 24th September 1909.

To Viceroy, dated 6th October 1909.

To Viceroy, dated 16th October 1909.

From Viceroy, dated 20th October 1909.

To Viceroy, dated 22nd October 1909.

From Viceroy, dated 27th October 1909.

To Viceroy, dated 28th October 1909.

I am to say that as the Government of Natal have passed an Act amending the Dealers' Licenses Act, so as to give a right of appeal to the Supreme Court against the withdrawal of licenses, the Secretary of State in Council gives an assurance that the emigration of indentured Indians will not be stopped until the Union Government has come into existence and decided on its future policy in the matter. It is understood that the duration of this period will not exceed one year from the present date.

I have, etc.,

ALEXANDER MURRAY.

The Under Secretary of State,
Colonial Office.

Viceroy to Secretary of State.

Telegram P., No. 101, 17th January 1910, 5 p.m. (Despatched for Department of Commerce and Industry.)

Emigration to Natal. Your Public Despatch No. 170, dated the 24th December 1909. The question of its discontinuance has recently attracted much attention in India as a means whereby pressure could be brought to bear on the Natal Government and indirectly on the Transvaal Government, so as to secure better treatment of Indians in the two Colonies. It is therefore almost certain that questions on the subject will be asked or resolutions moved in the Imperial Council. In that event have you any objection to our replying to the effect that the question of stopping emigration to Natal has formed the subject of correspondence between the Government of India and the Secretary of State, and the latter's sanction has been given to the introduction of legislation to secure the necessary statutory powers to this end, which the Government of India do not at present possess; that in the meantime the Natal Parliament has passed an Act giving right of appeal to Supreme Court against refusal to renew licenses; and an assurance has been given by the Secretary of State to the Colonial Government that emigration to Natal will not be stopped until the South Africa Union has come into existence and decided on its future policy in the matter.

No. 5 OF 1910.

GOVERNMENT OF INDIA.

DEPARTMENT OF COMMERCE AND INDUSTRY.

EMIGRATION.

To

THE RIGHT HONOURABLE VISCOUNT MORLEY
OF BLACKBURN, O.M.,
His Majesty's Secretary of State for India.

Calcutta, the 27th January 1910.

MY LORD,

WE have the honour to acknowledge the receipt of your Lordship's Public despatch No. 140, dated the 29th October 1909, forwarding copy of correspondence regarding the position of British Indian subjects in Natal.

2. We desire to invite a reference to paragraph 9 of the petition from the Natal Indians, dated the 10th July 1909, which forms part of the correspondence forwarded with your despatch. It is stated that Indians who have failed to pay the annual tax of £3 imposed under Act 17 of 1895, have been sent to prison, whereas others guilty of similar offences are dealt with under the Small Debts Act in conformity with the civil process. In this connection, we solicit a reference to the correspondence ending with the despatch from the Government of Lord Elgin No. 5, dated the 22nd January 1896, relating to the passing of Act 17 of 1895. Your Lordship will observe from Lord Elgin's letter No. 2509/18, dated the 17th September 1894, to His Excellency the Governor of Natal, a copy of which was forwarded to Lord George Hamilton with despatch No. 58, dated the 3rd October 1894, that among the conditions on which the Government of India then agreed to an alteration in the system of emigration, so as to require that Indian immigrants should be required by the terms of their contract to return to India on the expiration of the period of their indenture, was included a stipulation to the effect that Indian immigrants who might refuse to return to India on the expiration of the period of their indenture should in no case be made subject to penalties under the criminal law. In accordance with this stipulation, clause 6 of the Bill forwarded with Sir Walter Hely-Hutchinson's letter No. 30, dated the 5th April 1895, (Enclosure to Sir H. Fowler's despatch No. 31-Public, dated the 23rd May 1895), accordingly provided for the imposition of a tax on indentured Indians who refused to return to India in contravention of the terms of their agreements. This Bill eventually became law in the form enacted in Act 17 of 1895, section 6 of which provides that the tax should be recovered by summary process. No objection was taken by the Government of India to these provisions of the Bill and the Act, since they did not subject Indians to criminal penalties for non-payment of the tax. The Government of India have always understood that there would be no compulsion under penal law to enforce payment of the poll tax, and we should therefore be glad to be informed what foundation there is for the statement made by the petitioners to the effect that default of payment is being penalised by imprisonment. We observe from Appendix 2 to the Report of the Indian Immigration Commission, which was forwarded to us with Sir C. Lyall's letter J. & P. 4526, dated the 3rd December 1909, that this portion of the petition from the Natal Indians was considered by that Commission. The facts given in the Appendix, however, refer to only one Division: and we shall be glad to receive full information on the point.

We have the honour to be,

MY LORD,

Your Lordship's most obedient, humble Servants,

MINTO.

O'MOORE CREAUGH.

J. O. MILLER.

W. L. HARVEY.

G. FLEETWOOD WILSON.

S. P. SINHA.

H. H. RISLEY.

P. X. Telegram, dated London, the 29th January 1910.

From—Secretary of State,

To—Viceroy.

Natal. Your telegram of the 17th instant. I agree to proposed statement with the exception that the assurance was given to Natal Government by His Majesty's Government and with the addition that it was given on the understanding that the duration of the period of deliberation should not exceed one year from last December. The Colonial Office concur.

Speeches delivered by the Honourable Mr. W. Maxwell at a meeting of the Legislative Council held at Calcutta on the 25th February 1910.

The Hon'ble MR. MAXWELL :—" Before public attention was drawn in India to the matter under discussion, His Majesty's Government and the Government of India had been trying to obtain satisfactory guarantees for the protection of the interests of His Majesty's British Indian subjects in Natal, and these efforts have not been altogether unsuccessful. The chief grievance of the Indians in Natal arose in connection with the issue of licenses under Act XVIII of 1897 which relates to wholesale and retail dealers. The question of providing for the right of appeal against refusals to grant or renew licenses to trade has been one of the points in negotiation between us and the Colonial Government for some years past. These licenses are granted by Municipal Boards whose decisions under the Act of 1897 were not subject to review by, or appeal to, the Supreme Court. The Government of India pressed for an amendment of this Act so as to provide for a judicial review of the decisions of these Municipal Boards, and the Colonial Parliament recently passed an Act giving the right of appeal to the Supreme Court against refusals to renew existing licenses. The Government of India could not, however, accept this concession as a satisfactory settlement and have recently obtained the Secretary of State's sanction to undertake legislation to prohibit emigration from India on grounds such as exist in the case of Natal. The Government of India hope to be able shortly to introduce a Bill for this purpose and will be prepared to give effect to it if negotiations with the South African Union do not result in an agreement which the Government of India can accept as a proper settlement.

" The Government of India are prepared therefore to accept the Resolution of the Hon'ble Mr. Gokhale to the effect that they should be empowered to prohibit emigration to Natal. They can assure the Council that the treatment of His Majesty's British Indian subjects in South Africa is receiving their constant and sympathetic attention, and everything that lies in the power of the Government of India is being done to improve their position.

" My Lord, I have nothing further to say at this stage, but later I shall have a few observations to make regarding some of the points that have been raised by Hon'ble Members during the course of this discussion."

* * * * *

The Hon'ble MR. MAXWELL :—" My Lord, I now wish to add a few words with reference to such of the points raised by Hon'ble Members in the course of this discussion as seem to call for any observations at this stage. The Hon'ble Mr. Gokhale has enumerated the disabilities imposed on British Indians in Natal, and I have already dealt with the most serious one which relates to licenses. The grievance with respect to education is under consideration, and I am therefore unable to make any statement regarding it at this stage.

" As regards the municipal franchise, I may state that in the Natal Municipal Bill of 1905 it was proposed to disfranchise Indians, but the proposal was not carried into effect, and we are not aware that the subject has come up again.

" Reference has been made to the condition of indentured labourers in Natal, and it has been suggested that the Government of India should have an independent inquiry made on the subject. With regard to this proposal I may say that the Government of India carefully review the reports of the Protector of Immigrants on the condition of indentured labourers in the Colony, but they have found no occasion to take action regarding the ill-treatment of this class of emigrants and no complaints have been made to them by the labourers them-

selves ; on the other hand, no difficulty is experienced in obtaining recruits for Natal. These circumstances do not indicate that the condition of indentured labourers in Natal is unsatisfactory and that a special enquiry by the Government of India is required. The Hon'ble Member's suggestion will, however, receive due consideration.

"The Hon'ble Mr. Jinnah has drawn attention to the terms of the Income Tax and Land Assessment Act as operating harshly on Indians in Natal ; but I may point out that this Act will cease to be operative in June 1910.

"Mention has been made of the Natal Immigration Commission's Report. A copy of this Report has been furnished to the Government of India, but they have not yet been asked for their views on its findings. Hon'ble Members may, however, rest assured that the various questions with which it deals will receive the most careful consideration.

"As several Hon'ble Members have alluded to the treatment of Indians in the Transvaal, I may be permitted to state that the situation there is likely to improve considerably before long. The Transvaal Government have expressed their willingness to introduce legislation in order to repeal the Asiatic Law Amendment Act of 1907, which was strongly objected to by Indians, and to allow of the entry of six educated Indians annually as permanent residents. These concessions do not fully meet the wishes of the Indians resident in the Transvaal, but they mark a distinct step towards the solution of the problem in that country.

"In conclusion, I beg to acknowledge the eloquent and lucid manner in which the Hon'ble Mr. Gokhale has moved his resolution and the moderation of the language used by him and most of the speakers, but I wish to say that in accepting the resolution the Government of India do not endorse all the statements made by the Hon'ble Members who joined in the discussion."

The Resolution was put up and accepted.

Telegram from the Governor-General of South Africa to the Secretary of State for the Colonies.

(Received Colonial Office, 11.35 a. m., 4th November 1910.)

* * * * *

"My Government are anxious as far as possible to meet Imperial Government, and fully recognise that the opening of first Union Parliament makes this a highly appropriate time to introduce amending legislation framed so as to remove as far as possible the grievances which have been urged by the Indians. However, my Government must adhere at the moment for immigration purposes to the provincial boundaries, but they are prepared to introduce legislation :—

- (a) For the repeal of the Asiatic Act, 1907 ;
- (b) For the removal from the text of Immigration Act of any differential bar to entry of Asiatics as such, and the substitution of an education test on the Australian principle ; and
- (c) For providing by regulation for the entrance of a limited number of educated Indians in each year. My Ministers would deprecate fixing the number by statute. Six was the number suggested for the Transvaal, and it is obviously too few for the whole of South Africa. The Union Government would administer such a provision in a liberal spirit, and will reply in favourable terms as regards administration and finger prints when they answer your Despatch.

As Ministers will draft legislation promptly, let me have your views" by telegraph.—GLADSTONE.

Telegram from the Secretary of State for the Colonies to the Governor-General of the Union of South Africa.

(Sent 3 p. m., 4th January 1911.)

Matter most urgent.

I have to request you to inform your Ministers that the Government of India, after full consideration, has decided to issue a notice in April prohibiting further

indentured immigration to Natal from 1st July. A statement to this effect was made at the opening of the Legislative Council yesterday, and it was explained to the Council that the Government's decision has been taken in view of the fact that the divergence between the standpoint of the Colonists and that of the Indians has created an unsatisfactory position, and that Indians have no guarantee that after the expiration of their indenture they will be accepted by the Union as permanent citizens. His Majesty's Government, while regretting any inconvenience which may be caused to South African interests, feel that they must accept as adequate the reasons advanced by the Government of India for the exercise at no distant date of the statutory power vested in them by recent legislation.

HARCOURT.

From Viceroy, 19th December 1910.

P.—Indian immigrants in South Africa, referred to in your telegram of the 3rd December. As there is still uncertainty regarding the precise scope of the legislation proposed by the Union Government, we cannot say definitely whether in our opinion the South African question is likely to be settled on a satisfactory and permanent basis by the proposed scheme; but we wish to express our concurrence in the view advanced in the Despatch, dated the 7th October, from the Colonial Secretary to the Governor-General of Union, paragraph 1, where it is stated that His Majesty's Government would not find acceptable any solution by which the present position of Indians in Natal and Cape Colony would be weakened or prejudiced. With regard to Natal indentured emigration, please refer to our Despatch dated 24th December 1908, paragraph 4 of the accompaniment. It is our opinion that in consideration of the general grounds which we have already taken, announcement should now be made that we have decided to prohibit emigration. The Union Government has not further approached India on the subject, and the year of grace conceded has now expired. It is accordingly suggested that we should presently announce that under the Act of last July we shall, on the 1st April, publish a notification in prohibition, with effect from the 1st July, of emigration to Natal. The emigration agency will thus be given time to close its affairs, and any appearance of rushing the Government of Natal will be avoided. It appears to us to be of special importance that at the meeting of the Legislative Council we should be free to issue the announcement; and unless a further communication is received from you, we propose to adopt this course.

From Viceroy, 2nd January 1911.

P.—In the Legislative Council to-morrow we shall make a statement regarding Natal emigration, to the effect that the question of the discontinuance of Natal indentured emigration has engaged the consideration of the Governor-General in Council, who has come to the decision that he should no longer permit emigration. We shall announce that we have taken this decision in view of the fact that the divergence between the standpoint of the Colonists and that of the Indians has created an unsatisfactory position, and that Indians have no guarantee that after the expiration of their indenture they will be accepted by the Union as permanent citizens. We shall add that the Governor-General in Council is in all the circumstances satisfied that as he cannot concur in the perpetuation of the present unsatisfactory situation he should discontinue Natal emigration, and that it is proposed that a notification, in which Natal indentured emigration will be prohibited with effect from the 1st July 1911, shall be published on the 1st April next.

NOTIFICATION—By the Government of India, Department of Commerce and Industry.

Whereas the Governor General in Council has reason to believe that sufficient grounds exist for prohibiting emigration to the Colony of Natal; Now in exercise of the power conferred by section 5 of the Indian Emigration Act, 1908 (XVII of 1908), as amended by the Indian Emigration (Amendment) Act, 1910 (XIV of 1910), the Governor General in Council is pleased to declare that emigration to the Colony of Natal shall cease to be lawful from the 1st of July 1911.

TRANSVAAL.

Report on Indian Immigration into the Transvaal, by Vice-Consul Evans, Johannesburg, March 2nd, 1898.

There are two classes of Indian Immigrants who find their way to South Africa, namely:—

- (a) The Indentured Indians; and
- (b) The Free Indians.

The indentured Indians are imported into Natal under the sanction of the Indian Government, and in virtue of the Natal Indian Immigration Law.

A brief reference may here be made to some of the provisions of this Law, and to the system generally.

(1) A Protector of Immigrants exists, in Natal, whose functions are to protect and look after the interests and welfare of the Indentured Indians.

(2) Indian labour is requisitioned principally by the Sugar Planters, by the Natal Government Railways Department, by Farmers and by Hotel Proprietors.

(3) As a rule, Indians are indentured in Natal for a term of 4 years, and requisitioners are responsible for the Immigrants' passage money from and to India, their wages, rations, and medical attendance. As security for the requisitioner's liability in these connections, the Natal Indian Immigration Law establishes a preferent charge, in effect a tacit hypothec, on the real estate of the requisitioners, or in case of assignment of the Immigrants on that of the assignees; and two personal sureties are in addition demanded. It will, therefore, be seen that the Indentured Indian is, at any rate, so far as his passage money to and fro, his wages and rations, etc., are concerned, very well safe-guarded. In the event of ill-treatment by his employer, the Courts are open to him for redress.

On the expiration of the Indentures I believe the bulk of the Indians do return to India, but many of them prefer to remain in the Colony as free Indians, while others find their way to the Cape Colony and the Transvaal, but not to the Orange Free State, as no Asiatics are permitted to reside in that Republic.

(2) It is my special province to comment on the conditions and treatment free Indians have to face in the South African Republic, and I have the honour to submit the following report:—

As regards the number of Indians in this State, I cannot speak with any degree of accuracy, but, according to the census taken in Johannesburg in 1896, there were 4,556 Indians, Coolies and Chinese, and of this total it was estimated there were 1,500 Chinese. The total number of Indians in this State may be roughly estimated at, say, 5,000 and I may remark that the bulk of them are of the lowest type. Not only is the Government of the Republic hostile to them but the people, both Boer and Uitlander, in the main, regard them as undesirable members of the community; and if they were not protected by us, I think I am quite right in saying there is but little doubt that they would be expelled from this Republic in the same way as they have been from the Orange Free State.

I will now deal with the questions in the order indicated in the Indian Government's Despatch.

(a) Nature of Employment offering and suitable for Indians.

Indian labour, generally speaking, is not in demand on the Witwatersrand Goldfields, nor is it, I am informed, at the various other centres in the State. Indians are employed to a limited extent, as Cooks, Hotel Waiters, Coachmen, Gardeners, Labourers, Street Scavengers, Stone-breakers, and in the Town Sanitary Service. They are employed exclusively as waiters at several of the principal hotels in Johannesburg, and also as cooks; and I am told by some of the hotel proprietors that they, are much preferred to white waiters, owing to their civility, sobriety and to their being more amenable to discipline.

I may say that I have made enquiries at all the other towns in the State as to whether Indian hotel waiters are preferred to Whites, and without exception the replies have been in the negative.

I understand that Indians have from time to time been tentatively employed on the Mines, but they proved to be unsuitable for underground, as well as surface, work. For heavy manual labour the Indian cannot compare with the Kaffir, and employers of both classes of labour reckon that the latter can get through almost twice as much work as the former in a given time. The Indian in the Transvaal, however, is reputed to be a much more reliable workman, and is not so much addicted to drink as the Kaffir (a reputation which he certainly does not enjoy in Natal): hence he is preferred for certain classes of work. For example, the Town authorities employ a large number of Indians for the Sanitary Service, merely because the Kaffirs are too unreliable. So much for the Indians as employés.

There are a goodly number of Indians occupied as traders and hawkers. As a fact, however, Asiatics are not allowed by law to trade, except in streets and locations specially assigned to them, but they manage to evade the law by employing low class Whites to take out traders' licences for them. In this way there are numbers of them engaged in trade, and not a few are in quite a large way of business not only as retailers, but as wholesale dealers. The bulk, however, are engaged as small shopkeepers. Some no doubt are successful, but I have reason to believe that, on the other hand, many sooner or later come to grief; but whether they, or the European merchants who supply them with goods, are the losers, is a doubtful question. I imagine the latter.

Hawking is permitted, and the hawkers are granted licences which cost them 10 shilings per *men sem*. They principally vend fruit, vegetables and small wares, and I should say that they make money. Some are engaged in market gardening, while others are washermen: both profitable occupation to Indians in the Transvaal.

It is obvious that there is no demand for female Hindoo labour in this State, inasmuch as the census of 1896 disclosed the fact that out of a total of 4,556 Indians, Coolies and Chinese, residing within the jurisdiction of the Johannesburg Sanitary Board, only 666 were females.

(b) Nature of Climate.

The climate in this State varies considerably, and depends to a great extent on the altitude and the latitude. On the Witwatersrand it is subject to extremes practically at all times of the year, and especially during the winter months, May to October. The climatic changes are very rapid, and the temperature often falls 30 degrees or more in a few hours. These conditions, together with the dust storms, which almost constantly prevail from August to December, render the climate very treacherous, and pneumonia is prevalent and fatal.

In the northern portion of the State and the low country (principally inhabited by natives) the climate is more equable, but hot in the summer months. On the whole the climate in the Transvaal, notwithstanding its extremes, seems to suit the Indians very well.

(c) Rate of Wages.

Hotel cooks	..	..	..	£12 to £15	per mensem and rations.
Hotel waiters	..	..	..	£6 to £8	do.
Coachmen	..	..	..	£4	do.
Gardeners	..	..	..	£4 to £5	do. without rations.
Labourers	..	..	..	£3 to £4	do. do.
Street Scavenger	..	..	..	} £3	do. do.
Stone-breakers	..	..	..
Sanitary Employés	..	..	..

Hawkers, market gardeners and washermen—these people work on their own account, and really do not come under the category of wage-earners, but some allusion may be made to them here.

It is, of course, difficult to say what measure of success and profit attends their labours, but as a rule I should say that they are prosperous. I have reason

to believe that they make good profits on their wares and produce and washing is a lucrative employment; and as living is cheap, and they are frugal in their habits, they must be able to save, to them large sums of money.

(d) *Cost of Living.*

The Indians' principal diet is rice, and this commodity fluctuates in value but the average price is say 2½ *d.* per lb. The cost of living is trifling compared with the profits the traders make, and the wages the workers earn. The items of house or hut rent is also insignificant. I will refer to this later on. It is owing to their frugality, their abstinence from luxuries and drink, the economy exercised in regard to clothing, and their mode of herding together to save house rent, that the traders and hawkers are able to compete so successfully against the Whites. Hence the trade jealousy which exists, and which has culminated in a crusade against them, originated mainly by the Mercantile Association, which at the present time threatens to paralyse, if not to practically put an end to their trading operations in this State.

In connection with the question of their dwellings it may here be stated that Asiatics are not permitted to own landed property in this State, except as follows:— Art. 26 of Law 3, 1885, amended in 1886, reads: "They shall not be owners of landed property in the Republic except in those streets, wards and locations that the Government shall for sanitary purposes assign to them." In the early days of Johannesburg, 96 stands (each 50 × 100 feet) were set apart as a location for Asiatics, and this quarter is known as the "Old Coolie Location." The tenure of these stands is a 99 years' lease and Asiatics only are allowed to acquire them. To these stands they have full title, the only restriction being that they cannot sell them except to people of their own class. Owing to the large increase in the Asiatic population here the location became too small and over-crowding has resulted, and some time ago a fresh location was set apart for them. In this location they are permitted to lease stands, and are permitted to erect huts or buildings on the stands, for which they pay by way of hut-tax a sum not exceeding 7-6 per month. The occupier of a stand in this location has no power to sell it, nor can he sublet it or a portion of it. The Regulations provide that the occupier of a stand shall not be permitted to have more than one hut or dwelling thereon, and that no hut or dwelling shall be occupied by more than six persons, unless a family consisting of parents and children shall exceed that number, or by consent of the authorities. It will, therefore, be seen that if six coolies occupied a hut, their rent is quite nominal.

At the present time the lower class Indians herd together in squalor and filth; not only in the locations, but in certain portions of the European quarter, and their habits are so unsanitary that they are a positive source of danger to their neighbours. I am informed that the authorities intend shortly to force the Asiatics into the locations, and I have no hesitation in stating that I fully acquiesce in the wisdom of such a step, which I regard as necessary for the preservation of the health of the town. The view I express has reference only to the question of residence and not of trading.

(e) *Cost of Transport to Scene of Labour.*

The actual passage money from India to Delagoa Bay (Port Natal being no longer open to free Indians) paid by free Indians varies according to the class of ship they travel by. I am informed that Messrs. King and Sons (the Contractors for conveying indentured Indians from India to Natal) charge £7-10 per head, the ship finding rations. Ships owned by Arab merchants charge less, and I am led to understand that German steamers carry coolies from Bombay *via* Zanzibar to Natal, and I presume at practically the same rate, to Delagoa Bay, for £2 per head, the Indians providing their own rations.

The passage money of the indentured Indians is regulated by contract, which is not made public, but it is believed that the rate is £5 or £6 per head with rations.

The Railway fare from Delagoa Bay to Johannesburg is £2-4-0 per head.

(f) *Treatment of Asiatics by Employers.*

I am not aware that these people are subjected to any specially harsh or unfair treatment by their employers. A reasonable proof of this is that the Civil and Criminal Courts in this State are open to them, and rarely, if ever, are there

suits for recovery of wages, or other proceedings, either Civil or Criminal, brought by Asiatics against their employers. I think I may say with confidence that, as a general rule, Asiatics are very fairly treated by their employers in the Transvaal.

(g) *Whether Agreements are usually made and kept.*

Indians are invariably employed in the Transvaal as daily, weekly and monthly employees, and I am not aware that any are engaged under agreement. If, however, Indians have been imported under agreement, and such agreements are ratified in this State, both parties, in the event of their being broken or violated, have the usual legal remedies; but not in the absence of ratification on this side.

(h) *Whether Indians are subject to Special Taxation.*

On entering the South African Republic, Coolies, Arabs, Malays and Mahomedan subjects of the Turkish Empire are required to pay a special tax of £3. This covers the whole period of their residence in this State, and they are, therefore, on a better footing than the Whites, both burghers and aliens, who have to pay a poll tax of 18/6 per annum. The draft laws to be discussed in the Volksraad this year, however, include a proposition to make Asiatics liable to the poll tax, in addition to the £3 licence they have to pay on their entry into the Republic.

(i) *Special Legislation in the South African Republic applicable to Asiatics.*

It is manifest that Law 3 of 1885 of the South African Republic was enacted mainly for the purpose of protecting the White traders against the competition of the Asiatics, and although the question of sanitation was apparently made the *raison d'être* of this special legislation, the impartial will admit that trade jealousy on the part of the Whites, combined with the antipathy of the Boers to all coloured races, were the real causes which led to the enactment of the Law in question.

In 1884 an agitation was set on foot by the merchants and traders in the Republic against what they described as a threatened invasion of Asiatics, which resulted in the passing of Law 3 of 1885. This Law applied to persons including Coolies, Arabs, Malays and Mahomedan subjects of the Turkish Empire. The more important provisions of the Law are:—

- (a) They shall not acquire citizenship in the South African Republic.
- (b) They shall not be owners of landed property in the Republic. This provision shall have no retrospective effect. In 1887 this provision was amended as follows:—They shall not be owners of landed property in the Republic except in those streets, wards and locations that the Government shall for sanitary reasons assign to them.
- (c) Those who settle in the Republic shall have to be registered with the Landdrosts (Magistrates).
- (d) Licenses of £3, to be paid by all settling in the Republic after Law 3 of 1885 came into force.
- (e) The Government to assign to them for sanitary reasons special streets, wards and locations. (This provision not to apply to those residing with their employers).

The Government under law 3 of 1885, as amended, required certain Indian merchants, claiming to be British subjects, to conduct their trade within such locations, and refused them licences to trade elsewhere.

In August 1888, Ismael Suleiman and Co. applied to the High Court for an Order to compel the Landdrost of Middelberg to grant them a licence to trade in that village, and this was refused.

In August 1892 the Volksraad passed a resolution empowering the Government to drive Asiatics trading out of town, but no effect has apparently been given to it. This resolution was repeated on the 24th February 1898, in order that the High Court may be free to interpret Law 3, 1885, in accordance with the award of the Chief Justice of the Orange Free State.

In September 1893 the Volksraad passed a resolution that Law 3, 1885, should be strictly applied in such a manner that all Asiatics should have to confine themselves in respect both of habitation and of trade to the locations assigned to them, with the exception of those whose leases (entered into before the locations had been assigned) had as yet not expired.

This resolution was rescinded in 1895.

In 1895 Her Majesty's Government and the South African Republic agreed to submit to arbitration certain questions in dispute, and Mr. Melias de Villiers, Chief Justice of the Orange Free State, was appointed Arbitrator.

In the statement of the case drawn up on behalf of Her Majesty's Government the claims put forward are :—

- (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 or 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 submitted :

- (a) That the Government of the South African Republic is fully entitled to make such regulations concerning Coolies, Arabs, Malays and Mahomedan subjects of the Turkish Empire as it may think fit.
- (b) That Her Majesty's Government is not entitled to object when the Government of the South African Republic prohibit Coolies, Arabs, Malays, and Mahomedan subjects of the Turkish Empire from having business premises in villages, towns or other places than those assigned by the Government.

The award is as follows :—

- (a) The claims of Her Majesty's Government and of the Government of the South African Republic respectively are disallowed, except to the extent and degree following, that is to say—
- (b) The South African Republic is bound and entitled in its treatment of Indians and other Asiatic traders being British subjects to give full force and effect to Law 3, 1885, enacted and in the year 1886 amended by the Volksraad of the South African Republic subject (in case of objections being raised by or on behalf of any such persons to any such treatment as not being in accordance with the provisions of the said Law as amended) to sole and exclusive interpretation in the ordinary course by the tribunals of the country.

Nothing, therefore, resulted from the arbitration.

It will be seen that Asiatics are precluded from taking out licenses except for trading in certain places assigned to them, but, as I have already indicated, they have evaded the law by getting White men to take out licenses for them; and notwithstanding the restrictions to which they are subject, they have been able to conduct extensive mercantile operations in this State during all these years in defiance of the law. Early in 1897 the Government, owing chiefly to the pressure brought to bear on them by the Johannesburg Mercantile Association, were stirred into taking steps to enforce the law, and the local authorities were instructed to put it into operation. The traders were warned that they must repair to the locations assigned to them before the 30th June, but the operation of the law was suspended. Again, they were warned to remove into the locations, and again the law was suspended. The third time they were warned to go into the locations before the 1st January 1898, and for the third time the local authorities were instructed, in consequence of a representation from Her Majesty's Agent, to postpone taking action until a test case was brought before the High Court to obtain a decision as to whether Asiatics were obliged under the law to both trade and reside in the locations, streets or wards assigned to them, or whether it was only necessary that they should reside in the locations, streets or wards, and that they could trade in any other part of the town. No decision has yet been obtained on these points. At present, therefore, the Asiatic is trading as usual.

I may mention that Asiatics are legally not permitted to be at large after 9 p.m., but as a matter of fact the law has never been put into operation against them, and practically they are allowed as much freedom in this respect as the Whites.

I may also mention that in November last smallpox broke out in the Coolie Location, and the local authorities issued a regulation under which the Coolie hawkers were prohibited from attending the market and from hawking fruit and vegetables, while they were allowed to rove about the town at will. This was manifestly such a useless regulation that it is difficult to come to any other conclusion than that it was made with the view of diverting the hawker's trade into the hands of the poor Whites, and not with the object of arresting the spread of the disease. Representations were made to the Government by Her Majesty's Agent with the result that the restriction was rescinded on condition that the Indian hawkers were vaccinated.

(Sd.) J. EMRYS EVANS,
Vice-Consul.

MEMORANDUM.

On December 25th Messrs. Rooth and Wessels, solicitors acting for the Indian community, intimated that official notices were being served on all the Indian traders in the different towns on the Transvaal to quit their places of business by January 1st and to be take themselves to "Coolie-locations" outside the town-limits. Deputations of Indian traders subsequently called at the Agency and represented in person the hardship of their position, the first notice having been served on December 17th, thus giving them less than a fortnight in which to wind up their affairs and seek shelter elsewhere.

This action by the Transvaal Government caused the more surprise to the Indians and their solicitors, inasmuch as they were calmly awaiting an answer from the Transvaal Government on certain legal points that had been submitted in view of a test case which their solicitors had announced that the Indians were prepared to bring before the High Court in terms of the Bloemfontein Arbitration Award of April 2nd, 1895, and at the hearing of which suit Her Majesty's Government had offered to employ counsel "to watch the case" (Secretary of State's telegram to High Commissioner of April 19th, 1897). The solicitors had, in fact, after verbal consultation with the State Attorney, addressed a formal letter to the latter on May 26th last stating that the Indian community was prepared to bring a test case, but asking "Whether it was the intention of the Transvaal Government to take steps to obtain a Volksraad resolution cancelling any further laws and resolutions that may have been passed since 1885-86 bearing upon the position of the Indians, and which may be in conflict with the Bloemfontein Award, since it was doubtful—as the State Attorney was aware—whether the Volksraad Resolution No. 1551 of October 8th, 1895, was of sufficient force to repeal all such resolutions etc., above referred to and passed since 1886."

This Resolution, No. 1551 of 1895, which appears on page 4 of Blue Book (no. C. 7946) of 1896, cancels, in terms of section 68 of the arbitrator's "Reasons" for the Bloemfontein Award, another Resolution, numbered 1353, of September 8th, 1893. But the same section of the "Reasons" adds that, "in terms of my award, Her Majesty's Government may rightly object to the latter resolution and to any similar amplification by the Transvaal Legislature of Law No. 3 of 1885 as amended." This question of whether "any similar amplification" exists or not was the point at issue, and the solicitors accordingly (by their letter of May 26th) desired the opinion of the Transvaal Government as to whether any further legislative step was necessary so as to enable the Indians to submit a test case "for the sole and exclusive interpretation in ordinary course by the Transvaal tribunals" of Law No. 3 of 1885 as amended in 1886, according to the language of the award.

The solicitors assert that the State Attorney admitted in consultation that it was still doubtful whether further resolutions (as, for instance, No. 1072 of 1892) should not be cancelled in order to leave the High Court free to give an unfettered interpretation of the Law of 1885.

The State Attorney, however, has returned no reply to this letter of May 26th and after various reminders had been addressed by the solicitors both to the State Attorney and to the State Secretary, a letter was at length received from the State Secretary, dated October 14th, stating that the matter "was under consideration" by the Government.

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Since that date until the first notice to quit was served on the Indians on December 17th the solicitors heard nothing further from the Government, and were naturally waiting to hear the result of the Government's "consideration" of the points they had raised. In the absence of Her Majesty's Agent in Johannesburg I at once called upon the State Secretary and represented to him the hard case of these Indian traders who, while confident in the negotiations which they believed their solicitors were carrying on with the Government for arranging a fair trial of their claim to be allowed to remain trading in the towns before the High Court, were—with no more than a fortnight's warning—threatened with expulsion from the towns and the obvious pecuniary loss that such precipitate procedure involved. Dr. Leyds informed me in reply that the Transvaal Executive Council had come to the conclusion that there must be some limit to the long delay that had occurred with regard to enforcing what his Government considered the right interpretation of Law No. 3 of 1885, and in a resolution taken on November 19th last they had fixed the 1st of January as a convenient date upon which the long pending intention to expel the Indian traders should be enforced. A similar resolution had been taken by the Volksraad on 3rd and 4th November 1896 (*Staats Courant* of November 11th, 1896), and Government circulars had been issued in March and again in July last, to carry this out, but had—for reasons which he was unable exactly to explain—been left in abeyance; the Government's patience was at length exhausted, and this final decision had been taken.

I pointed out that, while quite admitting that the Government, as a Government, had not shown any undue desire hitherto to hustle the Indians out of what might be their rights, yet on this occasion it seemed to me that the loss of patience should be rather on the side of the Indians, for they had this correspondence pending with the Government for seven months past, during which the only answer they had received to their request that their position before the law courts should be regulated either by a Government assurance or by legislation, if necessary was "that the matter was under consideration". I had brought copies of the said correspondence with me from the solicitors' office, and laid it before Dr. Leyds *seriatim*. He could offer no explanation of the silence of the Government, and stated that he had not even seen the most important of the documents now laid before him; this was owing to his long absence in Europe this year. In any case, he said it was very hard for him to discuss the matter whilst the State Attorney, who had proposed this latest resolution in the Executive Council, was absent on leave. I remarked that, hard as it might be for the State Secretary to take a decision in the absence of the State Attorney, it was much harder for the Indians to be expelled now because the State Attorney happened to be having a holiday; in any case. I had already ascertained that the Acting Attorney was in possession of all the correspondence, and could certainly furnish any explanation there might be for the delayed answer.

Dr. Leyds then stated that, in his opinion, the Bloemfontein Award had in reality closed the difference between the two Governments as to the right to expel traders into locations, for the Award stated that the matter was simply one for decision by the Transvaal Courts, and that decision had been given before the arbitration took place, namely in the case of Ismael Suleman & Co. in 1888 (in which Dr. Leyds himself had been one of the counsel; the view of the Transvaal Government, therefore, was that no test case was necessary now or since the Award, and their delay in expelling the Indians had merely been forbearance. I expressed surprise at a view that was as new to me as I thought it would be to Her Majesty's Government, and showed (from Blue Book C. 7911) that the arbitrator had had this case before him, that he had declined to discuss the judgment therein, and that he had added (in section 63 of his "Reasons") that "it is indeed said that no actual decision on that point [*i.e.*, the classing of 'dwelling places' with 'business places' in the one expression 'for habitation' (*ter Bewoning*)] was given by the High Court; it is not for me to give an interpretation of the decision of the High Court; but if it be so that no such decision had actually been given, the point is one that may at any time arise, and then it will be for the tribunals of the South African Republic to give the necessary decision thereon."

I remarked that in view of this last sentence, and of the telegram from the High Commissioner to President Kruger, of June 24th, 1895, urging the Government to stay action till the law should be brought into harmony with the Award,

" when a test case can be tried in the Courts of the South African Republic ", I could not for a moment suppose that Her Majesty's Government would regard the question as settled until either the Indians had brought such a test case or had waived their right to do so.

This latter alternative, I could assure him, the Indians had no idea of adopting, and I therefore urged that he would bring their present situation again to the notice of the Government, and obtain for the Indian traders so long a delay as would enable them, at the earliest opportunity (which was probably not before March), to bring their test case before the High Court at its next session, with all the guarantees for an unprejudiced trial that they had a right to claim from the Award. Dr. Leyds, who appeared now to waive his contention that the matter was settled, and who certainly showed no desire to deal off-hand with the question which he admitted required further elucidation, promised to let me have the answer of his Government the following morning, when he informed me that they had decided to issue telegraphic orders postponing the expulsion of Indian traders to locations until the return of the State Attorney to Pretoria (about January 6th), when a final decision would be taken in consultation with him. I informed a deputation of Indians accordingly to-day.

IN THE HIGH COURT OF JUSTICE OF THE SOUTH AFRICAN REPUBLIC.

In re—

Tayob Hajee Khan Mahomed, Plaintiff,

versus

Dr. William Johannes Leyds, N. O. Defendant.

In the name and on behalf of the people of the South African Republic.

To the High Sheriff of the South African Republic or his lawful subordinate or substitute,

GREETING.

Summon Dr. William Johannes Leyds in his capacity as State Secretary of the South African Republic, hereinafter called the defendant, N. O., to appear before the Judges of the High Court of Justice of the South African Republic sitting at Pretoria eight days after service of this summons, and then and there to answer Tayob Haji Khan Mahomed, merchant by occupation, carrying on business at Pretoria, hereinafter called the plaintiff, in an action for declaration of rights and other purposes.

And the plaintiff appearing in Court by His Attorney Edward Rooth makes plaint and says—

- (1) That plaintiff is a British subject and has been settled at Pretoria in this Republic since the beginning of the year 1883, where he has continually since that time carried on business as a merchant in Church Street, first in partnership with Abou Bakr Amod and others, and later in his own name, and that he has always obeyed the laws of the land.
- (2) That the Field Cornet of Pretoria, Mr. Melt Marais, purporting to act under Law No. 3 of 1885, has given plaintiff notice to leave the town of Pretoria as residence and place of business as will more clearly appear from copy of the notice hereto attached marked "A", which plaintiff begs may be considered as inserted herein.
- (3) That plaintiff has duly tendered to the Civil Commissioner of Pretoria the necessary cash for license to carry on the business of a shop in Church Street, Pretoria, but this officer has refused to accept the cash, and, notwithstanding plaintiff's request, has refused to issue him a shop license as aforesaid.
- (4) That the Field Cornet and the Civil Commissioner are acting in the proceedings above stated by order and on instructions of the Government and the Executive Council of this Republic.
- (5) That the said instructions and the said proceedings are illegal and contrary to law, and cause the plaintiff great damage.

- (6) That the defendant, N. O., maintains that the plaintiff is not entitled to carry on the business of a store in Church Street, Pretoria, or to obtain a license for such business, and persists in the instructions given to the Field Cornet and the Civil Commissioner.
- (7) That plaintiff maintains that by law he is entitled to carry on a business of a store in Church Street, Pretoria, and to obtain a license therefor.

Wherefore your petitioner prays—

- (a) That this Honourable Court shall declare that he is entitled to carry on the business of a store in Church Street, Pretoria, and to proceed with the same, and that he is entitled to a license therefor.
- (b) That this Honourable Court shall declare that the said instructions given by the Government and the Executive Council to the Field Cornet and the Civil Commissioner are illegal and contrary to law, and shall order the defendant, N. O., to instruct the Civil Commissioner to issue a license for a store in Church Street, Pretoria, and to instruct the Field Cornet not to hinder or molest plaintiff in his said business.
- (c) That plaintiff shall obtain such further or other relief as may seem advisable to this Honourable Court.
- (d) The costs of this suit.

And serve upon the defendant a copy of this summons with annexure, and report then and there all that you have done herein.

Witness His Honour Reinold Gregorwoki, Acting Chief Justice of the High Court of Justice of the South African Republic, Pretoria, this 28th day of February A. D. 1898.

C. C. W. KETJEN,

Assistant Registrar of the High Court of Justice,

JOHN S. CURLEWIS,

Plaintiff's Advocate.

EDWARD ROTH,

Plaintiff's Attorney, Church Square, Pretoria.

No. 75, dated Pretoria, the 16th March 1898.

From—CONYNGHAM GREENE, Esq., Her Majesty's Agent, Pretoria,

To—The Governor and High Commissioner, Cape Town.

The test case brought by the British Indian traders in the Transvaal to claim a right to trading in the towns is presumably coming on for trial this month although the Transvaal Government have as yet filed no pleas in defence to the summons issued by the Indian, on the 28th ultimo. But in the meantime, whether by accident or design, this Government's officials are apparently taking every means to persecute the Indian community by enforcing Laws and Municipal Regulations in a way that has never been attempted before, and four distinct grievances have been brought to my notice during the past week by deputations of British Indian traders and by their Solicitors:—

- (1) Indians have now been forbidden to walk on the ordinary side-walks or street-pavement, and are compelled to walk on that part of the street used for horse and carriage traffic.
- (2) Indians are forbidden to make use of cabs, etc., that ply for hire.
- (3) Several Indians were last week fined for not being in possession of paper "Passes", such as are issued to kaffirs.
- (4) The Netherlands S. A. Railway Company has not yet issued any Bye-law dealing with the claim of Indian Traders, to travel first class when they choose to do so.

With regard to the first grievance, the Public Prosecutor has informed the Indians' Solicitor that, by section 36 of the Regulations for the Towns of the Transvaal, of July 24th, 1896 (v. "Laws" volume for 1896, page 308), coloured

persons (Kleurlingen) are forbidden to walk on the side-pavement, and that the British Indians, being "Kleurlingen," must comply. I have been supplied with the details of the trial and punishment of several Indians this week, when the Landdrost forfeited a certain Indian's Bail, and inflicted fines of five shillings or a week's hard labour on others, while this morning an Indian merchant gave £2 bail for his appearance to-morrow on a similar charge.

It appears to me that this arbitrary use of the word "Kleurlingen" in the Towns Regulations just quoted (as well as in other enactments) is itself *ultra vires* of the Transvaal Government; and the present action under such legislation, etc., would seem to be a breach of Article XIV of the London Convention. Pending, however, instructions from Your Excellency, I have thought it best, in view of the persistently irritable conduct of this Government, to advise the Indians merely to avoid arrest during the next week.

Turning to the second grievance, I should think that any Regulations to prevent Indian traders using cabs, etc., that ply for hire are equally in conflict with the same Article of the Convention, unless perhaps this Government chooses to provide special cabs for Indian Traders. In Johannesburg, complaints have been made to the Vice-Consul of the enforcement of section 22 of the Johannesburg Town Regulations issued in terms of Law No. 9 of 1897, to which I called Your Excellency's attention in my Despatch No. 39 of the 11th ultimo. In Pretoria, as the Town Council is not yet formed, the Government officials seem to have last week forbidden cab-drivers to drive Indian Merchants about the town, and two cab-drivers have already been fined for non-compliance.

As to the third grievance, "PASSES" have been issued to Indians on the same form as those issued to kaffirs in Pretoria (where the badge is not in use) and fines of ten shillings have been levied for non-possession of such passes, in spite of the fact that Law No. 3 of 1885, as amended in 1886, only gives the Transvaal Government a right to "register" Indians with a fee of three pounds. In order at once to put a stop to the wholesale issue of such passes and the infliction of fines, I thought it my duty to address the enclosed note to Dr. Leyds on the 8th instant, and, although as yet only receipt has been acknowledged, the note seems to have had the effect of stopping further arrests.

As regards the fourth grievance, referred to in Your Excellency's Despatch No. 4 of January 14th last, British Indian Merchants frequently present themselves at Railway stations and ask for first class tickets. These are sometimes supplied and sometimes refused; in any case, no fixed arrangement has yet been made for their accommodation in first class compartments, although when practicable the guard allows the Indians to seat themselves in such compartments, afterwards hanging up outside a placard marked "Kleurlingen"; while in a crowded train, they have to stand on the platform of the kaffirs' third class carriage, or take a seat with the latter. The Manager of the Netherlands S. A. Railway Company states that his Company have no wish to prevent Indians from travelling first class, but that there is a difficulty in meeting Boer ideas, the Company not being compelled by their concession to provide 1st class compartments for different categories of persons. In fact Mr. Middelberg does not attempt to defend the claim advanced by Boers to object to sit next to Indian traders. However, in view of the fact that the Volksraad Resolution No. 1522 of 1897 called upon the Transvaal Government to see that "the Netherlands S. A. Railway Company should partition off a place for coloured people with first class tickets," I propose not to press this grievance at present, unless further cases of hardship are brought to my notice.

But having regard to the importance of safe-guarding the interests of British Indians at the present moment, I venture to suggest that I may be authorized to make a general representation to Dr. Leyds with reference to the grievances which I have now enumerated, somewhat on the lines of Your Excellency's Despatch No. 30 of the 11th instant.

MEMORANDUM.

Indian subjects of Her Majesty enjoy the protection afforded by Convention in the South African Republic, and Her Majesty's Government do not admit any distinction in the treatment of British Indians from that secured to British

subjects in general, other than such as lies in the strict interpretation of Law No. 3 of 1885, as amended in 1886. Notwithstanding the occurrence of the comprehensive term "Kleurling" (coloured person) in recent legislation, Volksraad resolutions, etc., which have been promulgated in the South African Republic, Her Majesty's Government cannot admit that such enactments—especially the "Dorps Regulaties" of 1896, and the Johannesburg Town Council Regulations of 1898—are applicable to the case of British Indians on the ground of colour, since they are not "natives" (Inboorlingen) in the sense of Article XIV of the London Convention.

If, however, it should seem desirable to the Government of the South African Republic to make special enactments or regulations, for sanitary or other reasons, with respect to British Indians, Her Majesty's Agent is authorized to submit to the High Commissioner any proposals which the Transvaal Government may have to make for reference to Her Majesty's Government.

But in the meantime all attempts on the part of Transvaal officials to prevent British Indians from making use of cabs, etc., that ply for hire, or of first-class privileges on the railways, as well as the issue of "passes" in addition to the existing registration, and similar disabilities, must be regarded as inconsistent with the equal treatment secured to all persons not being "natives" by Convention.

Pretoria, March 29th, 1898.

Dated Pretoria, the 25th April 1898.

Memo. by—DR. W. J. LEYDS.

THE "Grondwet" of the South African Republic lays down that there shall be no equality between white and coloured persons, and the result of equality being thus forbidden is found in the legal distinction between whites on the one side, and coloured persons on the other.

This principle of a legal distinction between white and coloured persons has at all times held good in the Transvaal, and the application of that principle has never been departed from; it was moreover laid down in the Proclamation of Her Majesty's Special Commissioner, Sir Theophilus Shepstone, on April 12th, 1877.

By Article XIV of the London Convention of 1884 certain rights were secured to all persons, other than natives, under the express reservation, however, that they should conform to the laws of the land.

Admitting now that the British Indian subjects of Her Majesty cannot be included among the natives (Inboorlingen) named in Article XIV of the London Convention of 1884, yet this does not alter the fact that they are coloured persons (Kleurlingen), and that they accordingly, in terms of said Article XIV, have to conform to the laws in general as well as to the legal distinctions between white and coloured persons here in force, such as are laid down in the "Towns Regulations", the Municipal Regulations, and other Laws and Volksraad Regulations, and also to all similar ordinances of the kind that may be considered desirable and necessary by the country's legislature.

The contention of Her Britannic Majesty's Government that British Indian subjects have a claim to fully equal treatment with that assured to British subjects in general, with the exception of such as lies in the strict interpretation of Law No. 3 of 1885 as amended in 1886, is accordingly not in agreement with the express terms of Article XIV of the London Convention of 1884, that they should conform to the laws of the land. The acceptance of the contention of Her Majesty's Government would have as a consequence the existence of two categories of coloured persons, namely, one which, excepting only the restrictions of Law No. 3 of 1885-86, would stand on a fully equal footing with whites, notwithstanding their being aliens, and another which is placed in a position of inferiority towards the white population notwithstanding their being home-born.

The resulting position would be in conflict not only with the ordinances of the "Grondwet," but with the rules of the Law of Nations.

This Government is of opinion that the legal regulation of the status of coloured persons forms a subject of a purely internal nature. The Government is therefore not in a position to accept the suggestion of Her Majesty's Government that in case it should appear desirable to make, special laws or regulations for sanitary

or other reasons respecting British Indians, they should submit any such proposals to Her Majesty's Agent and His Excellency the High Commissioner for reference to Her Majesty's Government.

THE COOLIE QUESTION.

IMPORTANT PROCLAMATION.

Executive Resolutions.

Pretoria, November 23rd (Special).—The following important proclamation in respect to Asiatics appears in the *Gazette* this afternoon :—

For general information it is hereby notified that the Honourable Executive Council, by Resolution of Article 1101, dated November 15th, 1898, has decided :—

1. That the coolies and other Asiatic natives who do not at present reside and trade in the specified locations, but in conflict with the law, live and trade in a town or village or other prohibited area, shall be ordered by the Landdrost or Mining Commissioner, or, acting on their instructions by the Fieldcornet, to proceed to live and trade in the specified locations before January 1st, 1899, in terms of Law 3 of 1885.

2. The Landdrosts and the Mining Commissioners shall, however, prepare two lists of names of those coolies or other Asiatic natives who, for a considerable period, have traded on places other than the specified locations, and for whom it would consequently be difficult to remove their business within such a short period. On the one list shall be placed the names of coolies or other Asiatic natives to whom, in the opinion of the Landdrost or Mining Commissioner, at the utmost three months' postponement may be given; and on the second the names of those who may receive six months, thus respectively to April 1st and July 1st of 1899, in which to comply with the law. The coolies, or other Asiatic natives must themselves ask for such postponement and give reasons therefor.

3. That should application thereanent be made, in order to assist the coolies and other Asiatic traders, the question of reserving a piece of ground in the location as a bazar, or for a covered building with shops, will be favourably considered.

In connection with the above, it is further notified that those Asiatics who consider they do not fall within the pale of Law 3, 1885, either by virtue of their having entered into an agreement before that date which has not yet expired, or through their having obtained transfer of their property, shall communicate with the Landdrost or Mining Commissioner before January 1st in order that their case may be laid before the Government.

Field Cornet's Office, Pretoria, December 14th, 1897

To TOYAB HADJE KHAN MAHOMED and all other clerks and hawkers employed in his shop and residing at Pretoria.

In terms of Law No. 3 of 1885, and the further resolutions, etc., in connection therewith, notice is hereby given to you to remove from the town of Pretoria as a residence and place of business before the 1st January 1898.

The Field Cornet for the town will, at your request, point out to you a stand in the location, for which a payment of 7s. 6d. per month must be made at the office of the Civil Commissioner. The said amount is payable quarterly in advance.

In the event of this request not being complied with immediate legal steps will be taken against you in terms of the above-mentioned law and resolutions without further notice.

If you desire any further particulars you may obtain the same at my office.

MELT MARAIS,
Field Cornet,

To this summons the defendant, in his official capacity, pleaded :—

1. The defendant denies paragraph 1 of the summons, admitting, however, that the plaintiff has, and now carries on a business in Church Street, Pretoria.

2. The defendant admits paragraphs 2, 3, 4, and 6.

3. The defendant denies paragraph 5.

4. As to paragraph 7, the defendant denies the accuracy of plaintiff's contention. Wherefore defendant prays for judgment in his favour with costs.

5. On these pleadings issue was joined and the case was set down for hearing in the High Court at Pretoria on Wednesday, the 15th June 1898, before Justices Jorissen, Morice, and Esser. The appearances were :—Mr. J. W. Leonard, Q.C., Mr. J. S. Curlewis, and Mr. H. B. Sauer, of counsel for the plaintiff ; Mr. J. W. Wessels, Mr. Ewald Esselen, Mr. J. H. Coster, and Mr. J. K. Hummel, of counsel for the Government of the South African Republic. We had the honour of appearing to watch the interests of Her Majesty's Government.

6. There being no facts in dispute, no evidence was adduced on either side. After the court had seen fit to assent to the formal substitution of the name of Mr. F. W. Reitz, the present State Secretary, for that of Dr. Leyds, Mr. Leonard, Q. C., proceeded to argue the case on behalf of the plaintiff, who was counsel stated, one of Her Majesty's Indian subjects, and had carried on business in Church Street, Pretoria, since 1883. Until the year 1896 he had regularly obtained from the competent authorities the annual license required by him for a merchant's business conducted in Church Street, Pretoria, but in the year 1897 the Government of the South African Republic contested his right to receive a further license, or to carry on his business in Church Street, and instructed the official entrusted with the duty of issuing licenses to refuse to grant him a license for the year 1897. Counsel here read the letter which forms an annexure to the summons, a translation of which appears above, and said that the whole question was whether the plaintiff was to be allowed in the future, as in the past, to carry on business in Church Street, Pretoria. Mr. Wessels, for the defence, said :—Our case is simply this. We say that according to Law 3 of 1885, the Government has the right to point out to all Asiatics certain streets or localities where they shall reside or carry on business. The Government says to these people—"You may not live elsewhere, and you must go where we tell you." That is the whole case. Mr. Leonard said he did not know whether it was necessary to do anything further than simply argue on the issue before the court. Mr. Wessels replied :—We can at once pass on to the argument. It is wholly a question of the interpretation of Law No. 3 of 1885." Mr. Leonard : "I propose to reserve the right to call any evidence which the course of the argument may render necessary. Will the court grant me that right ?" Mr. Justice Jorissen : "Yes."

Mr. Leonard said that at the outset he would not refer to the London Convention of 1884, but would allude to that document at a later stage. Prior to the year 1885 there was no legislation in this State whereby the movements of Indians were fettered or limited in any way, but in that year the law known as No. 3 of 1885, was passed. There were thus three provisions in the law which he would refer to more fully at a later stage, namely, (1) that these persons were to be allowed to come here ; (2) that they could reside here ; (3) that their employment as servants procured for them certain immunities. There the law stood until 1886, the position remaining unchanged except as regard certain correspondence which passed between the Government and Her Majesty's Government, correspondence which would not be necessary for him to read. Then on the 12th August 1886, the Volksraad passed a resolution amending Law 3 of 1885, which is published in Mr. Justice Jorissen's Code of the Local Laws of this Republic.

(The following is a translation of this resolution :—“Amendment of Law 3, of 1885, approved by Volksraad resolution, Article 1419, dated 12th August, 1886. 1. To the first sentence of Article 23, of Law 3 of 1885. (They cannot be owners of fixed property in the Republic) shall be added the following, “except in those streets, wards, and locations which shall for sanitary purposes be pointed out to them by the Government for habitation.” 2. The sum of £25, mentioned in the second sentence of Article 2c of the said law, shall be reduced to £3. 3. Article 2d of the said law shall read as follows :—“The Government shall have the right

for sanitary purposes, to point out to them definite streets, wards and locations for residence. This provision does not apply to those who dwell with their masters.")

By this resolution the Government was empowered to adopt measures in reference to Asiatics in the interests of health or for sanitary purposes. From that date therefore, the law of 1885 must be so read as to mean that the Government has the right in the interests of sanitation, to indicate to these persons certain streets and localities for residential purposes. Following the course of subsequent legislation, counsel pointed out that on the 9th May 1888, the Volksraad passed another resolution, which is printed on page 37 of Ameshoff's edition of the Local Laws for 1888 and 1889.

(The following is a translation of the resolution :—" Article 41. The Raad having given its attention to the Government message, dated 19th April last, together with Executive Council resolution, Article 346, dated 6th September 1887, therein enclosed, accepts notice of the intimation thereby conveyed. Inasmuch, however, as it has appeared and continually becomes more and more manifest that the inrush of coolies, Chinese, and other Asiatics into this Republic is very detrimental to the interests of this State, the Raad instructs the Government again to enter into correspondence with Her Majesty's Government with the object of securing such an amendment of the provisions of the Convention as will leave the Government of this country free to prevent or to regulate in an efficient manner the inrush of the people above alluded to." The Executive Council resolution reads as follows :—" On the order, Minute 4095—87, covering Volksraad Besluit, Article 589, dated June 1887, in the matter of preventing the further importation of coolies, Chinese, and all other Asiatics, the Executive Council, concurring in the advice of the State Attorney, sees no chance of submitting to the honourable Volksraad such a draft law as asked for by the memorialists." The advice of the State Attorney (Dr. Leyds) reads as follows :—" It is in my view fortunate that the instructions of the Volksraad includes the words ' If possible.' A law, as here asked for, which has for its express object and tendency the prevention of the inrush of Chinese, coolies, etc., is in conflict with the Convention with England. I cannot, therefore, advise that such a law should be submitted to the Volksraad.")

Then there was a further resolution of the Volksraad, dated 5th July 1888, in which it was affirmed that it was against the spirit and letter of the existing law that the Indians should be allowed to live in their business premises. This was a very important resolution, and counsel would refer to it later.

The following is a translation of the resolution :—" The Raad, having given its attention to Article 4 of the Report of the Committee on Estimates at present on the Order, to Volksraad resolution, Article 415, of 8th June 1888, to Volksraad resolution, dated 9th May 1888, Article 41, to the intention of Law 3 of 1885, as amended by Volksraad resolution, Article 1419 of the year 1886, and to the instructions and provisions therein contained, feeling that it would strike at the stability of proper sanitary regulations to cause the races referred to in Law 3 of 1885, to reside in business premises not situated in locations; having good grounds for believing that this rule is not being observed, and being of opinion that this non-observance is in conflict with the spirit and letter of the said law resolves: To instruct the Government to institute an enquiry into this matter, and, if possible, to prevent residence in the said business premises. The Raad further instructs the Government, in case it may appear to them after enquiry has been instituted, that the further actions and mode of living of the said races are in conflict with the interests of the white population, more especially as regards the protection of health in the towns, to take steps whereby the law may be amended in all requisite respects.")

Then there was a Volksraad resolution, dated 5th August 1892, and another dated 8th September 1893, but these had been repealed, as the result of certain correspondence between the Government and Her Majesty's Government. The whole question outstanding was then referred to Chief Justice de Villiers as arbitrator on the claims of the Government and Her Majesty's Government respectively. Mr. Leonard then read the arbitrator's award, and said that, in other words, Chief Justice de Villiers had decided that the law of 1885, as amended in 1886, was accept-

ed by Her Majesty's Government who could not object thereto; but that this inability to submit objections would not apply to any subsequent legislation. In effect, Chief Justice de Villiers thus held that the court must interpret the law of 1885 as amended by the Volksraad resolution of 13th August 1886. Mr. Justice Esser: "How about the Volksraad resolution of 1888?" Mr. Leonard: "That does not affect the case. I alluded to these different resolutions for the purpose tracing the course of legislation chronologically." Counsel then proceeded to say that although the question to be decided was of a highly important nature it could really be compressed within very narrow limits. He would submit that the words "ter bewoning" (for habitation) must be read in connection with the proviso "for sanitary purposes," and he would contend that a "habitation" and a "business place" (bezigheidsplaats) were not by any means interchangeable terms. He would not say that a "business place" could not be described as being occupied (bewoond), but he would say that what was meant by the term "for habitation" (ter bewoning), was occupation of a place where one sleeps and has his food. Mr. Leonard then referred to the Volksraad resolution of 5th July 1888, and pointed out that in this a distinction is drawn between business places and residences, a distinction which was of much service as supporting his argument. This resolution declared that it was contrary to the spirit and letter of the law that Asiatics should be permitted to live in their business premises. The object of the resolution was not to prevent Asiatics from carrying on business, but to forbid residence in premises intended for business purposes. Had counsel been commissioned to draft a law forbidding residence in places of business he could not have drafted a better law. This the Government had been asked to do, but it now wished to wholly put a stop to business itself. That in itself was sufficient to establish his case. Again in 1892, the Volksraad resolved that the law should be strictly enforced, and that the Indians should be restricted to the localities to be indicated to them. Now if the law had to bear the construction placed upon it by the defence, it was not at all necessary to pass this resolution, in which again a distinction is drawn between a habitation and a place of business. Counsel wished here to point out that all these resolutions were passed after 1886, and were subsequently repealed. He had, therefore, to go back to the Volksraad resolution of 1886 and Law 3 of 1885. He would ask the court to affirm as a principle that a narrow and limited and not an extensive, interpretation must be placed on this law. What the court had done in the interpretation of contracts could not affect him; trade was always open and free, and the court always interpreted business contracts liberally. Mr. Justice Esser: "But how about contracts in restraint of trade?" Mr. Leonard said that this was not only a question of restraint of trade but it was a limitation (1) of natural freedom, and (2) of the freedom granted by Article 14 of the London Convention, and the court had repeatedly decided that the London Convention was equivalent to a Local Law passed by the Volksraad. Mr. Justice Jorissen said that for his part he had no doubt on this point, but he did not know what his colleagues thought. Mr. Leonard said he would ask the court to look upon the London Convention as "law—not as a treaty but as lex." Continuing, counsel submitted that the court would not so interpret the legislation of the country as to make it inconsistent with treaties and law. (Counsel then cited Maxwell on Statutes, 2nd Edition, page 173. This, he thought, was sound sense.) Now, the law of 1885 itself contemplated that Indians would come and reside in this country, and one must not proceed on the assumption that trade was to be confined to certain locations. That Indians should live apart from the whites counsel could understand, but not that they should be restricted in regard to trade, especially when it really was not possible to circumscribe trade, as for example, in the case of hawkers. But trade was for them free and unrestricted, and, therefore, the law must be held to apply only in cases where sanitary considerations demanded its enforcement. The object of the law was to safeguard health by measures bearing on sanitation, and in such matters there was a broad distinction between premises used for habitation and those set apart for business purposes. The legislature clearly meant to deal with residences and not with business premises, and counsel would again ask the court not to lose sight of this distinction, which had been drawn by the Volksraad itself.

At this stage M. Justice Jorissen suggested that it might be as well to call upon Mr. Wessels.

Mr. Wessels remarked that of course the present action was entirely apart from any political questions, and resolved itself wholly into a point of international law. And he would ask the court to interpret the law in such a way that it did not remain a dead letter. His learned friend had said that we were to be guided solely by the law of 1885, but seeing that counsel for the plaintiff had relied on the Volksraad resolution of 1888 as an aid to him in an interpretation of the law of 1885, he was entitled to refer to the Volksraad resolution of the 8th September 1893 which was as follows :—

(Translation.)—" Article 1072. The Volksraad, having given attention to the Petitions First Volksraad 582, 611, 155 and 843—92, with the report of the Commission now on the Order : noticing the instructions given to the Government by Article 134 of 1890 and Article 630 of 1891 ; further observing the fact that coolies or Asiatics still proceed to erect shops in towns, and trade under the names of white persons, and that thereby the object of Section 2 of Article 2 of Law 3 of 1885, is not attained ; resolves to instruct the Government carefully to see that no coolies, Chinese or Asiatics carry on business within the towns, and to cause to be removed from the towns all coolie shops erected since 1889, and, as soon as the contracts concluded before 1889 shall have lapsed, also to remove these coolies, Chinese, and Asiatics holding these contracts from the towns."

This was no new legislation—no new interpretation of the law. It was only an instruction by the Government to its officials that they might know how the law was to be carried out. To say that the resolution was unnecessary was not correct. It was a resolution of the Volksraad, and it merely embodied directions or instructions to officials, and did not pretend to supply any omissions in the Law of 1885. The intention of the Legislature was undoubtedly to take measures in protection of health, and with this in view the Law of 1885 was enacted. That being so the words " ter bewoning " (for habitation) must be taken to apply both to buildings used for residential purposes and to those used as places of business, for the latter were also occupied and used as habitations. In support of this contention, Mr. Wessels then cited certain English cases, including " Adleck v. Bushell " (L. J. Q. B., Vol. 25 p. 339) ; " Blackwell v. England " (L. J., Q. B., Vol. 27, p. 124) ; " Attenborough v. Thompson " (L. J., 27 Ex., p. 23) ; in *re* Bowie (L. J., Ch. D., Vol. 50, p. 384), and asked the court to interpret the words " ter bewoning " strictly and in the sense adopted by the court in the case of " Sulieman & Co. v. The State " (High Court South African Republic, 14th August, 1888). Reference was also made to the case of " Rogers v. Hancock " (Official Reports, South African Republic, Vol. 1). Counsel asked the court to establish the continuity of its decision by following the judgment in the case of " Sulieman & Co. v. The State," which really decided the whole matter.

Mr. Leonard was heard briefly in reply, and he pointed out that in Sulieman's case the Volksraad resolution of 1888 was not alluded to.

The Court reserved judgment.

7. On Monday, 8th August 1898, the judgment of the court was delivered. The following are translations of the judgments delivered by Justices Jorissen, Morice, and Esser respectively :—

MR. JUSTICE JORISSEN ; In this action the plaintiff prays that certain instructions issued by the Government to the Field Cornet and the Civil Commissioner shall be declared illegal. By these instructions the above-named officials were authorised to refuse to issue to plaintiff a license for a shop business in Church Street, Pretoria, and the plaintiff contends that according to the existing laws of the land (including the Convention of 1884) he is entitled to conduct such a business as that for which the license was demanded. He says " the Government has indeed the right for sanitary considerations to point out to me and other coolie locations or places where we may reside, but cannot prohibit us from carrying on our business in our business premises."

The case was argued with great ability by Mr. Leonard and Mr. Wessels respectively ; but I concur wholly with Mr. Leonard in his observation that although the case is one of great importance it lies within a very small compass and everything depends on the interpretation of the law.

Before proceeding to give my judgment, I wish to make two observations :—

- (1) Reference has been made to the Grondwet which, in Article 9, provides :
 "The people will have no equality between coloured and white inhabitants either in Church or State." To deduce from this that the Government may adopt any measures it may deem proper with regard to the coolies, is, in my view, giving an extensive interpretation to the Grondwet, which could never have been intended by the legislator. The "coloured persons" referred to in the article are those coloured persons who were then living in the country, namely, Kaffirs. That coolies were not included in this the Volksraad seems to have clearly felt when it enacted a separate law for these people.
- (2) It has been contended that this case has already been decided by the High Court in a judgment delivered by Chief Justice Kotze in the case of Ismail Sulieman & Co., who demanded from the Landdrost of Middelburg a license, which was refused, this refusal being approved of by the Chief Justice. Now this case cannot possibly serve as a precedent. When it was heard the Law of 1888 was a binding authority in the decision of a case, and this law, as will appear below, had not yet been published, and the Chief Justice did the only thing he was able to do, namely, he advised the coolies to seek diplomatic assistance at the hands of the British Agent.

I can be brief : With Mr. Wessel's contention that the court must enquire into the intention of the Volksraad so that such intention may be established, one can hardly agree when the intention of the Legislature does not appear from the law itself. This was definitely decided in the case of "The State v. Hess" (Official Reports, Vol. 2, p. 139).

So far as I am concerned the question must be decided by the existing law. In the Volksraad resolution of 5th July, 1888, a sharp and clear distinction is drawn between "residence" and "business place," and instructions were given to the Government to see that the coolies did not reside or sleep on their business premises.

The plaintiff's claim must, therefore, be allowed, with costs, and the Civil Commissioner instructed to issue to the plaintiff a license for his shop business ; the Field Cornet must be ordered not to interfere with the plaintiff in his said business.

MR. JUSTICE MORICE : The plaintiff in this action is an Indian merchant, and he is suing herein for an order to compel the Government to issue to him a license to carry on a shop business in Church Street, Pretoria. The Government, on the other hand, alleges that the plaintiff is entitled to carry on a shop business only in a certain location to be indicated by the Government.

The Government bases its case on Section 2*d* of Law No. 3 of 1885, as amended by Volksraad resolution, Article 1419, of 12th August 1886, which reads as follows : "The Government shall have the right in the interests of the preservation of health, to indicate to them (*i.e.*, persons belonging to the aboriginal races of Asia) certain definite streets, wards, and locations. This provision does not apply to those who reside with their masters."

The plaintiff contends that this article only empowers the Government to indicate localities where Indians shall reside, and that Indians may carry on business wherever they choose. The Government, however, contends that the persons to whom the law applies must be regarded as residing where they carry on their business.

This is not the first occasion on which this question has been before this court. On the 14th August 1888, Ismail, Suleiman & Co., Indian traders, made an application to compel the Landdrost of Middelburg to issue to them a license to carry on a shop business on an erf in the town of Middelburg. The Landdrost would only issue a license for a business to be carried on in a locality indicated by him. The court, consisting of Chief Justice Kotze, the late Mr. Justice Jorissen, and Mr. Justice de Korte, dismissed the application on the ground that in such a case no distinction could be drawn between carrying on business and residence in a certain place. This case is reported on page 244 of a volume of reports published by Messrs. Juta & Co., and compiled by Messrs. Kotze and Barber.

In that case, so far as I remember—and I was counsel for the applicants—the late Chief Justice made use of an argument which has also been advanced in this action. He referred to the article in the *Grondwet*, which provides that coloured persons shall not be placed on an equality with whites. From this he deduced that Law 3 of 1885 must be regarded rather as an “enabling” than as a “disabling” enactment, that is to say, as a law which rather increased than diminished qualifications or rights. According to this view, Law 3 of 1885 would confer advantages on Asiatics which they did not previously enjoy. To this, however, one might retort that it is a singular method to grant privileges by means of a law which mainly consists of provisions of a prohibitive nature. If the Legislature meant by means of this law to bless, the language used by it sounds very like a curse.

In my view the court would have decided, in accordance with sound judicial principles, had it acknowledged in the case of *Ismail, Sulieman & Co.* a distinction between “residence” and “carrying on business” in a place. In the ordinary employ of words one is not said to reside where he conducts his business and where he does not sleep. In the petition in the above case the applicant intimated that he did not propose to reside where he wished to carry on his business. One of his complaints was that the location pointed out to him was unhealthy, as it was situated on marshy ground, and he asked that he should not only receive a license for a shop in the town but also that a healthy spot should be pointed out to him for residential purposes. With regard to the latter request the court recommended the applicant to approach the Government, but it held that the applicant had no right to receive a license for a shop on ground beyond the limits of the indicated location.

On the other hand, the decision of the court cannot be regarded as wholly unreasonable. In civilised countries and in great cities it is easy to draw a distinction between the place where one resides and that where one carries on business. There are many thousands of persons carrying on business in that part of London known as the “City”, who have their residence at a considerable distance. In a lower grade of civilisation and comfort people live where they carry on their business—they eat, sleep, and work in the same building. In its decision in the case of *Ismail, Sulieman & Co.*, the court treated Indians as belonging to this lower grade of civilisation—as persons to whose case the differentiation between a residence and a place of business was inapplicable. One might say that the court was justified in taking up such a position inasmuch as the law itself by imposing restrictions upon Asiatics assumes that they belong to a lower state of civilisation than Europeans.

This being my attitude towards the former decision of the court, the question arises—How far is one bound by that decision? I regard it as of great importance that a court should be consistent in its decisions. In a case recently heard in the highest court in England (the House of Lords) it was laid down that the court was absolutely bound by its previous decisions; and that a point once decided could not be argued in a later case. I refer to the case of the *London Tramways Company, Limited, v. the London County Council*, whereof a résumé is contained in the *Cape Law Journal* for 1898, page 144. In that case the Lord Chancellor said: “It is totally impossible, as it appears to me, to disregard the whole current of authority upon this subject, and to suppose what some people call ‘an extraordinary case,’ and ‘unusual case’, a case somewhat differing from the common in the opinion of each litigant in turn, is sufficient to justify the re-hearing and re-arguing before the final Court of Appeal, of a question which has been already decided. Of course I do not deny that cases of original hardship may arise, and that there may be a current of opinion in the profession that such and such a judgment was erroneous; but what is that occasional interference with what is perhaps abstract justice as compared with the disastrous inconvenience of having each question subject to being re-argued, and the dealings of mankind rendered doubtful by reason of different decisions, so that in truth and in fact there would be no final Court of Appeal.”

In this land the principle that the court is bound by its previous decisions has not been so strictly followed. In the case of “*Brown v. Leyds N. O.*”, the decision was in conflict with that in the case of the executors of “*McCorkindale’s Estate v. Bok N. O.*” (*Kotze’s Reports*, 1881—1884; p. 234) and in the case of the trustees *MC186EHL*.

in the insolvent estate of "Doms v. Bok N. O." (Kotze and Barber's Reports, p. 189); while in the case of "Curlewis v. Carlis" (Cape Law Journal, 1898, p. 38) the judgment differed from that in a similar case, "Jooste v. Carlis" (Cape Law Journal, 1896, p. 296). But in these cases the decision of the judges who first heard the case was not unanimous, while in the executors of "McCorkindale's Estate v. Bok N. O.", the case was heard by only two judges. In the history of the court I am acquainted with no case where an unanimous decision of the Full Bench has been departed from. And in view of the large amount of litigation that takes place, certainly on such a point is of special importance.

In this instance, however, there is not only a previous unanimous decision of the Full Bench but in not following it the decision of three judges would be reversed, for it is within my knowledge that my brother Esser, who is sitting as a judge in this case, wholly concurs in the decision given in the former case. If the court must hesitate in departing from a previous judgment, still more must one hesitate when the previous decisions were unanimous, whereas the latter judgment would not be so. In such an event the previous decisions can be regarded as absolutely binding upon the individual judge. The least one can say is that very strong reasons must exist for not recognizing the former judgment.

In the present case it is contended that such reasons actually exist, and a resolution of the Volksraad is cited to show that the interpretation placed upon the law by the court is incorrect. This Volksraad resolution was adopted on the 5th July 1888, and contains this:—"The Raad being of opinion that it would be prejudicial to the stability of proper sanitary regulations to allow the races alluded to in Law No. 3 of 1885 to reside in business premises not situated in a location; having good grounds for believing that this rule is not being observed, and being of opinion that the non-observance of such rule is contrary to the spirit and the letter of the said law—resolves to instruct the Government to investigate the matter, and, if possible, prohibit residence in such places of business." Now, although this resolution was taken prior to the judgment in the case of Ismail Sulieman & Co., it was not published until a later date. I have perused the "Staatscourant" between the 5th July 1888, the date of the resolution and the 14th August of the same year, the date of the judgment, and have found that the resolution had not been published when judgment was given. The resolution appears to have been published for the first time in the Minutes of the Volksraad appearing in the "Staatscourant" of 12th September 1888. This, therefore, is an argument in favour of the plaintiff, namely, that the resolution of the Volksraad regarded juridically is of a later date than the judgment of the court, and that the position thus differs from that which existed when judgment was delivered. It is, however, not clear to me that the Volksraad did not intend (apart from the question whether the carrying on of business outside locations was contrary to the law) that there should be no doubt that living in business premises outside locations was contrary both to the spirit and the letter of the law. That this was the feeling of the Volksraad appears to be not improbable when we look at the later resolutions of the Volksraad now repealed. Thus the Volksraad resolution of 5th August 1892 (repealed on 24th February 1898) after referring to Law No. 3 of 1885, instructs the Government "to remove from the towns coolies shops erected since 1889." And the Volksraad resolution of 8th September 1893 (repealed on 7th October 1895) provides that the provisions of Law No. 3 of 1885 shall be strictly enforced in this sense that Asiatics shall be restricted to the locations pointed out to them, for the purposes both of residence and business. But even if the Volksraad resolution of 14th August 1888, was not intended in this sense, it can only be regarded as an instruction to the Government to take certain administrative measures. A resolution of such a nature can neither be taken as a law nor as an authentic interpretation of the law. Moreover, the Government was not instructed to do anything in conflict with the judgment of the court. And if a Legislature, even in former laws, discloses an erroneous idea concerning a law, such law is not thereby altered. So Maxwell on Statutes, 2nd Ed., p. 376, says: "An Act of Parliament does not alter the law by merely betraying an erroneous opinion of it. . . . A passage in an Act of Parliament which showed that the Legislature assumed that a certain kind of beer might be lawfully sold without a license could not be treated as an enactment that such beer might be so sold, when the law imposed a penalty on every unlicensed person who sold any beer."

On these grounds, I am of opinion that the Volksraad resolution of 14th August 1888, cannot be regarded as setting aside the former judgment of the court. Thus although I should probably have decided in favour of the plaintiff if the case were *res integra*, I am not prepared to do so under the circumstances above detailed. Moreover, as I have already pointed out, the former judgment is not wholly unfair or indefensible.

I have not alluded to the British Convention of 1884 because I look upon it as unnecessary in deciding upon this case. The question of how far the legislation affecting Indians was in conflict with that Convention was discussed on a former occasion by the British and the Transvaal Government. The question was ultimately submitted to the arbitration of Melius de Villiers, Chief Justice of the Orange Free State, whose award was given on 2nd April 1895. In that award he decided that although a special legislation with reference to India: s was contrary to the Convention, the British Government has acquiesced in Law No. 3 of 1885, as amended on 12th August 1886, and that the Transvaal Government was entitled to carry out the law so amended, subject to the sole and exclusive interpretation in the ordinary course by the law courts of the land. Section 63 of the reasons on which the award was based reads as follows:—"As regards the question whether the words 'for habitation' and for sanitary considerations' have reference only to dwelling places and not to business premises, I would feel myself bound by any decision the High Court of the South African Republic may have given on the subject were it necessary for me to give a decision thereon. It is, indeed, said that no actual decision on that point was given by the High Court. It is not for me to give an interpretation of the decision of the High Court, but if it be so that no such decision has actually been given, the point is one that may at any time arise, and then it will lie with the tribunals of the South African Republic to give the necessary decision thereon."

In giving judgment in favour of the Government may I express the hope that the persons who are thereby affected will be treated with fairness. It is clear that the sudden removal of a shopkeeper from his place of business may result in his commercial downfall. In addition to this, it may be remarked that while Law No. 3 of 1885, as amended on 12th August 1886, recognises the right to own ground in the places or locations pointed out, only a precarious tenure is offered in the letter attached to the summons.

The judgment of the court is thus in favour of the defendant in his capacity of State Secretary, with costs.

MR. JUSTICE ESSER: In this case the plaintiff comes to the court for a declaration that he is entitled to carry on and obtain a license for a shop business in Church Street, Pretoria. The defendant (the Government of the South African Republic) denies the plaintiff's right to ask for such a declaration, and bases this denial on sub-section *d.* section 2, of Law 3 of 1885, and the Volksraad resolution in connection therewith of 12th August 1886, sections 1418, 1419. The point to be decided by the court is whether the word "habitation" contained in the above law can and may be interpreted so as to include a shop business.

Reference was in the first place made by the plaintiff's counsel to certain resolutions of the Volksraad of 1892 and 1893, wherein, so it is suggested, the Government provided an authentic interpretation by drawing a distinction between the place where Asiatics and others lived and where they carried on business. On the other hand, reference is made on behalf of the Government to the same resolution of 1893, and the inference drawn that it was an instruction to officials to administer the law and to limit Asiatics to the locations both for living and for business purposes. Thus the learned counsel for the defence has argued, instead of drawing any distinction the Government has interpreted the law by placing "residence" and "carrying on business" in the same category.

It appears to me that the latter inference on this point is the simplest one that can be drawn from the resolution, and in this respect I concur in what Chief Justice de Villiers says in section 68 of his award, namely, that it has the effect of establishing a legislative interpretation of that law, and does not merely convey instructions to its own functionaries, though when one takes into consideration that the article has been repealed, then viewed from the standpoint of interpretation, not much value is to be attached to it.

A further argument was submitted on behalf of the plaintiff in the contention that we have not in this matter to deal with a "jus singulare," and that, therefore, the article must be narrowly construed. Sub-section c. of the article has been cited, and it is said that the Legislature was aware that these persons had come to this country with the object of carrying on business; that the carrying on of business is essentially free to everyone; and that our sole limitation of that right must be read as strictly as possible. Reliance is further placed on Article 14 of the London Convention, which provides for an unrestricted right to trade; and the plaintiff desires that every subsequent law shall be interpreted in such a manner as to be in consonance with the above article of the Convention. Finally, it is contended, in view of the Volksraad resolution of 1886, that the law only intended to limit "residence", in so far as sanitary considerations made such necessary, but that it could never be intended to apply to places of business, seeing that a complete separation of whites from Asiatics could never have been intended, and would, indeed, be impossible.

In my view, this line of argument cannot prevail. Although I have full respect for the award and the arguments of Mr. de Villiers in the well-known arbitration, I cannot wholly concur in his interpretation of Article 14 of the Convention. I am of opinion that in that article "coloured persons" were not alluded to, and could not possibly fall within its terms. If the article had been intended to deal with any others than white persons, then section d thereof, taken in conjunction with the then-existing Grondwet and other laws, is to me wholly unintelligible. Nor can I subscribe to the conclusion arrived at in section 41 of the award, and I would further refer to the arguments set forth in section 37. Fortunately nothing compels me to bind myself to the interpretation given to the Convention by the esteemed arbitrator in his argument, inasmuch as by the terms of the award full freedom is granted to this court to supply an independent interpretation of Law 3 of 1885 (section 67 and the award itself).

Article 9 of the Grondwet of 1858 provides: the people will not grant to coloured persons equality with the white inhabitants, whether in Church or State. (It is noteworthy that the compiler of the Local "Laws," in his note on this article, refers to Law 3 of 1885.) In the Grondwet of 1896 this article is repeated in almost identical terms. The British Government was acquainted with this article in 1884. It has as subjects coolies and other persons of colour; it was within its power to have caused a partial or total distinction in some form to be drawn between coloured persons and aboriginal natives by means of a special reference thereto in the Convention, but it did not do so. I can, accordingly, come to no other conclusion than that the Convention has left the article of the Grondwet unimpaired. There is and was thus never an equality between whites and persons of colour, and we are bound to accept as a principle that every right possessed by the white man can only be exercised to a limited extent, or not at all, by the persons of colour. And seeing that the Government must indicate by a clear definition what rights a coloured person may possess, as well as the extent of such rights, the principle of an extensive interpretation in favour of the Legislature must be followed, and thus, in case of any doubt or ambiguity, against the person of colour for whose benefit the law was enacted.

This principle being established, there remains for decision the question whether it is possible to attach to the words "for habitation" (ter bewoning) the meaning "shop or merchant's business" (winkel—of handelsbezigheid). If so, then the Government is entitled to attach such a meaning to the words, and to enforce the law accordingly.

Counsel for the defendant cited various decisions of the English court on this point, and in these decisions "abode" and "residence" are pronounced to be synonymous. At the same time there appears to be as many decisions to a contrary effect in that country, so that the English jurisprudence is not of much assistance to us on this occasion. Fortunately, however, we do not need to have recourse to foreign sources; our own judicial decisions furnish us with a judgment in which the point was decided in the sense first alluded to above by the then Chief Justice speaking on behalf of the full Bench. I refer to the case of "Ismail, Suleiman & Co. versus The State," which was an appeal from the Landdrost of Middelburg, heard in 1888, and which is also discussed in section 63 of Chief Justice de Villiers' award.

The interpretation of that judgment can only be that which has been above indicated by me. No reason exists for departing from this decision, and I feel that I must also repeat in this case that in the interpretation of the words "ter bewoning", in Law No. 3 of 1885, no distinction need be drawn between the place where a person carries on his business and where he resides.

My decision is therefore in favour of the defendant, with costs.

8. It will be observed that while Justices Morice and Esser concurred in pronouncing the judgment of the court to be in favour of the Government of the South African Republic, Mr. Justice Jorissen dissented from this decision, and was for allowing the plaintiff's claim to retain his place of business in the town or Pretoria and to obtain an annual license for the same without let or hindrance on the part of the Field Cornet and other functionaries. It will be further noted that while the award of Chief Justice de Villiers, bearing date 2nd April, 1895, declares:—"That the South African Republic is bound and entitled in its treatment of Indians and other Asiatic traders, being British subjects, to give full force and effect to the provisions of Law No. 3 of 1885, enacted, and in the year 1886, amended, by the Volksraad of the South African Republic, subject (in case of objections being raised by or on behalf of any such persons to any such treatment as not being in accordance with the provisions of the said law as amended) to sole and exclusive interpretation in ordinary course by the tribunals of the South African Republic", this section was decided, according to Mr. Justice Morice, in pursuance of the judgment of the High Court of the South African Republic in the case of "Ismail, Suleiman & Co. v. Landdrost of Middelburg" i.e., The State) delivered by Chief Justice Kotze on the 14th August 1888, and therefore before the publication, and consequently the taking effect, of the Volksraad resolution of 5th of July 1888, which was published in the "Staatscourant" of 12th September 1888, and on which Mr. Leonard greatly relied for the purpose of establishing the original intention of the Government when Law No. 3 of 1885 was enacted, namely, the intention to distinguish between premises used by Asiatics for residential and for trading or business purposes respectively.

We have, &c.,

A. F. MAASDORP, Q.C.

W. S. DUXBURY, M.A. (OXON.)

No. 196, dated Pretoria, the 24th August 1898.

From—EDMUND FRASER, Esq., Her Majesty's Acting Agent, Pretoria,

To—His Excellency the Governor and High Commissioner, Cape Town.

* * * * *

"On the contrary, petitions from the poorer class of burghers are being received, asking the Government not to drive the Indians from the towns where they afford the Boers a more convenient and cheaper means of procuring the necessaries of life, especially in the smaller towns, than the European tradesmen. Several influential Indians have called at this Agency, and I have told them that the State Secretary has assured me that nothing will be done in the matter without due deliberation and a regard for the hardship which a sudden removal to locations might involve. And I have asked the State Secretary to let me know of any plan that the Government may formulate before active steps are taken. I have in fact had some talk with the State Secretary about the possibility of finding a solution of the difficulty by means of separate Indian bazars just outside the towns to which plan Mr. Reitz himself had no objection, but the Executive Council have not yet discussed the matter at all. The action of this Government is rather hampered by the question of the issue of trading licenses to the Indians, which the white traders claim with justice that the Indians should have to take out; for the Government has hitherto, for two years past, refused these licenses to Indians, in order not to compromise its legal position with regard to the place of trade."

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APPENDIX to No.

REPORTS OF CASES decided in the Supreme Court of the South African Republic.

VOL. II, p. 244.

ISMAIL, SULEIMAN & Co., *versus* Landdrost of Middelburg.

Indians' Law 3 of 1885, Volksraad resolution, 12th August 1888, Articles 1418-1419.

The Government has the power, under Law 3 of 1885, and Volksraad resolution of the 12th August 1888, Articles 1418 and 1419, to refuse to grant a license to Indians to carry on business in any place other than the location pointed out to them for occupation.

Where a location has been pointed out to Indians by the Government, the court will not decide as to its suitability or otherwise.

This was an application for an order to compel the Landdrost of Middelburg to grant a license to the applicants, who were Indian traders, to carry on business on a certain erf situated in the town of Middelburg, and also to allow them to live on such erf or any other erf in the neighbourhood. It appeared from the petition that the Landdrost refused to grant a trading license to the applicants on the ground that they wished to carry on business on a spot which was not situated within the location pointed out to the Indians for occupation. The applicants wished to carry on their business on an erf formerly occupied by them, and not in the location, because the latter place, as they maintained, was unsuitable for business purposes owing to its distance from the town. They alleged also that the location was unhealthy for occupation, and could be approached only through a marsh.

Morice, for the applicants :—

Law No. 3 of 1885 does not give the Government any right to point out a location for *trading* purposes, but only for *dwelling*. The two things are distinct. Under the Volksraad resolution of the 12th August 1888, Articles 1418 and 1419, the Government is entitled to point out a location with a view to the health of the people, but the location in question is very unhealthy.

Leyds, A. G., for the respondent :—

No distinction can be drawn between *dwelling and trading* purposes. The object of the law is to restrict the freedom of the Indians as to residence.

Kotze, C. J. :—

The application must be refused. The prayer of the applicants is double ; first, that the Landdrost may be ordered to grant a license to the applicants to carry on trade on a certain erf ; and secondly, that he may be ordered to allow the applicants to live on that erf or in the neighbourhood on any other suitable spot. The first question is whether a distinction can be made between *living* (wonen) and *trading* (handelen) on a locality, as was done by Mr. Morice. Such a distinction cannot be drawn, for it cannot be said that a person does not *live* in a place simply because he does not sleep there ; otherwise the portion of a town where traders carry on business, but where they do not sleep might be described as an uninhabited locality, as pointed out by the Attorney-General. It would be inconsistent with the spirit of the law to draw such a distinction. The intention of Law 3 of 1885 was to draw a broad distinction between Asiatics and Europeans in the Transvaal, and therefore the interpretation must be against the Indians rather than in their favour. It was further argued that the Government, according to the Volksraad resolution of the 12th August 1888, has the right to define locations merely with a view to the health of the people, and that if the location pointed out by the Government is unhealthy, the Indians can have recourse to the court. But the law has entrusted the Government with certain administrative duties in regard to the fixing of locations for Asiatics. If the Government has not carried out those duties judiciously, for instance, by pointing out an unhealthy spot for a location, then it ought to be approached by means of petition. The Landdrost cannot do otherwise than follow the instructions of the Government. If he had refused to grant a license to trade in a location pointed out by the Government, then recourse might have been had to the court. The application must therefore be refused, with costs.

S, Jorissen and De Korte, J. J., concurred.

Telegram No. 184, dated the 19th November 1898.

From—Her Majesty's Acting Agent, Pretoria,

To—The Acting High Commissioner, Cape Town.

Executive to-day passed resolution which will probably appear next week's "Staatscourant," calling upon British Indian traders to remove from towns after expiration of certain specified periods of time. Principle of Oriental bazars outside locations proposed by myself accepted, and Government ground will be allocated for purpose. Indians not possessing shops in towns must remove to locations by end of January, small traders after three months' notice, and larger merchants after six months, but Government will consider separately any special cases of long lease, etc., and those possessing fixed property will receive special consideration on merits of their cases; latter very few in number.—FRASER.

For general information it is hereby notified that the Honourable Executive Council, by resolution of Article 1101, dated November 15th, 1898, has decided:—

1. That the Coolies and other Asiatic Coloured Persons who do not at present reside and trade in the specified locations, but in conflict with the law, live and trade in a town or village or other prohibited area, shall be ordered by the Landdrost or Mining Commissioner, or, acting on their instructions by the Field Cornet, to proceed to live and trade in the specified locations before January 1st, 1899, in terms of Law 3 of 1885.
2. The Landdrost and the Mining Commissioners shall, however, prepare two lists of names of those Coolies or other Asiatic Coloured Persons who, for a considerable period, have traded on places other than the specified locations, and for whom it would consequently be difficult to remove their business within such a short period. On the one list shall be placed the names of Coolies or other Asiatic Coloured Persons to whom, in the opinion of the Landdrost or Mining Commissioner, at the utmost three months' postponement may be given; and on the second the names of those who may receive six months, thus respectively to April 1st and July 1st of 1899, in which to comply with the law. The Coolies or other Asiatic Coloured Persons must themselves ask for such postponement and give reasons therefor.
3. That should application thereanent be made, in order to assist the Coolies and other Asiatic traders, the question of reserving a piece of ground in the Location as a bazar, or for a covered building with shops, will be favourably considered.

In connection with the above, it is further notified that those Asiatics who consider they do not fall within the pale of Law 3, 1885, either by virtue of their having entered into an agreement before that date which has not yet expired, or through their having obtained transfer of their property, shall communicate with the Landdrost or Mining Commissioner before January 1st in order that their case may be laid before the Government.

Telegram, dated the 14th February 1899.

From—The Secretary of State for the Colonies,

To—His Excellency the High Commissioner.

You should bear in mind in considering case of Indians and others that the acceptance by us of any distinction on the ground of colour or race alone will place us in a very awkward position in Natal, the Cape, and Australia. Such recognition has been refused in case of British subjects, and we have only accepted such conditions as health, poverty, or education, etc., as tests of immigrants.

A PROCLAMATION.

PRECAUTIONARY MEASURES.

The following proclamation was issued yesterday afternoon :—

Whereas all probability exists that a case of bubonic plague has appeared at Middelburg, and

Whereas this disease has been brought hither by a coolie coming from Delagoa Bay *via* Komatipoort, and

Whereas this Government fears that the disease will be spread throughout the Republic by similar cases, and

Whereas this Government thinks it advisable that, as a temporary measure, the influx of all coloured persons from Asia, Mauritius, Madagascar, and other countries, to be proclaimed later on, where the plague has already appeared or shall appear, over the eastern border of this Republic shall be regulated,

So it is that I, Stephanus Johannes Paulus Kruger, State President of the South African Republic, with advice and consent of the Executive Council, in accordance with Article 167, dated 13th February 1899, of its resolutions, do hereby proclaim and enact that :—

1. All coolies and other coloured persons coming from Asia, Mauritius, Madagascar, and such other countries as shall be further proclaimed, to this Republic over the eastern border, including Komatipoort and Volksrust, shall be prohibited from entering the Republic unless they are in possession of a written permit to that effect from His Honour the State Secretary of the South African Republic ; all such persons arriving at Komatipoort without such permit shall be turned back.
2. All goods from the abovementioned countries arriving at Komatipoort or at Volksrust shall be disinfected there in the most careful manner before being forwarded into this Republic.
3. The officials at Komatipoort and at Volksrust, the police on the Eastern border, and such other officials as the Government shall specially appoint under this proclamation shall see that this proclamation is rigorously enforced.
4. Coolies or other Asiatic coloured persons, at present residing in this Republic, shall for the time being remain where they are, and not travel about, or go to other places,—reckoning from the date of this proclamation,—unless they have first obtained a permit in writing, for that purpose, from the State Secretary.

Infractions of this Article shall be punished with a fine not above £25, or—in default—not more than three week's imprisonment.

Officials and all other persons concerned shall act entirely in accordance with this proclamation.

GOD SAVE LAND AND PEOPLE.

Given under my hand at the Government office, Pretoria, on this 13th day of February 1899.

S. J. P. KRUGER,
State President.

F. W. REITZ,
State Secretary.

GOVERNMENT OFFICE ;
Pretoria,
The 13th February 1899.

Dated (Conf.), the 22nd February 1899.

From—His Excellency Sir ALFRED MILNER, G.C.M.G., K.C.B., Governor and High Commissioner for South Africa,

To—Her Majesty's Acting Agent, Pretoria.

I have the honour to acknowledge the receipt of Mr. Fraser's despatch No. 45 of the 18th instant, enclosing a copy of the Proclamation issued by the

President on the 13th instant which, basing itself on the danger of bubonic plague infection, closes the Eastern border of the Transvaal to all "coloured persons coming from Asia, Mauritius, Madagascar and such other countries as shall be further proclaimed," and imposes the most serious restrictions upon the freedom of movement of all Asiatics who are already within the borders of the country.

I will not now discuss whether the sweeping measures of exclusion and restriction contained in the Proclamation are justified by the circumstances, or whether they are well-calculated to prevent the threatened danger. Be that as it may, it appears to me open to no question that the measures which the Government of the South African Republic have thought fit to adopt infringe the provisions of Article XIV of the Convention of London. If the Government of the South African Republic did not see their way to taking the precautions necessary for protecting the public health without infringing these provisions, it was open to them to represent the circumstances to Her Majesty's Government and to ask to be relieved temporarily and to the extent requisite to enable them to deal with the particular emergency, from the obligations of Article XIV. By not doing so, they have, in my opinion, put themselves entirely in the wrong, and, if the Proclamation comes to be enforced, very serious questions may arise out of it.

I desire you to see the State Secretary with reference to this subject, and to communicate to him the views I have just expressed. In doing so, I wish you to add that if I have not thought fit to enter a more formal protest, or to demand the immediate withdrawal of the Proclamation, it is because such a course might heighten the existing alarm by giving rise to an unfounded belief that Her Majesty's Government were disposed to raise difficulties about measures necessary to prevent the invasion of the plague. Neither have I so far represented the matter to Her Majesty's Government as one calling for immediate action on their part, but I feel that, while this Proclamation continues in force, I may at any moment be compelled to do so. And I think it only fair to the Government of the South African Republic to give this intimation that the infraction of the Convention has not escaped my attention, and that if, under the special circumstances of the moment, I am slow to move in the matter, my forbearance must not be construed into any intention to allow the provisions of Article XIV to become a dead letter.

The Memorials.

SIR,—The position of the British Indians in the Transvaal and the Orange River Colony is sufficiently serious to call for a statement from us to enable you to move in the matter. It will be recollected that Mr. Chamberlain has lately announced that the legislation of the late South African Republic and Orange Free State would, "so far as possible," be adopted by the Imperial Government. The question at once arose in our minds whether the anti-Indian legislation of the old Governments was included in the qualifying clause "so far as possible." If the present *regime* is any test of the future, then indeed the question has been solved for us to the horror of every Indian in South Africa. The whole of the anti-Indian legislation in the Transvaal is being enforced with a rigour unknown before. The laxity of the late Government was totally in our favour. Though the Location Law was there, and the cab regulations, footpath and numerous other by-laws existed in the Statute Book, they were more or less a dead letter. The enforcement of the Location Law, although often threatened, was never carried out as against the respectable Indians, the storekeepers and others, and only a few—very few—actually suffered the indignity of the footpath and other bye-laws. All is now changed. Every anti-Indian ordinance of the late Government is being unearthed, and with strict British regularity applied to the victims. The handful of poor Indians that were unable to leave the Transvaal before the war broke out, and who are therefore now there, have protested against the enforcement, but so far in vain. The following telegram was forwarded to His Excellency the High Commissioner on the 25th March last :—

"To Private Secretary, His Excellency High Commissioner. Some British Indians, who are at present in Pretoria and Johannesburg, write to Indian Refugee Committee saying they have received notice to remove to locations. They are not allowed to walk on footpaths, and that generally anti-Indian laws of the late Republic are being strictly enforced. I am requested respectfully to draw His
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Excellency's attention to the admission of His Majesty's Government that such laws are objectionable, and the statement that they would endeavour to have them repealed. The laws, it appears, were never under the old *regime* enforced as they now are and pending general settlement Committee prays for relief."

We are anxiously awaiting reply ; but the non-receipt of any reply till now fo ebodes, we are afraid, disappointment. It should be recollected that the protest against such legislation made by the then British Agent, as well as the Secretary of State for the Colonies, had much to do with the laxity of the Republican officials above aluded to. Mr. Chamberlain's reply from which the following extracts are taken, to the Indian memorialists as to the Location Law was very sympathetic, and shows clearly that he strongly disapproved of it, and stopped only when he felt helpless.

" I regret extremely that I cannot return a more encouraging answer to the memorial before me, for the petitioners have my sympathy. I believe them to be a peaceable, law-abiding, and meritorious body of persons, and I can only hope that, even as matters stand, their undoubted industry and intelligence, and their indomitable perseverance, will suffice to overcome any obstacles which may now face them in the pursuit of their avocation.

" In conclusion, I would say, that, whilst desirous loyally to abide by the award and to allow it to close the legal and international questions in dispute between the two Governments, I reserve to myself the liberty, later on, to make friendly representations to the South African Republic as to these traders, and possibly to invite that Government to consider whether, when once its legal position has been made good, it would not be wise to review the situation from a new point of view, and decide whether it would not be better in the interests of its own burghers to treat the Indians more generously, and to free itself from even the appearance of countenancing a trade jealousy, which I have some reasons to believe does not emanate from the governing class in the Republic."

Are we then, when everything is in his power, to groan under all the disabilities which so roused his indignation ? Even a few weeks before the war broke out, the British Agent assured the deputation that waited on him at Pretoria, that everything short of a declaration of war was done by him, that negotiations were still going on, and that if unfortunately the threatened war broke out, we need not bother further thereabouts. Lord Lansdowne has declared publicly that the anti-Indian legislation which was clearly in breach of the Pretoria Convention was one of the principal causes of the war. Is then the very evil to remove which among others the war has been entered upon, to be continued under the very shadow of the British flag, and when the Colonial Office cannot even put forth the excuse that it has not sufficient control over the self-governing Colonies ? For neither the Transvaal nor the Orange River Colony has yet got self-government.

We notice with much regret and misgiving that the King's speech on the opening of Parliament, pointedly refers to the equality of all the white races south of the Zambezi, and a fair treatment of the native races, as the only objects in view at the time of the coming settlement. Before the war it used to be " equal rights for all the civilised races in South Africa." If, therefore, the change to " the whites," is deliberate, it suggests a cause for grave anxiety.

We attach hereto an abstract of the laws of the late Republican State affecting the Indians. The question is most serious, our position most painful. Labouring under the oppressive yoke we feel too exhausted to make an effort ourselves. We can only cry out in anguish. It is for you to help us to be free from the grievous burden. We have done, we hope, everything to deserve better treatment. We have taken our share, however humble, side by side with the European Colonists in the war, and have endeavoured to show that if we are anxious and ready to pray to be allowed to enjoy the rights and privileges of British subjects, we are not unmindful of our duty as such. We have shown also, incontestably, that there is absolutely nothing in us to justify all the indignities we have to suffer in South Africa.

A great and combined effort on the part of the public bodies and the public press in India and the friends in England, cannot fail to secure justice. It is perfectly feasible in that, as there are, there can be no two opinions about the

justness of our cause. The time, too, is now or never ; for, after the settlement has taken place, it is clear, from experience, that no amelioration would be possible.

We remain,

Your obedient Servants,

MAHOMED CASSIM CAMROODEEN & CO.	HAJEE HABIB HAJEE DADA.
MAHOMED HOUSEN	I. M. KARODIA.
ABDOOL HACK MAHOMED ISMAIL & CO.	HASSAM MIA & CO.
MOOSA KHAN MAHOMED	HASSIM MOTI
ISMAIL SULIMAN & CO.	M. S. COOVADIA
MAHOMED AMOD PATEL	SHABOODEEN
ABDOOL RAHMAN	HASSAN RAJU
A. E. BHABBA	AMOD SULIMAN KHOTA
EBRAHIM AMOD KHOTA	EBRAHIM HAJEE CASSIM
ABDOOL CARIM JOOSAB	TAR MOHAMED DAWOOD

Durban,

20th April, 1901.

ABSTRACT LAWS.

Of the late South African Republic and the Orange Free State affecting British Indians only.

SOUTH AFRICAN REPUBLIC.

Every Indian must take out a Registration Ticket for £3.

When the officials treated the Indians as the natives of the soil, they insisted upon their taking out shilling travelling passes.

The railway regulations prevent Indians from travelling first or second class.

No Indian can own native gold, or take out a digging license. (This law has not operated as a hardship, as the Indians have not gone in for speculation).

Law 3, of 1885, gives the Government the right to point out to the Indians for sanitary purposes, certain locations, for habitation. An attempt was made before the war to send away all the Indians in Johannesburg to a location nearly five miles from the centre part of the town, where it was proposed to restrict their trade also.

Certain bye-laws in Pretoria prevent the use, by the Indians, of footpaths and public vehicles.

N.B.—For fuller information hereon, *vide* letter to the British Agent, 21st July 1899, and memorial to the Secretary of State for the Colonies, May 1899.

ORANGE FREE STATE.

Chapter 33 of 1890 prevents any Asiatics from (1) remaining in the State for more than two months without permission from the State President ; (2) owning landed property ; (3) trading or farming.

Chapter 71 levies a poll tax of 10s. per annum when permission to reside has been granted, subject to restrictions mentioned above.

N.B.—The full text of the anti-Asiatic laws of the late Orange Free State is set out in general letter, dated 24th February 1896.

Dated Pretoria, the 13th June 1901.

From—F. A. GILLAM, Esq., Supervisor of Indian Immigrants, Pretoria,
To—The Private Secretary to the Secretary to the Transvaal Administration.

I have the honour, in accordance with the Secretary to the Transvaal Administration's instructions, to herewith hand a general report regarding all matters concerning the Asiatic population of Pretoria since the establishment of this office at the beginning of November last, and of which office I was then put in charge, and am now in charge of. The Asiatic population of Pretoria is not big, and, of course, at present, is only half of what it is in normal times, 50 per cent. having left for Natal just before hostilities commenced. The Hindoo predominates, especially the Madrasi, and quite 80 per cent. are Hindoos, 50 per cent. of these being Madrasi, and the remaining 30 per cent. Calcutta coolies; this leaves 20 per cent. Mahomedans. When first this office was opened the greater part of the population, quite 75 per cent., were living in the town, some in Prinsloo Street and the greater number of them in a low-lying piece of land on the north side of the town and close to the Apies River, also in other parts of the town. Not more than 25 per cent. were living in the location set apart for them by the late Government, and in which, according to the law of the late Government, they were compelled to reside and (trade). Although in the late Government's time the law existed that all Asiatics must reside and trade in a location, and Landdrosts were repeatedly reminded of the fact by Government, for reasons which I think are better left unwritten, this law was never put in force. The Military Governor was approached on the subject of having Asiatics, "with the exception of those of known respectability," confined to a location, residentially, to which he agreed, and referred to His Excellency the High Commissioner for his sanction, which he obtained early in January on the condition that no hardships were unduly imposed upon them, or that the location be too far from the town. Operations were then commenced to remove all coolies into a location, with the exception, as I have already stated, of those of known respectability and of servants residing on their lawful master's or mistress's immediate property. Before taking the step of moving these people, I informed the Military Governor that I thought it would be a wrong policy to confine those Asiatics whom I describe as of known respectability into a location, the defining of such people to be left to the discretion of this office, to which the Military Governor gave his sanction. I also pointed out that since the Mahomedan community had a mosque (house of worship) in Queen Street, I thought it would be right that two men, the High Priest and another, be granted special permission to reside in the mosque as caretakers, to which the Military Governor acquiesced. When first the news was imparted to the Asiatics, they were naturally concerned, and petitioned the Military Governor two or three times that they be allowed to remain where they were, but this, of course, was almost exclusively the work of a few of the more influential and leading members of the community who when they discovered the move in no way affected them and in the future would in no way do so, ceased to stir up discontent amongst the lower classes who, after all I am sure anyone who knows the race will admit, are somewhat like sheep and only want one to lead the way for the rest to follow. By my interviewing the more respectable and influential of the lower and poorer class and pointing out to them, firstly, that by residing in a location, which would be kept in a thoroughly sanitary condition by Government their health would always be good; secondly, that those who could not afford to pay high rents (as none of them could) to rent land in the town with a view to opening stores and carrying on trade, would be able to do so in the location at a monthly rental of seven shillings and six pence, where all their trade would be centred in one place, and where, by the close proximity of the kaffir location, which has few shops in it, they would be able to trade with the kaffirs (which they now do to a considerable extent), but at the same time I did not say they would not be permitted to trade in the town; thirdly, I explained to them that should they be allowed to reside everywhere and anywhere in the town, and at any time an infectious disease, such as bubonic plague or small-pox, were to break out in Pretoria, the first thing the European population would attribute it to would be the Asiatics, with the result that it might mean the whole of that community having to quit the country. On my pointing out to them the foregoing facts, and more especially that any man wishing to open a small store in the location would

be granted a license to do so, they ceased petitioning the Military Governor, and slowly and by degrees (being given plenty of time to do so) removed their old houses to the location, not with even so much as any notice ever being published in the "Government Gazette" to the effect that they were to do so, and failing to do the same would be punished, with the result that on the 2nd April I was able to report to the Military Governor that all Asiatics, with such exceptions as I have before mentioned, were residing in the Coolie Location. I might add that in an interview I had with some of the more respectable Mohammedans, such as those I think it is only policy, as well as fair, to permit to reside in the town, I asked them whether, provided the lower class Hindoos were allowed to live in the town, they would be content if these lower classes took up their abode on the very border of their premises, and kept fowls and pigs, and lived in the unsanitary way they were wont to do, to which they replied, certainly not. I then pointed out to them that the Europeans were of the same opinion as themselves; added to this, they also quite saw the force of my argument that should an infectious disease break out it would be attributed to the Asiatic, with the result that through their lower classes having resided in the town it would very likely mean them suffering to the extent of having to quit a country more than prosperous to them, all through those in whom they have no interest, and with whom they never associate.

Discontented as they were when they were first ordered into a location, the Asiatics of Pretoria who, with the exception of four of known respectability and servants in the employ of Europeans, are now all residing in the location not only are quite content and in no way give any trouble, but petitioning has long since ceased, and I am quite confident that from now and henceforth the same system can be kept in force. Since this office has been established, roughly speaking about 50 refugees have returned to Pretoria from the Rustenburg and Pietersburg, districts, who have all taken up their residence in the location, as a matter of course, and without any protest, and so it can be when all the refugees return from Natal later on, provided, as I have already stated, that those of known respectability (they to be defined by this office) be permitted to reside in the town.

I forgot to mention the fact that many of the coolies who, as far as I have pointed out to them, were unable, through want of funds, to open stores in the town have done so in small way in the location, out of which they do a very good trade and have admitted as much to me. The location, as I think the Assistant Medical Officer of Health will agree, is kept thoroughly clean and in a sanitary condition, the ventilation of the houses is attended to, and no overcrowding is allowed in any one house.

On my suggestion the Medical Officer of Health approved of latrines being built in the location, one for Mohammedans and one for Hindoos, which work is at present in progress. The coolies were consulted on the matter before any steps were taken, as there might have been caste prejudices, but they in no way objected to the proposal. I would mention the fact that the Hindoos and Mohammedans have their own respective quarters. The Madras and Calcutta people have their respective quarters, as far as possible. Formerly there was only one pump in the location, which was insufficient when all the coolies went there to reside, so the pipe was extended and a second pump erected, much to the satisfaction of the people, and this, their first request after going into the location being granted, went a long way to content them.

When first they went into the location I gave every request a consideration and granted every one I possibly could, with the result that they soon settled down, and are now perfectly content and give no trouble whatever. In conclusion, I can only add that it will be a great pity if what is so easy to keep up is not kept up, viz., the confining of these people to a location residentially, with the exception of those of known respectability.

I am perfectly aware that we are enforcing, to ascertain extent, that which we protested so strongly against the late Government enforcing, although we did concede finally to the confining to locations residentially, but, nevertheless, no matter how many Asiatics come into Pretoria, I can see no reason why, without any discontent, the town should not be kept free of them.

CHINAMEN.

Of these there are not more than a dozen in Pretoria, all residing in a location, and I would strongly recommend this population being confined exclusively to a location; the result can only be one, it will keep the town free of Chinamen.

APPENDIX.

The "Johannesburg Gazette", May 8th, 1901.

NOTICE.

It is hereby notified for general information that an Indian Immigration Office has been opened at the Native Pass Office, Market Street, which will, until further notice, deal with the issuing of gratuitous residential passes and licenses to those Asiatics and Mohammedan subjects of the Turkish Dominion who may now or hereafter reside in Johannesburg.

All Asiatics and Mohammedans of the Turkish Dominion now in possession of passes issued by District Commissioners must present themselves, on or before the 16th May 1901, at the office of the Supervisor of Indian Immigrants, where they will, in exchange for the district residential pass now in their possession, receive a fresh gratuitous pass.

All matters relating to the aforesaid populations of Johannesburg will in future be dealt with by the office of the Supervisor of Indian Immigrants.

JOHANNESBURG ;

E. J. BURGESS,

The 6th May 1901.

Supervisor of Indian Immigrants.

Telegram, dated the 7th May 1903.

From—LORD MILNER, Johannesburg,

To—VICEROY, Simla.

7th May. Confidential. Would Government of India be prepared to consider favourably scheme for employment of coolies on construction of Government Railways in Transvaal, and Orange River Colonies. I am ready to employ 10,000 at least and I can offer very favourable terms provided that I am allowed to repatriate them at the end of their period of indenture. In view of public opinion here it would be impossible to introduce them except with a promise that they would ultimately return to India. They would be employed entirely on surface work in a healthy climate and would be kept separate from Kaffir labourers under supervision of Government. The Government of the Crown Colonies can absolutely guarantee their being well treated in every way, and the fears expressed in your Despatch of 25th March with regard to the employment of coolies in mining work in Rhodesia do not apply to this proposal in any way. My belief is that as far as Transvaal is concerned objections to importation of coolies in large and regular batches under the care of Government whether these objections come from your Government or from public of this Colony would absolutely disappear if experiment could only once be tried under favourable conditions. The Construction of the Railways at present contemplated appears to me to provide such a favourable opportunity. The responsible Engineer has long Indian experience and is confident experiment will be a success. I will not approach Home Government on subject till I know that you would not object. If you agree generally and His Majesty's Government approve I should suggest sending officer from here to arrange details.

Telegram, dated the 11th May 1903.

From—VICEROY, Simla,

To —LORD MILNER, Johannesburg.

Confidential. Your telegram of seventh. Labour for Transvaal Railways. We are favourably inclined to your proposal on its merits. But question of repatriation of coolies has been referred to Secretary of State and we cannot introduce new principle without his sanction. Moreover question of treatment of Indians in Transvaal has created intense feeling in India, and unless we obtain some assurance that it will be more liberal than in self-governing Colonies, it would be difficult to sanction emigration. I am writing to you on subject.

No. 18 of 1903.

GOVERNMENT OF INDIA.

DEPARTMENT OF REVENUE OF AGRICULTURE.

EMIGRATION.

To

THE RIGHT HONOURABLE LORD GEORGE F. HAMILTON, G.C.S.I.,
His Majesty's Secretary of State for India.

Smda, the 14th May 1903.

MY LORD,

We are this day addressing to you a separate despatch upon the subject of certain modifications in the system of emigration from this country to Natal which the Government of that Colony desire to introduce, and which we are disposed to accept, on the condition that certain of the laws and regulations relating to free Indians in Natal are altered or abolished, so as to remove, as far as appears at present to be practicable, the grievances of which our Indian subjects complain.

2. We desire to avail ourselves of the occasion to address Your Lordship on the cognate subject of the laws and regulations to which persons of Indian descent are in future to be subject in the recently annexed Colonies of the Orange River and the Transvaal. In our Despatch No. 36 of 12th July 1900 we addressed Your Lordship on the general question, and expressed the hope that it might be possible to effect a just settlement while the recollection of the loyalty and valuable exertions of the Indian population, and of the substantial service rendered by India during the war, was still fresh in the minds of the colonists. But we deem the present moment particularly opportune for the purpose of renewing our representations on the subject, with special reference to the late boer Republics. His Majesty's Secretary of State for the Colonies has recently visited South Africa and studied the local conditions on the spot, and we imagine that the question of the treatment of Indians in our new possessions is one of the subjects which are now under the consideration of His Majesty's Government. Its decision once made public, it will be most difficult to depart from it, at any rate in the direction of treatment more liberal than public opinion in the colonies would be disposed to approve of. We therefore lose no time in laying our views before Your Lordship, in the hope that you will commend them to the earnest consideration of the Government.

3. We regard the nature of the decision which must shortly be arrived at, as of the very greatest importance from the Indian point of view. The considerations involved extend far beyond the interests of the individual Indian in South Africa. As Your Lordship has long been aware, a very strong and bitter sentiment exists among the educated and articulate sections of the native community throughout India, who resent most keenly the treatment to which their fellow-countrymen are subjected in South African Colonies. Their resentment is primarily based upon a feeling of pride in the fact that India is a member, and the people of India subjects, of the great British Empire. This feeling, which we believe to be entirely genuine, has gradually developed with the spread of English education and of occidental ideas. It springs in the main from the value attached by the educated classes in India to those principles of freedom and equality which they have learnt to regard as the birth right of a British subject; and though not without its inconveniences, which are indeed daily becoming more obvious, it constitutes almost the only basis upon which active loyalty to the rule of an alien conqueror is likely to be developed.

4. Public opinion in India resents the legislation which differentiates Indians from other subjects of His Majesty, which classes them as "undesirables," which denies them access to portions of their Sovereign's dominions save in the capacity of indentured labourers, or which subjects them to a pecuniary penalty for the offence of desiring to remain in them. It is true that the legislation in

question is not confined to Indians; though it differentiates, even in its form, between Europeans and non-Europeans. But the Indians are as fully aware as we are that, after the Chinese, it is against them that these precautions are in reality directed. They resent most bitterly the distinction of race and colour upon which many of the Colonial regulations are based; for they can hardly be expected to realise and accept the fact, however true it may be, that it is neither upon race nor upon colour in itself, but upon the defects and customs which race and colour connote, that the regulations in question are founded. Above all, they resent being included in the same category with the indigenous inhabitants of Africa, whom the history of their country and people justifies them in regarding as standing far below themselves in the grades of humanity.

5. In the past they have recognised that, as regards the two Dutch colonies, it was the Boer and not the British Government which was responsible for the treatment which they resented, and have been grateful to the latter for the constant efforts which it has made to ameliorate that treatment. As regards the British colonies of South Africa, they have understood, though they have by no means wholly accepted, the plea that there was a limit to the pressure which the mother country was justified in exerting upon colonies to which she had granted the privilege of self-government, especially in matters of domestic and municipal administration. When the two Republics, however, were annexed to the British Crown, they looked for an immediate reversion to that general principle of equal treatment for all which they regarded as the central tenet of the British Constitution; and they were amazed to find that regulations and restrictions which under Boer administration had remained mere rules upon paper, were enforced with a rigour hitherto unknown. Even this unexpected result was explained for the time being by the fact that the country was under the *régime* of Martial Law, and by the constitutional dislike of the Englishman to consent to the non-observance of a rule, however objectionable, so long as the rule is in force. But Martial Law has now been withdrawn; the colonies are under the direct administration of the Crown, which will be immediately responsible for whatever action may be taken; and the classes in question are anxiously awaiting that action, in the confident expectation that it will be based upon the principle of equality by which they set such store, and will constitute a standing protest against what they regard as the unjust and illiberal action of other colonial Governments. We do not hesitate to express our conviction that, if this expectation is disappointed, the confidence which the educated classes of India repose in the justice of the British Government and in the benefits of inclusion in the British Empire will be materially shaken.

6. So far we have considered what may be called the sentimental—though not, for that reason, the less important—aspect of the question, as it presents itself in this country. We now turn to the more practical consideration of the effect which the action of His Majesty's Government in this matter will inevitably produce upon the treatment of Indian settlers, not in the two new colonies only but throughout the whole of British South Africa. It seems clear to us that whatever regulations and restrictions it may now be decided to impose upon Indian settlers will be established for ever as an irreducible *minimum*. In course of time, and possibly after no very long interval, self-government will be conceded to the Transvaal and Orange River Colonies; and it is very certain that the tendency of the new Governments will not be in the direction of relaxation, while all protests on our part would be vain against any action which they could defend by the argument that it had the authority of the Colonial Office as its sanction. If the principle of reasonable equality is adopted by Government as the basis of the regulations which are about to be made, we believe that experience will show that it leads to no injurious consequences; while at least the onus of abandoning it, in the absence of actual resulting evil, will rest with the popular Government of the future, should it adopt that course.

7. When addressing you on the subject of our negotiations with Natal, we have informed Your Lordship that we consider it by no means impossible, or even improbable, that the new arrangements for the repatriation of indentured labourers, if approved by Your Lordship, may form the basis of emigration to all those colonies of Africa and Australia in which coloured labour is essential for their proper development, such as North Queensland, the Northern Territory

of South Australia, and (when their administration system is further developed) the British African Protectorates. Such an emigration might eventually assume dimensions which would afford perceptible relief to the congestion from which parts of India suffer. In negotiating on the subject, we should, as in the case of Natal, stipulate where necessary for the improved treatment of Indians in general; and we should have a far freer hand in imposing such a stipulation, since the question at issue would be the opening of a new, and not the modification or continuance of an already established system of emigration. But in all such negotiations it would be useless for us to object to anything which was supported by the express authority of His Majesty's Government, as having been introduced by them into Crown colonies in Africa. We should experience precisely the same difficulties to which the treatment of British Indians in Natal subjected the Home Government in their representations to the Boer Government, as pointed out in Mr. Chamberlain's Despatch of 22nd June 1898 to Lord Milner which formed one of the papers received with Your Lordship's Despatch No. 127 of 13th August 1898. We recognise that it is impossible wholly to disregard the unanimous public opinion of the African colonies, and that it would be useless or unwise to contravene it too flatly. But we would urge that the public opinion now in question is largely based upon trade jealousy and race prejudice; that in so far as it rests upon a broader basis, it is possible to educate it by practical illustration of the fact that the just treatment of Indian immigrants is not incompatible with the true interests of the colony; and that the present is an opportunity for setting an example which could hardly fail to exercise a beneficial effect in the future. We earnestly hope that His Majesty's Government will not endorse by imitation, action on the part of the Colonial Governments which we understand that they have hitherto regarded with regret; that they will be more liberal than those Governments in their treatment of the Indian question, and at least not less liberal than the Boer Governments to which they have succeeded, whose action in the matter must, we submit, be measured by the manner and degree in which their laws were enforced in practice, rather than by the provisions of the laws themselves.

8. We do not for one moment suggest, nor do we regard it as possible, that Indians should enjoy in an African colony an absolute equality of rights with the white colonists, unhampered by any racial disabilities or any social and economic restrictions whatever. As Your Lordship is aware, such equality does not exist even in India. We do not, for instance, claim for them admission to the franchise, or inclusion on the general jury roll, for these in stipulations are foreign to their own ideas. We all of us understand, and some of us sympathise with, the determination of the African colonies that their colonies shall be "white-man's colonies", and their dread of an Asiatic invasion; and we should not regard as unreasonable a provision that no Asiatic can acquire property in agricultural land, or precautions against pauper immigrants of whatever nationality. But we gather from the correspondence between the Colonial Office, the High Commissioner, and His Majesty's Agent at Pretoria, which Your Lordship has sent us at intervals during the last five years, that all the principles, the infraction of which we have described the Indian community as resenting in the fourth paragraph of this letter, have been strenuously asserted and upheld by His Majesty's Government in opposition to the Pretoria authorities at various times during that interval, and we cannot now suppose that they will abandon them. By Article XIV of the London Convention all persons "other than natives" were secured complete freedom to travel and dwell in any part of the Republic, to rent or own houses and buildings, and to carry on trade, and equality of taxation with the Burgers of the Republic; and His Majesty's Government have always resisted any attempt on the part of the Transvaal Government to read "natives" as including natives of India, and have insisted upon their being clearly distinguished from the natives of the country. They demanded that the restrictions upon freedom of residence in the case of "coolies" which was imposed by Ordinance 3 of 1885 should be limited to cases in which it was justified on sanitary grounds, and have insisted upon the observance of the limitation. And they have consistently opposed the invidious attempts of the Transvaal Government to extend the meaning of the expression "coloured persons" beyond the express definitions of the restrictive laws in which it was employed, in order to include natives of India within their provision.

9. Leaving generalities, there are four subjects upon each of which in particular we desire to say a few words. We have, of course, no idea of the direction in which the conclusions of the Colonial Office are tending; but we have seen it stated in the public press that it is proposed to legislate in restriction of immigration into two new colonies upon the model of the Natal and Cape Colony law on the subject. Such legislation, if proposed by the Government of Pretoria four years ago, would have been promptly disallowed by Great Britain as an infringement of the London Convention. As we have just remarked, that Convention secured to Indians absolute freedom of access to the Transvaal; and we do not believe that they will be obliged to date their virtual exclusion from that country, from the time when it became subject to His Majesty and was administered by His Government. As a fact the inland colonies are already protected from all but inter-colonial immigration by their geographical position, and by the regulations already in force in Natal and Cape Colony and at Delagoa Bay. But apart from that, the two new colonies have no reason whatever to apprehend an Indian invasion of such magnitude as to endanger the interests of the white population. Natal owes her large Indian population to her system of indentured labour. The Indian coolie has neither the means nor the enterprise to wander unassisted to foreign lands in search of employment; while any organised system that might in future be adopted for his introduction would almost certainly be accompanied by provision for his repatriation. Thus, the only classes of Indians who are at all likely to seek admission will be merchants and traders, both great and small, and domestic servants. The supply of the latter will be regulated by the demand; while the former could never imperil the general interests of the colony, though they may well be objects of what Mr. Chamberlain is said to have described as "a trade jealousy which I have some reason to believe does not emanate from the Governing class in the Republic."

10. Should any such legislation be decided on, we hope at least that a less invidious test will be adopted than the one which is now in force in several of our colonies. At present it consists in ability to write some *European* language. This excludes, not only illiterate and therefore presumably pauper immigrants of all nationalities, but also all Indians, however highly educated, who are unable to write English. If all who are able to write in a language which is the vernacular of any portion of His Majesty's Dominions were to be admitted, the test would be deprived of its invidious character, at any rate so far as British subjects are concerned. We would also invite Your Lordship's attention to the possible hardships involved in the word "domiciled" as used in section 6 of the Natal Immigration Restriction Act, which were pointed out in a letter, dated 21st July 1897, from the India to the Colonial Office. That this provision is not at the present moment working grievous injustice in Natal, is only due to the fact that it is interpreted in practice in a far more liberal sense than its legal meaning would justify.

11. The second subject to which we desire to advert is the Pass law, and its corollary, the Curfew system. We gather from the reports from Johannesburg and Pretoria which form enclosures to Lord Milner's Despatch of 25th January 1898, that while in the former town Indians were nominally subject to a pass law which had never been enforced, in the latter there was no law on the subject, but that both pass and Curfew regulations were applied to them which depended solely upon custom. But whatever the state of the law, the practice was protested against a few months later by the British Government, and was admitted by the Pretoria Government to be unjustifiable. As Lord Milner observed in his letter of 13th May 1898 to His Majesty's Agent at Pretoria, "the question is not one which admits of argument," while in an earlier letter, dated 25th March 1898, he remarked that "there was nothing to be urged in its defence." It appears from the papers forwarded with your Lordship's Despatch of 20th September 1901, that at a later date passes were required from all alike; but that was a purely military regulation which has doubtless since been discontinued. We recognise that some scheme of passes is a necessary accompaniment of a system of indentured labour. But where, as in the Transvaal and the Orange River colonies, no such system is in force, we conceive that the only justification for a pass law is to be found in practices of a persistently criminal nature, such as obtain among certain criminal tribes notified by Government in various parts of India, who are subject to a

regular system of registration and passes. We do not believe that this justification will ever be found to exist in the case of our emigrants to Africa.

12. We now approach what is perhaps the most difficult of all the subjects which we propose to discuss: we mean the system of locations. To any precautions that are really necessary for the preservation of the public health, we can of course offer no objection whatever. And we learn from the correspondence which led up to the Colonial Office telegram of 6th August 1902, that Your Lordship has already urged, and Mr. Secretary Chamberlain accepted in part at least, the principles for which we desire to contend. We will however state them briefly with our reasons in support. The Transvaal Law 3 of 1885 permitted the location of "coolies" and other Asiatics in "definite streets, wards, and locations where they must reside." The British Government insisted upon the law being amended so as to permit of such location, only if made "with sanitary objects;" but the British Consul at Johannesburg, Mr. Emrys Evans, wrote in 1898—"the impartial will admit that trade jealousy on the part of the whites, combined with the antipathy on the part of the Boers to all coloured races, were the real causes which led to the enactment of the law in question." As a matter of fact the law was never enforced by the Boer Government in anything but the most half-hearted manner: It appears, however,

Enclosures to Secretary of State's Despatch No. 123 of 20th September 1902, and Mr. Sturt's demi-official letter of 15th August 1902.

that its provisions have already been vigorously enforced under military law in the case of Pretoria, and that the Town

Council of Johannesburg now proposes to follow the example.

13. It is impossible for any one not acquainted with the local conditions to form a decisive opinion as to whether a strict adherence to the location system is really necessary on sanitary grounds. But there are certain general considerations to which we desire to refer. The inquiries which were instituted by the

Enclosure to Mr. Sturt's demi-official letter of 15th August 1902.

Town Council of Johannesburg in 1901 show beyond question the insanitary conditions of the Indian location as it then stood. But the same inquiries revealed the fact that the condition of the adjoining area, inhabited by a population of about 1,000 of which just upon half was European, and which included only 67 Indians, was even worse. In both cases this condition was the natural result of absolute and long continued neglect to enforce the most ordinary sanitary precautions upon a population of the lower orders of whatever nationality; and apparently affords no ground for differentiation to the disadvantage of Indians. So far as the habits of the lower class of Indians are insanitary, it appears open to question whether, in the event of an epidemic, they would not constitute a greater danger to a town if concentrated in a single location, than if more widely distributed and therefore living under more favourable conditions. But the argument which appears to us to be entitled to the greatest weight is the example of Natal, a colony which certainly cannot be accused of too tender consideration for its Indian settlers. That Colony, with an Indian population of over 80,000 souls, has as yet found no necessity for the location system. So again in Cape Colony, in the solitary case (that of East London) where such a system as applicable to Indians is authorised by law, the townspeople have been content to allow the law to remain a dead letter. How then can the system be required in the Transvaal, the Indian population of which was estimated in 1898 to number under 5,000 souls? Even if it is desirable or necessary, from a regard for the public health, to confine the lower classes of Indians to separate locations, it surely cannot be justifiable to include the more respectable and well-to-do classes in the measure. Their exemption has already been suggested by Your Lordship in Sir A. Godley's letter to the Colonial Office of 29th July 1902. We hope that it will be found possible to make express provision for it in any law upon the subject; while if this is not done, we hope that the executive instructions will be interpreted with greater liberality than in the case of Pretoria, where, out of the whole Asiatic population, only four persons "of known respectability" were, in 1901, exempted by the Supervisor of Indian Immigrants.

14. Even supposing it to be decided that residence in locations must be enforced, the question remains whether the measure should apply to places of business not used for purposes of residence. The papers which Your Lordship forwarded to us with your Despatches No. 127 of 18th August 1898 and No. 57 of 4th May 1899 show how strenuously and persistently the British Government contested the attempt of the Government of Pretoria to include places of business within the provisions of Law 3 of 1885. And though, being hampered by the

results of the arbitration of 1895, they did not feel themselves in a position to contest the matter further in the face of a decision of the High Court which, in a test case brought to decide the point, was adverse to their contention, yet it is abundantly clear that the British authorities did not by any means accept or acquiesce in that decision, and that the suggestion which they eventually made to the Pretoria Government that a bazaar should be set apart for the use of Indian traders, was simply made because they felt that their hands were tied, and that that was the best which they could do for their people. It is now stated in the press—with what authority we know not—that the order requiring Indians to evacuate their present dwellings is to apply to places of business as well as to places of residence, and that their trade is in future to be confined to separate bazaars set apart for the purpose. If this be so, it would appear that the British authorities are actually doing what a few years ago they strongly protested against the Pretoria Governments only proposing to do. It is obvious that any such measure would be in derogation of that right of free trade which the London Convention secured to Indians, as well as to other subjects of His Majesty. And in so far as it may apply to those who have already established places of business, with a connection built up by the honest endeavour of past years, it appears to us that it would be a positive injustice now to require their abandonment.

15. We can dispose very briefly of the last subject to which we desire to refer. It is the regulations by which Indians were forbidden to walk upon the footpaths, to make use of public conveyances, to travel by the higher classes on the railway, and so forth. The papers which form an enclosure to Your Lordship's Despatch No. 127 of 15th August 1898 show how vigorously the British authorities protested against these regulations, not only as being technically open to objection, but also as being opposed to all propriety and fair dealing. It is probable that the feeling of the Colonial public will always enforce distinctions of this nature, and that is beyond the control of Government. But we are confident that no official countenance will be lent to any such invidious treatment. So again we hope that, in any legislation in which it may be necessary to mention them, the Transvaal practice of including all classes of Indians indiscriminately under the generic term of "coolie" will be abandoned, since the term is properly applicable, solely to the class of daily labourers.

16. We hope that whatever exemptions it may be found possible and proper to permit from the provisions of the general law, will be given express statutory authority, and will not be left to mere executive instructions. The effect of the latter depends largely upon the views of the individual who is charged with carrying them out; and, still more important, they can be set aside or neglected by future Governments far more easily than an express provision of the law. And whatever measures of restriction it may be decided to adopt, we would urge that they should in no case have any retrospective effect, and that vested interests should in all cases be scrupulously respected. It is against the neglect of this principle by the Natal Government that our most serious complaints have been directed. We do not accept the argument, so often used, that an emigrant who goes to another country in the hope of bettering himself knows or might know to what he is going, and, in any case must take his chance of the treatment which he will receive there. Our answer is that the ordinary Indian emigrant knows nothing of the restriction to which he will be subject, and, quite apart from the fact that they are liable to be added to any moment, has no means of ascertaining what they are; and that when he emigrates to a British Colony, he goes there in the belief that it is administered upon British principles. But if restrictions, the effect of which is wholly prospective, cannot be justified on this ground, still less is it possible to justify those which affect interests that have already come into existence. When an immigrant has by years of honest labour established a business, acquired property, built up a connection, and created a home, in the belief that the law which has allowed him to acquire will not be altered so as to forbid him to enjoy, almost any new restriction upon the freedom which has previously been permitted him must of necessity be injurious, and if injurious, then unjust.

17. We would explain that throughout the present discussion, we have excluded from consideration exceptional measures adopted as a precaution against the plague, such as are discussed in the later papers which accompanied Your Lordship's Despatch No. 57, dated the 4th May 1899. We recognise that, in

presence of the unreasoning panic which so often seizes a white community upon the approach of one of those Asiatic epidemics from which Europe is virtually free, it is sometimes impossible to avoid temporary measures which are hardly justifiable on their strict merits. But the settled policy of the British Government in matters of this nature has been laid down at Venice in the most public manner possible, it is exceptionally liberal, it forms our own guide in such matters, and we are assured that no measures of any lasting effect will be adopted in any Crown colony which are not fully justified by the necessities of the case. We have also confined our remarks to the Transvaal Colony. We understand that under Boer rule, Indians were virtually excluded from the Orange River Colony. We do not know how the matter stands at present; but we do not doubt that the general principles which regulate the future arrangements made in either colony will be identical in the two cases.

18. Finally, we would remind Your Lordship that we are of necessity absolutely in the dark as to the line which his Majesty's Government are likely to follow in respect of the subject which we have been discussing, save for such fragmentary indications as are afforded by the papers which you have sent us on the subject. In some of these papers and on certain questions, Mr. Secretary Chamberlain indicates a policy which is in entire accordance with our own views; and it may be that all which we contend for is already accepted, and that our present letter is unnecessary. But we know that a decision must shortly be arrived at which will seriously affect, for good or for evil, the feelings and interests of Indians throughout large portions of the Empire; we have no certain assurance as to what the nature of that decision will be; we realise that if any representation on our part is to avail aught, it must be made before that decision is announced; and we have felt it our duty, as guardians of the interests of our subjects in this country, to lay our views strongly and frankly before Your Lordship. We are aware, however, that the presence of Asiatics has complicated the racial problems with which the administrators of the South African Colonies have to deal, that the question at issue is one of Imperial policy, and that it must be decided upon considerations of which the greater, and indeed the more important portion lies beyond our purview. All that we can ask is, that due consideration may be given to our representations before any decisive action is taken in the matter.

19. We enclose for Your Lordship's consideration, a petition dated October 1902 from certain inhabitants of Johannesburg to the Governor of the Transvaal of which the petitioners have sent a copy, a letter, dated 12th February 1903, from the Bombay Chamber of Commerce to the Government of Bombay on the subject of the restriction of Indian emigration to South Africa, and a Memorial dated March 1903 which has been received by His Excellency the Viceroy since this letter was in print.

We have the honour to be,

MY LORD,

Your Lordship's most obedient, humble Servants,

(Signed) CURZON.

„ KITCHENER.

„ T. RALEIGH.

„ E. F. G. LAW.

„ E. R. ELLES.

„ A. T. ARUNDEL.

„ DENZIL IBBETSON.

Letter from the Chairman, Bombay Chamber of Commerce, dated the 12th February 1903.

Under the instructions of the Committee of the Bombay Chamber of Commerce, I have the honour to acknowledge the receipt of your letter No. 440, dated the 28th January, with which was enclosed a copy of a Resolution of the Government of India in the Department of Revenue and Agriculture (No. 2—2-2), intimating
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that the Government of Cape Colony have passed an Act similar to the Immigration Restriction Act of 1901, enacted by the Commonwealth of Australia. It is known of course that a similar Act has been in force in Natal for years. My Committee are informed that this Cape Colony Act was passed in the latter half of January and came into force on the 1st of February with the effect that great hardship results from the rejection of emigrants who had already sailed for the Cape.

2. The Australian Act and its possible bearings upon India were considered by the Committee at the time of its enactment, and their passive attitude in the matter was incidentally defined and explained in the third paragraph of their letter addressed to your Department on the 19th December 1901 on the subject of the Amendment of the Commonwealth Postal Bill and the exclusion from mail contracts of vessels carrying coloured crews.

3. But my Committee consider that there is no true analogy between the position of Australia and the position of Cape Colony in respect of such an Act. Australia is a true self-governing colony, in most of which white labour is efficient and sufficient, and which has by peaceful and progressive government established its claim to manage its own affairs. The climatic conditions of South Africa on the contrary are such that the proper development of its resources is admittedly and absolutely dependent on a supply of reliable coloured labour. And my Committee have the honour to submit that the South African community, their country having been set in order by the Empire at large, have no title to monopolize the resources of that country to the prejudice of its own speedy development and to the jeopardy of the rest of the Empire.

4. The strictly Indian aspect of the question, on which alone the Bombay Chamber of Commerce may be entitled to speak, involves chiefly the right of the Native of India to settle and hold property in Africa. The success of the Indian native trader throughout East Africa is the best proof of his civil virtues and of his value in the development of a tropical country. If he competes with a certain minority of white men engaged in the retail trade of the country, he does so by rendering living less costly to the majority, and the high cost of living in South Africa is notoriously one of its gravest economical difficulties. But my Committee hope that it may be recognised that there is a great difference between excluding a class of natives who engage in trades or perform duties or which white men are not disqualified by the climate, and excluding labour which neither the white nor the black community on the spot is able to furnish and which is indispensable to the country's development.

5. The Secretary for the Colonies has recently declared that in these matters it is impossible for the mother country to run counter to colonial sentiment. But the Committee venture to submit that being in a very special degree concerned in the settlement and development of South Africa, might now reasonably refuse indentured labour under the Indian Emigration Act to colonies that deny to British subjects of Indian birth those rights that are enjoyed by Negroes of inferior civilization and by foreigners who have no known claim but that which the Indian immigrant daily establishes by the performance of some service required by the community.

6. Generally the Committee of this Chamber desire to express the hope that the Government of India will take every opportunity of furthering a condition of things under which British Indian subjects of His Majesty will have the same rights as those enjoyed by all other subjects of His Majesty of going to and residing in and settling in any part of His Majesty's dominions entirely unrestricted by any legislation.

Telegram dated the 2nd January 1904.

From—Viceroy, Calcutta,

To—Secretary of State, London.

With reference to recent telegrams between the Secretary of State and the Viceroy regarding the proposed recruitment of Indian labour for the Transvaal. The suggestions put forward have been considered by us in Council. We quite realize the difficulty of Lord Milner's position and the urgency, from the Imperial point of view, of bringing Indian labour to his assistance, and we are anxious to give

him any help in this direction that we properly can. We feel, however, that the supply of Indian labour would not be justified, in view of the feeling which not unreasonably prevails in India, unless the restrictions now imposed on Indians in the Transvaal were, in return, substantially modified. The following concessions, which are founded upon your proposals, are, in our opinion, the least that would justify us in supplying Indian labour :—

- (i) that the Transvaal Legislature be asked, without delay, to modify the literary test to be applied to immigrants by including Indian languages ;
- (ii) that residence in locations be compulsory only upon those Indians in whose case the restriction is desirable for sanitary reasons ;
- (iii) that all Indian traders who had established themselves, whether with or without licenses, under the former Government, be granted licenses permitting them to retain their present places of business ;
- (iv) that exemption from the Pass Law and the-Curfew system, and from the other restrictions, regarding the use of foot-paths, public conveyances, higher classes of railway, etc., now imposed on the non-white population, be granted to all Indians of superior class, including all respectable shopkeepers and traders.

We are prepared, if the grant of these concessions can be published, to allow 20,000 coolies to be recruited in India for work, under Government, on railways in the Transvaal, their indentures to be for a period of two years only, and to terminate in India. We shall be in a position, at the end of this period, to estimate the results of the experiment and the effect of the concessions granted and to reconsider the matter in the light of the then existing situation.

We consider that, as in Uganda and other similar cases, the Colonial Government should take all responsibility for the recruitment and management of the labourers, but we should be prepared to lend a few officers to act as magistrates and to nominate an Indian officer of experience as Protector of Indian immigrants in the Transvaal.

Dated Downing Street, the 20th July 1904.

From—THE RIGHT HON'BLE ALFRED LYTTELTON, Secretary of State for the Colonies,

To—HIS EXCELLENCY RIGHT HON'BLE VISCOUNT MILNER, P.C., G.C.B., G.C.M.G., etc., etc., etc., Governor of Transvaal.

I have the honour to inform you that His Majesty's Government have given their most careful consideration to the proposals contained in your Confidential despatch of the 18th April for dealing with the question of the position of Asiatics in the Transvaal.

The decision at which His Majesty's Government have arrived has already been communicated to you by my telegram of the 8th instant, but I propose in this despatch to review the history of the question in order to indicate clearly the considerations which have influenced them in coming to that decision.

The history of the question, as you are aware, begins with the passing by the late South African Republic of Law No. 3 of 1885, relating to "Coolies, Arabs, and other Asiatics," under the following circumstances :—

On the 6th January 1885, the State Secretary of the South African Republic wrote to Lord Derby, then Secretary of State for the Colonies, to say that it was proposed to legislate for the regulation of the Orientals who had settled—nearly all as store-keepers—in the Republic, and enquiring whether, in the opinion of Her Majesty's Government, the South African Republic was at liberty to do so under Article XIV of the London Convention of 1884.

Article XIV of the London Convention provided that all persons, other than natives, conforming themselves to the laws of the South African Republic—

- (a) will have full liberty, with their families, to enter, travel, or reside in any part of the South African Republic ;
- (b) will be entitled to hire or possess houses, manufactories, warehouses, shops, and premises .

(c) may carry on their commerce, either in person or by any agents whom they may think fit to employ.

In forwarding the State Secretary's letter to Lord Derby, Sir Hercules Robinson, then High Commissioner for South Africa, recommended that Article XIV of the Convention should be amended by the substitution for the word "natives" of the words "African natives or Indian or Chinese coolie immigrants." This would safeguard the interests of the "Arab" traders already established at Pretoria, and leave the South African Republic free to legislate for Asiatic coolie immigrants, *i.e.*, labourers, not persons of a superior class.

Lord Derby concurred, but thought it preferable that the South African Republic should legislate "in the proposed sense, having received an assurance that Her Majesty's Government will not desire to insist upon any such construction of the terms of the Convention as would interfere with reasonable legislation in the desired direction."

The South African Republic thereupon passed Law No. 3 of 1885 applying "to the persons belonging to one of the aboriginal races of Asia," providing that they should not be capable of obtaining burgher rights, or of being owners of landed property, that those entering the Republic for the purpose of trade or otherwise should be obliged to be registered and to pay a fee for such registration, and that the Government should have the right to point out to them their proper streets, wards, and locations for residence (in Dutch "ter bewoning.")

The South African Republic claimed to apply this law to all Asiatics residing in the Transvaal indiscriminately, not distinguishing between traders and immigrant coolies. Complaints were consequently received from the Asiatic trading community, and Her late Majesty's Government represented to the Government of the South African Republic that the sense in which Law No. 3 of 1885 was being interpreted constituted a violation both of the Agreement under which Her Majesty's Government had assented to the passing of that law and a contravention of the London Convention.

The Government of the South African Republic consented to amend the law in question and this was finally done by Proclamation of the 26th January 1887, in pursuance of a resolution of the Executive Council of the South African Republic, the words "for sanitary purposes" being inserted in the clause before referred to, which empower the Government to point out to Asiatics their proper streets, wards, and locations for residence, and a clause being added empowering Asiatics to hold fixed (landed) property in such streets, wards, and locations so appointed for sanitary purposes.

Her Majesty's Government understood that the law as thus amended was a sanitary measure, and consequently would not apply to traders and other persons of a superior mode of life (not being coolies), whose relegation to certain districts was not necessary on sanitary grounds. They accordingly accepted the amended law, and did not insist upon the fact that it was a contravention of the terms of Article XIV of the London Convention.

The Government of the South African Republic, however, maintained that the law should apply to all Asiatics alike and further interpreted the phrase "for residence" as applying to business premises as well as private dwelling places. Thus they claimed the right to compel all Asiatics not merely to reside, but also to carry on their business exclusively in the streets or locations specially assigned to them.

Her Majesty's Government adhered to their view and pressed the Government of the South African Republic at any rate to respect the interest of British Indian traders who had acquired a vested right, prior to the legislation of 1885, to trade outside locations. But no agreement was come to on the subject, and ultimately in 1895, the matter was referred to arbitration before M. Melius de Villiers, then Chief Justice of the Orange Free State. In the case as presented to the Arbitrator, Her Majesty's Government claimed—

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

Whilst the South African Republic claimed—

- (a) that they were fully entitled to make such Regulations concerning coolies, Arabs, Malays, and Mohammedan subjects of the Turkish Empire as they might think fit;
- (b) that His Majesty's Government was not entitled to object to any Asiatics being prohibited from having business premises in villages and towns or places other than those pointed out by the Government.

The award of the Arbitrator was made 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."

Volksraad Resolutions subsequent to that of 1886 were thus, by implication, disallowed, and the question at issue was left for judicial decision.

The attitude of Her Majesty's Government at the time was clearly indicated in Mr. Chamberlain's despatch of the 4th September 1895, in which he stated that the award of the Arbitrator must be allowed to have closed the legal and international questions in dispute between Her Majesty's Government and the Government of the South African Republic. But Mr. Chamberlain expressly reserved to himself the liberty to make friendly representations to the Government of the South African Republic on behalf of the Indian traders with whom he expressed sympathy and possibly to invite the Government of the South African Republic to consider whether, when once its legal position had been made good, it would not be wise to review the situation from a new point of view, and decide whether it would not be better in the interests of its own burghers to treat the Indians more generously, and to free itself from even the appearance of countenancing a trade jealousy, which he had some reasons to believe did not emanate from the governing class in the Republic.

The award of the Arbitrator had not decided the question of the exact legal position of Asiatics under Law No. 3 of 1885, and the matter was finally settled by a test case.

On the 8th February 1898 Tajob Hadji Mohammed Khan, a British Indian who had received from the Field Cornet, by virtue of the Law of 1885, notice to leave Pretoria as a residence and place of business, summoned Dr. Leyds for a declaration of rights.

The Court, by a majority of two to one, gave judgment for the defendant with costs, Justices Morice and Esser holding that the words of the Law of 1885, "ter bewoning" could be held to cover a merchant's place of business, and that the action of the Executive in the case was therefore justified. Justice Jorissen dissented.

The correctness of the decision was gravely questioned by yourself and by lawyers of position, yet Her Majesty's Government felt obliged to accept it. But on the announcement of the decision, the Acting British Agent ascertained from the State Secretary that no sudden removal of the Indians to locations would take place as the result, and a proposal for the establishment of separate Indian bazaars just outside the towns was discussed. A Resolution was passed by the Executive Council on the 15th November 1898, calling upon British Indian traders to remove from the town after the expiration of certain specified periods of time for the two classes into which they were divided, the 1st April and the 1st July being fixed as the final dates for removal. As a matter of fact, in consequence of the events of 1899 leading up to outbreak of the war, no effect appears to have been given to this Resolution.

Negotiations were at this time entered into in regard to both Indian trader and Cape coloured persons, in order to secure the vested rights of those resident in the South African Republic, but they broke down.

In the course of the negotiations you, as High Commissioner, offered, provided that existing traders were left undisturbed in their places of business, to agree to future immigrants being obliged to reside and trade in locations and to the fee for registration being raised to 25*l.* instead of 3*l.*

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The Government of the South African Republic replied that they could not consider the proposal unless Cape coloured persons were included in it; whereupon you informed them that you could not, to help one class of British subjects, give away the rights of another class.

Mr. Chamberlain, in his despatch of the 4th May, did not see what could be done, except to communicate to the Government of the South African Republic in the sense of the last part of his despatch of the 4th September 1895, and ask, in a friendly way, for their favourable consideration of at least the better class of Indians, if not of all, suggesting the possibility of creating an Asiatic quarter within each town, and pointing out that the sanitary considerations on which the Law was based could not be applicable to all Indians without distinction.

Up to the outbreak of the war, therefore, the British Government had steadily maintained, at first as a matter of right, and subsequently to the Award of 1895, by diplomatic persuasion, the interest of the British Indians resident in the Transvaal, and the treatment of these fellow-subjects formed part of the British case against the late South African Republic.

After the annexation of the Transvaal, the Law of the late South African Republic was continued in force, owing to the difficulties surrounding fresh legislation on the subject. Licences to trade elsewhere than in locations which had been held by Asiatics at the date of the declaration of war were temporarily renewed and the residence of those who, at that date, were domiciled outside locations was not interfered with. The Law was enforced in the case of those Asiatics who were not at the date of the outbreak of war enjoying privileges opposed to the Law, except that the payment of the fee for registration was not exacted.

On the 3rd April 1902 you telegraphed the formal proposals of the Government of the Transvaal.

They were—

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*l.* (The South African Republic Law No. 3 of 1885 had fixed this charge for registration at 25*l.* It was reduced to 3*l.* 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.

It was explained that the object of this last provision was to prevent land settlement in the Transvaal being made more difficult by land being bought and held for speculative purposes by Indian and Arab traders.

Mr. Chamberlain replied, on the 6th August 1902, that it would be impossible to defend what would practically be a continuance of the system of the South African Republic against which His Majesty's Government had so strongly and repeatedly protested.

He said that the measures adopted must be limited to those which could be justified on sanitary and other reasonable grounds, so that it was doubtful whether business outside locations could properly be prohibited, though it might be necessary, on sanitary grounds, to compel all but better-class Asiatics to reside in locations.

If the object of registration was to keep out undesirable persons, he considered that this would be better done at the colonial ports and the Portuguese frontier by legislation on the lines of the Natal Immigration Restriction Act.

He added that it was better that any legislation to restrict the speculative acquisition of land should apply to all persons equally; that Asiatics living in locations might be prohibited from acquiring real property outside the locations; but that those allowed to trade outside locations should be allowed to acquire property in their business premises.

In May 1903 the question became acute when, owing to the labour difficulties of the Transvaal, the Colonial Government proposed to import 10,000 coolies from India to work on the railways under an indenture providing for their repatriation on the termination of their period of service.

In replying to the telegram dated the 12th May 1903, in which this proposal was made, Mr. Chamberlain informed you that the Government of India was not prepared to meet the wishes of the Transvaal Government while the position of British Indian traders resident in the Transvaal remained in so unsatisfactory a state. The Government of India would require as the condition of their consent to the importation of indentured Indian labour into the Transvaal that the existing legislation relating to Indians should be modified—

1. By the abolition of registration for Indians generally, and the substitution thereof of a measure for keeping undesirable persons out of the Colony.
2. By securing that locations for Asiatics should be restricted to those classes for whom they were required on sanitary grounds.
3. By allowing business to be carried on outside locations.
4. By replacing the restrictions on acquisition of real property by Asiatics by a general Law against speculative acquisition.
5. By exempting better-class Asiatics from all special restrictions, and by allowing them to have Indian servants to reside with them.

Shortly after the despatch above referred to was sent, Mr. Chamberlain received your despatch, dated the 11th May 1903, (Cd. 1684), dealing with the question of the position of Indians resident in the Transvaal, and inclosing a copy of a Government Notice on the subject, No. 356 of 1903, which was issued on the 8th April.

This notice announced that the Government had resolved—

1. That the Government should take immediate steps to have bazaars in every town set apart, in which alone Asiatics might reside and trade;
2. That no new licenses to trade should be granted to any Asiatic elsewhere than in bazaars;
3. That in the case of Asiatics who held licenses to trade outside bazaars at the beginning of the war, these licenses might be renewed to trade under the same conditions during the residence in the Colony of the licensee, but should not be transferable; and
4. That educated and respectable Asiatics should be exempted from all special restrictions.

In forwarding this notice, you commented on the absolute necessity, on sanitary grounds, of segregating the low-class Asiatics from the white population of the Transvaal, and quoted the evidence of Dr. Porter, Medical Officer of Health for the Transvaal, on the Indian quarter of Johannesburg, on this point.

You pointed out that it was the intention of the Transvaal Government to select for the bazaars in every town healthy sites suitable for trade, instead of the unsuitable sites which had been selected by the Government of the South African Republic, and that the notice respected vested interests which had been acquired before the war. On the other hand, no new vested interests were to be allowed to be acquired. Asiatics who had been trading outside bazaars only since the war had their licenses renewed until the 31st December 1903, but were warned that on that date they would be required to remove into bazaars. You also laid stress on the exemption of Asiatics of a superior class from all special restrictions.

This notice and your despatch were considered by the Indian Government in connection with the proposal that indentured Indian coolie labour should be allowed to be imported into the Transvaal for public works. The Indian Government

eventually decided that it would be prepared to allow the introduction of indentured Indian labour into the Transvaal if certain conditions relating to resident Indians were granted. The most important of these was that licenses should be given to all Indian traders who had established business outside locations under the Government of the South African Republic, whether with or without licenses, allowing them to retain their present places of business. This decision was telegraphed to you on the 4th January last.

Further discussion of the question took place in the Legislative Council of the Transvaal in December, and in reporting on this discussion in a Despatch dated the 1st February last, in reply to the representations which I had made to you on behalf of the Indian Government, you announced that the Transvaal Government, although in the face of strong popular opposition, propose to meet the wishes of the Indian Government in the matter of the traders who have been *bona fide* carrying on business outside locations before the war, although without licenses to do so. The Transvaal Government further proposed that immigration should be regulated by a law similar to those in force in the Cape and Natal, and to admit Indian as well as European languages in the education test to be imposed under the Act. This was in accordance with a suggestion made by the Indian Government.

On these lines it appeared probable that an agreement might be arrived at, the Indian Government on its side assenting to the arrangement under which all Asiatics who had not acquired a vested right to trade outside bazaars should be restricted to them for purposes of trade, and all not exempt by reason of their superior mode of life, for purposes of residence, and to the prohibition laid upon Asiatics to hold land except such as might be required for religious purposes.

It was hoped that arrangements might then be made for the importation of indentured Indian coolie labour into the Transvaal.

Telegraphing on the 15th April, however, in reply to a point which I had raised, you said that on further consideration you feared that the proposal that Indian languages should be admitted in the education test to be imposed under the Immigration Law would conflict with the principle of uniformity of legislation with regard to non-European persons which had been approved by the Colonial Conference at Bloemfontein. The Transvaal Government was therefore now opposed to the proposal.

On the 7th May I received your Despatch, dated the 18th April, enclosing Sir A. Lawley's Despatch, in which he deals exhaustively with the whole question, and comments in detail upon a letter from Sir M. Bhownaggee, M.P., in which the case for the British Indians in the Transvaal was fully set out.

In this despatch Sir A. Lawley dwelt strongly on the danger with which the continued existence of the European commercial community in the Transvaal towns is threatened by the continued influx of Asiatic traders, with whom, owing to their lower standard of living, Europeans cannot compete, and on the consequent violent prejudice against the Asiatics which exists in every town of the Transvaal. He pointed out how in towns like Petersburg the small European traders had been completely swamped by Indians, and contended that it depended upon the decision of the question of the position of Asiatics whether the Transvaal should remain in any sense a white man's country.

Two facts rendered immediate legislation imperatively urgent:—

1. The outbreak of plague in the Indian quarter of Johannesburg, illustrating the necessity for removing Indians to separate locations on sanitary grounds.
2. The fact that, as had been anticipated, a test case was being brought before the Supreme Court of the Transvaal to determine the validity of the old Boer Court's interpretation of Law No. 3 of 1885.

The final proposals of the Transvaal Government as set forth in that Despatch are that there should be introduced into the Legislative Council of the Transvaal—

- (a) An Immigration Restriction Law on the lines of the similar Cape and Natal Acts, providing *inter alia* an education test for would be immigrants for the purposes of which Indian languages should not be accepted.

(b) A measure dealing with Indians on the lines of the Government Notice No. 356 of 1903, above referred to providing—

- (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 not to apply to land now set aside and used for religious purposes.
- (4) All Asiatics entering the Transvaal, unless specially exempted, to take out a certificate of registration at a charge of 3*l*.
- (5) No restriction to be put on the issue of hawkers' licenses, provided that the Immigration Law referred to above is passed.

You recommend the acceptance of these proposals by His Majesty's Government as being the maximum amount of concession which it is possible to make to the demands of the British Indians, in view of the state of public feeling on the matter.

On the 14th May you telegraphed that the Supreme Court of the Transvaal in the test case brought before it had reversed the decision of the old Boer Court on the interpretation of Law No. 3 of 1885. The Supreme Court held that that law compelled Asiatics to reside, but not to trade in locations.

From this decision it follows that every Asiatic now resident in the Transvaal (except those brought in under indenture under a special Ordinance) is as free to carry on trade where he pleases as is a subject of English or Dutch origin, so that legislation of the kind now proposed by the Transvaal Government must be in diminution of existing rights. This fact, in my opinion, much changes the aspect in which the matter must be regarded by His Majesty's Government as the trustees of Imperial interests, including those of Indian subjects of the Crown.

On the other hand, the law of the Colony as so interpreted is, as I understand your Despatch, distasteful to the Transvaal public, who strongly desire to modify it adversely for British Indians who may in future enter the country, as well as for those who are now resident there.

A plain distinction may be drawn between these two classes :

With respect to the first class—future immigrants—His Majesty's Government recognize that for the reasons set out in your Despatch there is a strong opposition among the European population of the Transvaal to a continued and unrestricted influx of small traders and others of Asiatic race. The same feeling has already received expression not only in Australian and New Zealand legislation, but also in the Acts passed by the legislatures of the neighbouring Colonies of the Cape and Natal within the last few years. His Majesty's Government, deeply as they regret the necessity of hindering the free movement of British Indian subjects within the Empire, feel that they are unable to withhold their sanction to the immediate introduction into the Legislative Council of the Transvaal of a measure restricting immigration on the lines of those Acts.

The adoption in this measure of a language test in a European language only, and the exclusion of the alternative test in a literary Indian language, will undoubtedly effect the purpose in view of limiting, and indeed will, as I believe, almost entirely check, the influx of British Indians and Asiatics into the country. The exclusion of this Indian literary test will, as you are aware, in all probability prevent the Indian Government from viewing favourably any scheme for the introduction of Indian labourers under indenture, but I understand that the Transvaal Government do not now press any such scheme, and I realize that something is to be said from the South African point of view of keeping the legislation in the various Colonies of South Africa on this subject as far as possible on a uniform basis.

MC:66EHL

With respect to the second class—British Indians—now resident in the Transvaal, who are confirmed by the decision of the Supreme Court in the rights for which His Majesty's Government have so long contended, the case is wholly different. Every rational precaution to safeguard the health of the Community and of the British Indians themselves must of course be taken, and regulations securing this end with respect to their residence, and to the general treatment of their lower classes, carefully prescribed.

But an apprehended trade competition from the British Indians now in the country, whose number is now comparatively small and will under proposed restrictions on immigrants be in a diminishing proportion, cannot be accepted as sufficient reason for the legislation proposed. His Majesty's Government have steadily declined to allow this fear to influence their views in the past. On the contrary, for many years they repeatedly protested before the Empire and the civilized world against the policy and Laws of the late South African Republic in relation to this subject.

Those laws were indeed only partially enforced, yet His Majesty's Government is now asked not merely to sanction their strict enforcement, but to set aside by legislation a Judgment of the Supreme Court which has given to the British Indian rights for which His Majesty's Government have strenuously contended.

His Majesty's Government cannot believe that the British community in the Transvaal appreciate the true nature of the proposition which some of its members are pressing upon you. They, as Britons, are as jealous of the honour of the British name as ourselves, and even if a material sacrifice were necessary to vindicate that honour, I feel assured they would cheerfully make it. His Majesty's Government hold that it is derogatory to national honour to impose on resident British subjects disabilities against which we had remonstrated, and to which even the Law of the late South African Republic rightly interpreted did not subject them, and they do not doubt that when this is perceived the public opinion of the Colony will not any longer support the demand which has been put forward.

The second Ordinance proposed, which will take the place of Law No. 3 of 1885, should therefore not interfere with the right of those now in the country to obtain licenses to trade outside locations, but should be limited to creating the necessary machinery by means, I assume, of municipal Regulations for placing Asiatics in locations, in accordance with the Law, and should provide, in the case both of present residents and of newcomers, that those required to live in locations or bazaars should be so required for sanitary reasons in each case, whilst those of a superior class should be exempted and allowed to reside anywhere. With regard to the question of the holding of land, British Indians who are entitled to reside outside locations must at least have the right to acquire property in the premises which they occupy for business purposes.

His Majesty's Government are also anxious that the concessions which you favour respecting the exemption of Asiatics of the better class, including all respectable shopkeepers and traders, from humiliating disabilities under municipal and other Regulations applying to coloured persons, should be secured as far as possible either under the new Ordinance or by means of the machinery already provided by Ordinance No. 35 of 1901 if it can be adapted to that purpose.

There remains the question whether newcomers should be compelled without exception to trade in bazaars or locations. It seems certain that those who will come in under the proposed Immigration Restriction Ordinance, and they should be very few, will not be Asiatics of a low class, and will not, therefore, be such persons as could properly be required for sanitary reasons to reside in a special location. I am of opinion that until it is proved that the Immigration Restriction Ordinance has failed to limit the influx to a minimum as it is expected to do, and in view of the absence of any legislation of the kind in the Cape Colony or Natal, the Ordinance to be passed in the present Session should not limit the right of newcomers in respect of trade.

The two Ordinances which the Transvaal Government propose to pass during the present Session of the Council should contain a suspending clause, or be reserved for the signification of His Majesty's pleasure.

Telegram No. 7, dated the 20th January 1904.
 From—Governor Viscount MILNER, Johannesburg,
 To—MR. LYTTELTON, London.

Your telegram of 4th January, No. 2. I gratefully recognise the desire shown by the Indian Government to assist us in our labour difficulties, and I hope that the proposals now made by them may serve as the basis of an agreement which I can recommend to the Legislative Council of the Transvaal and which may be adopted by them without running counter in any dangerous degree to public feeling. For my own part I may say that there is nothing in the proposals of the Indian Government which does not appear to me perfectly reasonable. But, as you are aware, I have to contend with quite exceptional difficulties here in this matter, and I think the proposals as they stand would require some modifications. Moreover, they are in some respects based on a misunderstanding of the actual position here.

Dealing with the proposals in detail:—

1. This assumes that there is a law in the Transvaal restricting Indian immigration similar to those existing in Natal and the Cape, which require immigrants to be able to write in European language. As a matter of fact, there is no such law in the Transvaal, though the Government is under a pledge to legislate on the subject of Asiatic immigration. At present Indian immigration is regulated, like all other immigrations, under the Peace Preservation Act, *i.e.*, all immigrants require permits granted by the Governor. In administering this Act limitations imposed by Cape and Natal Statutes have not been insisted on. But for the present permits are practically confined to Indians who were here before the war. These seem to have the strongest claim, and it will take some time yet to bring back all wishing to return. When that has been done and permit clauses of Peace Preservation Act are replaced by a permanent law, the Transvaal Government is prepared to submit a proposal in conformity with the wish of the Indian Government, provided we can come to terms on Indian question generally.

2. If this applies only to residence, there is no objection. But subject to 3, we cannot undertake to allow Indians to trade, except in quarters specially allotted to them.

3. This is precisely the proposal which Government has made to Legislative Council. It is meeting with some opposition and Commission has been appointed to inquire into cases of unlicensed traders. But Government is determined to protect vested interests of traders who had established businesses before the war, even if unlicensed.

4. Pass law and Curfew system never have applied to Indians. Restrictions with regard to use of footpaths can, under new municipal law, only be imposed in case of natives. With regard to public conveyances and railways, there is no law making distinction between white and coloured except an old law about cabs in Pretoria, which is obsolete and might with advantage be repealed. But in practice separate conveyances are provided and on railways coloured people travelling 1st or 2nd class are, as far as possible, placed in different compartments from whites. This practice it would be very difficult, and in my opinion undesirable, to alter.

As regards conditions proposed for recruitment of coolies, I agree to them all. If coolies are imported, the appointment of an Indian officer as Protector would be welcomed. Special Magistrates unnecessary.

No. 75 (Transvaal), dated Johannesburg, the 1st February 1904.

From—His Excellency the Right Honourable Viscount MILNER, P.C.,
 G.C.B., G.C.M.G., etc., etc., etc., Governor of Transvaal,

To.—The Secretary of State for the Colonies.

WITH reference to your despatch Transvaal 1262 of the 22nd ultimo, enclosing certain correspondence with the India Office, on the position of British Indians in the Transvaal, and to your telegram No. 2 of the 18th ultimo, I have the honour to report that resolution was introduced in the Legislative Council on the 21st MC 166 EHL

ultimo extending the provisions of Government notice No. 356 of 1903, so as to meet one of the cases referred to by the Secretary of State for India, namely, the case of men who traded in towns outside locations before the war but without licenses.

2. The introduction of this motion gave rise to the strongest protests from all parts of the Colony. These protests were raised principally by the various Chambers of Commerce, and show the existence of a very strong feeling throughout the Colony against the extension under any circumstances of what is understood to be the meaning of Law No. 3 of 1885. It is generally contended by those who are opposed to Asiatic trades that Law 3 of 1885, although it was for a long time very inefficiently carried out showed an intention on the part of the late Government to pursue a policy of complete segregation; that this policy was never entirely abandoned, and but for the outbreak of hostilities would have been carried into effect. I enclose copy of a Resolution which was passed at a meeting of the Associated Chambers of Commerce of the Transvaal in view of the Resolution of which notice had been given in the Legislative Council.

3. The proceedings in the Council on the introduction of the motion reflected the strong feeling which had been evoked throughout the country, and showed an intense objection to the unrestricted competition of Asiatic traders, whether Indian or others. The opponents of the motion represented it as only the beginning of further concessions. They maintained that if any regard is to be paid to vested rights, the Government should not go further than had been proposed in Notice 356, namely, to confine the privilege of trading in towns outside bazaars to those traders who actually held licenses for trading outside locations before the war. The Government, on the contrary, feels that an Asiatic trader who was allowed, even without holding a license, to incur considerable capital expenditure in the erection of premises and the establishment and development of a business in any particular town, has acquired vested interests which it would be neither just nor equitable to take away without due compensation. Many traders of this class have been allowed to carry on their business undisturbed for a number of years. It is incumbent on the Government to recognize these vested rights; even though such recognition may have to be made in spite of the opposition of all the non-official members of the Legislative Council. Meanwhile the Government has accepted an amendment to the original Resolution, and agreed to postpone the decision of the Council until members are fully possessed of the facts regarding the position of the traders of the particular class referred to.

4. The amendment in question was to the effect that a Commission should be constituted with a view to ascertaining the nature and extent of the vested rights claimed on behalf of the traders, who were established before the war without licenses, and that meanwhile such traders should be granted provisional licenses. I cannot help hoping that, when the findings of the Commission are known to the Council, and the strength of these traders' claims to a recognition of their vested rights becomes apparent, the intense opposition which has been shown will be modified, if not withdrawn. It may, however, still be necessary for the Government to avail itself of the majority vote of the official members to insist on the fulfilment of what seems to be a manifest obligation towards these traders.

5. The amendment just referred to, besides dealing with the question of the unlicensed traders, recommends (1) the introduction of an Immigration Law on the lines of the Cape Colony Act of 1902, and (2) legislation defining the status of Asiatic traders in the Transvaal.

6. I am convinced that the question of the restrictions on the immigration of Asiatics into Transvaal, and of the status of those who are now here, or may hereafter be admitted, is one which requires immediate attention, and that, if possible, it should be dealt with during the next session of the Legislative Council. Even if the Council had not passed its recent resolution, the Government was pledged to deal with the matter at an early date.

7. The agitation against the Asiatic trader comes almost entirely from the trading classes in the towns, more especially the smaller country towns, where the stress of Asiatic competition is at present most felt. It is not altogether a matter of race and colour prejudice. There is behind it a strong feeling that the Asiatic storekeeper, living as he does under conditions involving a much

lower standard of expenditure than the European, can compete with the smaller white storekeepers at such an advantage as to rapidly drive them from the field. In confirmation of these apprehensions it is usual to point to Natal, where as a consequence of the Indians being allowed freely to compete in trading, the smaller retail trade has to a large extent fallen into their hands. It is urged that, unless immediate steps are taken here to regulate the immigration of Asiatics and to define the status of those in the country so as to protect the white trader from unrestricted Asiatic competition, the same conditions will be reached here as now exists in Natal.

8. However opinions may differ as to the economic merits of the case as between the European and Asiatic trader, there can be no doubt that any policy which aims at the removal of existing restrictions on Asiatic traders will meet with the strongest opposition throughout this Colony. The class of the community most closely affected is well organized, and accustomed to express its views on questions of public policy. The farming population is certainly not actuated by the same strong feeling, but on the other hand the farmers will not openly advocate a policy of no restriction. On the contrary, they are instinctively averse to any recognition of equality of rights for a coloured race. With the exception, therefore, of a few individuals, the public opinion of the whole Colony will be very strong against any policy which can be made to appear as a removal of the existing restrictions on Asiatic trading. The contemplated importation of Asiatics as unskilled labourers on the Witwatersrand adds to the uneasiness with which the present unsettled policy with regard to the Asiatic traders inspires the commercial community.

9. If the Government could continue to enforce Law 3 of 1885 in the sense in which it was apparently intended to be enforced by the late Government, saving of course vested interests already established, the question would be less pressing than it now is. It would, indeed, still be necessary to legislate as soon as possible in the direction of restricting undesirable immigration on the lines already adopted in the Cape Colony and Natal. But there would be no immediate necessity to legislate on the question of the status of Asiatic traders within the Colony. The policy announced by the Government in Notice No. 356 of the 8th April last would, in my opinion, be generally accepted, and the recognition of vested rights acquired before the war would not present insuperable difficulties.

10. Trouble arises, however, as soon as the Government attempts to put in force the provisions of Law 3 of 1885, on the lines indicated above. The law is very loosely drawn, and does not explicitly refer to segregation for trading purposes. Nor does it provide any machinery for securing compliance with its terms as regards residence. The High Court of the late Government held that the law applied to trading as well as to residence, and upheld the action of the Government in refusing to grant trading licenses to Asiatics outside locations. That judgment, however, is not binding on the present Supreme Court, and I am advised that if it is challenged it will in all probability be upset.

11. The Indian traders have formed a strong Association, and are well advised and are certain to resist the enforcement of the law. If they succeed, I anticipate that the opposition to them on the part of the white population will find very vigorous expression and that a demand will be made for legislation, which it will be impossible to resist. I am of opinion that this Government should be prepared, in such a contingency, to make a clear announcement that it adheres to its present policy, and that it will not recognize any claim to vested rights beyond those which it is prepared now to recognize, *i.e.*, the claim of traders who were established in business with or without license before the war, and that it proposes to introduce legislation as soon as possible, giving effect to the policy which it is now endeavouring to carry out.

12. In the matter of the selection of sites for bazaars, every care will be taken to provide sites which are suitable for residence, and at the same time reasonably accessible for purposes of trade. The present attitude of the Indian Association is to raise every obstacle to the institution of these bazaars anywhere outside the towns, and every possible objection, reasonable or unreasonable, is taken by them to any site which may be selected. On the other hand, the townspeople are strongly averse to the establishment of an Asiatic bazaar in close proximity to them, and insist on distinct segregation, in some cases, no doubt, to an extent

which would seriously prejudice the prospects of the Asiatic trader in regard to the trade of the town.

13. I propose that the Government should continue to grant exemption from enforced residence in bazaars to those Asiatics whose standard of civilization and mode of life fit them for it. With this exception I consider that the principle of segregation must be maintained, and that both on sanitary and other grounds it is most undesirable to have Asiatics living or trading in the midst of the European population. At the same time every care will be taken that the bazaars shall be so situated as not to deprive the inhabitants of the prospect of being able to carry on their trade successfully. The selection of these sites is a most difficult and delicate matter, and whatever site is ultimately decided on is inevitably objected to by one or both of the parties most immediately concerned. I propose, however, to satisfy myself as far as possible that the Asiatics are treated with fairness and consideration in this matter.

14. For the reasons given above it will be clear that a clear definition of the policy of the Government with regard to the status of Asiatics residing in the Transvaal can no longer be delayed, indeed, the question may be forced upon us at any moment. I should, therefore, be glad to know at the earliest opportunity whether the Government may proceed on the lines which I have indicated in this despatch, *i.e.* :—

- (1) that immigration should be regulated by a law similar to those in force in Cape Colony and Natal. In introducing such law the Government is prepared to adopt the modification asked for by the Government of India (see your telegram of 4th January, No. 2) and to allow Indian as well as European languages to be used in the education test applied to would-be emigrants ;
- (2) that all Asiatic traders now trading in towns should be removed to bazaars set apart for Asiatic traders, with the exception of those who had *bona fide* established a business before the outbreak of war and thereby acquired vested interests in respect of such business ;
- (3) that no Asiatics who may henceforward come into the country shall be allowed to trade except in such bazaars as aforesaid ;
- (4) that All Asiatics, except those to whom exemption is granted by reason of their having adopted a civilised mode of life shall reside in such bazaars.

Re 356.

WE, the undersigned, representing the following Chambers of Commerce of the Transvaal, Johannesburg, Pretoria, Germiston, Potchefstroom, Boksburg, Pietersburg, Middelburg, Barberton, Standerton, Klerksdorp, in meeting assembled to-day, hereby state—

That in view of the fact that it is absolutely detrimental to the welfare of all coloured and white races to commingle, that the tendency of all legislation in this country should, in our opinion, be to prevent the demoralization resulting therefrom, and the terrible responsibility which will rest upon any Government in altering legislation which has been proved in the past, both by history and experience, to be in the best interests of the country.

We beg respectfully to bring to your notice the following resolutions, *viz.* :—

- (1) That this Conference of the Chambers of Commerce of the Transvaal views with intense alarm and disfavour any legislation which might stultify such principle, and that all legislation contrary to the same be withdrawn, notably Notice No. 356 of 8th April 1903, and consequently the proposed amendment by the Colonial Secretary, in relation to this notice.

(2) That Law 3 of 1885, and all subsequent amendments by the late Volksraad, as approved by the Imperial Government by arbitration, should not only be strictly maintained, but enforced in its entirety.

H. F. ABERCROMBIE,
Chairman.

JAS. S. DYCE,
Secretary

The 18th December 1903.

Re ASIATIC TRADING.

WHEREAS neither Government notice No. 356, 8th April 1903, nor any previously existing law makes provision for restricting Asiatics from trading on their own behalf and benefit, under cover of a white persons name; and

WHEREAS Asiatics, particularly Chinaman, take advantage of this omission, and establish themselves in business in increasing numbers in the various towns of this Colony;

Thereby clearly evading the intention of the law, and also to the great detriment of the white trading community.

This meeting of the Associated Chambers of Commerce of the Transvaal respectfully requests that a special Act, dealing with this matter in such manner as to effectually put a stop to Asiatics trading under these conditions, be introduced without delay.

H. F. ABERCROMBIE,
Chairman.

JAS. S. DYCE,
Secretary.

No. L. G. 97—2, dated Pretoria, the 21st April 1904.

From—HIS EXCELLENCY SIR ARTHUR LAWLEY, Lieutenant-Governor of Transvaal,

To—The Governor of Transvaal.

IN further reference to my despatch of the 13th April, I have the honour to forward herewith certain statistics regarding the growth of the Indian population in the Colony of Natal during the last 15 years, which I have been able to obtain confidentially from the Colonial Secretary of that Colony, and a précis of remarks received from the local authorities in the various towns as to the competition between European and Indian traders.

From the statistics forthcoming it will appear that during the past 15 years the number of Indians to whom trading licenses have been issued has been more than trebled. The only complete schedule which I have been able to obtain is furnished by the Town Clerk of Durban, and is interesting as showing the rapid growth of the Indian population of that town, and the large acquisition of property during the last ten years by the British Indians in Durban.

These figures seem to justify the remarks of the Mayor of Durban, *viz.*, that "the Indian traders are supplanting the European dealers in every branch of the retail trade, and also absorbing a considerable portion of the wholesale trade".

It is not a matter of surprise that with these figures before them the European merchants of the Transvaal should view an influx of British Indians with great alarm.

Schedule re Indian population, properties, values, and licenses, 1870—1903.

Year.	Indian population.	European population.	Indian properties.	Value of Indian properties.	Stores (Indian).	Indians arrested on criminal charges.	Indians arrested for Bye-Law contraventions.
1870	665	3,147	2	£500	2	115	109
1875	698	4,564	9	£3,000	11	222	465
1880	3,309	6,736	50	£15,000	37	257	1,979
1884	3,711	8,543	118	£28,000	64	244	1,446
1889	4,853	9,899	131	£31,000	85	269	1,515
1893	5,917	12,772	229	£70,000	125	1,074	2,586
1903	1,500	34,000	662	£502,960	474	340	4,145

DURBAN;

The 13th April 1904.
MC166EHL.

WILLIAM COOLEY,

Town Clerk.

Telegram, dated the 14th May 1904.

From—GOVERNOR VISCOUNT MILNER, Johannesburg,
To—MR. LYTTTELTON, London.

Referring to my confidential despatch of 18th April, British Indians. Supreme Court has given judgment in a test case brought on behalf of British Indian traders to compel the Government to issue trading licenses. Court unanimously held that Law No. 3 of 1885 as amended by subsequent Volksraad Resolution does not apply to trading, but only to residence, and that receivers of revenue were bound to issue trading licenses to Asiatics who applied for them. Court refused to be bound in this matter by the decision of the High Court of the late South African Republic. Chief Justice in his judgment said that, owing to no penalty being provided for in Law No. 3 of 1885, there appeared to be no machinery for compelling Asiatics even to reside in bazaars or locations provided for them as places of residence.

In view of this decision, legislation during the next session of the Legislative Council is imperative.

Telegram No. 2, dated the 9th June 1904.

From—MR. LYTTTELTON, London,
To—GOVERNOR VISCOUNT MILNER, Johannesburg.

Referring to your telegram of 14th May, No. 1. Question in Parliament on Monday asking what steps are being taken to give effect to decision of Supreme Court by removal of existing restrictions upon trade of British Indians. Government Notice No. 356 enclosed in your despatch of 11th May last cannot be upheld in view of that decision, in so far as it conflicts with decision, and Indian traders now in the country cannot be refused licenses to trade outside bazaars. Proposed legislation cannot now properly be passed in such a form as to diminish rights of those already in Transvaal and can only affect future arrivals. Papers will have to be published and His Majesty's Government could not defend legislation in derogation of existing rights. See your Confidential Despatch of 7th September 1898, reporting result of test case tried before High Court of South African Republic in that year, and statement by Lord Lansdowne quoted on page 5 of letter from Sir M. Bhownaggee enclosed in my despatch No. 53 of 23rd January. Before you introduce legislation, I must confer with Secretary of State for India on the whole subject.

No. 529, dated Johannesburg, the 21st May 1906.

From—His Excellency EARL OF SELBORNE, Governor of Transvaal,
To—The Secretary of State for Colonies.

I have the honour to confirm my telegram No. 1 of the 21st May (No. 18, 128), copy of which is attached to this Despatch, in answer to Your Lordship's telegram No. 2 of the 11th May (No. 12,785), relative to the case of the heirs of Aboo Baker Amod. I propose to take this opportunity, in replying to Your Lordship at length of placing on record my views with regard to certain aspects of the Asiatic question in this Colony. In doing so it is necessary to note the circumstances which occasion the special difficulties with which a British Government is faced when dealing with this particular problem.

2. After the retrocession of the Transvaal to the Boers in 1881, Asiatics, many of whom were British Indians, attempted to enter the country to reside in it, to trade, and to acquire property. Their liberty to do so was questioned less at the instance of the Boers themselves than of the European traders who were in great part British subjects or of British origin. The British Government enforced the claims of the Asiatics by all the diplomatic means in its power, and the restrictions to which they were subjected were among the subjects of disagreement which led to the outbreak of war. In spite, however, of the protests of the British Government, the South African Republic was able to pass and to maintain certain restrictive laws. Now that the country is in the hands of the Imperial Government, the Asiatics who are British subjects naturally claim that the same privileges should be accorded to them as were demanded on their behalf from the Republican Government.

3. The European inhabitants of the country, however, and more especially the trading section of the population, assert that if Asiatics are freely admitted to this country, and if their disabilities are removed, they will in time displace all but a small minority of the white population. They draw attention to the fact that although Asiatics have been freely admitted to Natal for a comparatively few years they already exceed the white population, which is scarcely sufficient to maintain its supremacy over a large semi-civilised native population. In this task the Asiatic population, drawn almost exclusively from the lowest and most unwarlike races of India, take no share as combatants. They point to Mauritius, parts of which are more temperate and healthy than the lower portions of Natal, an island which was uninhabited when it was first discovered some 400 years ago, which has since that time been open of access to all races without distinction or restraint, and which now supports a large population, of whom no more than 2½ per cent. are Europeans, while upwards of 70 per cent. are pure Asiatics. Owing to the presence of the native population there is in practice no room in this country for unskilled labourers of European race, and it is contended that the removal of restrictions placed on the ingress of Asiatics and their residence in this country will mean that certain large and important branches of the mechanical trades, of agriculture, of commerce, and even of the professions, which now support the white inhabitants, will be invaded and ere long monopolised by Asiatics of the lower caste. They argue, and I must admit the force of their argument, that the white population of the country will not increase as it ought to in proportion to that of non-European origin, and that in less than a century, perhaps, the proportion which the white population bears to the coloured will approach the proportions which now exist in Mauritius. Under these conditions, South Africa will, for all time, require to be occupied by troops imported from Europe, not only for its protection against foreign invasion but even for the enforcement of order among its native population. Turning to America they contend that there is hardly any mistake which a young State may commit which cannot afterwards be amended and undone except a mistake in the elements of population. While admitting the grave difficulties in which this Government is placed by reason of its attitude on this question before the war, they ask that, where the future of this country as a home for Europeans is at stake, the Imperial Government should be prepared to reconsider a position adopted under circumstances very different from those with which they are now faced.

4. In considering these two positions a distinction must be drawn, so far as the Asiatics are concerned, between those who have acquired rights of domicile in the Transvaal as distinguished from those who have not, and who now claim to enter it. I am confident that a responsible Ministry, supported by the belief that the Imperial Government appreciates to the full the gravity of the question from the point of view of the white Colonists, can be trusted to listen to the just claims of British subjects of Asiatic nationality resident in the Transvaal, which will be pressed upon them by that Government, and to effect the settlement of this part of the question on just and moderate lines. The claims of the Asiatics who wish to acquire the right to enter the country, and the claims of the Europeans (more especially the British population) who demand the right to maintain the country they have settled and civilised as a European, and not as an Asiatic community, seem to me to be in an antagonism towards one another which cannot be reconciled. Whatever the settlement may be on paper, in the course of time one of the two parties will, in fact, be ousted from their position, and South Africa will either remain a "white man's" country, so far as it is possible for any country based on a negro proletariat to claim that title, or it will become a country peopled by aboriginal natives and Asiatics, under the control and management of Europeans, who form an insignificant proportion of the indigenous population.

5. From the outset I have recognised that the issues involved are so far reaching, that the settlement must await the establishment of representative institutions. An attempt to decide now any one of the main issues at stake would aggravate the difficulties of the question because an elective legislature would in all probability re-open it. All that can be effected now is to keep these issues open, and, in the meantime, to induce by every possible means a reasonable and moderate temper in both the parties concerned. The necessity of this course was so apparent from the outset, that I have not hesitated to give to the European population pledges of the most specific nature that the question would be reserved to be dealt with by their

representative Government. For Your Lordship's information, I enclose a passage from my speech, delivered at Potchefstroom on 7th October last, dealing with this subject (Annexure "A").

6. Unhappily this is a question which cannot be kept open by merely abstaining from action, and herein lies the peculiar difficulty for an intermediate and provisional Government. Where the mineral laws of the country are concerned or questions relating to native franchise, it is quite open for the present Government to postpone all decision pending the establishment of responsible institutions and to remain passive in the meantime. On this question, however, the mere inaction of the Government would do more to predetermine the issues in question than any positive steps which they might adopt. It is obvious that unless the present Government had enforced deliberate measures for the exclusion of Asiatics they would have flocked into this country in anticipation of the establishment of responsible Government. It is, in practice, impossible to remove a population which has once established itself, and the first Legislature elected to represent the whole European population of the Colony, would have found themselves deeply committed on a fundamental question of population before they had had an opportunity of expressing their views to His Majesty's Government. These obvious considerations are necessary to explain the extreme difficulties which have had to be faced by a British Government assuming responsibility for the administration of this Colony. Before the war the Transvaal was a foreign country, and the British Government was bound to maintain the rights of all British subjects as secured by conventions made with the Government of the Republic, to enter the country and to reside and trade there. When, however, the country was annexed to His Majesty's dominions the conventions lapsed, and though the moral responsibility of the British Government towards His Majesty's Indian subjects remain unaltered, the British Government were faced with an entirely new set of conflicting responsibilities which they had assumed towards the inhabitants of the Transvaal, many of whom now became British subjects for the first time. The British Government after the war necessarily undertook the administration of the country until such time as its inhabitants were in a position to administer it themselves, but they did so subject to a pledge, in some cases explicit, but in all implied, that the solution of the fundamental and permanent questions of the country should, so far as was possible, be left over until the time when, through the medium of their own responsible Government, they could discuss these questions face to face with the Imperial Authorities. The British Government were, therefore, in honour bound, while maintaining their own attitude on the subject so far as the Asiatics were concerned, to hold the question open in fact as well as in law, pending the establishment of responsible institutions, and had the British Government granted free admission to the Asiatics and repealed the restrictive laws imposed by the late Republic to which they or their predecessors had acquiesced so as to carry out, in the letter as well as in the spirit, the pledges given to Asiatics, they would have been untrue to a trust, in no degree less sacred, towards the European population which had been assumed through circumstances which were utterly unforeseen. For these reasons there was, in my opinion, no course honourably open to the Government of the Transvaal other than to maintain the fundamental laws relating to Asiatics for the time being, so far as was possible, unchanged, and as interpreted from time to time by the Courts, and also to prevent the further influx of Asiatics, however distasteful that task might be.

7. This latter object has been effected by means of the Peace Preservation Ordinance, which was not passed specifically to secure this object, but was intended to enable the Government to deal with the position which arose from the circumstances of the war. That Ordinance as amended by Ordinance No. 5 of 1903 conferred on all persons in the country at the time of the declaration of peace (31st May 1902) the right to remain there. All Asiatics, therefore, who were actually in the country at that time have a statutory right to remain. As a matter of equity this privilege was extended to refugees who had left the country in consequence of the outbreak of war. Your Lordship will note that in my speech at Potchefstroom I expressed my belief that the Ordinance was effectively used to prevent the further influx of Asiatics for the time being. From the reports then before me I could arrive at no other conclusion, but the information which I have since received has led me to revise that opinion, and I am no longer able to assert with

confidence, either that Asiatics are not entering in considerable numbers, or that the law provides a machinery which enables them to be excluded or to be detected, when they enter unlawfully. The Government of the Transvaal is pledged, however, to the European inhabitants to restrict the Asiatic population entitled to reside in this Colony within the limits specified above, so far as it is possible for them to do so.

8. On the other hand, I hold that the Government is bound in honour to spare no effort to mitigate the undoubted hardships involved by the position which I have described, on the Asiatics whose right to reside in this country they have recognised. When I say that they are bound to maintain the existing position, so far as is possible, unchanged, I mean that, in my opinion they should do so in the spirit rather than in the letter. Where it appears that laws passed by the late Republic, or laws passed by this Government operate harshly on the Asiatic in ways which were not foreseen, and which were not intended, or where they necessitate administrative methods which are harassing to Asiatics, who have entered the country legitimately, then, in my opinion, it is the duty of the present Government to modify these laws. It is, however, their duty no less to secure that the other side of the bargain shall be kept in the spirit as well as in the letter, and unless the Government are able to assure the Legislature that effective steps are being taken to check a general influx of Asiatics, they will be placed in a false position as regards the European inhabitants.

9. Your Lordship's telegram No. 2, of the 11th May, referring to the case of the heirs of Aboo Baker Amod, offers one of the instances in which I consider this Government should intervene in order to preserve the intention of the law, which its actual terms have failed to express. Article 2 of Law 3 of 1885 provides that Asiatics shall not be capable of being owners of fixed property in the Republic, subject to the provision that this restriction shall not be retrospective. The obvious intention of this law, as I read it, was that Asiatics, who held property previous to the date of its enactment, should retain undiminished the rights they had acquired, and, from an equitable point of view, a necessary part of these rights was the power to transmit that property to their heirs. Of this right, however, they have been deprived by the technical wording of the law, and I am in accord with Your Lordship in thinking that it is the duty of the Government to ask the Legislature to redress this hardship, and I have very little doubt that they would consent to do so. I am unable, however, to recommend that any attempt should be made pending the constitutional changes now impending, to repeal the provisions of Law No. 3 of 1885, which relate to the holding of property by Asiatics, because these provisions are regarded as an element in the fundamental position which should remain unaltered until it can be dealt with by an elective legislature. The feeling, in fact, on this subject is so strong that the Government could only carry an amending Ordinance by a vigorous use of the official majority, a step which, at this stage, I am confident would not commend itself to Your Lordship's judgment. At the same time, the opportunity might well be taken to rectify a number of other hardships involved by the present form of the law, the removal of which would not in any way prejudice the ultimate settlement of the question as between a Responsible Government and the Imperial Government.

10. Among the various steps which I have taken to modify the administration on lines compatible with the establishment of responsible institutions, has been the transfer of the control of Asiatic permits from my own office to the office of the Colonial Secretary. These duties have now been placed under the immediate charge of the official previously known as the Protector of Asiatics, whose title has now been changed to Registrar of Asiatics, in order that he may carry out the duties imposed on the Government by Law 3 of 1885. At the same time, the various enactments affecting the position of Asiatics in this country have been made the subject of careful examination by the Law Officers of the Crown, with the result that they are found, in their present form, to impose many hardships on Asiatics entitled to enter or reside in the country, which have no justification in themselves, and which would not, I believe, if understood, receive the approval of public opinion in this country.

11. Your Lordship will note that sub-section 3 of Article 2 of Law 3 of 1885, as modified by the Proclamation of 24th January 1887, imposes a poll tax of 3*l.* on the registration of every Asiatic entitled to reside in the country. In theory, MC166EHL.

of course, there should be very few Asiatics in the country from whom this tax has still to be collected, but, even so, I should recommend its abolition on principle. The tax is not sufficient to deter any Asiatic from entering the country who wishes, and is able to do so on other grounds. On the other hand, most of them are British subjects, and I cannot conceive any possible justification for imposing on one special class of British subjects permitted to reside in this country a separate poll tax, seeing that the Asiatics follow much the same occupations as Europeans, and therefore, unlike the native, contribute in the same way as Europeans, to the ordinary taxation.

12. The matter, however, is not one of principle only. The Asiatic women and children have not, so far, been placed on the registers. I am strongly of opinion that registration must be maintained for the time being, and it is complete registration alone which will enable the Government in future to assure the European inhabitants that numbers of Asiatics are not entering and taking up their residence in the country. As a matter of fact, apart from the tax, the Asiatics are not averse to registration, and Asiatics born in the country, who are not obliged to be registered under the law, often claim registration as a right. The explanation of this, of course, is that registration gives the Asiatic a documentary title to reside in the country, of which it would be difficult for any future Government to deprive him. The Law Officers of the Crown, however, have now pointed out that the Registrar of Asiatics is obliged by law to require the registration of these classes whose names have been omitted from the register, and further that, in doing so, he must collect the registration tax. The carrying out of the law by the Registrar of Asiatics is being delayed pending Your Lordship's reply, but I would strongly recommend that the Legislative Council should be asked in the course of the next session to abolish this tax, and I have little doubt that they will consent to do so if the Government are able to assure them that everything possible is being done to check for the present the introduction of further Asiatic immigration.

13. The practice of allowing Asiatics, not entitled to reside in the country, to visit it for a limited period for business purposes, and other special reasons, has long been admitted, and, in my opinion, it is a very proper practice, and one of which European opinion in the Transvaal approves. These facilities have gone a very long way towards mitigating the hardships imposed upon Asiatics by the present system of exclusion. It was found, however, that numbers of Asiatics who received temporary permits to visit the country, failed to leave it when those permits expired. The Law Officers of the Crown have now pointed out that the Peace Preservation Ordinance does not contemplate temporary permits, and that if permission is given to an Asiatic to enter the country for a time only, the law contains no machinery which makes it possible to enforce their departure at the expiration of the time specified. In effect, therefore, a temporary permit confers on the holder the same right to reside permanently in the country as an ordinary permit. As Asiatics have availed themselves of this technical defect, the Government have been obliged to stop the issue of temporary permits, except in cases of most exceptional urgency. This restriction imposes a very serious hardship on Asiatics who wish to enter the country for genuine reasons and honestly intend to quit within the time specified. As the matter now stands, the continued issue of temporary permits under the existing state of the law is inconsistent with the pledges which have been given to the European population. In the interests of all parties, therefore, I am strongly in favour of amending the law at once in such a way as will enable the Government to grant relief to Asiatics in this much appreciated manner.

14. It appears, however, that a hardship of an even more serious nature has been inflicted unwittingly by the provisions of the Labour Importation Ordinance. The Law Officers of the Crown have pointed out that any Asiatic who seeks to enter under a contract of service cannot be introduced into the Transvaal otherwise than subject to the provisions and limitations of that Ordinance. In some cases Asiatics have applied on the ordinary grounds for permits to enter the Transvaal and the justice of their claim has been proved; at the same time they have admitted that the immediate reason for their desire to return to the Transvaal has been a contract of service with some person in the Colony. Such contracts are, of course, ordinary contracts, not contracts of indenture. Under these circumstances, it is impossible for the Registrar of Asiatics to issue a permit without exposing himself and other

parties concerned to the heavy penalties imposed by section 6 of the Ordinance. Thus, by an unforeseen accident of legislation, Asiatics, whose right to reside in the Colony is admitted, have been deprived of that right, and an injustice has unintentionally been done which ought to be rectified as soon as possible.

15. I must now turn to the actual administration of the permit system. In view of the pledges given by me at Potchefstroom, I have directed that while every possible courtesy and consideration is to be used towards Asiatics residing in the country, the Peace Preservation Ordinance should be administered on the lines set forth in my speech. A more exact application of the law has now shown that the methods necessitated by its terms are at once harassing to the Asiatics and ineffective in securing the purpose for which they are designed. The Government has undertaken, for the time being, to limit the classes of Asiatics who reside permanently in the country to refugees who left on account of the war, and those who acquired a statutory right under the Peace Preservation Ordinance. In order to enjoy these rights, any Asiatic who is entitled to them must, of course, substantiate his claim to do so, and it is obvious that a very large number who desire to enter the Transvaal will demand privileges to which, in fact, they are not entitled. Under the present system an Asiatic who wishes to enter the Transvaal applies by post to the Registrar of Asiatics to do so. If there appears to be *prima facie* evidence that the grounds for his claim are genuine, he is accorded provisional permission to enter the Transvaal, and to present himself for examination at the office of the Registrar of Asiatics. In view of the recent opinion expressed by the Law Officers of the Crown, it is more than doubtful whether, having once entered, it would not be possible for him to remain in the country under cover of the technicalities of the law, to which allusion has been made above. On arrival at the office of the Registrar, he is tested by an examination on topographical details as to the place in which he professes to have resided before or during the war. In very many cases this examination proves conclusively that the man has never been in the Transvaal before, and has no right, under the existing system, to a permit. He is there, however, located in the Transvaal, and the onus of expelling him from the country then devolves upon the Government. At the same time, the Asiatic has been put to the expense of a journey from the coast to Pretoria and back. Frequently, however, he is not actually compelled to disburse the cost of his return to the coast, because he disappears before the necessary summons can be served upon him. He has, however, little difficulty in escaping detection and re-appears a year later disguised under another name and fully posted in all topographical details, and applies once more as an old resident of the country who has lost his registration certificate. In most cases it is impossible to obtain such information or evidence as will afford any possibility of success in seeking from the Courts an order for his eviction from the Colony. Another objectionable feature of this system lies in the fact that it has called into existence a whole class of "Permit Agents" in the Transvaal, who, in many cases, are nothing more or less than experts in the art of evading the permit restrictions and in obtaining the affidavits necessary to support applications. In one case an Asiatic was arrested with a manual in his possession designed to enable him to emerge successfully from an examination in topographical details. I contend that this system is very harassing for Asiatics who have a genuine right to enter the Transvaal and whose comfort we are concerned to protect in every possible way. To meet the convenience of this class I propose, in future, to station officers at the coast to whom Asiatics can apply direct, without previous reference to Pretoria. These officers, by examination, will be able to ascertain whether the applicant has previously resided in the Transvaal or not. Under the present system of correspondence great delay is necessarily entailed. When, however, the applications are dealt with by officers at the coast, such applications can be disposed of at once, and, if an application is not granted, the Transvaal Government will not be placed under the odious necessity of putting the law in force nor will the unsuccessful applicant have the opportunities, which he at present enjoys, of evading the law.

16. These measures, however, will not prevent the illicit influx of Asiatics, who are fast discovering that if they can enter the country and remain there for some time unobserved, the Government is in many cases powerless to secure their expulsion. For this reason I fear such influx is likely to increase in the future, unless effective steps are taken to check it. When experience has shown how great is the difficulty of preventing the egress of Chinese from the Witwatersrand merely

by the watchfulness of the police, it need scarcely be argued that any attempt to prevent the ingress of Asiatics across the Transvaal frontiers, which measure some 2,000 miles, is certain to fail. The only feasible means of securing immunity for the country, for the time being, from a steady and rapid increase of the Asiatic population permanently residing here, is to insist, as the Government of the Transvaal is at present professing to insist (except in the case of Asiatics born in the Transvaal) is that every Asiatic who remains in the Colony should be furnished with documents substantiating his claim to reside there. This is far from being the case at present. It is most unfortunate that nearly all the Registers of Asiatics kept in accordance with Law 3 of 1885 were destroyed in the course of the war. The registration certificates issued to the Asiatics under this law were nothing more than receipts for the 3*l*. registration fee. They contain on their face no such information as now makes it possible to connect them with the original Asiatic to whom they were issued. In many cases the Indian names are entered carelessly, and without knowledge, and sometimes amount to no more than the name of a caste which is equally applicable to several hundred other Indians in the country. In very many cases these permits, owing to their unsubstantial nature, have been lost or destroyed. An attempt has been made by the British administration to substitute for these registration certificates held by Asiatics living in the country, permits, issued under the Peace Preservation Ordinance, which bear the thumb mark of the holder and such other particulars as make it possible to ascertain whether the holder at any particular time is in fact the person in respect of whom the permit was issued; but the Government had no power to require the substitution of these new permits for the old registration certificates. The result is that Asiatics enter the country illicitly with old registration certificates which were issued in respect of Indians who are dead or who have left the country. The Asiatic assumes the name on the certificate and then applies on the strength of it for a permit under the Peace Preservation Ordinance. In most cases, however, the old registration certificates are no longer obtainable even at a high price, but there is nothing to prevent an Asiatic who holds no papers at all from pleading that he was in the country before the war and has been there ever since, and if he has been sufficiently long to acquaint himself with the local topography, he can answer satisfactorily all questions put to him and, in many cases, it is impossible to obtain such evidence as will enable proceedings in a Court to be instituted with any chance of success.

17. The present condition of affairs has many evil results. In the first place it is the occasion of an amount of fraud and perjury which is almost inconceivable to any one not accustomed to dealing with the lower classes of Asiatics. In the second place, where, as not infrequently happens, an Asiatic, who is entitled to reside in the country has lost his papers, he has to be subjected to a searching and harassing enquiry. Even so, his papers cannot be renewed, because such renewal would encourage the sale of these documents, which, in some cases, are known to have realised upwards of 30*l*. In the third place, the Government of the Transvaal is no longer in a position to profess that it is carrying out the policy to which it has again and again been pledged, of preventing the promiscuous immigration of Asiatics pending the establishment of responsible institutions. Lastly, and this is perhaps the gravest objection of all, the present unmethodical system is such as to offer Asiatics every inducement to corrupt the police and the officers of the Government responsible for administering the permits. Everyone who is accustomed to deal with Oriental races is aware that to obtain their object by means of bribery is not contrary to their code of morals, and any attempt to carry out the systematic verification of permits under the present system would, in my opinion, place temptations in the way of police officers and other officials on low salaries to which they should never be exposed.

18. With a view to the amendment of these defects in the present system, I propose to remodel it on lines which will leave the smallest possible opening for corruption in the future and which will reduce to insignificance any inconvenience which may be occasioned to Asiatics who are lawfully resident in the country. I have already stated that in my opinion large numbers of Asiatics have illicitly entered this country. Nevertheless, I do not consider that it is possible or desirable to attempt any wholesale measure of ejection. To succeed in such an attempt would require a large staff of detectives and a heavy expenditure of money and the proceedings would have the appearance of a racial persecution. These are the reasons which have led me to the opinion that if once large numbers of

Asiatics are allowed to enter the country, even though that entry may be illicit, I do not believe that it is possible for any British Government to expel them in the future. Except in the most flagrant cases, therefore, I should be in favour of accepting the situation as we now find it and of granting to Asiatics resident in the country a general renewal of permits, printed on parchment or substantial paper, such as will constitute their title deed to reside in this country, and drawn up in such a manner as will make it possible for the officials of the Government to ascertain from the face of the permit itself whether the Asiatic who purports to be the holder is in fact the person to whom the document was issued, without it being necessary to subject him to the present inquisitorial enquiries. With this object in view, I would propose to pass legislation enabling Asiatics, within a specified date, to place their names on a new register and to receive the new certificate of registration. It is already a practice in India, owing to the difficulty which exists when dealing with Asiatics of preventing personation, to attach the finger print as well as the signature to legal documents. Following this precedent the register, as well as the certificate, would record the name as well as the finger print of the holder. The new certificate should constitute for the holder final and indefeasible title of his right to reside in this country, and the means of identification afforded by the finger prints would enable the police without further enquiry, to connect the certificate with its lawful holder. The certificate should be checked once a year, but not more, and the Registrar of Asiatics would be able to ascertain, by a comparison of his registers with the inspection reports, whether the checking had been carried out, and would thus reduce to a minimum the possibilities of corruption.

10. It should also be provided in the law that, after the lapse of the time during which it would be open for Asiatics to apply for new certificates, it would still be open for Asiatics who did not hold them to apply, but that the onus of proving his right to reside in the Transvaal would rest with the Asiatic and that it would not be incumbent on the Government to disprove his right before refusing to grant him one of the new certificates. The situation would then be that the holders of certificates would in future be free to come and go on the strength of their papers, the necessity of any supplementary enquiry as to their right to these papers would no longer exist and an end would be put to all the delays and inconveniences which such enquiries impose on the Asiatics. Even if the holder lost his certificate, by giving his name and finger prints, a new certificate could at once be issued to him, on comparison of these data in the records of the Registrar. On the other hand if an Asiatic, after the time specified, were to be found without a new certificate, the burden of proving his right to such documents would rest with him, and not with the Government, and the present system of detective enquiries would be rendered unnecessary. One good result which I expect to follow from the institution of the new system is the elimination of the business of the permit Agent. It must be realised that there is no serious agitation on the part of Asiatics already domiciled in the country for the introduction of further Asiatics who have not as yet acquired the same rights as themselves. As a matter of fact protests are sometimes received from Asiatics in the country against the granting of permits to other Asiatics, who are seeking entrance and it is indeed obvious that the interests of the Asiatics resident in the country harmonise to some extent with the interests of the white traders so far as the further introduction of Asiatics is concerned. The agitation on this subject in the Transvaal is to a great extent fostered by the Permit Agents, who have so far thriven on the business of obtaining permits for Asiatics outside the country. There can be no doubt that, in some cases, very large sums of money have been made in this way. In spite of all that I have said I retain the deepest sympathy for Asiatics who are British subjects and who claim, on that ground, to enter the Transvaal as British territory, but I do not hesitate to say that while individual traders in the country are anxious for such facilities as will enable them to import relatives or shop assistants of their own nationality, the demand for free admission of Asiatics is one which they have no motive to press seriously.

20. For your Lordship's information, I attach to this report two draft Ordinances, (Annexures B and C) which would be necessary to carry out the recommendations I have made, and which with your approval, I propose to ask the Government of the Transvaal to submit to the Legislative Council in the session about to take place. I cannot advise the introduction of a measure which attempts to do no more than remedy certain grievances of the Asiatics because discussion would be provoked and the statements often made and commonly believed in this country that Asiatics are evading the permit regulations would be advanced and the

Government would now be obliged to admit that they were justified. But in any case they are likely to be questioned on the subject when the Legislative Council meets and they will be placed in a false and difficult position, if they are obliged to admit that not only are Asiatics entering the country by illicit means, but that under the existing law, it is impossible to prevent them from doing so, unless they are in a position to submit proposals which will enable them to arrest the increase of the Asiatic population which is taking place. I am advised that, it would be possible to obtain the consent of the Legislature to the Ordinances now submitted to your Lordship, which will remove many of the most substantial grievances of the Asiatics and will prevent the permit system from imposing hardships upon Asiatics genuinely entitled to live in the country by making it possible to distinguish them without enquiry from those who have entered it in contravention of the law. Unless something of the kind is done the European population will feel that the pledges given to them have not been maintained with an even hand, and they will not listen to any proposals for removing the hardships which the Ordinance now puts forward is designed to relieve. The question will then be dealt with at the forthcoming elections in a spirit of aggravation which will tend to prejudice its chance of final settlement on reasonable lines, when a Responsible Government is established here and is in a position to address the Imperial Government on the subject.

21. I anticipate that the Legislative Council will be sitting when this Despatch reaches London, and that the session is likely to be a short one. I have the honour to request, therefore, that your Lordship's conclusions may be communicated by telegraph, so that, if the views expressed in this Despatch are adopted, the draft Ordinances may be submitted as soon as possible to the Legislative Council.

Dated Johannesburg, the 21st August 1905.

From—His EXCELLENCY LORD SELBORNE, Governor of Transvaal,

To—His Majesty's Secretary of State for the Colonies.

I have now received four deputations on various aspects of the native question in this Colony, one from the Rand Pioneers, who represent the extreme anti-native section, another from the Free Church Council, which generally may be said to be sympathetically disposed towards the natives, a third was from the local Colony of Cape boys and a fourth from civilised natives.

The line I have taken throughout is to avoid any expression of opinion so soon after my arrival in the colony. The reason for this, I am sure, will be plain to you; I do not wish to discount any influence I may hereafter possess by appearing to have arrived with preconceived notions. My sympathies, however, as you may well imagine, are and will constantly be in favour of the famous dictum of Mr. Rhodes, adopted afterwards by Lord Milner, "Equal rights for all civilised men." On the other hand, I am well aware what a gulf separates the vast mass of natives from the most moderate conception of civilisation and therefore how very far they still are from any fitness for the enjoyment of equal rights with white men. I shall take care to avoid being thought to be a Negrophilist, as that reputation would surely weaken my influence; I can do much more in the direction that His Majesty's Government will favour if I avoid posing in any such attitude.

There is, no doubt, a very strong anti-native prejudice in this colony. The fundamental basis of this feeling is fear of what the future may bring forth, but there is little clear thinking on the subject, and later, before definitely taking any line publicly myself, I shall endeavour to lead people to clear and logical thinking on the subject, to make them ask themselves, in fact, what is the alternative to the rejection of the principle of equal rights to all civilised men. That there is a section of public opinion here that takes a wider view I have no doubt, but, with the exception of the clergy of the various denominations, who show great moral courage on the subject, there is much timidity in the expression of views, and, as a result, this section of opinion is unorganised.

Among the few educated natives in this colony and among the local colony of Cape boys, there is, on the other hand, a feeling of disappointment. They believed that, directly the Government of this country passed from Boer to British hands, their treatment would be very different to what it had been, and such

men resent that stipulation in the terms of surrender at Vereeniging, which practically deprived them in advance of any chance of obtaining the franchise. The number of educated natives and Cape boys in this colony is comparatively small, but the South African native population generally is in a state of development, and questions affecting its status are discussed more widely than has been the case in the past. There has also been steady breaking-down of the barriers between tribes and more intercommunication between them than was formerly the case. My judgment therefore leads me to credit information I have received that the attitude of the Government in the two new colonies towards the natives and coloured persons is generally discussed among natives and coloured people from the Cape to the Zambesi, and in some cases the feeling of attachment to the British flag has undergone a certain strain.

The civilised coloured persons or natives in these colonies, are, however, too prone to forget that they are but an infinitesimal portion of the community, and that from that very fact their special treatment presents a special difficulty and that generally the whole question is the reverse of simple, and really most complicated. This leads them to dwell too much on the franchise, for which the vast mass of natives are wholly unfitted, and which might safely be left to the distant future if a consistent, firm, and just policy for the slow training of the black man towards civilisation under the guidance of the white man could be accepted and acted on by the whole white community.

Hitherto I have been writing only about the natives indigenous to South Africa. The question in respect of Asiatics has not been so prominent, and I am inclined to think that if the people of the Orange River Colony and the Transvaal are quite assured that there will be no further immigration of Asiatics, it will be possible gradually to settle the status of those who are now residing in the country on fairly satisfactory lines. To these men it will be my utmost effort to do full justice, but I must express my strong conviction that there should be no further Asiatic immigration into this country. I am sorry to have to write this in respect of my Indian fellow subjects, but after all *Salus rei publicae suprema lex*, and what is wanted more than anything else in these two colonies are British subjects, who, if need be, can fight, which is the same thing as saying white British subjects. For in these colonies a white man must always be a fighter, whereas this is the one thing the Asiatic can never be, both owing to the peculiar circumstances of the country and to the fact that the Asiatics who come here are not of any martial race. It is the fact that the Asiatic does displace the white fighting man. Owing to the prejudice about the fields of white and black labour which exists in this continent, there are only a restricted number of professions open to the white British subject who immigrates here, and one of the most important of these openings is that of the trader. It is precisely in his capacity of a trader that the white British subject is hopelessly beaten out of the field by the Asiatic, and it is because we cannot afford to have the white British trader ousted that I think that any further Asiatic immigration into this country ought to be discouraged. As I have already said, I am sorry thus to discourage the immigration of my Indian fellow subjects, but, in the long run, it would do them no good if this country fell again under Boer domination, owing largely to the absence of Englishmen, Scotchmen, and Irishmen, ousted by their pressure into other lands.

I am not now asking you to take or approve of any definite step with regard either to Native or to Asiatic policy. No such step could indeed be taken before the new Legislative Assembly comes into existence, but I shall be glad to know that I have your approval of my general attitude on these important questions. I shall thus be fortified in endeavouring to carry out what I believe to be the right policy in both respects when the time comes. As regards the natives and coloured persons, I shall, if I have your approval use my influence with the new Assembly against all measures prompted by colour prejudice or fear, and in favour of the eventual ideal of equal rights for all civilised men. As regards the Asiatics, I shall endeavour to induce the Assembly to accept a compromise by which His Majesty's Government shall assent to a measure having the practical effect of preventing all future Asiatic immigration in return for a satisfactory assurance of the proper treatment of all Asiatics already in the country.

No. J. & P. 3184, dated India Office, London, the 27th October 1905.

From—SIR HORACE WALPOLE, Under-Secretary of State for India,

To—The Under-Secretary of State for the Colonies.

I am directed by Mr. Secretary Brodrick to acknowledge the receipt of Mr. Graham's letter No. 32—457-1905, dated the 13th October enquiring whether there is any objection in this Department to approval being conveyed to the proposals in regard to the future policy to be pursued in the treatment of Asiatics in the Transvaal, set forth in Lord Selborne's letter of the 21st August last, of which a copy was enclosed. In reply, I am to observe as follows:—

In Mr. Lyttelton's Despatch to the address of Lord Milner, of the 20th July 1904, it was stated that "His Majesty's Government, deeply as they regretted the necessity of hindering the free movement of British Indian subjects within the Empire, felt that they were unable to withhold their sanction to the introduction into the Legislative Council of the Transvaal of a measure restricting immigration on the lines of" the Acts in force in Cape Colony, Natal, Australia, and New Zealand. Such a measure would have permitted the entry into the Transvaal of Asiatics able to pass a test in a European, though not in an Asiatic, language, while excluding persons not so qualified.

In his present letter, however, Lord Selborne uses language which seems to imply that he contemplates the total exclusion of Asiatic immigrants in future, whether able to pass the test in a European language or not. Mr. Brodrick desires me to enquire whether Mr. Lyttelton understands this to be his meaning, and if so, to point out that such a measure would considerably extend the restrictions imposed on the immigration of Asiatics in the other colonies referred to.

No. 38—309, dated Colonial Office, Downing Street, the 5th January 1906.

From—FRED. GRAHAM, Esq., Under-Secretary of State for the Colonies,

To—The Under-Secretary of State for India.

I am directed by the Earl of Elgin to acknowledge the receipt of your letter No. J. & P. 3184 of the 27th of October regarding the treatment of Indians in the Transvaal.

2. In reply, I am to state that it appears to Lord Elgin that, in order to secure the fair treatment of the Indians now in the colony, Lord Selborne suggests that His Majesty's Government should be prepared to approve legislation having the practical effect of excluding Asiatics from entering the Transvaal in the future. Lord Elgin regards this as the only possible course to adopt in the circumstances.

3. As to the form of such legislation, Lord Selborne apparently does not wish to be committed, but as His Majesty's Government could not approve of the exclusion of Asiatics *eo nomine*, the legislation would be necessarily more or less on the lines of the existing Acts on the subject in Cape Colony, Natal, and Australasia.

No. J. & P. 45, dated India Office, London, the 31st January 1906.

From—SIR HORACE WALPOLE, Under-Secretary of State for India,

To—The Under-Secretary of State for the Colonies.

I am directed to acknowledge the receipt of Mr. Graham's letter No. 38—309, dated the 5th instant, on the subject of the treatment of Indians in the Transvaal. In reply I am to state for the information of the Secretary of State for the Colonies that the Secretary of State for India in Council, while regretting the necessity for a step which entails the practical exclusion of natives of India from a British colony, agrees with Lord Elgin that the compromise proposed by Lord Selborne is likely to afford the only practicable solution of this difficult question. I am accordingly to express Mr. Secretary Morley's concurrence in the policy suggested in the High Commissioner's Confidential Despatch of the 21st August last.

Governor the Earl of Selborne to the Earl of Elgin.

Transvaal. No. 947.

Governor's Office, Johannesburg,

24th September 1906.

MY LORD,

I have the honour to refer to my despatch, Transvaal, No. 529, of 21st May 1906, on the subject of an amendment of the law relating to the registration of Asiatics, and to subsequent telegraphic correspondence in which you approved of the introduction of such an Ordinance into the Legislative Council.

2. The Ordinance referred to therein has now passed through the Council, and will be transmitted to you in the ordinary course. As it imposes certain disabilities on persons of non-European races, it contains a clause in accordance with the Letters Patent suspending its operation until His Majesty's pleasure not to disallow it has been signified.

3. I think it necessary to address you specially on this Ordinance, as its publication has excited strong feelings of opposition among the Asiatic population here, feelings which, in my opinion, are not justified by the provisions of the measure itself.

4. The principle which I have followed, with your concurrence, in dealing with this most difficult matter is that the question of future Asiatic immigration into this Colony is one which must be settled by a responsible Government in consultation with His Majesty's Government. This Government has accordingly endeavoured, as far as possible, to restrict the immigration of Asiatics to those who had been resident here before the outbreak of the late war, and it will pursue that policy so long as it remains in power. The new Ordinance does not deal with the conditions affecting immigration except that section 17 provides that the Government may issue temporary permits enabling Asiatics to enter the Colony and reside for a certain specified time. This provision became necessary, as I explained in my previous despatch, owing to the fact that no provisions exist in the Peace Preservation Ordinance enabling permits to be issued for a certain limited time only. Otherwise the conditions governing the immigration of Asiatics remain as they are.

5. The object of the new Ordinance is to require all Asiatics now in the Colony to apply for registration, and to provide for the issue to those who are lawfully resident here of a certificate of registration, which will be clear evidence of their right to be and remain here. Section 3 prescribes that the following classes of Asiatics shall be deemed to be lawfully resident in the Colony:—

- (1) Those who have been duly authorised to enter and reside under a permit issued under the Indemnity and Peace Preservation Ordinance, 1902, or issued between the date of the annexation of the Colony and the date of taking effect of that Ordinance unless such permit was fraudulently obtained, and was not, expressed to be a temporary permit only.
- (2) Those who were resident and actually in this Colony or the Orange River Colony on the 31st day of May 1902, and therefore under the provisions of the Peace Preservation Ordinance do not require a permit to enter the Colony.
- (3) Those born in the Colony since the 31st day of May 1902, not being the children of labourers introduced under the Labour Importation Ordinance.

6. Section 5 provides that a certificate of registration must be issued on application to all Asiatics lawfully resident in the Colony as above defined. Discretion is reserved to the Registration Officer to issue certificates to others who may be approved by him. This provision is inserted so that the Government may be able to deal with cases which may arise in carrying the Ordinance into effect where serious hardship and injustice might be caused by the strict application of the principle that no certificates should be issued except to those who are lawfully resident as above defined. In the event of registration being refused the applicant, if he is of the age of sixteen years or over, is to be notified and directed to appear before the Resident Magistrate of the district to show cause why he should not be

ordered to leave the Colony, and if he fails to satisfy the Magistrate that he is lawfully resident in the Colony, the Magistrate is required to order him to leave the Colony and thereupon the provisions of the Peace Preservation Ordinance dealing with persons who have entered the Colony without being authorised as therein provided, are made applicable.

7. Sections 6, 7, and 8 (2) deal with the registration of children under the age of sixteen. For some time after the passing of the Peace Preservation Ordinance a rule was observed not to require permits in the case of youths under sixteen entering the Transvaal with their parents and guardians. This led to the importation on a large scale of boys and youths by Asiatics who desired to use them as shop assistants, etc., and who assumed the relationship of guardian so as to comply with the requirements of the Permit Office. Since the 4th July 1905 this practice has been discontinued, and the application of the ordinary permit regulations to all such immigrants has disclosed the fact that this class of immigration has been going on to an almost alarming extent, and that the relationship of parent or guardian is habitually alleged where there is no foundation for it in fact.

8. The provisions of the Ordinance in regard to registration apply to boys of eight years of age and upwards. Parents or guardians are bound to make application in respect of such boys of whom they are the parents or guardians, but in the event of registration being refused the provisions of section 5 do not operate against the boys till they attain the age of sixteen. On attaining such age if they have been refused registration on the application of their guardians or if no application has been made on their behalf, they are required to apply on their own behalf, and thereupon the ordinary procedure of the Ordinance applies to them. I should add that it is the intention of this Government if they are in office when the Ordinance comes to be applied to give every consideration to applications on behalf of children who have been introduced into the Colony on informal authorisations, though they may not actually hold permits issued under the law. Provision is also made for obtaining particulars as to children under the age of eight from persons claiming to be their fathers or guardians [sections 6 (1) and 7]. Section 8 (2) also provides penalties against any person introducing into the Colony a child under the age of sixteen who is not lawfully resident here, *i.e.*, who does not possess or obtain the qualifications required in section 3, and against any person who employs any child so introduced.

9. The remaining sections of the Ordinance up to section 20 do not call for special reference. Section 20 deals with a difficulty which has arisen in the case of Asiatics who were resident here before the war, but who have left the Colony, and wish to return under a contract of service. The terms of the Labour Importation Ordinance are so wide as to cover all contracts of service of any kind, and under the provisions of that Ordinance such Asiatics can only come into the Colony as indentured labourers under the Labour Importation Ordinance. Section 20 provides for exemption from the terms of that Ordinance in the case of Asiatics who before the date of its taking effect were lawfully resident here or were allowed to enter it under a permit.

10. Section 21 deals with the case of an Asiatic who, before the date of Law 3 of 1885, obtained fixed property, which shortly after the passing of the said law was registered in his name. The Courts have held that his heirs cannot take title to the land in view of the provisions of Law 3 of 1885, and it has been thought reasonable to provide that this restriction should be removed. There is only one case affected as far as I am aware. It was at first intended in the same section to provide that fixed property on which a place of worship is erected or intended to be erected might be acquired by and registered in the name of any religious community of Asiatics. This provision, however, was subsequently omitted in view of the fact that by a recent judgment of the Supreme Court it has been decided that an association of coloured persons incorporated under Ordinance No. 56 of 1903 was not subject to the disability in regard to the holding of land to which coloured persons individually are subject. Relying on that decision the Indian Association represented that they did not desire special legislation in this matter.

11. In one other important respect the provisions of the Ordinance have been modified as compared with the proposals submitted in my despatch, Transvaal, No. 52 of 21st May, and telegram No. 2 of 18th July, *viz.*, by the exclusion of women from its scope. In the draft Ordinance as published women were included

in the provisions with regard to registration. The Asiatic community, however, in a deputation which met the Colonial Secretary, protested very strongly against the violation of their customs and the precepts of their religions, which, as they alleged, would result from these provisions being put in force, and the Government, after considering their representations, introduced an amendment, while the Ordinance was passing through Committee, altering the definition of Asiatic in section 2 so as to exclude women. An exemption was also inserted at the same time in favour of Malays born and resident in any British Colony of South Africa. There has been a community of Malays established in the Cape Colony for many generations who have long been regarded as part of the South African population, and have indeed mixed to a large extent with the coloured population of the Cape Colony. Law 3 of 1885, though in terms applicable to such people, has never been put in force as regards them, either by the late Administration or the present one. There is practically no immigration from the Malay States to South Africa now, and it was thought reasonable to give statutory authority to the established practice in regard to the South African Malays.

12. The British Indian Association have protested strongly against the Ordinance, and their objections are recorded in certain resolutions passed at a mass meeting held in Johannesburg on the 11th instant, copies of which I enclose herewith.

13. Their objections are based on the grounds—

- (1) that it is unnecessary;
- (2) that it is harassing and degrading to the Indians, who are lawfully here and to whom protection has been promised.

14. In support of the first proposition, they contend that it is not the case that any considerable number of Asiatics who were not resident here before the war has come into the Colony in evasion of the law, and they demand an enquiry into the matter. On this point I would observe that the officers who have been dealing with the issue of permits to the Asiatics are confident after long observation that there has been immigration on a considerable scale of Asiatics who were not resident here before the war. It is common knowledge that there has been considerable traffic in certificates of registration issued by the late Government, and also in permits issued by this Administration. A prominent member of the Indian community who recently interviewed the Colonial Secretary as a member of a deputation protesting against the Ordinance, admitted that there were many Indians now here who were not here before the war, though his statement was disputed by others present. The same opinion is held almost universally among the European population, whose experience goes back to before the war. The suggestion of an enquiry is, in my opinion quite impracticable, as no such enquiry could be of any use unless statutory powers were conferred to the Government to require the attendance before a responsible official of all Asiatics now resident here, and the production by them of evidence as to their residence here before the war. This, however, is practically the procedure laid down in the Ordinance as antecedent to registration, and is one of the requirements of the Ordinance to which most exception is taken.

15. I am strongly of opinion that unless all attempts on the part of the present Government to control Asiatic immigration are to be abandoned, the provisions of this Ordinance for a new registration are necessary. The language of Law 3 of 1885, which governs registration at present, is of the vaguest kind, and it is very doubtful whether it applies to any Asiatic who comes here otherwise than for purposes of engaging in trade on his own account, and also whether it applies to any Asiatic born in the Colony, whatever may be his occupation. Moreover, it confers no powers on the Government of requiring means of identifying an Asiatic purporting to have been registered under it with a certificate of registration issued to him.

16. The Peace Preservation Ordinance, under which immigration is now limited, is inadequate for the same reason, *i.e.*, that it does not provide for the making of regulations to ensure a ready means of identification. Moreover, under that Ordinance, there are certain classes of persons who cannot be required to show a permit as evidence of authorisation to enter the Colony, *e.g.*, persons who were resident and actually in this Colony or the Orange River Colony on the 31st May 1902.

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17. The new Ordinance is intended to remedy these defects; and provide what is clearly essential to any proper control, viz., that a clear distinction should be established between those Asiatics who are regarded as lawfully resident here, and those who have entered in defiance of the established restrictions, and that the former class should be provided with a clear certificate of their title to remain in the Colony, which can be readily identified as belonging to the person claiming it as his.

18. In regard to the second point above mentioned, I will not repeat the arguments urged in my despatch No. 529, of 21st May, in favour of restricting Asiatic immigrants into this Colony. You are aware that the feeling of the European population is very strong on this matter, and that it is founded on a reasonable apprehension of an immigration of Asiatics in such numbers as seriously to prejudice the development of the European population. I assume that you are not prepared to admit the objections taken by the British Indian Association in so far as they are based on the principle that they should not be subject to any restriction which is not imposed on other subjects of His Majesty.

19. It remains, therefore, to consider whether the provisions of the Ordinance impose any conditions which in themselves are harassing or degrading. On this point I cannot but think that the resolutions passed at the meeting to which I have referred represent an altogether exaggerated view of the effect of the Ordinance. The statement that the requirements of the Ordinance are such as to reduce the status of the Asiatic below that of the aboriginal native is a gross misrepresentation.

20. The only requirement of the Ordinance, as far as I am aware, to which they are able to point when asked to substantiate their complaints, is that which gives power to the Government to require the Asiatic to do acts which may be necessary for identifying the person to whom a certificate is issued with the certificate itself, or for identifying the person professing to hold a certificate with the person to whom such certificate was actually issued. It is proposed to do this by means of the finger print system, which, as far as I know, is the only means by which such identification can be assumed. The great majority of these Asiatics are wholly illiterate, and the temptations to impersonation are so great and detection is so difficult without this system that I regard it as an essential part of the machinery of the Ordinance. I cannot see that it involves any act of degradation on the part of any Asiatic to impress his finger prints on a document. It has been in use for some time in connection with the issue of permits and registration certificates under the existing law (though there is no express provision enabling us to insist on it), and, as far as I know, it has been complied with without any feeling of degradation. I admit that it is capable of being made a means of existing sentimental opposition to the law, but I consider that it is so essential to the maintenance of the control which is necessary for the working of the system of registration that no sentimental objections should be allowed to outweigh its other advantages.

21. The new Ordinance provides for stricter administration of the registration system, and is necessarily more detailed in its requirements than the existing registration law, which, as is apparent on the face of it, is altogether inadequate for its purpose, and must in any case be superseded if the control of Asiatic immigration is to be a reality. It will be administered so long as I am directly responsible for it with every respect for the feelings and customs of Asiatics. It has been accepted by the European population with a certain amount of misgiving as to the possible settlement in the Colony of Asiatics who were not resident before the war, but, on the whole, with full recognition of the obligations on the Government to respect the rights of those who were settled here before the war. It is understood that it will be for the new Government to lay down the conditions under which Asiatic immigration will be permitted for the future, and that the object of the Ordinance now under consideration is to ascertain and identify those Asiatics who are properly entitled to settle here. I trust that His Majesty's Government will fully realise the importance which is attached by whole community here to the maintenance of the policy which I have endeavoured to explain, and that they will agree with me that the Ordinance contains no provisions of such a character as to justify them in advising its disallowance and leaving the law in regard to Asiatic immigration in its present uncertain and ineffective condition.

22. I enclose copies of representations from certain Chambers of Commerce assembled at Johannesburg, and also from the Central Committee, of the Asiatic Convention, which, as you will remember, was constituted some two years ago to represent the views of the European population on the Asiatic question.

I have, etc.,

SELBORNE,
Governor.

ANNEX. I.

Resolution I.

This mass meeting of British Indians here assembled respectfully urges the Honourable the President and Members of the Legislative Council of the Transvaal not to pass the draft Asiatic Ordinance to amend Law No. 3 of 1885, now before that Honourable House, in view of the facts that:—

- (1) It is, so far as the Indian community of the Transvaal is concerned, a highly contentious measure.
- (2) It subjects the British Indian community of the Transvaal to degradation and insult totally undeserved by its past history.
- (3) The present machinery is sufficient for checking the alleged influx of Asiatics.
- (4) The statement of the alleged influx are denied by the British Indian community.
- (5) If the Honourable House is not satisfied with the denial, this meeting invites open, judicial, and British inquiry into the question of the alleged influx.

ANNEX. 2.

Resolution II.

This mass meeting of British Indians here assembled respectfully protest against the draft Asiatic Law Amendment Ordinance now being considered by the Legislative Council of the Transvaal, and humbly requests the local Government and the Imperial Authorities to withdraw the draft Ordinance, for the reasons that:—

- (1) It is manifestly in conflict with the past declarations of His Majesty's representatives.
- (2) It recognises no distinction between British and alien Asiatics.
- (3) It reduces British Indians to a status lower than that of the aboriginal races of South Africa and coloured people.
- (4) It renders the position of British Indians in the Transvaal much worse than under Law 3 of 1885, and, therefore, under the Boer régime.
- (5) It sets up a system of passes and espionage unknown in any other British territory.
- (6) It brands the communities to which it is applied as criminals or suspects.
- (7) The alleged influx of unauthorised British Indians into the Transvaal is denied.
- (8) If such denial is not accepted, a judicial, open, and British inquiry should be instituted before such drastic and uncalled for legislation is enforced.
- (9) The measure is otherwise un-British, and unduly restricts the liberty of inoffensive British subjects, and constitutes a compulsory invitation to British Indians in the Transvaal to leave the country.
- (10) This meeting further and specially requests the Right Honourable the Secretary of State for the Colonies and the Right Honourable the Secretary of State for India to suspend the Royal sanction, and receive a deputation on behalf of the British Indian community of the Transvaal in connection with this draft Ordinance.

ANNEX. 3.

Resolution III.

This meeting hereby appoints a delegation with power from the Committee of the British Indian Association to add to its membership or to change its personnel, to proceed to England and to lay before the Imperial Authorities the complaint of the British Indian community of the Transvaal regarding the draft Asiatic Law Amendment Ordinance.

ANNEX. 4.

Resolution IV.

In the event of the Legislative Council, the local Government, and the Imperial Authorities rejecting the humble prayer of the British Indian community of the Transvaal in connection with the draft Asiatic Law Amendment Ordinance, this mass meeting of British Indians here assembled, solemnly and regretfully resolves that, rather than submit to the galling, tyrannous, and un-British requirements laid down in the above draft Ordinance, every British Indian in the Transvaal shall submit himself to imprisonment and shall continue so to do until it shall please His Most Gracious Majesty the King-Emperor to grant relief.

ANNEX. 5.

Resolution V.

This meeting desires the Chairman to forward copy of the first resolution to the Honourable the President and Members of the Legislative Council, and copies of all the resolutions to the Honourable the Colonial Secretary, to His Excellency the Acting Lieutenant-Governor, and to His Excellency the High Commissioner, and to request His Excellency the High Commissioner to cable the text of resolutions Nos. 2, 3, and 4 to the Imperial Authorities.

ANNEX. 6.

Resolutions passed at a Meeting of Delegates representing the various Chambers of Commerce in the Transvaal.

That this meeting, having carefully considered the draft Ordinance to amend the Law No. 3 of 1885, approves the said Ordinance in principle, on the ground that it is calculated to be of benefit to the country by preventing the further influx of Asiatics, and providing means for the removal of any who are now in the country, but are not lawfully resident there, and that a copy of same be forwarded to the Colonial Secretary.

The following was also agreed to, the Chamber of Trade dissenting :—

To make representations to the Legislative Council to the following effect :— Inasmuch as sub-section 1 of clause 3 will give a legal status to any Asiatic authorised to enter and reside in this Colony by a permit issued under the Indemnity and Peace Preservation Ordinance of 1902, this meeting is of opinion that the above sub-section of clause 3 should be amended, and that no Asiatic should be registered under the terms of the draft Ordinance, unless it is clearly proved to the satisfaction of the Registrar of Asiatics that he was in this Colony prior to the outbreak of the late war.

Further agreed to recommend that the Registrar should be assisted by Local Committees in each town or district when considering applications for registration, and that, as far as possible, applications for registration should be made in the town or district where the person resided at the time the late war broke out. It is also felt that under the draft Ordinance the danger of a large influx of children exists, and it is hoped that the Ordinance will be so amended so as to prevent this.

ANNEX. 7.

Box 72, PRETORIA,

10th September 1906.

SIR,

I have the honour to inform you that at a meeting of the Central Committee of the Asiatic Convention, it was felt that, whilst the principle of the draft Ordinance No. 403 A, amending Law No. 3 of 1885, was in principle good, and should

be accepted on the ground that it is calculated to be of benefit to the country by preventing the further influx of Asiatics, and providing means for the removal of any who are now in the country but are not lawfully resident here, it might usefully, and to the satisfaction of this Committee, be amended in the following particulars, viz,—

- (a) That inasmuch as sub-section 1 of clause 3 will give a legal status to any Asiatic authorised to enter and reside in this Colony by a permit issued under the Indemnity and Peace Preservation Ordinance, 1902, this Committee is of opinion that the above sub-section 3 should be amended, and that no Asiatic should be registered under the terms of the draft Ordinance unless it is clearly proved to the satisfaction of the Registrar of Asiatics that he was in the Colony prior to the outbreak of the late war.
- (b) That it is felt that under the draft Ordinance the danger of a large influx of children exists, and it is hoped that the Ordinance will be so amended so as to prevent this.
- (c) That it is also felt that there should be some kind of registration of women coming into this Colony, without hurting any sentimental, religious, or national feelings.

I have, etc.,
HENRY LAMB,
Secretary.

P. Duncan, Esq., C.M.G.,
 Colonial Secretary, Pretoria.

An Ordinance to amend Law No. 3 of 1885.

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. *Repeal.*—Sub-section (c) of Article two of Law No. 3 of 1885 as amended by Volksraad Resolutions Article 1419 of the twelfth day of August 1886 and Article 128 of the sixteenth day of May 1890 shall be and is hereby repealed.

2. *Definitions.*—In this Ordinance unless inconsistent with the context:—

“ Asiatic ” shall mean any such male person as is described in Article one of Law No. 3 of 1885, not being a Malay born and resident in any British Colony or possession in South Africa nor a person introduced into the Colony under the Labour Importation Ordinance 1904, and not being an officer in the Chinese Consular Service ;

“ Register of Asiatics ” shall mean the register to be kept under this Ordinance as prescribed by Regulation ;

“ Registrar ” shall mean the officer appointed by the Lieutenant-Governor to keep the register of Asiatics and any person lawfully acting in such capacity ;

“ Resident Magistrate ” shall include an Assistant Resident Magistrate ;

“ Regulation ” shall mean any Regulation made under section *eighteen* of this Ordinance ;

“ Guardian ” shall mean the parent of an Asiatic under the age of sixteen, or any other person under whose care or control such Asiatic is living for the time being or failing any such person the employer of such Asiatic ;

“ Application for registration ” shall mean an application to be placed on the register of Asiatics made in such manner and form as may be prescribed by Regulation and accompanied by the supplying of such particulars and the furnishing of such means of identification as may be required by this Ordinance or by Regulation ;

“ Applicant ” shall mean any person who makes application for registration on his own behalf or any person on whose behalf application for registration is made by his guardian ;

“Certificate of registration” shall mean a certificate of registration under this Ordinance in the form prescribed by Regulation ;

“Lawful holder” as used in relation to any certificate of registration shall mean the person whose registration is thereby certified.

3. (1) *All Asiatics lawfully resident in Colony to be registered.*—Every Asiatic lawfully resident in this Colony shall subject to the exceptions hereinafter mentioned be registered in the register of Asiatics and shall thereupon be entitled to receive a certificate of registration and no charge shall be made for such registration or certificate save as in section *twelve* of this Ordinance provided.

(2) The following shall be deemed for the purposes of this Ordinance to be Asiatics lawfully resident in this Colony :—

- (i) Any Asiatic duly authorized to enter and reside in this Colony by a permit issued under the Indemnity and Peace Preservation Ordinance, 1902, or any amendment thereof or issued between the first day of September 1900 and the date of the passing of the said Ordinance unless such permit shall have been fraudulently obtained ; provided that any permit expressed to authorize any Asiatic to remain in this Colony for a limited time only shall not be deemed to be a permit within the meaning of this sub-section.
- (ii) Any Asiatic resident and actually in this Colony or the Orange River Colony on the thirty-first day of May 1902.
- (iii) Any Asiatic born in this Colony since the thirty-first day of May 1902 not being the child of any labourer introduced into this Colony under the Labour Importation Ordinance, 1964.

4. (1) *Asiatics to apply for registration within fixed time.*—Every Asiatic resident in this Colony at the date of this Ordinance shall before the first day of January 1907 or such later date as in special cases the Lieutenant-Governor may appoint, make application for registration to such person and at such place as the Colonial Secretary may prescribe by notice in the *Gazette*.

(2) Every Asiatic who enters this Colony after the date of this Ordinance and who has not previously been registered thereunder shall within eight days after entering this Colony unless he shall have entered under a permit granted under section *seventeen* make application for registration to such person and at such place as may be so prescribed ; provided that—

- (a) no application shall be required to be made under this section on behalf of any Asiatic child who at the expiration of the time within which such application is required to be made is under the age of eight years ;
- (b) in the case of any Asiatic child who at the expiration of such time is eight years of age but under sixteen years of age such application shall be made on such child's behalf by his guardian and if not so made shall be made by such child within one month after attaining the age of sixteen years.

5. (1) *Registrar to register applicants if approved and in case of refusal to give notice.*—The Registrar shall consider every application for registration made under the last preceding section and register every applicant who is lawfully resident in this Colony or whose application is approved by him and shall cause to be issued to such applicant or the guardian who made the application on his behalf a certificate of registration.

(2) If it shall appear to the Registrar that any applicant is not lawfully resident in this Colony he may refuse to register such applicant and in case of refusal where the applicant is of the age of sixteen years or over shall cause a notice of refusal to be sent by post to the applicant at the address given by him on application and a copy of such notice shall be affixed to the principal door of the Magistrate's Office of the district where such application was made and the Registrar shall by such notice direct such applicant to appear before the Resident Magistrate of the district at a time therein specified being not less than fourteen days from the date of such notice and show cause why he should not be ordered to leave this Colony and if such applicant shall fail to appear at the time specified in such

notice or having appeared shall fail to satisfy the Resident Magistrate that he is lawfully resident in the Colony the Resident Magistrate if the applicant is of the age of sixteen years or over shall make an order in writing directing him to leave this Colony within a time to be specified in such order; provided always that if such order is made in the absence of the applicant such time shall run from the date of the service of the order upon him and such order shall be deemed to be an order made under section six of the Peace Preservation Ordinance 1903 and sections seven and eight of the said Ordinance shall apply accordingly; provided further that if the Resident Magistrate shall be satisfied that the applicant is lawfully resident within this Colony such Magistrate shall make an order upon the Registrar requiring him to register such applicant and to issue to him a certificate of registration.

6. (1) *Provisions as to particulars to be supplied and applications to be made by guardians.*—Any Asiatic who is the guardian of an Asiatic child under the age of eight years shall upon making application for registration on his own behalf supply such particulars and furnish such means of identification in respect of such child as may be prescribed by Regulation and if such guardian is himself registered the particulars aforesaid which he has supplied shall be provisionally noted on the register and such guardian shall within one year after the child aforesaid attains the age of eight years make application for registration on such child's behalf at the office of the Resident Magistrate of the District in which he himself resides;

(2) The guardian of every Asiatic child born in this Colony after the date of this Ordinance shall within one year after such child attains the age of eight years make application for registration on such child's behalf at the office of the Resident Magistrate of the district in which he himself resides;

Provided that—

(a) where any guardian fails to make application for registration on behalf of any Asiatic child whose guardian he is within the time hereby prescribed for making the same such guardian shall on being thereto required by the Registrar or any Resident Magistrate make such application at any later date;

(b) where any application which is required to be made under this section by the guardian of an Asiatic child is not made by such guardian or where such application is refused application for registration shall be made by such Asiatic child at the office of the Resident Magistrate of the district within which he resides within one month after he attains the age of sixteen years.

The Resident Magistrate at whose office any application is made under this section shall cause the record of such application and all documents relating thereto to be forwarded to the Registrar who shall if satisfied that the same is in order register the applicant and cause to be issued to him or his guardian a certificate of registration.

7. *Application for registration by Asiatics on attaining age of sixteen whose guardians have failed to supply particulars.*—Where particulars as to any Asiatic child under the age of eight years have not been provisionally noted on the register as is in the last preceding section provided by reason of the failure of his guardian to supply such particulars application for registration shall nevertheless be made on behalf of such Asiatic child by his guardian within one year after he attains the age of eight years and if not so made shall be made by such Asiatic child within one month after he attains the age of sixteen years at the office of the Resident Magistrate of the district in which he resides and the record of such application and all documents relating thereto shall be forwarded to the Registrar who may in his discretion register the applicant and issue to him or his guardian a certificate of registration.

8. (1) *Penalties for failing to make application.*—Any person who shall fail to make application for registration as required by this Ordinance either on his own behalf or as guardian on behalf of an Asiatic child shall be liable on conviction to a fine not exceeding one hundred pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months,

(2) Any person who brings into this Colony an Asiatic under the age of sixteen years not lawfully resident therein and any person who shall employ such child in any trade or business shall be guilty of an offence and shall be liable on conviction to the following penalties:—

(a) to the penalties mentioned in sub-section I of this section; and

(b) if such person is the holder of a certificate of registration to cancellation of such certificate by the Registrar;

and thereupon the Colonial Secretary may issue an order directing such person to leave this Colony and such order shall be deemed to be an order issued under section *six* of the Peace Preservation Ordinance, 1903 and sections *seven* and *eight* of the said Ordinance shall apply accordingly.

(3) Any Asiatic over the age of sixteen years who after such date as the Lieutenant-Governor may fix by Proclamation in the *Gazette* is found within the Colony and fails upon such demand as is hereinafter mentioned to produce a certificate of registration of which he is the lawful holder may be arrested without warrant and brought before a Resident Magistrate and if he fails to satisfy such Magistrate that he is the lawful holder of a certificate of registration or that the time within which he is required to make application for such certificate has not expired the Magistrate shall save as in the next sub-section provided make an order in writing directing such Asiatic to leave this Colony within such time as may be specified in such order and such order shall be deemed to be an order made under section *six* of the Peace Preservation Ordinance, 1903 and sections *seven* and *eight* of the said Ordinance shall apply accordingly.

(4) If an Asiatic who has failed to make application for registration within the time prescribed by this Ordinance shall satisfy the Magistrate before whom he is brought that such failure was due to some good and sufficient cause the Magistrate may instead of making such order as aforesaid direct such Asiatic forthwith to make application for registration and if such Asiatic shall comply with such direction his application shall be dealt with in all respects as if it had been made within the time within which it was required to be made by this Ordinance and all the provisions of this Ordinance which would have applied if the application had been so made shall apply accordingly but if he shall fail to comply with such direction the Magistrate shall make such order for removal as aforesaid in respect of such Asiatic.

9. *Registration certificate to be produced on demand.*—Every Asiatic of the age of sixteen years or over entering or residing in this Colony shall upon demand made upon him by any member of a police force lawfully established in this Colony or any other person authorised thereto by the Colonial Secretary produce the certificate of registration of which he is the lawful holder and shall also on like demand supply such particulars and furnish such means of identification as may be prescribed by Regulation.

Every guardian of an Asiatic child under the age of sixteen years shall produce on such demand as aforesaid any certificate of registration of which such child is the lawful holder and supply any particulars and furnish any means of identification required by this Ordinance or any Regulation in respect of such child.

10. *Evidence of registration certificates.*—Every certificate of registration shall be accepted as conclusive evidence in all places that the lawful holder thereof notwithstanding anything in the Peace Preservation Ordinance, 1903 contained is entitled to enter and reside in this Colony; provided always that this section shall not apply to persons who have under section *ten* of the Peace Preservation Ordinance, 1903 been ordered to leave the Colony.

11. *Duty of persons finding lost certificates.*—Any person into whose hands shall come any certificate of registration of which he is not the lawful holder shall deliver or transmit the same by post as soon as may be to the Registrar of Asiatics, Pretoria.

Any person who fails to comply with the requirements of this section shall be liable on conviction to a fine not exceeding fifty pounds or in default of payment to imprisonment with or without hard labour to a period not exceeding one month.

12. *Provisions where registration certificate is lost or destroyed.*—If at any time any certificate of registration is lost or destroyed the person who was the lawful holder thereof shall apply to the Registrar to have the same renewed and the Registrar shall upon compliance by such person with the Regulations relating to applications for the renewal of certificates and upon payment of a fee of five shillings renew such certificate. The said fee shall be denoted by means of revenue stamps to be affixed to such application by the applicant for such renewal and shall be defaced by the officer who receives such application.

13. *Trading licenses not to be granted to Asiatics except upon production of certificates.*—After such date as the Lieutenant-Governor may fix by Proclamation in the *Gazette* being a date not less than six months after the first day of January 1907 no Asiatic shall obtain any trading license issued under the Revenue Licenses Ordinance 1905 or any amendment thereof or under any bye-law in force in a municipality unless he shall produce to the person appointed to issue such license a certificate of registration of which he is the lawful holder and supply such particulars and furnish such means of identification as may be prescribed by Regulation.

14. *Evidence as to age of Asiatic.*—Whenever in any prosecution or other proceeding under this Ordinance the age of any Asiatic is in question such Asiatic shall unless and until the contrary be proved be taken to be of the age which the Registrar shall in any certificate issued under his hand certify to be in his opinion the apparent age of such Asiatic.

15. *Exemption from stamp duty of affidavit or sworn declaration required by Regulation.*—Any affidavit or sworn declaration which is required by Regulation to be made by any person who makes an application for registration either on his own behalf or on behalf of some other person shall be exempt from stamp duty.

16. *Offences relating to applications for registration and to registration certificates.*—Any person who:

- (i) for the purpose of or in connection with an application for registration or for the purpose of obtaining a certificate of registration commits any fraudulent act or makes any false statement or false pretence or incites any person to or aids or abets any person in such act statement or pretence;
- (ii) forges any certificate of registration;
- (iii) uses or attempts to use as his certificate any certificate of registration of which he is not the lawful holder or any forged certificate of registration;
- (iv) incites any person to use or aids and abets any person in using as such person's certificate any certificate of registration of which such person is not the lawful holder or any forged certificate or registration;

shall be liable to a fine not exceeding five hundred pounds or in default of payment to imprisonment with or without hard labour for a term not exceeding two years or to both such fine and such imprisonment.

17. (1) *Power to issue permits to Asiatics to remain in Colony for limited period.*—Notwithstanding anything in the Peace Preservation Ordinance 1903 contained a permit to enter this Colony may be issued in the form prescribed by regulation authorising an Asiatic to enter and remain in this Colony for any period named in such permit and after the expiry of such period the person authorised by such permit to enter this Colony shall be deemed to be a person not duly authorised to be in this Colony and if found may be arrested without warrant and the provisions of sections seven and eight of the said Ordinance shall apply to such person as if he were a person who at the date of such expiry had been ordered to leave this Colony under section six of the said Ordinance and had failed to comply with such order.

(2) The provisions of section nine of the said Ordinance shall in all cases apply to permits issued under this section.

(3) Any permit issued before the date of this Ordinance to an Asiatic under the Indemnity and Peace Preservation Ordinance 1902 or any amendment thereof

and expressed to authorise such Asiatic to remain in this Colony for a limited time only shall be deemed to be a permit issued under this section.

(4) The Lieutenant-Governor may in his discretion order that the person authorised by any permit issued under this section to enter and remain in this Colony shall not during the currency of such permit be deemed to be a coloured person for the purpose of the provisions of the Liquor Licensing Ordinance 1902 or any amendment thereof and such order shall be endorsed on such permit and shall be of full force and effect for such purposes.

(5) The Lieutenant-Governor may issue any such order as in the last preceding section mentioned in respect of any person who is a member of an Asiatic race and is not subject to the provisions of this Ordinance.

18. *Power to make Regulations.*—The Lieutenant-Governor may from time to time make alter and repeal regulations for any of the following purposes:—

- (1) Prescribing the form of the register to be kept under this Ordinance.
- (2) Prescribing the manner and form in which application shall be made for registration the particulars to be supplied and the means of identification to be furnished by any applicant or the guardian of any applicant for the purpose of or in connection with such application;
- (3) Prescribing the form of certificates of registration;
- (4) Prescribing the particulars to be supplied and the means of identification to be furnished—
 - (a) by the guardian of any Asiatic child under the age of eight years under section *six* of this Ordinance;
 - (b) by any Asiatic upon such demand as in section *nine* of this Ordinance mentioned;
 - (c) by any Asiatic applying for the renewal of any certificate of registration which has been lost or destroyed;
 - (d) by any Asiatic applying for a trading license;
- (5) Prescribing the form of permit to be issued under section *seventeen* of this Ordinance.

19. *General penalties.*—Any Asiatic or the guardian of any Asiatic failing to comply with any requirement of this Ordinance shall except where otherwise specified be liable on conviction to a fine not exceeding one hundred pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

20. *Provisions as to certain Asiatics under contracts of service.*—Notwithstanding anything contained in the Labour Importation Ordinance 1904 no Asiatic who is the lawful holder of a certificate of registration and no Asiatic who was lawfully resident in this Colony or allowed to enter it under a proper permit before the date of the said Ordinance shall be prohibited from entering or residing in or being introduced into this Colony by reason of the fact that he is under a contract of service and has not entered into the contract referred to in section *eight* of the said Ordinance.

21. *Provision as to holding fixed property.*—Notwithstanding anything contained in sub-section (b) of Article *two* of Law No. 3 of 1885 as amended by Volksraad Resolution Article 1419 of the twelfth day of August 1886; any fixed property in this Colony acquired by an Asiatic before the taking effect of such law and registered in the name of such Asiatic whether before or after the taking effect of such law may be transmitted by such Asiatic to another Asiatic by testamentary or other inheritance.

22. *Title.*—This Ordinance may be cited for all purposes as the Asiatic Law Amendment Ordinance 1906 and shall not take effect unless and until the Governor shall proclaim in the *Gazette* that it is His Majesty's pleasure not to disallow the same and thereafter it shall come into operation upon such date as the Governor shall notify by Proclamation.

Passed in Council the twelfth day of September one thousand nine hundred and six.

E. M. O. CLOUGH,
Clerk of the Council.

Authenticated under my hand and the Public Seal of the Colony.

PRETORIA ;
20th September 1906.

RICHARD SOLOMON,
Acting Lieutenant-Governor.

Assented to.

JOHANNESBURG ;
23rd September 1906.

SELBORNE,
Governor.

Proceedings at a Deputation to the Right Honourable the Earl of Elgin on behalf of British Indian subjects in South Africa.

CONFIDENTIAL.

COLONIAL OFFICE,

Thursday, 8th November 1906.

The deputation consisted of the following gentlemen :—

Lord Stanley of Alderley.
Mr. O. Ali, } Delegates from Transvaal.
Mr. Gandhi, }
Sir Lepel Griffin, K.C.S.I.
Mr. J. D. Rees, C.I.E., M.P.
Sir George Birdwood, K.C.S.I.
Sir Henry Cotton, K.C.S.I., M.P.
Mr. Naoroji.
Sir M. Bhowndree, K.C.I.E.
Mr. Amir Ali.
Mr. Harold Cox, M.P.
Mr. Thornton, C.S.I.

THE EARL OF ELGIN: I should just like to say, gentlemen, that I made this interview a private one because I thought, from experience of other meetings of the same sort, we should be better able to discuss the matter friendly across the table without the presence of public reporters; at the same time, I am quite aware that the deputation wish to go into matters of some detail, and therefore I have made arrangements for a note to be taken so that anything which may be said shall be on record.

Then I should like to say one other word. I recognise among the deputation some of those with whom I have had the pleasure of working in India, and I hope they have explained to the deputation, if it was necessary, that my sentiments would all be in favour of doing anything I could for the interest of British Indians. (*Hear, hear*).

SIR LEPEL GRIFFIN: My Lord, what you have just said makes my duty in introducing the delegates more easy. We are very much obliged to Your Lordship for admitting this deputation of men who are all known to you as gentlemen connected with India, who have been most of them in India themselves, and all are interested in India, and we are very glad, without any question of party feeling, because all sides are represented in this deputation, to introduce to you the delegates from South Africa, Mr. Gandhi, who is, as Your Lordship is aware, a barrister of the Inner Temple and a man who, in the late Boer war and in the late rising in Natal, has done most excellent work for the country in organising ambulance corps and in other ways—he practises now in Johannesburg—and Mr. Ali, his colleague, who is the representative of the Mohammedan part of the Indian community in the Transvaal, a merchant of very good position and the founder, and I believe the Chairman, of Islamic Association in the Transvaal. To those gentlemen I propose to leave any details of the Ordinance which has now been passed and which we are about to ask His Majesty's Government to veto. But I would like to say a few words in explaining the matter now before the Colonial Office, and I shall take up the time of your Lordship only for a few minutes.

I have been asked to present this deputation principally, I fancy, because I happen to be the Chairman of the Council of the East India Association, of which your Lordship is a distinguished Vice-President, but the question which the East Indian Association has so often urged upon successive Colonial Secretaries and

Secretaries for India and Viceroy of India, is not directly concerned in our presence here today. The bed-rock, as Your Lordship is aware, of the East Indian Association's protests, is that all well-conducted, loyal, and industrious British subjects, whatever their race or colour, should receive equal rights in all Colonies of the British Empire; that is the bed-rock of justice which has always been refused in the past, but on which the East Indian Association, which is represented largely here to-day, begs to continue to rely and from which it must continue to make its protest. That, my Lord, is not precisely the question which this deputation desires to put forward this afternoon; they are not making any of those large claims which we have before made; they only ask that a certain Ordinance applying to the Transvaal alone may not receive the sanction of His Majesty's Government.

A few words only are necessary on this point. During the Boer Government the British Indians were treated with considerable harshness, but their immigration into the Transvaal was not prohibited, and with the exception of a fee for a license for adult traders they were not interfered with. But their position was an exceedingly uncomfortable one, and many protests were raised which we understood, when the country fell into the hands of the English, would be redressed. So far from being redressed, their position is made worse and the rule for registration and identification were made exceedingly more rigorous. The Ordinance which has now been passed makes, whatever people in South Africa may choose to say, their position infinitely worse and more degrading. It may be said that in the Transvaal these rules are for the benefit of the Indians, but the toad under the harrow knows where the harrow grips him, and the Indians in the Transvaal consider that the new regulations of this Ordinance are a grievance and an insult which is almost too grievous to be borne; and I for one most strongly support their claim and their protest.

Under this Ordinance everyone in the Transvaal is exposed to the most rigorous investigation; the impressions of his fingers are to be recorded on every pass; no one is allowed in—man, woman, or child—without registration of so rigorous a character that has been unheard of in any civilised country within my recollection. Under this regulation every Indian in the Transvaal, whether an adult male, whether a woman, or whether a child, and even babes in arms, will be obliged to be registered under such conditions as only ordinarily apply to convicts in a civilised country; and evasion or ignorance or even forgetfulness on this point is punished by crushing fines, by imprisonment with hard labour, by expulsion, and by ruin. You, my Lord, who have been Viceroy of India, and whose sympathy is with the country, must know that legislation of this sort is unheard of under the British flag; indeed, to-day in Europe I may say, without any exaggeration, that with the exception of the Russian legislation against the Jews, there is no legislation comparable to this on the Continent of Europe; and in England, if we wanted a similar case, we should have to go back to the time of the Plantagenets.

And against whom is this legislation directed? Against the most orderly, honourable, industrious, temperate race in the world, people of our own stock and blood, with whom our own language has as a sister language been connected. There is no occasion, in the presence of people connected with India, who know its history, to say what the Indian community is to-day; it is almost an insult to refer to it.

And by whom is this legislation instigated? I am told, and I believe it, that it is not by the best part of the British community in the Transvaal, who are, I believe, in favour of giving all reasonable privileges to British Indian subjects; it is by the alien foreign population in the Transvaal who are perhaps to some extent inconvenienced by Indian traders who are so very much more temperate and industrious than themselves. It does not come from the English. The legislation is prompted, and the prejudice against the Indians is encouraged, by the aliens, by Russian Jews, by Syrians, by German Jews, by every class of aliens, the very off-scourings of the international sewers of Europe. The English residents, against whom I do not wish to say one word of criticism, are a part, in my mind, of the Transvaal, but the Transvaal is only a colony by conquest, not by settlement, and it is the aliens who are opposed to this honourable Indian community.

My Lord, I do not wish to take up more of your time, but what I wish to say is, that to-day we ask you, as representing His Majesty's Government, and as we know your sympathies are with the Indians over whom you have ruled with so much distinction, to procure the vetoing of this Ordinance. No large questions are brought before you to-day by this deputation. They are not asking for political rights; they are not asking for gratitude for their great and devoted services in the Transvaal war where so many of them lost their lives in their devotion to England, doing as courageous work as anyone of the members of the armies which were sent by England, by Australia, or by Canada. Those services have not been recognised; on the contrary, they have been ignored and further burdens have been placed upon them. We ask for nothing to-day except the merest barest justice. We ask that the whips which the Boers have inflicted upon us may not be changed into scorpions wielded by the British Government.

I would say in conclusion that we hope everything from the present Government, and for this reason, that the grievances of the Chinese have received the utmost sympathy at the hands of the Government, but, so far as this deputation is concerned, the Chinese and other alien nations do not count. We ask not for the Chinese but for our own fellow subjects, and we ask that justice, if not generosity, may be dealt out to them and that Your Lordship will save them from insult and oppression.

It was at Your Lordship's request that this deputation was a small one; it might have been indefinitely extended. This is test case—a question of going forward or going back. Your Lordship, as a past Viceroy of India, must know that the attention of the whole of India, 300 millions of Indians, is intent to-day upon the decision which will be given in this test case, and I beg Your Lordship to think and to remember that besides the Indians of Indian birth, against whom the insults of this Ordinance are directed, there are the whole body of Indian officials, to which I and most of the members of this deputation belong, who are insulted with the natives of India. Is it to be supposed that we who have worked with, we who have governed this province of India under Your Lordship and under your predecessors and successors, have been governing degraded creatures who are placed lower even than the Zulus and Russian Jews? No, my Lord. We trust to you to do what you can to defend the people whom you have governed so well. And I will beg you to excuse any exciting warmth in my way of speaking, because I assure you that any warmth in my words is very much exceeded by the feeling of shame and resentment which fills my heart at the way in which the British Indians of the Transvaal are treated to-day by the settlers (I will not call them Colonists) of that country.

MR. GANDHI: Both Mr. Ali and I are very much obliged to Your Lordship for giving us the opportunity of placing the British Indian position before you. Supported though we are by distinguished Anglo-Indian friends and others, I feel that the task before Mr. Ali and myself is very difficult, because Your Lordship, in reply to the cablegram sent to you through Lord Selborne, after the great British-Indian mass meeting in Johannesburg was pleased to inform the British Indian Association, that although you would be pleased to give us every opportunity of stating our case, no good purpose was likely to be served as Your Lordship had approved of the principle of the Ordinance, in that it gave some measure of relief to the British-Indian community, though not as much as His Majesty's Government would desire. We who are the men on the spot and who are affected by the Ordinance in question have ventured to think otherwise. We have felt that this Ordinance does not give us any relief whatsoever. It is a measure which places British Indians in a far worse position than before and makes the lot of the British Indian well-nigh intolerable. Under the Ordinance the British Indian is assumed to be a criminal. If a stranger, not knowing the circumstances of the Transvaal, were to read the Ordinance he would have no hesitation in coming to the conclusion that an Ordinance of that nature which carries so many penalties and wounds the British-Indian community on all sides, must only apply to thieves or a gang of robbers. I venture, therefore, to think that although Sir Lepel Griffin has used strange language in connection with the Ordinance he has not at all exaggerated, but every word of it is justified. At the same time I beg to state that the Ordinance, as amended does not apply to British-Indian females. The draft Ordinance undoubtedly applied to females also, but owing to the very strong

protest made by the British-Indian Association and by Mr. Ali separately, as Chairman of the Hamidia Islamic Society, pointing out the great violence that would have been done to female sanctity, if I may say so, the Ordinance was amended so as to take females out of its operation. But it applies to all adult males and even to children, in that the parents or guardians have to take out registration certificates for their children or wards as the case may be.

It is a fundamental maxim of the British law that everyone is presumed to be innocent until he is found guilty, but the Ordinance reverses the process, and brands every Indian as guilty, and leaves no room for him to prove his innocence. There is absolutely nothing proved against us and yet every British-Indian, no matter what his status is, is to be condemned as guilty and not treated as an innocent man. My Lord, an Ordinance of this nature is not possible for British-Indians to reconcile themselves to. I do not know that such an Ordinance is applicable to free British subjects in any part of His Majesty's dominions.

Moreover, what the Transvaal thinks to-day the other Colonies think to-morrow. When Lord Milner sprung his bazaar notice on British Indians the whole of South Africa rang with the bazaar idea. The term "Bazaar" is a misnomer; it has been really applied to locations where trade is utterly impossible. However, a proposal was seriously made, after a bazaar notice, by the then Mayor of Natal, Mr. Ellis Browne, that Indians should be relegated to bazaars. There is not the slightest reason why this Ordinance also, if it ever becomes law, should not be copied by the other parts of South Africa. The position to-day in Natal is that even indentured Indians are not required to carry passes as contemplated by the Asiatic Law Amendment Ordinance; nor are there any penalties attached to the non-carrying of passes as are defined in the Ordinance under discussion. We have already shown in our humble representation that no relief has been granted by this Ordinance, because the remission of the 3*l.* fee, referred to by Mr. Duncan, is quite illusory, because all we British Indians resident in the Transvaal who are obliged to pay 3*l.* under Law 3 of 1885, and those who, under Lord Selborne's promise, are likely to be allowed to re-enter the Transvaal, have paid the 3*l.* already.

The authority to issue temporary permits is also superfluous in that the Government have already exercised the power, and there are to-day in the Transvaal several Indians in possession of temporary permits. They are liable to be expelled from the Colony on the expiry of their permits.

The relief under the Liquor Ordinance is, British Indians feel, a wanton insult. So much was this recognised by the Local Government that they immediately assured the Indians that it was not intended for British Indians at all, but for somebody else. We have no connection with anybody else, and we have always endeavoured to show that the British Indians ought to be treated as British subjects, and ought not to be included with the general body of Asiatics with respect to whom there may be a need for some restrictions which ought not to apply to British Indians as British subjects.

There remains one more statement that is in connection with the land owned by the late Aboobaker. That land should belong to the heirs by right, but under the interpretation reluctantly put upon it by the Supreme Court, that it is only individual in character and does not touch the community, the land cannot be transmitted to the heirs. The Ordinance is intended to rectify the error, but as I had the honour to represent the heirs, I ventured to think that even they would not consent to pay for getting this relief at the price, in the nature of this Ordinance for British Indians; and certainly the Indian community can never exchange for the relief given to their heirs of the land of Aboobakar an Ordinance of this nature, which requires them to pay so great a price for what is really their own. So that under the Ordinance in that respect again there is absolutely no relief. As I said before, we shall be, under the Ordinance, branded as criminals.

My Lord, the existing regulation is severe enough. I hold in my hands returns from the Court of the Magistrate at Volksrust. Over 150 successful prosecutions of Indians attempting to enter the Transvaal have taken place during the years 1905 and 1906. All these prosecutions, I venture to say, are by no means just. I venture to believe that if these prosecutions were gone into you would see that some of them were absolutely groundless,

So far as the question of identification is concerned the present laws are quite enough. I produce to Your Lordship the registration certificate held by me, and it will show how complete it is to establish identification. The present law can hardly be called an amendment. I produce before Your Lordship a registration receipt held by my colleague Mr. Ali from the Transvaal Government. Your Lordship will see that it is merely a receipt for 3*l*. The registration under the present Ordinance is of a different type. When Lord Milner wished to enforce law 3 of 1885 he suggested new registration. We protested against it, but on his strong advice, as a voluntary act, we allowed ourselves to be newly registered, and hence the form produced before Your Lordship. At the time that registration was undertaken, Lord Milner stated emphatically that it was a measure once for all, and that it would form a complete title to residence by those who hold such registration certificates. Is all this now to be undone ?

Your Lordship is doubtless aware of the Punia case, wherein a poor Indian woman, in company with her husband, was torn away from her husband, and was ordered by the Magistrate to leave the country within seven hours. Fortunately relief was granted in the end, as the matter was taken up in time. A boy under 11 years was also arrested and sentenced to pay a fine of 50*l*. or to go to gaol for three months, and at the end of it to leave the country. In this case again the Supreme Court has been able to grant justice. The conviction was pronounced to be wholly bad, and Sir James Rose-Innes stated that the Administration would bring itself to ridicule and contempt if such a policy was pursued. If the existing legislation is strong enough and severe enough to thus prosecute British Indians, is it not enough to keep out of the Colony British Indians who may attempt fraudulently to enter it ?

It has been stated that the reason for passing the Ordinance is that there is an unauthorised influx of British Indians into the Transvaal on a wholesale scale, and that there is an attempt on the part of the Indian community to introduce Indians in such a manner. The last charge has been, times without number, repudiated by the Indian community, and the makers of the charge have been challenged to prove their statement. The first statement has also been denied.

I ought to mention one thing also, that is the fourth resolution that was passed at the British-Indian mass meeting. It was passed by the meeting solemnly, prayerfully, and in all humility, and the whole of that great meeting decided by the resolution that, if this Ordinance ever came to be enforced, and we did not get relief, the British Indians, rather than submit to the great degradation involved in it, would go to gaol, such was the intensity of the feeling aroused by the Ordinance. We have hitherto suffered much in the Transvaal and in other parts of South Africa, but the hardship has been tolerable ; we have not considered it necessary to travel 6,000 miles to place the position before the Imperial Government. But the straining point has been reached by the Ordinance, and we felt that we should in all humility exhaust every resource, even to the extent of sending a deputation to wait on Your Lordship.

The least, therefore, that in my humble opinion is due to the British-Indian community is to appoint a Commission as suggested in the humble representation submitted to Your Lordship. It is a time-honoured British custom that whenever an important principle is involved, a Commission is appointed before a step is taken. The question of alien immigration into the United Kingdom is a parallel case. Charges somewhat similar to the charges against the Indian community were made against the aliens who entered the United Kingdom. There was also the question of the adequacy of the existing legislation and the necessity for further legislation ; all these three points were referred to a Commission before any step was taken. I, therefore, venture to think that a Commission should be appointed, and the whole question threshed out before any drastic measures are taken.

I venture, therefore, to hope that Your Lordship will see your way to grant this small measure of relief to the British-Indian community.

MR. O. ALI : My Lord, we are very much obliged to you for the patient hearing Your Lordship is giving to the deputation. Mr. Gardhi has stated the case fully before Your Lordship, and I do not wish to add much what has already been said. I am not a lawyer, but as a layman, and as a resident of old standing in the

Transvaal, I do wish to submit to Your Lordship that the hardships that the present Ordinance would inflict upon us are unbearable. And I can assure Your Lordship that, immediately the Ordinance was introduced into the Legislative Council of the Transvaal, my fellow countrymen felt, and felt very keenly, to think that such laws can be passed under a British Government. It is what I should never have believed years ago.

Our lot is to-day infinitely worse than under the Boer régime ; we were able to get protection from the British Government during that time. Are we now, under the same Government, to be persecuted ?

When aliens of all classes are, at the very moment that the Ordinance is introduced, pouring into the Transvaal, and then they enjoy all the rights and privileges granted to British subjects, my countrymen, who are always to the fore for the defence of the Empire, are suffering these serious disabilities and the disabilities threatened by the Ordinance. To-day in India the frontier is guarded by my fellow countrymen, who shoulder the rifle in defence of the Empire ; and it is very grievous that they should have to suffer such misery, and that there should be class legislation against them of this type.

I appeal for justice, and I appeal to Your Lordship in the name of the British traditions, that you will be pleased to remove the disability that the Ordinance will place upon us, by vetoing it, or at least by granting a commission. We are loyal British subjects, and as such we are entitled to the fullest protection. We have not asked for, and we do not now ask for, political rights ; we are content that the white man should be predominant in the Transvaal ; but we do feel that we are entitled to all the other ordinary rights that a British should enjoy.

SIR HENRY COTTON : I wish to say one word, my Lord, if I may. I am here not only as a retired Indian official, like many distinguished men I see around me, but also as a member of the present Parliament, and as chairman of a meeting which sat in the Grand Committee Room upstairs in the House of Commons attended by more than 100 members of the Liberal party. I take this opportunity of saying that I deeply regret that the invitations to attend that meeting were not extended to both sides of the House. (*Hear, hear.*) It was an unfortunate oversight which we all regret. But that meeting, I say, was attended by 100 and more members of the House of Commons, and their feeling was very strong indeed upon this subject ; indeed, they went so far as to record a resolution that they sympathised with and supported the prayer of the petitioners. Since that meeting, my Lord, I have been brought in contact with many members of the House of Commons who were not present at the meeting, gentlemen on both sides of the House. Many gentlemen on the opposite benches have also intimated to me that there is a complete sympathy with the attitude taken up by Messrs. Gandhi and Ali on behalf of their fellow subjects in the Transvaal.

I wish also in associating myself, as I do completely, with the observations which fell from Sir Lepel Griffin, to remind Your Lordship that it was Lord Lansdowne, for whom we all have the greatest regard and respect, who, although he is the Leader of the Opposition in the House of Lords, is at all events, as we know very well, a most liberal-minded statesman, who drew prominent attention in England to the grievances which the British Indians in the Transvaal suffered from under President Krüger's Administration. Nothing, he said, roused so much indignation in his mind or so much anger as the ill-treatment which the British Indians received in South Africa. And he went further even in his speech—it was a speech delivered at Sheffield two or three weeks after the outbreak of the War—for he said that he regarded with grave anxiety the state of feeling which must inevitably exist in India when it was known that the British subjects of India in South Africa were so ill-treated and ground down. And he pointed out the imperative duty of the British Government to improve their status and position.

Now, my Lord, that is a pledge which was given by the head of the Opposition in the House of Lords, and I appeal to you, my Lord, as the representative of a Liberal Government, in dealing with this matter in South Africa, that your duty is at least as decisive as Lord Lansdowne claimed for himself a few years ago.

It is true that the people of India do feel this matter very deeply. It is true also that the British Indians in South Africa have greater grievances to complain of now than they had under the Dutch Government ; and the climax has been

reached in the passing of this Ordinance, of which Messrs. Gandhi and Ali here so justly complain. Representing as I do a very influential and large section of the House of Commons, and I believe the almost unanimous official feeling in India on the subject, I do trust that Your Lordship will be able to give this petition your favourable consideration.

SIR M. BHOWNAGREE: My Lord, I think the case has been so ably and clearly put before Your Lordship that there is not the least occasion for me to go into any details, and if I feel called upon to address Your Lordship for a very few minutes, it is simply on account of the interest I took in this question all through my ten and a half years' career in Parliament. I want to bring to Your Lordship's notice a few points which perhaps may not be within your knowledge.

In complaining of the grievances of British Indian subjects in South Africa, I had opportunities of seeing your predecessors, Mr. Chamberlain and Mr. Lyttelton, very often on the subject. My activity had taken the form at last of a long printed letter in which I detailed the whole narrative of the facts, and Mr. Lyttelton thereupon assured me that the case had been so fairly put, and the demands made were so reasonable, that he hoped to get some relief. I, on the other hand, knew what the local forces of opposition to a liberal policy on the part of any ministry of the Imperial Government would be, and while I thanked him for his sympathetic answer, I told him it might be necessary to appoint a commission to enquire into the whole subject. Sir George Farrer, who represented the Anti British-Indian interest in the Transvaal Legislature, also happened, at the same time, to suggest that the appointment of a commission would ventilate the matter, and might bring some solution of that very difficult problem. Thereupon I addressed Mr. Lyttelton again, accepting Sir George Farrer's offer, and matters were in that train, and I believe Mr. Lyttelton would have ultimately appointed a commission, but the Government, of which he was a member then, went out of office. Recognising the very difficult position in which the whole question stands, I now urge that a commission might be appointed pending the report of which this Ordinance might at least be held in abeyance, so that you may have the benefit of judging of the whole question by the report of that Commission.

I have only one word to add, my Lord. For five years Your Lordship has been the custodian and guardian of Indian interests and the protector of their rights, during a memorable and distinguished vicereignty. To-day—as our leader, Sir Lepel Griffin, has well said—the eyes of all India are focussed upon the proceedings which are taking place in this room, and I am only expressing the sentiments of the 300 millions of people of India when I express the hope that Your Lordship will, on account of the sympathy which you have shown, and which I believe you are ready to show, and of which, even on our entrance into this room, you assured us, allow no other consideration but that of justice to weigh with you, and will grant the prayer which these gentlemen have come all this long distance here to ask at your hands.

MR. REES: I am not going, my Lord, into the subject of the merits of the case—I think they were amply dealt with by Sir Lepel Griffin; nor am I going to speak of my interest in this subject, which I have often brought before Parliament myself. But when Sir Henry Cotton spoke of the meeting yesterday I should like to say that it was not only a party meeting, but it was a meeting of part of a party, and that I do not deprecate with all my heart and soul in a matter which is of such serious importance any endeavour to make any subject connected with British India a party subject. I do not think there can be a more serious matter than this very serious one upon which we have come before Your Lordship, namely, the unfortunate manner in which our fellow subjects have been treated in the Transvaal.

MR. HAROLD COX: My Lord, I am in a somewhat different position from most of the gentlemen here, because I am neither an ex-official of the Government of India, nor am I myself Indian by birth, but I did have the honour personally of serving in India for two years under a Native Prince, and I look back to that period of my life with the greatest pleasure. That is one special reason why I am here to-day. But at the back of my mind the real reason why I am here to-day is because I am English, and because I think this matter is a disgrace to my country. Our country was pledged when we went to war with the Transvaal to do justice to the British Indians. That justice had not been done, and I con-

tend that it is not possible for the present Government, of which Your Lordship is a part, to ride off on the plea that the Transvaal is a self-governing Colony. It is not a self-governing Colony. It is absolutely subject to your authority and whatever is done by you, to-day, or at any other time, is done not in the name of the Transvaal, but in the name of the English people, and in the name of the English people I protest against any injustice being done to British subjects.

MR. NAOROJI: I do not want to take up Your Lordship's time, and after the able manner in which the whole subject has been laid before you, I would only join in the appeal that has been made to you on behalf of my fellow subjects, under the British flag. If there is one principle more important than another, it is that of the freedom of British subjects under the British flag, and I do hope that the British Government, especially a Liberal Government, will stand upon that basis.

MR. AMIR ALI: Will Your Lordship allow me to make one observation only? Perhaps my recent experience of India is the most recent of all. I venture to say this: that the feeling of India is very strong on this subject of the injury done to British Indians in the Transvaal, and it will be a serious mistake if the subject is put on one side. That is the only matter I want to present to Your Lordship.

THE EARL OF ELGIN: In the first place, I would like to say that I entirely accept the position which Mr. Cox put upon me. I am responsible, no doubt, for the advice which is given in this matter and nobody else, and I do not wish to shirk my responsibility. In the second case, I wish also to express my adherence to what was said by Mr. Rees, Sir Henry Cotton, and others, that I regard this as no party question at all. Sir Henry Cotton quoted from Lord Lansdowne, but I have before me a despatch from the Colonial Secretary of the last Government from which I should like to read one paragraph: "His Majesty's Government cannot believe that the British community in the Transvaal appreciate the true nature of the proposition which some of its members are pressing upon you. They, as Britons, are as jealous of the honour of the British name as ourselves, and even if a material sacrifice were necessary to vindicate that honour, I feel assured they would cheerfully make it. His Majesty's Government hold that it is derogatory to national honour to impose on resident British subjects disabilities against which we had remonstrated, and to which even the law of the late South African Republic rightly interpreted did not subject them, and they do not doubt that when this is perceived the public opinion of the Colony will not any longer support the demand which has been put forward."

SIR HENRY COTTON: May I ask which Colonial Secretary that was?

THE EARL OF ELGIN: It was from Mr. Lyttelton to yourself, written in 1904

Now, I understand from the gentlemen who have come before me to-day that we are not here to discuss general sympathies, nor even are we to consider anything further than the rights which the British Indian community possessed in the past. They do not ask at this present moment for an extension of those rights. That limits the matter, as I think you wish it to be limited to the question of this Ordinance itself.

SIR LEPEL GRIFFIN: For the present, my Lord. We are going to fight the question hereafter.

THE EARL OF ELGIN: Oh, yes; I am thinking of to-day, and the answer I have to give.

SIR LEPEL GRIFFIN: Yes.

THE EARL OF ELGIN: I only make that observation in order that I may be precise in my answer. The question, therefore, is with reference to this Ordinance, and following up the remark I made just now about its being no party question. I hope you will accept from me that it was no intention of the men at the head of the Transvaal Government, they distinctly stated so to me, that they had no intention whatever in the legislation they brought forward to do otherwise than to improve, rather than to make worse, the condition of the British Indian community. I am not saying that the subject is not perfectly open to your criticisms, but I wish to accept from me that that was the intention with which this legislation was brought forward.

Now Mr. Gandhi explained that in some cases, for instance, in the case of the poll tax, this concession, which was supposed to be given under the Ordinance, was illusory. I admit that I think there was something in his statement, that most of those who would come under the restriction I have just mentioned would probably have paid the 3*l*. But at the same time, dealing with this as a matter of the status of the British Indians in the Transvaal, I conceive that the Government might quite fairly have held that in removing the imposition of the poll tax once for all they were, *pro tanto*, improving the status of the British Indians.

Then with regard to the question of permits or registration, we have seen one of the permits given under the Boer Administration. It is merely a receipt for the money. The Boer Administration in that respect, as well as in a good many others, was not so accurate as the administration which necessarily with our ideas obtains under the British Government; and, therefore, I am only stating the view which has been put before me, the view of the Government of the Transvaal is this: that as it stood under the rules of the Boer Government which they had inherited, there was great confusion, and there were great administrative difficulties, and that consequently there was a considerable degree of friction, and also there arose considerable delay in the determination of cases of which I see traces in the petition itself. It was for that purpose, as I understand it, that the Government of the Transvaal proposed to substitute the form of registration, but according to their representations to me, there was no intention whatever of making that form of registration in any way more oppressive than the form of permits properly ministered.

And if I may, just for a moment—I do not want to go into all the details—follow this question of thumb marks, I think that thumb marks first came into notice prominently when Sir Henry Cotton and I were associated in the Government of India, under our friend Mr. Henry, who occupies a prominent position in this city now. No doubt the imposition of thumb marks was introduced in that case for the detection of criminals, but I do not know why the imposition of a thumb mark in itself should be a very debasing operation; in fact, as they say, it has always seemed to me a most marvellous thing that they say they can trace every thumb mark, there might be an advantage over the hieroglyphics which some of us call our signatures. And there is this fact I want just to mention, and to bring to the notice of Mr. Gandhi, that on the permit which he has handed to me, issued under the present Ordinance, there is a thumb mark already imposed under the present Ordinance in just the same way as it will be imposed under the new Ordinance.

MR. GANDHI: Only that that, as I said, is a purely voluntary act done by us on the advice and the instigation of Lord Milner. He asked us to do it.

THE EARL OF ELGIN: Quite so; but still here is a certificate which is an official certificate, and it bears a thumb mark.

LORD STANLEY OF ALDERLEY: It was affixed without prejudice.

THE EARL OF ELGIN: I do not see why it should not be affixed to the registration certificate without prejudice.

SIR M. BOWNACREE: Might I explain one thing? Whatever Lord Milner asked British Indians to do was done on the understanding that the whole question of the treatment of the community was the subject of consideration between the Colonial Secretary for the time being and Lord Milner and the local authorities, so that they might have submitted to Lord Milner's injunction in a respectful way, and, as Lord Stanley just now said, without prejudice. But this imposes a sort of distinction between one subject and another in the Transvaal.

THE EARL OF ELGIN: Do not suppose I am taking it further than this; I am only saying here is a document which is at present in use with a thumb mark, and it cannot be called debasing.

MR. GANDHI: It is the ten finger mark.

THE EARL OF ELGIN: It is more debasing with ten fingers?

SIR HENRY COTTON: It is only required in the case of criminals.

THE EARL OF ELGIN: I do not want to argue it, but I think there is just that much to be said.

Then there is one matter about registration, that is, that if the system of registration was carried out it would give a final and indefeasible title to those who are registered to their rights in the Transvaal. That is the position of the Transvaal Government on that matter. And as regards the carrying of a pass, and any oppressive use of the power of inspection, I am informed, and I have taken some trouble to ascertain it, that all that would be intended, so far as checking the Ordinance certificate is concerned, is that it would probably be inspected once a year. As regards any other casual demand for it, it would be, as I am told exactly in the same position as this permit is, which, if I am right, may be demanded from anybody in the Transvaal. That is the position. I do not want to elaborate too much on this subject, I only wish to make this explanation, that those were the sort of reasons which the Government of the Transvaal put before me when they asked my assent to the introduction of the legislation on these grounds, and it is distinctly upon my apprehension that these modifications of the law would, in the long run, be for the benefit, and not for the oppression, of the British Indian community, that I gave my assent to the introduction of that legislation.

Now, gentlemen, we are in the position that this is challenged. I think I ought to say, without in any way challenging the authority with which Mr. Gandhi and Mr. Ali come here as the representatives of a large meeting, that I have got telegrams from the Transvaal advising me of the forwarding of a petition from British Indians which they say has been largely signed, in opposition to the views which have been placed before me to-day; and with regard to the general feeling I have to-day received two more telegrams, I say two more, because there are good many others from different municipalities in the country urging the passing of the Ordinance and so on. I cannot, therefore, entirely subscribe to what Sir Lepel Griffin said about the opposition, and the nature of the opposition to this matter. I regret it more than anybody in this room. I suppose there could be found, if not in the records of this office, at any rate in the records of the India Office, despatches with my signature attached to them, protesting, in as strong language as has been used here, against the restrictions on British citizens, and I do not go back from one single word. But we have to recognise the fact that all over the world there are difficulties arising on the part of white communities, and we have to reckon with them. I do not say that they ought always to succeed; they certainly ought not to succeed in points of detail which would, in any way, involve oppression. But the fact of there being that sentiment has to be borne in mind when we have to deal with matters of this description.

I do not think I have much more to reply to. Reference has been made to the proposition towards the end of the petition, that at any rate there might be a postponement for the examination of the subject by a commission. That, no doubt, is an alternative which might be adopted; but I am not in a position to-day to say whether that is so or not. Indeed I think you will easily acknowledge that I did you the best compliment when I did not endeavour to make up my mind until I had seen you, and heard what you have to say. That is my position. I have now heard what Mr. Gandhi had to say. I hope he has put before me, as fully as he desired, what he has come so far to say. I have heard the other gentlemen who have accompanied him. I will give the best consideration to their representations, and I shall think it my duty to make up my mind with the full responsibility which I have to assume.

MR. GANDHI: May I make one statement, my Lord, for one minute? I have listened with the very greatest attention, and with very great obligation, to Your Lordship's statement, but I must submit that the information placed before Your Lordship on some point is not accurate, and I am in a position to refute that information by documentary evidence with regard to permits, as Your Lordship use the term, in connection with the Ordinance of 1885, but this is not the occasion when I could do it. But if Your Lordship will ask us to wait upon you we will do it. But that just shows that nothing short of a commission would place our position accurately before Your Lordship.

SIR LEPEL GRIFFIN: My Lord, I beg, on behalf of the deputation, to express our best thanks for the exceedingly kind and courteous way in which you have received us, and the patience with which you have listened to what we had to say. We were assured before of your full sympathy in this matter, and knew it perfectly well.

(The deputation then withdrew.)

The Earl of Elgin to Governor the Earl of Selborne.

Transvaal no. 715.

Colonial Office, Downing Street,
29th November 1906.

MY LORD,

I have the honour to acknowledge the receipt of your despatch No. 999, of the 8th of October, submitting, for the signification of His Majesty's pleasure, Ordinance No. 29 of 1906 of the Legislature of the Transvaal entitled "An Ordinance to amend law No. 3 of 1885".

2. I have received a full and lucid expression of your views upon the question of the position of Asiatics in the Transvaal in your despatches No. 529 of the 21st of May and No. 947 of the 24th of September, and the presence of Sir Richard Solomon in this country has afforded me an opportunity of obtaining further advice in the matter from one who enjoys your confidence and shares your responsibility for the policy which has been pursued by the Transvaal Government and which is embodied in this Ordinance.

3. In your Despatch No. 529, of the 21st of May, you submitted the drafts of two Ordinances which you proposed, subject to my concurrence, to introduce into the Legislative Council; and you requested me to communicate my decision to you by telegraph. The view which I then took of the question was clearly indicated in my telegram No. 1, of the 4th of July. It was impossible for me to regard the proposals embodied in the draft Ordinances submitted to me as, in themselves, affording an adequate measure of relief from the disabilities to which British Indians are subject in the Transvaal. It was clear to me that they fell far short of the reforms which Her late Majesty's Government repeatedly pressed upon the Government of the late South African Republic, and that they did not contain more than an instalment of the measures of relief which had been advocated by my predecessor. I was, however, fully alive to the considerations which you urged as to the state of local feeling in the Colony and the inexpediency of forcing through in the last session of the existing Legislature and by means of the official majority, a measure which would be condemned by the public opinion of the Transvaal. I, therefore, accepted your proposals on the understanding that they would improve the position of the British Indians now resident in the Transvaal, not, indeed, to the extent to which I could have desired, but in an appreciable degree; and I was content to hope that the future responsible Government of the Colony would, of its own free will, ultimately carry the same policy a stage further.

4. But at the present time the position is by no means so simple as it was when I approved your original proposals. The two draft Ordinances which you submitted have been replaced by a single Ordinance; their provisions have been entirely re-drafted, and, in regard to some points, at any rate, the alterations affect the substance as well as the form. I have never for a moment doubted that your own intentions, and the intentions of your advisers, have been to improve, by means of this legislation, the position of British Indians in the Colony and I was at pains to impress this fact upon the members of the deputation which waited upon me on the 8th instant. But I am bound to give a careful and sympathetic consideration to the representations of those whom it has been my object to benefit. Messrs. Gandhi and Ali have come to this country as the representatives of the British-Indian Association, and though I have been informed that the British Indian community in the Transvaal does not accept them with complete unanimity as its spokesmen, I must, in the absence of stronger evidence to the contrary, regard them as really representative of the majority of their compatriots. They have protested against the Ordinance, not on the ground that it affords inadequate relief, but on the ground that it actually aggravates the disabilities from which they at present suffer; and they have urged that the retention unamended of the provisions of Law No. 3 of 1885 would be preferable to the allowance of the new Ordinance.

5. It is, of course, possible that the British Indians have formed a mistaken view of their own interests in opposing this Ordinance, but it is not easy for me to urge them to accept as advantageous a measure which they repudiate as detrimental to their interests. The gist of their contentions you will be able to gather from the printed Memorandum which they have communicated to me, and from the report of my reception of the deputation on the 8th instant, copies of which I enclose herewith.

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6. In paragraph 4 above I have referred to the differences between the drafts originally submitted by you and the Ordinances as ultimately passed by the Legislative Council. The most important difference is that the registration of Asiatics, which under your original proposals would have remained optional, is made compulsory and enforceable by severe penalties under the Ordinance. Another provision in the Ordinance which appears to me to be open to criticism is that which empowers a Resident Magistrate to issue an order requiring an Asiatic, who has failed to satisfy him that he is lawfully resident in the Transvaal, to leave the Colony within a time to be specified in the order. I am disposed to think that a right of appeal to the Supreme Court from such an order should have been given. I am advised that, under the existing law, no such right of appeal would exist, and I am not satisfied that a Resident Magistrate ought to be entrusted with the power of final determination of a matter of such importance.

7. I have received from you a number of telegrams reporting resolutions which have been passed by various municipalities and other bodies in the Transvaal in favour of the Ordinance. I have not failed to attach due weight to these expressions of the opinion of the white community in the Transvaal, and I fully understand your desire that the matter should not be left in suspense longer than is necessary. But in a question of such importance and difficulty a hasty decision is impossible, and I must, therefore ask you carefully to consider this despatch and to favour me with a further expression of your own opinion upon the question, in view of the strong, and, as I gather, somewhat unexpected opposition with which the Ordinance has been met by the majority of the Indian community.

8. I recognise that it follows that the decision on this Ordinance must be postponed until it is too late to bring into operation the provisions of section 4 (1) on the date named therein. Under these circumstances, and in view of the near approach of the establishment of responsible government, I think it expedient to announce at once that it is not proposed, in the meantime, to proceed further with this measure.

I have, etc.,

The Right Hon.
Earl of Selborne, P.C., K.C.M.G.
etc., etc., etc.

ELGIN.

Telegram (Paraphrase). Governor the Earl of Selborne to the Earl of Elgin
(Confidential.)

29th November. No. 6.

Your telegram No. 2 of 27th November. I am placed in a position of serious difficulty by the decision of His Majesty's Government. I always understood that the policy of His Majesty's Government, as of their predecessors, was to maintain the *status quo* until Responsible Government came into existence in the Transvaal, and more than once I have pledged my word publicly to that effect both to the European and to the Indians. When I found that the *status quo* was not being maintained I asked and obtained your leave to introduce the Ordinance now under your consideration. Not doubting that His Majesty would be advised by you to assent to the Ordinance, I have influenced the Europeans to forego further agitation against the Indians in every way in my power and have succeeded. It is obvious to every one that the *status quo* is not being maintained and public proof of the fact exists in the case which I reported to you in my telegram No. 2 of 28th November. I scarcely see what I shall answer if I am accused of not keeping my word and I fear that exactly that strong feeling which I have laboured so hard, and not unsuccessfully, to allay will be excited against the Indians.

Telegram. The Earl of Elgin to Governor the Earl of Selborne.

10th December. No. 1. Your telegram of 29th November. No. 6. I regret that my decision with regard to the Asiatic Ordinance should cause you embarrassment, but I have felt that no other alternative was open to me. In your efforts to check further Asiatic immigration into the Colony I have been willing to support

you, but I cannot accept proposals for doing this by means which may appear to alter the *status quo* in a manner detrimental to British Indians lawfully resident in the Transvaal. For measures passed at this juncture His Majesty's Government cannot disclaim direct responsibility. My object in authorising legislation was to ameliorate the position of Asiatics lawfully resident, but in view of the strong opposition with which the Ordinance has been received by the Indian community, I must regard it as at least doubtful whether it achieves that object. The Ordinance passed is widely different from the drafts which I approved and I am sure that you will realise that His Majesty's Government cannot of their own initiative pass legislation which is regarded, rightly or wrongly, by a large number of those mainly affected as aggravating the restrictions against which His Majesty's Government have in the past consistently protested. Our position will be made more clear to you by my despatch now on its way.

A

BILL

To place restrictions on Immigration into this Colony to provide for the removal therefrom of prohibited immigrants and other persons and to establish and maintain an Immigration Department.

INTRODUCED BY THE HONOURABLE THE COLONIAL SECRETARY.

Be it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of the Transvaal as follows:—

1. *Repeal of Ordinance No. 5 of 1903.* The Peace Preservation Ordinance 1903 shall be and is hereby repealed provided that no such repeal shall affect or abridge any powers or jurisdiction by the Asiatic Law Amendment Act 1907 conferred for the purpose of carrying out such Act; *but the said Ordinance shall for all the purposes of such act be deemed to remain of full force and effect.*

2. *Interpretation of terms.* In this Act and in any regulation made thereunder unless inconsistent with the context; :

“ Department ” shall mean the Immigration Department established and maintained under the provisions of this Act;

“ Governor ” shall mean the officer for the time being administering the Government of this Colony acting by and with the advice of the Executive Council;

“ Imprisonment ” shall mean imprisonment with or without hard labour as the court sentencing an offender to imprisonment may direct;

“ Magistrate ” shall include a resident magistrate and an assistant resident magistrate of any district of the Colony;

“ Minister ” shall mean the Colonial Secretary or such other Minister to whom the Governor may from time to time assign the carrying out of this Act;

“ Minor ” shall mean any person under the age of sixteen years;

“ Police officer ” shall mean any member of a police force lawfully established in this Colony;

“ Prohibited immigrant ” shall mean and include any of the following classes of persons desiring to enter or entering this Colony after the date of the taking effect of this Act;

(1) any person who when asked whether within or outside this Colony by a duly authorized officer shall be unable through deficient education to write out *from dictation or otherwise* and sign in the characters of an European language an application for permission to enter this Colony or such other document as such officer may require; provided

that for the purposes of this sub-section Yiddish shall be accepted as an European language ; provided further that :—

- (a) if the Minister publish a notice in the *Gazette* that arrangements have been made with the Government of any country for regulating the admission to this Colony of the subjects or citizens of such country such subjects or citizens shall not while such notice is in force be required to comply with the provisions of this sub-section ;
- (b) the Minister shall not issue any such notice unless such arrangements have been sanctioned by resolution of both Houses of Parliament ;
- (c) any such notice shall cease to have effect as soon as it is cancelled by further notice of the Minister in the *Gazette* ;
- (2) any person who has not in his possession or at his disposal means to support himself for a reasonable time within this Colony or who is likely to become a public charge if he were allowed to enter therein ;
- (3) any prostitute or person living on the earnings of prostitution or procuring women for immoral purposes ;
- (4) any person who [under any law in force] at the date of his entering or attempting to enter this Colony [would be liable] *is subject or would if he entered this Colony be subject to the provisions of any law in force at such date which might render him liable either at such date or thereafter* if found therein to be removed from or to be ordered to leave this Colony whether on conviction of an offence against such law or for failure to comply with its provisions or otherwise in accordance with its provisions ; provided that such conviction be not the result of the commission by such person elsewhere than in this Colony of an offence for which he has received a free pardon ;
- (5) any person who is a lunatic within the meaning of the Lunacy Proclamation 1902 or any amendment thereof ;
- (6) any person who is a leper or is suffering from such infectious or contagious disease of a loathsome or dangerous character as may from time to time be prescribed by regulation ;
- (7) any person who owing to information officially received by the Minister from any Secretary of State or from a member of any colonial government (whether British or foreign) or through diplomatic channels from an officer of any foreign state is deemed by the Minister to be an undesirable ;
- (8) any person who the Minister has reasonable grounds for believing would be dangerous to the peace order and good government of this Colony if he entered therein ;

but shall not include—

- (a) Members of His Majesty's regular forces ;
- (b) the officers and crew of any public ship of a foreign state ;
- (c) any person who is duly accredited to this Colony by or under the authority of His Majesty or of the government of a foreign state together with his wife family and servants ;
- (d) any person who has served in any of His Majesty's volunteer forces in South Africa and has received a good discharge and who does not come within the scope of sub-sections (3) (4) (5) (6) (7) or (8) of this section ;
- (e) the wife or minor child of any person who is not a " prohibited immigrant " ;
- (f) any European person who has been at any time lawfully resident within this Colony and who has not under the provisions of any law been removed from or ordered to leave this Colony ;
- (g) any Asiatic who is eligible for or has obtained a certificate of registration under the Asiatic Law Amendment Act 1907 and who does not come within the scope of sub-sections (3) (4) (5) (6) (7) or (8) of this section ;

- (h) descendants of the aboriginal races of Africa south of the Equator who do not come within the scope of sub-sections (3) (4), (5) (6) (7) or (8) of this section.
- (i) European persons who are agricultural or domestic servants skilled artisans mechanics workmen or minors who are able to produce a certificate signed by the Agent-General of this Colony in England or by an officer in England or elsewhere appointed for the purpose by the Governor to the effect that the person named therein has been engaged to serve immediately on arrival in this Colony an employer therein of repute at an adequate remuneration and for a reasonable period of time; *provided that such persons do not come within the scope of any sub-section of this section other than sub-section (2).*

"Regulation" shall mean any regulation made under section fifteen of this Act.

3. *Establishment, functions and officers of the Immigration Department.*—

- (1) The Governor may establish and maintain out of moneys voted by Parliament for the purpose a department to be known as the "Immigration Department" which shall be under the control of the Minister and in charge of such officer as he may from time to time appoint.
- (2) The function of the department shall be the performance of all work whether within or outside this Colony necessary for or incidental to the prevention of the entrance into the Colony of prohibited immigrants or their removal therefrom and the carrying out of any powers or duties that may be specially conferred or imposed on it by this Act or by regulation.
- (3) The Governor may from time to time appoint and remove such officers as he may think necessary or expedient to assist in the administration of the department who shall have such powers and perform such duties within or outside this Colony as may be conferred upon them by this Act or by regulation.

4. *Agreements with Governments of neighbouring colonies for the carrying out of Act.*—The Governor may from time to time enter into agreement with the Government of any colony or territory in South Africa for the doing of such acts or things as are necessary or expedient for the carrying out of the objects and purposes of this Act.

5. *Penalties for prohibited immigration.*—Every prohibited immigrant entering into or found within this Colony shall be guilty of an offence and shall be liable on conviction:—

- (1) to a fine not exceeding one hundred pounds or in default of payment to imprisonment for a period not exceeding six months or to both such fine and such imprisonment; and
- (2) to be removed at any time from the Colony by warrant under the hand of the Minister and pending such removal to be detained in such custody as may by regulation be prescribed; provided that
- (a) such prohibited immigrant may be discharged from such detention if he find two approved sureties in this Colony (each in the sum of one hundred pounds) for his leaving the Colony within one month;
- (b) if such prohibited immigrant be sentenced to imprisonment such imprisonment shall terminate as soon as he is removed from the Colony.

[6. *Removal from Colony of certain persons convicted under Immorality Ordinance, 1903, and of dangerous persons.*—Any person convicted after the date of the taking effect of this Act of a contravention of sections three, thirteen or twenty-one of the Immorality Ordinance, 1903, or any amendment of such sections and any person who may be deemed by the Minister on reasonable grounds to be dangerous to the peace order and good government of this Colony if he remain therein and any person who having been ordered under any law to leave this Colony fails to comply with the terms of such order

be arrested and removed from the Colony by warrant under the hand of the Minister and pending removal may be detained in such custody as may be prescribed by regulation.]

6. Any person who :—

- (a) is convicted after the date of the taking effect of this Act of a contravention of sections *three, thirteen or twenty-one* of the Immorality Ordinance, 1903, or any amendment of such sections ; or
- (b) is deemed by the Minister on reasonable grounds to be dangerous to the peace order and good government of this Colony if he remains therein ; or
- (c) having been ordered under any law to leave this Colony failed to comply with the terms of such order ;

may be arrested and removed from this Colony by warrant under the hand of the Minister and pending removal may be detained in such custody as may be prescribed by regulation ; provided that no such person as is in paragraph (b) hereof described shall be removed from this Colony except on the order of the Governor ; provided further that every such person arrested shall be discharged from custody unless an order be made by the Governor for his removal from this Colony within ten days after the date of his arrest.

7. *Offences of aiding or being accessory to prohibited immigration.*—Any person who :—

- (1) wilfully aids or abets a prohibited immigrant in entering or remaining in this Colony ; or
- (2) wilfully aids or abets a person ordered to be removed under section six in remaining in this Colony ; or
- (3) enters into or purports to enter into a contract as employer with any person outside this Colony with intent that the provisions of this Act be evaded or at the time of entering into or purporting to enter into such contract shall be unable to fulfil his part thereof or has no reasonable expectation of being so able ; or
- (4) uses or attempts to use any certificate issued under paragraph (i) of the classes of persons excluded from the definition of " prohibited immigrant " unless he be the lawful holder of such certificate ; or
- (5) forges or uses knowing the same to be forged any document purporting to be such certificate

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred pounds or in default of payment to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

8. *Prohibited immigrant not to obtain a license to carry on trade or calling or acquire interest in land.*—No prohibited immigrant shall be entitled to obtain a license to carry on in this Colony any trade or calling or to acquire therein any interest in land whether leasehold freehold or other interest ; and any such license (if obtained) or any contract deed or other document by which such interest is acquired in contravention of this section shall on conviction of such immigrant under section five of this Act be null and void.

9. *Arrest without warrant of persons suspected of being prohibited immigrants.*—Every person found in this Colony who is reasonably suspected of being a prohibited immigrant may be arrested without warrant by any magistrate, justice of the peace, police officer or officer of the department and shall as soon as possible be brought before a court of resident magistrate to be dealt with according to law.

10. *Prohibited immigrant not exempt from Act by reason that he was allowed to enter through oversight.*—No prohibited immigrant shall be exempt from the provisions of this Act or allowed to remain in this Colony by reason only that he had not been informed that he could not enter this Colony or that he may have been allowed to enter through oversight or owing to the fact being undiscovered that he was a prohibited immigrant.

11. *Prohibited immigrant, etc., and person assisting him liable to pay expense of his removal and custody.*—Any person ordered to be removed from this Colony under this Act and any other person who shall have been convicted under section seven of aiding or abetting him in entering or remaining in the Colony in contravention of this Act shall be liable to pay all expenditure incurred by the Government in carrying out such removal whether from the Colony or South Africa or in the detention within the Colony or elsewhere of any person pending his removal; and the amount of such expenditure on production to the Sheriff of the certificate of an officer of the department stating the items and total amount of such expenditure shall be recovered by execution levied on the property within the Colony of the person so liable in manner provided for execution levied under a Judgment of the Supreme Court; and the proceeds of such execution shall be paid by the Sheriff to the Treasurer who after deduction of the amount of expenditure aforesaid and the costs of execution shall remit the balance to the person so liable or to any person appointed by him to receive same.

12. *Keeping of books by hotel boarding-house and lodging-house keepers.*—(1) It shall be the duty of every keeper or person having the management of a place used as a hotel boarding-house lodging-house or other place wherein persons receive sleeping accommodation for money or valuable consideration to cause to be kept a book in which every person immediately he first receives such accommodation shall enter his name and place from which he last came.

(2) Every such book shall be open to the inspection of any police officer or officer of the department at all reasonable times.

(3) Any person failing to comply with the requirements of this section or obstructing or preventing any such officer in carrying out his powers thereunder or making any false entry in such book shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty pounds or in default of payment to imprisonment not exceeding one month or to both such fine and such imprisonment.

13. *Evidence.*—The burden of proving that a person has not entered or remained in this Colony in contravention of this Act or any regulation shall in any prosecution for such contravention lie upon the accused person.

14. *Special jurisdiction of resident magistrates.*—Every court of resident magistrate shall have jurisdiction to impose the maximum penalties for all contraventions of this Act or of any regulations.

15. *Regulations for purposes of Act.*—The Governor may from time to time make alter or rescind regulations not inconsistent with the provisions of this Act for all or any of the following purposes:—

- (a) Prescribing the powers and duties of officers of the department.
- (b) For preventing the entrance of prohibited immigrants into this Colony.
- (c) For the removal from this Colony of persons ordered under this Act to be removed therefrom.
- (d) For the detention pending removal of persons ordered under this Act to be removed from the Colony.
- (e) Prescribing the diseases which are infectious or contagious diseases for the purposes of sub-section (6) of section two.
- (f) Prescribing the forms of—
 - (i) the certificate mentioned in sub-section (2) of the classes of persons excluded from the definition of prohibited immigrant;
 - (ii) the warrants to be issued by the Minister under sections five and six;
 - (iii) the book to be kept under section twelve.
- (g) Prescribing the conditions under which prohibited immigrants may be allowed to pass through this Colony while journeying to a place outside the same.
- (h) Generally for the better carrying out of the objects and purposes of this Act.

And may by any such regulations prescribe penalties for contraventions thereof not exceeding a fine of one hundred pounds or in default of payment imprisonment for a period not exceeding six months or both such fine and such imprisonment.

16. *Title and date of taking effect.*—This Act may be cited for all purposes as the Immigrants Restriction Act, 1907, and shall take effect on such date as may be declared by proclamation of the Governor in the *Gazette*.

Telegram No. 9499—108, dated the 5th November 1907.

From—Viceroy, Simla,

To—Secretary of State, London.

Your telegram dated 16th October: Transvaal Immigration Restriction Bill. We are strongly opposed to the principle of the Bill. But we recognize that His Majesty's Government must decide the question on other considerations than the interest of British Indian subjects. If Asiatic Law Amendment Ordinance, 1907, preserves rights possessed by Indians under Peace Preservation Ordinance, 1903, we do not desire to offer any remarks on the detailed provisions of the Bill.

Telegram No. 3, dated London, the 1st August 1907.

From—The Secretary of State,

To—The Governor of the Transvaal.

Your telegram 31st July, A. Following are terms of reply of Under Secretary of State to Sir William Bull's question inquiring in what respects the Regulations published in the "Gazette" of 28th June differed from those appended to the original disallowed Ordinance and may be published:—

"No Regulations were issued under the Ordinance of 1906, but the Transvaal Government had announced their intention of adopting finger-print impressions as the means of identification. The Transvaal Ministers now state that after careful consideration of the representations made by the Secretary of State and after investigation of the various other systems of identification that now exist, they have come to the conclusion that there is no alternative but to adopt the finger impression system; they state that they cannot admit that the adoption of this system will expose Asiatics to any degrading or vexatious indignities; that it is not a purely criminal system, but is applied in India in all branches of public business; that it is an easy, cheap and expeditious system and its use does not involve the breach of principles of any religion, so far as they have been able to ascertain; and that it is absolutely necessary that the Government should adopt some certain means of identification which this system provides. Whilst the Secretary of State regrets that the Transvaal Ministers have not found themselves able to make a concession to the local Indian sentiment in this matter, which is largely based upon the fact that Asiatics will receive differential treatment in this respect, he does not regard this highly scientific method of identification as being objectionable in itself, and he does not feel that he is able, in face of the explanations given by the Transvaal Ministers, to press them further to reconsider their decision."

No. 9 OF 1908.

GOVERNMENT OF INDIA.

DEPARTMENT OF COMMERCE AND INDUSTRY.

EMIGRATION.

To

THE RIGHT HONOURABLE JOHN MORLEY, O.M.,

His Majesty's Secretary of State for India.

Calcutta, the 30th January 1908.

SIR,

In our telegram of the 7th January 1908 we repeated, for your information and for such action as you might consider desirable, a telegram which had been addressed

to His Excellency the Viceroy by the President, All India Conference, Surat, appealing for intervention on behalf of the British Indians in the Transvaal, against whom prosecutions had been instituted under the Asiatic Law Amendment Act, 1907. We have since received from different quarters further representations on the same subject, and we enclose copies for your information.

2. These representations do not exhaust the indications, which have come to our notice, of the existence in this country of a deep and general feeling of resentment evoked by the legislative and executive measures recently adopted in the Transvaal in regard to British Indian residents of that Colony. The disabilities to which these subjects of His Majesty are exposed have been discussed at public meetings throughout the country, and they have formed the subject of severe criticism alike in the Anglo-Indian and Vernacular Press. The principle underlying the legislation recently adopted is indeed regarded as involving an unjustifiable invasion of the rights which Indian subjects of His Majesty are entitled, as such, to claim in any part of His Majesty's dominions. But it is more particularly in regard to the measures which it is proposed to introduce with a view to give effect to the principle of excluding British Indians from the Colony that the strongest feeling has been aroused. It is urged that these measures constitute a breach of the pledges which have been given to British Indians already resident in the Colony; that they are in diminution of rights enjoyed by them even under the *regime* of the late Transvaal Republic and since recognised during the period of Crown administration, and, finally, that many of the provisions of the new Registration law, the circumstances attending its enactment after a disallowance by the Crown of an Ordinance embodying substantially similar restrictions, and more particularly the official announcements in regard to its administration, point to the inevitable conclusion that it will be enforced, as we believe it so far has been enforced, with uncompromising severity, in direct contravention of the assurances as to the intention with which such legislation was originally proposed to His Majesty's Government. On the effects of this aspect of the case it is perhaps unnecessary for us to insist. On a previous occasion, in 1903, when the Government of India were constrained to address the Secretary of State in regard to the position of British Indians in the Transvaal, Lord Curzon's Government clearly brought to notice the existence of a very strong and bitter sentiment amongst the educated and articulate sections of the native community throughout India on the subject of the disabilities imposed on their countrymen resident in South Africa. The further developments of an attitude of hostility towards British Indians which have taken place in the interval in South Africa and elsewhere have only served to render this sentiment of resentment more general and more pronounced. We have no desire to exaggerate its effects; but it would be idle, we consider, to ignore the significance which in the altered political conditions obtaining in India, must necessarily attach to the growth among the Indian subjects of His Majesty of a feeling that they are denied the privileges and rights usually regarded as the birthright of a British subject.

3. The disabilities to which at the close of the war British Indian subjects were subjected in the Colonies of the Transvaal and of the Orange River were exhaustively reviewed in the despatch of Lord Curzon's Government, No. 18 (Revenue and Agriculture) of the 14th May 1903. Realising that their removal at that time would not only be a less formidable task than subsequently when these Colonies had passed from under the direct administration of the Crown, but that it might also not improbably prepare the way for a more generous treatment of British Indians when the Colonies should be given the responsibilities of self-Government, the Government of India invited special attention to four subjects in regard to which the position of British Indian subjects resident in these Colonies called for consideration. They trusted that, if legislation on the lines of the Immigration Restriction Acts in force in the other Colonies of South Africa were introduced, the literary test to be applied to immigrants would be defined so as to include the Indian vernaculars. They pressed for the abolition of the Pass Law and its corollary, the Curfew System, for which they considered that the only justification could be found in practices of a persistently criminal nature. Thirdly, they asked that residence in locations should be made compulsory only upon Indians in whose case the restriction was desirable for sanitary reasons, and that, in any event, such a measure should not apply to places of business. Their fourth

recommendation referred to the disabilities imposed by regulations as to the use of footpaths and of public conveyances and as to the right to travel by higher classes on railways. In regard to these, while recognizing that many of the restrictions so set up were beyond the control of Government, the Government of India urged that no official countenance should be lent to such invidious treatment; and in this connection they suggested that the practice of grouping all classes of Indians indiscriminately under the generic term of coolies should be abandoned.

4. These recommendations of the Government of India formed the basis of negotiations between the India and the Colonial Offices into which we need not enter, and it will be sufficient to refer to the resulting position as it was explained to Lord Milner in Mr. Lytton's despatch of the 20th July 1904. A distinction was drawn between future immigrants and British Indians then resident in the Transvaal. In regard to the former His Majesty's Government reluctantly agreed that it would be impossible for them to withhold their sanction to a measure restricting immigration on the lines of similar Acts in force in the Cape Colony and in Natal, the test in a literary Indian language being excluded. With respect to the latter, His Majesty's Government desired that there should be no interference with the right of those then resident in the country to obtain licenses to trade outside locations; that while regulations might be framed to require both residents and newcomers to live in locations, so far as such a requirement was necessary for sanitary purposes, those of a superior class should be exempted and be allowed to reside anywhere; that concessions respecting the exemption of Asiatics of the better class, including all respectable shop-keepers and traders, from humiliating disabilities under municipal or other regulations applying to coloured persons should be definitely secured by Ordinance. With reference to these latter restrictions it had already been explained in a telegram from Lord Milner, dated the 20th January 1904, that the Pass and Curfew law had never applied to Indians; that the restrictions as to the use of footpaths would under the recent municipal regulations only be imposed in the case of natives; that the laws as regards the use of public conveyances would be repealed, while it would be difficult to agree to any withdrawal of the restrictions as regards the right of British Indians to travel in higher classes on railways.

5. The subsequent stages in the history of the proceedings culminating in the Ordinance of 1906 which was disallowed by His Majesty's Government do not immediately concern the object of our present communication to you, and we pass to the two measures affecting British Indians which were introduced into the new legislature on the grant of responsible institutions, to the Colony. The first of these, the Asiatic Law Amendment Act of 1907, is in all essential matters identical with the Ordinance disallowed by His Majesty's Government, and while signifying that His Majesty would not be advised to exercise his powers of disallowance with respect to the Act, Lord Elgin desired to place on record that His Majesty's Government did not consider the position of Asiatics lawfully resident in the Transvaal as settled by this Act to be satisfactory. The definition of Asiatics for the purpose of this enactment reproduces a classification adopted in the Boer Law of 1885 by which all classes of Indians are grouped under the generic term of coolies. By the new measure registration is made compulsory in the case of all Asiatics above the age of 8 and is enforceable by severe penalties and no trading licenses are to be granted to Asiatics except on production of certificates of registration. These certificates are to be produced on demand by any member of the police force or any person specially authorised in this behalf. The method of registration is left to be provided for by regulations, and, though as yet no copy of these has reached us we infer from the papers forwarded with your despatch No. 166, dated the 25th October, 1907, that the impression of finger-prints is to be required alike in the application for registration and the certificate of registration. The second measure which has been adopted is the Immigration Restriction Bill. The stringency of this measure, as compared with similar enactments in force in the Cape Colony and Natal, is admitted by Lord Selborne in his telegram of the 11th July 1907. No exemption is provided for in favour of Asiatics lawfully resident in the Colony unless the provisions of the Asiatic Law Amendment Act have been complied with. The penalties for unlawful immigration are for more severe than those prescribed in the Acts of other Colonies. Though the Act does not differentiate against Asiatics by name the definition of prohibited immigrant singles out the Asiatic as the

of the measure. While we were strongly opposed to the principle of the Bill, we telegraphed to you on the 5th of November 1907 that we recognised that the matter must be decided on other considerations than the interest of British Indian subjects alone.

6. In the brief sketch given in the preceding paragraphs we have contrasted the present position of British Indians in the Transvaal with their position after the annexation of the Colony and the contrast fails to reveal any modification which can fairly be regarded as an improvement. Access to the Colony, the right to which under the *regime* of the late Republic has been enjoyed unfettered by any condition, is now closely regulated and controlled by a stringent Immigration Restriction Bill; residence in the Colony is in the case of British Indians conditional on compliance with a system of registration enforceable by an enactment which replaces a loosely worded and vague law of doubtful application. On the other hand, so far as our information goes, many petty harassing disabilities, notably those connected with the right to travel by the higher classes of railways remain unredressed. The legislation which has since taken shape in the two enactments referred to above was originally proposed to His Majesty's Government with the object and in the expectation that the regularisation of the conditions of admission and of residence applicable to British Indians would result in bettering their position. This expectation, we fear, has so far not been realised. We appreciate the peculiar difficulties which surround the question and we recognise that the determination of the Colony to prevent an excessive influx of Asiatics must, however much we may regret it, be respected. We do not however consider that this determination is inconsistent with a less severe treatment generally of Asiatics and in particular of the better class of Asiatics lawfully resident in the Colony. We are of opinion that an endeavour should be made to induce the Colonial Government to relax the stringency of the provisions of the two Enactments in question and to secure that in future these provisions may be liberally interpreted and leniently enforced by the authorities charged with their administration. We would in illustration refer to the requirement of section 9 of the Asiatic Law Amendment Act, which provides that a certificate of registration must be produced on demand by any member of the police force or any person authorised in this behalf. This provision of the law presents a certain similarity to the Pass Law to which reference was made in paragraph 11 of the despatch of Lord Curzon's Government of the 14th May 1903. We were informed that this Pass Law did not apply to Indians and we hope that it may be possible by executive instructions from the Colonial Government to give this requirement as limited and restricted an operation as is consistent with the necessities of the case. We would also ask that consideration may be given to the possibility of modifying the existing restrictions so as to include a differentiation in favour of literate Asiatics. A distinction in favour of the Asiatics of the better class was one of the points on which insistence was laid in Mr. Lyttleton's despatch of July 1904 in connection with the restrictions on the residence of British Indians in locations, and we consider that a similar distinction should be recognised so as to provide for the exemption of literate Indians from restrictions intended primarily to apply to those of a lower class. We would also observe with reference to the question discussed in the Minute accompanying Lord Selborne's despatch of the 8th July 1907 that while it is true that the system of finger-print impressions is generally enforced in India, it is only in the case of criminals that impressions of the thumb and of each digit of each hand are taken. In the transactions connected with pensions the standing rules of the Indian Accounts Department provide only for the taking of the impression of the thumb and fingers of the left hand, while the impression of the left thumb alone is required from persons executing documents before Registrars. The feeling of indignation with which British Indians in the Transvaal regard an obligation to comply with a method of registration usually associated in their native country with the criminal classes can be easily understood.

7. In view of the absence of detailed information of a recent character and of the consideration that the general principles at stake have in the past been most fully discussed, we have refrained from entering at greater length into the specific grievances of the Indians in the Transvaal. We desire however, to insist most strongly on the fact, which is admitted by His Majesty's Government, that the present condition of our Indian subjects in South Africa cannot be looked on as other than most unsatisfactory. The new legislation while professing to be directed towards the confirmation of the rights of those already lawfully in the Transvaal

is obviously of a nature calculated, if worked on the present lines, to limit their privileges to an extent that the old law of 1885, the operation of which was so often called in question, did not effect. It may probably in the long run result in the expulsion of the majority of them. We recognize that the time has passed when any protest against the legislation itself could be proper or effectual. But it is not, we trust, too late to make an earnest appeal that you will endeavour to secure that the actual administration of the law, which is entirely within the control of the Government of the Colony, may be made less onerous, and especially that respectable and literate Indians may not be subjected to the harassing restrictions and limitations that are imposed on those of a much inferior class. We fully recognize that the present agitation, which has culminated in the refusal, on the part of those made liable to registration, to comply with the law, may have been accompanied by demands which exceed the limits within which we have in the past considered interference justifiable and with which it is impossible to comply. But it cannot be denied that there are at the bottom real grievances resulting from harshness and unnecessary severity, which friendly intervention might succeed in removing. We consider that we should fail in our duty if we refrained from specially addressing you with a view to securing the removal or the mitigation of these grievances. The matter is one of the highest importance, and we need not attempt to describe the deplorable state of feeling that will be created if it be once for all established that the Government is unable to protect its Indian subjects from worse treatment than they have had to endure in the same country under foreign rulers.

We have the honour to be,

SIR,

Your most obedient, humble Servants,

MINTO.

KITCHENER.

H. ERLE RICHARDS.

E. N. BAKER.

H. ADAMSON.

J. F. FINLAY.

J. O. MILLER.

TRANSVAAL REGISTRATION BILL.

Further papers in regard to the Transvaal Registration Bill.

No. 1.

THE GOVERNOR OF THE TRANSVAAL TO THE SECRETARY OF STATE.

(Received April 20, 1907.)

Government House, Pretoria, April 1, 1907.

MY LORD,

I have the honour to transmit to you three copies of Act No. 2 of 1907 passed by the Legislature of the Transvaal, and entitled an "Act to amend Law No. 3 of 1885."

2. I have assented to the Act, but Your Lordship will observe that it contains a suspending clause to the effect that it shall not take effect unless and until it is proclaimed in the "Gazette" that it is His Majesty's pleasure not to disallow it.

3. The reasons which have led the Legislature to pass this Act are familiar to your Lordship, and I do not think that it is necessary for me on the present occasion to add anything to the previous correspondence which has passed between us on this subject. I would only repeat that there can be no mistaking the strength of the unanimous demand of all sections of the white community in the Transvaal for the passing of this Act.

4. I hope that it may be possible for you to inform me at an early date that His Majesty will not be advised to exercise his power to disallowance in respect

of this Act, so that it may be possible to bring it into force at once and so to check the illicit and unauthorised influx of Asiatics into the Transvaal which is at present proceeding at an alarming rate.

I have, etc.,

SELBORNE,
Governor.

Enclosure in No. 1.

Act No. 2 of 1907.

ACT TO AMEND LAW NO. 3 OF 1885.

A. D. 1907.—Be it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of the Transvaal as follows:—

1. *Repeal.*—Sub-section (c) of Article two of Law No. 3 of 1885 as amended by Volksraad Resolutions Article 1419 of the twelfth day of August 1886 and Article 128 of the sixteenth day of May 1890, shall be and is hereby repealed.

2. *Definition.*—In this Act unless inconsistent with the context;

“Asiatic” shall mean any such male person as is described in Article one of Law No. 3 of 1885 not being a Malay born and resident in any British Colony or possession in South Africa nor a person introduced into the Colony under the Labour Importation Ordinance 1904 and not being an officer in the Chinese Consular Service;

“Register of Asiatics” shall mean the register to be kept under this Act as prescribed by Regulation;

“Registrar” shall mean the officer appointed by the Governor to keep the register of Asiatics and any person lawfully acting in such capacity;

“Resident Magistrate” shall include an Assistant Resident Magistrate;

“Regulation” shall mean any Regulation made under Section *eighteen* of this act.

“Guardian” shall mean the parent of an Asiatic under the age of sixteen or any other person under whose care or control such Asiatic is living for the time being or failing any such person the employer of such Asiatic;

“Application for registration” shall mean an application to be placed on the register of Asiatics made in such manner and form as may be prescribed by Regulation and accompanied by the supplying of such particulars and the furnishing of such means of identification as may be required by this Act or by Regulation;

“Applicant” shall mean any person who makes application for registration on his own behalf or any person on whose behalf application for registration is made by his guardian;

“Certificate of registration” shall mean a certificate of registration under this Act in the form prescribed by Regulation;

“Lawful holder” as used in relation to any certificate of registration shall mean the person whose registration is thereby certified.

3. *All Asiatics lawfully resident in Colony to be registered.*—(1) Every Asiatic lawfully resident in this Colony shall subject to the exceptions hereinafter mentioned, be registered in the register of Asiatics and shall thereupon be entitled to receive a certificate of registration and no charge shall be made for such registration or certificate save as in Section *twelve* of this Act provided:

(2) The following shall be deemed for the purposes of this Act to be Asiatics lawfully resident in this Colony:—

(i) Any Asiatic duly authorised to enter and reside in this Colony by a permit issued under the Indemnity and Peace Preservation Ordinance, 1903, or any amendment thereof or issued between the first

day of September 1900 and the date of the passing of the said Ordinance unless such permit shall have been fraudulently obtained; provided that any permit expressed to authorise any Asiatic to remain in this Colony for a limited time only shall not be deemed to be a permit within the meaning of this sub-section.

(ii) Any Asiatic resident and actually in this Colony on the thirty-first day of May 1902.

(iii) Any Asiatic born in this Colony since the thirty-first day of May 1902 not being the child of any labourer introduced into this Colony under the Labour Importation Ordinance, 1904.

4. *Asiatics to apply for registration within fixed time.*—(1) Every Asiatic resident in this Colony at the date of the taking effect of this Act shall before such date or dates and at such place or places and to such person or persons as the Colonial Secretary may prescribe by notice in the "Gazette" make application for registration.

(2) Every Asiatic who enters this Colony after the date of the taking effect of this Act and who has not previously been registered thereunder shall within eight days after entering this Colony unless he shall have entered under a permit granted under section *seventeen* make application for registration to such person and at such place as may be so prescribed; provided that

(a) no application shall be required to be made under this section on behalf of any Asiatic child who at the expiration of the time within which such application is required to be made is under the age of eight years;

(b) in the case of any Asiatic child who at the expiration of such time is eight years of age but under sixteen years of age such application shall be made on such child's behalf by his guardian and if not so made shall be made by such child within one month after attaining the age of sixteen years.

5. *Registrar to register applicants if approved and in case of refusal to give notice.*—(1) The Registrar shall consider every application for registration made under the last preceding section and register every applicant who is lawfully resident in this Colony or whose application is approved by him and shall cause to be issued to such applicant or the guardian who made the application on his behalf a certificate of registration.

(2) If it shall appear to the Registrar that any applicant is not lawfully resident in this Colony he may refuse to register such applicant and in case of refusal where the applicant is of the age of sixteen years or over shall cause a notice of refusal to be sent by post to the applicant at the address given by him on application and a copy of such notice shall be affixed to the principal door of the Magistrate's Office of the District where such application was made and the Registrar shall by such notice direct such applicant to appear before the Resident Magistrate of the District at a time therein specified being not less than fourteen days from the date of such notice and show cause why he should not be ordered to leave this Colony and if such applicant shall fail to appear at the time specified in such notice or having appeared shall fail to satisfy the Resident Magistrate that he is lawfully resident in the Colony, the Resident Magistrate if the applicant is of the age of sixteen years or over shall make an order in writing directing him to leave this Colony within a time to be specified in such order; provided always that if such order is made in the absence of the applicant such time shall run from the date of the service of the order upon him and such order shall be deemed to be an order made under Section *six* of the Peace Preservation Ordinance, 1903, and Sections *seven* and *eight* of the said Ordinance shall apply accordingly; provided further that if the Resident Magistrate shall be satisfied that the applicant is lawfully resident within this Colony such Magistrate shall make an order upon the Registrar requiring him to register such applicant and to issue to him a certificate of registration.

6. *Provisions as to particulars to be supplied and applications to be made by guardians.*—(1) Any Asiatic who is the guardian of an Asiatic child under the age of eight years shall upon making application for registration on his own behalf supply such particulars and furnish such means of identification in respect of such

child as may be prescribed by regulation and if such guardian is himself registered the particulars aforesaid which he has supplied shall be provisionally noted on the register and such guardian shall within one year after the child aforesaid attains the age of eight years make application for registration on such child's behalf at the office of the Resident Magistrate of the District in which he himself resides ;

(2) The guardian of every Asiatic child born in this Colony after the date of taking effect of this Act shall within one year after such child attains the age of eight years make application for registration on such child's behalf at the office of the Resident Magistrate of the District in which he himself resides ; provided that—

- (a) where any guardian fails to make application for registration on behalf of any Asiatic child whose guardian he is within the time hereby prescribed for making the same such guardian shall on being thereto required by the Registrar or any Resident Magistrate make such application at any later date ;
- (b) where any application which is required to be made under this section by the guardian of an Asiatic child is not made by such guardian or where such application is refused, application for registration shall be made by such Asiatic child at the office of the Resident Magistrate of the District within which he resided within one month after he attains the age of sixteen years.

The Resident Magistrate at whose office any application is made under this section shall cause the record of such application and all documents relating thereto to be forwarded to the Registrar who shall if satisfied that the same is in order register the applicant and cause to be issued to him or his guardian a certificate of registration.

7. *Application for registration by Asiatics on attaining the age of sixteen whose guardians have failed to supply particulars.*—Where particulars as to any Asiatic child under the age of eight years have not been provisionally noted on the register as is in the last preceding section provided by reason of the failure of his guardian to supply such particulars application for registration shall nevertheless be made on behalf of such Asiatic child by his guardian within one year after he attains the age of eight years and if not so made shall be made by such Asiatic child within one month after he attains the age of sixteen years at the office of the Resident Magistrate of the District in which he resides and the record of such application and all documents relating thereto shall be forwarded to the Registrar who may in his discretion register the applicant and issue to him or his guardian a certificate of registration.

8. *Penalties for failing to make application.*—(1) Any person who shall fail to make application for registration as required by this Act either on his own behalf or as guardian on behalf of an Asiatic child shall be liable on conviction to a fine not exceeding one hundred pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

(2) Any person who brings into this Colony an Asiatic under the age of sixteen years not lawfully resident therein and any person who shall employ such child in any trade or business shall be guilty of an offence and shall be liable on conviction to the following penalties :—

- (a) to the penalties mentioned in sub-section (1) of this section ; and
- (b) if such person is the holder of a certificate of registration to cancellation of such certificate by the Registrar ;

and thereupon the Colonial Secretary may issue an order directing such person to leave this Colony and such order shall be deemed to be an order issued under Section six of the Peace Preservation Ordinance, 1903, and Section seven and eight of the said Ordinance shall apply accordingly.

(3) Any Asiatic over the age of sixteen years who after such date as may be notified by the Colonial Secretary in the "Gazette" is found within the Colony and fails upon such demand as is hereinafter mentioned to produce a certificate of registration of which he is the lawful holder may be arrested without warrant and brought before a Resident Magistrate and if he fails to satisfy such Magistrate that he is the lawful holder of a certificate of registration or that the time within

which he is required to make application for such certificate has not expired the Magistrate shall save as in the next succeeding sub-section provided make an order in writing directing such Asiatic to leave this Colony within such time as may be specified in such order and such order shall be deemed to be an order made under section *six* of the Peace Preservation Ordinance, 1903, and sections *seven* and *eight* of the said Ordinance shall apply accordingly.

(4) If an Asiatic who has failed to make application for registration within the time prescribed by this Act shall satisfy the Magistrate before whom he is brought that such failure was due to some good and sufficient cause the Magistrate may instead of making such order as aforesaid direct such Asiatic forthwith to make application for registration and if such Asiatic shall comply with such direction his application shall be dealt with in all respects as if it had been made within the time within which it was required to be made by this Act and all the provisions of this Act which would have applied if the application had been so made shall apply accordingly but if he shall fail to comply with such direction the Magistrate shall make such order for removal as aforesaid in respect of such Asiatic.

9. *Registration certificate to be produced on demand.*—Every Asiatic of the age of sixteen years or over entering or residing in this Colony shall upon demand made upon him by any member of a police force lawfully established in this Colony or any other person authorized thereto by the Colonial Secretary produce the certificate of registration of which he is the lawful holder and shall also on like demand supply such particulars and furnish such means of identification as may be prescribed by Regulation.

Every guardian of an Asiatic child under the age of sixteen years shall produce on such demand as aforesaid any certificate of registration of which such child is the lawful holder and supply any particulars and furnish any means of identification required by this Act or any Regulation in respect of such child.

10. *Evidence of registration certificates.*—Every certificate of registration shall be accepted as conclusive evidence in all places that the lawful holder thereof notwithstanding anything in the Peace Preservation Ordinance, 1903, contained is entitled to enter and reside in this Colony; provided always that this section shall not apply to persons who have under section *ten* of the Peace Preservation Ordinance, 1903, been ordered to leave the Colony.

11. *Duty of persons finding lost certificates.*—Any person into whose hands shall come any certificate of registration or any permit issued under Section *seventeen* of which he is not the lawful holder shall forthwith deliver or transmit the same by post as soon as may be to the Registrar of Asiatics, Pretoria.

Any person who fails to comply with the requirements of this section shall be liable on conviction to a fine not exceeding fifty pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding one month.

12. *Provision where registration certificate is lost or destroyed*—If at any time any certificate of registration is lost or destroyed the person who was the lawful holder thereof shall apply forthwith to the Registrar to have the same renewed and the Registrar shall upon compliance by such person with the Regulations relating to applications for the renewal of certificates and upon payment of a fee of five shillings renew such certificate. The said fee shall be denoted by means of revenue stamps to be affixed to such application by the applicant for such renewal and shall be defaced by the officer who receives such application.

13. *Trading licenses not to be granted to Asiatics except upon production of certificates.*—After such date as may be notified by the Colonial Secretary in the "Gazette" no Asiatic shall obtain any trading license issued under the Revenue Licenses Ordinance, 1905, or any amendment thereof or under any bye-law in force in a municipality unless he shall produce to the person appointed to issue such license a certificate of registration of which he is the lawful holder and supply such particular and furnish such means of identification as may be prescribed by Regulation.

14. *Evidence as to age of Asiatic.*—Whenever in any prosecution or other proceeding under this Act the age of any Asiatic is in question such Asiatic shall

unless and until the contrary be proved be taken to be of the age which the Registrar shall in any certificate issued under his hand certify to be in his opinion the apparent age of such Asiatic.

15. *Exemption from stamp duty of affidavit or sworn declaration required by Regulation.*—Any affidavit or sworn declaration which is required by Regulation to be made by any person who makes an application for registration either on his own behalf or on behalf of some other person shall be exempt from stamp duty.

16. *Offences relating to applications for registration and to registration certificates.*—Any person who ;

- (i) for the purpose of or in connection with an application for registration or for the purpose of obtaining a certificate of registration commits any fraudulent act or makes any false statement or false pretence or incites any person to or aids or abets any person in such act statement or pretence ;
- (ii) forges any certificate of registration ;
- (iii) uses or attempts to use as his certificate any certificate of registration of which he is not the lawful holder or any forged certificate of registration ;
- (iv) incites any person to use or aids and abets any person in using as such person's certificate any certificate of registration of which such person is not the lawful holder or any forged certificate of registration ;

shall be liable to a fine not exceeding five hundred pounds or in default of payment to imprisonment with or without hard labour for a term not exceeding two years or to both such fine and such imprisonment.

17. *Power to issue permits to Asiatics to remain in Colony for limited period.*—

(1) Notwithstanding anything in the Peace Preservation Ordinance, 1903, contained a permit to enter this Colony may in the absolute discretion of the Colonial Secretary be issued in the form prescribed by Regulation authorizing an Asiatic to enter and remain in this Colony for any period named in such permit and after the expiry of such period the person authorized by such permit to enter this Colony shall be deemed to be a person not duly authorized to be in this Colony and if found may be arrested without warrant and the provisions of Sections *seven* and *eight* of the said Ordinance shall apply to such person as if he were a person who at the date of such expiry had been ordered to leave this Colony under Section six of the said Ordinance and had failed to comply with such order.

(2) The provisions of Section *nine* of the said Ordinance shall in all cases apply to permits issued under this Section.

(3) Any permit issued before the date of the taking effect of this Act to an Asiatic under the Indemnity and Peace Preservation Ordinance, 1902, or any amendment thereof and expressed to authorize such Asiatic to remain in this Colony for a limited time only shall be deemed to be a permit issued under this section.

(4) The Colonial Secretary may in his discretion order that the person authorized by any permit issued under this section to enter and remain in this Colony shall not during the currency of such permit be deemed to be a coloured person for the purpose of the provisions of the Liquor Licensing Ordinance, 1902, or any amendment thereof and such order shall be endorsed on such permit and shall be of full force and effect for such purposes.

(5) The Colonial Secretary may issue any such order as in the last preceding sub-section mentioned in respect of any person who is a member of an Asiatic race and is not subject to the provisions of this Act.

18. *Power to make Regulations.*—The Governor in Council may from time to time make, alter and repeal Regulations for any of the following purposes :—

- (1) prescribing the form of the register to be kept under this Act ;
- (2) prescribing the manner and form in which application shall be made for registration the particulars to be supplied and the means of identification to be furnished by any applicant or the guardian of any applicant for the purpose of or in connection with such application ;

- (3) prescribing the form of certificates of registration ;
 (4) prescribing the particulars to be supplied and the means of identification to be furnished —
 (a) by the guardian of any Asiatic child under the age of eight years under section six of this Act ;
 (b) by any Asiatic upon such demand as is in Section nine of this Act mentioned ;
 (c) by any Asiatic applying for the renewal of any certificate of registration which has been lost or destroyed ;
 (d) by any Asiatic applying for a trading license ;
 (5) prescribing the form of permit to be issued under Section seventeen of this Act.

19. *General penalties.*—Any Asiatic or the guardian of any Asiatic failing to comply with any requirement of this Act shall except where otherwise specified be liable on conviction to a fine not exceeding one hundred pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

20. *Provisions as to certain Asiatics under contracts of service.*—Notwithstanding anything contained in the Labour Importation Ordinance, 1904, no Asiatic who is the lawful holder of a certificate of registration and no Asiatic who was lawfully resident in this Colony or allowed to enter it under a proper permit before the date of the said Ordinance shall be prohibited from entering or residing in or being introduced into this Colony by reason of the fact that he is under a contract of service and has not entered into the contract referred to in Section eight of the said Ordinance.

21. *Provision as to holding fixed property.*—Notwithstanding anything contained in sub-section (b) of Article two of Law No. 3 of 1885 as amended by Volksraad Resolution Article 1419 of the twelfth day of August 1886 any fixed property in this Colony acquired by an Asiatic before the taking effect of such Law and registered in the name of such Asiatic whether before or after the taking effect of such Law may be transmitted by such Asiatic to another Asiatic by testamentary or other inheritance.

22. *Title and date of taking effect.*—This Act may be cited for all purposes as the Asiatic Law Amendment Act, 1907, and shall not take effect unless and until the Governor shall proclaim in the "Gazette" that it is His Majesty's pleasure not to disallow the same and thereafter it shall take effect upon such date as the Governor shall notify by Proclamation.

Passed by the Legislative Council,
 E. M. O. CLOUGH,
 Clerk of the Council.

Passed by the House of Assembly.
 GYS. R. HOFMEYR,
 Clerk of the House.

No. 2.

THE SECRETARY OF STATE TO THE GOVERNOR OF THE
 TRANSVAAL.
 DOWNING STREET, MAY 9, 1907.

MY LORD,

I have the honour to acknowledge the receipt of your despatch of the 1st of April, forwarding for the signification of His Majesty's pleasure, Act No. 2 of 1907, of the Legislature of the Transvaal, briefly entitled The Asiatic Law Amendment Act, 1907.

2. This Act is in all essential matters identical with Ordinance No. 27 of 1906, which formed the subject of my despatch of the 29th of November, 1906, and of your despatch of the 14th of January 1907. Under circumstances which I

explained to you I did not feel able to take action with a view to bringing that Ordinance into operation, having regard to the objections which had been brought against it by the persons affected, and to the fact that it had been passed in the last session of a nominated Legislative Council, whose decision in the matter I should not have been justified in taking as the final expression of the will of the people of the Colony.

3. That Act which is now submitted has behind it a very different weight of authority. It has been introduced by the first responsible Ministry of the Colony, and has been passed unanimously by both Houses of the new Legislature. I consider it my duty to place it on record that His Majesty's Government do not consider the position of Asiatics, lawfully resident in the Transvaal, as settled by this Act, to be satisfactory; that they adhere to the opinions which have been expressed by successive Secretaries of State as to the desirability of relaxing the restrictions to which Asiatics are at present subject; and that they commend this view to the Transvaal Government in the hope that it may be carefully considered how far practical effect can be given to it. But they feel that they would not be justified in offering resistance to the general will of the Colony clearly expressed by its first elected representative; and I have accordingly to inform you that His Majesty will not be advised to exercise his power of disallowance with respect to the Act.

4. Your Ministers will be aware that in the representations which were addressed to me on the subject of the previous Ordinance great emphasis was laid on the announced intention of the Transvaal Government to provide for the identification of holders of certificates of registration under the Ordinance by means of finger-print impressions. Similar representations have reached me from many quarters with regard to the present Act, and I have taken the opportunity afforded by General Botha's presence in this country in connection with the Colonial Conference to discuss the matter with him. I understand that, in view of the strong feeling which has been aroused in connection with this method of identification, which is not expressly provided for in the Act, General Botha will endeavour to provide for the adoption of other methods, which cannot possibly be regarded as degrading by those subject to registration.

5. It appears to me that this would be an opportune concession to Indian sentiment, which should go some way to remove any impress on that the Transvaal Government is disposed to act harshly or unsympathetically towards Asiatics whose title to reside in the Colony is admitted.

I have, etc.,
ELGIN.

India Office to Colonial Office.

J. and P. 3531.

India Office,
31st October 1907.

SIR,

I am directed by Mr. Secretary Morley to acknowledge the receipt of Mr. Just's letter of the 10th instant, with reference to the Immigrants' Restriction Act, recently passed by the Transvaal Legislature, which is now awaiting His Majesty's pleasure.

I am to say that the text of the Act is already in the hands of the Government of India, who have been requested to telegraph at once any observations they may wish to make on the measure. Mr. Morley hopes to be able very shortly to communicate his views to Lord Elgin, and trusts that, in the meantime, no action will be taken.

Without prejudice to his decision as to concurrence in the Act, I am to say that Mr. Morley regrets that he cannot agree that the Act in question can be regarded as similar to the legislation already sanctioned in other self governing Colonies. He fully recognises that His Majesty's Government are not in a position to object to the future exclusion of immigrants who are unable to pass such tests as the Colonial authorities, following the lines of other Colonial legislatures, may think fit to impose. But he must observe that Section 2 (4) of the Transvaal Act intro-

duces a principle to which no parallel can be found in previous legislation. This clause perpetuates an arrangement introduced in very special circumstances, and will debar from entry into the Transvaal British subjects who would be free to enter any other Colony by proving themselves capable of passing the educational tests laid down for immigrants. It will, for instance, permanently exclude from the Transvaal members of learned professions and graduates of European Universities of Asiatic origin, who may in future wish to enter the Colony. It has further been represented to Mr. Morley that the Act may work grave injustice, since British Indian subjects who had before 1902 acquired domicile in the Transvaal, but, having temporarily left the Colony, had not yet registered themselves, may under its provisions be debarred from re-entry.

I have, etc.,
COLLIN G. CAMPBELL.

The Under Secretary of State,
Colonial Office.

India Office to Colonial Office.

J. and P. 4426-1907.

India Office,
29th January 1908.

Sir,

I am directed to acknowledge the receipt of your communication No. 45337, dated the 6th of January 1908, enclosing certain correspondence relative to the Immigration Restriction Act of the Transvaal. I am also to enclose a copy of a telegram from the Viceroy of India, dated 7th January.

With reference to the situation that has arisen in the Transvaal, I am directed to say that Mr. Morley does not propose to re-open the question of Indian immigration into the Transvaal. An Act has been passed in this behalf by the Colonial Legislature, and has received the royal assent; the provisions of this Act must therefore be enforced by the authority of the responsible Ministers and local officials without question or interference from outside. It is only in respect of the manner in which these provisions are enforced that Mr. Morley desires to address the Secretary of State for the Colonies.

Mr. Morley is aware that Lord Elgin fully realises the grave situation which has been created in India by the prospect of deportation which confronts Indians who refuse to register, he wishes to assure Lord Elgin that the indignation with which the news from the Transvaal has been received is not confined to one political party, but is shared by all sections of Indian society which are in a position to take an interest in current politics. Mr. Morley views with grave concern the consequences which must ensue in India from the arrival in that country of large numbers of Indians who may have refused to comply with the regulations which require the impression of the ten digits as a condition of registration.

Mr. Morley hopes that when the Ministers of the Transvaal Colony are informed of the grave apprehensions of the Government of India they will be ready to modify the regulations in such a way as to conciliate Indian sentiment. Mr. Morley suggests that the basis for a compromise may be found in accepting the impression of one thumb, or of the thumb and fingers of the left hand only, in place of the impression of the ten digits required by the present regulations. From what has been said by representative Indians in the Transvaal it appears that the impression of the single thumb is not felt to convey the same humiliating stigma as the impression of the ten digits, which in India is used only for criminals. Mr. Morley does not deny that the impression of the ten digits secures greater certainty of identification than the impression of the single thumb, but he is advised that Indian experience shows that the impression of the thumb or of the left hand only is for ordinary purposes sufficient to establish identity. He would further suggest that upon every certificate a notice should be printed to the effect that the defacement of the thumb impression would be held to render the certificate invalid.

Mr. Morley also desires to suggest in this connection that, in dealing with the British Indian subjects to whom these measures will apply, the Colonial authorities might perhaps derive the greatest assistance if they thought fit to apply for the

services of an experienced and tactful Indian officer acquainted with their languages, manners, and customs, who could interpret and explain the regulations of the Colony in a manner which might as far as possible render them less repugnant to those who will have to obey them.

Should this suggestion commend itself to the Colonial authorities it would not probably be difficult, Mr. Morley thinks, to find an officer in furlough, without having to resort to India, who could proceed to South Africa at the shortest notice.

I have, etc.,

COLIN G. CAMPBELL.

The Under Secretary of State,
Colonial Office.

Telegram from the Governor of the Transvaal to the Secretary of State.

24th January. No. 2. Matter most urgent.

Your telegrams of 15th January, No. 1, 22nd January, No. 2. Ministers state that while they consider that power to demand furnishing of the thumb impression on temporary permits to visit Transvaal should be retained, they are quite agreeable that discretion should be used in exercising the requirement. There is no objection to Asiatics such as Ruling chiefs, Asiatics of distinguished position, or officials of Asiatic descent, giving their signature in place of their thumb impression.

Ministers further advise, with regard to furnishing of eighteen impressions by applicants for registration, that these are comprised of twelve separate acts of impression, namely taking of the ten individual digit impressions and the taking of two simultaneous impressions of the four fingers of each hand, latter being required as proof that each of the individual impressions is recorded in its allotted space. In the average case taking of the eighteen impressions does not occupy more than 30 seconds.—SELBORNE.

Circular Letter issued by Mr. Gandhi.

Various statements have appeared in the Press regarding the charge of breach by the Colonial Secretary of the compromise between the Government and the Asiatic communities. Hitherto, owing to the delicate nature of the negotiations that were going on between the Government and the Asiatic communities, it has not been possible to state the case before the public.

I am sorry to say that the negotiations came to an abrupt and unsatisfactory end to-day. I use the term unsatisfactory as applicable not merely to the Asiatics, but to the whole Empire. General Smuts was willing to repeal the offending Asiatic Act, which has cost the Asiatics treasures of money and much trouble, including incarceration of over two hundred innocent Asiatics, mostly British. This shows that General Smuts was and still is under promise to repeal the Act.

But if he was willing to carry out the letter of the compromise, he wanted to break the spirit of it. For it will not be argued that the material position of the Asiatics was under and after the compromise, to be lower than under the Asiatic Act. Yet such was General Smuts' draft which I was to-day pained to study and, so far as I was concerned, to reject.

The draft measure proposed to treat the following as prohibited immigrants :—

- (a) Asiatics possessing educational qualifications prescribed by the Immigrants' Restriction Act.
- (b) Asiatics, whether in or out of the Colony, holding Dutch Registration Certificates, under Law 3 of 1885, for which they paid 3l.
- (c) Other Asiatics who were residents of the Transvaal before the war, and who could prove before a Court of Law their previous domicile.
- (d) Those Asiatics whose claims have been rejected by Mr. Chamney. (For these it is contended only that they should have the right to have

their claims investigated by a judicial tribunal, not finally disposed of by an administrative official).

In rejecting these claims for consideration and adjudication, not for admission *ipso facto*, General Smuts has misread the passive resistance struggle. It was undertaken, not for selfish purposes, but for the benefit of the Asiatics as a whole, and, shall I add, even the Empire. Moreover, he has wrecked a whole compromise to avoid the possible accession to the Asiatic population of the Colony of two thousand Asiatics as an outside figure. I call these people an "accession"; but, in fact, they are already domiciled residents of the Colony, though General Smuts' draft ignored their rights.

The position of the Asiatics is simple. They must revert to the condition that prevailed in January last in this matter, and they have been advised to withdraw their voluntary application forms. General Smuts has declined to return them. If he had the courage to face the passive resisters, he would return them without much ado.

Asiatics were labouring under a cloud of suspicion up to January last. Mr. Duncan had levelled the charge, and it was repeated, even in the highest places, that there was an organised illicit entry of Asiatics. The fact that over 7,600 out of 9,000 have already proved their *bonâ fides* disposes of the charge. It was in order to refute that foul charge that voluntary registration was tendered, and for no other reason. The Asiatics, therefore, approach the public with clean hands. Moreover, they have shown by their sufferings that they have a right to command sympathy from a humanitarian public.

Lastly they have shown, by some of their leaders being severely assaulted by their own countrymen, that they are just as eager to serve the Government as they are to serve their countrymen.

General Smuts' Act will be that of the Government and the Government's will be the white men's—mostly British. When I explained the compromise to my countrymen, the less thinking among them said: "Do not trust the white man. Repeal of the Act should precede voluntary registration and not succeed it." I told them that that was not a dignified position to take up.

In tampering with the compromise, I venture to say that General Smuts does not know what he is doing. Will the Englishmen in the Colony tolerate the position, when their main intention is granted, that future immigration of Asiatics should be effectively controlled?

Yours, etc.,
M. K. GANDHI.

Johannesburg,
22nd June 1908.

Ministers to Governor, Transvaal.

(Minute No. 431.)

Prime Minister's Office. Pretoria.

11th July 1908.

With reference to His Excellency the Governor's Minute, No. 53-1-08, of the 23rd April last, transmitting copy of despatch No. 82 from the Secretary of State on the subject of the position of British Indians in the Transvaal:—

Ministers have the honour to advise that since the memorandum of the Colonial Secretary, Pretoria, regarding the registration of Asiatics in the Transvaal under Act 2 of 1907 was written on the 11th November 1907, the position has considerably altered.

On the 30th November 1907 the period expired during which Asiatics lawfully resident in the Transvaal were required to make application for registration. Up to that date, however, only 545 applications were actually received, and subsequently certain Indians and Chinese were ordered by the Magistrates to leave the Colony because they failed to produce on demand Certificates of Registration. Owing to the failure of these persons to obey the Order of Court they were sentenced to various terms of imprisonment, and in January last a letter was addressed to the Government by Messrs. Gandhi, T. Naidoo, and Leung Quinn, stating

that the Indian and Chinese communities would voluntarily register themselves within a period of three months subject to certain small concessions, particulars of which were embodied in the letter. This offer was accepted, and applications for registration were received from the 9th February to 9th May inclusive, the Government guaranteeing that the registration of those whose applications were approved would be validated by special legislation during the next session of Parliament.

Subsequently, Mr. Gandhi pressed for the total repeal of Act No. 2 of 1907, and suggested that instead of introducing fresh legislation to validate voluntary registration the Immigrants Registration Act No. 15 of 1907, should be so amended as to cover all the requirements in respect to Asiatic immigration and registration. It was considered that the views of the Asiatics concerned should, as far as possible, be met, provided that nothing should be done that would conflict with the attainment of the objects held to be essential when Act 2 was introduced. Mr. Gandhi was given an opportunity of representing to the Colonial Secretary in person his views on the question, and it was pointed out to him that the adoption of his suggestion would mean the inclusion in the definition of "prohibited immigrant" all Asiatics who were not in possession of Certificates of Registration. Mr. Gandhi stated that his community would have no objection to this, and a Bill was then drafted providing for the repeal of Act 2 of 1907, and for the amendment of the Immigrants Restriction Act No. 15 of 1907. When, however, this draft Bill was shown to Mr. Gandhi, he commenced to raise fresh objections, not only against the provisions embodied for the purpose of restricting undue Asiatic immigration, but also to the main principle of the draft. He claimed that all Asiatics who could pass the educational test should be allowed to enter the Colony whether previously domiciled here or not, that those who claimed to have paid the registration tax to the late Government, even if they left the Transvaal ten or twelve years ago, should now be allowed to return and resume domicile, and that others who claimed that they had resided here before the war, whether they had paid the tax in question or not, should also be permitted to return. As there are, practically speaking, no means of identifying such persons after the lapse of such a period of time it is palpable that a concession of this kind would prove of a most elastic nature, and that Asiatics for years to come would continue to press claims to pre-war residence, which it would be most difficult, if not impossible to refute.

It was pointed out to Mr. Gandhi that no such claims were recognised under the provisions of Act 2 of 1907, and that if the community he purported to represent were not prepared to abide by the reasonable terms of the draft Bill to amend the Immigrants Restriction Act, No. 15 of 1907, the Government would be obliged to adhere strictly to the terms of the compromise arrived at in January last, and while retaining on the Statute Book the Asiatic Law Amendment Act, to legalise by a special Bill the issue of the certificates granted under the voluntary registration compromise. Such a Bill has now been drafted, and will be published at an early date.

In the meanwhile it has been ascertained that Asiatics continue to enter the Colony without authorisation, and are actually forging and uttering for large sums of money the very certificates which their leaders assert it is an indignity to ask them to receive.

A copy of the letter from Messrs. Gandhi, Naidoo, and Quinn, referred to in paragraph 3 of this minute, together with a copy of the reply thereto, are transmitted herewith.

LOUIS BOTHA.

Resolution I.

This Mass Meeting of British Indians domiciled in the Transvaal deploras the fact that the Government intend to depart from the spirit of the compromise entered into by them with the Asiatic communities of the Transvaal last January, in that they make it a condition of repeal of the Asiatic Law Amendment Act that rights of certain Asiatics domiciled in the Transvaal before the war are surrendered, and that the Asiatic communities should consent to an insult being offered to Asiatics of educational attainments.

Resolution II.

By reason of the decision of the Government not to carry out their part of the compromise, and regard being had to the fact that the Asiatics in the Transvaal have almost without exception, made application for voluntary registration, this Mass Meeting hereby resolves to withdraw all the applications so made, and re-affirms the solemn declaration made on the 11th day of September 1906, not to submit to the Asiatic Law Amendment Act, but to suffer, as loyal citizens and conscientious men, all the penalties consequent upon non-submission thereto.

Resolution III.

This Mass Meeting tenders its respectful thanks to all those, whether in South Africa, England, or India, who have helped and sympathised with the British Indian community of the Transvaal during its struggle for legitimate freedom and to retain its self respect, and earnestly trusts that they will continue to assist with their sympathy and support until justice is fully vindicated.

Resolution IV.

This Mass Meeting hereby authorises and instructs the Chairman of the British Indian Association to forward copies of the preceding resolution to the Honourable the Colonial Secretary, and to His Excellency the Governor of the Transvaal, for transmission to the Imperial Secretaries of State for the Colonies and India.

ESSOP ISMAIL MIA,

Chairman of the Mass Meeting.

Dated at Johannesburg this 24th day of June 1908.

BURNING OF CERTIFICATES.

Gathering at the Mosque.

About 3,000 Indians, gathered from all parts of the Transvaal, collected outside the Hamidia Mosque at Fordsburg yesterday afternoon for the purpose of burning the registration certificates which they had taken out after the compromise arrived at between General Smuts and their leaders in February last. The space available was packed to its fullest capacity and the flat roof and turrets of the Mosque and the surrounding fences and roofs also carried a large number of Indians. A number of Cantonist storekeepers and other Chinese occupied front seats. Mr. Essop Esmail Mia (Chairman of the British Indian Association) presided, and among those occupying seats on the platform were Mr. M. K. Gandhi, Mr. Dowd Mahomed (President, Natal Indian Congress), Mr. Adam Gool Mahomed (President, Capetown British Indian League), Mr. N. A. Chettiar (Chairman, Tamil Benefit Society), Mr. Abdul Rahaman (Potchefstroom), Mr. R. K. Pobcasky (Pretoria), and Mr. Leung Quinn (President, Chinese Association).

Mr. Mia spoke in Gujerati, his remarks being afterwards translated into English by Mr. N. A. Cama. In the course of his address he said that it was his pleasant duty to welcome their brave brethren from Durban. The meeting was one of the most unique in Indian annals in South Africa. Before them was the Chairman of the Natal Indian Congress, the President of the British Indian League at Capetown, a Vice-President of the Natal Indian Congress, and the Joint Secretary of the Congress. They had come to assist them and to show that they were as ready to suffer as they in the Transvaal. Their presence demonstrated that the question in the Transvaal was a South African question; indeed, an Imperial question. Preceding he said "We have to meet an unholy combination. I fear that on this question there is no such thing as Progressive opposition, and if we are successfully to fight this combination it goes without saying that we must be united and we must be prepared for the worst. It may be asked why have these gentlemen from Durban arrived here? Why have they brought with them others who claim to enter the Transvaal? It is not because we want to defy the laws in so far as they are bearable, but we wish to show that it is impossible for the Government to administer their laws successfully unless they carry with them the majority of the most respectable among the community to which such laws are applicable. We are now showing by the determined opposition that we

are offering to the Asiatic Law Amendment Act, that we resent it, that it is against our conscience to submit to it that we have suffered much for it. Everyone who has entered the Transvaal has entered by way of protest against the breach of the compromise committed by General Smuts and against an invasion of our just rights. We claim that those who have lived in the Transvaal before the war have a right to return to the Transvaal and to live in it unmolested subject to such supervision as may be necessary, in order effectually to identify them from intruders. We claim that those who are so entitled should not be subjected to harassing inspection, much less to any symbol of the Asiatic Act, so long as it remains on the statute book. We claim that educated Indians have, under the laws a right to enter. In our Durban quests we have, in Mr. David Mahomed and Mr. Parsee Rustomjee not only distinguished Indians (applause)—but pre-war residents of the Transvaal. In Mr. Anglia we have one possessing sufficient educational qualifications under the Immigrants' Restriction Act. There are other Indians who have arrived who possess Peace Preservation Ordinance permits, or Dutch registration certificates, or educational qualifications. These, according to General Smuts should become prohibited immigrants, if we want repeal of the Asiatic Act. It is impossible for us to accept any such bargain. We have been fighting all along not with a view to gain some questionable advantage for ourselves but to gain self-respect and equal advantage for those Indians who have a right to enter the Transvaal. (Hear, hear). As we have respectfully declined to accept repeal on the above mentioned conditions a validating Bill has been sprung upon the Asiatic communities, which, I have no hesitation in saying, is not worth the paper on which it is printed, in so far as we are concerned. The petition presented to Parliament sufficiently shows this. There is no occasion for me therefore to dilate upon it. Acceptance of that Act by us would, I have no doubt, mean, in reality, a breach of the oath we took not to submit to the Asiatic Act. That Bill shows that we are being treated not as men, but as children. This meeting is an emphatic repudiation of any such treatment. The remedy before us is.

Not Defiance but Suffering.

The taking out of the certificates was a voluntary act induced as I must now state by false pretences.

A belief was produced on the minds of Asiatics that their position would be bettered, that the Asiatic Act would be repealed, if they voluntarily underwent registration. We accepted the assurance given partly in writing, partly through the lips of your Honorary Secretary and, partly in the public declarations of General Smuts. To-day we find that that was an assurance not to be fulfilled, or to be fulfilled only with impossible conditions superimposed. Voluntary registration was a point of honour on either side, and ordinary decency demanded that if either through misunderstanding or any other cause, we wished to retire from the voluntary undertaking, General Smuts should have afforded us every facility. On the contrary, our request for the return of our voluntary applications was rejected. The Supreme Court, through a legal technicality, could not grant us relief. The only thing, therefore, left to us is to divest ourselves of the certificates we have been misled into taking. It is, in my opinion, a humiliating spectacle for the Government to take advantage of our strictly honourable behaviour. We have met here this afternoon under the shadow of the holy Mosque in all humility respectfully to burn the voluntary registration certificates we have taken out. (Applause). Some who have repented of their having accepted the Asiatic Act have also handed in their certificates to be burned. This Act has been called by some to be open defiance of the law. It is an abuse of words to call this act, which only imposes on us suffering and brings us within the clutches of the law, defiance. But whether it is called defiance or whether it is called a signal for further suffering to be undergone by us, it is an act that has become absolutely necessary. The validating Bill has been set down for the second reading tomorrow. This act is by way of strengthening the humble petition that is now before Parliament, and I implore that Parliament, in the name of this meeting, not to accept the Bill. The result is obvious. We would then be brought under the Asiatic Act, and we would share the same fate that would await the brave friends who have come from Durban, and hundreds of British Indians who, through no fault of their own, have not yet been voluntarily registered.

The validating Bill, it will be said, has been brought in order to confer a benefit upon us. It will be somewhat humorous to call that a benefit which the receivers consider to be an insult and an indignity.

What is it we want? We do not say that this country should be flooded with Indians. We do not want an open door. We have no desire to enter into unfair competition with anybody in the Colony. But we do ask that those who have been domiciled in the Transvaal should have a right to live in the country with perfect freedom and without restraint. We accept the position that further immigration of British Indians should be totally prohibited except in respect of those who possess very high educational attainments such as professional men, men possessing University degrees. These men we require to assist us, and they can only come into the country in infinitesimal numbers, not in order to compete with the general body of the Colonists, but only to earn their living from us and give us the benefit of their guidance and advice. I know of no British Colony where a large Asiatic population is denied the necessary facility of receiving such assistance. What, however, has appeared in the papers of late shows clearly that there is a wide difference between some Colonists and ourselves. Both are agreed that there should be no further uncontrolled immigration of Asiatics, (hear, hear), but it is evident that the white Colonists intend ultimately to, to use a homely but telling expression, "freeze out" British Indians. We on the other hand claim as we must, that those who are entitled to remain in the country must be allowed every opportunity of prospering in it to the best of their deserts. The Asiatic Law Amendment Act, viewed in this light is, therefore, a test of our sentiments. Are we prepared to allow ourselves to be entirely frozen out in the course of time? The answer that this meeting returns is that, so far as this Colony remains a British Colony and so far as the King-Emperor does not withdraw the Proclamation of 1857 and declare to the world that we are not subjects of the Empire, but chattels to be kicked about, so far must we continue to claim the rights of ordinary British citizens and so far must we also fight, and fight strenuously, in the cleanest manner possible, every attack upon our rights and liberty. The weapon we have chosen is a divinely appointed one. It has been used by the greatest men of the world, and always in fear and trembling and in full realisation of the presence of the Supreme Being Who rules over us all. I hope that even at this eleventh hour the Government and the Colonists will realise that the question so far as we are concerned, is one of life and death, so far as they are concerned, is a very small one, in view of what we are asking." (Loud applause.)

Mr. Gandhi said he felt the responsibility on him a serious one. He had been taken to task in connection with the advice he had given his fellow countrymen for some time by friends, and he had been ridiculed by others who did not profess to be their friends. After much consideration and prayer, the advice he ventured to give his fellow-countrymen was that as things had taken the turn they knew of in connection with the struggle, they must burn their certificates. (Applause.) He had been told that he might be instrumental in imposing on his countrymen untold suffering, because of the advice he had given. He knew this well, and he knew that if the burning of the certificates would impose untold suffering the keeping of the certificates and submission to the Asiatic Act or the validating Bill would impose on his countrymen untold indignity. He would far rather that his countrymen should suffer all that they would have to suffer than impose indignities on them. His countrymen had taken an oath not to submit to the Asiatic Act. This oath was to be fulfilled in the spirit as well as in the letter, and were he so ill-advised as to propose to them to accept the validating Bill, and thereby flatter themselves that they were escaping the Act, he would be a traitor to his countrymen. His advice to them was not to take advantage of the certificate until an honourable settlement had been arrived at. If they chose to apply for copies of the certificates after they were burned, the Government would supply them. Should any man wish to day to burn his certificate out of shame, false modesty or any other reason and to afterwards apply for a copy, he wished that man to step forward and say that he did not wish his certificate to be burned. After referring to the case of Surabji, who he said had come from Charlestown to fight their battles the speaker said that he (Mr. Gandhi) had not come out of gaol before his time to escape any hardship he might be suffering for he really was not suffering any hardships, but it would be a great hardship to him to see his countrymen suffer indignity and he would rather pass the whole of his life in gaol, and be perfectly happy than see his fellow countrymen suffer indignity.

The statement he made lately with reference to the position of the British Indians in this Colony had been misconstrued and he had read some remarks passed on that statement. These were that he claimed that the country belonged to the British Indians just as much as it belonged to the Europeans. He did not mean by this that he wished to have an unchecked influx of Asiatics into the country. He claimed to be a Colonist and to have passed a fair measure of his time in the country, and if the welfare of the country demanded that Asiatic immigration was not to proceed unchecked he would be the first to say "Let that be so." If the majority of the people in the Colony thought that Asiatic immigration should cease and that the Asiatics should be under well-ordered control he would also accept the position. But what he claimed was that the country was just as much his as any of the Colonists and it was in this sense that he put forward that claim on behalf of his fellow countrymen. Rather than the Indians in the Colony should be treated as though they were cattle it would be better that they should be hounded out of the country to carry their tale to India. This would be better than that they should remain in a humiliating position. It was in this sense that he claimed that the country was just as much as the British Indians' as the Europeans'. Proceeding, he said that he knew full well that it was open to the Government to repeal the Asiatic Act, in order to throw dust in their eyes and then to embark on other legislation, harsher and more humiliating. The lesson they had to learn was that unenfranchised and unrepresented as they were it was open to them to confer on themselves an undying franchise. This was by recognising their manhood and that they were part and parcel of the great universal whole. Their trust should be in the One who ruled over them all rather than in earthly kings. No matter what legislation was passed, if it was in conflict with their ideas of right and wrong, their conscience or their religion they should show that they would not submit to it.

He had hitherto refrained from making any personal attacks except when he had made reference to Mr. Chamney. He felt bound in the interests of the Colonists and the Indian community and for the honour of the Colony to make the remark that so long as Mr. Chamney reigned supreme in the Registration Department there would be no peace so far as Asiatics were concerned. He accused Mr. Chamney of hopeless incompetence and ignorance and he now repeated it. When he contrasted what Mr. Chamney had done, with the actions of Captain Hamilton Fowle, he said honestly that had the latter been at the helm of affairs they would not be faced with the difficulties they were. Mr. Chamney had stated in an affidavit made before a Justice of the Peace that he was present at the interview on February 3rd and that Mr. Smuts never promised the repeal of the Act. Mr. Chamney not only listened to the promise made by Mr. Smuts but repeated it to him (the speaker). He mentioned it, if once, 12 times, and said that Mr. Smuts was going to "play the game", and was going to repeal the Act.

At one time he said, "Remember that Mr. Smuts said that so long as there is a single Asiatic in the Colony who did not register, the Act would be applied against him." So far as he (the speaker) knew, there were none to speak of who had not made application for voluntary registration. In concluding he said that he wished to repeat that there would be no peace in South Africa, so far as the Indian community were concerned, as long as Mr. Chamney remained head of the Registration Department. (Applause).

Mr. Gandhi then addressed the meeting in Gujarati.

A large three-legged pot was then filled with the registration certificates, about 1,300 in all, and about 500 trading licenses. Paraffin was then poured in, and the certificate set on fire, amid a scene of the wildest enthusiasm. The crowd hurrahed and shouted themselves hoarse; hats were thrown in the air, and whistles blown. One Indian, said to have been a leading blackleg, walked on to the platform and setting alight his certificate, held it aloft. The Chinese then mounted the platform and put their certificates in with the others. For a considerable time it was impossible for any of the leaders on the platform to make themselves heard.

P. Telegram, 21st October 1908, 11 p.m. (Despd. for C. & I. Dept.)

From—Viceroy,

To—The Secretary of State.

Position of British Indian subjects in the Transvaal. Please refer to the correspondence ending with Your Lordship's Despatch [No. 158-Public of 18th September 1908 on the subject.

We have received protests against the treatment to which British Indians are being subjected from all parts of India, and public opinion is greatly exercised on the subject. As the political effect in this country of the measures taken to enforce the law is a matter which in present circumstances we regard as very serious, we consider it most desirable that some settlement of the questions in dispute should be arrived at without delay. The view expressed in Your Lordship's letter of the 3rd September to the Colonial Office is agreed in by us; and although we are not in a position to make a representation against the refusal of the Transvaal Government to repeal Act 2 of 1907, we desire to support your request that considerate treatment should be accorded to those Indians who possess pre-war rights, but were not, prior to the outbreak of the war, continuously in the Transvaal for three years.

We understand that the only other point of substantial difference between Indians and the Transvaal Government is the admission of educated Indians. Whilst we recognise that this question has been already decided, we fear that, unless some concession is made, agitation is likely to continue. We now learn that the demand of the Indians is restricted to the admission of six professional men each year. We should be glad if consideration were given to the possibility of arriving at a settlement on the basis of this limited request.

Extract from a letter from the High Commissioner, Pretoria to the Secretary of State for the Colonies, dated the 24th August 1908.

* * * * *

13. On the 21st the Asiatics Registration Amendment Bill, as to which I am reporting to your Lordship by telegraph to-day was passed through all its stages with the approval of both sides of the House. Representatives of both sides had been consulted with regard to the drafting of the Bill and had had an interview with the British Indian Association, and the Bill, though not meeting all the demands put forward by Mr Gandhi and his friends, is recognised as a fair and a reasonable attempt to meet their legitimate claims.

14. On the same day the report of a Committee to enquire into the debts owed by persons in the Transvaal in respect of advances made to them by the Repatriation Department was considered, and the recommendations of the Committee, which involve the writing off of some 360,000*l.*, and cash refunds, if applied for, of some 18,000*l.* in respect of certain classes of animals sold by the Department, were approved. During the discussion of this motion the Prime Minister passed severe strictures upon Lord Milner's administration, which strictures called forth vigorous and indignant replies from Mr. Chaplin, Sir P. Fitz Patrick, and Sir G. Farrar on the following day.

15. The proceedings of the Legislative Council during the past fortnight do not call for much comment, but I would invite Your Lordship's attention to the discussion on the labour question which took place on the Appropriation Bill on the 11th instant, and to the constitutional question which has arisen in connection with the Public Service and Pensions Bill and the Railway Service and Pensions Bill. The President of the Council ruled that they were money bills within the meaning of the Letters Patent, and that consequently the Council though it might reject them could not amend them. The Sessional Committee of the Council on standing orders endorsed the President's ruling on this point, and as a result, the Committee stage of the two Bills in question was omitted in the Council. As Your Lordship will see from the report of the discussion on this point on the 18th the Government has undertaken to refer the whole matter to the Law Officers of the Crown for a final and authoritative opinion. I shall not, therefore, deal further with the matter now, but it is obvious that if the President's ruling is correct and is to form a precedent for the future the utility of the Legislative Council is likely to be seriously impaired.

16. I enclose the translation of extracts from the Dutch Press which have appeared in the "Star" during the past fortnight.

I have, etc.,

SELBORNE.

Prime Minister to Governor.

No. 528.

Prime Minister's Office, -

5th September 1908.

In transmitting a copy of a Bill passed by the Transvaal Legislature on the 22nd ultimo to validate the voluntary registration of certain Asiatics who failed to comply with the provisions of Act 2 of 1907, and to make further provisions for the registration of Asiatics, Ministers desire to submit, for the information of His Excellency the Governor, a statement of the circumstances under which the Bill was introduced and adopted.

His Excellency is aware that when voluntary registration was permitted in February last, the Government, after consulting the leaders of the opposition, undertook to validate such registration by a special Act, and that subsequently Mr. Gandhi asked that instead of introducing a new Bill, Act 2 of 1907 should be repealed and the Immigrant's Restriction Act No. 15 of 1907 amended in such a manner as would validate voluntary registration and provide machinery for the future registration of Asiatics who would have been entitled thereto if they had complied with the provisions of the Registration Act. Although no promise on the subject was made Ministers were not averse to accepting the proposal in the hope that such a course would finally close the controversy, and a Bill was accordingly drafted repealing Act 2 and amending Act 15 in the direction indicated.

This draft Bill, at an interview held with the Colonial Secretary, was shown to Mr. Gandhi, who on behalf of his fellow countrymen, immediately rejected it on the grounds that provision had not been made for the immigration of Asiatics, who although not claiming previous domicile in the Transvaal, could pass an educational test in an European language. His Excellency will recollect that Asiatics had previously declared that they did not desire the immigration of Indians or Chinese who could not claim pre-war residence. The claim put forward by Mr. Gandhi was therefore a totally fresh one, and he was informed that it could not possibly be granted, and that under the circumstances the written terms of the compromise arrived at in February last would have to be adhered to. A fresh Bill embodying the terms of the compromise was thereupon drafted and a copy forwarded to His Excellency on the 12th ultimo.

In the meanwhile Mr. Gandhi induced a considerable number of Indians to commence a fresh passive resistance movement, directed mostly in this instance against the Licensing Laws of the Transvaal, under which all traders, European or otherwise, are required to take out licences according to the class of trade in which they are engaged, but also against the holding of certificates of registration, and Mr. Gandhi and his emissaries have actually collected a considerable number of these certificates, often under threats and by violence, and publicly burnt them. The Chinese and many Mahomedans have so far declined to join this movement.

In spite of the unreasonable and lawless attitude of a section of the Indian community it was decided that before the Bill was discussed by the Legislature an opportunity should be given to the Asiatic leaders to place on record a full and final statement of their objections against the proposed legislation. On the 18th ultimo a meeting took place at Pretoria between Messrs. Gandhi, Leong Quinn, Mr. Cartwright, editor of the *Transvaal Leader*, who acted as their friend, the Premier, the Colonial Secretary, Sir George Farrar, Sir Percy Fitzpatrick, Messrs. Hosken, D. Chaplain, and Lindsay, representing both parties in the Legislative Assembly.

Nine points were raised by the Asiatics, and these were recorded in writing as representing their final demands; and, after a discussion lasting some hours, it was decided to meet their views as far as possible and to allow no opportunity for any reasonable man to say that such views had not been met in the widest possible spirit. The objections met were as follows:—

- (1) Alteration of the definition of the term "Asiatic," so that Mahomedan subjects of the Turkish Dominions should not as expressed in Law 3 of 1885 be specially described as Asiatics.
- (2) Unregistered Asiatics domiciled in the Transvaal for three years prior to the 11th October 1899, should be allowed to return and register themselves, provided they made their applications within one year of the coming into force of the new Act.

- (3) The names of male minor Asiatics to be recorded on their parents' certificates and their registration not to be required until they reached the age of sixteen years.
- (4) Thumb impressions should not be required from applicants for trading licences who could sign their names in English in formed handwriting.
- (5) An appeal from the decision of the Register of Asiatics refusing to register an applicant for registration should be allowed to a magistrate specially appointed to hear all such appeals.
- (6) The provision in Act 2 of 1907 allowing Asiatics under certain circumstances to acquire liquor should be deleted on the grounds that it was contrary to the religion of the majority of the persons concerned to consume the same.
- (7) While Act 2 of 1907 was to remain on the Statute Book all Asiatics holding Certificates of Registration under the Validating Act were to be specially exempted from the provisions of the Asiatic Law Amendment Act.
- (8) Transfer of certain property in Pretoria to be allowed in favour of the heirs of a deceased Indian named Aboobaker Amod who had acquired the property before the passing of Law 3 of 1885.

The 9th subject of discussion was the fresh demand made for the immigration of Asiatics not claiming previous domicile in the Transvaal but could pass an educational test. This is a claim which Ministers had previously decided was inadmissible, and even had it been otherwise it is difficult to see by what means a Bill providing for the immigration of Asiatics of the class in question could be passed through either of the Houses of Parliament in view of the almost universal feeling of the white Colonists on the subject. The Asiatic leaders were informed that in this single respect their wishes could not be met, and this was distinctly understood by them. A Select Committee representing all parties in the Legislative Assembly was then appointed to re-draft the Bill in accordance with the arrangement come to. The Committee consisted of Sir Percy Fitzpatrick, Messrs. Jacobsz, Chaplin, Wybergh, and the Colonial Secretary, and a copy of their report, dated the 20th ultimo, submitting a new draft Bill is attached.

Subsequently, however, a letter was received from Mr. Gandhi raising fresh and inadmissible demands, namely, that:—

- (1) Parsee Sorabjee, recently deported under the Immigrant's Restriction Act No. 15 of 1907, should be granted full residential rights in the Transvaal.
- (2) All Asiatic prisoners should be discharged.
- (3) Act 2 of 1907 should be repealed.
- (4) A general educational test should be adopted in respect to the immigration of educated Asiatics.
- (5) Duplicates should be issued free of charge in respect of all certificates of registration wantonly burnt.
- (6) The new draft Bill should be submitted to the Committee of the British Indian Association before its discussion by the Legislature.

His Excellency will see that while the Government and all parties in both Houses have exercised patience and judgment in meeting every reasonable claim brought forward, the Indians have not alone shown themselves unreasonable, but have persisted through their leader, Mr. Gandhi, in a policy of attempting to procure the settlement of points declared to be final and then, when these had been met, bringing up fresh demands not previously discussed and not possible of acceptance on the part of the white community. Further in the case of Mr. Gandhi's demand for the repeal of Act 2 of 1907, he withdrew from the distinct understanding arrived at at the meeting of the 18th ultimo, namely, that the Act was to remain on the Statute Book.

The Bill was unanimously passed by both Houses, and Ministers trust that the Secretary of State will intimate to His Excellency by cable that it is His Majesty's pleasure not to disallow it. Until this has been done it is feared that the Indians will continue their campaign of resistance against the laws in force in the hope that by so doing they may influence the judgment of the Imperial authorities for the purpose of obtaining concessions they are not entitled to in law, in justice, or in reason.

LOUIS BOTHA.

No. 421 of 1908.

In the Court of the Resident Magistrate for the District of Wakkerstroom.
Holden at Volksrust.

Before Andreas Francois de Villiers, Esq., Assistant Resident Magistrate for the said District, on the 8th day of October 1908.

Rex versus Mohandas Karamchand Gandhi, A. M. Indian, barrister, age 25 years.

Charged with the crime of contravening Section 9 of the Regulations framed under Act 36-08 and published under Government Notice 950-08, in that upon (or about) the 7th day of October 1908, and at (or near) Volksrust in the said district the said Mohandas Karamchand Gandhi, he being an adult male Asiatic did enter this Colony from the Colony of Natal, and did when required by a European Police Officer, to wit Corporal Cameron of the Transvaal Police, or produce a certificate of registration of which he was the lawful holder, wrongfully and unlawfully failed to do so, and did further upon demand made upon him by the said Corporal Cameron wrongfully and unlawfully refuse to furnish impressions of his thumbs and fingers.

The prisoner being arraigned, pleaded guilty.

Judgment.—Guilty.

Sentence—25l. or two months I. H. L. (subject to review).

A. F. DE VILLIERS,

Assistant Resident Magistrate.

Extract from the proceedings of a Mass meeting at Johannesburg.

* * * * *

The following Resolutions were submitted to the meeting and unanimously carried:—

“On the eve of the termination of the period of registration under the Asiatic Registration Amendment Act, No. 36 of 1908, this meeting hereby respectfully urges the Government to concede the request of the British Indians as to repeal of the Asiatic Act, No. 2 of 1907, and the status of educated Indians.”

“In the event of the Government's declining to accede to the foregoing requests this meeting solemnly and sincerely, and in the name of God, hereby resolves at any cost to continue the struggle by declining to receive the benefits of Act 36 of 1908 and suffering the consequences thereof.”

“This meeting congratulates the Natal leaders and the other 120 Indians who have, for the sake of God and honour, suffered imprisonment and much pecuniary loss during the struggle that has now been proceeding on the part of the Indians.”

“This meeting tender its respectful thanks to those European friends who have espoused the Indian cause, believing it to be just, and trusts their support will be continued.”

“This meeting hereby authorises the chairman to forward copies of the foregoing resolution to the proper quarters.”—From the *Transvaal Leader*, 30th November 1908.

Lord Selborne to General Botha.

Meunt Nelson Hotel, Cape Town,

10th December 1908.

Dear General Botha,

I have received another telegram from the Secretary of State about the Indian question in reply to a telegram from me in which I pointed out the difficulty

of attaining finality in this matter. He says that he quite understands this point and recognises the reasonable and conciliatory attitude which my Ministers have adopted in the face of great difficulties, but he again lays stress on the fact that the continuation of the Indian agitation is not only inconvenient for the Transvaal, but has greatly exercised public opinion both in India and in the United Kingdom and that His Majesty's Government is extremely anxious that it should be brought to a close. The Indian Government, says the Secretary of State, recognise that they are not in a position to make representations against the Transvaal's refusal to a repeal Act No. 2 of 1907, but they ask for the considerate treatment of Indians who possess pre-war rights but were not continuously in the Transvaal for three years before the War, and further urge the admission of a limited number of educated Indians.

The Secretary of State proceeds to make the following suggestions, proposed apparently by a deputation consisting of both Houses of the Imperial Parliament and representing all sections of opinion, as a means to securing a final settlement:—

That the Transvaal Government, in addition to conceding the two points mentioned above (the considerate treatment of Indians, with pre-war rights and the admission of a limited number of educated Indians, which the Secretary of State presumes might be conceded by executive action, might undertake to repeal Act No. 2 of 1907, and consequently, Act No. 36 of 1908 also, after the lapse of such a period as would ensure that all the Indians were registered under them, and might rely afterwards on a strict immigration law, re-enacting only so much of the repealed legislation as might be required to preserve the rights of Indians already registered. The Secretary of State says that he infers from Mr. Smut's speech, printed on pages 6 and 36 of the Blue Book [Cd. 4327], that he was at one time inclined to favour some such solution. The Secretary of State adds that His Majesty's Government feels that it is not in a position to press this solution upon the Transvaal Government, who have given effect to the terms of the compromise made with Mr. Gandhi and others in January last; but he says that if you and your colleagues were prepared to proceed on these lines on condition of the settlement to be thus arrived at being final, it would be recognised that you desired to meet the difficulty which has resulted from the misunderstanding alleged by Mr. Gandhi to have arisen during the negotiations between him and Mr. Smuts, and not only His Majesty's Government, but the Government of India also, would be greatly strengthened in their efforts to persuade those who sympathise with the Indians to induce them loyally to accept the situation.

Will you very kindly let me know what you think of these suggestions, and advise me as to the reply which I should send to the Secretary of State?

Believe, me, etc.,

SELBORNE.

Enclosure No. 2 in above.

Lord Selborne to General Botha.

Mount Nelson Hotel, Cape Town,

12th December 1908.

Dear General Botha,

With reference to my letter of the 10th instant about the Indian question in the Transvaal, I have received a further telegram from the Secretary of State in which he calls attention to the following resolution, passed at a meeting of British Indians on the 4th November, a copy of which, together, with other resolutions was sent to the Secretary of State at the Indians' request:—

“British Indians demand that the right of free immigration under the general Immigration Act of the Colony be conceded to six highly educated Indians yearly in order to minister to the spiritual and intel-

lectual needs of the people, and unhesitatingly reject the humiliating proposal of the Transvaal Government that temporary permits be granted to priests, professional men, and teachers."

A copy of this resolution, when received by my office, was sent to Ministers, who were asked whether they had any remarks to make upon it. They replied that they had nothing to add to previous minutes on this subject, and it was accordingly forwarded to the Secretary of State without comment.

The Secretary of State, however, in his telegram, says that this resolution appears to him to indicate that the Indian Association is now prepared to accept the limitation of admissions under the Immigration Act to six per annum. Will you, therefore, take this point into your consideration in connection with the Secretary of State's suggestion which I passed on to you in my letter of the 10th instant.

Believe me, etc.,

SELBORNE.

General Botha to Lord Selborne,

South African National Convention,
Cape Town,
15th December 1908.

Dear Lord Selborne,

I have received your note of the 10th instant containing therein certain suggestions of the Secretary of State with reference to the Indian question, and also a supplementary note of the 12th instant. I gather from the first that the Indian Government asked for two points which require executive action, viz:—

- (1) the considerate treatment of Indians who possess pre-war rights but were not continuously in the Transvaal for three years before the war; and
- (2) the admission of a limited number of educated Indians.

With reference to the last point the Transvaal Government have repeatedly assured both His Majesty's Government and the Indian leaders and their white friends in the Transvaal that they are prepared to take into favourable consideration the application of any educated Indians for admission into the Transvaal and to grant such applications in proper cases. Notwithstanding this assurance no such application has so far been made, and it almost seems as if the Indian leaders are not anxious to avail themselves of the solution thus offered, but prefer to keep their grievance alive and to use it as a means of agitation and attack against the Government.

If they are at all serious in their wish to see a limited number of educated Indians admitted into the Transvaal, the way to realise it has been repeatedly indicated by our declarations. The fact of the matter is that they desire to see the Asiatic Acts repealed and all differential treatment of Indians done away with and the same educational tests applied to both white and Indian immigrants. If this is not what they mean, then there is no valid reason why, under the existing laws, applications should not be made for the admission into the Transvaal of such educated and professional Indians as may be necessary for the needs of the Indian community in the Transvaal. The admission of Indians into the country on the same educational qualifications as whites could not for a moment be entertained as a policy; if they are serious in asking for less then they should accept the assurance of the Government and cease agitation on this point. The objection of the Indians to this course on the ground that the acceptance of temporary permits under the present law would be humiliating is entirely groundless as the Government have assured them that their permits could be extended indefinitely in proper cases. Their proposal involves fresh legislation which the Government, in view of the intense feeling among the white population, do not think desirable in the public interest.

I do not understand that the other point raised by the Indian Government is at all a grievance, at any rate with the Indians. The clauses in Act 36 of 1908, in reference to pre-war Indian residents of the Transvaal, embody in exact terms the arrangement which Mr. Gandhi came to at the Conference referred to by the Secretary of State. If pre-war Indian residents have recently suffered in the Transvaal,

it is chiefly because they are taking part in this agitation against the Act and not because they are barred from entering the country under the provisions of the Act. If there are cases where a strict adherence to the letter of the Act would cause undue hardship, the officials will be instructed to treat such cases with every consideration.

I am glad to note that His Majesty's Government recognise the reasonable and conciliatory attitude of the Transvaal Government in this matter, the difficulties of which are not so great in themselves, but are very seriously aggravated by the spirit of fanaticism which actuates a portion of the Indian community. The Government will continue to do its best to allay this unhappy spirit and hope to be successful in the end. They do not, however, think that the repeal of the Asiatic Act would be a proper solution of the difficulty. It is quite true that the Colonial Secretary at one time seriously considered the repeal of Act No. 2 of 1907 and the introduction of the necessary safeguards into the Immigration Law, and it was only when he became convinced that the Indian leaders would in that event continue their crusade against these safeguards, that he gave up the attempt to obtain peace in that way.

The last Act has only recently been placed on the Statute Book; large numbers of Indians appear quite content with its terms; and in my opinion it should be given a fair trial. Besides its 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.

I hope that Lord Crewe will appreciate the grave difficulties in the way of giving effect to his suggestions for the repeal of the Asiatic Acts, and await the results of the present policy of the Government. In carrying out that policy the Government will proceed as tactfully as possible under very difficult circumstances.

Believe me, etc.,
LOUIS BOTHA.

His Excellency
The Earl of Selborne, G.C.M.G.

Mr. J. C. Smuts to the Earl of Crewe,

Hyde Park Hotel,
Knightsbridge, London, S. W.,
26th August 1909.

Dear Lord Crewe,

Since our conversation of the 5th and 24th instant, in reference to the Transvaal Indians, I have had time to go into the points which you raised with a view to the final settlement of this question. These points were:—

- (1) The repeal of Act 2 of 1907.
- (2) The admission into the Transvaal of a limited number of educated Asiatics, not exceeding six per annum, under permanent certificates of registration instead of temporary permits; and
- (3) The question of a uniform education test for European and Asiatic immigrants, alike; subject, however, to differential administrative application as between the two classes.

I shall now deal briefly with each of these points.

(1) The Asiatic Registration Amendment Act, No. 36 of 1908, was so framed as to render Act 2 of 1907 unnecessary, and, since it came into operation, Act 2 of 1907 has practically fallen into desuetude. I, therefore, can see no strong objection to its repeal.

Its repeal would necessitate only one very small alteration in the Immigrants Restriction Act, No. 15 of 1907, of a consequential character, viz., a deletion in paragraph G. of Section 2 of the words "is eligible for or." These words refer to the provisions of Act 2, whereby Indians are allowed to come into the Transvaal and to apply within eight days for a certificate of registration. During those eight days they are nominally "eligible for" a certificate. In the subsequent Asiatic Registration Amendment Act, No. 36 of 1908, it is, however, provided that Indian immigrants with claims to reside in the Transvaal, should apply from out-

side the Transvaal border for certificates of registration, and they would only be entitled to enter the Transvaal after having actually obtained a certificate or some special permit.

Under this Act the above words therefore become meaningless and have to be deleted if Act 2 of 1907 is repealed. It would also be necessary in the same paragraph G, after the words "Act 1907" to insert the words "or the Asiatic Registration Amendment Act, No. 36 of 1908, or any amendment thereof." Against these consequential amendments of paragraph G, I do not anticipate any objection, There is, however, another amendment to this Act, not absolutely necessary, but certainly desirable, which I would submit to your favourable consideration if Act 2 of 1907 is repealed.

You will notice that the provisions which now prevent the entry of Asiatics now provided with certificates into the Transvaal is sub-section 4 of section 2 of Act 15 of 1907. This sub-section does not mention Asiatics, but was deliberately framed for them and has been interpreted in the Courts in that sense. Its language is, however, unnecessarily involved and awkward, and I would suggest that this sub-section be repealed, and the following substituted therefor:—

"Any Asiatic as defined in the Asiatic Registration Amendment Act, No. 36 of 1908, who has not obtained a certificate of Registration under that Act, or under the Asiatic Law Amendment Act of 1907, or a permit under section 16 of the first mentioned Act, or any amendment thereof."

The effect of this amendment would be identical with that of the present sub-section 4, but the phraseology would be simple and direct.

2. The second point raised by you would be met by an addition to section 16 of Act 36 of 1908, whereby the Governor-General in Council would be authorised to issue certificates of registration to a limited number of approved Asiatics, not exceeding six in any one year. The power of granting temporary permits should be retained as that has been found very useful in cases where expulsion of prohibited immigrants in accordance with the strict requirements of the law would involve unnecessary hardship.

I believe that these two points which include the substance of what the Indians have been contending for, might fairly form the basis for a final settlement of the Indian trouble in the Transvaal. Act 2 of 1907 they have unfortunately come to look upon as derogatory to their national dignity, and besides they want the introduction under permanent certificates of residence of a limited number of educated Asiatics who are necessary for the spiritual and social needs of their compatriots already legally resident in the Transvaal. If both these contentions are conceded in substance they should have every reason to be satisfied.

3. However, the advocates of extreme views among them desire a further alteration of the law which was raised by you as the third point in our discussions. This point is that there should be no differential provision in the immigration law for European and Asiatic immigrants, that the statutory provisions for immigration should be the same for both alike, but that the law should leave an opening for such administrative differentiation as will close the doors to all except, at most, six educated Asiatic immigrants in any one year. This proposal is, in my opinion, open to the gravest objections, and would be most strongly resisted by the white people of the Transvaal and of South Africa.

In the first place, we cannot recognise in our legislation the equal rights of all alike to emigrate to South Africa. Under our special circumstances we leave the door as wide as possible to white immigrants, but we could never do the same to Asiatic immigrants. In the second place the proposal recognises the force of this contention and proceeds to suggest that there shall be differential treatment, but of an administrative as distinct from a statutory character. The refinement and subtlety of this distinction would scarcely appeal to the commonsense of the people of South Africa, who would think, and I submit, rightly think, that if equality is conceded in principle, the practice would ultimately have to conform to the principle, and in the end the Asiatic immigrants would be on the same footing as the European. If there is to be differentiation (and the friends of the Indians conceded that in practice it is necessary), surely it is better to be quite honest and candid about it rather than to resort to dodges which savour strongly of dishonesty and immorality. Besides, there are other practical difficulties in the working of differential administrative tests in South Africa, which I pointed out to you in conversation, and need not repeat here.

On these and other grounds it is impossible to expect from the Transvaal, and indeed any South African Legislature, legislation which would satisfy the aspiration of some extreme Indians for equal rights of immigration. I would therefore advise that this third point be abandoned, and that action be taken, as indicated above, in connection with the first and second points raised by you, and that a settlement with the Indian people of the Transvaal be secured along those lines. It may, and no doubt will be, argued in the Transvaal that it is better to let well alone, and not to re-open the Indian question by a fresh attempt at a solution which runs every risk of proving abortive. It will be also pointed out, that, on the whole, the vast bulk of the Indian community in the Transvaal have acquiesced in the legislation which was passed last year after full consultation with their leaders, and that any tinkering with this problem may have the effect of unsettling the minds of those who actually submitted to the law.

At the same time, there are many South Africans who appreciate profoundly the complex and far-reaching character of the questions at issue and the difficulties of His Majesty's Government as the custodian of the most widely divergent Imperial interests, and I believe, that on the whole, South African public opinion would approve a solution of the trouble along the lines above sketched.

If these lines are generally approved by His Majesty's Government, I think it will be possible to secure some such solution by legislative action in South Africa. It is not possible for me to say whether the necessary amendments of the law would be made by the Transvaal Parliament. Our ordinary Session for the present financial year, which ends 31st June 1910, is already past, and in the ordinary course, the Transvaal Parliament will not meet again except for the election of Senators to the Union Parliament. If, however, no opportunity can be afforded to the Transvaal Parliament of dealing with this question, I have little doubt personally that the first Union Government will show at least the same anxiety to meet His Majesty's Government in this matter as the Transvaal Government have done in the past.

Believe, etc.,
J. C. SMUTS.

The Right Hon.
The Earl of Crewe, K.G., P.C.,
etc., etc., etc.

Telegram from Officer Administering the Government of the Transvaal to the Secretary of State for the Colonies.

(Received Colonial Office 7-45 P. M., 15th November 1909.)

15th November, No. 2.

Your telegram 9th November, No. 2. Ministers state that they approve of policy set forth in the personal letter of the Colonial Secretary addressed to Lord Crewe on the 26th August last when the Transvaal delegates were in London. They add that they have not yet had time to consider whether any extraordinary session of Transvaal Parliament will be held at which business other than election of senators could be disposed of. They find it therefore impossible to state at the present time whether legislation on Asiatic questions, such as is proposed in that letter, will be brought forward in the Transvaal before the establishment of union.

Telegram from the Secretary of State for the Colonies to the Officer Administering the Government of the Transvaal.

(Sent 3-40 P. M., 18th November 1909.)

18th November, No. 2.

Your telegram 15th November 2, I stated in House of Lords 16th November that your Government had expressed themselves in general terms willing to introduce legislation if opportunity offered, which I understood was uncertain, to repeal Act 2 of 1907, and allow entry of six educated Indians as permanent residents. In reply to request for papers I promised to inquire whether Ministers have any objection. Papers would include Smuts 26th August, and correspondence regarding treatment of Indians in prison, etc.

Please inform me of Minister's views bearing in mind that His Majesty's Government earnestly hope that Your Government will see their way to introduce proposed legislation and that they do not wish to prejudice hope of legisla-

UNION OF SOUTH AFRICA.

Telegram P. X., dated London, the 26th September 1910.

From—The Secretary of State,

To—His Excellency the Viceroy.

Indians in South Africa. The Governor-General of South Africa is about to be addressed by the Colonial Office on the question of legislation for the general control of immigration into the Union and my opinion has been asked on a draft despatch which Lord Crewé wishes to issue by the mail leaving on Saturday, October 1st. The Despatch draws the attention of the South African Ministers to a letter from the British Indian Association of March 29th, 1909, and to a statement of Mr. Gandhi of January 6th, 1910 (see my Public Despatch No. 37 of April 15th, Enclosure 8) as showing that the Indian leaders will be satisfied (a) by the repeal of the Transvaal Asiatic Act, 1907, (b) by the removal from the text of Immigration Act of any differential bar to entrance of Asiatics as such and (c) by differential administration of the Immigration Act under which by means of regulations of Governor-General in Council the entrance even of Indians who can pass the educational test would as a matter of fact be barred except as regards a certain number not exceeding 6 in any year. In this connection the Government of South Africa is asked to give careful consideration to the precedent afforded by the Immigration Legislation of Australian Commonwealth

A. Pros., April 1906, nos. 2-7.

which opposes no hindrance to entrance of coloured persons as such but effectually checks their entrance into Australia by the action of Immigration officers. These might require such persons to write a number of words in some European language such as Swedish or modern Greek with which they are not acquainted.

The anxiety of the Colonial Office for an early settlement of this grave and difficult question is shared by me. But I am not altogether convinced that the solution forwarded by the Colonial Office affords the requisite guarantee of permanence. It is impossible to overlook the danger that each case in which language test is applied so as to exclude an educated Indian would give rise to a fresh outbreak of agitation and that attention would continually be drawn to the sharp contrast between the liberal theory of the Act and the intolerant practice of the executive officials. It has accordingly been suggested to me that a less invidious solution might possibly be found in an adaptation of provisions of Section 38 (c) of the Canadian Immigration Act of 1910 (see enclosure of my Public Despatch No. 25 of March 11th last) on the following lines:— (First) for the word "climate" which is inappropriate in the case of South Africa read "conditions." You will observe that Section applies to all races and does not differentiate Indians. (Second) Provide in the substantive law for the admission every year of 6 cultured Indians on an educational test in the English language. (Third) Empower Governor-General of India to issue passports to Indians of high position for purpose of temporary travel in Union territories. (Four) Provide for proving identity of Indians already entitled to reside in South Africa (a) in the case of educated persons of good position by means of signature, (b) in the case of others by impression of left thumb.

Owing to meeting of Union Parliament it is impossible to defer issue of the Despatch. I shall be glad to receive expression of your views on the subject with the least possible delay.

Telegram P. X., No. 274, dated 30th September 1910.

From—His Excellency the Viceroy,

To—The Secretary of State.

Indians in South Africa. Your telegram 26th September. We greatly regret that we are unable to grasp fully the proposals put before us. Our chief difficulty is this. You state that the Governor-General in South Africa is about to be addressed by the Colonial Office on the question of legislation for the general control of immigration into the Union. You then mention certain problems connected with Indian immigration into the Transvaal. And later on you refer to the anxiety of the Colonial Office for an early settlement of "this grave and difficult question." There has been no grave and difficult question raised of late about the Immigration Acts of the Cape Colony and Natal, so that we infer that what is particularly aimed at is a settlement of the Transvaal question. We are unable to understand how this particular question can be settled by the passing of a general Immigration Act. The Transvaal has steadily

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refused admission to all Indians except those entitled to reside within the Colony. We do not gather definitely from your telegram that the Transvaal is to be pressed to abandon this position. And we can hardly believe that it will readily accept a general immigration law which, while imposing great restrictions on the entry of Indians into South Africa generally, would throw the Colony open to Indians resident elsewhere within the Union. We cannot fully appreciate the aim of legislation for the general control of immigration into the Union, until we know precisely what the intention is regarding this matter.

We also find difficulty in connection with the following points. The purport of your telegram appears to us to be that, in the general legislation which is proposed, the standard of restriction should be such as would meet the conditions asked for by the leaders of the Transvaal agitation. We are unable to follow the connection between the particular problems affecting the Transvaal and the general question of immigration into the Union. We should deprecate the application of the Transvaal leaders' conditions to immigration into South Africa in general. This would mean the curtailment of the entry of Indian into Cape Colony and Natal as allowed under the existing laws of these Colonies. Such curtailment would produce renewed agitation and we cannot see how it could be defended. You, for instance, refer in your second suggestion to provision being made in the substantive law for admission every year of six cultured Indians on an educational test in the English language. We consider that a storm would undoubtedly be raised by the substitution of such a provision for the existing law in Cape Colony and Natal.

We notice also that you propose in your fourth suggestion that the matter of identity should be provided for. Here again a differentiation would be introduced in Cape Colony and Natal, to which we think strong objection would be taken, particularly as to thumb impressions.

We regret that, without further information as to the precise intention of the Colonial Office we find it impossible to advise you on the proposals put before us. All we can say is that we do not think, by adopting for general application to the Union the measures which have been suggested for solving the unfortunate situation in the Transvaal, any settlement is to be found.

Minute 902 A.

Union of South Africa,
Prime Minister's Office,
Cape Town,
20th December 1910.

MINISTERS have the honour to acknowledge the receipt of His Excellency the Governor-General's Minute no. 15—63 of the 25th October last, and enclosing a despatch from the Right Honourable the Secretary of State for the Colonies, in reference to the position of British Indians in the Transvaal and Natal on the subject of immigration legislation generally, and desire to express their thanks to the Secretary of State for his careful and fair statement of the present position and his suggestions for the removal of such difficulties as still surround it in some Provinces of the Union. On their part, Ministers are anxious, as far as possible, to meet the views of His Majesty's Government, and have only waited for a suitable opportunity to introduce the necessary legislation. Such an opportunity has now presented itself in the opening of the first Union Parliament, and Ministers intend to introduce amending legislation framed so as to remove, as far as possible, the grievances which have been urged by the Indians.

As far as the Transvaal Province is concerned, these grievances have now narrowed themselves down to the subjects mentioned in the Despatch, *viz.*, (a) the repeal of Act 2 of 1907; (b) permission for the annual immigration into the Transvaal, as permanent residents, of six educated or professional Indians; and (c) the avoidance of any specific statutory prohibition of Indian immigration; and the prevention, subject to (b) of Indian immigration by means of differential administration.

Ministers consider that Lord Crewe's suggestions in reference to these points, in the despatch under consideration, afford a fair and reasonable basis for action, and they propose to introduce at an early date legislation repealing Act 2 of 1907 and adopting, as suggested, the dictation test of the Australian law. By the differential application of this test it will be within the power of the

immigration officers effectually to check the entry of coloured persons into the Union. It is, however, proposed notwithstanding this test, to instruct these officers to allow the entry of a limited number of educated Indians who will, after such entry, possess permanent residential rights in any province of the Union. It is not necessary to fix this number by legislation, as each case might be dealt with on its merits, but it is not anticipated that such rights of entry and residence will, in any one year, be accorded to more than, say, a dozen Asiatics altogether.

With further reference to the difficulties which have arisen in the Transvaal, Ministers wish to point out that no exception is now taken, or could be reasonably taken, to the administration of the Asiatic Act 36 of 1908. The provisions of this Act are administered in a fair and liberal spirit. The method of identification by means of finger prints is only resorted to in the case of uneducated Indians who have no formed handwriting, and no opposition is offered to this method. In other cases where Asiatics who, either from education or from their commercial or social standing, are able to make use of other means of identification, such means are freely exercised. It is proposed to continue this liberal administration of the Act in the future.

The objections made at one time in regard to the giving of finger prints have been met in the above spirit, and, as Ministers believe, to the satisfaction of the Indian community. Those who still continue their attitude of passive resistance do so solely for the purpose of establishing the statutory position which it is now intended to bring about by amending legislation above referred to.

With regard to the position of Indians in Natal, Ministers believe that fresh legislation is not at present called for, and hope that a fair and reasonable administration of the existing law will have the desired effect of remedying specific grievances, as far as possible and securing considerate treatment to all in the enjoyment of vested rights.

Ministers beg to state that it is, in their opinion, not possible to ignore Provincial boundaries in the administration of the Asiatic or Immigration Acts, and that it is not proposed to disturb these for the present. One Province contains practically no Asiatics; in another enormous difficulties have arisen which have for the past 25 years been fruitful of discord and strife; and it must be evident that, if the doors of these Provinces are to be opened to the large and growing numbers of Indians in Natal, a state of affairs will arise which cannot be contemplated without the gravest anxiety.

Ministers would also point out that the Indians have themselves not raised this issue of free migration from one Province to the other, and they do not think that such an issue could now fairly be raised.

In conclusion, Ministers venture to express the hope that the solution of the difficulties which have surrounded the residence of free Indians in South Africa, which has now been suggested by His Majesty's Government and agreed to by Ministers, will be accepted as final by all parties concerned, and will not, as has so often happened with this vexed Indian question in the past, become a fresh starting point for new demands in the future.

LOUIS BOTHA.

(Minute 186.)

Union of South Africa, Prime Minister's Office,

Cape Town, 21st February 1911.

With reference to His Excellency the Governor General's Minute no. 15104, of the 16th instant, transmitting a copy of a telegram from the Right Honourable the Secretary of State for the Colonies, on the subject of the position of Asiatics in South Africa under the proposed Immigrants' Restriction Act, Ministers have the honour to state that, while the Bill does not affect the position of Indians now legally resident in any Province of the Union, it will obviously be impossible under the new Immigration Act to pursue separate immigration policies for the different Provinces of the Union.

Ministers desire to point out that they have accepted the suggestion of the British Government, as contained in paragraph 6 of the Secretary of State's despatch
A., January 1911, nos. 8-19.

of the 7th October, to have a uniform law with differential administration, under which even those Asiatics who could pass the education test could be barred from entering except as regards a certain number in any one year, and this policy would have to be carried out under the new law all over the Union, irrespective of what the policy of the late Colonies had been.

Ministers have undertaken, in their minute of the 20th December, to deal with Asiatic applicants on their merits, and they do not wish it to be understood that the number 12 will be regarded as an absolute limit, as it may be possible for them to admit more than that number in any one year.

Ministers desire, in conclusion, to state that the immigration policy above expressed will apply uniformly to all the Provinces of the Union, and they would be glad if this could be made clear to the Imperial Government in any communication which His Excellency may make on the subject.

LOUIS BOTHA.

P. X. Telegram, dated London, the 13th (received 14th) April 1911 at 11 P.M.

From—The Secretary of State,

To—The Viceroy (Commerce and Industry Department).

Following is very secret. South African Immigration Bill. Governor-General telegraphs privately to Colonial Office to the following effect:—Gandhi tells Smuts that passive resistance in Transvaal must continue if selected immigrants are not admitted into Orange Free State. He objects to Bill as containing inadmissible condition as to Orange Free State and also causing new trouble in Cape and Natal. Gandhi therefore wants Bill dropped and new Bill substituted covering Transvaal only. Smuts says *firstly*—Orange Free State cannot be made to admit immigrants; *secondly*—New Bill cannot be introduced this session; *thirdly*—It is impossible to legislate specially for Transvaal. Smuts therefore suggests dropping Bill. Trying to arrange with Gandhi *modus vivendi* in Transvaal and introducing new Bill next year. He thinks passive resistance in Transvaal nearly ended. Union Ministers feel bound to proceed with Bill if Imperial Government insist, but think that Government of India dislike present Bill so much that they will not object to its being dropped.—*Ends*.

Colonial Office desire to know your views, which they feel must determine question. But they are very averse from dropping present Bill. They question whether dropping Bill in deference to Gandhi's opposition might not lead to greater trouble in future by enhancing Gandhi's prestige and his belief that he can dictate to Union Government. They doubt whether Ministers can foresee that it will be possible to introduce next year a Bill which would be more acceptable to Gandhi on the two points at issue. In Orange Free State there is no resident Indian community to require presence of selected educated immigrants except a few waiters and servants and as regards Cape and Natal stiffening of Immigration administration (it) is inevitable in consequence of Union.

Apart from above considerations I am not sure how far Transvaal Indians, if their domestic grievances were removed, would continue agitation over Orange Free State? It is also possible that if the Bill were dropped Union officials might administer educational tests in existing Cape and Natal Immigration Laws so as to exclude new immigrants.

You will no doubt discuss whether leaving question open for another year might encourage agitation in India to obtain free entry of British subjects to South Africa, which Union will never concede. If no general Immigration law has been passed by South Africa before the King visits India his visit might no doubt be made occasion for pressing theoretical claims.

Please telegraph as soon as possible your views.

P. X. Telegram, dated London, the 16th (received 16th) April 1911.

From—The Secretary of State,

To—The Viceroy (Commerce and Industry Department).

The following is secret. South Africa. In continuation of my telegram of the 13th instant. Governor-General telegraphed to Colonial Office on April 14th to the following effect: *Begins* :—

Smuts proposes not to withdraw Bill at once but not to proceed with it so that its passage will be seen to be impossible and measure will lapse with other-

uncompleted Bill at end of session, which may be expected after about ten more sittings. Smuts would then make general statement referring to difficulties that make progress this year impossible but saying that Union Government keenly desirous to settle question as soon as possible and think that further consideration may suggest more satisfactory settlement. He would not mention or bargain with Gandhi. He thinks his suggestion preferable to forcing on Bill against Gandhi's ultimatum, as latter course might cause active trouble in Transvaal and stimulate new agitation in Cape and Natal. Unexpected opposition has arisen from January 22nd and section of Unionists dislike it because they fear ulterior restriction of immigration from England. Also repeal of Cape Act would allow Natal Indians to enter Cape Colony. Gladstone thinks adverse criticisms of the Government of India have weakened Bill. He is satisfied that Union Ministers most anxious to meet wishes of Government of India and settle question on reasonable and durable basis, but he reluctantly concludes, in view of Orange Free State implacability and general position, that attempt to pass present Bill would do more harm than good and that further time is required for satisfactory solution of problem. Possibility of pursuing Bill decreases daily.—Ends.

Colonial Office feel they must be guided by your views, which they are anxious to ascertain as soon as possible.

It seems doubtful whether Colonial Office could now ensure passage of Bill, but it is desirable to avoid onus being thrown on India of causing it to be abandoned.

Colonial Office to the Governor-General of the Union of South Africa.

Downing Street,

No. 226.

7th October 1910.

MY LORD,

I HAVE learned from Your Excellency's Despatch, no. 70 of the 9th July, that the position of British Indians in the Transvaal is the subject of the earnest consideration of your Ministers in conjunction with impending legislation for the general control of immigration into the Union of South Africa. I shall no doubt in due course be advised of the proposals of your Ministers in this regard, and it will then appear whether they have found it possible to deal with the problem for the whole of the Union as one immigration area, presumably on the lines of the existing Cape Colony and Natal Immigration Acts or whether it has been necessary to adhere to the provincial boundaries for immigration purposes and to continue for example to restrict the movements of Indians from Natal into the Transvaal as it is now restricted. The position of His Majesty's Government in relation to India would, of course, be rendered much easier by the adoption of the first of these courses. I ought to add that any solution which prejudiced or weakened the present position of Indians in the Cape Colony and Natal would not be acceptable to His Majesty's Government.

2. Since, however, the whole question is under consideration, and since a decision as to continued emigration under indenture from India to Natal must be taken at an early date, I think it advisable to make certain observations for the consideration of your Ministers as to the grievances of British Indians in the two Provinces of the Transvaal and Natal. In the case of the Orange Free State Province no practical question has arisen, and in the case of the Cape Colony Province the liberal policy pursued by the late Colonial Government in respect of the native and coloured population has had the effect of obviating any general complaint.

3. The grievances of the British Indian populations in the Transvaal have formed the subject of correspondence over practically the whole period since members of the community first entered the country. Complaints, for example, as to the subjection of Indians to the Pass Laws, as to their inability to hold land, as to exclusion from tramways and sidewalks, and as to differential treatment on railways have been made from time to time.

4. Of late years, however, those grievances have to some extent fallen into the background, with the exception of the grievance as to the treatment on railways, to which a satisfactory solution has been found, and the difficulties have centred in the bitter controversy respecting the Asiatic Registration Acts of 1907 and 1908, and the Immigration Act of 1907. That controversy has led

to the imprisonment of many Asiatics who are normally respectable and law-abiding British subjects, and to the deportation of a considerable number, and it has been, and is, a source of very grave embarrassment to His Majesty's Government in their relations with the Indian Empire.

5. As the Acts above mentioned are framed, the conditions of entrance into and residence in the Transvaal Province are part of one and the same difficulty, and must be dealt with together. In my telegram of the 8th of June I have already expressed the view that the commencement of Union could not be more happily marked than by a settlement of that difficulty mutually acceptable to both sides. The settlement of it is, in fact, a matter which may with confidence be attempted having regard to the opportunity afforded by the inauguration of a Government and Parliament representing not one Colony but the whole of United South Africa.

6. I desire to draw the special attention of your Ministers to the letter from the British Indian Association enclosed in Lord Selborne's Despatch of the 2nd of April 1909, and to the statement of Mr. M. K. Gandhi enclosed in Lord Selborne's Despatch of the 24th of January 1910. These documents are included in the Parliamentary Paper recently issued, and there will accordingly be on public record a pledge that the leaders of the Indians (who, as the Transvaal Ministers repeatedly stated, are the real actors in the movement of passive resistance) will be satisfied (a) by the repeal of the Asiatic Act of 1907, (b) by the removal from the text of the Immigration Act of any differential bar to the entrance of Asiatics as such, and (c) by differential administration of the Immigration Act under which by means of regulations of the Governor in Council the entrance, even of Indians who can pass the education test, would, as a matter of fact, be barred except as regards a certain number, not exceeding six in any year. The object of the Transvaal legislation, which was to preclude the entrance of any fresh Asiatics, would thus be substantially attained, and this at the cost only of meeting a difficulty on the part of the Indians which may be said to be sentimental, but which is none the less real.

7. In a letter addressed to me on the 26th August 1909 the present Union Minister of the Interior, while expressing readiness to meet the views of the Indians by the repeal of the Act of 1907, and by the admission of not more than six educated Indians in any year, stated that, as there must be differential treatment of Asiatics desiring to enter the Colony, it was on all grounds preferable to provide for such treatment by law and not to leave it to administrative action. On grounds of logic and simplicity there is doubtless much to be said in support of this contention. It must, however, be remembered that there is on record the statement in terms just referred to that the leaders of the Indians will acquiesce in differential treatment, so long as it is secured by executive action and as the law does not enact a colour bar. This attitude on the part of the Indians is noteworthy, and it is strictly consistent with their attitude in the matter of the differential railway regulations forming the subject of the correspondence* noted in the margin.

*Secretary of State, dated 10th February 1910.

Ditto, dated 7th March 1910, telegram.

Deputy Governor, dated 27th May 1910.

Secretary of State, dated 2nd July 1910.

8. In this connection I desire specially to draw the attention of your Ministers to the precedent for this solution afforded by the Immigration legislation of the Commonwealth of Australia. (I enclose copies of the Acts and Regulations in force, and a copy of the last Australian Report of Statistics relating to the Immigration Restriction Acts.) Your Ministers will see that this legislation opposes no hindrance to the entrance of coloured persons as such. In this important respect it conforms to the traditional policy of the Empire which, numbering as it does many millions of coloured men among its subjects, has scrupulously avoided drawing distinctions before the law merely on the ground of race and colour. Yet the entrance into Australia of coloured persons, to whose admission Australian opinion is strongly opposed, is effectually checked under the law by the action of the Immigration officers.

9. I need hardly repeat in this connection that His Majesty's Government, while strongly urging that the proscription by Act of Parliament of the inhabitants of one part of the Empire by another is open to the gravest objection both from their own point of view and from that of the sufferers, fully recognise the right of a self governing community such as the Union to choose the elements of which it shall be constituted, and it is in no way their desire to press your Government to admit immigrants whom the people of South

Africa are resolved to exclude. They only ask that the exclusion of such immigrants shall not be provided for in a manner which subjects them to unnecessary humiliation.

10. I earnestly trust that your Ministers will give careful consideration to the Australian precedent, and that they will see their way to a settlement on lines which will meet the expressed wish of the Indians and at the same time satisfy public opinion in the province by ensuring the practical cessation of Indian immigration. His Majesty's Government feel assured that, in addition to the issue of passports to persons of position for the purpose of temporary travel, your Ministers will, under their executive discretion, permit the admission from time to time of a limited number of educated persons. This was conceded in principle by Mr. Smuts in his letter addressed to me on 26th August 1909, though it was then proposed to effect this object by an amendment of the Transvaal Act. If Ministers, after reviewing the whole question, consider that fresh provision for registering Asiatics entitled to reside in the Transvaal should be made, the Secretary of State for India urges that no person literate in any European language whose identity can be established by other means should be required to furnish finger impressions, and that in the case of persons whose identity can only be established by finger impressions, such impressions should only be taken of the thumb of the left hand.

11. The grievances of the resident Indian population of Natal, though they have not caused difficulties so acute as those in the Transvaal, are still worthy of the careful attention of your Ministers. They are for the most part matters of administration, but I would draw your Ministers' special attention to the complaint which has been made that under the Natal Immigration Acts the families of lawfully and permanently-resident Indians may be declared prohibited immigrants.

12. In answering a general petition, dated the 10th of July 1909 in connection with the position of Natal Indians under the South African Union Act, I was able to refer to the amendment of the Dealers' Licenses Act of 1897, which removed the main grievances by providing for an appeal in cases where renewal of trading licenses is refused by the licensing authority. In regard to other grievances I laid stress on the fact that the control and administration of matters specially or differentially affecting Asiatics is by the South African Act vested in the Union Government, and I stated that it might in the opinion of His Majesty's Government be anticipated that the new Government and Parliament would view the whole position in a broader and a more generous spirit. I trust that in dealing with the position in Natal your Ministers will recognise the great services of the Indian population in developing that province, not only by remedying specific grievances so far as possible, but also by exerting the whole power and influence of the Union Government to secure considerate treatment of them, especially by the municipal bodies with whom they come in contact.

13. I shall be glad to receive the observations of your Ministers on the whole question at an early date.

I have, etc.,

CREWE.

Governor-General, His Excellency,
The Right Honourable Viscount Gladstone,
etc., etc., etc.

Governor-General, South Africa, to Colonial Office.

South Africa, No. 2. Confidential.

Governor-General's Office, Cape Town,
5th June 1912.

Sir,

I have the honour to inform you that, in view of the approaching termination of the Session, I thought it advisable to stimulate the Government to some further action towards passing the Immigration Bill, and on 29th ultimo I addressed to my Prime Minister a letter, of which I attach a copy, deprecating further delay. This intervention produced the desired effect. The Bill was put down for Second Reading on the following day, and the debate, which has not yet been concluded, was continued on Monday afternoon.

2. You will observe that General Smuts promised to introduce amendments in regard to the protection of domicile, and for regulating the admission of tuberculous immigrants under proper safeguards. He also gave a pledge that the administrative restrictions upon inter-provincial movements would not in practice be made more drastic than heretofore, and he undertook, if necessary, to elaborate the provisions of Clause 28 with the object of allaying apprehensions in the Orange Free State.

3. It would be idle to pretend that the Bill is popular in any part of the House. The Opposition dislike it because of the potential risk of the exclusion of white immigrants, but their desire to refrain from embarrassing Imperial interests in India will act as a restraining factor. Mr. Alexander's obstruction need not be regarded very seriously. On the Nationalists benches a policy of explicit prohibition of Asiatic immigration would be far more acceptable. Mr. Sauer and Mr. Merriman are understood to take a frankly hostile view, and I am told that the former has in private conversation made his attitude quite clear to some of the Opposition leaders. The Labour Party could, of course, not be expected to regard the Bill with sympathy. I think, however, that General Smuts will make a strong effort to carry the Bill, and, if so, I am hopeful that he will be able to force it through both Houses before the recess.

I have, &c.,

GLADSTONE,

Governor-General.

The Secretary of State,
Colonial Office.

Paraphrase telegram from the Governor-General of the Union of South Africa to the Secretary of State for the Colonies.

(Received, Colonial Office, 2.25 p.m., 24th June 1912.)

Confidential.

My Despatch of the 5th June Confidential (2). As no effective progress was made last week with the Immigration Bill I wrote again to the Prime Minister urging that he should proceed to a finish in view of the inevitable difficulties (?) which loss of the Bill would cause to all concerned. I have received now a letter from J. C. Smuts and have also had an interview with General Botha. I regret to say that they find hot opposition from some of their own men and from Labour Party. Some Unionists are obstructing also, and the Opposition leaders give no assistance to the Government in their efforts to pass the Bill. Government much regret this, but under the circumstances, and as the Bill has not passed the Second Reading, although it was again under discussion in the House of Assembly on 14th June and 22nd June, they can make no further progress with it. I pressed General Botha to summon Parliament in November for a special session and he expressed himself favourably to this plan, but will consult with colleagues. I will report the final decision.

The Session will probably end to-day.—GLADSTONE.

India Office to Colonial Office.

J. and P. 4835.

India Office,

15th December 1911.

Sir,

With reference to your letter of the 14th November, no. 35483, I am directed by the Secretary of State for India in Council to enquire whether it is the case that Indian labourers in Natal who re-indenture are required during the term of re-indenture to pay the 3l. tax imposed on ex-indentured Indians, although relieved of the payment of any arrears due at the time of re-indenture.

I have, &c.,

ED. S. MONTAGU.

The Under Secretary of State,
Colonial Office.

Colonial Office to India Office.

No. 40148.

Downing Street,

21st December 1911.

Sir,

I am directed by Mr. Secretary. Harcourt to acknowledge the receipt of your letter of the 15th instant, J. and P 4835, and to refer to Section 3 of the Natal Act, No. 19 of 1910, from which it will be seen that the payment of arrears of license money by Indian immigrants is suspended during re-indenture or contract for a period of not less than two years.

2. Mr. Harcourt presumes that the enquiry in your letter has arisen out of the references to this matter made in the *Natal Mercury* of the 9th of November, an extract from which has been forwarded to this Department by the South Africa British Indian Committee. I am to enclose a copy of the paper for convenience of reference, and am to add to it an extract from *Indian Opinion* of the 25th November, containing an official statement of the policy which is being adopted.

I am, &c.,

HENRY LAMBERT.

The Under Secretary of State
for India.

Extract from *Indian Opinion*, 25th November.

An Official Statement.

Mr. W. Stead, Secretary of the Immigration Trust Board, writes as follows to the *Natal Mercury* :-

"With reference to a leading article in your paper a few days ago, and later correspondence bearing on the subject of the payment of the 3*l.* license by Indians, I am directed by the Board to ask you to kindly publish the following :-

"(1) Indians under re-indenture are not being asked to pay either arrear or current license.

"In a few cases where judgment has been given against an Indian previous to his re-indenturing the Board understand that the magisterial judgment is being carried out and that these Indians are being asked for the amount of arrear license for which judgment was given. It is not considered quite right that an Indian should evade a magisterial judgment merely by entering into re-indenture.

"(2) Indians under civil contract have all arrear license suspended during the course of the contract the Indian has entered into.

"I understand, however, that Indians under civil contracts are being asked for current licenses only. The Board at first understood that Indians entering into civil contract would be relieved from current as well as arrear licenses, and a circular to that effect was drafted and issued by the Protector. It has been ruled, however, that, while Indians under civil contract are entitled to suspension of arrear license, they are not entitled to the same benefits as re-indentured Indians in having their current licenses waived as well."

South African British Indian Committee to Colonial Office.

Thanet House, 231-2, Strand,
London, W. C.,

Sir,

3rd January 1912.

Reverting to my letter of the 15th November, in acknowledgment of your letter of the 14th November last, enclosing copy of a Despatch from the Governor-General of the Union of South Africa, transmitting a minute from his Ministers relative to the 3*l.* tax imposed upon ex-indentured British Indians in Natal, I am now directed by my Committee to address to you the following observations :-

2. My Committee gratefully recognise the efforts of His Majesty's Government to procure relief in this matter, by laying before the Governor-General, for transmission to the Union Government, my Committee's views as to the principle and incidence of this tax, with, as my Committee gather, an inquiry as to the possibility of its repeal.

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3. It is, however, with the profoundest regret that my Committee hear of the disinclination of the Union Ministry, for reasons of policy, to introduce repealing legislation.

4. My Committee learn, with very great astonishment, that the Union Government are of opinion that the administration of the law imposing the tax has not been unduly harsh, and that its application in particular cases has been carefully watched.

5. My Committee feel, however, that the Union Government have expressed a somewhat hastily conceived opinion, for, whilst it is a fact that for a number of well-understood reasons very many cases of hardship never receive publicity, ample evidence exists, some of which has been brought to the notice of His Majesty's Government, that the incidence of this tax has been exceedingly harsh.

6. His Majesty's Government will no doubt be aware of the statement made by Sir Liege Hulett in the Natal Parliament in 1910, that the enforced payment of this tax had had the effect of driving many Indian women to lives of shame. Notwithstanding the Amending Act of 1910, the situation in that respect has scarcely improved, whilst, within the last few months, occurred a case, reported to His Majesty's Government, of an Indian woman, earning a wretched livelihood for herself and her children by hawking fruit, being sentenced to one month's imprisonment with hard labour for being in arrears with this tax for three years, and who was, upon the expiry of the sentence, immediately re-arrested and brought before the magistrate on the same charge, she being given a period of grace only because of the accidental presence in court of a medical man who, shocked at the proceedings, gave a certificate that she was physically incapable of earning money to pay the tax. Here, then, was an actual instance of a magistrate failing to exercise the discretion by law vested in him. Moreover, it is common knowledge in the Natal Indian community that the imposition of the tax has resulted in the demoralisation and impoverishment of a large section of the community by obliging many of the men liable to the tax to desert their families, or to endeavour to maintain them by the adoption of dishonest means of livelihood. The effect upon the children, who receive practically no other education, as was admitted in 1908 by the Natal Education Commission, may easily be conceived.

7. Apart, however, from this, there is the evidence recently given before the South African Commission on Commerce and Industries by an organisation representing the Natal planters to the effect that only 6 per cent. of the indentured British Indians could afford to pay the 3*l.* annual tax, the remainder, in almost equal proportions, being compelled either to re-indenture or to return to India, a significant commentary, in my Committee's opinion, on the one hand, upon the inequitable nature of the burden imposed upon the community, and, on the other, upon the conditions of indentured service.

8. My Committee fear that His Majesty's Government have not realised, as adequately as the circumstances of the case appear to warrant, that the continued imposition of this annual tax implies, apart from the social and economic evils referred to in paragraph 6 hereof, the maintenance, with their knowledge, though doubtless against their will, of a system involving the compulsory repatriation of the labourers or their obligatory re-indenture; and I am directed respectfully to remind you that the British Indians returning to India in this fashion, and telling the tale of their grievances, will have considerable excuse in spreading far and wide the impression that His Majesty's Government were not only originally responsible for, but are yet a party to, the grave injustice that has been, in my Committee's opinion, so wantonly inflicted upon them.

9. My Committee are unable to contemplate with equanimity so unhappy a situation, and the perpetuation of a system that may be described as one of exemption, or of permanently servile conditions utterly in conflict with the underlying principles of the British Constitution.

10. In the circumstances, therefore, they cannot accept the declaration of the Union Ministry as the last word to be said in this matter, and I am, accordingly, directed strongly to urge upon His Majesty's Government the desirability of pressing the Union Government to reconsider their decision, in the interests alike of racial ethics and of Imperial obligation.

I have, &c.,

M. E. POLAK,
Assistant Honorary Secretary.

Ministers to Governor.

Minute 105.

6th February 1912.

With reference to His Excellency the Governor-General's minute, no. 15/228, of the 8th December 1911, on the subject of the 3 $\frac{1}{2}$ annual license imposed on ex-indentured Indians in Natal, Ministers have the honour to state that they have given their most careful consideration to the proposal of the Right Honourable the Secretary of State for the Colonies that the existing law should be amended on the lines of the original Bill introduced into the Natal Parliament in 1910; but they very much regret to say that, in view of the state of public feeling in South Africa on the Indian question, they can hold out no hope at the present juncture of any legislation of the nature indicated by Mr. Harcourt being passed by the Union Parliament.

LOUIS BOTHA.

Colonial Office to India Office.

No. 7177.

Dowling Street,
26th March 1912.

Sir,

I am directed by Mr. Secretary Harcourt to acknowledge the receipt of your letter (no. J. and P. 296) of the 7th instant, and am to offer the following observations on it and on the enclosed despatch from the Government of India as to the position of Indians in the several provinces of the Union of South Africa.

2. The point raised in the second paragraph of the despatch with regard to the position of Asiatics in connection with the Transvaal Townships Amendment Act and the Precious and Base Metals Act of 1908 has been dealt with in the letter from this Department of the 12th of January, in which the view was expressed that no further concession could reasonably be expected from the Union Government.

3. The fifth paragraph of the despatch urges that an appeal should be allowed from the decision of the Licensing Courts in the Cape and Natal in all cases and not only in the case of refusals to extend existing licenses. As Lord Crewe is aware from the enclosure to the letter from this Department of the 7th of October last, Union Ministers have stated that the extent to which Asiatics are displacing white traders is rousing considerable feeling, and that the licensing provisions existing in the Cape and Natal will probably have to be introduced in the Transvaal. In his Despatch no. 614 of the 21st November, of which a copy was enclosed in my letter of the 1st of December, Mr. Harcourt has strongly deprecated such a measure, and he trusts that recourse will not be had to it. But the fact that it has been suggested indicates that it would be useless to press Ministers to modify the existing law in favour of Asiatics in the Cape and Natal provinces.

4. The 6th paragraph of the despatch refers to the question of the 3 $\frac{1}{2}$ tax on time-expired indentured immigrants in Natal, and Mr. Harcourt notes that in view of the past history of the question, the Government of India feel precluded from pressing this point. It will have been seen from the despatch, of which a copy was enclosed in the Colonial Office letter of the 13th of March, that, in the view of Ministers, the state of public opinion in South Africa renders it impossible, at present, to consider even the amendment of this law on a point of comparatively minor importance.

5. The remainder of the despatch and the telegram, of which a copy accompanied your letter no. J. and P. 5048, of the 10th of January, is concerned with the position of the Asiatics under the Immigration Bill now before the Union Parliament.

6. Mr. Harcourt notes that the Government of India regret the absence of a definition of domicile in the Bill. I am, however, to observe that, in practice, under the Bill, the question of domicile will mainly arise in the case of Asiatics desiring to enter the Union. Such persons, if domiciled, must previously have been in the Union or in one of the colonies comprised in it and have temporarily gone abroad. Under the existing laws of the Cape, Transvaal, and Natal Provinces, it is open to them to obtain either permits of absence or domicile certificates, and under the Union Bill they can also obtain permits. If they have carried out the provisions of the law, with which they must be presumed to be acquainted, it does not appear that difficulty should arise as to their re-entrance. In the cases, which should in the nature of things be infrequent, where Asiatics

have not carried out the law, the question of the meaning and effect of Section 5 (f) of the Bill would arise. As Lord Crewe is aware from other papers, Mr. Harcourt is in correspondence with the Union Government as to that subsection.

7. In view of the satisfaction expressed by the Government of India at the specification in Clause 25 (2) of a period not exceeding three years as the limit of time in which permits should be operative, it is a matter for regret that this provision should have been cut out of the Bill as introduced in the Union Parliament. But it does not appear that the alteration will make much practical difference, as the power to grant permits, in proper cases, for a longer period than one year remains unimpaired.

8. As regards the other points mentioned in the telegram of the 29th of December, I am to observe that it does not appear that exception can fairly be taken to the attitude adopted by Ministers upon the question of the use of the word "white" in Clause 5 (h), as reported in the telegram of which a copy accompanied the letter from this Department of the 10th of January: that there is nothing in the Bill to debar the fresh Asiatics who are to be annually admitted from entering into and residing in any province of the Union, subject, of course, in the case of the Orange Free State province, to the provisions of Sections 7 and 8 of Chapter XXXIII, of the laws of the province; and that it is difficult to see what practical effect would be produced by limiting the operation of Clause 19 to a period of one year from entry.

9. There remain the questions of the number of educated Indians to be admitted annually, and of facilities for the introduction of Indian clerks into the Cape and Natal. The first of these questions has formed the subject of prolonged discussion, and the Union Government are firm in their adherence to the limit already laid down, though they have expressed their readiness to take the merits of cases into consideration, so that in some years the number of admissions may be less, and in other greater, than 12.

10. As regards the introduction of new Indian clerks or their passage from one province to another Minister's policy is clearly explained in the correspondence of which copies accompanied the letters from this department of the 7th of October, 22nd of November, and 4th of December last. It would in Mr. Harcourt's opinion be unwise to depart from the accepted policy of exclusion of fresh immigrants with the exception of the small number to be annually admitted, and it does not appear that any useful purpose would be served at the moment by again taking up the question of transfer of clerks between provinces. Both these proposals involve an increase, general or local, of the Indian population. Public opinion in the Union is resolutely and unanimously hostile to any such increase, and Mr. Harcourt fears that to advocate it further in any way will merely tend to weaken the effect of any representations which His Majesty's Government may have to make on behalf of the resident Indian population.

11. From the above statement it will be observed that all the questions of importance on which the Government of India desire that representations should be made to the Union Government, have recently formed the subject of correspondence with the Union Government. Mr. Harcourt fully appreciates the propriety of keeping that Government apprised of the views of the Indian Government on these matters, but it appears to him that till the question of the Immigration Bill is decided, further representations at this stage would be fruitless, and would tend to embarrass and possibly to irritate Ministers, and to endanger the passage of the Bill.

12. Mr. Harcourt therefore adheres to the opinion that any action in the direction desired by the Government of India should for the present be deferred.

I am, &c.,

H. W. JOSEPH.

The Under Secretary of State
for India.

Ministers to Governor-General.

(Minute 715).

Union of South Africa,
Prime Minister's Office, Pretoria,
16th June 1911.

With reference to His Excellency the Governor-General's minute of the 22nd ultimo, transmitting a copy of a petition addressed to the Right Honourable the Secretary of State for the Colonies by the Natal Indian Congress, Ministers have the honour to state that it is not their intention to affect in the proposed immigration legislation for the Union the right of entry into Natal of the wives and

minor children of Indians domiciled in that Province. It is, however, not proposed to perpetuate the system of domicile certificates which has hitherto been in force in Natal, as it is considered that the use of these documents is liable to abuse in the absence of all reliable means of identification of the holders of such certificates. The system in vogue in the Cape Province of granting permits to domiciled Indians to leave the country for limited periods has worked satisfactorily, and, with the safeguards adopted under the regulation in force in that Province, does not lend itself to similar abuse. It is proposed, therefore, to embody this system in the forthcoming Immigration Bill.

Ministers regret that they are unable to agree to the importation under temporary permits of clerks from India. Natal already has the enormous Indian population of 150,000, and a community so large as that is, surely, in Ministers' opinion, capable of supplying the necessary clerks to the limited number of Indian business houses in that Province. The question of what is to become of the large number of Indian youths born and educated in Natal is already beginning to exercise many minds, and the situation would be greatly aggravated by the proposed importation of clerks from India.

With regard to the proposal of the Natal Indian Congress that 50 educated Indians should be allowed to immigrate to South Africa annually, Ministers see no reason to depart from the views and intentions already expressed by them to His Majesty's Government in previous correspondence.

J. C. SMUTS.

A shocking case at Stanger.

The 3l. tax again.

On Monday last (writes our Stanger correspondent) an Indian woman, who maintained herself and her little children by selling fruit, was arrested for not paying her 3l. tax for the last three years. She was taken before the Court, and, as there was no chance of her being able to pay this huge sum of 9l., the magistrate thought fit to give her two weeks' imprisonment. No thought has been given to her little children, who, being fatherless, are left altogether uncared for. The heartlessness of the prosecutor, and the magistrate who had power to discharge the woman, is so obvious that comment is superfluous.

No. 2 of 1912.

GOVERNMENT OF INDIA.

DEPARTMENT OF COMMERCE AND INDUSTRY.

EMIGRATION.

To

THE MOST HONOURABLE THE MARQUIS OF CREWE, K.G.,

His Majesty's Secretary of State for India.

Calcutta, the 11th January 1912.

MY LORD MARQUIS,

We have the honour to acknowledge the receipt of Your Lordship's despatches and letters from the Secretary, Judicial and Public Department, India Office, noted below, on the subject of the status of British Indians in the several provinces of the Union of South Africa:—

No. 157-Public, dated the 8th September 1911.

No. 164-Public, dated the 15th September 1911.

No. J. and P.-3622, dated the 21st September 1911.

No. J. and P.-3510, dated the 22nd September 1911.

No. J. and P.-3953, dated the 12th October 1911.

No. J. and P.-3954, dated the 13th October 1911.

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No. J. and P.-3953, dated the 9th November 1911.

No. J. and P.-3954, dated the 10th November 1911.

No. 201-Public, dated the 24th November 1911.

No. 205-Public, dated the 24th November 1911.

No. J. and P.-4637, dated the 24th November 1911.

2. With regard to the complaints made by Indians resident in the Transvaal in connection with the Transvaal Draft Municipal Ordinance and the Townships Amendment Act and the Gold Law of 1908, we are unable to express any definite opinion on the information at our disposal. We observe that the Secretary of State for the Colonies has asked the Union Government for a full expression of their views on the whole subject of the position of Asiatics under the legislation of 1908, and we reserve our opinion until the expression of views asked for from the Union Government has been received by us. We desire only to add that we sincerely trust that no effect will be spared to secure proper treatment of existing Indian residents.

3. With regard to the position in Cape Colony and Natal, we desire to refer in the first place to the petition of the Cape British Indian Union on the subject of the grant of permits, under section 4 (g) of the Immigration Restriction Act, 1906, for temporary absence from Cape Colony. We consider that the period of absence of one year which is at present ordinarily allowed causes undoubted hardship to British Indians who desire to visit India, and we were about to recommend that the period might be extended to three years when we received from the Governor General a copy of the draft of the South Africa Immigrants Restriction Bill. We are glad to observe that the Bill embodies in clause 25 (2) the proposal which we intended to make.

4. We have no recommendations to make on the request of the Cape Colony Indians for the abolition of the system of permits for inter-provincial travel and for the creation of an Immigration Board. We recognise that, as inter-provincial immigration is not to be allowed under the proposed Immigrants Restriction Act, it will be impossible to dispense with permits. And we accept the statement of the Secretary of State for the Colonies that His Majesty's Government cannot interfere with the discretion vested in the executive as to the admission of persons affected by the Act into the Union.

5. On the subject of the grant of trading licenses in Natal and Cape Colony, we observe that it is alleged by the Indians in both provinces that the Acts are being administered greatly to their prejudice, and evidence is adduced to show that the European traders are urging the Licensing Councils to adopt the policy of suppression of Asiatic trading. It is alleged that some of the Licensing Officers are imbued with the idea that a license should expire on the death or retirement of the original licensee, an idea which precludes the transfer of licenses being granted. These papers have been forwarded to the Union Government for report and its reply is awaited. The Union Ministers have in the meantime stated that the Acts have not so far been administered against Asiatics in any harsh manner and that the community have no just grievance. We share the doubt expressed by Mr. Harcourt and Your Lordship as to the accuracy of the statement so far as Natal is concerned. The manner in which the Natal Dealers Licenses Act is administered has for a long time been the subject of complaint by the Indians, and the Government of India have consistently asked that an appeal should be allowed from the decision of the Licensing Courts in all cases and not only in the case of refusals to extend existing licenses. We would again urge that this suggestion may be adopted both in the case of Natal and Cape Colony. We are of opinion that as the influx of Indians will soon be definitely curtailed, it is entirely reasonable that the rights of settled Indians should not be subject to regulations which are capable of being worked to their detriment.

6. A further point to which the Natal Indian Congress draws attention is the imposition of the £3 tax on time-expired indentured immigrants and their children. In view of the past history of this question and as the tax was imposed with the cognizance of the Government of India, we are precluded from making any recommendation for its abolition. We would therefore leave it to the Union Government to take such action on the representation as it may deem fit in consideration of the situation which has been created by the stoppage of indentured emigration to the Colony.

7. The last matter for consideration is the change in the matter of admission of Indians into Cape Colony and Natal which will be introduced by the

proposed Immigration Law for the whole of the Union. Both the Natal Congress and the Cape British Indian Union request that the facilities at present enjoyed by Indians resident in the two provinces for importing clerical and other assistance from India may be continued. The Natal Congress suggests in particular that temporary permits be granted for the admission of clerks and that the number of Indians of culture to be annually admitted be fixed at 50 instead of 12, the number which had been previously proposed by the Union Government. In this connection we invite a reference to our telegram, dated the 14th March 1911, in which we expressed the opinion that the provision of twelve admissions annually would be wholly inadequate. The original proposal was to allow six new entrants for the Transvaal alone. It appears to us therefore to be proper that, since Natal and Cape Colony have been brought within the purview of the Bill, the limit of new admissions should be reasonably calculated with reference to what was originally proposed for the Transvaal. It is said by the Union Government and Mr. Harcourt that as Natal has an Indian population of about 150,000 it should be capable of supplying the necessary clerks and professional men required by the two Colonies. With reference to this remark, we would point out that the great majority of the Indians resident in Natal belong to the ordinary labouring classes, and on account of the illiberal policy in the matter of Indian education formerly adopted by the Colony, it may be regarded as doubtful whether proficient clerks can be locally obtained in any number from among the remainder of the settled Indians. It has also to be borne in mind that as under the Immigrants Restriction Bill provincial boundaries are to be maintained, it will not be possible for Cape Colony to import Indians from Natal. We therefore adhere to the opinion already expressed that the door should not be so firmly closed against entry of professional and clerical Indians, at any rate for some years to come, and that the Union Government should recognise the equity of the Indians' claims in this respect.

We have the honour, to be,

My Lord MARQUIS,

Your Lordship's most obedient, humble Servants,

O'MOORE CREAUGH.

GUY FLEETWOOD WILSON.

S. H. BUTLER.

SLAYID ALI IMAM.

W. H. CLARK.

Secret Memorandum.

In the course of conversation this morning General Smuts referred to the draft Immigration Bill. I asked him what would be the position, under Clause 28, of one of the limited number of educated Indians to be admitted into the Union under the dictation test if he wished to enter the Free State. The Minister said there would be no restriction upon his entry into the Free State or into any other Province, and the only special disabilities to which he would be subjected would be the prohibition to acquire fixed property, or to engage in commerce or farming in the Free State, as set forth in Sub-clause 2 of Clause 28. According to what General Smuts said, there would be nothing to prevent him from establishing himself as a doctor except the absence of a sufficient number of his compatriots to make professional practice lucrative. The rest of Chapter 33 of the Orange Free State Law Book was not being repealed, but its provisions, with the exception of Articles 7 and 8, would be practically inoperative so far as the Indians admitted under the dictation test were concerned, as their status and rights were protected under the draft Bill. I asked the Minister whether he did not anticipate strong protests from Mr. Gandhi and his followers in regard to the specific retention of Articles 7 and 8. He said that Mr. Gandhi would raise no objection so long as the right of entry into the Free State were secured, as it was under the draft Bill. I did not anticipate such a sanguine reply, but I conclude from the confidence with which General Smuts spoke that he has been in communication with Mr. Gandhi and has satisfied himself on this point. He appeared to be convinced that the Bill, so far as it went, would be acceptable to the Indian community in this country. As regards the attitude

of the Orange Free State members, General Smuts recognised that Sub-clause 2 of Clause 28 did not go so far as they would desire. Their wish would be to prevent any Indian from entering their Province, and time would show whether they would prove intractable. He hopes that they would be reasonable enough to appreciate that it would be intolerable if they endeavoured to wreck the Bill because it did not meet all their aspirations in every particular, and he considered that he had a strong argument in his armoury in that there was no absolute bar upon the entry of Indians into the Province under the present law, as the grant or refusal of permission in each case was left to the exercise of ministerial discretion, and there was nothing to prevent a Minister from admitting an unlimited number of Asiatics into the Free State if he saw fit, subject always to the statutory bar in regard to their owning fixed property, or their engaging in commerce or farming. He seemed to think that, if this circumstance were brought home to them, their attitude might not improbably undergo some modification. I may add that I have reason to believe that the draft of Sub-clause 2 was specially submitted to General Hertzog, and that he did not take exception to its terms.

2. I mentioned that I had failed to observe in the draft Bill any provision for giving effect to the Minister's undertaking in his correspondence with Mr. Gandhi that provision should be made for the registration of passive resisters who, but for their passive resistance, would previously have been entitled to registration. This point, it will be remembered, was alluded to in paragraph 15 of Lord Gladstone's Despatch, Confidential (2), of the 23rd October. General Smuts replied that it had been found that no special legislation was required for the purpose of carrying out this pledge, and that certificates of registration were now in fact being granted.

3. As regards the dictation test, General Smuts volunteered the statement that he was considering the expediency of adopting the Australian model in its entirety and of providing that the subject of the test should be restricted to European languages. He thought there would be no difficulty in scheduling a list of European languages, and he would be prepared to include Yiddish in the list as the overwhelming majority of white immigrants at present were of the Jewish race.

4. He said that he was very hopeful of passing the Bill into law during the next session, and would use every endeavour in that behalf, as it was of the greatest importance that the immigration question should be regularised and settled. The emphasis with which he spoke is the more satisfactory as a few months ago there were indications suggesting the possibility of some slackening of interest in the subject.

5. He went on to lay stress upon his conviction that if South Africa were to be a white man's country, it would be necessary to encourage a large immigration of white labour. He thought there would be great difficulties in persuading the mine owners to employ white labour in the mines, but he could see no reason why the work of agriculture should not be carried out by white men as in the United States of America and in Australia, and he thought that the future of the Union as a white man's country depended on the settlement of a large white population on the land, where there was almost unlimited scope for their activities. For this reason he was not inclined to regret the signs of an approaching scarcity of coloured labour, as he thought that the farmers when they found that natives were no longer easily procurable would have to make up their minds to employ white men. He thought that the time was coming when a strong movement in favour of white immigration would have to be organised, but that it would be no use to introduce white labour so long as the work of agriculture was mainly left to the coloured population. At present immigration was almost wholly Jewish. He did not altogether regret this, as the Jews who came into the country, although ethnically and socially they remained a distinct entity, were generally prepared to stay and to make South Africa their home. In consequence of the conditions of their native environment they were undoubtedly apt to take up activities of a parasitical nature, but there was a growing satisfactory tendency on their part to settle on the land and to engage in productive industry. It will be noted that his observations on the general question of white immigration differ considerably, both in tone and in intention, from the public utterances of at least one of his colleagues.

6. As regards the Asiatic question in the Transvaal, he expressed himself as gravely concerned by the interpretation placed by the Divisional Court upon Sections 77 and 130 of the Gold Law, to which reference was made in Lord

Gladstone's Despatch No. 817, of the 23rd instant. He considered that the decision was bad in law, but he did not propose to interfere with it. Its effect he understood to be that wherever a right to let stands to Asiatics had existed in mining areas, outside of townships, prior to the passing of the Act, that right could still be exercised. The result would be that a large number of Asiatic stores would spring up all over the reef, that the white trader would be crowded out, and that a considerable impetus would be given to the illicit traffic in gold and liquor in which Asiatics were prone to indulge. He thought that further legislation might be necessary, and a solution, to which he inclined, both in regard to this particular difficulty and to the general question of Asiatics trading in the Transvaal, might have to be found in the introduction of a licensing system resembling that of Natal. It will be remembered that the contemplation of some such expedient was indicated by Ministers in their Minute No. 1023 of the 2nd September, which was transmitted to the Secretary of State with Lord Gladstone's Despatch No. 737, of the 4th idem. The scheme in General Smuts' mind appears to be the introduction of an universal system of licensing of all businesses in the Transvaal by the local authorities, without any explicit discrimination against Asiatics, and subject to the preservation of existing rights and to an appeal to some central authority with a view to obviating the infliction of undue hardship. He has evidently not yet come to a definite conclusion on the subject, and he appreciates that any such proposals would encounter formidable opposition in several quarters. He said, however, that he was strongly impressed with the necessity of taking some action to check what he described as the alarming development of Asiatic trading in this Province; and that, of course, would be the practical effect of the introduction of a licensing system, however free from racial differentiation it might be in form. The white trader, he asserted, could not exist side by side with Asiatic competition. He quite recognised that the business methods of white traders did not entitle them to very much sympathy, as they had taken an unreasonable advantage of their opportunities and were inclined to charge excessive profits. But, however that might be, he was not prepared to face the alternative of the whole retail trade of the country falling into Asiatic hands. As between the two evils of the undesirable business methods of white traders on the one hand, and the unlimited extension of Asiatic trading on the other, he could not hesitate to choose the former, unless he wished to stultify his ideal of South Africa as a white man's country. The tone of his remarks left no doubt in my mind that he was giving the question serious attention, not merely as a subject for theoretical consideration, but with a view to effective action, and it would, I fear, be idle to hope that it will be allowed to remain in abeyance.

H. J. STANLEY.

Government House, Pretoria,
26th October 1911.

Telegram from Governor-General of the Union of South Africa, to the Secretary of State for the Colonies.

(Received Colonial Office 6-50 P.M., 30th November 1911.)

30th November. Secret. Immigration Bill. Reference my telegram of to-day's date.

I saw J. C. Smuts after receiving Minister's reply to your questions. He strongly deprecates raising question of validating registration certificates for passive resisters. A separate Bill would be necessary. The Government are issuing certificates, and their validity could only be challenged by themselves. By issue they will themselves be estopped. It is their intention to safeguard position of passive resisters. I think that it will be best not to press them on this point.

As regards answer 3 of Ministers' Minute, J. C. Smuts quite recognises your point. But he says that it is new, and to make provision in Bill (1 for) fresh immigrants would be dangerous. He prefers to deal with point in Parliament, in event of its being raised, and then to deal with it as best he can. Gandhi has not raised it.

As regards answer 4 he does not think Gandhi will make difficulty. He thinks that paragraph can be considered from points of view other than differentiation. Attempts now being made to organise entry of natives from Liberia and he believes elsewhere, and therefore provides in such cases for necessity for legislation. Whites must be exempted in view of white immigration scheme approved by Government for land and other developments here.

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He cannot say that he has an agreed scheme with Gandhi. They are in agreement generally, but J. C. Smuts does not wish to incur risk of being charged with breach of faith, constructive or otherwise, which unforeseen developments might produce.

Owing to opposition in Orange Free State and the Cape, and from Jews, he is doubtful whether he can get the Bill through, and he wishes to avoid its position being prejudiced in advance.

GLADSTONE.

Transvaal Leader, 27th April 1911.

The Asiatic Question.

Following are copies of letters between Mr. Gandhi and the Minister of the Interior :—

Department of the Interior,
21st April 1911.

Dear Mr. Gandhi,

I am in receipt of your letters of the 19th and 20th April, in regard to the draft Immigration Bill, and have submitted them both to the Minister.

General Smuts has asked me to say to you that he regrets that, in view of the probable prorogation of Parliament early next week, it will not be possible for the Government to proceed with immigration legislation in any form this session.

The Government are keenly desirous of arriving at a solution of this vexed question, and in the recess they will go into the matter again and see what can be done to secure a settlement.

In the meantime, General Smuts feels that the passive resistance movement, which has caused and still continues to cause considerable suffering, might now well be brought to a close. Its continuance only tends unnecessarily to complicate the situation, and when the Government are endeavouring to fix a satisfactory solution of the question of Indian immigration the Indian community should not embarrass matters by maintaining their campaign.

General Smuts notes that Mrs. Sodha's appeal comes up at Bloemfontein on Saturday next, and requests me to say that your representations on her behalf are receiving his favourable consideration.

Yours sincerely,
ERNEST F. C. LANE,
Private Secretary to the Minister
of the Interior.

7, Buitencingle, Cape Town,
22nd April 1911.

Dear Mr. Lane,

I beg to acknowledge your letter of the 21st instant. I regret that General Smuts finds it impossible to settle the Transvaal Asiatic trouble during this session. I am, however, grateful for the statement contained in your letter that the matter will engage General Smuts' attention during the recess, with a view to bringing about a settlement during the next session.

I share General Smuts' anxiety that passive resistance may now be brought to a close. May I then suggest the following for his consideration, so that the suspicion that is sure to be aroused among my countrymen owing to a postponement of the solution may be allayed? An assurance should be given that:—

- (a) Legislation will be passed next session repealing Act 2 of 1907, subject to the reservation of the rights of minor children in terms of the Chotabhai judgment, and restoring legal equality as to the immigration of Asiatics into the Transvaal and maintaining existing rights. If the racial bar in the present Immigration Act of the Transvaal is removed by a general Bill, such Bill should naturally be free from a racial bar throughout the Union.

- (b) Passive resisters, who but for their resistance would have been entitled to registration, should now be so entitled, notwithstanding anything to the contrary in Act 36 of 1908.
- (c) Educated passive resisters who are now in the Transvaal, but who are not registrable under the Asiatic Act, should be allowed to remain in the Transvaal as educated immigrants in anticipation of the forthcoming legislation, their number not to exceed six. They may have special certificates in order to enable them to move to and fro without hindrance.

If the above assurance be given I do not anticipate any difficulty in persuading my countrymen to suspend passive resistance.

I trust General Smuts will recognise that in asking for the above assurance I am simply requesting ratification of what he has often publicly stated.

I am thankful, too, for the verbal assurance given by General Smuts that he will be pleased to grant relief in cases of individual hardship.

I need hardly reiterate the statement that whatever befalls the present passive resistance movement, the Indian community will continue to worry him about the many matters in the different provinces which have from time to time formed the subject matter of memorials, &c.

Lastly, I venture to repeat what I have said so often, that those who have the privilege of guiding the Indian community in South Africa have always been anxious and will continue, to help the authorities and to study and appreciate the European standpoint consistently with that community's self-respect and interests.

I am,

Yours sincerely,

M. K. GANDEL

Ernest F. C. Lane, Esq.,
Cape Town.

Department of the Interior,

22nd April 1911.

Dear Mr. Gandhi,

I am in receipt of your letter of the 22nd April, which was written in reply to my letter of the 21st instant.

I have shown your letter to General Smuts, and he has asked me to say that he quite appreciates the spirit in which you write, and he has every hope that by approaching this question in a conciliatory way a temporary solution may be arrived at which will leave all concerned free to devote their energies to securing a more lasting one.

I am authorised to say that the Minister intends introducing legislation during the next session of Parliament to repeal Act 2 of 1907, subject to the reservation of the rights of minor children. In devising such legislation the minister intends to introduce provisions giving legal equality for all immigrants, with, however, differential treatment of an administrative as distinct from a statutory character.

In regard to the second point you raised, I am to say that in such proposed legislation power will be taken to register all passive resisters who, but for their present resistance, would have been entitled to register had they done so at the present time, nothing in Act no. 36 of 1908 withstanding.

Power will also be taken to regularise the issue at the present time of temporary certificates, which the Minister is prepared to grant to the educated passive resisters who are now in the Transvaal, but who are not registrable under the existing Asiatic Acts. Their number is, I understand, not more than five or six at the outside. These certificates would entitle the holders to remain in the Transvaal in anticipation of the forthcoming legislation.

In conclusion, I am to say that if an assurance is given by you to the effect that the community will suspend their passive resistance movement, the Minister will ask His Excellency the Governor-General to consider favourably the question of releasing passive resistance prisoners who are now undergoing sentence for contravening the existing Asiatic legislation.

I hope that, after consultation with the Indian community, you will be able to inform General Smuts on his return to Pretoria of the cessation of the passive resistance, so that he may be able to assure His Majesty's Government that the leaders of the Indian community intend to co-operate with the Government with a view to arriving at a definite solution of this question.

Believe me,

Yours sincerely,

ERNEST F. C. LANE,

Private Secretary to Minister
of the Interior.

Extract from petition of A. M. Cachalia, Chairman of the British Indian Association, to the Right Hon'ble the Secy. of State for Colonies, London, dated Johannesburg, the 1st May 1911.

Owing to the unfortunate prejudice against Asiatics prevalent in South Africa, the Association regards as outside practical politics any demand at present for burgher's rights, i.e., rights for political franchise.

The deprivation, however, of the right to own landed property except in bazaars or locations is a very serious disability, and it naturally interferes with the progress of the community, and, strange as it may appear, the absence of building enterprise on the part of the community, owing to this disability, is used as an argument against the community, and so fosters prejudice. Though residence of Asiatics is restricted under this law to locations or bazaars, there being no penalty prescribed for non-residence therein, the Courts have held that Asiatics cannot be compulsorily segregated. The presence, direct and indirect, of rival European traders has, however, virtually driven a number of the poorer Asiatics into the locations already established under the law. It is worthy of note, as an indication of the hostile spirit actuating the Government for the time being of the province, that these locations have been so far situated as to make general trade therein practically impossible, and to put Asiatic hawkers, who must every morning go to the public market for buying produce, to very great inconvenience. Moreover, whereas, under this law Asiatics are permitted to own landed property in such locations the Government permit them only to hold leases of no longer than 21 years of stands into which such locations are divided. Indeed, in Johannesburg they are only allowed a monthly tenure. Here, it may be added, that upto the time of the outbreak of the late war, there was a location in Johannesburg in which 90 stands were held under 99 years' lease. This location, among other areas, was expropriated under a special ordinance, and since then Asiatics have not been able to hold any landed property in their own names save as above mentioned.

In order, however, to enable British Indians to become virtual owners of landed property, equitable trusts under legal advice were created, whereby Asiatics have been able hitherto to acquire a permanent interest in land, their European friends taking transfer of land for which the Asiatic beneficiaries pay, and the ostensible owner passing a bond over such land in favour of the equitable owner. These trusts have been recognised by the Courts, and the method has been in vogue almost since the time of the promulgation of this law.

Gold Law Townships Act (1908).

In order, as it would appear, to defeat such trusts, and to bring about effectual compulsory segregation, the legislature has included in the Gold Law and the Townships Amendment Act of 1908 certain subtle provisions which, on the face of them, appear to be comparatively innocuous (though still highly offensive), yet which are obviously designed to accomplish the object above indicated. The Association has made this discovery only lately by accident. In the town of Klerksdorp, European owners of stands occupied by, and in some cases equitably owned by, British Indians have been notified by the Government that they are committing a breach of Section 130 of the said Gold Law, and that if the British Indian occupants be not removed by the 30th April (last), proceedings will be taken against them. The penalty for non-compliance is a fine of 50*l.*, and an additional fine of 5*l.* per diem so long as the breach continues. These notices have created consternation among British Indians. The community has received legal opinion to the effect that the combined reading of the

two laws above referred to means that every Indian residing within mining areas in this province runs the risk of being dispossessed of his occupation of stands therein, and having his equitable ownership completely destroyed. The latter object is attained by a section of the Townships Act afore-mentioned, which provides for forfeiture to the State, without compensation, of land occupied by British Indians and other Asiatics, although, as before explained, they may be virtual owners of such stands. The only protection of existing rights granted under these drastic laws is in respect of leases directly held by Asiatics and entered into before promulgation of the Gold Law. Many important towns, including Johannesburg (which accommodates nearly one-half of the total Indian population of the Transvaal), are affected by these laws. If, therefore, they are to be strictly enforced, virtual ruin of the Transvaal Indian community must almost certainly follow, and the off-declared policy of prominent members of the present Ministry of the Union; the starvation of British Indians out of the province will be effected at a stroke of the pen.

Had such an attempt been made by an open and plain amendment of Law 3 of 1885, instead of by an obscure interpolation in statutes covering hundreds of sections and ostensibly dealing with matters of quite a different nature, the Association feels certain that such a measure would never have received His Majesty's sanction. The Association naturally lays the greatest emphasis upon this part of the petition, and hopes that His Majesty's Government will not fail to grant relief.

Ministers to Governor-General.

Union of South Africa,

Prime Minister's Office, Pretoria,

16th June 1911.

(Minute No. 714.)

With reference to His Excellency the Governor-General's minute of the 12th instant, no. 15/139, transmitting a telegram from the Right Honourable the Secretary of State for the Colonies, asking for Ministers' observations on the petition of the British Indian Association, copy of which was enclosed in His Excellency's minute of 8th May, and on the question raised by the South Africa British Indian Committee in their letter of the 5th May, on the subject of the effect of Section 130 of the Transvaal Gold Law, Ministers desire to state that they do not think that it is necessary to review the situation which has arisen under Law no. 3, of 1885, and subsequent laws dealing with the rights of Asiatics to own or otherwise hold property outside locations and bazaars.

The grievance to which attention is particularly drawn in the enclosures to the Governor-General's minute refer to certain police action which has been taken at Klerksdorp under Section 130 of the Precious and Base Metals Act of 1908. The reference by the British Indian Association to the Townships Amendment Act, 1908, is not understood by Ministers, as no provision such as is alleged to exist is contained in that Act.

With regard to the Section of the Precious and Base Metals Act referred to, Ministers wish to point out that that law deals primarily and almost entirely with mineral and mining rights from which coloured people have always been excluded under the provisions of the Mining Laws of the Transvaal. No doubt the language of Section 130 is wide enough to cover all rights conferred under the Act of 1908 as well as under previous Gold Laws; but there is no intention of interfering with the business or rights of carrying on business which Indians have acquired and exercised previous to the enactment of Act 35 of 1908. Ministers are informed that the stands at Klerksdorp, in reference to which action has been taken, were clandestinely acquired for business purposes by Indians subsequent to the passing of the Act, and in contravention of the Section referred to. They understand that action has been taken at the instance of the local trading community, which is profoundly exercised over the rapid ousting of white traders by the Indians. Ministers are, however, causing further enquiries to be

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made in order to avoid as far as possible any harsh application of the provisions of Section 130 of the law in question.

J. C. SMUTS.

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No.

SOUTH AFRICA BRITISH INDIAN COMMITTEE to COLONIAL OFFICE.

(Received September 1, 1911.)

[Answered by no. .]

THANET HOUSE,
231-2, STRAND,
London, W. C.,
31st August, 1911.

SIR,

In continuation of previous correspondence on the subject of the Transvaal Gold Law and Townships Amendment Act, 1908, I have the honour, under instructions, to enclose herewith for your attention, copy of a notice received by Mr. L. W. Ritch, the Secretary of this Committee, who is at the present time in Johannesburg.

2. For your further information I am to say that Mr. Ritch is a resident of the Transvaal of long standing, and has for years been intimately associated with individual members of the Indian community, with whom he has formed, in many instances, very friendly ties. As an act of friendship, he has frequently become the registered owner of fixed property in the Transvaal of which his Indian friends are the virtual owners, and has entered into equitable trusts with them, which have been recognised as valid and lawful by the Transvaal Courts. There are several other European gentlemen who occupy positions towards Transvaal Indian merchants similar to that of Mr. Ritch, including Mr. H. S. L. Polak, who is at the present time in London on behalf of the Transvaal Indian community.

3. It is evident to my Committee that the representations which my Committee understand to have been made by the Secretary of State to the Government of the Union of South Africa have not been so effective as they hoped. My Committee are informed that the situation is gravely exercising the minds of the Transvaal Indian community and especially of those members of it who are directly concerned either as owners or tenants.

4. My Committee have every reason to believe that the Transvaal Indians regard this matter as of equally vital importance to the community as the registration or immigration questions, and in the event of the Union Government's proceeding with the policy that they have apparently undertaken, their action is extremely likely to provoke a further passive resistance movement. In that event, it is quite probable that those Europeans who are trustees of Indian interests will make common cause with the Indians, decline to pay the fines leviable under the sections quoted, and accept the usual legal consequences of non-payment.

5. My Committee are satisfied that the Imperial Government will be most unwilling to contemplate such a catastrophe as the revival of the bitter struggle that has so recently been concluded would be, and once more they beg to urge that the Imperial Government will use its utmost efforts to persuade the South African Government either to amend the law or to suspend its operation pending a subsequent amendment.

6. In the respectful opinion of my Committee, the provocation offered by the Union Government makes it extremely difficult for the resident Indian community to regard the future with any degree of equanimity, for they are faced with the prospect of old-established British Indian merchants having to abandon the businesses they have built up over a period of many years of doubt and distress, and which are being conducted by them in premises for which they themselves have paid, and which are their property in everything but name. The same disaster confronts the far more numerous section of the community that

are tenants and have held trading licences for very many years. My Committee feel that, admirable as is the recent settlement of the Transvaal Immigration problem, its effect will be nullified entirely by a policy such as that now adopted by the Union Government, ensuring the compulsory withdrawal from the Province, ruined and uncompensated, of the entire Indian population.

I have, etc.,
M. E. POLAK,
Assistant Honorary Secretary.

PUBLIC PROSECUTOR to Mr. L. W. RITCH,
Office of the Resident Magistrate, Krugersdorp,
3rd August 1911.

Re Trading on Mining Ground.

SIR,

I beg to draw your attention to the provisions of Section 130 and the following sections of Act 35 of 1908, which prohibits, among other things, the acquisition of any rights under this Act by coloured persons and residence of coloured persons on proclaimed land. The sections referred to also make it a criminal offence for any person to transfer or sub-let or permit to be transferred or sub-let any portion of any rights under this or previous laws to coloured persons or to permit coloured persons to reside on ground held under such rights.

I am directed by the Attorney-General to point out to you that contravention of these sections renders you liable to criminal prosecutions.

Will you kindly take immediate steps to comply with the requirements of the law ?

E. H. HONEY,
Public Prosecutor.

L. W. Ritch, Esq.

Telegram dated Bangalore, the 20th November 1913.
From—His Excellency the Viceroy,
To—His Majesty's Secretary of State for India.

Crisis in South Africa. As indicated by Reuter's telegrams, position in Natal is becoming increasingly grave. Riot of a serious nature has taken place already and bloodshed is not impossible. A contingency of this kind would in itself be calamitous and disastrous in its effect upon public opinion in India. We would urge most strongly that all possible pressure should be brought to bear on Government of South Africa to induce them to negotiate with Indian leaders before it is too late. We should be glad to know of action that is being taken by Colonial Office. It seems to us possible that strong expression of opinion from London Press reported by Reuter's this morning, urging necessity for conciliation, may produce some effect on Government of South Africa.

Telegram P., dated the 22nd November 1913.
From—The Viceroy,
To—The Secretary of State.

Please refer to your telegram of the 21st instant about South Africa.

It is only right, I think, that I should point out that in view of the very wide publicity the various allegations of ill-treatment in South Africa have received, a bare denial of them by the South African Government will not satisfy Indian public opinion. I therefore once more urge that the only course likely to give satisfaction in India is an impartial and thorough enquiry by a strong committee upon which Indians are fully represented.

Telegram P., dated the 26th November 1913.
From—The Viceroy,
To—The Secretary of State.

The fact that it is now admitted that three hundred Indians were flogged by Mr. Hult, a mine manager who was charged with their custody as prisoners, renders the necessity for an impartial and full inquiry into the whole question

of the recent treatment of Indians in South Africa, as the only means of allaying the feelings of indignation and strong resentment in India, and of convincing India of the sincerity of General Botha's professions that he courts inquiry and of the truth of the denials of the South African Government.

From Kimberley Indians to Lord Gladstone, Cape Town,
Telegram.

7th May 1913. Kindly transmit the following resolution passed at a mass meeting of Indians to the Colonial Secretary, Mr. Harcourt. The mass meeting of British Indian residents of Kimberley and Beaconsfield strongly but respectfully protests against, and views with alarm, the provisions of the new Immigration Bill inasmuch as they do away with existing rights and privileges, jeopardise the domicile rights of long standing of Indians, give to individuals the autocratic powers, and do away with right of appeal to Courts of Justice, and are consequently absolutely contrary to the assurances given to the Imperial Government and to Mr. Gokhale.

Resolution passed at an open air meeting of British Indians held at Vrededorp on the 27th April 1913.

This Mass Meeting of British Indians hereby endorses the action of the Committee of the British Indian Association in forwarding to the Government its objections against the Immigration Bill, and inasmuch as it affects the honour, the religious sentiment, and the very existence of the Indian community in South Africa, solemnly resolves that, in the event of the Government not conceding the request, passive resistance, which has remained under suspense since 1911, be revived and continued until the sufferings of the passive resisters shall have proved to the Government and the Europeans of South Africa the earnestness of the community, and, therefore, the necessity of granting relief.

Certified correct.

A. M. CACHALIA,

Prime Minister's Office, Cape Town,

27th April 1913.

Ministers to Governor-General.

Prime Minister's Office, Cape Town,

2nd May 1913.

(Minute No. 430.)

With reference to the Governor-General's Minute, No. 15/389, of the 25th April, on the subject of the Immigrants Restriction Bill, in which His Excellency communicated certain observations made by the Secretary of State for India on the draft measure in question, Ministers have the honour to state that in regard to the point raised in connection with paragraph (a) of Sub-section (1) of Section 4, no difficulty is anticipated in connection with the admission of the specially selected educated entrants. It is intended that these individuals should be exempted by the Minister under the powers conferred on him in Section 25 from the necessity for submitting to the provisions of paragraph (a) of Section 4. It is not contemplated that any of these Indians will attempt to seek entry into the Union until they have received a notification in advance that they will be allowed in; and, when the list of these persons is made up each year, the Immigration Officers at the ports will be notified and instructed to pass the individuals whose names and descriptions are contained in that list.

In this connection Ministers desire to inquire whether the Indian Government would wish to concern itself in any way with the selection of these persons: As the number to be admitted each year will be strictly limited, it is thought that it would be desirable, owing to the diverse claims to consideration which are sure to be put forward in South Africa on behalf of different individuals by the various societies which exist amongst the Indian community in South Africa, and by individuals who have some influence in the different sections of that Community, if the Indian Government could scrutinize the applications, and, if not actually select the persons to be admitted, at all events advise thereon.

With regard to the claims of female immigrants to be admitted by virtue of being the wives of persons domiciled in South Africa, Ministers would be glad if Lord Crewe could be informed that it is not intended in the Bill to interfere in any way with the jurisdiction of the Courts on question of domicile. Questions which may arise concerning the validity of the marriage of a female immigrant will, however, be dealt with, as at present, by Immigration Officers. The South African Courts have made it clear that in cases of this nature, where proof has to be submitted to the satisfaction of an Immigration officer in order to prove a claim to enter, they cannot interfere unless it can be shown that the officer has not given proper consideration to the evidence tendered. It has been held by a Judge of the Supreme Court in the Cape Province that the Immigration Officer occupies a quasi-judicial position in these cases, and that the onus of proof is definitely thrown upon the immigrant to prove his or her claim to admission. In Natal a Judge of the Supreme Court has stated, in regard to similar cases, that all the Court has to do is to inquire whether the officer has approached the matter in such a way as to fulfil his statutory duties, and has dealt with it in good faith and with a reasonable spirit, and has not restricted an applicant arbitrarily without a genuine exercise of the discretion vested in him.

As a matter of fact, the position of persons such as those to whom Lord Crewe has referred, is considerably improved under the new Bill, as they will now have a definite right to appeal from the decision of an Immigration Officer to a Board.

Ministers note that Lord Crewe is also desirous of having some further explanation of Section 19 of the Bill. It is not the intention to require persons resident in inland districts to appear before Immigration Officers at the ports to produce evidence that they are not prohibited immigrants. Immigration Officers are stationed at other places besides the coast ports, and, for the purposes of inland districts, certain police officers are vested with authority to act for the Immigration Department. There must naturally be a *prima facie* case before an Immigration officer can take action against a supposed prohibited immigrant who is found within the Union.

Regarding the inquiry as to the precise restrictions to be imposed on persons "entitled to reside," though not domiciled, when they return after three years' absence, Ministers desire to state that the position would be that, if such persons appeared to be undesirable, they might be subjected to the provisions of Section 4 of the Bill.

With regard to the last point referred to in the Governor-General's Minute, Ministers beg to inform His Excellency that during 1912, 29 male Asiatics were allowed into Natal, and 17 into the Cape Province, by virtue of having complied with the education test at present in force in those Provinces.

LOUIS BOTHA.

The Governor-General to Secretary of State.

(Received 14th June 1913.)

(Confidential.)

Governor-General's Office, Cape Town,
27th May 1913.

Sir,

In continuation of my Despatch, Confidential, of the 23rd May, and in confirmation of my telegram of the 26th instant, I have the honour to inform you that the Immigrants Regulation Bill yesterday afternoon passed the Report and Third Reading stages in the House of Assembly, and was thereupon transmitted to the Senate.

Cape Times, Tuesday, 3rd June 1913.

Immigration Bill.

Threat of Passive Resistance Renewed.

Mr. Gandhi Interviewed.

Durban, 2nd June.—(From our Correspondent.)

In the course of a statement to-day respecting the Immigration Bill, Mr. Gandhi renewed the threat of passive resistance on the part of the Asiatics,
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"If the Bill is not amended in several material particulars," he said, "I feel that a revival of passive resistance is inevitable. The provisional settlement of 1911 contains two principal conditions to be fulfilled by the Government, namely, that existing rights should be maintained intact in any legislation that might be passed in order to satisfy the Indian claims, and that Transvaal Act 2 of 1907, subject to the reservation of the rights of minors, should be repealed, and there should be no racial bar introduced in any such legislation. Both of these conditions are violated by the Bill, even in its amended form. South African born Indians have, under the present Cape Immigration Act, the unconditional right to enter that Province. This right is now being taken away. If the Bill is not adequately amended, this deprivation will constitute a very serious grievance, and passive resisters will lose all title to respect, if, for the sake of avoiding the hardship of gaol or any other penalty to which they might be liable, they were to accept such a bargain. I do not know what other fatal defects there may be in the Bill as amended. The question of domicile, for instance, may have been left in a most unsatisfactory position, and so also that of the right of appeal to the Supreme Court. The marriage amendment moved by Mr. Alexander and accepted by the Minister will, I fear, frustrate the very purpose with which Mr. Alexander moved it in such a public-spirited manner. It requires the fulfilment of an impossible condition, namely, registration of marriage at the place of its celebration, in addition to proof of due performance of religious rites. There is, however, no system of State registration of marriage in India. As a matter of fact, a recent arrival from India endeavoured to obtain a certificate of marriage from a magistrate of Bombay, who refused to issue it on the ground that he was not authorised by law to do so. Nor is this requirement necessary for any purpose whatsoever. The religious celebration is accompanied by so much solemnity, ceremonial and publicity, that it is the best possible safeguard against collusive connections. Finally, the strictness with which the marriage question has been dealt with by the Government is quite unwarranted by past experience. During my twenty years' experience in South Africa I have never known of the entry under the Immigration Law of a single Indian woman belonging to the undesirable class. The second condition of the settlement appears also to have been broken by the Government in that a declaration is to be required of such Indian immigrants as may possibly be admitted into the Free State. It not being required of European immigrants, the declaration in question will be highly offensive and wantonly irritating; because in the case of an educated Indian who alone could enter that Province, it would be wholly unnecessary. It is really a statement that the declarant shall not hold landed property, trade or farm, three disabilities to which he is subject whether he makes the declaration or not. It will be remembered that it was the Free State difficulty that came in the way of a permanent settlement on the two previous occasions. Mr. Fischer cannot now settle the controversy by ignoring it, as if it were not of most vital importance. One can only hope that the Senate will perform its duty as a vigilance chamber, and the guardian of unrepresented interests by insisting upon amendment of the measure so as to fulfil both the letter and the spirit of the provisional settlement."

No. 66 of 1913.

GOVERNMENT OF INDIA.

DEPARTMENT OF COMMERCE AND INDUSTRY.

EMIGRATION.

To

THE MOST HONOURABLE THE MARQUESS OF CREWE, K.G.,

His Majesty's Secretary of State for India.

Dated Simla, the 2nd October 1913.

MY LORD MARQUESS,

WE have the honour to reply to Your Lordship's Public despatch, No. 164, dated the 11th July last, in which we are asked for our views on the suggestion made by Union Ministers that the co-operation of the Government of India should be invited as regards the admission of educated Asiatics by administrative order.

2. The objections to such course of action on the part of the Government of India have been stated in Your Lordship's despatch under reply. We are strongly of opinion that the Government of India should take no part in deciding who, among a number of applicants, should be admitted and who should be excluded. Any attempt at such discrimination would, as Your Lordship points out, place an unfair responsibility on our Government. We should, however, be prepared to furnish the Government of South Africa, if asked to do so, with information regarding the status of persons who wish to enter the Union. The fact that the Union Government could obtain such information would be some security against the concurrence of such unfortunate mistakes as are alluded to in the concluding sentence of your despatch.

3. Your Lordship is aware that we have always regarded as wholly inadequate the proposed provision for future admission of educated Indians by which the number, we understand, is to be restricted to 12 in one year. While we are unable to accept the principle of any such restriction against Indians as such, we trust that any such limit will not be held to include the wives and children of Indians who may be admitted by administrative order. The few educated Indians whom it is proposed to admit will ordinarily not be mere travellers but professional men wishing to enter the Union in the pursuit of their business. It can hardly be intended to exclude from the Union the families of such persons, but we should be glad of an assurance that their admission will not be regarded as reducing *pro tanto* the number of available permits.

4. There is one other point upon which we desire to address Your Lordship. The papers forwarded with Mr. Seton's letter, No. J. and P. 2550 of the 18th July last, make it clear that the amendment of the definition of 'domicile' (Clause 30) introduced during the Committee stage of the Bill in the Senate will have the effect of excluding ex-indentured Indians residing in Natal by virtue of the £3 tax, as well as their descendants, from the acquisition of domiciliary rights. Lord Gladstone, in commenting upon this amendment, remarks that "it does not seem to add any disability to those which apply to these classes of Asiatics under the existing law in Natal." The accuracy of this statement appears open to question since the definition of domicile in the now repealed Natal Act of 1903 did not specify 'conditional residence' as being a disqualification for the acquisition of domicile and it was held, in the case of Subrayen *versus* Immigration Officer, a report of which was forwarded with Mr. Seton's letter, No. J. and P. 776, dated the 28th February 1913, that the Natal Act did not contemplate any such disqualification arising from the obligation to pay the £3 tax. Had we had earlier notice of the introduction of this amendment, we should have protested against this provision which we consider constitutes a grave injustice, and we now desire to urge most emphatically that the Union Government may be pressed to remove this injustice either by a modification of the definition of domicile, or, preferably, by the repeal of the enactment imposing the £3 tax upon ex-indentured Indians in Natal.

We have the honour to be,

MY LORD MARQUESS,

Your Lordship's most obedient, humble Servants,

HARDINGE or PENHURST.

O'MOORE CREAUGH,

HARCOURT BUTLER.

SAIYID ALI INAM.

W. H. CLARKE.

R. H. CRADDOCK.

W. S. MEYER.

110 FIELD STREET,

DURBAN;

April 17th, 1913.

DEAR MR. CLARK,

I received a cablegram, last evening, from Mr. Gokhale, suggesting that I should send you direct a telegraphic summary of the Indian objections to the Immigrants Restriction Bill, of which the first reading was taken last Monday,

and the second reading will be taken on the 24th instant. I accordingly sent you to-day a lengthy telegram, summarising the position created by the Bill.

No doubt you have already received a copy of the Bill, but in any event, I enclose herewith a copy of the current issue of Indian opinion, containing the principal sections, an analysis, and editorials dealing with one or other of its phases.

Speaking without reserve, I should call the Bill a calculated attempt on the part of the Union Government to deceive the Home Government on the subject of domicile, for it contains no safeguards whatever of vested rights, as all existing immigration laws are repealed without any saving clause. Any person hereafter attempting to enter the Union must either satisfy the tests under section 4 or prove exemption under section 5. The only domicile recognised by the Bill is common law domicile, whilst the statutory domiciliary rights conferred under the existing Natal legislation will be incapable of proof in a Court of law. It is notoriously difficult to prove common law domicile, and the rights of Indians long resident in Natal will be automatically destroyed. Moreover, even common law domicile rights disappear after an absence from any Province of the Union of more than three years. This is a distinct diminution of existing rights in Natal and the Transvaal. So far as the latter Province is concerned, this new requirement is a clear breach of faith, for registration has always been given by the Indian community on the positive declarations of one Government after another, since Lord Milner's time, that the registration certificates gave permanent rights of residence and an indefeasible right to come and go at will. The incorporation of this provision in the present Bill is a double breach of faith, first, for the reasons given above, and secondly, because, it is re-inserted after it had been deliberately omitted from the 1912 measure, after its inclusion in the 1911 draft had been vehemently protested against.

Apart from this important point, the Bill does not, in other respects, notably in regard to the Free State matter, carry out the spirit of the provisional agreement. Besides the possibility of provincial restriction of persons entering under section 4, the Bill contemplates that such persons entering the Free State must, if they are Asiatics, make the special declaration required by section 8 of Chapter XXXIII of the Free State Law Book, would create a very subtle, but none the less very real, racial bar of a statutory character.

The situation has been seriously complicated by the far-reaching decision of Justice Searle, in the Cape Provincial Division of the Supreme Court, declaring, in effect, that non-Christian Indian marriages, not performed by a civil marriage officer, and whether solemnised in this country or in India, are invalid, I need hardly point out to you the immense hardships that are involved in this judgment. The legal position, of course, is that the majority of Indian women here, even of the highest classes, are in the eye of the law concubines, and their children illegitimate. They therefore cannot claim to enter or re-enter the Union. Other legal disabilities are disclosed in the Janubie case, of which I enclose details herewith. Even were the Bill otherwise acceptable, this defect would alone cause a revival of passive resistance, for the passive resisters, who never fought for material advantage but for the sake of principle, will not, I am positive, quietly accept a declaration of the invalidity of Indian marriages solemnised according to the great religions of India, and whose validity in India is recognised by the Indian Courts and by the Privy Council, to which even the Union Courts are subordinate. The Government take up the attitude that, in spite of the legal position, immigration officers will be instructed to permit the entry of women whose marriages are satisfactorily proved provided that the husbands have no other wives in South Africa. But the community cannot, of course, accept this position of toleration. The position of Indian wives and minor children must be legalised. Moreover, it is no longer possible for the Union Government to contend, as they have hitherto done, that polygamous marriages are not recognised in South Africa, either under the common or the statute law, as you will see from enclosure "G" of the letter to the Colonial Office of the South Africa British Indian Committee, dated the 27th February last, copy of which letter with its enclosures I send you herewith. The documents were being prepared for the Press, but I am sending them to you, being the only copy at hand, in order to catch this mail. Parenthetically, they will show conclusively how unnecessary any further restrictions upon Indian immigration are.

With all the parade of fairness attaching to the Immigration Boards erected by the Bill, there is only too good reason to believe that they are a snare and a delusion. To begin with, they must take their instructions from the Minister,

who has to administer an Immigrants *Restriction* Bill. Then, too, they are hardly likely to contain any representative of the Indian community or any European sympathiser with Indians. Besides this, their personnel is chargeable from year to year, so that the members are largely depended upon the goodwill of the Minister. Finally, the ousting of the jurisdiction of the superior Courts in favour of the Boards is ominous, and the Indian community's experience of justice at the hands of the Licensing Boards in Natal and at the Cape does not inspire great confidence that Indian Immigrants will receive any more favourable treatment at the hands of these new Boards. The mere fact that a magistrate will ordinarily preside, against whose decisions there is to be no appeal, except in matters of common law domicile, does not afford any greater hope of redress, as will be seen from the Estcourt licensing case of which I send you details herewith. It should be noted that this magistrate had already declared, in a public document, that there should be no appeal against refusals of Asiatic licences from decisions of licensing officers or Boards.

Other criticisms will be derived from a perusal of the papers enclosed herewith and I do not propose to burden you with additional comments, beyond saying that the second proviso of section 5 presupposes that every Transvaal Indian leaving the Province must, in practice, obtain official leave to do so as any affidavit that he will make setting forth the date of his departure, will almost certainly be rejected by the authorities. The Bill appears to be an agglomeration of all the worst provisions of all the existing Provincial statutes, with a more peculiar to itself, applied in all the Provinces against Indians, who alone are aimed at in the domicile proviso, as Europeans who may remain away longer than three years will always be able to pass the education test and so secure readmission.

Mr. Gandhi is in telegraphic communication with the Government and the leading members of the Opposition. He leaves for Capetown in a few days, to see whether it will not be possible to avoid a revival of the struggle, which would be unwelcome to him, as he was preparing to pay a visit to India; but, of course if there is no other alternative, he will not hesitate to put personal inclination on one side in order to take his part in the struggle.

Whether the Bill will go through at all this Session is a very moot point, as the members of the Government party are at daggers drawn amongst themselves owing to the Hertzog episode, and the official attitude of the Opposition is yet unknown. But Mr. Gokhale's visit here has made it easier for the Opposition leader to deal with this matter in an Imperial spirit, and we may therefore hope for a greater amount of support from that side of the House than hitherto. Whilst the Imperial Government must have received copies of the Bill, I can hardly conceive that they have realised its inner purpose, which is, in a very subtle manner, to bring about the extermination of the resident Indian population. The correspondence of the London Committee amply indicates this. Syed Ali Imam can give you further particulars of the case of Bhawani Dayal mentioned therein. I do sincerely hope that the Government of India will use every endeavour to prevent the perpetration of so gross a fraud upon the South African Indian population as this Bill would be, and preserve them from the necessity of inviting such misery and hardship as have been the lot of the Transvaal passive resisters for so long.

I shall be able to send you fuller particulars of the situation by the next mail.

Enclosure to the Despatch from the Governor-General of South Africa, No. 152, dated 12th March 1912.

Minute 242.

Prime Minister's Office, Cape Town,
11th March 1913.

Ministers have the honour to transmit to the Governor-General six copies of a Bill to "Consolidate and Amend the Laws in force in the various Provinces of the Union relating to Prohibited Immigrants to provide for the establishment of a Union Immigration Department, to regulate Immigration into the Union or any Province thereof, and to provide for the removal therefrom of undesirable persons" which they intend to introduce into Parliament during the present Session, and which they hope will become law in due course. This draft follows, in the main, the Bill which was introduced into Parliament last year; but there are certain important changes in it to which Ministers desire to invite His Excellency's attention.

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The first of these provides for the establishment of regular Boards of Appeal somewhat on the lines of the Canadian Boards, before whom restricted immigrants may bring their cases, instead of the Advisory Boards contemplated under the 1912 Bill. New Section 2 deals fully with the constitution of these boards and with their functions and jurisdiction.

With the establishment of such Boards the Canadian precedent for limiting the jurisdiction of superior Courts in immigration cases has been followed, as will be seen in Section 3.

Ministers have also decided, in Section 4 of the Bill, to follow, as far as is practicable under the circumstances existing in South Africa, the Canadian method of exclusion of persons, who, on account of race, class, occupation or character, are deemed to be undesirable, but, in order to avoid offending the susceptibilities of the Asiatic community, it has been necessary to adopt different wording, though the underlying principle in the Canadian clause and in paragraph 4 (1) (a) of this Bill is the same. Ministers are also of opinion that this method of prescribing what persons shall be prohibited immigrants, without actually naming particular races in the law, is preferable to the Australian method, which was incorporated in earlier drafts of this measure.

Regarding the method by which undesirable immigrants are to be indicated, it was at first proposed to provide for the issue of a Proclamation under the hand of the Governor-General specifically excluding certain races; but as His Excellency will remember this course was abandoned in deference to His Excellency's wishes. Accordingly, under the restricting clause as now framed the Minister will communicate his decision as to the persons whom, on economic grounds or on account of their standard or habits of life, he deems to be unsuited to the requirements of the Union, to the Immigration Officers and Boards of Appeal; and in the ordinary way the Minister will issue a standing instruction that persons of Asiatic race are to be restricted, except in those special cases where, in terms of the arrangement with the Asiatic leaders, a certain number are to be exempted from the restriction clauses of the Bill and allowed into the Union each year. Power to make such exemptions is taken in Section 25 of the Bill.

Paragraph (a) of Section 4 will be used only to restrict Asiatics and other persons of colour who may be regarded as undesirable inhabitants of the Union; and it consequently becomes necessary to reintroduce an education test to be applied in cases where undesirable persons of European race or descent seek entry, which has been done in paragraph (b).

The paragraph dealing with the prohibition of persons on the grounds that they are infected with some serious disease has also been extended by the specific mention of "tuberculosis in an infectious form" as a disease which will render an immigrant liable to restraint.

Ministers have also decided that if the law is to be effectively administered it will be necessary to limit the ports at which Asiatics may apply for admission; and they are accordingly taking power in the Bill to declare that persons who belong to the same race or class as those who may be deemed prohibited immigrants under paragraph (a) (but who have a domicile in the Union or any Province) may, after absence, enter or return only at a specified port or ports. This provision is most desirable on account of the large number of prohibited immigrants who make their way into the Union after having landed in Portuguese territory; and it is hoped that when it becomes known that Ministers do not intend in future to allow Asiatics, except those who are to be exempted under Section 25, to enter the Transvaal *via* Komati Port, the Portuguese authorities, who at present are unable to distinguish between Asiatics who have a lawful right to return to the Union and those who have not, will not consent to the landing in their territory of any Asiatics who allege that their destination is the Union.

Section *five* of last year's Bill has been amplified by the addition of certain provisos, the first of which was previously contained in Section *seven*, and the second of which lays down that if any resident of the Union or a Province absent himself from the Union or that Province for a period of three years or more, he shall be obliged to satisfy the requirements of Section 4 on return. This is tantamount to a declaration that a loss of domicile follows after three years' absence and is, in Ministers' opinion, a reasonable provision, as persons who absent themselves from South Africa for lengthy periods in nearly all cases acquire interests elsewhere and should have no permanent right to re-enter unless they can satisfy the requirements of the Immigration Law.

New Section seven takes the place of old Sub-section (2) of Section 28 and deals with the position of Asiatics in the Orange Free State. It provides, *inter alia*, that although an Asiatic may become a lawful resident of the Union he is still debarred in that Province from trading, farming, or holding fixed property. Any relaxation of the existing Orange Free State Law on this subject would be strongly opposed in Parliament, especially by the Members who are elected in that Province, and would jeopardise the passing of the Bill. The Section, though somewhat differently worded from the clause in last year's Bill, attains the same objection as it was intended to secure in the last draft.

Section 22 has been amended to apply to all persons, whether alien or otherwise who are not South African born, and will enable the Government to consider the case of any such person after he has served a sentence for any of the offences named therein, and decide whether he should be allowed to remain further in the Union. Such a power is most necessary to enable the Government to deal with these classes of criminals who carry on their operations at the mining centres amongst the natives there employed. The latter form an easy prey to illicit liquor dealers and diamond buyers, and the profits in this illegal business are so large that ordinary sentences seem to have no deterrent effect, and more drastic provisions, such as compulsory removal from the field of unauthorised enterprise after completion of sentence, are necessary.

(Sd.) LOUIS BOTHA

UNION OF SOUTH AFRICA.

Bill to consolidate and amend the laws in force in the various Provinces of the Union relating to Prohibited Immigrants, to provide for the establishment of a Union Immigration Department, to regulate Immigration into the Union or any Province thereof, and to provide for the removal therefrom of undesirable persons. (Copy corrected in accordance with telegrams subsequently received at the Colonial Office.)

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:—

CHAPTER I.

ADMINISTRATION OF ACT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Restriction of jurisdiction of courts of law in respect of detention of removal of alleged prohibited immigrants.

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

CHAPTER II.

PROHIBITED IMMIGRATION.

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

Who are
Prohibited
Immigrants.

- (a) any person deemed by the Minister on economic grounds or on account of standard or habits of life to be unsuited to the requirements of the Union or any particular Province thereof ;
- (b) any person who is unable, by reason of deficient education, to read and write any European language to the satisfaction of an immigration officer ; and for the purpose of this paragraph Yiddish shall be regarded as an European language ;
- (c) any person who is likely, if he entered the Union, to become a public charge, by reason of infirmity of mind or body, or because he is not in possession for his own use of sufficient means to support himself and his dependants ;
- (d) any person who, from information received from any Government (whether British or Foreign) through official or diplomatic channels, is deemed by the Minister to be an undesirable inhabitant of or visitor to the Union ;
- (e) any prostitute, or any person, male or female, who lives or has lived on or knowingly receives or has received any part of the earnings of prostitution or who procures or has procured women for immoral purposes ;
- (f) any person who has been convicted in any country of any of the following offences (unless he has received a free pardon therefor), namely, murder, rape, arson, theft, receiving stolen goods knowing the same to have been stolen, fraud, forgery or uttering forged documents knowing the same to have been forged, counterfeiting coin or uttering coin knowing the same to be counterfeit, house-breaking, with intent to commit an offence, burglary, robbery with violence, threats by letter or otherwise with intent to extort, or of any attempt to commit any such offence, and by reason of the circumstances connected with the offence, is deemed by the Minister to be an undesirable inhabitant of or visitor to the Union ;
- (g) any idiot or epileptic, or any person who is insane or mentally deficient, or any person who is deaf and dumb, or deaf and blind, or dumb and blind, or otherwise physically afflicted, unless in any such case he or a person accompanying him or some other person give security to the satisfaction of the Minister for his permanent support in the Union, or for his removal therefrom whenever required by the Minister ;
- (h) any person who is afflicted with leprosy or with any such infectious, contagious, or loathsome or other disease (other than tuberculosis), as is defined by regulation ; and any person who is afflicted with tuberculosis in an infectious form, unless he is in possession of a permit to enter the Union, issued upon conditions prescribed by regulation.

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

(2) A list of all persons who have been declared under this Act to be prohibited immigrants in respect of the Union or any province, and who have been removed therefrom, or whose entry into the Union or any province has been restricted, shall be laid by the Minister upon the Table of both Houses of Parliament within 14 days after the commencement of each Session thereof. Such list shall be framed in respect of a period ending one month before the Session commences, and shall contain the name, sex, and nationality of each such person, and the reason for his removal or restriction.

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

Persons who are not to be deemed prohibited immigrants.

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

- (a) any member of His Majesty's Regular Naval or Military Forces ;
- (b) the officers and crew of a public ship of any foreign state while the ship is in port ;
- (c) any person who is duly accredited to the Union by or under the authority of His Majesty or the Government of any foreign state, or the wife, family, staff, or servants of any such person ;
- (d) any person who enters the Union under such conditions as may be prescribed from time to time in accordance with any law or under any convention with the Government of a territory or state adjacent to the Union and who is not such a person as is described in Sub-section (1) (c), (d), (e), (f), (g), or (h) of the preceding section.
- (e) any person born in any part of South Africa included in the Union ;
- (f) any person domiciled in any province ;
- (g) any person who is proved to the satisfaction of an immigration officer to be the wife, or the child under the age of sixteen years, of any person described in paragraph (f) of this section, provided that the wife or the child (as the case may be) is not such a person as is described in Sub-section (1) (d), (e), (f), (g), or (h) of the last preceding section ;
- (h) persons of European descent who are agricultural or domestic servants, skilled artisans, mechanics, workmen, or miners, and who have entered the Union under conditions which the Governor-General has approved on being satisfied that there is not sufficient supply available within the Union of such persons at adequate wages : Provided that every such person shall produce, if required, a certificate of the person authorised in any country to issue such certificates, to the effect that the intending immigrant has been engaged to serve immediately on his arrival in the Union an employer of repute at adequate wages, and for a period of time to be fixed in the said conditions not being less than one year :

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

Special jurisdiction of Magistrate's courts.

24. A magistrate's court shall have special jurisdiction to impose the maximum penalties provided for a contravention of this Act, anything to the contrary notwithstanding in any law relating to magistrates' courts.

Permits and certificates.

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

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

26. (1) The Governor-General may make regulations, not inconsistent with Regulations-
this Act, prescribing—

- (a) the powers and duties of immigration officers and immigration boards ;
- (b) the steps to be taken to prevent the entrance of prohibited immigrants into the Union or the entrance of persons into any Province in which their residence is unlawful ;
- (c) the times, places, and conduct of the enquiry or examination, medical or otherwise, of persons entering or desiring to enter the Union or any Province or who, being found in the Union or any Province, are suspected of being prohibited immigrants or unlawfully resident therein ;
- (d) the procedure for, and the manner of, the detention of prohibited immigrants and unlawful residents, pending their removal from the Union or any Province, and the procedure necessary for and the manner of any such removal ;
- (e) the procedure to be followed at or in connection with meetings of, and proceedings before, immigration boards and the mode of securing the attendance of witnesses at such proceedings ;
- (f) lists of infectious, contagious, loathsome or other diseases (other than tuberculosis) the affliction with which will render a person a prohibited immigrant ; and the conditions governing the issue to any person infected with tuberculosis of a permit to enter the Union ;
- (g) the other permits and the certificates which may be issued under this Act, the conditions upon which any such permit or certificate may be issued, the circumstances, under which they may be cancelled or withdrawn, and the fees which may be charged for any such permit or certificate ; and the amount and nature of the security to be found for the due carrying out of any conditions upon which a permit to enter and reside for a specified period may be issued to a prohibited immigrant ;
- (h) the conditions under which prohibited immigrants may be allowed to pass through the Union while journeying or being conveyed to a place outside the Union or from one Province to another within the Union ;
- (i) the forms of warrants, permits, certificates, or other documents to be issued or used, or of the declarations to be made, or of the books to be kept, for the purposes of this Act, and the particulars to be inserted on or in any such document, declaration, or book,

and generally for the better carrying out of the objects and purposes of this Act.

(2) The regulations may prescribe penalties for the contravention thereof or failure to comply therewith, not exceeding the penalties mentioned in the next succeeding section.

No. 35 of 1913.

GOVERNMENT OF INDIA.

DEPARTMENT OF COMMERCE AND INDUSTRY.

EMIGRATION.

To

THE MOST HONOURABLE THE MARQUESS OF CREWE, K.G.,

His Majesty's Secretary of State for India.

Simla, the 3rd July 1913.

My Lord MARQUESS,

WE have the honour to refer to Mr. Ferard's letter J. and P.-1967, dated the 30th May 1913, enclosing copy of further correspondence regarding the South Africa Immigration Bill.

Lc166EBL

2. We observe that His Excellency the Governor-General, in his telegram of the 27th May, reports that an amendment in clause 5 (g) was moved by Mr. Alexander and accepted by the Minister, the effect of which is to include among non-prohibited immigrants "the wife or the child of a lawful and monogamous marriage duly celebrated according to the rites of any religious faith outside the Union and duly registered at the place of celebration and having all the legal consequences of a lawful marriage duly celebrated within the Union."

3. It would appear very doubtful whether any marriage of a Hindu or a Muhammadan can be correctly described as "monogamous" even if the Hindu or Muhammadan concerned has only married one wife, nor is it usual for such marriages to be registered in India. We are apprehensive therefore that the effect of this amendment might be to impose a fresh check upon the admission of wives and children of Hindu and Muhammadan residents in South Africa, should it be considered as in any way overriding the undertaking given in Mr. Fischer's letter to Lord Gladstone of the 24th April last (which forms one of the enclosures to Mr. Ferard's letter under reference) to the effect that the Government "will still admit one wife per man as before so long as she is really his wife, whether she has been married by a custom which recognises polygamous marriages or not." The matter is one of great importance in India, and we should be glad therefore to receive an assurance that Mr. Fischer's undertaking may be regarded as unaffected by the amendment now reported and is continuing in force.

4. We would further remark that the embodiment in Statute of the condition of 'monogamous marriage' may prove an obstacle to the carrying out of the undertaking above described, even assuming that that undertaking has not been definitely abandoned.

We have the honour to be,

My Lord MARQUESS,

Your Lordship's most obedient, humble Servants,

HARDINGE OF PENSHURST.

O'MOORE CREAGH.

HARCOURT BUTLER.

SAIYID ALI IMAM.

W. H. CLARK.

R. H. CRADDOCK.

E. D. MACLAGAN.

W. S. MEYER.

Paraphrase.

Telegram.

The Governor-General of the Union of South Africa, to the Secretary of State for the Colonies.

(Received, Colonial Office, 4 p.m., 29th May, 1913.)

Secret.

It is possible that, for reasons of their own, agitators here may continue agitation among Indian community in spite of concessions made on Immigration Bill. If this should lead to renewal of passive resistance effect on public opinion in South Africa would be very serious and Indians would probably be regarded as having forfeited any claim to considerate treatment. I hope you will represent this to Indian Government and ask them to use such influence as they may possess with Gandhi and others. I gather from Fischer that women and

children will almost all certainly be exempted from Natal £3 tax. I am doing my best to secure total abolition of tax. Matter is still under consideration.

GLADSTONE.

Telegram from the Governor-General of the Union of South Africa, to the Secretary of State for the Colonies.

(Received Colonial Office, 6-20 p.m., 23rd April 1913).

Confidential. Immigration Bill. My telegram of 22nd April. Fischer informs me that during 1912, 29 male Asiatics were allowed into Natal and 17 into Cape, by virtue of compliance with education test at present in force in those provinces. The figures for Natal refer only to entries at Durban. Number which might have entered by land from Transvaal or Cape is not known.—
GLADSTONE.

Telegram from Natal Indian Congress, Durban, to His Excellency the Governor-General, Cape Town.

22nd April 1913. Committee Natal Indian Congress respectfully but emphatically protest against Immigration Bill in present form as contrary pledges maintain existing rights. Takes away residential rights guaranteed existing laws, Natal, and deprives Indians absent three years domicile rights. Interferes previous rights re-entry. Contrary existing laws protection Supreme Court withheld. South African born Indian deprived present right entry Cape. Rights enter provincial immigration educated Indians taken away. Relief urgently needed protect status Indian marriages recently destroyed. New immigrants who may be allowed enter under Bill should have rights bring wives minor children. Committee earnestly appeals Minister provide relief from continued unnecessary harsh administration present laws, and molestation domiciled persons, their wives and minor children, when re-entering Union. Issue of domicile certificates to lawful persons be not left on discretion but as matter of rights. Section 19 confers on executive plenary powers deal with persons already domiciled found in Union contrary existing Act. Committee earnestly trust amendments will be introduced on model of existing statutes of Natal; unless relief as above provided fear Indian community will be obliged strenuously oppose Bill with all resources in its power.

Cape Times, Friday, 21st March 1913.

Supreme Court : Cape Provincial Division.

Friday, 14th March.

(Before the Hon. Mr. Justice Searle.)

Judgment.

Esop v. Minister of Interior.

Mr. Justice Searle in giving judgment said : I should have been glad to have had a little more time in regard to giving judgment in this matter so as to have been able to go into it somewhat more fully, but on account of the departure of a steamer it is of urgency and thus requires to be disposed of at once.

The facts are not in dispute.

The applicant, an Indian who has been living at Port Elizabeth since 1902, obtained a permit last year to go to India, where he contracted a " marriage " by Mahomedan rites with one Bal Mariam, who now seeks admission to this country with him, as an immigrant under Act 30, 1906 ; it is admitted that she is unable to satisfy the qualifications of Sec. 3 (a) of Act 30, 1906, and that unless she is to be regarded as the wife of applicant under Sec. 4 (e) of that Act, she cannot claim admission. What appeared at first to me to be a difficulty in the way of the respondent was that a certificate from a magistrate in India was annexed to the petition in which it was stated that she was the wife of the

applicant ; but I understand that that document is only admitted as evidence subject to the admission made by the applicant that this so-called marriage was what is commonly known as a polygamous one ; in other words, that the applicant was free to enter into other unions of a similar nature during the subsistence of the marriage with Bal Mariam. As a fact, however, he has not done so, and the question for discussion, it is agreed between the parties, is simply narrowed down to this " What is the meaning of the word ' wife ' in Section 4 (e) of the Act " : does it mean a wife by marriage recognised as legal by the laws of this country, or must the term be extended to embrace a so-called wife by custom which recognises polygamy ? The courts of this country have always set their faces against recognition of these so-called Mahomedan marriages as legal unions ; although by Act 16 of 1860 of Cape Colony, provision was made whereby marriage officers could solemnise such and thus give them validity, until so solemnised they remain out of the pale of legal marriages. It is clear, however, that such solemnisation has not taken place in this case, and there is no statement even of any intention to effect this if Bal Mariam is permitted to land. It was in consequence of the existence of that statute that Magmoet's case and the others quoted on the same lines were decided. The object of allowing the wife of an immigrant to land with him was no doubt because of the intimate legal relations existing between husband and wife, whereby they are partners in legal contemplation for many purposes and the husband is bound to maintain the wife until they are legally separated by the Court. If, however, persons are admitted as " wives " who might legally be repudiated the next day after the arrival by the husband entering into a lawful union in this country with someone else, or even without his doing so, it seems to me the object of the exemption in favour of the wife would not be carried into effect. The statute is in general terms, it is not framed merely for Asiatics or indeed principally for them, although the word Asiatic is incidentally mentioned in the Act ; not all Asiatics however contract unions of a polygamous character. It is said that at all events one " wife " should be admitted of a Mahomedan union, and I do not know whether it is to be the first that comes, or the first that is married ; but it is said that otherwise there will be great hardships imposed and immorality presumably encouraged ; these are matters for the legislature to consider, though I am not satisfied that such consequences would necessarily ensue by the interpretation of the Act contended for by the respondent. The matter has never been judicially decided in this Province but in the Transvaal a recent decision disclosed a difference of opinion on the Bench. The Transvaal Statute is in similar terms to Act 30 of 1906, and I agree with the decision of the majority of the Court. This is not a case where merely the ceremonial forms of the marriage celebration in the foreign country by parties domiciled there are different from those required in this country ; in such cases it may well be that the marriage could not be impeached here, but this is a case where the very elements and essentials of a legal union of marriage are, by admission, wanting. As pointed out for respondent, when the legislature of this Colony did intend to put a wider interpretation on the word wife so as to include a reputed wife as in Act 15, 1856, the Act clearly said so ; the onus here lies on the applicant and I am not satisfied that he has discharged it. The application must be refused. It was suggested that the Court should intimate that Bal Mariam might be allowed to land if applicant agreed to legalise his marriage under Act 16 of 1860, but that is not a matter for the Court to interfere with though I can see no objection to such a course of procedure if the Minister should direct it. I don't even know if machinery for such legislation at present exists.

As costs are not pressed for there will be no order as to costs.

Extract from *Cape Times*, Friday, 11th April 1913.

THE IMMIGRATION BILL.

INDIAN ATTITUDE EXPLAINED.

Durban, 10th April. (From our correspondent.)—Mr. H. S. Polak, the well-known publicist in Indian affairs, interviewed to-day regarding the Immigration Bill, declared that Asiatics throughout the Union would practise passive resistance against the measure. He said that the Bill seemed to be expressly designed to extinguish as speedily as possible the lawfully resident Indian population. Passive resisters would object to it with all the energy

at their command, because it did not fulfil the terms of the provisional settlement that was obtained during the last two years. Indians all over South Africa would resent the measure, because it deprived them of rights of long standing. The existing legislation in various provinces was repealed without any safeguards being inserted for the preservation of rights already acquired. For example, Section 3 took away the jurisdiction of the courts except as to questions of domicile. This did not mean the statutory domicile provided by the Natal laws, which now disappeared, but common law domicile, which was often extremely difficult to prove in the present form of the Bill. Mr. Polak said the Bill undoubtedly appeared to jeopardise the residential rights of thousands of Indian residents of many years standing. No provision was made for remedying the terrible position created by the Searle judgment, which invalidated non-Christian Indian marriages contracted by the laws and ceremonies of Indian religions. This judgment had shaken, Mr. Polak declared, South African Indian Society in its foundations, and its annulment was vitally necessary for the preservation of the integrity of the Indian community. He was certain that unless the Government made material alterations in the Bill there would be a revival of passive resistance, and he could not say that it would be confined to the Transvaal. Mr. Gandhi was at present in telegraphic communication with the Government with a view to avoid the necessity of renewing a bitter struggle.

Mr. Fischer to Governor-General.

The Union of South Africa,
Department of the Interior,
Cape Town, Cape of Good Hope,
24th April 1913.

DEAR LORD GLADSTONE,

“
I am afraid if questions of validity of Indian marriages were to be made subject to appeals to the Court, the result would be disastrous to the Indians, as Mr. Justice Searle's recent judgment has made it clear that marriages according to Indian custom are not legal here, and any case taken to Court where a question of proof of marriage was involved, would be at once whittled down to the issue whether the marriage was a legal one according to our Roman Dutch law or not. The Government has told the Indian community that, notwithstanding that judgment, it will still allow one wife per man in as before so long as she really is his wife, whether she has been married by a custom which recognise polygamous marriages or not. The Government is not legally obliged to do this, but has adopted the course entirely as an act of grace.”

Yours very sincerely,

A. FISCHER.

His Excellency, The Right Hon.

Viscount Gladstone, P.C., G.C.M.G.

Minute No. 15/389.

(Confidential.)

Governor-General's Office, Cape Town,
25th April 1913.

The Governor-General informs Ministers that the Secretary of State for the Colonies has forwarded to him, for consideration, a copy of a letter from the India Office, dated the 12th March, with reference to the Immigrants Restriction Bill, of which a preliminary draft had been communicated confidentially to the Imperial Government.

In the course of his observations, Lord Crewe expresses the view that the new sub-clause 1 (a) of clause 4 has the distinct advantages of removing the semblance of a dictation test and of avoiding any phrase implying racial discrimination. But, he adds, it is somewhat difficult to see how in administration it is to be combined with the policy definitely accepted by Union Ministers of admitting to South Africa a few educated Asiatics each year. Lord Crewe presumes that the Minister will issue certain general instructions for the guidance of the immigration authorities. If these are of such a tenor as to exclude all Indian immigrants coming to South Africa for the first time, there would seem,

it is suggested, to be some danger that individuals to whom the Minister would be willing to grant a permit might be restricted before they could appeal to him.

Having regard to the complaints which are circulated by publication in such papers as *Indian Opinion* or which reach the Imperial Government directly, the Secretary of State for India is impressed with the importance of the powers proposed to be conferred upon immigration boards as tribunals of appeal from decisions of immigration officers.

In this connection, he enquires with what authority will rest the final decision as to the validity of the marriage of a female immigrant who claims to be the lawful wife of an admittedly domiciled person.

Lord Crewe would be grateful for some further explanation of clause 19, of which—at the time of writing—only a telegraphic summary was before him. He points out that the clause, as summarised, appears to enable Immigration Officers to require persons resident in inland districts to appear before them at any time, and produce evidence that they are not prohibited immigrants. He assumes that some *prima facie* evidence that a resident Asiatic has evaded the law will be required before the Immigration Officer is allowed to take action under this clause. He also seeks information as to the precise restrictions to be imposed on persons “entitled to reside” though not domiciled, when they return after three years’ absence.

The India Office letter concludes with the enquiry whether it is known how many educated Asiatic immigrants have been allowed to enter the Provinces of the Cape of Good Hope and Natal during the past year.

The Governor-General would be obliged if Ministers would be so good as to take these points into consideration and advise him what answer he can send to the Secretary of State for the Colonies.

GLADSTONE,
Governor-General.

Telegram from the Governor-General of the Union of South Africa to the Secretary of State for the Colonies.

(Received Colonial Office 6-51 p.m., 27th May 1913.)

My telegram of 26th May. Immigration Bill. Principal change on report was following amendment in clause 5 (g), moved by Alexander and accepted by Minister:—

“After the words ‘this section,’ insert ‘including the wife or the child of a lawful and monogamous marriage duly celebrated according to the rites of any religious faith outside the Union and duly registered at the place of celebration and having all the legal consequences of a lawful marriage duly celebrated within the Union.’”—GLADSTONE.

Telegram P., dated London, the 11th March 1913.

Secretary of State to Viceroy.

South Africa. His Majesty’s Government have agreed generally to draft Revised Emigration Bill to be introduced into Union Parliament. The following are the chief alterations. Immigration Boards on general lines of United Kingdom Aliens Act for determination of appeals from Immigration officers. Boards will have no jurisdiction in questions of domicile, but otherwise decision of majority of Board will be final, except that Minister may at his discretion modify decision involving appellants’ removal from Union or Province. Except on question of domicile jurisdiction of Court Bill law over orders or warrants under Act is barred. Clause 3. No person is domiciled in Union or any Province if he (a) either entered in contravention of law, or (b) resided for purposes of carrying out indenture. Old dictation test in clause 4 (a) disappears altogether and is replaced by “any person deemed by Minister on economic grounds or on account of standards or habits of life to be unsuited to the requirements of the Union or any Province, (b) any person not being such as is herein described in paragraph (a) who is unable when asked to do so to read and write in the

characters of the language of his country of origin to the satisfaction of the Immigration officer". Minister may specify ports of entry for persons described in clause 4 (a) to enter or return. Clause 5 (h). For "white persons" read "persons of European descent." After continuous absence of three years persons previously entitled to reside but not domiciled shall be liable to restrictions. Clause 7 is redrafted so as to preserve Orange Free State laws and clause 28 (2) disappears. Every person arriving or found within the Union is liable to appear if required before an Immigration officer and satisfy latter that he is not prohibited immigrant. Other alterations seem consequential or of minor importance. Colonial Office have at my suggestion enquired whether new clause 3 (b) would affect position of *ex-indentured* Indians so long as they remain in Natal.

Colonial Office have received no intimation that three pounds sterling tax in Natal is likely to be repealed, but I am suggesting further reference. Removal of the dictation test is, I think, an improvement, and Immigration Boards should be of value if they are carefully constituted. Please telegraph any observations, bearing in mind that there is not much use in pressing the amendments unless we consider them vital.

Telegram No. 267-C., dated Delhi, the 22nd March 1913.

Viceroy to Secretary of State.

South African Immigration Bill. Government of India consider that alterations intimated in your telegram dated 11th March constitute material improvements on former Bill. They, therefore, accept revised Bill, but would urge that if South African Government could accept firstly our previous suggestion to define domicile, reference our telegram, dated 29th December 1911, and secondly proposal to provide specifically for admission of wives and children of domiciled persons born in South Africa, reference Colonial Office telegram, dated 16th December 1911, to Union Government, much risk of hardship would be avoided.

Colonial Office to India Office.

No. 27580.

Downing Street,
6th August 1914.

Sir,

I am directed by the Secretary of State for the Colonies to transmit to you, for the information of the Marquess of Crewe, copies of the paper* noted below.

I am, &c.,
JOHN ANDERSON.

The Under Secretary of State
for India.

ANNEX :-

Act to make provision for the redress of certain grievances and the removal of certain disabilities of His Majesty's Indian subjects in the Union, and other matters incidental thereto.

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. (1) The Minister of the Interior (hereinafter referred to as the Minister) may from time to time appoint priests of any Indian religion to be marriage officers with authority to solemnise the marriages of Indians in accordance with the rites and formularies of such religion.

Appointment of marriage officers to solemnise marriages according to the rites of an Indian religion.

(2) A marriage between two Indians solemnised in accordance with such rites and formularies by a marriage officer so appointed shall be a valid and binding marriage, and all the incidents shall follow therefrom which follow from any other union recognised in law as a valid and binding marriage.

*Indians Relief Act (No. 22 of 1914) of the Union of South Africa.

(3) A marriage officer appointed under this section shall be under the same obligations of keeping registers and entering therein particulars of marriages solemnised by him, as are imposed upon marriage officers appointed under any other law in force in the Province in which those marriages are solemnised and the provisions of any such law as to the custody and inspection of registers, the obtaining of copies thereof, the evidence of certified copies thereof, the loss, the destruction or falsification of or injury to such registers or such certified copies, shall be deemed to be incorporated in this section.

Validation
by registra-
tion of
marriages
which in fact
are mono-
gamous.

2. (1) If any Indian male and Indian female upon a joint application to any magistrate or marriage officer (whether appointed under this Act or under any other law), satisfy such officer—

- (a) that there exists between them a union recognised as a marriage under the tenets of an Indian religion which they profess; and
- (b) that there does not exist between either of them and any other person a union so recognised as a marriage or any union recognised in law as a marriage; and
- (c) that each of them is desirous that the union should be regarded as a valid and binding marriage in law;

such officer shall, upon being furnished with particulars as to the full name, residence, place of birth, and age of each party and such further particulars as are prescribed by regulations made under this section, register such union in manner so prescribed as a marriage between those parties. Notwithstanding that by the tenets of the religion which the parties profess, polygamous unions are approved or recognised, the said union shall, by the fact of registration, become, as from the date when it was contracted, a valid and binding marriage between the parties, and all the incidents shall follow therefrom which follow from any other union recognised in law as a valid and binding marriage, and the marriage shall be deemed to have taken place at the place where the union was, prior to the registration, contracted.

(2) The Minister may make regulations as to the manner in which applications shall be made under this section, the keeping of registers for the purposes thereof, and the particulars to be entered in those registers. The provisions of the marriage laws in force in the Province in which such unions are registered as marriages, so far as those laws relate to the custody and inspection of registers, the obtaining of copies thereof or extracts therefrom, the evidence of certified copies thereof, the loss, destruction or falsification of or injury to those registers certified copies or extracts shall *mutatis mutandis* apply to registers kept under this section.

Amendment
and inter-
pretation of
section five
(g) of Act
No. 22 of
1913

3. (1) From paragraph (g) of section five of the Immigrants' Regulation Act, 1913 (Act No. 22 of 1913), the following words shall be deleted, that is to say, the words—

“including the wife or child of a lawful and monogamous marriage duly celebrated according to the rites of any religious faith outside the Union.”

(2) In the interpretation of that paragraph, as hereby amended—

“the wife” shall include any one woman between whom and the exempted person mentioned therein there exists a union recognised as a marriage under the tenets of an Indian religion, notwithstanding that by those tenets the union of that exempted person with other women at the same time would also be recognised as a marriage: Provided that no woman shall be deemed to be the wife of such exempted person—

- (a) if such a union exists between him and any other woman who resides in any Province; or
- (b) if such exempted person has in any Province offspring by any other woman who is still living;

“the child under the age of sixteen” shall mean a child who is the offspring of the exempted person and the wife as herein defined, or the child of the exempted person and a deceased woman who, if she had been alive, could have been recognised as the wife (as herein defined) or whose union with the exempted person could have been registered as a marriage under section two of this Act.

4. Nothing in the preceding sections in this Act shall be construed as repealing or in any manner modifying the provisions of sections *sixty-five* to *eighty-nine* inclusive of the Indian Immigration Law, 1891, of Natal (Law No. 25 of 1891), or Act No. 2 of 1907 of Natal.

5. Section *three* of the Indian Immigrants Amendment Act, 1895 (Natal) is hereby amended by addition to the end of that section of the words "if he applies therefor within twelve months after such expiry."

6. The Minister may in his discretion cause to be provided out of moneys appropriated by Parliament for the purpose a free passage from any port in the Union to any port in India (with or without free conveyance by rail to such first mentioned port) for any Indian (other than an Indian who is or may become entitled under Law No. 25 of 1891—Natal— or any amendment thereof to such free passage, who makes a written request for such free passage and—

(a) signs as a condition of the grant of such request a statement that he abandons on behalf of himself and his wife and all minor children (if any) 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; and

(b) furnishes to an officer designated by the Minister such means of identification of such Indian and his wife and minor children (if any) as the Minister may prescribe.

A condition so signed shall be conclusive evidence that such Indian and his wife and minor children (if any) have abandoned his or their rights to enter and reside in the Union and any rights incidental to his or their domicile therein.

7. If in the administration of any law any question arises as to whether an Indian who produces a certificate of former residence or domicile in Natal is identical with the Indian who was lawfully entitled to obtain that certificate, then if the thumb impressions placed on that certificate, when it was issued by the immigration officer, are identical with the thumb impressions of the Indian who produces it, the certificate shall be conclusive evidence of such Indian's former residence or domicile in Natal.

8. The laws specified in the Schedule to this Act are hereby repealed to the extent set out in the fourth column of that Schedule, and those provisions of those laws which are hereby repealed shall, in so far as they have been extended to Zululand, cease to be in force therein.

No proceedings shall be taken to recover any moneys which may have become due from any Indian prior to the commencement of this Act under the provisions so repealed.

9. This Act may be cited for all purposes as the Indians Relief Act, 1914.

SCHEDULE.

Province.	No. and Year of Law.	Title or Subject of Law.	Extent of Repeal.
Natal	Act No. 17 of 1895 ..	The Indian Immigration Amendment Act, 1895.	Section <i>six</i> .
"	Act No. 2 of 1903 ..	To amend the Indian Immigration Amendment Act, 1895.	The whole except sections <i>one</i> and <i>four</i> .
"	Act No. 39 of 1905 ..	To amend Act No. 17 of 1895 ..	The whole.
"	Act No. 19 of 1910 ..	To amend the Indian Immigration Act No. 17 of 1895 and Act No. 2 of 1903.	Sections <i>one</i> and <i>three</i> .

" Our Magna Charta."
Passive Resistance better than the Vote.

Capetown, Saturday.

Reuter's Agency has received the following letter from Mr. Gandhi for publication :—

I would like, on the eve of my departure for India, to say a few words to my countrymen in South Africa and also to the European community. The kindness

with which both European and Indian friends have overwhelmed me sends me to India a debtor to them. It is a debt I shall endeavour to repay by rendering in India what services I am capable of rendering there, and if, in speaking about the South African Indian question, I am obliged to refer to the injustices my countrymen have received and may hereafter receive, I promise that I shall never wilfully exaggerate and shall state the truth and nothing but the truth.

A word about the settlement and what it means. In my humble opinion it is the Magna Charta of our liberty in this land. I give it the historic name not because it gives us rights which we have never enjoyed and which are in themselves new or striking, but because it has come to us after eight years' strenuous suffering, that has involved the loss of material possessions and of precious lives. I call it our Magna Charta because it marks a change in the policy of the Government towards us and establishes our right not only to be consulted in matters affecting us, but to have our reasonable wishes respected. It moreover confirms the theory of the British Constitution that there should be no legal racial inequality between the different subjects of the Crown, no matter how much practice may vary according to local circumstance. Above all, the settlement may well be called our Magna Charta because it has vindicated passive resistance as a lawful, clean weapon, and has given in passive resistance new strength to the community, and I consider it an infinitely superior force to that of the vote, which history shows has often been turned against the voters themselves.

The settlement finally disposes of all the points that were the subject matter of passive resistance; and in doing so it breathes a spirit of justice and fair play. If the same spirit guides the administration of existing laws, my countrymen will have comparative peace and South Africa will hear little of the Indian problem in an acute form.

"Not Enough."

Some of my countrymen have protested against it. The number of these protestants is numerically very small and in influence not of great importance. They do not object to what has been granted, but they object that it is not enough. It is impossible, therefore, to withhold sympathy from them. I have had an opportunity of speaking to them, and I have endeavoured to show to them that if we had asked for anything more it would have been a breach of the submission made on behalf of the British Indians in a letter addressed to the Government by Mr. Cachalia during the latter part of last year, and we should have laid ourselves open to a charge of making new demands. But I have also assured them that the present settlement does not preclude them from agitation (as has been made clear in my letter to the Secretary of the Interior of the 16th ultimo) for the removal of other disabilities which the community will still suffer from under the Gold Law, Townships Act, and Law, 3 of 1885 of the Transvaal and the Trade Licenses Laws of Natal and the Cape. The promise made by General Smuts to administer the existing law justly and with due regard to vested rights gives the community breathing time, but these laws are in themselves defective and can be, as they have been, turned into engines of oppression and instruments by indirect means to drive the resident Indian population from South Africa. The concession to popular prejudice, in that we have reconciled ourselves to almost total prohibition by administrative methods of a fresh influx of Indian immigrants, and to the deprivation of all political power, is in my opinion the utmost that could be reasonably expected from us.

These two things being assured, I venture to submit that we are entitled to full rights of trade, inter-provincial migration and ownership of landed property being restored in the not distant future. I leave South Africa in the hope that the healthy tone that pervades the European community in South Africa to-day will continue, and that it will enable Europeans to recognise the justice of our submission. To my countrymen I have at various meetings that I have addressed during the past fortnight, attended in several cases by thousands, said: "Nurse the settlement. See to it that the promises made are being carried out. Attend to development and progress from within. Zealously remove all causes which we may have given for the rise and growth of anti-Indian prejudice or agitation, and patiently cultivate and inform European opinion so as to enable the Government of the day and the legislature to restore to us our rights." It is by mutual co-operation and goodwill that the solution of the balance of the pressing disabilities which were not made points for passive resistance may be obtained in the natural course and without trouble or agitation in an acute form.

Natal Indians.

The presence of a large indentured and ex-indentured Indian population in Natal is a grave problem. Compulsory repatriation is a physical and political impossibility. Voluntary repatriation, by way of granting free passages and similar inducements, will not, as my experience teaches me, be availed of to any appreciable extent. The only real and effective remedy for this great State to adopt is to face responsibility fairly and squarely, to do away with the remnant of the system of indenture, level up this part of the population, and make use of it for the general welfare of the Union. Men and women who can effectively strike in large bodies, who can for a common purpose suffer untold hardships, who can, undisciplined though they are, be martyrs for days without police supervision and yet avoid doing any damage to property or person, and who can in times of need serve their King faithfully and capably—as the ambulance corps raised at the time of the late war, and which had among other classes of Indians nearly 1,500 indentured Indians, bore witness—are surely a people who will, if given ordinary opportunities in life, form a honourable part of any nation.

If any class of persons have a special claim to be considered it is these indentured Indians and their children, to whom South Africa has become either a land of adoption or of birth. They did not enter the Union as ordinary free immigrants, but they came upon invitation, and indeed even after much coaxing by agents of South African employers.

In this letter I have endeavoured as accurately and as fairly as is in my power to set forth the Indian situation, and the extraordinary courtesy, kindness and sympathy that have been shown to me during the past month by the many European friends; the frankness and generosity with which General Smuts in the interviews that he was pleased to grant me approached the questions at issue, and the importance that so many distinguished members of both Houses of Parliament attached to the Imperial aspect of the problem give me ample reason for believing that my countrymen who have made South Africa their home will receive a fairly full measure of justice, and will be enabled to remain in the Union with self-respect and dignity.

Finally, in bidding good-bye to South Africa, I would like to apologise to so many friends on whom I have not been able, through extreme pressure of work, to call personally. I once more state that though I have received many a hard knock in my long stay in this country, it has been my good fortune to receive much personal kindness and consideration from hundreds of European friends, well wishers and sympathisers. I have formed the closest friendships, which will last for ever for this reason, and for many similar reasons which I would love to reduce to writing but for fear of trespassing unduly upon the courtesy of the Press, this sub-continent has become to me a sacred and dear land, next only to my mother land. I leave the shores of South Africa with a heavy heart, and the distance that will now separate me from South Africa will but draw me closer to it, and its welfare will always be a matter of great concern. The love bestowed upon me by my countrymen, and the generous forbearance and kindness extended to me by the Europeans will ever remain a most cherished treasure in my memory.

I am, &c.,

M. K. GANDHI.

The Governor-General to the Secretary of State.

(Received 21st July 1914.)

(Secret.)

Government House Cape Town,

4th July 1914.

Sir,

The agreement reached between General Smuts and Mr. Gandhi upon outstanding administrative points, as reported to you by telegraph on the 1st instant, is a welcome sequel to the enactment of the Indians Relief Bill, and presages, I trust, a respite from those Indian troubles which have formed the subject of constant correspondence during practically the whole of my residence in this country.

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2. I enclose herewith copies of the two letters which were summarised in my telegram. The concessions promised by the Minister display a spirit of generosity and statesmanship. All Mr. Gandhi's stipulations which were recorded in my Secret despatch of the 30th May, have been met, although in regard to the preservation of vested rights in the administration of existing laws, and particularly of the Transvaal Gold Law, the general assurance given towards the end of Mr. Gorges's letter is less precise and categorical than Mr. Gandhi desired. This point, I believe, was found the most difficult of adjustment. On Sunday last, General Smuts said that on the previous day he had received Mr. Gandhi in an interview lasting a couple of hours, and that, apart from the question of the administration of the Gold Law, an agreement was in sight. Upon the Gold Law, however, Mr. Gandhi's demands involved an extension rather than a confirmation of vested rights as understood by the Minister, and he did not think it would be possible to give the specific assurance for which he was asked. Being anxious for a settlement, he was still considering what could be done, but he doubted that he would be able to go as far as Mr. Gandhi wished. The further negotiations were conducted with Mr. Gorges, and in the end Mr. Gandhi, either in a mood of sweet reasonableness or from reluctance to jeopardize what he had obtained for the sake of the unobtainable, signified his willingness to accept the formula which was offered and to close the bargain. Letters were exchanged, and on the following morning, the 1st instant, Mr. Gandhi left Cape Town for Durban. My Secretary, who happened to meet him before his departure, did not observe any marked change in his appearance as a result of his recent fast. In the course of a brief conversation he spoke with great modesty of his own share in the settlement, and with generosity of the help which had been given by others.

3. Mr. Gandhi presumably will publish the attached correspondence shortly after the end of the session. It is not likely to enhance the popularity of the Government in Nationalist circles, and even in some other quarters, especially in Natal, it may be expected to have a dubious reception. In these circumstances publicity before Parliament has risen might prove very inconvenient. I need not lay stress on the courage with which General Smuts has disregarded the prejudices of a large section of his party.

4. The assurance given on the first point specified in Mr. Gorges's letter should go far to allay the apprehensions which have been aroused in Natal as to the effect of the removal of the 3l. licence. These misconceptions are responsible for the foolish telegrams from Durban, which have been communicated to you under cover of my despatches No. 467 and No. 468 of the 2nd instant asking that the Bill should be "vetoed." The sender of one of them, Mr. K. K. Pillay, who describes himself as "Chairman of the 3l. Tax Committee," is said to be a person of no importance. I am also told that it is very doubtful whether Mr. M. C. Coovadia, from whom the other emanates, has any considerable following, even among the members of the Natal Indian Congress. Information has reached me that at a recent so-called "mass meeting" which he summoned the attendance only numbered some thirty Indians. For the accuracy of this statement I cannot, however, vouch. There is some force in his criticism of Section 7 of the Act as redrafted. The point has not been overlooked. I saw the new clause for the first time when it appeared among the amendments on the Order paper. I at once caused inquiry to be made why the Commission's recommendation had been varied so that proof might be required not only of the identity of the Indian producing a certificate of domicile, but also of the grantee's lawful title to its issue. I was advised that in some cases such certificates had been obtained by fraud and that the Government did not think it right that these should be protected. I should have preferred the original clause, but as the contention of the Government was not in itself unreasonable, and as Mr. Gandhi took no exception to the amendment, I did not feel called upon to cause embarrassment by insisting on so relatively trivial a detail. In other respects Mr. Coovadia's telegram is futile. It is conceivable, though there is no evidence, that this agitation may have been encouraged by a few Europeans in Natal who were perhaps not averse from allowing Indian suspicion and credulity to be stimulated into a belief that, in the absence of a 3l. licence, reindenture was the only safeguard against compulsory repatriation. Mr. Gandhi's influence may, upon his return to Natal, be expected to supply the necessary corrective.

5. On the second point in Mr. Gorges's letter the concession is more generous even than the Commission's recommendations, in so far as the requirement that the plural wives affected shall previously at some time have lived in South Africa has been omitted. That the privilege was only to be granted if the number of potential beneficiaries was found to be small has been common ground throughout.

6. On the third point, Mr. Gandhi receives the desired administrative assurance in regard to the question of the "Cape entry." On the fourth point his difficulty about the Orange Free State declaration is met. The matter dealt with in the fifth point had not hitherto, so far as I am aware, been raised. It is disposed of in an eminently fair and reasonable manner. On the sixth point a conciliatory and favourable answer is given to Mr. Gandhi's plea that past convictions for "*bonâ fide* passive resistance offences" should not in future be brought up against the persons so convicted. The seventh point regulates satisfactorily a detail of procedure in connexion with the admission of "specially exempted entrants." In the eighth point the pledge given by General Smuts in the House of Assembly as to the adoption of all the administrative recommendations summarised at the end of the Commission's report is explicitly reiterated. No surprise can be felt at the addition of a stipulation that the fulfilment of all these assurances in conjunction with the legislative action which has been taken is subject to the understanding that the settlement will be accepted as complete and final by the Indian community.

7. Mr. Gandhi in his reply says unequivocally that the passage of the Bill and this correspondence bring the passive resistance struggle to a final close, and at the end of his letter he expresses his conviction that, if the generous spirit recently displayed by the Government continues to be applied, as promised, in the administration of existing laws, the Indian community in the Union will be able to enjoy some measure of peace and will never be a source of trouble to the Government. Further than this Mr. Gandhi could hardly be expected to go, and General Smuts would probably have been glad if the letter had been confined to these two statements. The indication that other points stand over for adjustment at some future date is, however, tactfully worded, and Mr. Gandhi may have felt its inclusion to be necessary both in justice to himself and as a means of preventing any immediate clamour for further concessions. General Smuts, when the letter was submitted to him, is understood to have described it as a remarkable feat of diplomacy and ingenuity; he does not appear to have regarded it as a serious departure from the terms of settlement, but I have not yet had an opportunity of sounding him personally on the point.

8. I enclose two newspapers extracts. The first reports the proceedings at a congratulatory function held in Mr. Gandhi's honour on Saturday last. The speeches delivered by Senator Marshall Campbell, Mr. Meyler, and Mr. Gandhi will be read with interest. The second records a grumble by a Mohammadan Society at Johannesburg. Their grievance presumably is that the Act fails to give recognition to polygamy, and that grievance, I fear, will for the present, at any rate, have to remain unredressed. The legislation of Mauritius, to which a Mohammadan deputation invited the attention of General Smuts, is considered by the Department of the Interior, with whose view I agree, to be rather less liberal in this respect than the marriage provisions of the Indians Relief Act as passed by the Union Parliament.

I have, &c.,

GLADSTONE,

Governor-General.

Enclosure 1 in above.

Mr. Gorges to Mr. Gandhi.

Department of the Interior,
Cape Town, Cape of Good Hope,

30th June 1914.

Dear Mr. Gandhi,

Adverting to the discussion 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 specifically dealt

with in the 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 inquiry 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 increase 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 declarations 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 absencing 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 " *bonâ 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 the 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 Indians 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.

I am, etc.,
E. H. L. GORGES

M. K. Gandhi, Esq.
Cape Town.

Enclosure 3 in above.
Mr. Gandhi to Mr. Gorges.

7, Buitensingel, Capé Town,
30th June 1914.

Dear Mr. Gorges,

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 showed 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 licences 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 Immigrants 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.

I am, &c.,
M. K. GANDHI.

ANNEX. I :—

The Governor-General to the Secretary of State, Colonial Office.
Governor-General's Office, Cape Town,
16th May 1914.

Sir,

Since the publication of the Report of Sir William Solomon's Commission, the Indian question in this country has remained dormant, in anticipation of the introduction of a Bill to give effect to the Commission's recommendations. The Report was well received by the Press, especially in Cape Town and Johannesburg, and even the Durban and Pietermaritzburg papers refrained from laying undue stress upon the notorious reluctance of influential sections of the Natal public to acquiesce in the policy of repealing the 3*l.* tax.

Ls16/EHL

2. Before the departure of Sir Benjamin Robertson, who during the whole of his stay discharged the very delicate duties of his mission with admirable tact and all possible success, a short draft Bill had been prepared embodying the principal legislative recommendations of the Report. It was shown to Sir Benjamin, and by him to Mr. Gandhi, both of whom expressed themselves as satisfied generally with its contents. The most serious defect in this first draft was its omission to provide for the waiving of unpaid arrears of the 3*l.* tax. At my instance the draftsman's attention was invited to this point, and it has since been rectified.

3. Mr. Gandhi after seeing the first draft returned to his home in Natal. I understand that General Smuts arranged with him that he would be summoned to Cape Town when it became practicable to proceed with the introduction of the necessary legislation, and I gather that he will be afforded an opportunity of perusing the Bill in its final form before its terms are made public. So far as I am aware, he still adheres to his intention of departing for India as soon as the passage of a satisfactory measure is assured.

4. Some unavoidable delay has been caused by the claims of the Budget upon General Smuts' time. He gave instructions that the draft Bill was to be elaborated and amplified in certain particulars. This has been done, but up to the present it has been impossible for him to consider the revised draft. It has, however, been communicated informally to my office, and I enclose a copy for your confidential information. In perusing it you will doubtless bear in mind that on points of drafting and minor detail its text should not be regarded as having received Ministerial scrutiny and approval.

5. The Budget debate is now drawing to a close, and General Smuts hopes very shortly to be able to resume consideration of the Bill with a view to its early introduction. A few days ago he suggested that my Secretary should let the Secretary of the Interior privately have a note of any criticisms on the draft. A copy of the letter which thereupon I caused to be sent to Mr. Gorges is attached. You will observe that it raises no important questions of principle. In essentials I regard the Bill as satisfactory, although on a few points of detail it seems to require reconsideration.

6. Clauses 1, 2, 3 and 4 of the Bill deal with the marriage question. Clause 1 gives effect to the Commission's recommendation numbered 3 in the summary which is printed on pages 37 and 38 of the Report.

7. Clause 2 embodies the substance of the fourth recommendation in the above-mentioned summary.

8. Clause 3 amends the reference to "lawful and monogamous" marriages in Section 5 (g) of last year's Immigration Act in accordance with the first recommendation in the Commission's summary. The point raised in Mr. Stanley's enclosed letter on proviso (b) of sub-clause 2 will continue to engage my attention.

9. Clause 4 preserves the provisions of Natal Acts 25 of 1891 and 2 of 1907 in regard to the marriage and divorce of Indians specially affected by that legislation. The repeal or supersession of these provisions might have been resented as constituting a withdrawal of existing rights, but in certain particulars they seem to be in direct conflict with the policy of the Commission's report, and a few amendments or excisions will probably have to be made. In any case, after the passage of this Bill the indentured Indian in Natal will be able to contract a recognised and lawful marriage under any one of three different legislative arrangements, viz.: (a) the ordinary law of the land; (b) the special enactments in Natal law 25 of 1891; and (c) the procedure established by this Bill.

10. Clause 5 extends to a period of 12 months after the expiration of articles of indenture the right of an Indian to be provided with a free passage back to India.

11. Clause 6 empowers the Government to grant free passages to India to Indians and their families, who are not entitled to claim them as of right, on condition that the grant of any such application shall involve the abandonment by the applicant of any right of return to the Union or domicile therein. As no Indian can be compelled to avail himself of these provisions, any repatriation effected under them will be quite voluntary. The clause, therefore, seems to me to be wholly unobjectionable, and indeed no less desirable in the interests of the Indians than in the interests of the Union. The clause did not appear in the original draft Bill, but General Smuts discussed its provisions with Sir Benjamin Robertson who signified his approval.

12. Clause 7 gives effect to the 13th recommendation in the summary on page 38 of the Report.

13. Clause 8 repeals the 3*l.* tax and certain consequential legislation. It also bars proceedings for the recovery of unpaid arrears of the tax.

14. You are aware that the Mohammedan section of the Indian community is not satisfied with the Commission's recommendations on the marriage question, and is inclined to repudiate the policy of Mr. Gandhi on which those recommendations were based. I refer to your Despatch No. 149 of the 28th March, forwarding a copy of a telegram from the Hamidia Islamic Society of Johannesburg. Similar representations were addressed by that Association to the Minister of the Interior, and were informally communicated to my office by the head of the department under cover of the enclosed letter. You will see that towards the end of March the Minister was disinclined to receive a Mahommedan deputation. Later on, however, he reconsidered this decision feeling that as Mr. Gandhi had been given interviews by him it would not be right to debar from personal access those Indians who took a different view. He intimated accordingly that he would receive a Mahommedan deputation about the beginning of May. Such a deputation did in fact wait upon him last week; it was composed not only of Indian Mahommedans from the Transvaal, but also of Cape "Malays" (Mahommedan descendants of the old slave population). Curiously enough, the Johannesburg Mahommedan Indians, when they desired legal advice, applied to Mr. Esselen, and after obtaining his advice, persuaded him to come to Cape Town and introduce the deputation to General Smuts. You will remember the opinions and prejudices which were attributed to Mr. Esselen at the time of his appointment as a member of the Commission; his subsequent selection by an influential body of Indians to act as their spokesman in an appeal for the unqualified recognition of polygamy would have caused much surprise in any country other than South Africa. Mr. Neser, the Chairman of Committees, whose constituency includes Klerksdorp, where several well-to-do Indian traders reside, was also present at the reception of the deputation. No report of the proceedings is available, but I gather that the Cape Malays, who are well thought of by the Government, seemed concerned not so much for the recognition of the polygamous marriages themselves as for some arrangement analogous to the system applicable to the natives whereby the children of their polygamous marriages would not be excluded from succession as illegitimate in the event of the father's intestacy. General Smuts said that he would look into this point and see if anything could be done. On the general question of the recognition of polygamy he made no promise, and held out no hope that it would be possible to go further than had been recommended by the Commission, but he spoke sympathetically, and told the deputation that he would certainly enquire into the matter, particularly into a law which they said had recently been passed and was working satisfactorily in Mauritius, as the result of an enquiry held by a commission in or about 1909. The deputation appealed to appreciate his courtesy, and are said to have departed in a good temper.

15. The prospects of a satisfactory Bill being passed are, I think, favourable. General Smuts has repeatedly assured me of his intention to legislate this Session. He anticipates serious difficulty from the Natal members on the question of the 3*l.* tax. He proposes to appeal to their Imperial patriotism, but he is apprehensive that, in the end it may become necessary to apply the "steam roll" to their objections, a proceeding which the Government would regret, as some of the principal objectors, such as Colonel Leuchars, have hitherto consistently given Ministers loyal support in Parliament.

16. Some apprehensions appear to have been aroused in Indian circles by the sentence of 30 days' hard labour which was passed by the Magistrate at Verulam on an Indian named Bhola for failure to pay a sum of 4*l.* 5*s.* due on account of the 3*l.* tax. As soon as the matter was brought to the notice of the Government they advised me to approve of Bhola's immediate release, and in this recommendation I gladly concurred. In submitting the recommendation the Minister of Justice explained the Government had decided to release all Indians at present serving sentences for failure to pay the tax.

I have, &c.,
(Sd.) GLADSTONE,
Governor-General.

To the Secretary of State,
Colonial Office.

The Governor-General to the Secretary of State.

(Received 16th June 1914.)

Governor-General's Office, Cape Town,

30th May 1914.

(Secret.) •

Sir,

With reference to my Despatch Secret, No. 4. of the 16th instant, I have the honour to enclose herewith two copies of the draft Indians Relief Bill as printed for departmental purposes. The text was communicated to the Press on Wednesday last, and was published through that channel on Thursday morning. You will observe from the accompanying extract from the *Cape Times* that in the editorial columns of that journal the Bill has been well received. The printed text differs from the type-written version, which I forwarded to you on the 16th instant, in four particulars. In Clause 2 (1) (a) the words "at the commencement of this Act" have been inserted. In Clause 3 (2) the words "the wife shall include a woman" have been altered to "the wife shall include any one woman." In proviso (b) to Clause 3 (2) all the words after "living" have been deleted. In the Schedule, Section 2 of the Natal Act, No. 19 of 1910, is now left unrepealed.

2. Mr. Gandhi had been summoned from Natal, and a copy of the Bill as printed was handed to him by the Secretary for the Interior on Wednesday morning. After perusing it he saw Mr. Gorges again on Wednesday afternoon. I understand that he seemed on the whole to be satisfied and that the substance of the interview may be summarised as follows.

3. Upon Clause 1 Mr. Gandhi indicated that he valued this provision mainly for the sake of appearances. He thought that the appointment of a large number of Indian priests as marriage officers might easily lead to abuses, as some persons representing themselves as priests might not be of the highest character. He contemplated, therefore, that a somewhat sparing use would be made of the power of appointment, and that only such priests would be selected as were known to be of unimpeachable reputation. He thought that, for practical purposes, the machinery of registration under Clause 2 would and should become the usual method of legalising Indian marriages, and he, therefore, deprecated very strongly the limitation of the right to such marriages only as existed at the commencement of the Act. I may mention that I had previously caused to be conveyed to Mr. Gorges an expression of regret at the introduction of the words "at the commencement of this Act." Mr. Gorges said that they had been inserted by General Smuts's direction, but he did not know whether the Minister's decision on this point must be regarded as irrevocable. I am, therefore, not without hope that Mr. Gandhi's representations in regard to this cause will not prove wholly ineffective. He will have an opportunity of discussing the matter with General Smuts in the course of the next few days. Another point which was considered at the interview between Mr. Gorges and Mr. Gandhi was the expediency of enabling magistrates generally, whether appointed as marriage officers or not, to register Indian marriages under Clause 2. Mr. Gorges, I understand, will suggest to General Smuts the insertion of a proviso that, for the purposes of this section, the term "marriage officer" shall include any magistrate. On Clause 3 Mr. Gandhi does not appear to have taken any exception to proviso (b) of sub-clause (2). He urged, however, that the children of deceased women who would have been eligible for admission under this clause should not be excluded from its benefits. Mr. Gorges told my Secretary that he would submit to the Minister an amendment to the following effect: after the word "defined" at the end of the clause insert some such phrase as "or the child of the exempted person and "a deceased woman who, had she lived, could have been recognised as a wife "within the meaning of this section, or whose marriage could have been registered under the provisions of Section 2 of this Act." These, so far as I am aware, were the only points raised by Mr. Gandhi upon the Bill.

4. He, however, made the following representations upon questions of administration. He asked for the facilities for the admission and registration of all existing plural wives, whether in or out of South Africa, of Indians lawfully resident in the Union. This, you will observe, is a slight extension of the second recommendation on page 37 of the Commission's Report, where the grant of the privilege is contemplated only in the case of plural wives who had actually lived in the country. Mr. Gorges did not seem to regard the request as unreasonable, but he told my Secretary that he was not aware of the view

which General Smuts might take of the proposal. Mr. Gandhi renewed his request for an assurance that, so long as the immigration of Natal-born Indians into the Cape did not exceed its present dimensions, such Indians should be admitted without the imposition of a test, and particularly without the application of the provisions of Section 4 (1) (a) of last year's Immigrants Regulation Act. He did not ask for legislation, as presumably he is well aware of the very serious difficulty which the Government would experience if the question of the Cape entry were again to be raised in Parliament even by the introduction of the small amendment recommended by the Commission on page 16 of their Report. I gather that the Commission attached no great importance to this recommendation, and that after the position had been explained to them and they had been apprised of the reason why the words "at the commencement of this Act" had been inserted in Section 4 (2) (a) of Act 22 of 1913, they intimated that the recommendation was not one which they would be disposed to press.

5. Mr. Gandhi renewed his plea for a satisfactory statement in respect of the declaration required under the Free State law from Indians entering that province. This point should occasion no difficulty as General Smuts and Mr. Gandhi had previously come to an agreement upon it.

6. Mr. Gandhi then raised two new points. (1) He asked for some declaration or assurance that vested rights under the Transvaal Gold Law should be recognised and preserved. Mr. Gorges told him that this was really a matter for the Mines Department, and suggested that he should discuss it with General Smuts. (2) Mr. Gandhi urged that a free pardon should be granted to all *bonâ fide* passive resisters in respect of convictions for *bonâ fide* passive resistance offences, excluding all offences of violence which had been committed during the passive resistance campaign. I see no reason why the Minister should adopt a *non possumus* attitude towards this request, but I am not aware of his views.

7. As regards Clause 4 of the Bill, I understand that the Government think it undesirable to interfere with the special legislation governing the status of indentured Indians under the Natal Acts, except in so far as the repeal of the 3*l.* tax is concerned. For this reason they are disinclined to modify any provisions mentioned in Clause 4. Mr. Gandhi, I believe, made no comment upon the clause.

8. With reference to paragraph 14 of my Secret Despatch of the 16th instant, I may mention that, in the Mohammedan deputation which was received by General Smuts, those Natal Indians who have broken away from Mr. Gandhi's leadership were also represented. Mr. Anglia was present, and I believe that it was he who suggested to the Minister the expediency of studying the legislation recently passed in Mauritius.

9. I enclose a newspaper extract containing a report of an interview with Mr. Polak upon the publication of the draft Bill. Though the general tone of his comments is satisfactory, it is unfortunate that he should have thought it necessary to say that acceptance of the present Bill would not involve "the abrogation of the general claim to civil equality in South Africa." Such hints as to a probable continuance of agitation will not tend to facilitate the Government's task in passing the Bill.

I have, &c.,
GLADSTONE,
Governor-General.

Telegram from the Governor-General of the Union of South Africa, to the Secretary of State for the Colonies.

(Received Colonial Office, 6-55 P.M., 12th March 1914.)

Confidential. 12th March. Indian Enquiry Commission has reported unanimously. Following is substance of principal recommendations. 3*l.* tax: Section 6 of Natal Act, no. 17 of 1895, to be repealed with a view to leaving Indians who fall under provisions of that Act in same position as those who were indentured under Act of 1891. Marriage question: (1) Section 5 (g) of Act 22 of 1913 to be amended to provide for admission of one wife and minor children by her of an Indian now entitled to reside in any province, or who may in future be permitted to enter the Union, irrespectively of fact that marriage to such wife may have been solemnised according to tenets that recognise polygamy, or that she is one of several wives married abroad, so long as she is his only wife in South Africa: (2) Immigration officers to be instructed to open registers in each

province for registration of Indians of, say, three or more years' residence in South Africa, who have now or have had more than one wife living with them in South Africa, of such wives who are to be free to travel to and from India, with minor children, so long as husband continues to reside in this country: (3) Legislation to be passed on lines of Cape Act 16 of 1860 to provide for appointment of marriage officers from among Indian priests of different denominations for solemnisation of Indian marriages. Report points out that a marriage contracted in South Africa before a marriage officer would necessarily be monogamous: (4) Legislative provision to be made for validation by means of registration of existing *de facto* monogamous marriages, i.e., marriages of one man with one woman under a system which recognises the right of the husband to take one or more other wives. Conditions of validation to be (a) registration before a marriage officer, whether priest or Resident Magistrate, or official specially appointed *ad hoc*. Indians, both men and women, who have been married according to rites of their respective religions and who desire to avail themselves of proposed law should be required to appear before marriage officer and apply for registration. No ceremony contemplated, but they should have to satisfy officer that their marriage is *de facto* monogamous and should supply particulars of names and ages as well as of time and place of marriage. Upon such registration the marriage should be taken as validated from date on which it was contracted. Indians who do not wish to validate their marriages will be under no obligation to register, and applications for registration will be conclusive evidence of election to come under provisions of proposed law. (b) By registration such marriages should become monogamous in law as well as in fact, and all legal consequences following from marriage under South African common law should follow upon registration, except in so far as it may be deemed necessary to make special provision by legislation. One result will be that thereafter husband could not enter into any relations with another woman which would be recognised by law. If, however, he desires to go through a form of marriage with another woman before a priest († who was not) a marriage officer according to forms of his religion, Commission sees no reason why such a proceeding should be prohibited by law. It would not be bigamy, because marriage solemnised before such a person would not be valid by South African law, but while there would be no necessity for interference, relation so created would be irregular and not recognised by law, and would confer no rights on woman and her offspring. Commission does not recommend legislation to recognise and legitimise such intercourse.

You will observe that Commission has gone as far as they could towards meeting Muhammadan difficulty short of recommending recognition and legislation of Muhammadan law of marriage and divorce. The recommendations seem to concede all that Gandhi asks with regard to marriage, and more indeed than he was disposed to ask at first. Upon minor points of administration of Immigration Act, Commission makes a number of practical recommendations, such as that identification certificates should remain in force for three years, that interpreters should be († attached to) Capetown office of Immigration Department, that certain fees should be reduced, that Natal domicile certificates bearing thumb impressions of holder should be recognised as conclusive evidence of right of holder to enter Union establishment of identity, and with regard to a few other matters of administrative practice. Report also recommends arrangements with Government of India for official enquiries to be held by magistrate or other Government official in case of women and children proceeding from India to join their husbands and fathers in South Africa. Report discusses Cape entry question at some length, but considers grievance shadowy, and from practical point of view does not recommend amending legislation elimination of education test in case of South African born Indians entering the Cape. It suggests, however, that the words "at the commencement of this Act" might reasonably be omitted from Section 4(2) (a) of Act 22 of 1913. In regard to administration of Licensing Acts in Cape and Natal, Commission feels unable to make recommendations, as grievances arise from exercise of discretion vested by law in local bodies, and relief could only be given by amending law. Moreover, even if proposal to alter licensing laws fell within the scope of enquiry a recommendation to legislate, depriving local authorities of control over licensing, would be opposed to public opinion, and therefore ineffective. Commission did not feel justified in investigating questions of Transvaal Gold Law, Townships Acts, &c., which had no effect in bringing about strike. On shooting affrays report exonerates police. Report consists of 169 typewritten foolscap pages, and telegraphic summary must necessarily be inadequate, but you will see that on the two main points of 3*l.* tax and marriage the recommendations are all that could

be desired. Ministers seem favourably disposed, but have not yet committed themselves indefinitely. I am hopeful, however, that satisfactory legislation will shortly be introduced. Contents of report are of course confidential pending publication here. Robertson, who remains until next week, is understood to be in communication with Viceroy.

GLADSTONE,

No. 45 of 1914.

GOVERNMENT OF INDIA.

DEPARTMENT OF COMMERCE AND INDUSTRY.

EMIGRATION.

To

THE MOST HONOURABLE THE MARQUESS OF CREWE, K.G.,
His Majesty's Secretary of State for India.
Simla, the 9th July 1914.

MY LORD MARQUESS,

We have the honour to acknowledge the receipt of Your Lordship's despatch no. 67-(Pub.), dated the 8th May 1914, and enclosures on the subject of the Indian Enquiry Commission in South Africa. In paragraph 4 of the despatch you ask for any observations which we may desire to offer on the Report of the Commission, particularly in regard to the suggested solution of the marriage question in its bearing on the status of children.

2. The Commission, though labouring under great disadvantages owing to the regrettable refusal of the majority of the Indians to appear and give evidence before them, have framed their recommendations on broad and liberal lines. We particularly deplore the ill-advised action of the Indian community in abstaining from giving evidence, inasmuch as the result has been to deprive the Commission of the opportunity of investigating thoroughly the numerous charges of ill-treatment of Indians which were current in South Africa in November last. The repetition of these charges in this country very naturally led to wide-spread irritation, and we should have been glad to possess evidence from the Commission's proceedings of the weight to be attached to the numerous charges of ill-treatment which were so freely made in the press in both countries concerned.

We find in the recommendations a very complete and satisfactory attempt to arrive at a final solution of the difficulties that have arisen in South Africa, and we feel confident that if they are given effect to by the Union Government, and if the existing laws are sympathetically administered, a lasting settlement will be reached of the difficulties which have recently embittered relations between the Indians and the Colonists in South Africa.

3. We cordially welcome the recommendation of the Commission for the repeal of the £3 tax. For some time the tax has been felt to be undesirable and burdensome. Since the complete cessation by order of the Government of India, of all indentured emigration to Natal, its retention coupled with its capricious enforcement, even though it has only been levied from a small number of those liable to pay, has been a constant source of irritation among Indians in Natal. The abolition of the tax, therefore, will remove a legitimate grievance.

4. We are fully aware of the fact that Mahomedan opinion is dissatisfied with the solution of the marriage question suggested by the Commission. We are however unable to support the demand for the full recognition of polygamous marriages contracted in accordance with the tenets of the Quoran. The recommendations of the Commission go further towards affording legal recognition to polygamous marriages than the existing laws in other Christian countries, and we are sensible that the Commission has made every reasonable effort to meet the case of such polygamous unions.

With regard to the status of children, we accepted the consequences arising from the Commission's recommendation relative to the marriage question. We have noticed, in the papers forwarded with Mr. Seton's letter no. 2078-J. and P., dated the 5th June 1914, the contention of the All-India Moslem

League of London that, whilst the Union Government is entitled to declare monogamy the prevailing rule in South Africa, they have no right to declare that the issue of a valid marriage in India conformable to the personal laws of the contracting parties should possess no rights in and be excluded from entering the country of his father's domicile. We are unable to support such a claim; and we cannot therefore approve of the request that the children of Indian residents in the Union should receive special privileges not accorded to their mothers.

5. We would add with reference to paragraph 2 of your despatch under reply that an expression of appreciation of the valuable services rendered by Sir B. Robertson has been conveyed to him on behalf of His Majesty's Government. A copy of the private correspondence between Mr. Harcourt and the Prime Minister of the Union has also been communicated to Sir Benjamin.

We have the honour to be,

MY LORD MARQUESS,

Your Lordship's most obedient, humble Servants,

(Signed) HARDINGE OF PENSHURST.

" BEAUCHAMP DUFF.

" R. W. CARLYLE.

" HARCOURT BUTLER.

" S. A. IMAM.

" E. H. CRADDOCK.

" W. S. MEYER.

The Governor-General to the Secretary of State.

(Received 10th February 1914.)

(Secret.)

Governor-General's Office, Pretoria,
22nd January 1914.

Sir,

I am glad to be able to report that the prospects of an early settlement of the principal points at issue between my Government and the Indian community in this country have distinctly improved during the past week. Obstacles which it would be imprudent to disregard still exist, and others, either unforeseen or only dimly foreseen at present, may yet arise before mutually acceptable legislation can be passed. But on the whole the situation is more hopeful now than at any previous period of my term of office.

2. Numerous personal interviews have taken place between General Smuts and Mr. Gandhi, General Smuts and Sir Benjamin Robertson, and Sir Benjamin Robertson and Mr. Gandhi. Mr. Andrews also has had conversations both with the Minister and with Sir Benjamin Robertson. General Smuts has shown a most patient and conciliatory temper. In spite of a series of conflicts extending over many years, he retains a sympathetic interest in Mr. Gandhi as an unusual type of humanity, whose peculiarities, however inconvenient they may be to the Minister, are not devoid of attraction for the student. Sir Benjamin has proved himself tactful, judicious, and reasonable. He has established excellent relations, not only with General Smuts, but also with the Prime Minister, and is on friendly terms with the other members of the Cabinet whose acquaintance he has made, while on Mr. Gandhi his firmness and shrewd common-sense would seem to have exercised a salutary restraining influence. It is no easy task for a European to conduct negotiations with Mr. Gandhi. The workings of his conscience are inscrutable to the Occidental mind and produce complications in wholly unexpected places. His ethical and intellectual attitude, based as it appears to be on a curious compound of mysticism and astuteness, baffles the ordinary processes of thought. Nevertheless, a tolerably practical understanding has been reached.

3. The original proposal laid before General Smuts by Mr. Gandhi on Friday last was as follows:—

He asked for definite assurances on four points;—(a) The 3l. tax:—General Smuts inquired whether he would be satisfied if the payment of the licence money were abolished, but the licence retained and no further alteration made in the

provisions of Natal Act 17 of 1895. Mr. Gandhi thought that this solution would meet his requirements, but he urged that if the licence were retained, it should be made a standing licence not subject to annual renewal.

(b) The marriage question: He did not make it quite clear what precisely he desired, but General Smuts gathered that his expectations were not unreasonable, and that they would probably be satisfied if statutory recognition of *de facto* monogamous wives were accorded.

(c) The admission of South African born Indians into the Cape Province: Mr. Gandhi did not press for legislation on this point but only for an assurance that the law would be so administered that the education test would not be applied to such Indians seeking to enter the Cape. This was to be subject to the understanding that only a small number would thus seek admission, and that if large numbers came forward, the education test should be applicable. I cannot vouch for the actual wording of the stipulation, but I believe that this was its substantial effect.

(d) The declaration said to be required under the Orange Free State Law: General Smuts pointed out that the Government had already in Mr. Gorges' letter of the 19th August (Cd. 7111, page 51), signified their willingness to accept Mr. Gandhi's suggestion on this point. Mr. Gandhi said that he did not so understand the relevant passage in that letter, but that a slight verbal amendment of its terms would meet the difficulty.

It will be seen that only the first two of Mr. Gandhi's points would involve fresh legislation.

Mr. Gandhi explained that if General Smuts would give him a clear assurance in writing on his four points, he would regard it as disposing of the whole general question of Indian grievances. The Commission need not then consider general grievances or policy. Its inquiry should in that case be limited to the occurrences of the recent passive resistance campaign and the strike and the various allegations to which that movement and the manner of its repression had given rise. On that basis he and his friends would be prepared to appear before the Commission and give evidence. If the assurance were not forthcoming, they would still be willing to appear before the Commission and give evidence on all matters included in the terms of reference, provided that either Sir James Rose-Innes or Mr. Schreiner were added to its membership. In that event he would raise in detail the whole question of all Indian grievances, dating, I think, from 1885, and he let it be understood that his opening statement alone would occupy at least two days of the Commission's time.

If neither of his alternative proposals were accepted he could have nothing to do with the Commission and must reserve complete freedom of action, although he would consider himself bound by his promise not to embarrass the Government by a renewal of passive resistance while the present industrial troubles remained unsettled.

General Smuts pointed out the obvious objections to any interference with the present constitution of the Commission, and endeavoured to impress on Mr. Gandhi how desirable it was in his own interests that instead of asking for assurances he should state his case on his four points of grievances before the Commission. The Government would be in a far stronger position to carry remedial legislation if they could base it on recommendations made by the Commission. From private conversations with Sir William Solomon and Mr. Esselen the Minister had gathered the conviction that remedial legislation would be recommended by the Commission, and Mr. Gandhi would therefore be ill-advised if he neglected the opportunity of making his views on these points clear to the tribunal.

Mr. Gandhi, however, insisted on the insuperable obligations of his vow, and General Smuts ended the interview by promising to consider his proposals and to give him an answer as soon as possible.

4. Subsequently, in the course of confidential conversation, General Smuts intimated to me that practically no difficulty would be presented by Mr. Gandhi's two administrative points, and very little by the point on the marriage question if the sense of Mr. Gandhi's proposal thereon had been correctly apprehended. The abolition of the 3*l.* tax would be a much more formidable task, but he was disposed to think that it would in the end be found inevitable. In substance, therefore, Mr. Gandhi could probably be met; on the question of form, however, he did not see his way clear to compliance with Mr. Gandhi's wishes. If in regard to

policy he were to ignore the Commission appointed by the Government and to make a compact with Mr. Gandhi after all that had occurred recently, he and his colleagues would be placed in a most undignified and, he feared, even impossible position. At the same time, if a settlement which would be accepted by all parties as final was attainable, he would like to effect it without unnecessary delay by carrying the requisite legislation during the forthcoming Session. He doubted whether he would be able to carry such legislation unless he were fortified by a recommendation of the Commission, and equally whether a recommendation would be obtainable in time if evidence were to be led on every Indian grievance which could conceivably be brought forward. From this point of view matters would not be advanced by the acceptance of Mr. Gandhi's second alternative, *viz.*, the addition of Sir James Rose-Innes or Mr. Schreiner to the Commission, even if there were no serious objections to such a course on other grounds. He was in favour of limiting the inquiry of the Commission on questions of policy to the four points specified by Mr. Gandhi if this could be done without making an overt bargain with him.

5. After further consideration and consultation of the Cabinet, General Smuts signified his decision to Sir Benjamin Robertson for communication to Mr. Gandhi. Its purport was that the Government could not see their way to alter either the composition or the terms of reference of the Commission, nor could they authorize him to make a compact with Mr. Gandhi by giving in advance of the Commission's report the assurances for which he asked. The Commission must go on as previously arranged, but it would be asked to submit its recommendations in regard to policy at a sufficiently early date to enable legislation to be introduced during the forthcoming Session. If Mr. Gandhi felt himself precluded by his vow from giving evidence under these conditions, he was quite at liberty to abstain from participation in its proceedings; he need, however, feel no serious apprehensions as to the probable nature of the Commission's recommendations on his four points, and as to the Government's intentions, but he should promise not to revive passive resistance until the Commission had reported and the Government had been given an opportunity of taking action on the report. The Minister repeated that while he had no knowledge whatever of Colonel Wylie's views he had some little time ago sounded both the Chairman and Mr. Esselen and felt sure that their recommendations would be satisfactory to Mr. Gandhi.

6. In the result of the ensuing interviews and negotiations an understanding which is embodied in the enclosed correspondence of yesterday's date, was finally reached by the Minister and Mr. Gandhi. You will observe that, while Mr. Gandhi receives no assurances, the Government express their desire for an early settlement. Mr. Gandhi and his friends will not appear before the Commission, but in recognition of the opportunities of consultation which General Smuts had afforded by consenting to receive Mr. Gandhi, they offer to assist Sir Benjamin Robertson in the preparation of his evidence. Passive resistance is to be suspended pending the report of the Commission and the introduction of legislation. The release of *bona fide* passive resisters now serving sentences is asked for, and the Minister explains that this had already been done by the Government. At his own suggestion, Mr. Gandhi and his friends will take no further action with regard to the allegations of ill-treatment during the Indian strike. The Government, while repudiating the allegations as emphatically as ever, will also refrain from leading evidence upon them, but reserve their right to ask the Commission to investigate the shooting affrays at Esperanza and Mount Edgecombe. It will be noted that Mr. Gandhi has added to his previous four points a fifth, asking for an assurance of just administration of the law and of due regard to vested rights. This appears to be innocuously vague and should not cause any difficulty. He has also slightly modified his stipulation respecting the licence under Natal Act 17 of 1895. He formerly asked that a standing licence should be substituted for the annual licence, but he now apparently contemplates that after an ex-indentured Indian has acquired domiciliary rights, in terms of the judgment in the Subrayen case, by three years' continuous residence after the expiration of his indentures the licences should be dropped altogether. This is a point of detail on which the Commission's recommendation will doubtless carry weight with the Government. I may mention that yesterday afternoon, when Mr. Gandhi received Mr. Gorges' letter, he was much perturbed by the omission of any explicit recognition of the motive which restrained him from pursuing the allegations of ill-treatment. In order to meet his difficulty, General Smuts caused the words which now form the third sentence of the letter to be inserted. They were suggested by Mr. Gandhi himself, and he is understood to be satisfied and to be leaving for Natal to-day.

7. Sir Benjamin Robertson and Mr. Slater left Government House this morning. They are to spend the day at Johannesburg, where they have made appointments to meet Mr. Duncan and Mr. Drummon Chaplin. They return to Durban to-night to be in readiness for the sitting of the Commission on Monday. Unless Indians come forward with evidence independently of Mr. Gandhi, the Commission's inquiry is not likely to be protracted, and there is every reason to hope that it will make recommendations which will form the basis of a lasting settlement.

8. The incident to which reference was made in the third paragraph of my Secret despatch of the 14th instant, does not appear to have been of a serious nature. Sir Benjamin Robertson seems to attach no importance to it. His ship arrived rather earlier than had been expected. There was some little difficulty in finding hotel accommodation for the Indian official who accompanied him, and this was accentuated by the circumstance that the party landed on a Sunday. The Indian slept on board on Sunday night, and on Monday morning was accommodated at the Marine Hotel.

9. I attach some further papers which have been supplied to me respecting the alleged assault by a planter named Armstrong on two Indians near Verulam. A previous reference to the case will be found in my despatch, Secret (3), of the 4th December. The depositions, if substantiated, indicate very serious brutality. You will observe from the accompanying press extract that the accused was yesterday committed for trial.

I have, &c.,

GLADSTONE,

Governor-General.

Enclosure 1 in above.

Mr. Gandhi to the Secretary for the Interior.

Pretoria, 21st January 1914.

Sir,

Before leaving for Phoenix I venture to express my thanks to General Smuts for the patient and kindly interviews that he has been pleased to grant me during a time of overwhelming pressure. My countrymen will remember with gratitude his great consideration.

I understand that the Minister is unable to accept (with regard to the Indian Inquiry Commission) either: (1) My suggestion that a member representing Indian interests should be co-opted when questions of policy are inquired into; or (2) my suggestion that a second Commission with Indian representation should be appointed to deal with these questions only—the present Commission in that case becoming purely judicial. I submitted a third proposal also, but this, in view of the Government's decision, I need not state here. Had any of my suggestions been viewed favourably by the Government, it would have been possible for my countrymen to assist the labours of the present Commission. But with regard to leading evidence before this Commission (which has a political as well as a judicial character) they have conscientious scruples, and these have taken with them a solemn and religious form. I may state briefly that these scruples were based on the strong feeling that the Indian community should have been either consulted or represented where questions of policy were concerned. The Minister, I observe, appreciates these scruples and regards them as honourable, but is unable to alter his decision. As, however, by granting me the recent interviews he has been pleased to accept the principle of consultation, it enables me to advise my countrymen not to hamper the labours of the Commission by any active propaganda, and not to render the position of the Government difficult by passive resistance pending the result of the Commission and the introduction of legislation during the forthcoming Session.

If I am right in my interpretation of the Government's attitude on the principle of consultation it would be further possible for us (without violating the spirit of the vow we have taken) to assist Sir Benjamin Robertson, whom the Viceroy, with gracious forethought, has deputed to give evidence before the Commission.

A word is here necessary on the question of allegations as to ill-treatment during the progress of the Indian strike in Natal. For the reasons above stated the avenue for proving these allegations through the Commission is closed to

ns. I am personally unwilling to challenge libel proceedings by publishing the authentic evidence in our possession. I would far rather refrain altogether from raking up old sores. I beg to assure the Minister that as passive resisters we endeavour to avoid as far as possible any resentment of personal wrongs, but in order that our silence may not be mistaken, may I ask the Minister to recognise our motive, and reciprocate by not leading evidence of a negative character before the Commission on the allegations in question.

Suspension of passive resistance, moreover, carries with it a prayer for the release of the *bona fide* passive resistance prisoners now undergoing imprisonment either in the ordinary gaols or the mine compounds which have been declared as such.

Finally, it might not be out of place here to recapitulate the points on which relief has been sought. They are as follows:—

- (1) Repeal of the 3*l.* tax in such a manner as the Indians relieved will virtually occupy the same status as the indentured Indians discharged under the Natal Law 25 of 1891.
- (2) The marriage question.
[These two are the points that (as I have verbally submitted) require fresh legislation].
- (3) The Cape entry question.
[This requires only administrative relief, subject to the clear safeguard explained to the Minister].
- (4) The Orange Free State question.
[This requires merely a verbal alteration in the assurance already given].
- (5) An assurance that existing laws specially affecting Indians will be administered justly and with due regard to vested rights.

I venture to suggest that nos. 3, 4, and 5 present no special difficulty, and that the needful relief might now be given on these points as an earnest of the good intentions of the Government regarding the resident Indian population.

If the Minister, as I trust and hope, views my submission with favour, I shall be prepared to advise my countrymen in accordance with the tenor of this letter.

I have, &c.,

M. K. GANDHI

The Secretary for the Interior,
Pretoria.

Enclosure 2 in above.

Secretary for the Interior to Mr. Gandhi.

Department of the Interior, Pretoria,
21st January 1914.

Sir,

With reference to your letter of even date, I am instructed by the Minister of the Interior to reply that you are correct in your statement that it is not proposed to make any alteration either in the personnel of, or the reference to, the Commission appointed to inquire into the recent Indian strike in Natal. The Minister regrets, but of course understands, that you are so far committed by your previous public declarations in regard to the Commission that you are precluded from appearing before it. He also recognizes the motive which makes you unwilling to revive old sores by courting libel proceedings before another tribunal. The Government repudiates as strongly and emphatically as heretofore the charges of harsh or improper action against the Indian passive resisters and strikers. But as you and your friends have decided not to appear before the Commission and lead evidence in support of those allegations, it seems likely that there will be no charges for the Commission to investigate. The Government would regret the consequent absence of an opportunity to lead rebutting evidence in vindication of the conduct of its officers, but it feels that, unless it has a definite case to answer, any attempt to deal with the allegations before the Commission could only result in an unprofitable waste of time. The Government is anxious that any recommendations which the Commission may make on

the larger issue of Indian grievances should be received at a sufficiently early date to enable proposals to be submitted to Parliament during the forthcoming Session. It is hoped that those proposals, if accepted by Parliament, would ensure a satisfactory and permanent settlement. The Government considers that such a settlement of longstanding disputes is too important to justify any risk of endangering its achievement by delaying the proceedings of the Commission—already delayed through unforeseen circumstances—by an inquiry, which would now be necessarily one-sided, into points of minor and secondary moment relatively to the wider issues at stake. If, therefore the Indians decline to submit to the Commission any specific charges in connection with the treatment of passive resisters and strikers during the recent troubles, the Government will not think it necessary to take any further action in refutation of the allegations against it and its officers, but it reserves its right to ask the Commission to investigate the occurrences which resulted in loss of life at Esperanza and Mount Edgecombe.

With reference to your prayer for the release of *bona fide* passive resistance strikers from ordinary or compound gaols, the Department of Justice had already previous to the arrival of your letter taken steps for the release of the small balance of these prisoners kept in the gaols.

In regard to the grievances which you have summarised at the end of your letter, the Government will, as already stated, await the recommendations of the Commission before taking any action.

I have, &c.,
E. H. L. GORRES,
Secretary for the Interior.

M. K. Gandhi, Esq.,
Pretoria.

Extract from *Cape Times* of 30th January 1913.

REPEAL OF 3L TAX DESIRED. SIR BENJAMIN ROBERTSON'S EVIDENCE: QUESTION OF MARRIAGES: VOLUNTARY REPATRIATION SUGGESTED BY PROFESSOR PEARSON.

Durban, 29th January.

At to-day's sitting of the Indian Commission, Sir Benjamin Robertson gave important evidence on behalf of the Government of India. He said it was very unfortunate that they were unable to enter into the charges made because of the decision of Indians not to give evidence, and the Indian Government was most anxious that there should be some settlement of these grievances. Whilst he was expressing his personal views, they were to his knowledge in agreement with the views of the Government of India. He had hoped that the Indians would be represented by counsel at the Commission, and he could have assisted that gentleman with information.

Regarding the 3L tax, the view of the Indian Government was that the object for which it was imposed, namely, to induce Indians to return to India at the expiry of their indentures, was no longer being fulfilled. This was admitted by the deputation which went to India from Natal in 1903. He explained that negotiations took place at the time for the compulsory repatriation of indentured Indians at the termination of their indentures, but these fell through. In view of the fact that immigration was now prohibited, that the tax was not shown to have the effect desired, and in view of the invidious nature of its collection, and also the feeling in India, the Indian Government desired its repeal.

Replying to the Chairman, Sir Benjamin said the toolies were very ignorant about the conditions of Natal. Many of them who came here left India because they had had a family or caste quarrel, and were only anxious to leave India, and when the agreement was explained to them they would not take the trouble to understand or appreciate the conditions under which they would have to serve. He had experience of this in the past when acting as a magistrate. If it was thought desirable that the 3L tax should be replaced by a licence until the Indians got domicile, he thought that licence should be taken out once for all.

Dealing with the question of Indian marriages, Sir Benjamin Robertson said this question had caused a great commotion in India, and the Government was anxious that means should be found to validate monogamous marriages in South Africa in regard to the superior classes affected here, as the indentured Indians were provided for. The only way out of the difficulty seemed to be registration, with a declaration from the man that he would take only one wife. It came to

this, that, when marriages took place under Hindoo or Mohammedan rites, people would have to make a declaration that they abandoned their personal law and came under the Statute Law, which he suggested should be enacted regarding past marriages. The Indian community would thus be able to validate their marriages if they wished. The community would object to anything which would amount to a fresh ceremony. Monogamy was practically the rule in India, and the Indian Government agreed that, in the case of plural marriages, only one wife should be admitted to South Africa.

Regarding the question of the admission of South African born Indians to the Cape, which right had been taken away, Sir Benjamin Robertson said the Indian Government specially desired that all the existing rights of these people should be maintained.

Professor Pearson, who recently came to Natal from India to investigate the Indian grievances, spoke in favour of the abolition of the 3*l*. tax, as the coolie did not understand its significance when he left India. He did not think it possible to explain it in a manner so that it could be grasped by him. He said it was the poorer white man who was feeling the competition of these Indians, and as the tax failed to cause them to return, it would be better to offer them an inducement voluntarily to repatriate themselves. He suggested an offer of 20*l*. or 30*l*. would cause many of them to leave. If the white people really wanted the Indians to leave, one clear way of inducing them to go was by boycotting them.

Professor Pearson also objected to the 3*l*. tax on the ground that it induced Indians to re-indenture, and the indenture system was thoroughly bad, as it placed the coolie in a position of absolutely no responsibility. The birth rate amongst these people was exceptionally high, and the death rate very low, and that was why Europeans feared their competition.

Mr. Esselen: Is that why the Indians struck? (Laughter.)

Witness agreed that the material conditions under which indentured people lived were very good, but he objected to the fact that it was a criminal offence to refuse to work, which increased the criminal population, and he came to the conclusion that the indenture system placed the coolies in a disadvantageous position in regard to the administration of the law.

Telegram No. dated London, the 12th (received 13th) December 1913.

From—The Secretary of State for India,

To—His Excellency the Viceroy (Commerce and Industry Department).

South African Question: Colonial Office has received following telegram to-day from Lord Gladstone.

Begins. On advice of my Minister, I have appointed a Commission, (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 strike, and (2) to make recommendations in respect to any of the above matters.

Commission composed of Sir William Solomon, K.C.M.G., Chairman, Ewald Esselen, K.C., and Lieutenant-Colonel J. S. Wyllie, K.C., M.V.O., Notification will be published in Gazette this afternoon. *End of message.*

Extract from *Transvaal Leader*, dated 7th October 1913.

Indians' Grievances.

A Statement of Demands.

We have received the following statement of the demands of the Indian community:—

1. The removal of the annual tax of 3*l*., which ex-indentured Indians—men, women and children—are liable to pay as the price of their remaining free from re-indenture in Natal.

2. (a) An amendment of the Marriage Law of the Union so as to recognise the legality of monogamous Indian marriages celebrated, whether in India or South Africa, according to the rites prescribed by the Hindu and Mahomedan religions. Although both of these religions countenance polygamy, statistics

show that only one per cent. of Indian marriages are polygamous. (b) Administrative admission of the existing plural wives (not more than 100 in all) and their children, of Indians already domiciled. This was the position at the time of the inauguration of Union. Legal recognition of polygamy is not asked for.

3. Restoration of the right to enter the Cape of South African-born Indians. This right existed at the time of the introduction of the Immigration Bill, and its retention may in practice mean the admission of hardly more than a dozen Indians annually to the Cape from Natal and the Transvaal.

4. The Government say that there is no racial bar in the Immigration Act. Therefore an admission from them is necessary that no declaration in law will be required from an Indian at the Free State border that will not be equally necessary from a European. In practice this does not mean that any Indian will necessarily enter the Free State, but, if he does, he will still remain liable to the prohibition to own land, to farm or to trade.

5. A declaration that existing laws such as the Transvaal Gold Law and Townships Act, the Licensing Laws of the Cape and Natal, and the Immigration Act, shall be administered in a liberal spirit and with due regard to vested rights. The policy of the Government is, for example, to prevent Indians with *bona fide* proof of previous residence from re-entering their respective Provinces, if they have been absent for a long period. This situation is intolerable.

The first point was the subject of a definite promise to the Hon. Mr. Gokhale. The others arise out of the provisional settlement of 1911.

The statement continues:—Indians do not fight for equal political rights. They recognise that, in view of the existing prejudice, fresh immigration from India should be strictly limited, provision being made for the entrance of a sufficient number annually for reasonable wear and tear. As no relief could be obtained by prayers, petitions, or negotiations, Indians started passive resistance on the 15th September by 12 men and four women setting out from Natal to court imprisonment at Volksrust. The movement is spreading. There are already in gaol 35 passive resisters—a larger number than when the two previous campaigns started, or when the provisional settlement of 1911 resulted in a suspension of passive resistance. Numbers of men and women are coming forward daily to seek arrest. Several of the women have taken their babies with them, as they have not yet been weaned; or are incapable of being looked after otherwise. Arrest is courted by crossing the border, or by hawking without licences, or by refusing to show licences or permits, or by breaking other civil laws which do not involve a breach of the moral law. The Free State border is left untouched, as there is no desire at all to inflame public opinion so far as it can be avoided, and there is every desire to show that Indians wish to respect the Free State prejudice. The movement will also consist in advising indentured Indians to suspend work until the 3*l.* tax is removed. The indentured Indians will not be invited to join the struggle. On the strength of the promise made to Mr. Gokhale, and which promise was brought to the notice of the House of Lords by Lord Amphil, these men were assured by Indian leaders, at meetings of thousands, that the tax would be repealed during the last session of Parliament. Meetings in support of the claims of the passive resisters have been held in Cape-town, Port Elizabeth, East London, Woodstock, Durban, Maritzburg, Tongaat, Verulam and Johannesburg (representing all the principal towns in the Transvaal), and similar meetings are being held at other centres. If the Government wish to grant relief, fresh legislation will be necessary only on the marriage and the 3*l.* tax question. All other points are capable of easy adjustment without legislation. The marriage difficulty can be solved by a brief amendment of the Immigration Act, without in any way interfering with the general marriage laws of the Union.

At a meeting of the Hamidia Islamic Society, held yesterday at the Society's Hall in Vrededorp, Imam A. K. Bawazeer presiding, the following resolution was proposed by Mr. M. P. Fancy (Treasurer of the Society), seconded by Mr. Amod Moosajee, supported by Messrs. Aswat and Shahhoodeen, and carried unanimously:—

“ This meeting of the Hamidia Islamic Society hereby associates itself with Mr. Cachalia's letter to the Government, strongly supports the passive resistance movement, and congratulates those passive resisters—men and women—who are already undergoing imprisonment. This meeting further expresses its deep indignation at the recent decision of the Natal Supreme Court in regard to marriages,

whereby the great Mahomedan religion is insulted. This meeting prays that the Government may heed the requests put forward by Mr. Cachalia, and thus end the sufferings of the Indian community."

21—24, Court Chambers,
corner Rissik and Anderson Streets, Johannesburg,
30th June 1913.

Dear Sir,

I have endeavoured to study the Immigrants Regulation Act, and observe with thankfulness that it is an improvement upon the original Bill. But I respectfully beg to point out that it fails to carry out the provisional settlement of 1911 in at least four important particulars. In my humble opinion, if redress is granted in regard to these four particulars, the policy of the Government will not be affected, and yet the terms of the settlement, as my countrymen read it, will be just, but only just, satisfied.

The points are :—

- (1) According to the definition of the term "domicile", those indentured Indians who arrive after the Indian Immigration Law Amendment Act of 1895 and their descendants appear to become prohibited immigrants.
- (2) The descendants of this class, although born in South Africa, will, if the above interpretation be correct, be unable henceforth to enter the Cape Province.
- (3) Women married in South Africa according to the rites of Indian religions, and going to India and returning with their husbands, will not be on the same footing as those married in India. Nor are the hundreds of women married according to non-Christian faiths provided for by the amendment.
- (4) The Free State difficulty seems to remain as it was before.

With reference to the first point, in view of the fact that the Minister has respected the right of the South Africa-born Indians to enter the Cape if they are born of Indian parents domiciled in South Africa, but not of indentured parents indentured after the Natal Act 17 of 1895, it seems to me to be a small matter for the Government if they were to recognise the status of the descendants born in South Africa of those Indians who were indentured after the Act of 1895. I am sure the Government do not intend to set up distinctions between one class of Colonial-born Indians and another.

Nor can it affect the policy of the Government to recognise the right of domicile of such indentured Indians themselves. There could not be more than 7,000 such Indians at the outside. This number, compared with the Indian population of Natal, which is estimated at 133,000, cannot fairly be deemed a dangerous permanent increase to the Indian population, especially when it is borne in mind that these men are wanted by the Europeans of Natal.

To the Indian community both the first and the second point are of the highest moment. According to the judgment of the Natal Courts, these men, if they are paying the annual tax of 3*l.*, have a right to remain in Natal as permanent residents. Are they now to become prohibited immigrants? I presume that the Government do not intend to deport them; but do they intend to enforce the provisions of the Act as to trading or the holding of land by them?

As to the marriage question, the difficulty raised by me is, in my humble opinion, obvious, and calls for consideration.

As to the last point, in the correspondence that took place between General Smuts and myself, doubt was expressed whether, in spite of the Reservation Clause, the declaration referred to in Section 8 of Chapter 33 could be required of an Indian who might be permitted to enter that province under the new Act. What the people of the Free State want, I hope, is not a humiliating declaration from an Indian immigrant, but his legal disability to hold land, to farm or to trade. If this be particularly mentioned in the Act itself, they cannot reasonably object to the removal of the clause which requires the declaration.

For the moment, and for the purpose of a settlement, I do not raise the question of the ousting (not only partial, I admit) of the jurisdiction of the

Supreme Court and the other drastic provisions of the Act, which at once make it far more illiberal than the previous Provincial Acts which it replaces.

If Mr. Fischer considers that it is possible for the Government to meet the Indian community and give an assurance that the necessary amendments will be made next year, and if he considers it worth while to discuss the points personally with me, I shall be pleased to wait on him. I hope that Mr. Fischer will see his way to consider my letter in the spirit in which it has been addressed. I beg to assure him that I have no desire to precipitate an acute crisis, which is certain to arise if no settlement can be arrived at between the Government and the Indians.

In the event of an appointment being made, it will be necessary to discuss at the interview the administration of the Act as to the admission of married women in cases where the marriage is not monogamous, as also the mode of regulating the entry of educated Indians. I do not discuss them here for fear of making this letter too long, and because I believe that, if the law can be set right, the question of administration is a comparatively easy matter.

I need hardly say that I have, throughout this letter, assumed that there are no other existing rights disturbed by the Act which have not formed the subject-matter of correspondence, telegraphic or written, between the Government and myself.

As I shall await your reply before advising my fellow workers, may I ask for a telegraphic reply?

I remain, &c.,

M. K. GANDHI.

P.S.—It will be seen that I am in Johannesburg. I am sending this letter per special messenger, in order to avoid delay.

M. K. G.

The Private Secretary
to the Minister of the Interior, Pretoria.

Department of the Interior, Pretoria,
19th August 1913.

Dear Mr. Gandhi,

Referring to our previous correspondence on the subject of the Immigrants Regulations Act, 1913, I beg to state that the points you raised have been fully considered by the Minister, and at General Smuts's request I will now indicate what view he takes of them.

1. Your first point was that the descendants of indentured Indians would not in future be able to enter the Cape Province by reason of the proviso to Section 5 of the Act. General Smuts requests me to submit that this is an entirely new point, and one not raised by you when all the matters at issue between the Indians and the Government were dealt with by you in your correspondence with him in January and February, 1912. Your letter of 29th January to the Private Secretary, and your telegram of 1st February referred to the right of educated Indians to enter the Cape and Natal Provinces from other parts of the Union on passing the education test provided in the Immigration Laws of those Provinces, while your letter of 15th February 1912, contained a specific statement that passive resisters could have nothing to complain of "if the present legal position, namely, the ability of educated Asiatics to enter Natal or the Cape from the Transvaal (and presumably from Natal to Cape and *vice versa*?) by passing the education tests provided by the respective laws of the Provinces is retained".

I have only to refer you to paragraphs 7 and 8 of Ministers' Minute, 902A, of 20th December 1910, printed as enclosure No. 8 to the White Book (Cd. 5579), to make it clear that the Union Government have all along regarded it as impossible to allow Indians born in Natal to migrate freely to the Cape, and until you raised the matter for the first time, in your telegram of 9th April of this year to me, the Minister was not aware that your community had any views on the subject at all.

The rights of the educated Indian inhabitants of any Province to enter the Cape and Natal by passing the education test prescribed in the recently repealed Immigrations Laws of those two Provinces, are fully secured by Sub-section (2) of Section 4 of our new law, and as you yourself pointed out in your last letter (2nd July) to me, most of the Colonial-born Indians in Natal have

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passed through the Government Indian schools, and possess sufficient knowledge to undergo the Cape test. You also stated that it was a well-known fact that throughout the time the Cape Act was in force hardly any South Africa-born Indian not belonging to the Cape has endeavoured to migrate to that Province, as there is no scope for them there. In view of all these facts the Government cannot conceive that the Indian community now wishes to make a grievance of the fact that provincial boundaries have been maintained in the new law, and General Smuts trusts that the position created by that law will be accepted. You will be aware, also, that the point was fully discussed in Parliament last Session, and the very strongest exception was taken by members representing constituencies in the Cape Province to any proposal for allowing non-educated Natal-born Indians to enter the Cape.

2. Secondly, in regard to the position of the ex-indentured Indian under the definition of "domicile" in the new Act, the Government takes the view that the provisions of paragraph (f) of Section 5 of the Act would apply to any such Indian who has resided under annual licence or pass in Natal for three years or more after his indentures expire, and who leaves the Province with the intention of returning thereto, and that this view is not affected by the definition of domicile in Section 30 of the Act.

3. Thirdly, with regard to the question of the declaration required under Chapter XXXIII, of the Orange Free State Law Book, General Smuts has no difficulty and rather sees an advantage in notifying all educated Indians admitted into South Africa of the disabilities that Indians are under in the Orange Free State. Steps will be taken to have these disabilities specified on the form of declaration which is required under Section 19 of the Act.

4. Fourthly, General Smuts is quite prepared, when some suitable occasion presents itself, for dealing with the consolidation of the Marriage Laws of the Union to make provision for the appointment of special marriage officers for denominations other than Mahomedan, upon its being shown that there is a demand by the members of such denominations for such appointments and that there are suitable persons in the different communities on whom the appointments could be conferred. The present practice of admitting one wife of an Indian, now entitled to reside in any Province, or who may in future, be permitted to enter the Union, irrespective of the fact that his marriage to such wife may have been solemnised according to tenets which recognise polygamy, or that she is one of several wives married abroad, will be continued so long as she is his only wife in South Africa; but General Smuts regrets that it will not be possible to go further and admit plural wives of Indians who are already resident in South Africa.

Believe me, &c.,

E. H. L. GORGES.

M. K. Gandhi, Esq.,
Phoenix, Natal.

9, 10, 11, Löwenstein's Buildings,
Market Street, Johannesburg,
24th August 1913.

Dear Mr. Gorges,

I thank you for your letter of the 19th instant (166/19797).

I have come to Johannesburg in order to attend the Döke Memorial Service, and shall be here for a few days. If, therefore, General Smuts desires my presence in Pretoria, I would be pleased to come over.

I submit for General Smuts's consideration the following regarding the points dealt with in your letter.

As to South Africa-born Indians. It is perfectly true that I did not raise, in the correspondence of 1912, this point. It had entirely escaped me until a friend drew my attention to it. But I assured the friend that no difficulty need be anticipated, as the correspondence setting forth the provisional settlement of 1911 protected all existing rights of British Indians. I freely admit that I do not lay claim to a full knowledge of all such rights possessed by my countrymen throughout the Union or even the Transvaal. The fact that very few South Africa-born Indians avail themselves of the right was used by me to show that the Government had no occasion to fear a sudden influx into the Cape of South Africa-born Indians, if the right was retained. From the Indian standpoint, I

wanted to emphasise the fact that we were fighting for the sentiment, namely, that the liberal and reasonable view taken by the old Cape Legislature should be left untouched. And I fear that I must press that view again on General Smuts's attention. I have already submitted that the Cape Members laid stress on the point, because the Right Honourable Mr. Fischer fostered, I submit, without a knowledge of the facts, the view that there was a large influx of South African-born Indians into the Cape. I observe that your letter seems to suggest that I am asking for a breaking of the provincial boundary altogether. Though this would be a legitimate desire, I have not asked for it, as I know that it is no part of the provisional settlement.

As to the second point, I am glad that the Government interpretation agrees with that of the Indian community.

As to the Free State difficulty. The point raised by me has not been understood. I do not ask for the sake of asking that the attention of intending Indian emigrants should be drawn to the disabilities, but I have submitted that the wording of the new Act seems not to require the declaration in question at the Free State border. If such is also the Government interpretation of the Act, the Free State difficulty could be solved without any statutory alteration. In order to allay anxiety on the part of the Free Staters I suggested that the disabilities in the Free State might be notified on the general declaration to be made at the first port of entry at coast. I need hardly say that I have assumed the legal possibility of an Indian being permitted under the new Act to enter the Free State.

As to the fourth point. The question of the validity of marriages already solemnised in South Africa of the resident Indian population, as also of the marriages hereafter to be solemnised within the Union, is of vast practical importance. A definite assurance that legislation will be introduced next Session is necessary to settle this very thorny problem. Regarding the plurality of wives, I have not asked for a general recognition of polygamy. All I contend is that, in continuation of the practice hitherto followed, existing plural wives of domiciled residents should be allowed to enter. And this was the assurance given in the letter quoted by me in my correspondence with you. The number of such wives could be easily ascertained at the present moment. And the toleration may be restricted only to the number so ascertained.

I observe that cases have already arisen in Natal out of the new Act. I cannot help remarking that the marriage case is inconsistent with the assurance contained in your letter under reply. For Kulsambibi is admittedly the only wife in South Africa of her husband. I would respectfully suggest that the case be withdrawn and the lady set free. The other cases are regarding domicile. The Government contention seems to be that, even where there is no dispute as to facts, or the *bonâ fides* of the holder of a certificate of domicile, his right should be impugned if he has been long absent from the Province of domicile. If such is the Government interpretation of the new Act, existing and *acquired* rights are threatened, and, in the event of a decision unfavourable to the Indian community, a position would be created that would be totally intolerable and inconsistent with the provisional settlement, as also the declarations of the Right Honourable General Botha and other members of the Ministry that there is no desire to harass the resident Indian population. I therefore venture also to suggest that these cases be withdrawn. I have assumed that you are fully aware of these cases. They are reported in the current issue of *Indian Opinion*.

May I ask for an early reply ?

I am, &c.,

M. K. GANDHI.

E. H. I. Gorges, Esq.,
Pretoria.

Box 6522, Johannesburg,
3rd September 1913.

Dear Mr. Shawe,

As I informed you through the 'phone to-day, I am leaving for Phoenix to-morrow. But before I leave I should like to draw General Smuts's attention to the eagerness and impatience with which many of my co-workers are looking forward to some final answer. Indeed, I have even been blamed for writing the first letter. Their impatience is natural. All our activity is at a standstill.

Several have been obliged to refuse offers of handsome employment owing to the suspense. I hope, therefore, that among the many important matters that engage General Smuts's attention this will find its proper place. If nothing definite is vouchsafed by Tuesday next—the day given by you—may Mr. Gorges' letter be taken as the final answer? I would also like to mention that if the negotiations now going on prove abortive the struggle will be revived on a wider issue. Most important items have been omitted from my correspondence for the purpose of securing a settlement, and in order to show that we are not pining for a revival of the struggle.

I hope that General Smuts will appreciate the spirit in which this letter is written.

I am, &c.,

M. K. GANDEL

H. B. Shawe, Esq.,
Pretoria.

Telegram from Interior, to Gandhi, Phoenix.

9th September 1913.

Am directed by Minister reply your letter 24th August. As to first point regrets he can add nothing to statement already made in my letter 19 idem. Second point calls for no further action. As regards third point there is no difficulty, as any declaration made would be on entry into Union and not at Free State border. With regard to marriage question, cannot give any assurance that a marriage law will be introduced next Session on lines asked by you, which would, apparently, alter whole basis of existing law in South Africa. Your reference to an assurance given to you that plural wives would be admitted not understood, as I can find nothing in communications from this Department to that effect. Would you please elucidate? Regarding appeal cases at Durban, those you refer to are apparently still *sub judice*, and Minister would, consequently, not be able to interfere.

Telegram from Gandhi, Phoenix, to Interior, Pretoria.

10th September 1913.

Thanks for wire. Fear reply makes revival struggle imperative, notwithstanding every effort minimise points differences. Regarding polygamous marriages, refer Minister Association letter 5th July 1911, and Interior reply tenth same month.

Department of the Interior.

Pretoria,

19th September 1913.

Dear Mr. Gandhi,

I have to acknowledge the receipt of your telegram of the 10th instant in which you refer the Minister to a letter of the British Indian Association, dated the 5th June 1911, on the subject of the Supreme Court judgment in the matter of the introduction of the plural wives of Asiatics into the Transvaal, and the reply of the Chief Immigration Officer of the 10th idem, in which he stated that if any case involving hardship were brought to the notice of the Minister it would receive consideration.

Your telegram was in reply to portion of a message from me, in which I queried the statement contained on page 3 of your letter to me, dated the 24th August last, where you said:—"Regarding the plurality of wives, I have not asked for a general recognition of polygamy. All I contend is that, in continuation of the practice hitherto followed, existing plural wives of domiciled residents should be allowed to enter. And this was the assurance given in the letter quoted by me in my correspondence with you".

I was somewhat at a loss to understand what assurance you were referring to: hence my enquiry. Looking now at the past correspondence on the subject, I fear that the very wide interpretation you are seeking to apply to the Immigration Officer's letter of 10th August 1911, is not one which was ever contemplated, or one which would be accepted by the Minister.

You will, of course, understand that the paragraph of my telegram of the 9th instant, which read: "With regard to the marriage question, cannot give any assurance that a marriage law will be introduced next Session on lines asked by you, which would apparently alter whole basis of existing law in South Africa", referred to that portion of your request in which the question of the introduction of a law to validate Indian marriages already solemnized in South Africa was raised. The Minister has already intimated that the introduction of a Bill providing for the appointment of special marriage officers for denominations other than Mahomedan will be considered when an opportunity occurs; but your last letter appeared to make the issue considerably wider. If I am mistaken, or if the real point is obscured, will you please advise me?

Believe me, &c.,

E. H. L. GORGES.

M. K. Gandhi, Esq.,

Phoenix, Natal.

Phoenix, Natal,

22nd September 1913.

Dear Mr. Gorges,

I am much obliged to you for your letter of the 19th instant regarding the marriage question. I have not widened the original scope of my request. But I shall endeavour as clearly as possible to re-state the position.

It is submitted that authority should be taken from the Parliament during its next Session to legalise monogamous marriages already solemnized, or hereafter to be solemnized, by Indian priests among Indians belonging to non-Christian denominations. Legislation has become necessary only because the marriage clause in the new Act was hastily worded without considering the full position. Unless the relief now sought is granted soon, the status of Indian women married in South Africa is that of concubines, and their children not lawful heirs of their parents. Such is, as I take it, the effect of the Searle judgment, combined with the action of the Natal Master of the Supreme Court and the Gardiner judgment. I have asked for a promise of amelioration during the next Session, because I submit that the matter is one of urgency. With regard to polygamy, I have not asked for legal recognition, but the admission, under the powers vested in the Minister, of plural wives, without the Government in any way recognising the legal status. The admission is to be restricted only to plural wives already married to Indians who may be found unquestionably domiciled in the Union. This at once restricts the scope of the Government's generosity, and enables them to know now how many such wives will have to be admitted. I have already submitted a plan as to how this can be brought about. In my humble opinion, the letter of the 10th August 1911, referred to in your communication, bears the interpretation I have placed upon it. The British Indian Association raised the question of polygamy, and the above-mentioned letter containing the assurance was the reply. I suppose you know that plural wives have actually been admitted by the Immigration Officers, and that polygamous unions are even registered on the Transvaal registration certificates?

As doubts have arisen as to the meaning of the term monogamous marriage, I beg to record that the meaning that the community has placed upon it is that a marriage is monogamous if a man is married to only one woman, no matter under what religion and no matter whether such religion, under given circumstances, sanctions polygamy or not.

I observe that paragraph 2 of your letter seems to suggest that my reply to your last wire did not cover, though it might have the other points referred to therein. I purposely refrained from touching the other points, as I felt that no scope was left open for me to do so. But if General Smuts is still prepared to consider the other points, I shall be certainly prepared to make a further submission. I cannot help feeling that the unfortunate rupture has taken place on points very vital to the Indian community, but of little consequence to the Government or the dominant population of the Union.

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Pray always consider me to be one of the least desirous to obstruct the Government, and most anxious to serve it in so far as I can do so consistently with my duty to my countrymen.

I am, &c.,

M. K. GANDHI.

Department of the Interior, Pretoria,
27th September 1913.

Dear Mr. Gandhi,

I beg to acknowledge the receipt of your letter of the 22nd instant, in which, in response to my letter of the 19th idem, you re-state the views of the Asiatic community with regard to the question of the legalisation of marriages between members of that community in South Africa. I have submitted your communication to the Minister, who, after full consideration of the matter, requests me to say that it will not be possible for him to give any assurance that legislation on the lines indicated in Section 4 of my personal letter of the 19th ultimo to you will be introduced at the next Session of Parliament.

With regard to the other points to which you refer again briefly in the fourth paragraph of your letter, he desires me to say that he fears he can add nothing to what I have already said in reference thereto.

Believe me, &c.,

E. H. L. GORGES.

M. K. Gandhi, Esq.,
Phoenix, Natal.

P. O. Box 6522.

Johannesburg,
28th September 1913.

Dear Mr. Gorges,

I do not know that I am justified in writing this letter to you, but, as you have been personally solicitous about the non-revival of passive resistance, and as, in the course of my conversations with you, I have so often told you that I have nothing to withhold from the Government, I may as well inform you of what is now going on.

I wrote to you from Phoenix in reply to your last letter, and if you have not yet replied to my communication, but intend to do so, I would suggest your sending your reply to my Johannesburg address, as I shall be here for some time at least.

The campaign has started in earnest. As you know, sixteen passive resisters, including four women, are already serving three months' imprisonment with hard labour. The resisters here were awaiting my arrival, and the activity here will commence almost immediately.

I cannot help saying that the points on which the struggle has re-started are such that the Government might gracefully grant them to the community. But what I would like to impress upon the Government is the gravity of the step we are about to take. I know that it is fraught with danger. I know also that, once taken it may be difficult to control the spread of the movement beyond the limits one may set. I know also what responsibility lies on my shoulders in advising such a momentous step, but I feel that it is not possible for me to refrain from advising a step which I consider to be necessary, to be of educational value, and, in the end, to be valuable both to the Indian community and to the State. This step consists in actively, persistently, and continuously asking those who are liable to pay the 3*l.* 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 indenture, and who will, therefore be liable to pay the 3*l.* tax on completion of their indenture, to strike work until the tax is withdrawn. I feel that, in view of Lord Ampthill's declaration in the House of Lords, evidently with the approval of Mr. Gokhale, as to the definite promise made by the Government and repeated to Lord Gladstone, this advice to indentured Indians would be fully justified. That the tax has weighed most

heavily upon the men I know from personal experience ; that the men resent it bitterly I also know from personal knowledge. But they have submitted to it more or less with quiet resignation, and I am loth to disturb their minds by any step that I might take or advise. Can I not even now, whilst in the midst of the struggle, appeal to General Smuts and ask him to reconsider his decision on the points already submitted, and on the question of the 3*l.* tax, and, whether this letter is favourably considered or not, may I anticipate the assurance that it will in nowise be taken to be a threat ?

I am, &c.,

M. K. GANDHI.

E. H. L. Gorges, Esq.,

Office of the Interior, Pretoria.

Department of the Interior, Pretoria,

30th September 1913.

Dear Mr. Gandhi,

I beg to acknowledge the receipt of your letter of the 28th instant from Johannesburg, in which you inform me of your intentions in regard to the revival of passive resistance.

I have shown the letter to General Smuts.

On the 27th instant I sent you a letter to Phoenix, as I did not know you were in the Transvaal, in reply to your previous communication of the 22nd idem from that place. I take it that by now it will have been re-addressed to you, so I am not enclosing a copy.

Believe me, &c.,

E. H. L. GORGES.

M. K. Gandhi, Esq.,

P. O. Box 6522, Johannesburg.

Box 6522, Johannesburg,

2nd July 1913.

Dear Mr. Gorges,

With reference to the interview between us this morning, and in accordance with your wishes, I reduce to writing the points discussed between us :—

1. With reference to Indians born in South Africa and their right under the Cape Immigration Act to enter the Cape ; in my opinion under Section 5 of the new Act such men will not be able to enter the Cape by reason of the proviso of that section. If the Government intend to recognise their right to enter the Cape on proving their South African birth, as heretofore, they can do so without further legislation by regulations that would exempt them from the operation of Section 1, clause (a), of the Act. It may be observed that if such Indians can pass the simple education test of the Cape they can enter that province under paragraph A of sub-section 2 of clause 5. As you are aware most of the Colonial born Indians have passed through the Government Indian Schools and possess sufficient knowledge to undergo the Cape examination. It is also a well known fact that throughout the time that the Cape Act has been in force, hardly any South African born Indian not belonging to the Cape has endeavoured to migrate to that province ; the reason is that there is no scope for them there.

2. With reference to the indentured Indians who entered Natal under the amending legislation of 1895, as I have already told you the Natal Courts have held that these indentured men after they have finished their indentures are free to settle in Natal, and could not be treated as prohibited immigrants if they have not re-indentured themselves, and that after three years' residence without indenture these people acquire under the Natal Immigration Act full rights of domicile in the same manner as other Indians ; such Indians now appear to be affected by the definition of the term " domicile " in the present Act. I have already told you that we have obtained best legal opinion in Natal, which is to the effect that the definition does not cover such Indians and that their rights will not be affected by the new Act. However, I do not wish to take upon my shoulders the responsibility of advising my countrymen that they may be guided by that opinion alone. It is my sincere desire that an-

points which I at least can foresee should not be left open or not entirely understood. If the Government however give the same interpretation to the term "definition" that our Counsel does, an assurance to that effect settles this point. Let me state it as clearly as I can. We are not seeking to gain any new rights for indentured Indians, but we are anxious that their present rights should be left intact, and these according to the belief of the Indians are that if an indentured Indian entering into a contract of service after 1895, having become free at the end of his contract does not re-indenture, lives in the Province for three years, then goes to India and returns, he has a right to re-enter under the present Immigration Law of Natal by reason of his three years' free residence.

3. As to the Free State I have drawn your attention to the letter from General Smuts to the effect that, in his opinion, possibly the Free State declaration was not required. If that is the legal position according to the opinion of the legal advisers of the Government a statement to the effect that such is the position will meet the difficulty. I venture to suggest that the general declaration that will be required in terms of Section 19 of the new Act may have all the disabilities printed at the back thereof, including Section 28 of the new Act. Then there need be no repetition of a declaration when a British Indian is recognised as an immigrant for the Free State.

4. As to the marriage question, in view of the Searle judgment it is absolutely necessary to legalise Indian marriages celebrated or to be celebrated within the Union. This can be done by amending the new Act by removing the words "outside the Union" from the marriage clause of the Act, or by amending the Marriage Laws of the different Provinces, authorising the Government to appoint marriage officers for different denominations whose certificates as to the celebration of marriages according to the rites of the respective religions of the parties would be recognised as proper proof of marriage.

With reference to the marriage amendment in the new Act I understand that only monogamous marriages will be recognised, and I appreciate that nothing more can be done in law at present, but an assurance is necessary to the effect that the present practice of admitting one wife of an Indian immigrant so long as she is the only one in South Africa, irrespective of the number of wives he might have in India, will be continued.

Then there will remain the question of polygamous marriages. As I have told you there are not many such cases, but it is necessary to admit or re-admit plural wives of Indians who are already resident in South Africa. No new polygamous unions need be administratively recognised. A list can easily be prepared of those who have more than one wife either in the Union or outside it. My remarks are naturally applicable to the children of these unions also. I may point out that, in the July of 1911, General Smuts gave the assurance that special cases of polygamy would be considered by the Government.

I think that I have now exhausted all the points we discussed. If you think that there is anything omitted, or that I should supplement this letter, kindly let me know. It is clear to me that the solution of this difficulty is very easy because, with the exception of the marriage difficulty, all the points can be settled without an Act of Parliament.

If a settlement is arrived at it will be necessary to discuss the mode of admitting new entrants and the number for the various Provinces. May I suggest that, if the solution suggested by me is considered acceptable by General Smuts, you should telephone to me so that I can come over to Pretoria and a final letter setting forth the terms of the settlement may be given to me. I make the suggestion so that there may be no correspondence necessary in order to elucidate any doubt that might arise as to the language of any letter that might be given to me, and the question of new entrants could also then be discussed. I have told you how urgent the matter is, and may I rely upon your courtesy to let me have an early reply?

I am sending this letter per Mr. Pragji Desai, who will be at your disposal to carry any communications you may wish to send me, and, if you require me at the telephone, you have only to ring up 1635, and I shall be at the telephone from wherever I may be.

I am, &c.,
M. K. GANDHI

E. H. I. Gorges, Esq.,
Pretoria.

Telegram no. 292-C., dated the 29th December 1913.

From—His Excellency the Viceroy, Delhi,

To—His Majesty's Secretary of State for India, London.

Position in South Africa. We propose to depute Sir Benjamin Robertson, Chief Commissioner, Central Provinces, to watch case on behalf of Indians in connection with Committee appointed to enquire into recent disturbances in Natal. He will be accompanied by Mr. Slater, Under Secretary, Commerce and Industry Department, A. K. Sarkar, an Indian Superintendent in that Department, in receipt of pay of R600 per mensem and a shorthand writer who may also possibly be an Indian. We consider that in view of climate and high cost of living at Durban, Sir Benjamin should be allowed full pay as Chief Commissioner, Central Provinces, during the period of deputation and that he should in addition get two guineas per day for every day spent in South Africa to meet hotel expenses and obligation of hospitality which he will be expected to show. We similarly propose full pay for staff but in case of Slater daily allowance should be one guinea and in case of Sarkar and shorthand writer such allowance not exceeding one guinea as Sir Benjamin may think advisable after making acquaintance with local condition. Sir Benjamin leaves Bombay January 1st, per R. I. M. S. "Hardinge" arriving Durban about 11th January. On return voyage if by private vessel Sir Benjamin Robertson should be allowed reserved cabin and Messrs. Slater and Sarkar first class passages and shorthand-writer passage according to his status. We ask your Lordship's sanction to above proposals and that necessary steps may be taken with a view to admission of the two Indian officers by the Union Government. Sir Benjamin Robertson and Slater will be accompanied by one Indian servant each for whom we request permission to enter may be obtained.

Governor-General, South Africa, to Colonial Office.

(Confidential.)

Governor-General's Office, Cape Town,
25th May 1917.

Sir,

A Congress of the Indian Communities in the Cape Province has been held recently in Cape Town. I enclose Press reports of the proceedings.

2. There appears to have been some difference of opinion amongst Indians whether it would be expedient to hold a Congress at the present time. When the question was once settled, however, all sections of the Indians agreed to co-operate and the Congress was a most representative gathering.

3. Mr. Merriman, who opened the proceedings, gave the delegates much good advice, which they can hardly be said to have followed. He urged, in particular, moderation in putting forward grievances. Almost every subject discussed was brought up as a grievance, and although most of the speakers professed to adhere to the Smuts-Gandhi settlement of 1914, and represented each "grievance" as a breach of that agreement on the part of the Union Government, it is only necessary to glance through the resolutions adopted to see that the Congress went far beyond Mr. Gandhi's maximum. I need only mention the three demands, first, for full citizen rights for all Indians who have the qualifications required from Europeans; secondly, for the admission of all dependents of Indians resident in the Union; and thirdly, for the recognition of every marriage contracted according to Indian religious tenets.

4. It is not, of course, to be expected that the Indians of South Africa should see the world after three years' war as they saw it in 1914. The Smuts-Gandhi settlement could in no circumstances have been permanent but the war has taken years off its life. It seems as certain that the Indians of South Africa will after the war agitate for conditions more favourable to themselves as that the people of India will demand a greater share in the government of India. (You will observe that the Cape Town Congress passed a resolution in favour of Home Rule for India.) It is idle to speculate how a fresh Indian agitation in South Africa would be received by the white population. General Smuts said in Cape Town after his return from East Africa that he was sure all those South Africans who had served side by side with Indian troops would have a far wider sympathy with their Indian fellow subjects than they had before. This is no doubt true. But at present there is little sign of any change of spirit in the Union itself.

There is profound ignorance of Indian affairs and little sign of awakening interest. The decision to give India representation at Imperial Conferences has passed practically unnoticed. The report which I attach of an enquiry into the recent death of an Indian in Johannesburg reveals an attitude towards the individual Indian in South Africa which is probably still that of many Europeans of both races.

5. You will observe that some members of the Congress expressed anxiety over a report that Indians were to be deprived of the municipal franchise in Natal. The reference was, I gather, to a draft Municipal Ordinance to be introduced in the Natal Provincial Council. I have not yet seen the draft Ordinance, but I have received a petition on the subject and have asked Ministers for a full report.

I have, &c.,
Buxton,
Governor-General.

The Secretary of State,
Colonial Office.

TRANSVAAL GOLD LAWS.

The Governor-General to the Secretary of State.

(Received 11th November 1911.)

No. 817.

Governor-General's Office, Pretoria,
23rd October 1911.

Sir,

With reference to your telegram of the 6th September, regarding the position of British Indians under the Transvaal Townships Amendment Act of 1908, and the Transvaal Gold Law, I have the honour to transmit herewith a copy of a minute in which, after referring to the assurance contained in their Minute No. 714, of the 16th June, a copy of which accompanied my Despatch No. 503, of the 19th June, Ministers state that in view of a recent decision by the Court, there is now no restriction imposed by the Gold Law on the letting to Asiatics of stands laid out under the mining laws prior to 1908.

2. The decision mentioned by my Ministers is, I understand, that delivered in the appeal case of *Tamblin versus Rex* in the Transvaal Provincial Division of the Supreme Court of South Africa on the 28th August.

3. In this case the accused had been convicted of contravening Section 130 of Act No. 35 of 1908, and sentenced to a fine of 2*l.* or ten days' imprisonment. Prior to the coming into force of that Act, the Appellant had leased a mining stand to coloured persons, being Asiatics, and, the lease expiring in January 1909, he thereupon renewed the lease to the same coloured persons. The court held that the lessees were protected by Section 77 of the Act, which created an exception to Section 130. The appeal against the conviction was accordingly allowed.

4. I enclose a press report of this decision, which is one of considerable importance to the coloured community in the Transvaal.

I have, &c.,
Gladstone,
Governor-General.

Ministers to Governor-General.

(Minute 1252.)

21st October 1911.

In reply to His Excellency the Governor-General's Minute No. 15171, dated the 7th September, forwarding copy of a telegram from the Right Honourable the Secretary of State for the Colonies, dated the 6th *idem*, asking for a full statement as to the administration and application of the legislation of 1903 with regard to the position and rights of British Indians, Ministers have the honour to refer his Excellency to their Minute No. 714, dated the 16th June last.,

wherein the assurance was given that there is no intention of interfering with the business or rights of carrying on business which Indians have acquired and exercised prior to the enactment of Act 35|1908, and to state that the court has now amplified that assurance by construing Section 130 of that law in a narrower sense than Ministers thought possible, and that, in accordance with this recent decision there is now no restriction imposed by the Act mentioned on the letting to Asiatics of any stands which have been laid out under the Mining Laws prior to 1908.

LOUIS BOTHA.

“ Transvaal Leader,” 30th August 1911.

Supreme Court of South Africa.

Transvaal Provisional Division.

(Before the Judge-President, Mr. Justice Wessels, and

Mr. Justice Bristowe.)

28th August.

A. Tamblin v. Rex.

Appeal against a conviction by the A.E.M., Krugersdorp.

The accused was charged with contravening Section 130 of Act 35 of 1908, in that on or about May or June 1911, at or near Roodepoort, the accused did wrongfully and unlawfully, being the registered owner of mining stand No. 546 on the farm Roodepoort 43, under the provisions of Law 15 of 1898, or a prior law, or under the provisions of Section 77 of Act 35 of 1908, and by virtue thereof the holder of the full rights in the said stand did wrongfully and unlawfully transfer or sublet the whole or a portion of such rights to certain coloured persons trading as Khan Brothers, being Asiatics, and did permit such Asiatics, not being his *bonâ fide* servants, to reside on or occupy the ground held under such rights on the said stand 546, such mining stand not falling under the provisions of Section 24 of Act 35 of 1908.

The accused pleaded not guilty, but was found guilty and sentenced to 2l. fine or 10 days' imprisonment. He appealed on the grounds : (1) The occupation of the stand by the said Asiatics was not by the sanction of the accused, but by virtue of a prior lease ; (2) The Asiatics in question were exempted by Section 77 from the operation of Section 13 of the Act ; (4) the Asiatics were in occupation when the Act came into force ; and (5) Section 130 of the Act was *ultra vires* the Constitution.

Mr. Gregorowski appeared for the Appellant.

The Attorney-General (Mr. F. W. Beyers) appeared for the Crown.

The Judge-President, in giving judgment, after stating the facts, said that Mr. Gregorowski had argued two points—the first was that under Section 131 (3) coloured persons, who, at the time of the coming into operation of the Gold Law were lawfully in occupation of the premises affected, were excluded from the operation of Section 130, and Section 130 did not apply to them, and that Section 131 was also subject to that proviso. If the Court were irresistibly forced to that conclusion then the Court would give effect to it, but that would lead to an inconsistency. The Court should reconcile the sections of the Act as far as possible, and it was clear from Section 130 that white persons were prohibited from subletting to any coloured persons, and the prohibition seemed to be absolute as far as the owner of the rights was concerned. Section 131 (1) only applied to the Witwatersrand area, but Section 130 was much wider in its terms, and included all stands outside townships, and it seemed clear that by Section 131 (3) the Legislature intended making the residence in the Witwatersrand area by coloured persons at the time of the coming into operation of the Act lawful as far as these coloured persons themselves were concerned. But the Legislature had sufficiently provided for their ultimate exclusion by Section 130, which prevented the white owner of the rights renewing leases to coloured persons in existence at the time of the coming into operation of the Act. In the present case the lease expired in January 1909, and the Appellant renewed it to the Asiatics. That being so he cannot be heard to say that he did not permit the transfer of the lease, or sublet to them. That portion of the appeal must therefore fail. The second point argued by Mr. Gregorowski was that the Asiatics in question had acquired rights and obligations in connection with the stands upon which they had traded for a considerable number of years, and were protected by

Section 77 of the Act, which created an exception to Section 130. The Attorney-General had argued that Section 77 only referred to contractual rights and obligations, but his Lordship could not agree with that view. The section safeguarded all rights attaching to stands under any previous Gold Law. His Lordship then referred to the case of *Khotas v. Colonial Treasurer*, which decided that coloured persons could obtain and exercise rights to stands outside of townships. That being so, the Asiatics in question were protected by Section 77, and the appeal would be allowed on the second point.

Mr. Justice Wessels and Mr. Justice Bristowe concurred.

(Ruling No. 105.)

Re Coloured Persons on a Stand on Mining Ground.

1. A far-reaching judgment has lately been delivered by the Transvaal Supreme Court in the appeal case of *Tamblin versus Rex*.

2. The Court held that the first sentence of Section 77 of the Precious and Base Metals Act (to the effect that all rights and obligations attaching at the commencement of the Act to a stand outside a township and acquired under Law 15 of 1898, or a prior law, should remain in force) constitutes an exception to the very clear wording of Section 130, and that as standholders under Law 15 of 1898 could sub-let to coloured persons, they are protected to-day in that right by the words of Section 77.

3. The decision appears to have been made with scant consideration for the views expressed in *Kheta's case*. In that case it was evident that the Court considered that, while a man who had already leased a stand to a coloured person before the coming into force of the Precious and Base Metals Act was not acting in contravention of the Act in allowing the lease to continue, an extension of an existing lease was a fresh act and a contravention of Section 130.

4. In *Tamblin's case*, the Court now says that any holder of a stand, referred to in Section 77, may lease and sub-let to coloured persons whenever he likes. The decision practically strikes Section 130 off the Statute Book, and has surprised the Minister as much as the Department and probably everybody else, and from the point of view of our efforts to diminish the number of coloured persons holding stands in mining areas it is a calamity. It is as undesirable as distasteful, at all events, to advertise the remarkable result of *Tamblin's appeal*.

5. Mining Commissioners, however, may note that even if the white person may lease to the coloured person, the coloured person is still, under Section 131, forbidden to reside on the premises [unless he be one of the exceptions mentioned in Sub-section (3)].

6. The Minister will be glad if Mining Commissioners will not take any action in matters connected with Asiatics without referring to this Office, as the air surrounding these matters now has become even more electric than before.

No. 24 of 1912.

GOVERNMENT OF INDIA.

DEPARTMENT OF COMMERCE AND INDUSTRY.

EMIGRATION.

To

THE MOST HONOURABLE THE MARQUIS OF CREWE, K.G.,

His Majesty's Secretary of State for India.
Simla, the 11th April 1912.

MY LORD MARQUIS,

We have the honour to refer to the correspondence ending with the letter from the India Office on the subject of the Transvaal Gold Law, the Townships Amendment Act and the Draft Municipal Ordinance.

2. In their letter dated the 29th July 1911, the South Africa British Indian Committee protested against the Gold Law and the Townships Amendment Act

both on account of the principle involved of the exclusion of Indians from certain townships and mining districts and on account of the injury likely to result therefrom to business conducted by Indians. The letter of the Committee was referred to the Union Government and in paragraph 2 of our Despatch No. 2, dated the 11th January 1912, we informed your Lordship that we reserved our opinion until the views of the Colonial Government had been expressed on this subject. The papers which we have subsequently received contain the reply of the Union Government. The Acts in question have received the assent of His Majesty's Government, and although they appear to us to be opposed to the principles enunciated in the despatches,* we are precluded from making any protest against their operation, unless evidence is adduced of their unfair administration. We understand from the correspondence that vested interests are not being invaded. We do not desire therefore to make any representation in regard to these laws at present.

We have the honour to be,

My LORD MARQUIS,

Your Lordship's most obedient, humble Servants,

O'MOORE CREAGH.

R. W. CARLYLE.

R. H. CRADDOCK.

II.

ALIEN IMMIGRATION.

Alien Immigration.—One other question I have to mention, and only one ; Alien Immigration. that is, I wish to direct your attention to certain legislation which is in process of consideration, or which has been passed by some of the Colonies, in regard to the immigration of aliens, and particularly of Asiatics.

I have seen these Bills, and they differ in some respects one from the other, but there is no one of them, except perhaps the Bill which comes to us from Natal, to which we can look with satisfaction. I wish to say that Her Majesty's Government thoroughly appreciate the object and the needs of the Colonies in dealing with this matter. We quite sympathise with the determination of the white inhabitants of these Colonies which are in comparatively close proximity to millions and hundreds of millions of Asiatics that there shall not be an influx of people alien in civilization, alien in religion, alien in customs, whose influx, moreover, would most seriously interfere with the legitimate rights of the existing labour population. An immigration of that kind must, I quite understand, in the interest of the Colonies, be prevented at all hazards, and we shall not offer any opposition to the proposals intended with that object, but we ask you also to bear in mind the traditions of the Empire, which makes no distinction in favour of, or against race or colour ; and to exclude, by reason of their colour, or by reason of their race, all Her Majesty's Indian subjects, or even all Asiatics, would be an act so offensive to those peoples that it would be most painful, I am quite certain, to Her Majesty to have to sanction it. Consider what has been brought to your notice during your visit to this country. The United Kingdom owns as its brightest and greatest dependency that enormous Empire of India, with 300,000,000 of subjects, who are as loyal to the Crown as you are yourselves, and among them there are hundreds and thousands of men who are every whit as civilized as we are ourselves, who are, if that is anything better born in the sense that they have older traditions and older families, who are men of wealth, men of cultivation, men of distinguished valour, men who have brought whole armies and placed them at the service of the Queen, and have in times of great difficulty and trouble, such for instance as on the occasion of the Indian Mutiny, saved the Empire by their loyalty. I say, you, who have seen all this, cannot be willing to put upon those men a slight which I think is absolutely unnecessary for your purpose, and which would be calculated to provoke ill-feeling, discontent, irritation, and would be most unpalatable to the feelings not only of Her Majesty the Queen, but of all her people.

What I venture to think you have to deal with is the character of the immigration. It is not because a man is of a different colour from ourselves that he is necessarily an undesirable immigrant, but it is because he is dirty, or

*Despatch from the Government of India, no. 18, dated 14th May 1903, paragraphs 12—14, Lord Lytleton's despatch to the Governor of Transvaal, dated 20th July 1904.

he is immoral, or he is a pauper, or he has some other objection which can be defined in an Act of Parliament, and by which the exclusion can be managed with regard to all those whom you really desire to exclude. Well, gentlemen, this is a matter I am sure for friendly consultation between us. As I have said, the Colony of Natal has arrived at an arrangement which is absolutely satisfactory to them, I believe, and remember they have, if possible, an even greater interest than you, because they are closer to the immigration which has already begun there on a very large scale, and they have adopted legislation which they believe will give them all that they want, and to which the objection I have taken does not apply, which does not come in conflict with this sentiment which I am sure you share with us; and I hope, therefore, that during your visit it may be possible for us to arrange a form of words which will avoid hurting the feelings of any of Her Majesty's subjects, while at the same time it would amply protect the Australian Colonies against any invasion of the class to which they would justly object. Now, gentlemen, I really owe you a humble apology for having detained you so long, but I thought that it might be to your convenience that this recapitulation should be made of some things which might be treated in our discussions, and I have only now to thank you very much for your kindness in listening to me so patiently, and to express a hope that you will be good enough to give me generally and at this stage in our proceedings your ideas as to the course which we should take in regard to our future meetings."

 III.

No. 9.

The Marquess of Ripon, to Sir Hercules Robinson.

(Sent June 22, 1895.)

Telegraphic.

Inform President of South African Republic that Her Majesty's Government are prepared to accept award of arbitrator in relation to British Indians if course suggested by him at end of his reasons is adopted, *viz.*, that Volksraad of South African Republic should repeal resolution of 8th September 1893, and Government of South African Republic should withdraw Circular of December 1893, so as to allow courts of justice to give an unfettered interpretation of Law of 1895 as amended.

* * * * *

 Enclosure in no. 12.

From His Excellency the High Commissioner, Cape Town, to His Honour the State President, Pretoria.

Telegram.

June 24th.—I am directed by the Secretary of State to inform your Honour that Her Majesty's Government are prepared to accept the award of the arbitrator in respect to Indian Traders. They understand, however, that it is a condition of the award that the course suggested by the arbitrator at the end of his reasons be adopted, namely, that the Volksraad of the South African Republic should repeal the resolution of the 8th September, 1893, and the Government of the South African Republic should withdraw the Circular of December 1893, so as to allow the courts of justice to give an unfettered interpretation of the Law of 1885 as amended. The Secretary of State has received a telegram from the Indians stating that they have received notice to remove, and praying that action may be stayed. I therefore urge your Honour's Government to stay action until the Resolution and Circular of 1893 have been cancelled, and the law brought in harmony with the award, when a test case can be tried in the courts of the South African Republic.

 Enclosure 4 in no. 4 in Appendix A.

(No. 3, 1885.)

Law respecting Coolies, Arabs, and other Asiatics.

(Sanctioned and enacted by the Honourable Volksraad, Art. 255, dated the 1st June 1885.)

(Translation.)

Clause I.—This law is applicable to the persons belonging to one of the aboriginal races of Asia, among whom are comprehended the so-called Coolies, Arabs, Malays, and Mahometan subjects of the Turkish Empire.

Clause 2.—With respect to the persons included in Clause 1, the following provisions shall be of force —

- A. They cannot acquire the rights of citizenship of the South African Republic.
- B. They cannot be owners of landed property in the Republic ; This provision has no retrospective effect.
- C. Those who settle in the Republic for the purposes of trade, or otherwise, will have to be enrolled in a register to be specially kept for the purpose by the landdrosts of the respective districts, in accordance with a model to be prescribed by the Government.

At this registration, which will have to take place within eight days after arrival, there will have to be paid the sum of 25 (twenty-five) pounds sterling.

A breach of the provisions of section C. will be punishable with a fine of from 10 (ten) to 100 (one hundred) pounds sterling, for which shall be substituted in case of non-payment imprisonment for a term of from 14 days to six months.

This registration above referred to shall take place free of charge with respect to those who have settled in the Republic before the coming into operation of this law, provided that they report themselves to the landdrost, as regards Pretoria, within eight days, and in other districts within thirty days after the coming into operation of this law.

- D. The Government shall have the right to point out to them their proper streets, wards, and locations, where they shall reside.

This provision shall not be applicable to those who reside with the masters in whose service they are.

Clause 3.—This law comes into operation immediately after publication in the “ Staats Courant ” in accordance with Art. 12 of the “ Grondwet.”

(Sd.) S. J. P. KRUGER,

State President.

(Sd.) W. EDUARD BOK,

State Secretary.

Government Office, Pretoria,
10th June 1885.

Enclosure 1 in no. 6 in Appendix A.

State Secretary, Pretoria, to High Commissioner, Cape Town.
(Translation.)

Government Office, Pretoria,
September 6, 1886.

YOUR EXCELLENCY,

I have the honour to inform you that I have been instructed to acknowledge the receipt of your despatches, dated respectively 25th March and 28th July, dealing with the law relating to Coolies and Arabs, passed by the Volksraad of this Republic in the year 1885.

This Government has learnt therefrom with regret that the above-mentioned law embraced measures not entirely in accordance with the views of Her Majesty's Government, and that a misunderstanding seems to have taken place regarding the information under which Her Majesty's Government desisted from pressing for a strict interpretation of the Convention of London.

It appears to this Government that a misunderstanding also exists regarding the intention with which the projected law was framed.

It was for the sake of public health, having in view the experience acquired in other countries and colonies, and here also already, very desirable and necessary, to take sanitary measures regarding those Eastern strangers who established themselves here in increasing numbers after the conclusion of the Pretoria

Convention, and chose their dwelling places everywhere in the midst of the white population. It was to meet this necessity, and with the therewith coinciding wishes of the signators to the memorials already made known to Her Majesty's Government (the majority English subjects) that the projected law was passed.

This Government is not disinclined to let that object appear more clearly and to meet the wishes of Her Majesty's Government. They have therefore applied to the Volksraad, and have obtained the power to amend the Act. no. 3 of 1885, in the following respects :—

- 1st. That after the first part of Article 2 of Law No. 3, 1885, the following shall be added, "save only in the streets, wards, and locations which the Government shall, for sanitary purposes point out for habitation."
- 2nd. That the sum of 25£ named in the second part of Article 2c. of the law quoted shall be reduced to 3£.
- 3rd. That Article 2d. of the law quoted shall read as follows : "The Government shall have the power, for sanitary purposes, of showing them fixed streets, wards, and locations for habitation. This decree is not applicable to those who reside with their employers."

In accordance with these alterations, the Easterns mentioned in the law will not be prevented from acquiring fixed property in this Republic.

This Government intends that, with the introduction of these alterations, the difficulties will be removed which might hitherto have existed with Her Majesty's Government, and that their views may have been met.

It will be pleasing to this Government to receive a confirmation of this from your Excellency.

I have, &c.,
(Sd.) W. EDUARD BOX,
State Secretary.

No. 8 in Appendix A.

Government Notice of the South African Republic published in the "Staas Courant" of September 27, 1893.

No. 324, R.-11, 576|93.

Government Notice.

Art. 1353. The First Volksraad, having in view the memorials together with the two reports of the Commission now under consideration, resolves—

- "1. That Law no. 3, 1885, as afterwards modified be rigidly applied in such a manner that all Asiatics and other persons coming under the said law shall have to limit themselves, both in respect to residence as well as to trade, to the localities appointed; with the exception of those whose hire-contracts, concluded before the appointment of those localities, have not yet expired, and that the further aforesaid resolution of the First Volksraad shall likewise be rigidly carried out.
2. That every Chinaman shall be obliged to provide himself with a special pass upon which a stamp of 25£ shall be placed, and which must be signed and issued by the proper landdrost or mine commissioner, and must be renewed yearly.
3. That every Chinaman who shall fail to exhibit his pass when required to do so by a magistrate, officer of justice, or policeman, shall be arrested and punished by a fine not exceeding 25£, and in default of payment, by imprisonment for a period not exceeding one month, with or without hard labour, and, on repeating the offence, by expulsion from the Republic.

The regulations respecting Chinamen shall come into force on and after the 1st of January 1894.

The memorialists are to take note of this resolution."

C. VAN BOESCHOTEN,
Acting Secretary of State.

Government Office, Pretoria,
25th September 1893.

No. 9 in Appendix A.

Circular.

From the Attorney General, to Public Prosecutors, Landdrosts, &c.
(Translation.)

Pretoria, December 27, 1893.

SIR,

With reference to the instructions previously given hereupon, I have now the honour to inform you that the Government has sent me a copy of the Resolution of the Volksraad, Art. 1353, dated 8th September 1893, with the order to put same into execution.

The said Resolution of the Volksraad, runs as follows:—

"The First Volksraad, having regard to the memorials, together with the two reports of the Committee, now under consideration—

"Resolves:—1. That the Law, No. 3, 1885, as subsequently modified, shall be strictly enforced, that is to say, that all Asiatics and other persons coming within the provisions of the above-mentioned law, shall be bound to confine themselves, both as regards habitation and trade, to the location assigned to them, with the exception of those whose leases were entered into before the assigning of such localities and have not yet expired, and that further the above-mentioned decree of the First Volksraad shall in other respects also be rigidly enforced.

"2. That every Chinaman shall provide himself with a special pass, which must be stamped with a 25£ stamp, which said pass shall be signed and delivered over by the Landdrost or Mining Commissioner in question, and must be renewed annually.

"3. That every Chinaman failing to produce his pass on being required to do so by the justice of the peace, official of the courts, or police officer in question, shall be arrested and punished with a minimum fine of 25£, or, on failing to pay same, with imprisonment with or without hard labour, not to exceed one month, and on repetition of the offence with banishment from the Republic.

"The regulations concerning Chinamen shall come into effect from and after 1st January 1894."

You are aware that already during the first half of this year, instructions were given to the effect that coolies and other Asiatics should be allowed the opportunity for the space of three further months to carry on a free trade in the villages in order to be enabled to dispose of their goods, or remove the same in order to save themselves from eventual loss.

Since that time the above-mentioned Resolution of the Volksraad has been passed, and you are now charged to see that all Asiatics, as soon as possible, and at the very latest within a month after written notice thereof to that effect, are removed to the localities in question, with the exception of those whose leases had not expired before the assigning of such localities was made, and such written notice is to be given you punctually on the receipt of this circular, and with special reference therein to the above-mentioned previously given instruction.

With regard to the special pass of 25£ to be taken out by Chinamen, I have to inform you that the rules and regulations relating thereto have not yet been quite completed. They shall be sent to you as soon as possible. Till such time, however, the special passes shall not be issued by you, and the 25£ not demanded.

Moreover, I beg to inform you that all Asiatics, including Chinamen also, are subject to the registration fee of 3s in accordance with Law no. 3, 1885.

I have, &c.,
 (Sd.) DR. A. E. J. KAUSE,
 Attorney-General.

Sub-Enclosure in no. 5 in Appendix B.
 Lord Knutsford, to Sir Hercules Robinson.

Downing Street, April 1, 1889.

SIR,

With reference to the correspondence noted below, relating to the complaints of Indian traders of the operation of one of the laws of the South African Republic, I have the honour to transmit to you copies of correspondence with the India Office on the subject :—

Sir H. Robinson, to Colonial Office, 16th January 1889.

Colonial Office, to Sir H. Robinson, 9th February 1889.

Sir H. Robinson, to Colonial Office, 4th February 1889.

I request that you will take an early favourable opportunity of informing the President of the South African Republic that renewed complaints have been made as to the inconvenience and even hardship caused to some of Her Majesty's Indian subjects by the operation of the Law no. 3 of 1885 of the Republic.

Her Majesty's Government fully appreciate the difficulty which the President may feel in interfering with the execution of the law, but they trust that it may yet be found possible, in some way, to meet to a greater extent than at present the wishes of the Indian traders, and not to press the law in its full strictness against any reasonable objections which they may make.

I have, &c.,
 (Sd.) KNUTSFORD.

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**

with
APPENDICES



SIMLA
GOVERNMENT OF INDIA PRESS
1926

CONFIDENTIAL.**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.—HISTORICAL.****(1) Natal upto 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. In his evidence before the Select Committee on the Areas Reservation and Immigration and Registration (Further Provision) Bill, Mr. William Cox, a member of the Natal Provincial Council and a strong anti-Asiatic, sought to make out that the bulk of the colonists were opposed to the introduction of labour from India. Some may have been, but these were probably men who wanted the native to be compelled to work and feared that the Indian might prove more expensive. The majority were doubtless glad to be saved from the "sicken- ing despair" the phrase is quoted from the Natal Mercury of April 28th, 1859—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 on account of complaints of ill-treatment which returned emigrants brought back with them. The complaints were of "flogging, non-payment of wages, illegal and exorbitant stoppages on account of sickness, and general inhumanity towards the sick." The results of the stoppage of emigration are graphically described in contemporary documents. In a despatch No. 87, dated the 25th August 1873, Sir B. C. C. Pine, 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.....". Similar remarks occur in the report of Mr. Justice Wragg's Commission, which the Natal Government

appointed in the eighties to inquire into the question of emigration from India: "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. Renewal of emigration was allowed only after an authoritative inquiry into the charges of ill-treatment and the receipt of an assurance that the defects disclosed would be remedied, whether by legislation or administrative action. A Protector of Indian Immigrants was appointed in Natal. An Emigration Agent was appointed in India. The Natal Government undertook to make a grant from public revenues to the Indian Immigration Fund. In 1874 a law* was passed to facilitate the grant of land to Indian labourers in lieu of a free passage to India, if they wished to settle in the Colony after completing their terms of indenture.

3. 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 the Wragg Commission 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, probably the majority, 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 carried the following resolution:—

"That in the opinion of this Council it is desirable for the Government to enter into communication with the Indian Government with a view to obtaining its approval to such changes in the Indian Immigration Laws of Natal as will attain the following objects:—

"(a) that for the future Indians should continue in service during

*Repealed in 1891.

the whole of their residence in the Colony ;

- (b) that it is desirable for Indians, on the completion of their term of service, to return to India ;
- (c) that in the event of it being proved to be impracticable to make such changes in the laws, the Council is of opinion that the grant from revenue should be discontinued."

At that date there were 30,393 free Indians in Natal. They were, in the words of the Governor Sir Charles Hugh Mitchell "on the whole industrious and law abiding." Their competition, to quote the same authority, had "had the effect of considerably lowering the prices of garden produce, maize, etc." and proved of "direct benefit to the community generally". Four years earlier the Wragg Commission had spoken in similar terms of the Indian trader: "We are content" said the Commission "to place on record our strong opinion, based on much observation, that the presence of these Indians has been beneficial to the whole Colony". But the cry that Natal must be kept a "white man's colony" had become too insistent to be ignored any longer. The resolution was highly significant of coming events.

4. The last part of the resolution aimed at discontinuance of the annual subsidy of £10,000 which since 1874 the Natal Government had been paying towards the cost of introducing Indian labour. 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 Secretary of State for the Colonies himself definitely declined to assent to any law which would make the failure of an Indian to return to India on completion of his engagement as labourer a criminal offence.

5. 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.

Mr. Binns, M.L.A., who was responsible for the 1891 resolution and Mr. Mason protector of Immigrants were the delegates. They arrived in India early in 1894 and had conferences with the late Lord (then Sir Antony) Macdonnel, and Mr. Buck, Secretary to the Government of India in the Department of Revenue and Agriculture. They 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". 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". They were opposed to any proposal which would involve compulsion to return under penal laws, but thought that the object might be achieved by imposing a tax on residence. The Secretary of State for India, however, doubted whether the suggestion to impose a tax should be communicated to the Colonial Government, and Lord Ripon, then Secretary of State for the Colonies, decided to leave it to the Natal authorities to make it if they wished. 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. Act No. 37 of 1894 abolished the annual grant to the Indian Immigration Fund. An Act (No. 25* of 1894), which failed to obtain the Royal assent, was passed the same year to deprive the Indian of the parliamentary vote. In 1896 this object was achieved by excluding the Indian 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 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. "Nederi" and "Courland". They were in quarantine till the 11th January as they had come from a plague-infected port. To quote the language of the telegram from the Governor: "large and unanimous European demonstrations had been organised to prevent landing. Owners hesitated to bring the steamers 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." In February 1897 the Governor of Natal, Sir Walter Hely Hutchinson, forwarded to the Secretary of State for the Colonies a draft immigration bill of which the most important provision was that any person who failed "to write out and sign in the characters of any language of Europe an application in a prescribed form and did not possess available means of subsistence to the value of not less than £25 should be treated as a prohibited immigrant." "The main object of the law," according to the covering despatch "was to prevent Natal from being flooded by undesirable immigrants from India". Mr. Joseph Chamberlain, then Secretary of State for the Colonies, advised Her Majesty to assent to the bill

* With Secretary.

because he felt that "some form of legislation in restriction of Indian immigration was inevitable in Natal" and the law was not open to the objection that it "proscribed persons of a particular race or colour". The event roused some feeling in India. The British Indian Association of Calcutta and a representative public meeting in Madras protested against the measure. But it was placed on the statute book as Act 1st of 1897.

7. Another law to restrict Asiatic trading—Act 18th of 1897—was passed the same year. It—

- (i) provided for the appointment of licensing officers by Town Councils or Town Boards;
- (ii) invested them with full discretion to grant or refuse wholesale or retail licenses;
- (iii) made their decisions appealable only to the Town Council or Town Boards; and
- (iv) forbade the issue of a license to any person who could not fulfil the conditions of the Insolvency Law[†] 47 of 1887 as regards the keeping of proper books of account in the English language.

In respect of condition (iv), an assurance was obtained by the Secretary of State for India that it would be sufficient if books were maintained by a trained clerk or book keeper. Regarding the other provisions, the Colonial Government said that they would be worked in a liberal spirit. But 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 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 a despatch dated 12th July 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

* Repealed.

† Appendix II;

‡ With Secretary.

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," that "all free immigrants were treated as being more or less on the level of aborigines" and "subjected to special treatment which was degrading and injurious to their self-respect", and that the recent legislation was "inequitable" in its effect on "those who had been permitted to settle and acquire property in the country."

9: In May 1902 intimation was received from Sir Henry McCallum 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. The exact points which the Commissioners—Messrs C. B. de Gersigny and H. C. Shepstone—were required to discuss were—

- (i) relaxation of recruiting restrictions in India;
- (ii) possibility of obtaining greater facilities to recruit labour for the mines of Natal; and
- (iii) modification of terms of indenture so as to secure termination of engagement in India.

The deputation was sent because "applications for Indians for various purposes had increased from 2,000 to 15,000 owing to the scarcity of native labour." The anxiety to secure (iii) was the result of the experience that the existing law was a dead letter and the £3 tax ineffective to compel Indians to return to India.

10: The Government of India informed the Governor of Natal that they were not unduly disposed to meet the wishes of the Natal Government in the matter so long as

- (a) the labourer was not compelled to be indefinitely in a state of indenture; and
- (b) 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—

- (1) that the £3 tax may be removed after 10 years from the introduction of the new arrangement in regard to repatriation;

- (2) that Act No. 18* of 1897 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 may think necessary in order to secure to their subjects proper treatment in that colony." 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 Act I† of 1895. But in September 1904 they again asked for certain facilities to promote the flow of labour from India. These were the opening of the port of Karachi and the reduction of the statutory proportion of women who must emigrate from 40 % to 33 % of emigrant males. The Government of India declined to meet the wishes of the Natal Government until the treatment of Indian immigrants in that colony was "substantially modified." One Mr. Joseph Baynes, C.I.E., who visited India in 1905, suggested to the Natal Government that they should invite a deputation from India to visit the colony. He was evidently impressed by the strength of Indian feeling on the treatment of Indians in the colony, though he thought that the reports on which this was based were exaggerated. But nothing came of the suggestion.

11. Complaints of the maladministration of the Traders and General Dealer's Licensing Act became more prominent in 1907. It was discovered that in the smaller towns, applications for renewals of licenses were being refused. In some cases this refusal was based on the inability of the *owners* to maintain books in English—a condition which, according to the assurance given by its author, Mr. Escombe, the Act never contemplated. Even the Natal Times described such decisions as a "scandalous injustice." The Secretary of State for the Colonies asked the Governor for particulars, and renewed the suggestion made by Mr. Chamberlain in 1899 that the Act should be amended to permit appeals. The Governor agreed that the concession seemed necessary to protect existing license holders. But his ministers showed no disposition to make it. On the contrary, they expressed their unwillingness to drop a provision in the Natal Municipal Corporations Bill introduced in 1905, which sought to take away the municipal franchise from the Indian.

* Appendix II.

† With Secretary.

12. 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.

He anticipated that (a) would meet with considerable opposition from the employers of Indian labour on sugar plantations and from certain farmers in the uplands, but gave it as his opinion that "repatriation to India or removal to some colony which Great Britain governs but does not colonise, of the bulk of Indians outside of the tropics of South Africa is the only solution which would be completely satisfactory to the white races in the sub-continent." 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). His comment on these two bills deserves quotation in full :

"It would be a matter of the greatest difficulty to enumerate any conditions under which it would be possible to justify the interdiction of a particular class in the State from engaging in normal, legitimate and necessary occupations ; and it would be still harder to justify dispossessing them from their existing means of livelihood, however liberal might be the terms of compensation. But the imposition of such disabilities on a class which owes its presence in the Colony to the Colony's own necessities and whose numbers have been augmented by the voluntary action and indeed the settled policy of successive Colonial Governments, over a period of 15 years since the advent of self-government, would appear on its merits to constitute a hardship of a specially grievous character."

13. As Sir Mathew Nathan had anticipated, the bill to stop the flow of indentured labour from India was not proceeded with, and Government decided to appoint a Commission to go into the question of labour immigration. The demands of the gold mines for native labour damped the ardour of those who saw in this source an adequate substitute for labour from India. The two

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trade bills were passed by the Colonial Parliament, but disallowed by the Crown. The Natal ministers deleted from the Municipal Corporation Bill the provision to disfranchise Asiatics. But they adhered to their determination not to amend Act 18* of 1897 so as to allow appeals against the decision of Town Councils and Town Boards in the matter of trade licenses. The Government of India, therefore, decided to take action to prohibit emigration from 30th June 1909. In their despatch No. 104, dated 24th December 1908, they asked the Secretary of State for permission to introduce legislation which would give them power to suspend emigration to any country where conditions were not satisfactory. The Secretary of State gave the necessary sanction in September. Meanwhile, the Colonial Office informed the Secretary of State that the Natal Government would be quite willing to amend the Dealer's Licensing Act so as to allow appeals in the case of refusals to renew existing licenses. The offer was doubtless inspired by the recommendation of the Commission appointed in 1908 that the supply of Indian labour was still necessary. The Secretary of State accepted this compromise, though the Government of India wanted him to press for the right for new as well as old licenses. His decision was probably influenced by two considerations :—

- (i) that new licenses would be of less importance in future owing to restrictions on Indian immigration into and settlement in the colony ; and
- (ii) that after Union, the question of Indian disabilities would receive more sympathetic consideration at the hands of the federal Government.

The necessary amendment to give effect to the compromise accepted by the Secretary of State was made in the Act of 1897 before the end of the year.

14. 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*. The Government of India took this step because opposition in India to the system of indenture in general and public resentment in the country on the

*Appendix II.

†Appendix III.

position of Indians in Natal in particular rendered such a decision expedient. They also took it because their sustained and prolonged effort to induce the Colonial Government to redress legitimate Indian grievances had evoked little response, and their patience was exhausted.

(II).—*Transvaal.*

15. According to the evidence of an old resident of Pretoria, Mr. Bourke, there were no 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 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 two causes:—

- (1) the traditional prejudice of the Boer against all non-Europeans on account of their colour; and
- (2) trade jealousy which came less from the Boer than the trading classes, both British and foreign.

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 Mohamedan 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 retroactive 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 by the Landdrosts of the respective districts, according to a model to be prescribed by the Government."

*Appendix IV.

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.”

Before the law was passed, the State Secretary of the South African Republic wrote to Lord Derby, then Secretary of State for the Colonies, that it was proposed to legislate for the regulation of orientals who had settled in the republic, and enquired whether such legislation could be undertaken under Article XIV of the London Convention of 1884. This article provided that “all persons, other than natives, conforming themselves to the laws of the South African Republic—

“(a) will have full liberty, with their families, to enter, travel or reside in any part of the South African Republic ;

“(b) will be entitled to hire or possess houses, manufactories, warehouses, shops and premises ;

“(c) may carry on their commerce either in person, or by any agents whom they may think fit to employ”.

Sir Hercules Robinson, who was then Her Majesty's High Commissioner for South Africa, recommended that the article should be amended by the substitution for the word “natives” of the words “African natives or Indian or Chinese coolie immigrants”. This would safeguard the interests of the “Arab” trader; *i.e.*, the Indian of the superior class. Lord Derby concurred in the suggestion, but thought it preferable that the Republic should legislate “in the proposed sense”. In view, presumably, of the natural desire to obliterate all remnants of bitterness of the recent war, Her Majesty's Government were anxious not “to insist upon any such construction of the terms of the convention as would interfere with reasonable legislation in the desired direction”. Her Majesty's Government doubtless understood that the provisions of Act 3* of 1885, 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. The Republican Government, on the other hand, claimed to apply the law to all Asiatics

*Appendix IV.

indiscriminately. The Indian community complained, and Her Majesty's Government represented to the Government of the Republic that the sense in which the law was being interpreted was a violation, both of Lord Derby's assent to it and of the London Convention of 1884. The result was that the law was amended by Proclamation 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.

16. 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 their 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.

17. 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 1 the judges decided that the words in question could be said to cover a merchant’s place of business. Justices Morris and Esser constituted the majority. Justice Jorissen dissented and was in favour of allowing the plaintiffs’ claim to retain his place of business in the town of Pretoria. The High Commissioner, the late Lord (then Sir Alfred) Milner expressed the opinion that “the decision at which the majority of the court had arrived, and the reasons on which it was based, were calculated to exercise surprise in the minds of impartial lawyers.” But in view of the award of Mr. De Villiers, Her Majesty’s Government felt obliged to accept it, particularly as it was ascertained that no “sudden removal” of Indians to locations was contemplated.

18. But 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 from £3 to £25. But the Republican Government declined to consider these proposals unless they were extended to include all coloured persons, including those coming from the Cape. This would have involved a sacrifice of the existing rights of the class known as "Cape coloured" and the High Commissioner could not, in fairness to this section of Her Majesty's subjects, agree. The Secretary of State for the Colonies, Mr. Joseph Chamberlain, suggested that the Republican Government should favourably consider the case of at least the better class of Indians, if not of all, and the possibility of creating an Asiatic quarter within each town and pointed out that the sanitary considerations on which the law was based could not be applicable to all Indians without distinction. The outbreak of the Boer War put an end to these negotiations.

19. It will be observed that up to the outbreak of the war the British Government had steadily attempted to maintain, at first as a matter of right and, after the Bloemfontein award of 1895, by diplomatic persuasion, the interests of the British Indians resident in the Transvaal. They had substantially succeeded, for, in spite of laws and judgments, Indians had been allowed to trade where they liked, and to acquire 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. In some cases the trustee was the Mining Commissioner, a Government officer. This was done with the consent, and at the instigation, of Government.

20. The other supporter of the Indian was the poorer class of "burgher". After the judgment in Tayob Hadji's case, the Republican Government received petitions from this class not to drive the Indians from the towns where they afforded the petitioners

a more convenient and cheaper means of securing the necessaries of life than the European tradesmen.

Crown Colony Government.

21. When the Transvaal was annexed, some of the local officials adopted a policy of strict enforcement of the segregation law. Mr. Gillam, Supervisor of Indian Immigrants at Pretoria "commenced" operations "to remove all coolies into a location". He excepted persons of "known respectability" from the drive, but their number was only four. This was a sign of the new times. 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."

The hostility of the local European community of the Dutch element, on account of inherited colour prejudice, of the British and other elements, through trade rivalry—was evidently influencing the policy of the new administration. Mr. Joseph Chamberlain, who was then Secretary of State for the Colonies, replied on 6th August 1902 that it would be impossible to defend what would practically be a continuance of the system of the South African

*Appendix IV.

Republic, against which Her Majesty's Government had so strongly and repeatedly protested.

22. 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, they addressed a "luminous and forcible" despatch to the Secretary of State for India on the subject. 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. In a telegram dated the 2nd January 1904 they practically repeated the requests made in their despatch No. 18 of the preceding May. 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.

23. 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 Peace Preservation Ordinance* and Ordinance No. 5† of 1903 to enter 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 "section 2 (d) of Law 3 of 1885, as amended by the Volksraad Resolution of the 12th August 1886, does not apply to the business places, but only to the residence 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, which he had foreshadowed in a notice No. 356 of 1903, and which is 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."

The attitude of His Majesty's Government towards these proposals is lucidly explained in Mr. Lyttleton's despatch, dated the 20th July 1904. Mr. Lyttleton 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. This was a great concession to the sentiment of the local white population for the Republican Government had imposed no restriction on the entry of Asiatics beyond the payment of a £3 registration tax. This he thought would provide a check on the increase of Indian competition in trade. As regards Indians already resident in the colony, he was unwilling to sanction legislation which would take away rights for which the

* Appendix V.
 † Appendix VI.

British Government had contended in republican days, and which the decision of the Supreme Court in *Habib Motan's case* had secured to the Indian. He was willing "that every rational precaution to safeguard the health of the community and of British Indians themselves" should be taken; he was 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, he declined to countenance the suggestion that newcomers should be allowed to trade only in Asiatic bazaars. In regard to ownership of landed property, he 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". These decisions were not favourably received by European opinion in Natal. 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. Lord Selbourne supported the measure on the ground 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, Lord Elgin disallowed it on the ground that it did nothing "to ameliorate the position of Asiatics lawfully resident in the Transvaal".

24. 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 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". Act 2* of 1907, known as the Asiatic Law Amendment Act, was thus placed on the statute book. 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—penalties for unlawful entrants were far more severe and new entrants, even if they satisfied the education test, could not be admitted as they were not eligible to be registered under Act 2* of 1907,— 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

* Appendix VII.

† Appendix VIII.

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.*

25. 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.

26. 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 be-

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tween 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 which General Smuts had introduced in the Transvaal Parliament, and which passed through all its stages in one sitting, failed to satisfy the community, because it 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

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quarter". 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: Government also, presumably, relented on the question of repealing the Asiatic Law Amendment Act of 1907. When General Smuts visited England in 1909, he had discussions on the subject with Lord Crewe, Secretary of State for the Colonies. The General agreed to repeal Act 2* of 1907, and to admit six educated Asiatics each year on certificates of permanent right of residence. He was unable to accept the claim that Asiatics should be placed on a footing of equality with Europeans in respect of right of entry. Mr. Gandhi admitted that the concessions proposed were real, but was unwilling that the agitation should cease unless the claim for equality before the law was conceded, at least in theory. Lord Crewe urged action on the lines agreed to by General Smuts, particularly as he felt that it would be advantageous to settle the question before Union. The Transvaal Government accepted the suggestion, but felt themselves unable to promise that action would be taken before Union, as it was unknown whether the provincial parliament would meet earlier. Finally, a provisional settlement was arrived at which is set forth in three letters which passed between General Smuts and Mr. Gandhi in April 1911:—

DEPARTMENT OF THE INTERIOR,

21st April, 1911.

DEAR MR. GANDHI,

I am in receipt of your letters of the 19th and 20th April, in regard to the draft Immigration Bill, and have submitted them both to the Minister.

General Smuts has asked me to say to you that he regrets that, in view of the probable prorogation of Parliament early next week, it will not be possible for the Government to proceed with immigration legislation in any form this session.

The Government are keenly desirous of arriving at a solution of this vexed question, and in the recess they will go into the matter again and see what can be done to secure a settlement.

In the meantime, General Smuts feels that the passive resistance movement,

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which has caused and still continues to cause considerable suffering, might now well be brought to a close. Its continuance only tends unnecessarily to complicate the situation, and when the Government are endeavouring to fix a satisfactory solution of the question of Indian immigration the Indian community should not embarrass matters by maintaining their campaign.

* * * * *

Yours sincerely,

ERNEST F. C. LANE,

Private Secretary to the Minister of the Interior.

7, BUITENCINGLE, CAPE TOWN,
22nd April 1911.

DEAR MR. LANE,

I beg to acknowledge your letter of the 21st instant. I regret that General Smuts finds it impossible to settle the Transvaal Asiatic trouble during this session. I am, however, grateful for the statement contained in your letter that the matter will engage General Smuts's attention during the recess, with a view to bringing about a settlement during the next session.

I share General Smuts's anxiety that passive resistance may now be brought to a close. May I then suggest the following for his consideration, so that the suspicion that is sure to be aroused among my countrymen owing to a postponement of the solution may be allayed? An assurance should be given that :—

- (a) Legislation will be passed next session repealing Act 2* of 1907, subject to the reservation of the rights of minor children in terms of the Chotabhai Judgment, and restoring legal equality as to the immigration of Asiatics into the Transvaal and maintaining existing rights. If the racial bar in the present Immigration Act of the Transvaal is removed by a general Bill, such Bill should naturally be free from a racial bar throughout the Union.
- (b) Passive resisters, who but for their resistance would have been entitled to registration, should now be so entitled, notwithstanding anything to the contrary in Act 36 of 1908.
- (c) Educated passive resisters who are now in the Transvaal, but who are not registrable under the Asiatic Act, should be allowed to remain

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in the Transvaal as educated immigrants in anticipation of the forthcoming legislation, their number not to exceed six. They may have special certificates in order to enable them to move to and fro without hindrance.

If the above assurance be given I do not anticipate any difficulty in persuading my countrymen to suspend passive resistance.

I trust General Smuts will recognise that in asking for the above assurance I am simply requesting ratification of what he has often publicly stated.

* * * * *
* * * * *

I need hardly reiterate the statement that whatever befalls the present passive resistance movement, the Indian community will continue to worry him about the many matters in the different provinces which have from time to time formed the subject matter of memorials, etc.

Lastly, I venture to repeat what I have said so often, that those who have the privilege of guiding the Indian community in South Africa have always been anxious, and will continue, to help the authorities and to study and appreciate the European standpoint consistently with that community's self-respect and interests.

I am,

Yours sincerely,

M. K. GANDHI.

Ernest F. C. Lane, Esq.,
Cape Town.

DEPARTMENT OF THE INTERIOR.

22nd April 1911.

DEAR MR. GANDHI,

I am in receipt of your letter of the 22nd April, which was written in reply to my letter of the 21st instant.

I have shown your letter to General Smuts, and he has asked me to say that he quite appreciates the spirit in which you write, and he has every hope that by approaching this question in a conciliatory way a temporary solution may be arrived at which will leave all concerned free to devote their energies to securing a more lasting one.

I am authorised to say that the Minister intends introducing legislation during the next session of Parliament to repeal Act 2* of 1907, subject to the reservation of the rights of minor children. In devising such legislation the minister intends to introduce

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provisions giving legal equality for all immigrants, with, however, differential treatment of an administrative as distinct from a statutory character.

In regard to the second point you raised, I am to say that in such proposed legislation power will be taken to register all passive resisters who, but for their present resistance, would have been entitled to register had they done so at the proper time, nothing in Act No. 36* of 1908 withstanding.

Power will also be taken to regularise the issue at the present time of temporary certificates, which the Minister is prepared to grant to the educated passive resisters who are now in the Transvaal, but who are not registrable under the existing Asiatic Acts. Their number is, I understand, not more than five or six at the outside. These certificates would entitle the holders to remain in the Transvaal in anticipation of the forthcoming legislation.

In conclusion, I am to say that if an assurance is given by you to the effect that the community will suspend their passive resistance movement, the Minister will ask His Excellency the Governor-General to consider favourably the question of releasing passive resistance prisoners who are now undergoing sentence for contravening the existing Asiatic legislation.

I hope that, after consultation with the Indian community, you will be able to inform General Smuts on his return to Pretoria of the cessation of the passive resistance, so that he may be able to assure His Majesty's Government that the leaders of the Indian community intend to co-operate with the Government with a view to arriving at a definite solution of this question.

Believe me,

Yours sincerely,

ERNEST F. C. LANE,

*Private Secretary to Minister
of the Interior.*

27. This settlement was accepted by a mass meeting of Indians at Johannesburg in the following terms:—

“That the proposal and acceptance embodied in the correspondence between General Smuts and Mr. Gandhi..... be accepted as a provisional settlement conditionally upon the pledges embodied in General Smuts's letter of 22nd April 1911 being carried into effect.”

Thus closed the first stage in the movement.

IV—Passive Resistance: 2nd Stage.

28. In a telegram, dated the 26th September 1910 the Secretary of State informed the Government of India that the Colonial Office proposed to address a despatch to the Governor General of the Union of South Africa suggesting legislation for the general control of immigration into the Union with due regard to the agreement already reached with Indian leaders in the Transvaal: viz,—

- (a) that the Transvaal Asiatic Law Amendment Act No. 2* of 1907 should be repealed;
- (b) that the text of the new law should contain no differential bar to the entrance of Asiatics; and
- (c) that the administration of the Act in respect of Indians may be differentiated by limiting the entry of educated Indians to six every year. The Colonial Office evidently hoped that once the immigration question was regulated to the satisfaction of the European population, the other disabilities of the resident Indian community will be dealt with in a sympathetic spirit.

The Government of India pointed out that the application of (c) to the whole Union would curtail existing rights regarding entry into Natal and the Cape Province, and thus widen the extent, rather than diminish the intensity, of Indian resentment. Nevertheless a despatch on these lines was addressed by Lord Crewe to Lord Gladstone on 7th October 1910. The Australian precedent was commended to the ministers as a suitable model for securing exclusion of Asiatics. In January 1911 the Governor General of South Africa informed the Colonial Office that a Bill entitled "the Immigrants Regulation Act, 1911" had been prepared. The Bill repealed the Transvaal Act No. 2* of 1907 and followed the Australian precedent in prescribing a dictation test as a condition of entry. But the ministers explained that not more than 12 educated Indians would be permitted to enter the Union each year. In practice the dictation test would be differentially applied so as "effectually to check the entry of coloured persons". They expressed the opinion that "a fair and reasonable administration of the existing law would have the desired effect of remedying specific grievances, as far as possible, and securing considerate treatment to all in the enjoyment of vested rights". They

*Appendix VII.

felt unable to ignore provincial boundaries in the administration of the Immigration Acts. The Secretary of State for the Colonies, at the instance of the Secretary of State for India, drew attention to the fact that the Bill—

- (1) seemed to jeopardise the rights of entry, after temporary absence, of Indians lawfully resident in the Union ; and
- (2) unduly limited the number of educated entrants.

In Natal alone during 1909 thirty Indians had satisfied the educational test and been admitted. The Union Government gave an assurance that the position of Indians lawfully resident in any province would not be affected. But they repeated that the proposed education test would be administered differentially so far as Indians were concerned throughout the Union. The Secretary of State for India was not satisfied that more could not be reasonably asked for, but 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, and passed its second reading on March 13, but after much criticism—on the ground, *inter alia*, that it left a loophole for Asiatics to enter the Orange Free State. The ministers contended that the educated Indians whom it was proposed to allow to come in each year should have right of entry into, and residence in, the Orange Free State also. The Free State members in the Assembly were firm that such concession should not be made. Mr. Gandhi informed General Smuts that failing such concessions, passive resistance in the Transvaal must continue. The Bill also did not exempt such Indians from the obligation to register in the Transvaal. It was, therefore, decided to drop it.

29. 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 ever with the administration of the licensing law, 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.

30. The Immigration Bill that was re-introduced 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. *Eo nomine* exclusion of white labourers from the category of prohibited immigrants was open to the criticism that it explicitly differentiated against non-whites. General Smuts assured the Governor General that the new measure did not prevent the entry into the Free State of educated Indians who might be allowed into the Union after it became law. He anticipated no opposition from Gandhi, either on this point or in regard to the exception of "white" labourers from immigration restrictions. 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.

31. 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 best summarised from a contemporary document :—

- (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 ; and
- (3) the judgment of Mr. Justice Searle in the case *Esop vs. Minister of the Interior*, 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.

The correspondent on whose letter the summary is based said that the defect of the Bill in respect of the admission of wives would alone, if the measure became law, revive passive resistance. Subsequent events proved that his prophecy was partially correct. 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 on its second and most serious stage.

32. 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 the passing of the Indian Immigration Law Amendment Act, 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 proviso to section 5 of the Act deprived Indians born in South Africa of the free right to enter the Cape Province which they had hitherto enjoyed under the Immigration Act 30* of 1906; and
- (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 him 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 XXXIII 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

* Repealed by the Union Act 22 of 1913.

been promised by Government to Mr. Gokhale who visited South Africa in 1912. The discontent at Government's failure to carry out the alleged promise, and the prospect that success in the agitation might mean withdrawal of the tax, therefore, secured to Mr. Gandhi the support of the most numerous class of Indians. 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 "to the number in all of over 2,200", 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. As practically no Indians gave evidence before the Solomon Commission, which was later on appointed by the Union Government to inquire into the cause and course of these disturbances, authentic details of the various incidents cannot be given. Nor is such a narrative necessary. 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 afar 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

* With Secretary.

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.”

On the 19th November His Excellency had telegraphed to the Secretary of State “that a thorough and impartial inquiry into the facts should be made immediately.” In December, a Commission, with Sir William Solomon, a Judge of the Supreme Court, as Chairman, was appointed by the Union Government—

- (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".

The Government of India 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. 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* Bill to give effect to these recommendations. Agreement on other points which had played an important part in the passive resistance movement is set forth in two letters which passed between Mr. Gandhi and Mr. Gorges, Secretary of the Interior :—

MR. GORGES TO MR. GANDHI.

Department of the Interior,
Cape Town, Cape of Good Hope,
30th June 1914.

Dear Mr. Gandhi,

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 specifically 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

*Union Act 22 of 1914, with Secretary.

†Appendix L

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 declarations 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

*Appendix X.

†With Secretary.

‡ Ditto.

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.

I am, etc.,

(Sd.) E. H. L. GORGES.

M. K. Gandhi, Esq.,
Cape Town.

MR. GANDHI. TO MR. GORGES.

7, BUTENCINGEL,

CAPE TOWN.

30th June 1914.

Dear Mr. Gorges.

I beg to acknowledge receipt of your letter of even date herewith setting forth the substance of the interview that General

*With Secretary.

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

* Appendix IV.

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.

I am, etc.,

(Sd.) M. K. GANDHI.

On 20th July 1914 Mr. Gandhi left South Africa, and the passive resistance movement came to an end.

The exact significance and scope of the terms (1) "existing laws", and (2) "vested rights", has been the subject of controversy for some time. From the South African side, it has been argued that by "existing laws" were meant only the "Gold laws" of the Transvaal, and that "vested rights" referred to rights which Indians had already acquired in the Transvaal in contravention or in spite of these laws. The Asiatic Inquiry Commission of 1919-20 appears to have lent the weight of its authority to this interpretation. Indians contend that this interpretation is too narrow: that "existing laws" referred to all laws throughout the Union, particularly those of which the harsh administration had been the subject of complaint for years and had led to the passive resistance movement; while the phrase "vested rights" covered not only rights actually acquired but rights which Indians could, in practice, acquire. During the discussions, in the press and on the platform, on the Areas Reservation Bill much stress was laid, especially by the advocates of the Indian cause, on this wider interpretation of the Smuts-Gandhi agreement; and the Bill itself was described as a breach of that agreement. This latter charge roused much feeling among the white population, whose representatives, especially those belonging to the party of General Smuts, hotly resented the charge. No one likes to be accused of bad faith; least of all the South African who is more than ordinarily sensitive on the point. From the tactical point of view, therefore, nothing but harm may come of making the wider interpretation claimed by the Indian side the basis of Indian claims for just treatment. The so-called "agreement" has no legal force; and if an appeal is to be made to the moral sense of the parties, the equity or otherwise of a particular measure can provide ample material for appeal and argument. In any case, it cannot be contended that the "agreement," whatever its scope, imposed any legal limitation on the power of the Union Parliament to restrict or reduce by legislation the rights which it conceded

to the resident Indian population of South Africa. But in the statement which he placed before Sir John Lange's Commission, Sir Benjamin Robertson said that the Government of India interpreted the undertaking of the Union Government in regard to the administration of existing laws given in Mr. Gorges' letter of 30th June "as implying that no new law would be passed imposing fresh restrictions on Indians". The justification, in equity, for their view is clearly explained in the statement: "An undertaking to administer existing laws in a just manner appears... to be meaningless, if the rights which Indians are entitled to exercise under those laws can be restricted at will by fresh legislation." The weight of circumstantial and documentary evidence is also against the contention that "existing laws" only referred to the Transvaal Gold laws:—

- (1) The phrase "existing laws" was not judicially interpreted by the Solomon Commission in 1914, for the point was not referred to them. But in speaking of the "fifth and last point" on which Mr. Gandhi asked for relief in a letter to the Secretary for the Interior dated 21st January 1914, viz., "an assurance that existing laws specially affecting Indians will be administered justly and with due regard to vested rights," the Commission state that the representations which had been made to them on this subject dealt mainly with the Immigration and Licensing Acts...". The Commission, therefore, did not take the view that only the "Gold Laws" were covered by this phrase.
- (2) In reporting the settlement to the Secretary of State for the Colonies Lord Gladstone, in a despatch dated the 4th July 1914, said: "all Mr. Gandhi's stipulations which were recorded in my secret despatch of the 30th May have been met, *although in regard to the preservation of vested rights and the administration of existing laws, and particularly of the Transvaal Gold Law, the general assurance given towards the end of Mr. Gorges' letter (of 30th June) is less precise and categorical than Mr. Gandhi desired.*" Whatever the reasons for this vagueness in the assurance, it is difficult to argue in face of this passage that the phrase "existing laws" was

understood by the authorities concerned to refer only to the Transvaal Gold Law.

- (3) In a letter which he sent just before his departure from South Africa to Reuter's for publication Mr. Gandhi wrote: "But I have assured them (Indians) that the present settlement does not preclude them from agitation... for the removal of other disabilities which the community will still suffer from under the Gold Law,* Townships Act,* and Law 3† of 1885 of the Transvaal and the Trade Licenses Laws of Natal and the Cape. The promise made by General Smuts to administer the law justly with due regard to vested rights gives the community breathing time, but these laws are in themselves defective and can be, as they have been, turned into engines of oppression and instruments by indirect means to drive the resident Indian population from South Africa." The passage can only leave one impression that Mr. Gandhi did not understand the minister's assurance to cover only the Gold Law of the Transvaal.

The circumstantial evidence can be summed up in few words. Mr. Gandhi could not have described the settlement of 1914 as the "Magna Charta of Indian liberty in South Africa" if he had understood that the assurance to administer existing laws justly and with due regard to vested rights covered only a special law of one province. Nor would the Indian community have been satisfied, after all it had suffered, with so limited a guarantee.

* With Secretary.

† Appendix IV.

II.—THE PRESENT POSITION.

The brief historical survey attempted in the preceding section shows that prejudice against the Indian always existed. In Natal it grew as the Indian population, especially the "free" element, increased, and Indian competition in trade developed. It manifested itself in numerous measures which sought to restrict Indian immigration, limit Indian political and municipal rights, and curtail their trading activity by the refusal of new trading licenses. In the Transvaal anti-Indian bias, in so far as it was based on colour, was strong from the beginning, perhaps more so than in Natal. The Indian was excluded from burgher rights; he was, according to the strict letter of the law, not allowed to own fixed property; he was supposed to reside and trade only inside locations set apart for him; he was also subject to economically unimportant but sentimentally galling humiliations when travelling by trams or trains, going about at night after a certain hour in the bigger towns, using foot paths. But during the republican regime he was protected from the rigour of the law by the pressure of His Majesty's Government. When the country was annexed to the British Empire, his position in some respects became worse. Fresh immigration of Indians was first practically stopped. Trading outside locations in certain areas was more effectively restricted. This new severity of administration and policy was attributed to the fear of the white population that the Indian would otherwise swamp the European and make South Africa "black". The settlement of 1914 was accepted by Indians in South Africa in the hope that once the white population was rid of the fear of unrestricted immigration from India, existing disabilities would slowly disappear. Speaking in the Imperial War Conference in 1917, General Smuts said:—

"There is still a difference of opinion on administrative matters of detail, some of which are referred to in the memorandum * which is before us, but I feel sure, and I have always felt sure, 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. That is the position in which we are now that the fear which formerly obsessed the settlers there has been removed; the great principle of

* (This was prepared by Lord Simba.)

restricting immigration for which they have contended is on our Statute book with the consent of the Indian population in South Africa and the Indian authorities in India, and, that being so, I think that the door is open now for a peaceful and statesmanlike solution of all the minor administrative troubles which occurred and will occur from time to time."

In 1918 General Smuts' Finance Minister, Mr. Burton, practically repeated the assurance. His words will bear reproduction:—

"As far as we are concerned, it is only fair to say—and it is the truth—that we have found that the Indians in our midst in South Africa, who form in some parts a very substantial portion of the population, are good, law-abiding, quiet citizens, and it is our duty to see, as he (Lord Sinha) himself expressed it, that they are treated as human beings, with feelings, like our own, and in a proper manner."

During the war agitation was temporarily stilled, because of India's response to the call of the Empire, and the absorption of all its component parts in the effort to achieve complete victory. With the return of peace, old animosities revived. Act 37* of 1919, which finally prohibited the acquisition by Indians in future of fixed property in the Transvaal, whether individually or corporately in the form of companies, or directly or through nominal trustees, was the first fruit of this re-born agitation. In Natal a series of measures, aimed against the Indian, have during the last few years been placed on the provincial statute book. The Durban Boroughs Land Alienation Ordinance (No. 14† of 1922) and the Natal Borough and Township Lands Ordinance (No. 5‡ of 1923) have limited his hitherto unlimited right to acquire landed property anywhere in Natal. These two laws empower the local bodies concerned to subject the sale or lease of land belonging to them to racial restrictions. The Natal Rural Dealer's Licensing Ordinance (No. 4§ of 1923) has made it more difficult for Indians to obtain licenses to trade in rural areas. For the magistrate, boards have been substituted as licensing authorities. Indians are not represented on these boards, their opponents are. Greater severity in the granting of licenses to them is the inevitable sequel. The Natal Boroughs Ordinance (No. 19|| of 1924) and the Natal Township Franchise

* With Secretary.

† Pages 124—128 of Yellow Compilation supplied to Delegation separately.

‡ Appendix XI.

§ Pages 120—124 of Yellow Compilation.

Ordinance (No. 3* of 1925) have rendered Indians ineligible for the borough or township franchise in future. The Transvaal General Dealer's Ordinance† of 1925 has, by rendering the acquisition of new licenses in future conditional on the issue of a certificate of fitness by local bodies, placed them at the mercy of those who have never shown them any partiality.

2. The passing of new restrictive laws has in no way softened the severity of the old. The Natal licensing laws are administered in conformity with the letter and the spirit of the following statement which Colonel Molyneux, Licensing Officer of Durban, made before the Asiatic Enquiry Commission (1919-20):—"We do what we can to restrict further Indian licenses. A European license is granted as a matter of course; whereas the Indian license is refused as a matter of course, if it is a new one." Durban and other municipalities have also used their powers in this respect to confine Indians to special areas for purposes of trade. In the Transvaal Indians cannot get licenses to carry on trade "on any of the stands outside townships granted after the Gold Law of 1908 came into force," or on "stands inside townships whether now held under the Gold Law title or under a title converted into freehold under the Townships Act No. 3‡ of 1908." Elsewhere, they are eligible for such licenses. But their position has been rendered precarious by the new Transvaal General Dealer's (Control) Ordinance† to which reference has already been made. The municipality of Balfour exercised its new powers to refuse licences wholesale to Asiatics. In the Cape Province certain municipalities follow a restrictive policy, especially in areas which are regarded as exclusively European. Administrative regulations and social custom also impose certain disabilities on him. To quote from the statement laid by the Paddison deputation before the Select Committee on the Areas Reservation Bill§:—

"Except on suburban lines in the Cape Province, Indians may not travel by rail in compartments other than those specially reserved for non-Europeans; in some places they may use only reserved seats on tramcars, and only reserved taxicabs and rickshaws. Except in the Cape Province, they may, also, not transact the normal business in post and telegraph offices at counters other than those specially set apart for non-Europeans. In the law courts in Durban there was a notice

* Pages 153—155 of Yellow Compilation.

† Vide pages 195—198 of Yellow Compilation.

‡ With Secretary.

§ Appendix XII.

prominently exhibited in the Registrar's Office requesting lawyers to send only Europeans to take out processes of the Court, as non-Europeans would not be attended to. Popular prejudice is responsible for their exclusion from hotels and places of amusement like theatres and cinemas."

3. Nevertheless "white" opinion is not satisfied. 30 years ago, speaking on the Indian Immigration Law Amendment Bill the Rt. Hon. Harry Escombe said :—

"Unless an arrestation was put upon the introduction of immigrants from India, the whole of the social polity of this country would be disturbed.....Having regard to the character of the people who were coming into the country deck passengers as a rule, who paid only £2 or so for their passage, and who were, therefore, seemingly in no very flourishing condition of life it was easy for the whole of the population of this country to be, as it were, submerged by the new arrivals, entailing a competition which was simply impossible as far as Europeans were concerned, whether in trade or agriculture, on account of the different habits of life."

The object of the Union Immigration Regulation Act* (22 of 1913) was similar. The new ideal is expressed in the words of the present Minister of the Interior, the Honourable Dr. D. F. Malan :—

"I must say that the Bill (the Areas Reservation Bill) frankly starts from the general supposition that the Indian, as a race in this country, is an alien element in the population, and that no solution of this question will be acceptable to the country unless it results in a very considerable reduction of the Indian population in this country."

The change is the result of organised agitation, which has often been heedless of the truth. The South Africans' League, which is most powerful in the Transvaal, and "Young South Africa," which professes to have a strong following in Natal, are organisations whose avowed purpose it is to squeeze out the Indian. The Labour party has joined the crusade on the ground that the Indian's lower standard of living makes him a menace to the white workman. Fear of and antipathy towards the Indian are deliberately and assiduously fostered

* With Secretary.

by exaggerated statements as to the illicit influx of Indians, and their progressive penetration into the sphere of industry and trade. In his evidence before the Lange Commission the Chairman of the Ventersdorp Municipality said :—“ The Immigration officers do not stop them from coming in. I hear that they (Indians) are pouring over the border.” Even the late Secretary for the Interior, Mr. A. G. G. Pienaar seemed to share this opinion. When asked by the Chairman of the Select Committee on the Areas Reservation Bill whether he thought a large number of Indians were still coming into the country, he said :—“ I am sure they do. We have recently carried out several raids in Cape Town alone, and have now been able to send away 18 of the men we have arrested. That is a result of three raids. They came in through the Transvaal and Delagoa Bay. They came right down to Cape Town.” The present Minister of the Interior himself seemed to consider it a serious possibility that 56,000 women may, under the existing immigration laws of the Union, be introduced from India to provide brides for the 56,000 Asiatic males—be it noted of all ages from infants to old men—who were returned as unmarried at the last census. The tendency, therefore, even in responsible quarters is to see in the concessions made in 1914 in respect of the entry of wives and minor children, of domiciled Indians a danger that the position of the resident Indian population will be consolidated. The allegation that the Indian is ousting the European from industry will be discussed in detail later. It would be sufficient to state here that the charge has not been substantiated. But the European point of view has changed. From restriction of immigration public opinion seems to have moved “ forward ” to regard reduction of the Indian population as the goal of policy. The more extreme advocates of this view, like Mr. Kemp of Durban, favour compulsory repatriation of Indians with compensation. The Asiatic Inquiry Commission rejected the suggestion as impossible in 1920 ; and reasonable leaders of opinion realise that to compel the entire Indian population to leave the country will be neither just nor practicable. The general European sentiment, however, seems to be in favour of Dr. Malan's aim that the pace of repatriation should be accelerated so as to reduce the number of Indians substantially.

4. To this desire the inception of the more important *anti-Asiatic* measures, attempted or achieved, since 1920 may primarily be traced. Apart from the pro-

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vincial legislation in Natal and the Transvaal referred to in paragraph 2 of this section the public and the Union Government have sought to legislate for the commercial and residential segregation of the Asiatic. The Government of General Smuts introduced a measure to this end in 1924, which lapsed only owing to the dissolution of Parliament. One of the first acts of the nationalist Government, which succeeded his was to revive the Bill in a more drastic form. Both Bills depart from the recommendation of the Asiatic Inquiry Commission which advised against compulsory segregation. The later Bill differs from its predecessor in that—

- (2) it purports to include the Cape within its scope;
- (2) it seeks to give effect, though in a more drastic and extended form, to the majority recommendation of the Lange Commission that Indians should not be allowed to acquire property even in non-urban areas in Natal outside a coast belt extending 30 miles inland, and
- (3) it also attempts to impose fresh restrictions on Indian immigration.

Even this measure was described by Dr. Malan as an attempt "to steer the safe and sane middle course". If the suggestions to tighten up the Bill which were made by certain witnesses before the Select Committee on the Bill represent the wishes of any considerable section of the community, the claim would appear to be quite just. A few typical statements by witnesses will help to illustrate the point:—

Mr. Duncan.—"Can you tell me how this Bill will protect the Europeans?"

Mr. Cox (M. P. C., Natal).—"If the sale of land is prohibited throughout the rural areas of the Province we think it will assist the Europeans. If this Bill is passed our view is the Indian will see we do not want him here. We may as well be frank about it. In the fight for possession of the country the Europeans are determined to protect themselves. It is a matter of self-preservation; we do not put it on any other ground. We think conflict between the two races is inevitable, because as the Indian becomes more powerful his behaviour will become intolerable to the European, and we wish the matter dealt with before that happens".

* *Sir Ernest Oppenheimer*.—"No law will give you any real help ?

Mr. Cox.—"I do not say that. The more we worry them (Indians), the more we give them encouragement to go elsewhere and the sooner they will accept the situation".

* * * * *
Dr. Malan.—"What is the feeling generally on the part of Europeans in Port Elizabeth in regard to Indians ?

Mr. Young (Mayor).—"The view of the people of Port Elizabeth is that they should not be allowed to live in this country".

5. Various reasons have, from time to time, been assigned for the attitude of mind of which the *anti-Asiatic* agitation is the product. Trade jealousy has been described as an important cause. It undoubtedly has played, and still plays, some part in shaping opinion, but it is doubtful whether its influence is decisive. The majority of Indians are small traders: in Natal a good proportion of them control the native trade, which passed into their hands decades ago. They are not up against "big business", and owing to the restrictive licensing policy of local bodies, they are not making any headway now against the European retailer. In the smaller towns and rural areas of the Transvaal the Indian trader is still a help to the "poor" Dutch. Of late propagandists, especially of the labour party, have tried to make out that he is a menace to the white wage-earner. The facts do not support the charge. While Indians were probably given jobs during the war which would ordinarily have gone to white men, the tendency, according to evidence laid before the Economic and Wage Commission (1925), is the other way now. In fact the ordinary Indian workman is employed on a class of work which the European would not or could not do. He is, with certain exceptions, employed on semi-skilled or unskilled work. The Indian agriculturist is no menace to the "white" farmer. The evidence given before the Asiatic Inquiry Commission showed that on the whole Indians had shown no aptitude for large-scale farming or for pastoral industries. The small Indian cultivator is a boon to the community. He is an expert at growing vegetables, and his industry has helped to bring under the plough much land, especially in the coast belt of Natal, which was formerly virgin bush. He is said to be insanitary. The poorer Indian's

*Mr. Cox had rejected the suggestion that Indian wages should be regulated under the Wages Act on the ground that the Indian would avoid the law.

dwelling is not a model of cleanliness, though it must be recognised that the fault, where he is housed by his employer, is scarcely his. But the Indian who tries to conform to modern requirements of sanitation is not welcome in areas where alone he can, in ordinary circumstances, have his way. His presence in very limited numbers in European quarters in Durban and elsewhere has lent strength to the demand that he should be relegated to areas reserved for members of his race, and prohibited from purchasing fixed property outside such areas.

6. The true explanation of this prevailing bias must be sought in the history of South Africa, its peculiar ethnic composition, and the "white" psychology, which is the product of these two factors. The Dutch and, after them, the British established themselves in the country after bitter and sustained conflict with the natives. The struggle between the newcomers and the indigenous population was not conducted according to the canons of war recognised among civilised nations. Quarter was seldom sought or given; and the superior science of the invader was often opposed by treachery. That comparatively a handful of pioneers overcame the weight of numbers has heightened the European's pride of race, and increased his contempt for the native. That education may gradually restore to the native the weight that belongs to numbers has given him what in reality is his fear of the consequences of conceding the "black" man equality of opportunity. The Indian is viewed with no greater favour because in South Africa gradations of colour are ignored. If a person is not white he is "coloured", and, therefore, one of the potential dangers to the maintenance of what may euphemistically be described as "white" standards of life, but what could more accurately be styled white predominance. The class known as "Cape Malay" is treated as an exception because it is merging by slow but sure stages into the European; not economically only but racially. The Indian, by his continuance as a distinct racial entity has, perhaps, roused the same feelings as the native. The latter cannot be assimilated because he outnumbers the European; the Indian because of the vitality of his own civilisation. It is not suggested that while retaining the best elements of his heritage, the Indian cannot adopt sanitary and economic standards which will make his mode of living similar to the Europeans. In Natal and, to a lesser extent, in the Cape Province, one can see the transformation

at work. But its progress is slow, and the ways of the majority disguise the progress of the few.

7. In Natal the size of the Indian population and its concentration around Durban have also profoundly influenced the European's attitude. At the 1921 census there were 1,40,000 Asiatics, mainly Indians, as compared with 1,37,000 Europeans: In 1911 the disparity was greater 1,10,000 Europeans to 1,25,000 Indians. As time passes the European population will outstrip the Indian by accretions by birth as well as immigration from abroad. The latter source is now closed to the Indian: the infant death-rate among Indians is higher. There is also the drift back to India of the old and the unemployed who are moved by sentiment or lack of work to return to the mother country. But what looms large in the eye of the Europeans in Natal to-day is the figure 1,40,000. It has destroyed their sense of perspective.

8. Even if they were scattered throughout Natal, the numbers on paper would alarm the European in the peculiar conditions of South Africa. That 48,000 out of these Indians live in Durban or its neighbourhood makes the position worse for the Indian. The majority are poor, and live under conditions of squalor for which the neglect of others or their own poverty is responsible. Hence the generalisation that they are insanitary by instinct and a danger to the public health of the Colony. As Durban is Natal's principal hive of industry and trade, Indians who must work for their living are employed there in large numbers. Their work may be of a semi-skilled or unskilled character; but because they are in evidence in most spheres of activity, the European gets the impression that he (the Indian) is keeping his own kith and kin out of jobs. Indians from the neighbourhood drift in and out of Durban, bound on visits to friends or on other errands; and the belief grows that they are the advanced guard of teeming hordes outside. And so the legend of the Indian menace lives and spreads. Prejudice grows on "facts" of its own creation.

9. The Indian problem in South Africa is, therefore, not primarily economic; it is psychological. Further, it is really a Natal problem. 16,000 Asiatics are, and can be, no menace to over half a million whites in the Transvaal, nor 7,000 Indians a danger to a white population which, in the Cape Province, numbers nearly $\frac{3}{4}$ million. In the Orange Free State there are only 100 odd Indians mostly domestics, for none of them can farm or trade there.

Before the allegations made against him are discussed in detail, it may help the memory to recapitulate succinctly his present disabilities. In the Transvaal he has neither the political nor the municipal franchise; cannot acquire landed property except in locations; can trade only in limited areas in townships on the Rand owing to the restrictions which the Gold laws* and Act* 37 of 1919 impose on Asiatics and, throughout the province, is at the mercy of municipalities so far as concerns the acquisition of new licenses. In Natal he lost the political franchise in 1896; and the municipal franchise in December 1924. In townships, he can get practically no new licenses to trade; outside, the new Licensing Boards are also severe on him. He can own and hire fixed property where he likes at present; the only legal restriction applies to property belonging to municipal bodies, which can subject transfer of it to conditions of a racial character. But the practice of inserting "anti-Asiatic" clauses in documents governing transfer of private property effectively circumscribes the Indian's opportunity of acquiring private property. In the Cape Province, he enjoys both kinds of franchise, and prejudice against him is, on the whole, less strong, though certain municipalities are more strict in the matter of issuing trading licenses to men of his race than to Europeans. The restrictive laws of the Orange Free State have practically kept him out of the province. Practically no universities will, in practice, admit the Indian; there are few schools in Natal and the Transvaal to which he can go. He is segregated on trains and, in some places, even on trams. Hotels and theatres generally bar their doors to him.

* With Secretary.

III—THE PROBLEM.

Before considering solutions, it seems desirable to discuss, even at the risk of some repetition, the main allegations which have been made against the Indian. They all have their origin in the fear which colours the psychology of most Europeans in South Africa: that the Indian is a standing menace to the maintenance of white supremacy. According to the report made by the Paddison deputation, the charges made against him are—

- (1) that he keeps the European out of
 - (a) trade; and
 - (b) to a lesser, but growing, extent, industry;
- (2) that he seeks social equality with the European by penetrating into residential areas where his presence is unwelcome and tends seriously to lower the value of adjoining European property;
- (3) that he is distrustful of Government whose most beneficent measures, *e.g.*, the Public Health Ordinance of 1923, he challenges; and
- (4) that he constitutes a distinct and unassimilable element in a country where political, economic and social problems are already complicated by the existence of races so different as the European and the native.

In the following paragraphs an attempt is made to show how far, if at all, these allegations are borne out by the available facts.

2. (1) (a) *Competition in trade.*—Reference has already been made to the existing provincial licensing laws and the manner in which they are applied to the Indian. The attached table shows that in Natal the Indian finds it very difficult to make any further progress in this sphere. There can hardly be any question, therefore, of his ousting the European:—

	Europeans.		Indians.	
	1921.	1924.	1921.	1924.
Charles Town ..	7	7	21	15
Dundee ..	111	118	61	57
Durban ..	2,078	2,438	1,938	2,041
Esourat ..	34	38	26	17
Greytown ..	62	60	39	29
Harding ..	14	16	6	10
Howick ..	9	7	6	7
Ladyamith ..	76	85	101	124
Mooi River ..	..	24	..	12
Newcastle ..	31	38	41	45
Richmond ..	17	22	19	17
Stanger ..	13	12	55	60
Verulam ..	15	16	27	34
Weenen ..	5	5	6	6
Pietermaritzburg ..	417	448	563	581
	2,889	3,334	2,909	3,055

Increase in European licenses 445 or 15 per cent.
Increase in Indian licenses 146, or 5 per cent.

In the Transvaal, the Indian's trading activity is restricted in two ways: The first restriction results from the limitations to which he is subject in respect of purchasing or leasing immovable property. Inside public diggings proclaimed under the Gold Laws (Acts* 34 and 35 of 1908, and Act* 37 of 1919) they cannot own fixed property, including stands, inside and outside townships, directly or indirectly, except in such localities as Government for sanitary reasons may assign to them for the purpose of residence. The Asiatic bazaars at Springs and Benoni, etc., are examples of such localities. They are used not merely for residence but also largely for trade. Indians cannot acquire leases with respect to stands outside townships granted after the Gold Law of 1908 came into force. They cannot lease land within townships whether now held under the Gold Law title or under a title converted into freehold under the Township Act No. 34* of 1908. Except those who on the 1st May 1919 were carrying on a duly licensed business on proclaimed lands and townships, Indians have, therefore, practically no scope for extending their commercial operations in these localities which are perhaps the busiest and most prosperous parts of the Transvaal. In centres like Krugersdorp, Potchefstroom, Zeerust and Volksrust, where anti-Asiatic feeling has been strong for some time, the number of general dealer's licenses held by Asiatics has already diminished. The following figures illustrate this:—

	1920.	1923.
Krugersdorp ..	139	115
Potchefstroom ..	99	78
Volksrust..	25	19
Zeerust ..	54	47

The second check is provided by the powers now vested in local bodies by the Transvaal General Dealer's (Control) Ordinance† of 1925, which, as already explained, makes it obligatory for an applicant for a license to obtain a certificate of eligibility from the local body within whose jurisdiction he wishes to carry on trade. These bodies are notoriously anti-Asiatic.

As regards the Cape Province, the figures supplied to the Paddison deputation by the Town Council of Port Elizabeth are

* With Secretary.

† Vide pages 195-198 of Yellow Compilation.

significant of the attitude of some, happily few, municipalities.

Year.	Nationality of applicant.	Number of applications granted.	Number of applications refused.
1920	European ..	189	16
	Indian ..	139	55
1925	European ..	253	8
	Indian ..	286	36

(Note.—Out of the 322 Indian applications made in 1925, 204 were for hawkers licenses, and only 52 for general dealers. The corresponding figures for Europeans were 53 and 157. The remaining Indian applications were for restaurateurs, butchers, etc.)

This shows that the powers which local bodies have in the matter—no trading license may be obtained without a certificate from such a body that a license may be given, and certificates can be refused without assigning reasons—are exercised to restrict Indian trading. The use of such powers to the disadvantage of the Indian is not general because his population in the Cape is limited and evidently his competition not really felt.

3. (1) (b) *Competition in industry.*—The charge that the Indian is now rapidly ousting the European from the skilled and semi-skilled trades is as difficult fully to investigate as it is frequently repeated. Those who make the charge can only refer to isolated trades or the stray experience of individuals. They have no statistics; merely impressions. Official sources are equally unable to provide definite information on the subject. From the Chief Inspector of Factories it was ascertained by the Paddison deputation that his department had made a special survey of four industries, viz., printing, manufacture of footwear, matches and engineering. The report relating to the manufacture of footwear alone gives the number of persons of different races employed. These show a preponderance of the European of whom there were 2,101 working as against 134 male Asiatics. The Director of Census informed the deputation that since 1917-18 particulars of non-Europeans of different races employed in the manufacturing industries were not included in the annual census. Such particulars, it was said, would appear in the report of 1925-26, which, it is understood, will not be ready till the end of the year. Comparison between the figures of 1915-16 and 1916-17 is of no value since the increase recorded in the latter year was due to the inclusion in the returns for that year of factories employing three instead of four persons or more. In 1915-16

only factories employing four or more persons were dealt with. The only recently published statistics available were for the magisterial districts of Durban and Pietermaritzburg. These show an increase in the ratio per cent. of non-European employees to total employees in the tailoring industry from 39 per cent. in 1916-17 to 69 per cent. in 1922-23. During the same period there was also an increase from 78 per cent. to 95 per cent. in industries relating to the treatment of raw materials, e.g., tallow refining, tanning, chaff-cutting, etc. This increase probably represented in the main an addition to the strength of native labour. In the furniture trade the increase was only 1 per cent., viz., from 72 per cent. to 73 per cent. In building, which is represented as a field where the Indian is encroaching, the percentage for 1923 is the same as for 1916-17, viz., 69 and represents a steady decline from 1919-20 when it reached 82 per cent. The complaints of Indian encroachment were probably based on developments between 1916-17 and 1919-20 when there was a progressive increase in the ratio of non-Europeans to Europeans in this trade. The same is practically true of the furniture trade the percentage of which for 1922-23 shows an increase of only one per cent. Allegations of Indian penetration in the field of industry cannot therefore be said to have been conclusively proved.

4. (2) *Penetration into European residential areas.*—The complaint of Asiatic penetration into European residential areas refers mainly to Natal. In the Transvaal Asiatics cannot acquire immovable property. In the Cape Province, the Paddison deputation saw no residential concentration of the various races into colour compartments. "As regards Natal," say the deputation "we are satisfied that the realisation of social equality is not the conscious motive of the Indians' effort to acquire property in such areas. The Indian who has a natural pride in the continuity and traditions of his civilisation undoubtedly resents being treated as an inferior. But in Durban, where alone the question appears to be of immediate practical importance, the real object of the purchaser is to live in quarters suited to his position. As the Asiatic Inquiry Commission observed there are social grades amongst Asiatics as amongst Europeans. The better class Indian has practically no outlet where he may realise this natural desire. Indian opinion in South Africa and elsewhere strongly resents all idea of compulsory segregation as a racial stigma. Indians in the Union also apprehend that, once it is statutorily introduced, the de-

plorable conditions which now prevail in Boksburg and Vrededorp will ultimately over-take the Asiatic class areas of the future. The complaint that the presence of an Indian in a European locality lowers the value of European-owned property seems to be hypothetical, for no concrete instances were cited to prove conclusively that such depreciation had actually taken place. On the contrary, the Natal Indian Congress gave two or three instances to prove the opposite."

5. (3) *Distrust of Government.*—The charge that the Indian is apt to regard every piece of legislation with distrust even if it is intended to benefit him deserves some notice. Special reference is made in this connection to the attitude which the South African Indian Congress in Natal took up towards the Public Health Ordinance* of 1923. The Indians contested it on the ground that it did not allow them either representation on the Public Health Committees which it purported to set up, or any share in the selection of their members. They succeeded for the time being, as the Ordinance was held by the Supreme Court to be *ultra vires* of the Provincial Council. It may incidentally be added that early during the past session, the Union Parliament passed an Act† to validate action taken by Public Health Committees under the Ordinance and to empower the provincial council to pass a fresh ordinance. The answer to this charge, however, is that the history of recent Natal legislation is not calculated to win the confidence of the Indian. If they contest certain laws it is because they regard the laws as oppressive; not because they are not law-abiding. The testimony of General Smuts and Mr. Burton provides ample proof to the contrary.

6. (4) *Unassimilability of the Indian.*—Neither the white man nor the Indian desires racial assimilation by the process of intermixture by marriage. The smallness of the Indian population compared with the European or the native element—there are only 161,000 Indians as against a million and a quarter Europeans and five million natives—makes the 'complication' negligible. No Indians—except the wives of those already lawfully domiciled in the Union and their minor children, can now enter the Union. Except by the natural excess of births over deaths, the complication cannot, therefore grow. The European, on the other hand, has both avenues of increasing his numbers open to him. Such increase will, in due course, further consolidate white predominance over the

*Pages 130—135 of Yellow Compilation.
†With Secretary.

Indian, and this reduces the "complication". The "complication" created by the presence of the native is not going to be affected by the fate of the Indian. Such assimilation of the Indian as is now in progress is educational and economic. This will fulfil, not destroy, the white standard which Europeans so dearly value. The aim of policy should be to accelerate, not to stop or retard this process. In order, however, to understand South African feeling (and without such an understanding it is impossible to arrive at a working agreement) it must be recognised that the low standard of living adopted by the majority of Indians in South Africa raises real difficulties.

IV.—THE SOLUTION.

In the preceding section, the allegations made against the Indian have been explained and criticised in the light of facts so far as they can be ascertained. It has been shown that the charges are on the whole groundless. Nevertheless, it must be acknowledged that feeling in South Africa amongst Europeans is so strong that these facts alone will not satisfy them. They have formed certain conclusions and are committed to certain remedies. Indians in South Africa have their own ideas of settling the problem. In this section these different suggestions are examined, and certain solutions which represent a fair compromise between opposing points of view and which the Government of India are willing to accept, are discussed.

The official solution of the Indian problem put forward by the present Government of the Union is embodied in the Areas Reservation and Immigration and Registration (Further Provision) Bill.* Its main provisions frankly constitute a concession to European opinion. The European complains of the Indian's competition in trade; the bill, therefore, proposes to confine Indians in future to areas where, it is evidently assumed, they will not compete with him. The European resents the presence of the Indian as a neighbour. The bill, therefore, seeks to create areas outside which Indians may not, in future reside. To achieve these two objects, the purchase or lease by them of land or building outside such areas is to be prohibited. The European fears that Indians are still coming into the country illicitly and that the privilege which they now have of introducing their wives threatens to perpetuate their presence in the Union. The bill makes the penalties for illicit entrants and those that harbour them more rigorous; and prescribes a time limit of 5 years, after which no Indian may bring in a wife from India. Directly the bill attempts to curtail Indian competition in trade and prevent his penetration into European areas; indirectly it provides pressure to squeeze the Indian out of the country. It fails to meet only the demand of the extremist; that all the Indians should be compulsorily repatriated.

2. The extreme Indian solution, which is certainly a logical solution, is that the Indian should be given the same civil and political rights as are enjoyed by the white population. Only thus would he be able to secure from Parliament redress for his grievances and respect for his rights. In 1921 the Government of India themselves

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pressed for the acceptance of this ideal by all the self-governing dominions where Indians have settled. South Africa dissented from this proposition, for reasons which have been explained in paragraph 6 of section II. No political party in South Africa could accept this even as an ideal, at least at present. To do so would be to court annihilation at the polls. But the majority of Indians in South Africa scarcely regard the attainment of civil and political equality as practicable. They are more concerned with the protection of such rights as they enjoy; they are strictly on the defensive.

3. The solutions which European opinion favours may be conveniently classified under the following heads :—

- (1) Repatriation.
- (2) Compulsory (a) Residential and (b) Commercial Segregation.
- (3) Restrictions on acquisition of fixed property.

(4) Fresh restrictions on immigration. The Areas Reservation and Immigration and Registration (Further Provision) Bill* sought to give effect to all these solutions; the first indirectly by means of pressure which the provisions of the bill referred to in (2) and (3) were expected to bring to bear on the resident Indian Community. Repatriation is dealt with later (paragraph 6). The objections to (2), (3) and (4) are best stated in extracts from the Statement which the Paddison deputation presented to the Select Committee of the Union House of Assembly on the Areas Bill:

Compulsory Residential segregation.—

“ Commenting on the proposals for residential segregation which were frequently made by witnesses of an anti-Asiatic complexion the Lange Commission said :—

“ The result of our visits of inspection to some of the locations or so-called bazaars at present set apart for Asiatics in the Transvaal was not such as to inspire confidence in a general policy of segregation.”

“ At Johannesburg Indian merchants appeared before the Commission who proved by their books and income-tax receipts that their individual incomes amounted to several thousands of pounds per annum.”

“ From their annual house-hold expenditure, as shown by their books, which were carefully and accurately kept, their standard of living appears to be quite equal to ordinary well-to-do classes amongst Europeans. It seems monstrous, therefore, to suggest that these men who have by their industry and commercial ability worked

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themselves up to such a position should now be forced to remove into locations". On these grounds they came to the conclusion that "indiscriminate segregation of Asiatics in locations would result in eventually reducing them to helotry and that such measures, apart from their injustice and inhumanity, would degrade the Asiatic and react upon the European". They accordingly recommended that "there should be no compulsory segregation of Asiatics". Indians without exception look upon the application of the principle of compulsory segregation to themselves as a racial stigma. It is galling to their national pride to feel that though members of their race may sit in the Council Chamber of the Empire beside the most distinguished statesmen, in South Africa they may not live in proximity to the humblest of their white fellow-subjects that Tagore, though he was worthy of the Nobel prize in literature could, if he were in South Africa, reside only in a slum like Boksburg or Germiston. The fact that the Bill provides for exemptions is no consolation to them; for they realise that no Indian truly proud of his origin, will seek personal aggrandisement at the sacrifice of association with his fellows—a severance of association which would most effectively destroy his value as a factor in the uplift of his nationals.

"Their sense of humiliation is aggravated by the knowledge that the Bill seeks to place them on a lower level than certain coloured elements of the populations of the Union. Where Indians have inter-married with the Malay community, it is feared that to racial humiliation will be added the bitterness which is born of a consciousness of inequality between husband and wife."

- Compulsory Commercial Segregation.—

"From the commercial point of view segregation would spell ruin to many Indians and ultimate restriction of opportunity to all. Businesses which now rely on a European clientele will be extinguished within a generation; in the majority of cases, much sooner. Indian trade will be restricted, geographically, to a special area, practically to a section of the community which will probably be the poorest. The consequences, immediate as well as remote, of such a drastic curtailment of existing rights need no undue elaboration. We would merely ask the Committee to reflect on the results of the restriction now contemplated on the many Indians who carry on business, at present in premises owned by themselves or hired from Europeans, in areas that may be set apart from the latter. From our experience we can assure them that there are many such in Natal; that in

the Transvaal, where the acquisition of fixed property by Indians has always been restricted, probably the majority of Indian traders hold land on lease from Europeans; that in the Cape Province, where men of various races trade alongside each other—the dividing line is the class of business or financial capacity—segregation for the purpose of trade will impose very great hardship.”

General.—“Further, with their experience of municipal administration of laws affecting them and their impotence to influence municipal policy, Indians regard their future under segregation, whether for purposes of residence or trade, with feelings of dismay. In view of the conditions prevailing at Germiston, Boksburg, Springs and other Asiatic Bazaars which we visited in the Transvaal, we consider that they have good reason for the fear that, in practice, the policy of segregation will be administered in a spirit of racialism rather than of even-handed justice. The interests which are hostile to them, and which are in possession of the political franchise will, always, be able to influence the administration of the proposed law to their disadvantage; for neither local bodies nor Government are likely to disregard the wishes of the electorate.”

Restriction in regard to Acquisition of Property.—“In the Orange Free State Indians cannot hold immovable property at all. In the Transvaal they were subject to stringent limitations until 1st May, 1919, and since then acquisition of property has been prohibited except in areas which Government may assign to them for purposes of residence for sanitary reasons. In the other two provinces where they have been subject to no such disability, the restrictions now contemplated in the Bill constitute a drastic innovation. The effect of these restrictions in so far as they are designed to subserve the policy of racial and commercial segregation has already been indicated in the preceding paragraph. They will also reduce the value of property owned by Indians in European areas by restricting the market for its sale. But grave consequences will ensue from the creation of the Coast Belt. It is in Natal that the Asiatic population is highest; at the last Census the numbers were 141,000 out of a total of 161,000 for the whole Union. Nearly 48,000 were concentrated in Durban and its suburbs. A considerable proportion of those resident in the proposed coast belt are agriculturists whose sole ambition is to own their own plot of land and cultivate it. Some of them own the land on which they grow crops; but the

majority are squatters on land which does not belong to them but mostly to Europeans. This is the class which will be hit hardest by the establishment of the coast belt with the attendant condition that members of one race shall not, within that belt, outside class areas, buy or lease land from members of another race. Its effect will be to drive Indian squatters on European land from their natural metier into the labour market. The squatter will lose a congenial employment if not his livelihood; the agricultural labourer will lose all prospect of investing his savings in land, for the area of agricultural land owned by Indians is strictly limited; the general consumer will suffer from a shrinkage of the supply of vegetables and fruit, and a consequential increase in the price of these articles; the labour market from a glut of cheap labour and the urban community generally from congestion in towns, especially Durban, whither the squatter, deprived of his holding, will drift in quest of work. This particular phase of the restrictive policy will probably be a source of grave embarrassment to the entire community; for the indentured Indian and his descendants who have done so much for Natal it will be disastrous."

Further Restriction of Rights of Immigration.—"In paragraph 3 of their telegram No. 609-Os., dated the 12th October 1925, the Government of India made the following observations of principle on the restrictions proposed in the Bill in regard to immigration and inter-provincial migration:—

"Clause 16 (b) of the Bill will have the effect of restricting further entry of Asiatics lawfully resident in other parts of the Union into Natal and the Cape of Good Hope. The reasons for proposing this provision are unknown to us, but we venture to point out that the restrictions of freedom of inter-provincial movement must seriously affect vested interests. Again, imposition of the time limit in respect of the entry into the Union of wives and children of lawfully resident Indians prescribed in (ii) of the proviso to clause 17 is scarcely in consonance with the terms of paragraph 3 of the reciprocity resolution of 1918, which did not contemplate any such limitation, and which representatives of South Africa accepted. In view of the disparity between the two sexes of the resident population, it will inflict great hardship on unmarried Indians."

"(ii) sub-section (e), which clause 17 substitutes for the present sub-section (c) of section 5 of the Immigrants Regulation Act (No. *22 of 1913), empowers the Minister to withdraw from Asiatics, born of parents lawfully resident in any province of the

* With Secretary.

Union, domicile that they have already acquired or may hereafter acquire in another province. Here again we fear that existing rights will be seriously prejudiced”.

“With regard to the restriction now contemplated in relation to the entry into South Africa of wives and children of lawfully domiciled Indians, we would add that it constitutes a serious curtailment of a privilege which the Indian community in the Union secured as part of the settlement which led to the abandonment of the passive resistance movement in 1914”.

4. Commercial segregation, unless it involves the relegation of Indians to quarters where they can have no customers at all, will not protect the European. But whether it does so or not, impartial opinion throughout the world and, in particular, Indians in South Africa and elsewhere will resent legislation on the lines of the bill as a grave injustice and a deep affront to India. The Asiatic Inquiry Commission thought that attempts at compulsory segregation alone would drive Indians in the Union to resort to passive resistance. The bill with its other restrictions is only calculated to make them more desperate. The Union Government evidently realise this now. The evidence which was given before the select committee by the opponents of the bill convinced at least some of its members that the bill provided no real solution of this difficult problem. Hence the decision of the Union Government to postpone the bill and enter into a conference “to explore all possible methods of settling the Asiatic question.” But they have also impressed it upon the Government of India that public opinion in South Africa will not view with favour any settlement which does not hold out a reasonable prospect of safeguarding the maintenance of western standards of life by just and legitimate means”.

5. In the informal conversations which led to the agreement to hold a conference no attempt was made to define what “western standards of life” meant. It would have been tactically unwise at that stage to initiate discussions which might have served only to bring to light fresh and fundamental differences. Moreover, it was clear that the Union Government had no proposals, even tentative, to put forward at that stage for safeguarding these “standards.” It is possible, however, to indicate generally the proposals which the Union Government are almost certain to place in the forefront of the agenda of the conference at Cape Town, and those which the Government of India should advance to secure a settlement

that will protect and promote the interests of the resident Indian community, and satisfy the more reasonable schools of Indian opinion.

6. *Repatriation*.—As has already been stated, Europeans in South Africa generally and in Natal in particular, want to see a reduction in Indian numbers. Two direct methods to secure this object have been suggested :—

- (a) more effective repatriation ; and
- (b) fresh restrictions on immigration from India.

The present Union Government attach great importance to (a). In this they have the support of the majority of the parliamentary opposition. They invited the Government of India to co-operate in devising "a satisfactory and effective process of repatriation." Had the Government of India agreed to make this question the main item of the agenda, a Round Table Conference would have been agreed to much earlier. It was because they were not willing "to cooperate in exploring the possibility of more effective repatriation with the object of bringing about a reduction in the Indian population in South Africa" that agreement to hold a conference was not reached at once. The scope of the conference which is to meet in Cape Town next December has been widened ; but there is little doubt that the Union Government will expect the Government of India to make some concessions to an objective on which European opinion in South Africa is unanimous. They will doubtless argue that "western standards of life" cannot be protected if there is a large population whose modes of existence tend to lower or endanger the economic or sanitary life of the majority.

7. The Government of India cannot accept and the Union Government cannot propose, "compulsory repatriation". Such a solution will neither be "just nor legitimate". In their telegram No. 606-Os., dated 9th October 1925, the Government of India have already expressed their willingness to re-examine "the existing scheme of repatriation on a purely voluntary basis with a view to ascertaining what difficulties have arisen in its working and how these difficulties can best be smoothed away". This formula offers a wide enough basis for a mutually satisfactory adjustment.

8. According to figures given to the Select Committee on the Areas Reservation Bill, 31,725 Indians have been repatriated since 1914. The principle of offering

inducements to Indians to return to India was approved by Mr. Gandhi; the insertion in the Indian Relief Act* of 1914 of authority to offer free passages and a cash bonus to voluntary repatriates was the result of the 1914 settlement to which he was a party. In 1924 there apparently was a falling off in the number of repatriates. Partly this may have been due to the fact that the number of those who are anxious to return to India has temporarily diminished. Partly this is, no doubt, the result of the suspicions raised among the Indian community by the employment of "recruiters" to accelerate repatriation and the hostility of its leaders to the scheme, because of this propaganda, and of resentment at restrictive measures like the Class Areas Bill which seemed intended to add pressure to inducement. Subject to the conditions—

- (1) that no coercion or undue influence, direct or indirect, is exercised; and
- (2) that proper safeguards are provided against misrepresentation by over zealous officials or misunderstanding on the part of intending repatriates,

the Government of India would be willing to agree to—

- (a) an enhancement of the bonus now given to repatriates;
- (b) the graduation of the amount of such bonus to the requirements of each case: a trader may require a higher bonus than a labourer, an old man past work more than a young man able to earn his living; a single man less than one married or with dependents;
- (c) the provision of a more regular, efficient and comfortable steamer service; and
- (d) the improvement of executive machinery inside the Union to expedite the disposal of applications for repatriation.

To ensure the co-operation of the resident Indian community and to prevent repatriation by coercion or fraud, the Union Government should be asked to appoint advisory committees of Indian gentlemen enjoying the confidence of their community to assist the local officials who deal with repatriation. The work of these officials and advisory committees should be supervised by the officer who, it is

* With Secretary.

suggested later on, should be placed in administrative charge of Asiatic affairs throughout the Union. The Government of India, in their turn, should offer to assist in the re-absorption of repatriates in the general body of the community in India by encouraging the establishment of friendly societies or perfecting existing official agencies to help repatriates who are willing and able to work to find suitable employment. Migration in any considerable numbers of these people to British Guiana is only likely by flooding the labour market to depress the economic status of the resident Indian population there. But if the Union Government press the suggestion, the Government of India would be quite willing to explore, in consultation with them, the possibilities of diverting repatriates to that colony. Local conditions will, probably, have to be investigated before any concrete suggestions can be formulated or considered. Similarly, the principle of friendly consultation between the two Governments in regard to any scheme of voluntary migration to other parts of the Empire which the Union Government may like to suggest hereafter, should be secured. The Government of India, with their greater experience of Indian emigration, will be in a position to give useful advice to the Union Government; their acknowledged interest in the well-being of the Indian community in South Africa entitles them to be consulted and to offer advice; such consultation will ensure that adequate consideration is given to the Indian point of view both official and non-official.

9. *Residential separation.*—The white community in South Africa have been pressing for this for some time, and for two reasons:—

- (a) colour prejudice—most white men dislike coloured people living in their neighbourhood; and
- (b) the alleged insanitary mode of living of the poorer class of Indians especially.

The problem does not exist in the Transvaal, where, with a few exceptions, Indians are already segregated, or in the Orange Free State, where there are hardly any Indians. The same may be said of the Cape Province. Indians have, of their own accord, not intruded in the newer European quarters. The older residents who live in predominantly European areas are accepted without question.

In Natal, the position is acute; not because many Indians have actually taken

up their residence in parts like the Berea in Durban, but because the European apprehends that Indians in Natal being more wealthy and more numerous than elsewhere, such an invasion is likely. The dwellings of the poorer Indian which in parts of Durban and other towns are scattered among European houses, are not always clean or sightly. Moreover, the squalor of Indian "barracks"—for which Indians cannot be held responsible—on the sugar estates and factories near Durban is regarded as a potential danger to the health of the city. Indians throughout South Africa regard statutory segregation as a racial stigma. The Government of India opposed the segregation provisions of the Areas Reservation Bill* on this ground. They cannot, therefore, accept any statutory arrangement which seeks to placate the prejudices of the white population by making race the basis of residential separation. A fair and logical compromise can be found if separation is attempted on the 'basis' of standards of civilisation and sanitation. This will enable the highly civilised and the sanitarily "efficient" members of all races to live apart from those whose standards of life are lower. But such a solution may not appease those Europeans who would object to have an Indian neighbour merely because he is an Indian. Unhappily, in Natal, persons holding this opinion predominate, at least in certain towns, including Durban. Some scheme of voluntary separation on the basis of race may, therefore, have to be agreed upon in the last resort. For this purpose the following suggestions may be put forward in the Conference :—

- (1) Mixed committees of prominent Europeans and Indians should be formed in each town to settle amicably the demarcation of residential areas for their respective communities.
- (2) Municipal Councils should allocate attractive sites to Indians for purposes of residence so as to draw them voluntarily to these areas. This will prove more effective than any scheme of compulsory segregation. Indians do not care to live among people who do not want them, and if only suitable sites are offered, they will, it is believed, take them up. But it should be understood that the law would enjoin no prohibition on members of either race living outside these areas if they wish to. Otherwise the scheme will lose its voluntary character, antagonise the

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Indian community and consequently fail.

- (3) Sanitary laws, which should be of general application, to all classes of people residing in areas of which the amenities it is intended to safeguard should be strictly enforced. This will effectively check the migration of the poorer Indian into prosperous quarters—a tendency which is bound to disappear as the value of real property in towns rises.
- (4) Local authorities should seriously tackle the problem of housing the poorer class of Indians. The concentration of this class near Durban, and the neighbouring towns in the coast belt accounts for a good deal of the feeling roused by the "Indian problem." Employers of Indian labour who house their people badly should be compelled to put up better quarters for them. The provincial Governments should, if necessary, help local bodies financially to start housing schemes of their own.

10. *Commercial Segregation.*—In the Transvaal this practically exists already, except so far as old established businesses outside "locations" or "Asiatic Bazaars" are concerned. In the Cape there is no pronounced feeling in favour of it. The views expressed by the Mayor of Port Elizabeth are, fortunately, not yet common in that province. In Natal a good many municipalities have already achieved "separation" by the exercise of their licensing powers. In Dundee and Pietermaritzburg the separation is almost complete. In Durban there are still a few important Indian shops in the European quarter; the majority are now concentrated in areas which are predominantly Indian. To put all Indians compulsorily into special areas would be to ruin them—especially if, as is probable, these areas are chosen at some distance from the towns, as is the case in Benoni in the Transvaal. The Government of India cannot accept commercial segregation any more than residential. If the practice of "living in" on trade premises, which is common among Indians, is objected to on sanitary grounds, local bodies can stop it by prohibiting residence on such premises for *all* classes or by subjecting it to suitable sanitary regulation. Overcrowding can be prevented by prescribing by rule or law the minimum floor area which must be allotted to each individual. Defective conservancy arrangements can also be remedied by suitable regulations.

11. *Restrictions on acquisition of property.*—These have been suggested to enforce commercial and residential segregation. In the Transvaal and the Orange Free State restrictions already exist. In Natal the Durban Borough Lands Alienation Ordinance (No. 14* of 1922) and the Natal Borough and Townships Land Alienation Ordinance (No. 5† of 1923) have given local bodies power to sell or lease land belonging to them under restrictive covenants of a racial character. Consistently with their objection in principle to segregation and to the imposition of disabilities on Indians which are inherently unjust, the Government of India can only ask for the repeal of such restrictions as now exist. Opinion in South Africa, however, will not countenance any such change at present, and the Union Government will find it impossible to entertain proposals to this end. The Government of India equally cannot agree to any extension of existing restrictions. The compromise indicated in the present circumstances, is the maintenance of the *status quo*, on the understanding that as feeling improves the possibility of removing existing disabilities will be favourably considered by the Union Government.

12. *Restrictions on Trade.*—The position in the various provinces has already been described. Licensing laws are applied with the utmost stringency to Indians everywhere in the Union except perhaps in the Cape. The Asiatic Inquiry Commission was so impressed by the hardships to which Indian applicants for new licenses are now exposed that they suggested a uniform law for the whole Union which would allow an appeal to the Supreme Court wherever a license was refused on personal grounds. While the Union Government have attempted to embody in the law provisions in regard to segregation and to limitation of the right to acquire fixed property more drastic than any recommended by the Commission, they have done nothing to carry out this proposal for which the Government of India, the Secretary of State for India and, for a considerable period of time, the Secretary of State for the Colonies sedulously pleaded. The Union Government may reply that licensing policy is a provincial subject. The real reason, however, for failure to liberalise the law is the opposition of European opinion to such reform. It is certain, therefore, that the Union Government will be unable to meet the Government of India in the matter now. But the suggestion which has the support of their own

*Pages 124—128 of Yellow Compilation.

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Commission should be pressed : and if the Union Government plead popular prejudice as an excuse for their inability to accede to the wishes of the Government of India they should be asked to (1) urge local bodies to administer the existing law justly, and (2) take up the proposal at the earliest opportune moment.

13. *Mitigation of competition in (a) Trade and (b) Industry.*—

(a) *Trade.*—On the question of economic competition between the Indian and the European whether in industry or trade it is difficult to make any definite recommendation, for the data are so uncertain. The finding of the Asiatic Inquiry Commission was that, while some Indian merchants spend as much as their European rivals, the majority of them have smaller overhead charges to meet and can therefore undercut the white trader. Indians whom the Paddison deputation questioned on the subject vehemently denied this and said that the person who undersold both the Indian and the Britisher was the alien immigrant from Syria and Eastern Europe. It is not possible without an elaborate *ad hoc* enquiry to sift the exact truth from such conflicting evidence. In the case of those who keep no regular accounts, it is doubtful whether the real facts could ever be correctly ascertained. In the case of those who keep accounts, the correctness of any comparison that might be made would be in strict proportion to the accuracy of the written accounts on which they are based. And, while many might be willing to make a correct return of their expenditure, few would be willing to disclose their percentage of profits. It would be difficult, if not dangerous, to attempt to interfere too much with the natural laws of trade competition. A man's standard of profit is his own affair, and no one can effectively regulate it. And, unless the standard of profit is equalised, the equalisation of trade expenses will not make the conditions of competition equal. But for this very reason suggestions to prescribe a minimum wage for shop assistants would be difficult to resist. Indian opinion in South Africa, however, may object to such action on the ground that Indian merchants pay their assistants partly in kind, partly in cash and a cash minimum wage will prove an interference with traditional custom. If the Union Government press it, the Indian delegation should ask for instructions from the Government of India after consulting leaders of the Indian community in South Africa. Probably it would be safest to agree to an *ad hoc* inquiry and plead for postponement of a decision until the results of such an investi-

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gation became available. But if the Union representatives are unwilling or unable to accept an inquiry then in the last resort the Government of India will not refuse to agree to a minimum wage for this class of worker. Every attempt should, however, be made to ensure that if a minimum wage is fixed for this class of workers, adequate allowance is made in the shape of a suitable deduction, for the value of payments in kind.

(b) *Industry*.—The position has been explained in paragraph 3 of section III of the brief. Generally speaking Europeans and Indians do different kinds of work, and there is very little real competition between them. But the Pact Government passed a Minimum Wage Act last year, and its labour wing, which is obsessed with the idea that the coloured worker undercuts the European, is bound to work for as wide an application of its provision as possible. The Government of India cannot now resist the extension of the new law to industries in which Indians are employed, should the Government of South Africa decide to do so. At the same time there is a danger that, unless the White Trade Unions to whose agitation the law owes its origin pursue a policy of sympathetic co-operation with the Indian workmen, the immediate effect of enforcing a higher minimum wage in certain occupations would be to throw the Indian out of employment. Co-operation should take the form of not insisting on the employment of Europeans for work which an Indian can do and is doing equally well. The policy now being embodied in the Colour Bar Bill, or the policy now being pursued by the Railway Department, holds out little promise that such co-operation will be forthcoming. For the aim of both is to replace non-European by European labour; not to raise the former's level of wage. But the advocates of an all white-wage standard in South Africa cannot have it both ways. If they insist that the coloured workman should demand the same wage as his white confrere, they must also be prepared to assist the coloured man with all their resources in securing favourable consideration for that demand in industries which are not actually subject to the Minimum Wage Act. If they are not prepared to help him to obtain employment on a white-wage basis, they cannot with justice require him not to work for a smaller wage. It is not suggested that they should necessarily admit him to their Unions, though this would be the logical corollary of the professed brotherhood of labour, and would be the best way of assimilating the economic outlook and standards of the white and

the non-white. Race feeling, especially in the Transvaal, may prove too strong for such fusion. But there could be no objection to co-operation with parallel or separate non-European trade unions in pursuit of a common wage ideal. These aspects of the industrial problem should be discussed.

Reference should also be made in this connection to the 'Colour Bar Bill'—now the Mines and Works Amendment Act, 1926. The Government of India are willing that for the same class of work Indians and Europeans should demand and be helped to secure the same wage. In return they may well claim that race should not prove an obstacle to Indian employment in any branch of industry or in any class of work for which he is fit. To raise such obstacles would be to take away from him all incentive to conform to the 'western standards of life' which the Union Government and the white population of South Africa are so anxious to preserve. It would be neither just nor legitimate to maintain those standards by a policy of racial discrimination. The logical step would be to repeal the new law. Unfortunately this is not possible, mainly because the prestige of the present Government is now identified in the public estimation with the preservation of the law on the statute book. Moreover, as the law is professedly designed to protect the white workman against native competition in the Transvaal, it becomes a part of native policy. But as Indians may also be affected by it if its operation is extended beyond the Transvaal, the Government of India have a right to ask that such extension should not take place in view of the policy of raising the Indian workman's standard of earning and living for which they contend, and which they hope the Union Government will accept. In any case, if such extension is ever contemplated, they will expect the Union Government to give them every opportunity to make such representations as circumstances may require.

14. *Restrictions on Immigration.*—As regards illicit immigration the facts do not appear to justify the fears that are entertained in South Africa. Such immigration can only take place through Portuguese ports and the Principal Immigration Officer of the Transvaal is best in a position to know whether it is excessive. The present incumbent of the office, Mr. Hartshorne, made the following statement on the subject before the select committee on the Areas Reservation bill. "There has been no great influx to my knowledge, and I have been connected with the Department of the Interior from the inception of the Immigrants Regulation Act in 1913". The

Minister's apprehensions regarding the introduction of wives from India are also mainly hypothetical. The comments made on this point by the Paddison deputation may be quoted :

"Migration for marital purposes.—In the course of the evidence apprehensions were expressed as to the possibility of a large influx of females from abroad to provide brides for the 56,000 Asiatic males who were returned as unmarried at the last census. The tendency in the past to import wives from India was due (i) to the disparity between the numbers of the male and female portions of the resident Indian population and (ii) the preponderance among males of persons born outside the Union. The figures supplied to the Committee by the Director of Census show that of the 56,000 unmarried males living in the Union 43,617 were below the age of 21 which represents the normal matrimonial age-limit. The corresponding number of females under the same age was 41,136. Of the former, 40,567 were born within the Union ; of the latter, 39,492. The natural tendency for the males especially those born in the Union would be to select their wives from women of their own age in South Africa. This is confirmed by the fact that amongst the Natal born Asiatics 5,384 males married females born in the same province whilst 368 took wives from India. The fear of a large future immigration of brides from India may, therefore, be dismissed as chimerical."

No fresh restrictions therefore seem to be called for. However, if the Union Government make a further tightening up of the laws a necessary condition of a settlement, the Government of India may agree to the fixing of a time-limit of 10 years after which, normally an Indian would not be allowed to introduce a wife from India. The Union Government should however undertake to allow admissions in special cases. Exceptions will be rare and will probably have to be made in favour of educated Indians. Inter-provincial migration, to the extent that it is now permitted, should not be interfered with. Apart from infringing vested rights which in the case of the Cape, were secured after a bitter struggle, such interference will aggravate the congestion in Natal. But for the fact that European opinion in the different provinces would not tolerate it, the best solution of the Indian problem in South Africa would be to break down present-day provincial obstacles to Indian migration. If the 161,000 Indians were spread over the Union, they will not be noticed. In any case, the raising of

fresh barriers will only make the problem worse.

15. The proposals discussed so far come in the category of measures which should go far to satisfy European opinion. They represent no new advantage to the Indian community. Such concessions as they require the Union Government to make only assure to the Indians a continuance of the *status quo*. In the existing state of white feeling even this must be regarded as a real gain.

16. Existing grievances may gradually be removed as prejudice against the Indian softens. The Union Government hope for such an improvement of feeling if the Indian population is reduced. The Government of India are not unwilling to accept a modification of the present scheme of voluntary repatriation so as to secure for the residuum left over in South Africa better treatment. They can reasonably demand some return for the concessions they are prepared to make. The most important concession they want relates to the educational advancement of the Indian population. Whatever scheme of voluntary repatriation may finally be adopted, a substantial number of Indians will stay on in South Africa. Means must, therefore be devised to mitigate friction between them and the European community. Education will be the best solvent of mutual antipathy. The educational facilities provided by the State are totally inadequate. Thus in Natal there are only 8 State primary schools for Asiatics as against 144 for Europeans and 53 for natives; one intermediate school as against 7 for Europeans and 11 for natives. This in spite of the fact that the European and Asiatic populations are almost equal. The average enrolment for the year for both classes of schools in 1924 was 8,446 Asiatics, 22,414 Europeans and 29,728 natives. The bulk of the Asiatics were in aided schools, of which there are no less than 40—mainly missionary. In the Transvaal there are 5 primary Government schools for Asiatics with an enrolment of 555. For the European population which is 543,485 as compared with an Indian population of 13,405 there were 1,148 primary schools with a muster roll of 112,134 pupils. Thus, while roughly one European out of every 5 goes to school in the Transvaal, only one Indian out of 50 has the opportunity. It must be confessed, the wealthier Indians have, with a few exceptions, shown little disposition to augment the existing facilities by their own efforts. But if the Union Government wishes to safeguard the western standard of life, it must teach the Indian to understand and

appreciate that standard. On the other hand, if the Indian aspires to equality with his European fellow citizen, he must learn and endeavour to win his esteem. Education will be the best solvent of prejudice and the most powerful stimulus to uplift. Education will increase the Indian's efficiency as a worker, broaden his outlook, raise his standard of living. As the range of his needs and comforts widens, he will require more to live on and will insist on a higher rate of income, whether as a wage-earner or as a trader. His understanding of sanitary laws will be more intelligent and his readiness to observe them keener. If education is to be broadly and effectively disseminated, the State must pursue a more active and generous policy, and the more prosperous Indians must supplement its efforts with financial aid. In Natal, where the problem is most acute, prejudice against the Indian is unfortunately strongest, and 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. It is doubtful whether this attitude will rapidly alter. The Federal Government should, therefore, be prepared to step into the field and help the community with funds. The Government of India could help materially by co-operating in the selection of teachers, and by lending men in their own employ for service in South Africa.

Facilities for collegiate or university education hardly exist for Indians in the Union. This deficiency must also be made good in time. The establishment of a college for Indians is neither feasible nor necessary at this stage. Until the foundations of an edifice have been truly laid, it is premature to think of the superstructure. For the few Indians who may be qualified for and anxious to pursue their studies after the school stage, opportunity should be provided by facilitating their admission into one or more of the principal universities by the construction of suitable hostels, and by the appointment of special tutors. An alternative suggestion would be that qualified Indian students should be given scholarships to study in India or abroad: but this would serve to perpetuate prejudices which should be allayed as quickly as possible.

17. Two other proposals of an administrative, but, nevertheless, important nature may come up for consideration. These are—

- (1) appointment of an agent of the Government of India in the Union;

(2) appointment by the Union Government of a Commissioner of Asiatic Affairs.

(1) *Appointment of an Agent.*—As India now enjoys the status of a dominion so far as her relations with other dominions are concerned, there can be no constitutional objection to such representation. The present Nationalist Government is strongly in favour of dealing direct with other parts of the Empire and should not, in principle, be opposed to the establishment of a personal link to facilitate such dealings. The practical utility of the appointment to both Governments will be considerable. The Government of India will be able to receive regular, timely and first hand information about Indian affairs in the Union. They will also be able to use their Agent as the channel of representation in regard to questions of importance which, until the Indian community in South Africa is effectively able to look after itself, are bound to arise from time to time. In this capacity he will also be useful to the Union Government who have now learnt to appreciate the value of personal discussion as a method of negotiation and a preventive of misunderstanding. He could also be of great assistance to them in the administration of their Asiatic policy, for with his wider Indian experience and better knowledge of Indian psychology, he would be the best man to advise them informally both on the principles and the details of their administration of Indian affairs. If it is understood that such advice will be tendered in a friendly spirit and without any obligation on the part of the Union Government to accept it, it will probably be availed of. The suggestion to appoint an agent however should in no case emanate from our delegation in the first instance. Should the Union Government however consider that such a representative will be a source of assistance to them and of help in the promotion of better relations generally including trade and commerce the Government of India will be willing to appoint one.

(2) *Commissioner of Asiatic Affairs.*—The Asiatic Inquiry Commission recommended in 1921 that the Union Government should appoint a special officer to administer its Asiatic policy. Effect was not given to this proposal by the Smuts Government on the ground of financial stringency. The desirability of appointing such an officer cannot be over-emphasised. At present there is no co-ordination of administration or policy.

In the Transvaal there is a Registrar of Asiatica and in Natal a Protector of Immigrants. In the Cape Province, the Principal Immigration Officer alone seems to have any concern with Asiatics. The Protector of Immigrants in Durban is responsible for the welfare of Indians still under indenture in Natal, and for maintaining touch with *ex-indentured* men and their descendants; but the other officers, as their designation indicates, deal merely with the movement of Indians to and from the Union or between provinces. The wants or welfare of the Indian community as a whole are not the concern of any one officer, unless it be the Secretary of the Interior who obviously has too many other duties to be able to bestow much attention on Asiatic affairs. No special knowledge of Indian psychology is necessary to make one appreciate that, for the average Indian who is instinctively accustomed to look to Government for redress, the absence of an official who is familiar with his ways, to whom he can have ready access, and who will give him a patient hearing, is a great hardship. In South Africa, where he has many disabilities and few rights, the need for such an official is all the greater. The cumulative effect of petty individual grievances is to produce general discontent, and no Government could really be anxious to foster such an attitude of mind. The Union authorities would have far less occasion to complain of Indian sullenness and intransigence if adequate provision were made to settle minor grievances promptly. A whole-time officer should be appointed at headquarters to supervise the work of local officers and act as the principal administrative link between the Government and the Indian community. If the conference results in the adoption by the Union Government of a comprehensive and humane Asiatic policy, the creation of such an office will become essential.

18. Allied to (2) is the question of strengthening the subordinate staff for administering Asiatic affairs in Natal. The Union Government should consider this point. It seems obvious that the Protector of Indian Immigrants at Durban whose primary duty is to look after Indian labourers who are still working under indenture cannot be in touch with the whole Indian population of the province which numbers 1,41,000. Even the proposed Commissioner of Asiatics will be unable to do this adequately. The question what staff should be provided can best be considered after the Commissioner is appointed.

19. But if the Asiatic policy of the Union Government is to work smoothly, it must enlist the support of the Indian community. This can only be done by providing the machinery to consult Indian opinion, and using such machinery in a spirit of trust. It has already been suggested that Indian Advisory Committees should be established to assist resident magistrates in districts and other officers in working the repatriation scheme. Similar organisations should be set up to advise on matters affecting the general welfare of the community. In municipal areas this will prove most helpful to local bodies until such time as the municipal franchise is restored to the Indian. Much of the friction that now exists between Town Councils in Natal and the Indian community is due to the absence of touch between the two. There would be far less of it if there were more consultation between the representatives of the two.

20. Agreement on these proposals, if it is reached, will probably go a long way to ease the present tension of feeling in the two countries. But if the tension is to disappear and be replaced by real friendship, there must be (1) a progressive improvement in the position of the Indian community in South Africa, and (2) something other than sentiment to bind South Africa to India. To ensure (1), any arrangement that may now be arrived at should be subject to periodical revision—say once in five years. That would enable both Governments to take stock of its actual working and discuss improvements, should these be called for. Such examination would also provide the Government of India with a suitable occasion to suggest improvement in the status of the resident Indian population and the Union Government with an opportunity of effecting such improvement as the state of public opinion may permit. They can make us no tangible return now for our willingness to co-operate in smoothing away difficulties that may have arisen in the working of the present scheme of repatriation. It is but natural that we should ask for such return later on if conditions prove favourable.

21. The second object will be best served by developing trade between India and the Union. Once the South African producer realises that India provides a profitable and growing market for his goods, he would be less inclined to favour measures in his own country that may lose him such a market. Suggestions on this subject will be made in a separate note.

22. It seems convenient to recapitulate at this stage the constructive suggestions

which the Government of India wish their delegation to put forward on the general problem. The first is that the principle of consultation with the representatives of the local Indian community should be recognised and so far as possible applied in all matters affecting their welfare. For this purpose the formation of advisory committees seems desirable. The second main suggestion is that there should be no further deterioration in the existing status and no further curtailment of the privileges of the resident Indian population of the Union. Existing laws should be justly administered and every endeavour should be made to secure a progressive improvement of their position as prejudice against them softens. Provision by statute for an appeal against refusal to trading licenses on personal grounds is a measure of redress which seems urgently required. The third suggestion is that to ensure the maintenance of western standards of life, an active policy of raising the educational and economic standards of the resident Indian community should be inaugurated. The Government of India cannot and do not propose to resist the extension to the Indian of wage or sanitary laws which are of general application. That, however, will constitute only a negative safeguard of white standards. The only positive safeguard will be to stimulate the Indian's interest in and desire for maintaining those standards of his own free will. Education alone can achieve this object. Housing reform for the poorer class Indian has also been suggested because State aid or the help of local bodies alone can put this class in a position to conform to modern requirements of cleanliness. Finally, to ensure that the Asiatic policy of the Union Government is administered throughout South Africa uniformly the appointment of a Commissioner of Asiatic Affairs is recommended.

APPENDIX I.

[No. 17, 1895.]

WALTER HELY-HUTCHINSON,

Governor.

ACT,

“To amend the Indian Immigration Law, 1891.”

WHEREAS it is expedient to amend the Indian Immigration Law, 1891 :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

1. This Act may be cited as the “Indian Immigration Amendment Act, 1895,” and shall be read and construed together with the Indian Immigration Law, 1891, as one Act. Short title of Act. Joint construction with Law 25, 1891.

2. From and after the date when this Act shall take effect, the indentures to be signed by Indian Immigrants as provided by Schedules B and C of the Indian Immigration Law, 1891, referred to in Section II of the said Law, shall contain a covenant by the Indian Immigrants in words as follows :— Covenant to be inserted in Indentures under Law 25, 1891.

“And we further agree that, after the expiration or other determination of this contract, we shall either return to India or remain in Natal under indentures to be from time to time entered into : Provided that each term of new indentured service shall be for two years. And provided further, that the rate of wages for each year of indentured service after that provided by this contract shall be 16s. per month for the first year, 17s. per month for the second year, 18s. per month for the third year, 19s. per month for the fourth year, and 20s. per month for the fifth and each succeeding year.” Return to India or renewal of indentures.

3. Every Indian desiring to return to India on the expiry of the first or any subsequent period of his service under any contract of indenture or re-indenture entered into under the Laws for the time being in force, shall be provided by the Indian Immigration Trust Board with a free passage to India. Free passage to India.

4. Any Indian Immigrant who may have entered into the covenant set out in Section 2 of this Act shall be at liberty, subject to the approval of the Protector of Indian Immigrants, to choose the employer to whom he shall be indentured after his first term of service and for the purpose of making such choice the Indian Immigrant shall be entitled to a pass for one month, to be issued by his last Employer, or should the Employer refuse such pass, then by the Magistrate of the District. Choice of employer.

M^c196 EHL

- Continuance of privileges during re-indenture. 5. During all the periods of re-indenture each Indian Immigrant entering into such further indenture shall have all the rights and privileges which he had during his first term of indenture.
- Indian failing to return or re-indenture to take out a pass. 6. Every indentured Indian who shall have entered into the covenant set out in Section 2 of this Act and who shall fail, neglect, or refuse to return to India or to become re-indentured in Natal shall take out year by year a pass or license to remain in the Colony to be issued by the Magistrate of his District, and shall pay for such pass or license a yearly sum of Three Pounds Sterling, which may be recovered by summary process by any Clerk of the Peace or other officer appointed to get in such license money.
- Landing, etc., of Immigrants to be a duty of the Board. 7. The duty of causing Indian immigrants on arrival to be landed, conveyed to proper quarters, and provided with proper and sufficient food and clothing in terms of Section 15 of the Indian Immigration Law, 1891, shall devolve upon the Indian Immigration Trust Board, and shall be discharged to the satisfaction of the Protector.
- Duties of Protector may be defined. 8. The duties of the Protector of Indian Immigrants and of any Deputy or officer of his Department, additional to the duties imposed by any law and the manner in which such duties are to be discharged, may be defined by the Governor in Council.
- Returns to be furnished to Board. 9. The returns mentioned in Sections 49 and 96 of the Indian Immigration Law, 1891, shall be sent to the Indian Immigration Trust Board instead of the Protector of Immigrants, and the said Board shall have all the powers of the Protector for the purpose of enforcing such returns.
- Recovery of employers' contributions by the Board. 10. The contributions by employers of Indian immigrants under Section 50 of the Immigration Law, 1891, shall be payable to and recoverable by the Indian Immigration Trust Board.
- Medical Board to be appointed by the Board. 11. The appointment of a Medical Board under Section 52 of the Indian Immigration Trust Law, 1891, shall be made by the Indian Immigration Trust Board, anything in the said Section 52 to the contrary notwithstanding.
- Licenses to leave Colony to be approved by the Board. 12. Licenses to leave the Colony under Sections 90, 91, 99, and 100 of the Indian Immigration Trust Law, 1891, shall not be granted without the sanction or approval of the Indian Immigration Trust Board, and for the purposes of the said Sections 99 and 100, the said Board is substituted for the Protector.
- Signature of renewed indentures. 13. A renewed indenture made under the provisions of Section 107 of Law No. 25, 1891, may be signed before the Protector or Deputy Protector of Indian Immigrants, or before any Magistrate.
- Adjustment by Board of employers' payments. 14. The Indian Immigration Trust Board may so adjust the annual payments to be made under Clause 18 of Law No. 25, 1891, by the employers of indentured Indian immigrants that the successive employers of Indians under original

indentures or renewed indentures may be made to contribute to the cost to which the Board may be put in procuring immigrants from India.

15. The consent of the Governor shall not be needed to any increase or decrease in the annual payments on indentured Indians decided on by the Board, anything in Clause 13 of Law No. 20, 1874, and Clause 18 of Law No. 25, 1891, to the contrary notwithstanding. Governor's consent thereto not needed.

16. The duty imposed by Section 21 of Law No. 25, 1891, upon the Protector of Indian Immigrants of preparing and submitting to the Indian Immigration Trust Board returns of arrear instalments shall be discharged by the Secretary to the Board. Returns of arrear instalments by Secretary to Board.

17. Sections 106, 107, 108, and 109, of Law No. 25, 1891, shall not apply to Indians introduced into Natal under contracts of indenture made in pursuance of this Act. Amendment of sections 106 to 109 of Law 25, 1891.

18. Sections 110, 111, and 114, of Law No. 25, 1891, are hereby repealed. Repeal of sections.

19. The words "from and out of the funds of the Indian Immigration Trust Board of Natal" occurring in Sections 2, 3, and 4 of Law No. 25, 1891, shall be expunged. Amendment of sections 2 to 4 of Law 25, 1891.

20. This Act shall commence and take effect from and after such date as shall be fixed by Proclamation in the *Natal Government Gazette*. Commencement of Act.

Given at Pietermaritzburg, Natal, this Eighth day of August, 1895.

By command of His Excellency the Governor,

JOHN ROBINSON,
Colonial Secretary.

APPENDIX II.

WALTER HELY-HUTCHINSON,

Governor.

[No. 18, 1897.]

ACT^s,

“To amend the law relating to Licenses to Wholesale and Retail Dealers.”

Whereas it is expedient to regulate and control the issue of licenses to wholesale and retail dealers not being Licenses under Act No. 38 of 1896 :

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

1. The Annual Licenses mentioned in sub-section (a) of section 71 of Law No. 19, 1872^s shall include Licenses to wholesale dealers.

2. For the purposes of this Act the expression “retail dealers” and “retail Licenses” shall be deemed to apply to retail dealers and retail Licenses of every description, not being Licenses under Act 38 of 1896, including hawkers and Licenses to hawkers.

3. Any Town Council or Town Board may, from time to time, appoint an officer to issue the Annual Licenses (not being Licenses under Act No. 38, 1896), required in the Borough or Township by wholesale or retail dealers.

4. Any person appointed to issue Licenses for wholesale or retail dealers under Law No. 38, 1884, or any like Stamp Act, or under this Act, shall be deemed to be a “Licensing Officer” within the meaning of this Act.

5. A Licensing Officer shall have a discretion to issue or refuse a wholesale or retail License, not being a License under Act No. 38, 1896 ; and a decision come to by a Licensing Officer as to the issue or refusal of a License shall not be liable to review, reversal, or alteration, by any Court of Law, or otherwise than is in the next section provided.

6. There shall be a right of appeal by the applicant, or any other person having an interest in the question, from the decision of the Licensing Officer to the Town Council or the Town Board, if the License is sought for in a Borough or Township, or to the Licensing Board of the Division appointed under the Liquor Act, 1896, if the License is sought for elsewhere than in the Borough or Township : and the Town Council, Town Board, or Licensing Board, as the case may be, may direct that the License, the subject of appeal, shall be issued or cancelled.

7. No License shall be issued to any person who, when thereto required, fails to show to the satisfaction of the Licensing Officer or to the Town Council, Town Board, or Licensing Board, as the case may be, that he is able to fulfil the conditions of the Insolvency Law No. 47, 1887, section 180, sub-section (a), as regards the keeping of such books of account in the English language as are usual and proper in the business to be carried on.

8. No License shall be issued in respect of premises which are unfit for the intended trade, or unprovided with proper and sufficient sanitary arrangements, or not affording sufficient and suitable accommodation for salesmen, clerks, and servants apart from the stores or rooms in which goods and wares may be kept in cases where premises are used for both purposes.

9. Any person who shall carry on any wholesale or retail trade or business without a License, or who shall allow licensed premises to be in a condition which would disentitle him to a License, shall be deemed to have contravened this Act, and shall be liable to a penalty not exceeding Twenty Pounds Sterling for each offence, to be recovered in the Court of the Magistrate by the Clerk of the Peace, or if the contravention is within a Borough or Township, by an officer appointed by the Town Council or Town Board.

10. All penalties recovered under the foregoing section in respect of a business or premises within a statutory Borough or Township shall be paid to the funds of such Borough or Township.

11. Rules may be passed by the Governor in Council to regulate the mode of obtaining Licenses, and to regulate appeals from the Licensing Officer to the Board or Council having appellate jurisdiction.

Given at Government House, Natal, this Twenty-ninth day of May, 1897.

By command of His Excellency the Governor,

THOS. K. MURRAY,

Colonial Secretary.

*Amended by Act 22 of 1909, *vide* Appendix XIII.

APPENDIX III.

Act No. XIV of 1910.

An Act to amend the Indian Emigration Act, 1908.

Whereas it is expedient to amend the Indian Emigration Act, 1908; it is hereby enacted as follows :—

1. This Act may be called the Indian Emigration (Amendment) Act, 1910.
2. For section 5 of the Indian Emigration Act, 1908, the following section shall be substituted, namely :—

“ 5. 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.”

APPENDIX IV.

(Translation.)

(No. 3, 1885.)

LAW RESPECTING COOLIES, ARABS AND OTHER ASIATICS.

(Sanctioned and enacted by resolution of the Honourable Volksraad, Article 255, dated the 1st June 1885.)

Clause 1.—This law is applicable to the persons belonging to one of the aboriginal races of Asia, among whom are comprehended the so-called coolies, Arabs, Malays, and Mahometan subjects of the Turkish Empire.

Clause 2.—With respect to the persons intended in clause 1 the following provisions shall be of force :—

- (a) They cannot acquire the rights of citizenship of the South African Republic ;
- (b) They cannot be owners of landed property in the Republic, *save only in the streets, wards, and locations which the Government shall for sanitary purposes point out for habitation.*

This provision has no retrospective effect.

- (c) *Those who settle in the Republic for the purposes of trade or otherwise shall have to be enrolled in a register to be specially kept for the purpose by the landdrosts of the respective districts, in accordance with a model to be prescribed by the Government ;

As this registration, which shall have to take place within eight days after arrival there shall have to be paid the sum of 3*l.*

A breach of the provisions of section C shall be punishable with a fine of from 10 (ten) to 100 (one hundred) pounds sterling for which shall be substituted in case of non-payment, imprisonment for a term of from 14 days to six months.

This registration above referred to shall take place free of charge with respect to those who have settled in the Republic before the coming into operation of this law, provided that they report themselves to the landdrost, as regards Pretoria within eight days, and in other districts within 30 days after the coming into operation of this law.

- (d) The Government shall have the *power for sanitary purposes of shewing them fixed streets, wards and locations for habitation.*

This provision shall not be applicable to those who reside with their employers.

Clause 3.—This law comes into operation immediately after publication in the “Staats Courant,” in accordance with article 12 of the “Grondwet.”

* Repealed by Act 2 of 1907.

S. J. P. KRUGER,
State President.

W. EDUARD BOK,
State Secretary.

Government Office, Pretoria,
June 10, 1885.

APPENDIX V.

No. 38 of 1902.]

ORDINANCE.

WHEREAS it is desirable to withdraw Martial Law from this Colony and to indemnify acts matters and things in good faith advised commanded ordered directed or done while Martial Law was in force :

And whereas it is desirable in view of the withdrawal of Martial Law to make special provision for the maintenance of good order and government and the public safety of this Colony during such time as circumstances may require :

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

Definition of terms.

1. The following expressions in inverted commas shall have the meaning placed opposite to them :—

“ Constabulary ” shall mean the South African Constabulary.

“ Police Officer ” shall mean any Officer of the Constabulary or Town Police not under the rank of Captain or Inspector respectively.

2. (1) From and after the date of the taking effect of this Ordinance Martial Law shall be and is hereby withdrawn from this Colony and all Proclamations and

Withdrawal of Martial Law.

Regulations issued under the authority of Martial Law and all Proclamations signed by the Military Governor of Pretoria or Johannesburg shall become *ipso facto* of no force or effect.

(2) Sub-Sections (1) and (2) of the Proviso to Section sixteen of the “ Administration of Justice Proclamation 1902 ” shall be and are hereby repealed.

Repeal of Laws.

3. It shall be lawful for the Governor at any time by Proclamation in the *Gazette* to with-

draw any district from operation of Part II of this Ordinance.

draw any district of this colony or any portion of a district from the operation of Part II of this Ordinance or any portion thereof ; such Proclama-

tion shall also be published in some newspaper circulating in the district and printed copies thereof shall be affixed to the door of the Court House of the Resident Magistrate and of every police station in the district ; provided always that the Governor may at any time thereafter proclaim that the whole or any portion of Part II of this Ordinance shall be in force in any district or portion thereof from which it may have been withdrawn ; notice of such Proclamation to be given in like manner as is provided in this section in respect of a Proclamation for withdrawal.

PART I.

4. No action indictment or legal proceeding whatsoever shall be brought or instituted in any of the Courts of this Colony against His

Indemnity for certain Acts.

Excellency the Governor of the Transvaal or His Excellency the Lieutenant-Governor of the Transvaal or the Officer for the time being Commanding His Majesty's Forces in this Colony or against any person or persons acting under them or any of them respectively in any command or capacity civil or military for or on account or in respect of any acts matters and things whatsoever in good faith advised commanded ordered directed or done for the suppression of hostilities or for the maintenance of good order and government or for the public safety of this Colony between the date of the commencement of a state of war between His Majesty's Government and the late Governments of the South African Republic and the Orange Free State and the date of the taking effect of this Ordinance ; and any such action indictment or other proceeding which may have been commenced at the date of the taking effect of this Ordinance shall be discharged and become and be made void.

5. Every such person aforesaid by whom any such act matter or thing shall have been advised commanded ordered directed or done for the

Certain persons indemnified.

purposes aforesaid shall be freed acquitted discharged released and indemnified against all and every person and persons whomsoever in respect thereof.

6. Every such act matter or thing referred to in the preceding Sections shall be presumed

Presumption of good faith.

to have been advised commanded ordered directed or done as the case may be in good faith until the contrary shall be proved by the party complaining.

7. The several sentences pronounced by Military Courts or by Courts established by proper Sentences pronounced by Military Courts Military authority and holden in this Colony confirmed. during the existence of Martial Law upon persons tried by such Courts for offences against the law of this Colony as well as for contraventions of Martial Law Regulations are hereby confirmed; and all such persons confined in any prisons or other legal places of confinement in this Colony under or by virtue of such sentences shall continue liable to be confined there or elsewhere as the Lieutenant-Governor may direct until the expiration of the sentences respectively passed upon them or until their discharge by lawful authority; and such sentences shall be deemed to be sentences passed by duly and legally constituted Courts of this Colony and shall be carried out or otherwise dealt with in the same manner as the sentences of duly constituted Courts of Law of this Colony.

8. All persons who have been in good faith and under proper military authority arrested for Persons arrested for High Treason under High Treason or other crime in this Colony Martial Law to be deemed to have been lawfully arrested. during the existence of Martial Law and all persons who have been similarly committed to gaol and are there detained to await their trial for High Treason or other crime shall be deemed to have been lawfully arrested committed to and detained in gaol in the same manner and to the same extent as if they had been arrested and committed to gaol on warrants issued by persons authorised by Law to issue them.

9. Every recognizance taken during the existence of Martial Law upon which a person accused of High Treason or other crime has been Recognizances taken during existence of Martial Law to be of full force and effect. admitted to bail shall be and is hereby declared to be of full force and effect.

PART II.

Special Provisions for Public Safety.

10. It shall be lawful for any Magistrate, Assistant Magistrate, or police officer in any district to arrest or cause to be arrested without warrant any person in such district on reasonable suspicion of his having committed treason or any of the offences mentioned in section eighteen of this Ordinance and to lodge such person in any gaol in the said district.

11. Upon the written order of such Magistrate, Assistant Magistrate or police officer as aforesaid the gaoler of the said district shall be bound to receive and detain in custody in the gaol thereof any such person arrested as aforesaid for such time as is specified in the said order or if no time is specified therein until the said gaoler receives an order from the Attorney-General or official on whose order the said person is detained for such person's release notwithstanding that no charge is preferred against such person either at the time of his arrest or of his reception into gaol; provided that every such person shall be entitled to his discharge from gaol or custody unless within twenty-one days after such imprisonment criminal proceedings shall be commenced against him.

12. As soon as a person is received into custody under the last preceding section the Magistrate shall forthwith submit to the Attorney-General a statement in writing containing the full name, address and occupation of such person as far as can be ascertained and also a copy of the order on which such person was received into possession together with all the information in his possession on which such order was issued.

13. Any person liable to arrest under section ten who shall have removed from any district in which that section is in force may be arrested in any other district; and the Magistrate of such last-mentioned district or any police officer therein shall on the application of the Magistrate of the first mentioned district cause such person to be arrested without warrant and detained in the gaol of the district in which he was arrested or removed to the gaol of the district from which such application as aforesaid was made. Upon such arrest the provisions of sections eleven and twelve shall *mutatis mutandis* apply.

14. Should any person arrested under section ten or thirteen apply to the Supreme Court, Witwatersrand High Court or to any Judge of the Supreme Court for his discharge from custody before the expiration of the twenty-one days mentioned in section eleven it shall not be competent for any such Court or Judge to grant such discharge if satisfied that reasonable grounds exist for suspecting that the said person has committed treason or any of the offences mentioned in section eighteen of this Ordinance.

15. It shall be lawful for the Resident Magistrate or Assistant Resident Magistrate in any district or for any Police Officer serving therein on any information that there is reasonable cause to suspect that any person within such district is in the possession of any document written or printed of a seditious or treasonable character to search or cause to be searched any land building or premises of any kind whatever situated in such district or any wagon cart or other vehicle on or in which there are reasonable grounds for suspecting that such document may be found and to seize any such document as aforesaid without any warrant being issued or obtained for such search or seizure.

16. Any person hindering or obstructing any Police Constable or other authorized person while engaged in any search under the provisions of this Ordinance shall be liable on conviction to be imprisoned with or without hard labour for a period not exceeding one year or to be fined a sum not exceeding one hundred pounds or to both such fine and imprisonment.

17. It shall be lawful for the official in charge of any Post Office to intercept any letter or other document or parcel sent through the post which he has reasonable grounds to suspect contains treasonable or seditious matter; such letter document or parcel shall be forthwith sent by him to the Resident Magistrate of the District together with a statement in writing of the grounds of suspicion and shall be opened by such Magistrate if satisfied that reasonable grounds of suspicion do exist as aforesaid; and in case such letter document or parcel be found on being opened to contain treasonable seditious or other criminal matter it shall be forwarded by the Resident Magistrate to the Attorney-General to take such action thereon as he may deem advisable; and in case such letter document or parcel shall be found not to contain treasonable seditious or other criminal matter it shall after being endorsed by the said Magistrate be forwarded to its destination.

18. Any one who speaks seditious words or does seditious acts or publishes a seditious libel or is party to a seditious conspiracy shall be liable on conviction to imprisonment with or without hard labour for a period not exceeding five years or if he has previously been convicted of any offence under this section to imprisonment with or without hard labour for a period not exceeding seven years.

Seditious words are words expressive of a seditious intention.

Seditious acts are acts done with a seditious intention.

A seditious libel is a libel expressive of a seditious intention.

A seditious conspiracy is an agreement between two or more persons to carry into execution a seditious intention.

A seditious intention is an intention—

- (1) To bring His Majesty or the Governor or Lieutenant-Governor of the Transvaal in person into hatred or contempt; or
- (2) To excite disaffection against His Majesty or the Governor or Lieutenant-Governor in person or the Government and Constitution of the United Kingdom or of the Transvaal as by law established or the administration of justice therein; or
- (3) To incite His Majesty's subjects to attempt to procure otherwise than by lawful means the alteration of any matter in the Transvaal by law established; or
- (4) To incite any person to commit any crime in disturbance of the public peace; or
- (5) To raise discontent and disaffection amongst His Majesty's subjects; or
- (6) To promote feelings of ill-will and hostility between different classes of His Majesty's subjects:

Provided that no one shall be deemed to have a seditious intention only because he intends in good faith;

- (a) To show that His Majesty or the Governor or Lieutenant-Governor has been misled or mistaken in his measures; or
- (b) To point out errors or defects in the Government or Constitution of the United Kingdom or the Transvaal as by law established or in the administration of justice therein with a view to the reformation of such alleged errors or defects; or to urge His Majesty's subjects to attempt to procure by lawful means the alteration of any matter in the Transvaal by law established.

19. After the date of this Ordinance no person shall enter this Colony without a permit granted under the terms of this Ordinance unless—

- (a) He was resident and within this Colony or the Orange River Colony on the 31st of May 1902 and has not since that date been expelled from or ordered to leave this Colony or the Orange River Colony.

- (b) He has since the 31st of May 1902 and before the date of this Ordinance received a permit or other formal authorisation to enter this Colony from some duly constituted authority.
- (c) He is a person coming within the provisions of Article 2 of the Terms of Surrender signed at Pretoria on the 31st of May 1902, and published in the *Gazette Extraordinary* dated 3rd June 1902.
- (d) He is a person employed in His Majesty's Naval or Military Service or in the Civil Service or in any Police Force of this Colony or the Orange River Colony.

20. Permits to enter the Colony under this Ordinance shall be granted by such persons as may be authorised to do so by the Governor and shall be in such form as the Governor may direct.

No such permit shall be granted to any person who having been a burgher of the South African Republic or the Orange Free State has not taken the Oath of Allegiance to His Majesty or made some declaration of equivalent import in form approved by the Governor. In all other cases it shall be in the discretion of the Governor to grant or refuse any permit.

21. It shall be lawful for the Colonial Secretary if he has reason to believe that any person is residing or sojourning in this Colony having entered it without proper authority to give notice thereof to any Resident Magistrate and such Magistrate shall thereupon summon such person to appear before him and if such person fails to satisfy the Magistrate that he has obtained a permit under this Ordinance or is exempt under the provisions of Section *nineteen* from obtaining such permit the Magistrate shall make a written order directing such person to leave the Colony within seven days unless before the expiration of that time he has received permission in writing from the Colonial Secretary to remain in the Colony; such permission shall have the same effect as a permit granted under this Ordinance.

22. (1) If any person in whose case such order has been made is found within the Colony after the expiration of seven days after service of such order without having obtained permission from the Colonial Secretary as aforesaid he may be arrested and brought before a Magistrate and shall upon conviction be sentenced to imprisonment with or without hard labour for a period of not less than one month and not more than six months and with or without a fine not exceeding five hundred pounds and in default of payment to a further term of imprisonment for a period not exceeding six months.

(2) If any person imprisoned under the terms of the preceding Sub-Section shall remain in the Colony for a period of more than seven days after the expiration of his term of imprisonment or any subsequent term of imprisonment imposed under this Section without obtaining permission in writing from the Colonial Secretary to remain in the Colony he may be arrested and brought before a Magistrate and shall on conviction be sentenced to imprisonment with or without hard labour for a period of not less than six and not more than twelve months and with or without a fine not exceeding five hundred pounds and in default of payment to a further term of imprisonment for a period not exceeding six months.

23. Any person entering this Colony on a permit not issued to him by a proper authority or obtained by him by any fraudulent means shall be liable to imprisonment with or without hard labour for a period not exceeding two years or to a fine not exceeding five hundred pounds or to both such imprisonment and fine.

24. It shall be lawful for the Lieutenant-Governor on its being shewn to his satisfaction that there are reasonable grounds for believing that any person within this Colony is dangerous to the peace and good government of the country to issue an order under the hand of the Colonial Secretary to such person to leave the Colony within fourteen days after service of such order. If on the expiration of the said period such person shall be found within the Colony he shall be proceeded against in similar manner and be subject to the like penalties as are provided in Section *twenty-two* of this Ordinance.

25. It shall be lawful for the Lieutenant-Governor to make regulations for all or any of the following purposes and to provide penalties for any breach thereof not exceeding a fine of fifty pounds or imprisonment with hard labour for a period not exceeding three months or both such fine and imprisonment.

- (a) For the more effectual carrying out of the provisions of this Ordinance.
- (b) For preventing the wilful or reckless spreading of false intelligence calculated to create panic, or alarm.
- (c) For prohibiting the holding of meetings at which there is reasonable suspicion that seditious speeches will be made.

(d) For prohibiting the introduction into this Colony or circulation therein of any printed matter of a treasonable or seditious character.

Any regulations made under this section may be for any one or more districts, but shall only be of force after publication in the *Gazette*.

26. Nothing in this Ordinance contained shall be deemed or taken to interfere with or to limit the power of the Governor to proclaim Martial Law throughout this Colony or in any district or districts thereof.

27. This Ordinance may be cited for all purposes as the "Indemnity and Peace Preservation Title Ordinance 1902."

Passed in Council the Twelfth day of November, One thousand Nine hundred and Two.

GERARD CRAIG SELLAR,

Clerk of the Council.

Authenticated under my Hand and Seal :—

ARTHUR LAWLEY,

Lieutenant-Governor.

Pretoria, 14th November 1902.

Assented to :—

MILNER,

Governor.

Johannesburg, 15th November 1902.

APPENDIX VI.

No. 5 of 1903.

ORDINANCE.

To Amend the Peace Preservation Ordinance of 1902.

BE it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. Sections *nineteen twenty twenty-one twenty-two twenty-three and twenty-four* of the Indemnity and Peace Preservation Ordinance No. 38 of 1902 are hereby repealed.
Repeal.
2. After the date of this Ordinance no person shall enter or reside in this Colony unless he is possessed of a permit issued to him under the provisions of this Ordinance or can give satisfactory evidence that he belongs to one of the following classes:—
 - (1) persons resident and actually in this Colony or the Orange River Colony on the 31st May 1902;
 - (2) persons who before the date of this Ordinance have received a permit or other formal authorisation to enter this Colony from some person duly authorised to issue the same;
 - (3) persons coming within the provisions of Article *two* of the Terms of Surrender signed at Pretoria on the 31st day of May 1902 and published in the *Gazette Extraordinary* dated 3rd June 1902;
 - (4) persons employed in His Majesty's Naval or Military Service or in the Civil Service or in any Police Force of this Colony or the Orange River Colony;

provided that the exemption in this section contained shall not apply to any person who has been expelled from or ordered to leave this Colony or the Orange River Colony.

3. Permits to enter the Colony shall be in the form prescribed by the Governor and shall be issued by such persons as he may appoint for that purpose.
Persons by whom permits may be issued.
4. (1) No permit to enter this Colony shall be granted to any person who having been a Burgher of the South African Republic or the Orange Free State has not taken the Oath of Allegiance to His Majesty or made some declaration of equivalent import in form approved by the Governor.
Limitation on issue of permits.
 - (2) Subject to the above limitation the granting or withholding of permits shall be in the absolute discretion of the Governor.
5. Any person entering or residing in this Colony may be called upon by any member of any Constabulary or Police Force or other person authorised thereto by the Colonial Secretary to produce a permit issued under this Ordinance or to give satisfactory evidence that he belongs to one of the classes exempted from the necessity of having such a permit under the provisions of Section *two*. If the person so called upon fails to produce such a permit or to give such evidence as aforesaid he may be arrested without a warrant and dealt with as hereinafter provided.
Persons called on to produce permits on pain of arrest.

6. Every person so arrested shall with all convenient speed be brought before a Magistrate and if he fails to satisfy the Magistrate that he is duly authorised to enter or reside in this Colony under the provisions of this Ordinance the Magistrate may make an order in writing directing such person to leave this Colony within such time as may be specified in such order provided that if such person declares upon oath that he has already obtained a permit and gives satisfactory reasons for his inability to produce the same or if he declares upon oath that he can produce satisfactory evidence that he belongs to one of the classes exempted from the necessity of obtaining a permit by the provisions of Section *two* hereof he may be released upon entering into a recognizance with or without sureties to produce before any Magistrate named in such recognizance and within the time stated therein such permit or evidence as the case may be. If such person fails to comply with the conditions of his recognizance it shall be forfeited.
Persons arrested to be brought before a Magistrate.

7. Any person who may be ordered to leave this Colony and fails to do so within the time specified in the order and any person whose recognizance has been forfeited under the provisions of the last preceding section may be arrested without warrant and brought before a Magistrate and shall upon conviction be sentenced to imprisonment with or without hard labour for a period of not less than one month and no more than six months and with or without a fine not exceeding £500 and in default of payment to a further term of imprisonment for a period not exceeding six months.

8. If any person imprisoned under the terms of the last preceding section shall remain in the Colony for a period of more than seven days after the expiration of his term of imprisonment or any subsequent term of imprisonment imposed under this section without obtaining permission in writing from the Colonial Secretary to remain in the Colony the burden of proving which shall be upon him he may be arrested without a warrant and brought before a Magistrate and shall on conviction be sentenced to imprisonment with or without hard labour for a period of not less than six and not more than twelve months and with or without a fine not exceeding five hundred pounds and in default of payment to a further term of imprisonment for a period not exceeding six months.

Offences relating to permits.

9. Any person who

- (1) obtains or attempts to obtain or incites any person to obtain or aids or abets any person in obtaining a permit by any fraud misrepresentation false pretence falsehood or other improper means ;
- (2) uses or attempts to use or incites any person to use or aids or abets any person in using any permit so obtained ;
- (3) enters or attempts to enter this Colony on a permit so obtained or on a permit not issued to him by proper authority

shall be liable to a fine not exceeding five hundred pounds or to imprisonment with or without hard labour for a term not exceeding two years or to both such fine and such imprisonment.

10. It shall be lawful for the Lieutenant-Governor on its being shewn to his satisfaction that there are reasonable grounds for believing that any person within this Colony is dangerous to the peace and good government of the country to issue an order under the hand of the Colonial Secretary to such person to leave the Colony within such time after service of such order as may be stated therein. If on the expiration of the said period such person shall be found within the Colony he shall be proceeded against in manner prescribed in sections seven and eight of this Ordinance and shall be subject to the penalties therein provided.

11. This Ordinance may be cited as the Peace Preservation Ordinance 1903 and shall be read as one with the Indemnity and Peace Preservation Ordinance 1902.

Title.

Passed in Council the eighteenth day of February One thousand Nine hundred and Three.

CECIL E. HAWES,
Acting Clerk of the Council.

Authenticated under my Hand and Seal.

ARTHUR LAWLEY,
Lieutenant-Governor.

Pro via, 23rd February, 1903.

Assented to.

MILNER,
Governor.

Johannesburg, 25th February, 1903.

APPENDIX VII.

Act No. 2 of 1907.

ACT TO AMEND LAW NO. 3 OF 1885.

Be it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of the Transvaal as follows:—

A. D. 1907.

1. Sub-section (c) of Article two of Law No. 3 of 1885 as amended by Volksraad Resolutions Article 1419 of the twelfth day of August 1886 and Article 128 of the sixteenth day of May

1890, shall be and is hereby repealed.

2. In this Act unless inconsistent with the context;

Definitions.

"Asiatic" shall mean any such male person as is described in Article one of Law No. 3 of 1885 not being a Malay born and resident in any British Colony or possession in South Africa nor a person introduced into the Colony under the Labour Importation Ordinance 1904 and not being an officer in the Chinese Consular Service;

"Register of Asiatics" shall mean the register to be kept under this Act as prescribed by Regulation;

"Registrar" shall mean the officer appointed by the Governor to keep the register of Asiatics and any person lawfully acting in such capacity;

"Resident Magistrate" shall include an Assistant Resident Magistrate;

"Regulation" shall mean any Regulation made under Section *eighteen* of this Act;

"Guardian" shall mean the parent of an Asiatic under the age of sixteen or any other person under whose care or control such Asiatic is living for the time being or failing any such person the employer of such Asiatic;

"Application for registration" shall mean an application to be placed on the register of Asiatics made in such manner and form as may be prescribed by Regulation and accompanied by the supplying of such particulars and the furnishing of such means of identification as may be required by this Act or by Regulation;

"Applicant" shall mean any person who makes application for registration on his own behalf or any person on whose behalf application for registration is made by his guardian;

"Certificate of registration" shall mean a certificate of registration under this Act in the form prescribed by Regulation;

"Lawful holder" as used in relation to any certificate of registration shall mean the person whose registration is thereby certified.

3.—(1) Every Asiatic lawfully resident in this Colony shall, subject to the exceptions hereinafter mentioned be registered in the register of Asiatics and shall thereupon be entitled to receive a certificate of registration and no charge shall be made for such registration or certificate save as in Section *twelve* of this Act provided.

(2) The following shall be deemed for the purposes of this Act to be Asiatics lawfully resident in this Colony:—

(i) Any Asiatic duly authorised to enter and reside in this Colony by a permit issued under the Indemnity and Peace Preservation Ordinance, 1902, or any amendment thereof or issued between the first day of September 1900 and the date of the passing of the said Ordinance unless such permit shall have been fraudulently obtained; provided that any permit expressed to authorise any Asiatic to remain in this Colony for a limited time only shall not be deemed to be a permit within the meaning of this sub-section.

(ii) Any Asiatic resident and actually in this Colony on the thirty-first day of May 1902.

(iii) Any Asiatic born in this Colony since the thirty-first day of May 1902 not being the child of any labourer introduced into this Colony under the Labour Importation Ordinance, 1904.

4.—(1) Every Asiatic resident in this Colony at the date of the taking effect of this Act shall before such date or dates and at such place or places and to such person or persons as the Colonial Secretary may prescribe by notice in the "Gazette" make application for registration.

(2) Every Asiatic who enters this Colony after the date of the taking effect of this Act and who has not previously been registered thereunder shall within eight days after entering this

Colony unless he shall have entered under a permit granted under Section *seventeen* make application for registration to such person and at such place as may be so prescribed ; provided that

- (a) no application shall be required to be made under this section on behalf of any Asiatic child who at the expiration of the time within which such application is required to be made is under the age of eight years ;
- (b) in the case of any Asiatic child who at the expiration of such time is eight years of age but under sixteen years of age such application shall be made on such child's behalf by his guardian and if not so made shall be made by such child within one month after attaining the age of sixteen years.

5.—(1) The Registrar shall consider every application for registration made under the last preceding section and register every applicant who is lawfully resident in this Colony or whose application is approved by him and shall cause to be issued to such applicant or the guardian who made the application on his behalf a certificate of registration.

(2) If it shall appear to the Registrar that any applicant is not lawfully resident in this Colony he may refuse to register such applicant and in case of refusal where the applicant is of the age of sixteen years or over shall cause a notice of refusal to be sent by post to the applicant at the address given by him on application and a copy of such notice shall be affixed to the principal door of the Magistrate's office of the District where such application was made and the Registrar shall by such notice direct such applicant to appear before the Resident Magistrate of the District at a time therein specified being not less than fourteen days from the date of such notice and show cause why he should not be ordered to leave this Colony and if such applicant shall fail to appear at the time specified in such notice or having appeared shall fail to satisfy the Resident Magistrate that he is lawfully resident in the Colony the Resident Magistrate if the applicant is of the age of sixteen years or over shall make an order in writing directing him to leave this Colony within a time to be specified in such order ; provided always that if such order is made in the absence of the applicant such time shall run from the date of the service of the order upon him and such order shall be deemed to be an order made under Section *six* of the Peace Preservation Ordinance, 1903, and Sections *seven* and *eight* of the said Ordinance shall apply accordingly ; provided further that if the Resident Magistrate shall be satisfied that the applicant is lawfully resident within this Colony such Magistrate shall make an order upon the Registrar requiring him to register such applicant and to issue to him a certificate of registration.

6.—(1) Any Asiatic who is the guardian of an Asiatic child under the age of eight years shall upon making application for registration on his own behalf supply such particulars and furnish such means of identification in respect of such child as may be prescribed by Regulation and if such guardian is himself registered the particulars aforesaid which he has applied shall be provisionally noted on the register and such guardian shall within one year after the child aforesaid attains the age of eight years make application for registration on such child's behalf at the office of the Resident Magistrate of the District in which he himself resides ;

(2) The guardian of every Asiatic child born in this Colony after the date of the taking effect of this Act shall within one year after such child attains the age of eight years make application for registration on such child's behalf at the office of the Resident Magistrate of the District in which he himself resides ; provided that—

- (a) where any guardian fails to make application for registration on behalf of any Asiatic child whose guardian he is within the time hereby prescribed for making the same such guardian shall on being thereto required by the Registrar or any Resident Magistrate make such application at any later date ;
- (b) where any application which is required to be made under this section by the guardian of an Asiatic child is not made by such guardian or where such application is refused application for registration shall be made by such Asiatic child at the office of the Resident Magistrate of the District within which he resides within one month after he attains the age of sixteen years.

The Resident Magistrate at whose office any application is made under this section shall cause the record of such application and all documents relating thereto to be forwarded to the Registrar who shall if satisfied that the same is in order register the applicant and cause to be issued to him or his guardian a certificate of registration.

7. Where particulars as to any Asiatic child under the age of eight years have not been provisionally noted on the register as is in the last preceding section provided by reason of the failure of his guardian to supply such particulars application for registration shall nevertheless be made on behalf of such Asiatic child by his guardian within one year after he attains the age of eight years and if not so made shall be

made by such Asiatic child within one month after he attains the age of sixteen years at the office of the Resident Magistrate of the District in which he resides and the record of such application and all documents relating thereto shall be forwarded to the Registrar who may in his discretion register the applicant and issue to him or his guardian a certificate of registration.

8.—(1) Any person who shall fail to make application for registration as required by this Act either on his own behalf or as guardian on behalf of an Asiatic child shall be liable on conviction to a fine not exceeding one hundred pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

(2) Any person who brings into this Colony an Asiatic under the age of sixteen years not lawfully resident therein and any person who shall employ such child in any trade or business shall be guilty of an offence and shall be liable on conviction to the following penalties:—

(a) to the penalties mentioned in sub-section (1) of this section; and

(b) if such person is the holder of a certificate of registration to cancellation of such certificate by the Registrar;

and thereupon the Colonial Secretary may issue an order directing such person to leave this Colony and such order shall be deemed to be an order issued under Section six of the Peace Preservation Ordinance, 1903, and Sections seven and eight of the said Ordinance shall apply accordingly.

(3) Any Asiatic over the age of sixteen years who after such date as may be notified by the Colonial Secretary in the "Gazette" is found within the Colony and fails upon such demand as in hereinafter mentioned to produce a certificate of registration of which he is the lawful holder may be arrested without warrant and brought before a Resident Magistrate and if he fails to satisfy such Magistrate that he is the lawful holder of a certificate of registration or that the time within which he is required to make application for such certificate has not expired the Magistrate shall save as in the next succeeding sub-section provided make an order in writing directing such Asiatic to leave this Colony within such time as may be specified in such order and such order shall be deemed to be an order made under Section six of the Peace Preservation Ordinance, 1903, and Sections seven and eight of the said Ordinance shall apply accordingly.

(4) If an Asiatic who has failed to make application for registration within the time prescribed by this Act shall satisfy the Magistrate before whom he is brought that such failure was due to some good and sufficient cause the Magistrate may instead of making such order as aforesaid direct such Asiatic forthwith to make application for registration and if such Asiatic shall comply with such direction his application shall be dealt with in all respects as if it had been made within the time within which it was required to be made by this Act and all the provisions of this Act which would have applied if the application had been so made shall apply accordingly but if he shall fail to comply with such direction the Magistrate shall make such order for removal as aforesaid in respect of such Asiatic.

9. Every Asiatic of the age of sixteen years or over entering or residing in this Colony shall upon demand made upon him by any member of a police force lawfully established in this Colony or any other person authorized thereto by the Colonial Secretary produce the certificate of registration of which he is the lawful holder and shall also on like demand supply such particulars and furnish such means of identification as may be prescribed by Regulation.

Every guardian of an Asiatic child under the age of sixteen years shall produce on such demand as aforesaid any certificate of registration of which such child is the lawful holder and supply any particulars and furnish any means of identification required by this Act or any Regulation in respect of such child.

10. Every certificate of registration shall be accepted as conclusive evidence in all places that the lawful holder thereof notwithstanding anything in the Peace Preservation Ordinance, 1903, contained is entitled to enter and reside in this Colony; provided always that this section shall not apply to persons who have under Section ten of the Peace Preservation Ordinance, 1903, been ordered to leave the Colony.

11. Any person into whose hands shall come any certificate of registration or any permit issued under Section seventeen of which he is not the lawful holder shall forthwith deliver or transmit the same by post as soon as may be to the Registrar of Asiatics Pretoria.

Any person who fails to comply with the requirements of this section shall be liable on conviction to a fine not exceeding fifty pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding one month.

12. If at any time any certificate of registration is lost or destroyed the person who was the lawful holder thereof shall apply forthwith to the Registrar to have the same renewed and the Registrar shall upon compliance by such person with the Regulations relating to applications for the renewal of certificates and upon payment of a fee of five shillings renew such certificate. The said fee shall be denoted by means of revenue stamps to be affixed to such application by the applicant for such renewal and shall be defaced by the officer who receives such application.

Provision where registration certificate is lost or destroyed. Registrar shall upon compliance by such person with the Regulations relating to applications for the renewal of certificates and upon payment of a fee of five shillings renew such certificate. The said fee shall be denoted by means of revenue stamps to be affixed to such application by the applicant for such renewal and shall be defaced by the officer who receives such application.

13. After such date as may be notified by the Colonial Secretary in the "Gazette" no Asiatic shall obtain any trading license issued under the Revenue Licenses Ordinance, 1905, or any amendment thereof or under any bye-law in force in a municipality unless he shall produce to the person appointed to issue such license a certificate of registration of which he is the lawful holder and supply such particulars and furnish such means of identification as may be prescribed by Regulation.

Trading licenses not to be granted to Asiatics except upon production of certificates.

14. Whenever in any prosecution or other proceeding under this Act the age of any Asiatic is in question such Asiatic shall unless and until the contrary be proved be taken to be of the age which the Registrar shall in any certificate issued under his hand certify to be in his opinion the apparent age of such Asiatic.

Evidence as to age of Asiatic.

15. Any affidavit or sworn declaration which is required by Regulation to be made by any person who makes an application for registration either on his own behalf or on behalf of some other person shall be exempt from stamp duty.

Exemption from stamp duty of affidavit or sworn declaration required by Regulation.

Offences relating to applications for registration and to registration certificates.

16. Any person who ;

- (i) for the purpose of or in connection with an application for registration or for the purpose of obtaining a certificate of registration commits any fraudulent act or makes any false statement or false pretence or incites any person to or aids or abets any person in such act statement or pretence ;
- (ii) forges any certificate of registration ;
- (iii) uses or attempts to use as his certificate any certificate of registration of which he is not the lawful holder or any forged certificate of registration ;
- (iv) incites any person to use or aids and abets any person in using as such person's certificate any certificate of registration of which such person is not the lawful holder or any forged certificate of registration ;

shall be liable to a fine not exceeding five hundred pounds or in default of payment to imprisonment with or without hard labour for a term not exceeding two years or to both such fine and such imprisonment.

17.—(1) Notwithstanding anything in the Peace Preservation Ordinance, 1903, contained a permit to enter this Colony may in the absolute discretion of the Colonial Secretary be issued in the form prescribed by Regulation authorizing an Asiatic to enter and remain in this Colony for any period named in such permit and after the expiry of such period the person authorized by such permit to enter this Colony shall be deemed to be a person not duly authorized to be in this Colony and if found may be arrested without warrant and the provisions of Sections *seven* and *eight* of the said Ordinance shall apply to such person as if he were a person who at the date of such expiry had been ordered to leave this Colony under Section *six* of the said Ordinance and had failed to comply with such order.

(2) The provisions of Section *nine* of the said Ordinance shall in all cases apply to permits issued under this section.

(3) Any permit issued before the date of the taking effect of this Act to an Asiatic under the Indemnity and Peace Preservation Ordinance, 1902, or any amendment thereof and expressed to authorize such Asiatic to remain in this Colony for a limited time only shall be deemed to be a permit issued under this section.

(4) The Colonial Secretary may in his discretion order that the person authorized by any permit issued under this section to enter and remain in this Colony shall not during the currency of such permit be deemed to be a coloured person for the purpose of the provisions of the Liquor Licensing Ordinance, 1903, or any amendment thereof and such order shall be endorsed on such permit and shall be of full force and effect for such purposes.

(5) The Colonial Secretary may issue any such order as in the last preceding sub-section mentioned in respect of any person who is a member of an Asiatic race and is not subject to the provisions of this Act.

18. The Governor in Council may from time to time make alter and repeal Regulations for Power to make Regulations. any of the following purposes —

- (1) prescribing the form of the register to be kept under this Act ;
- (2) prescribing the manner and form in which application shall be made for registration the particulars to be supplied and the means of identification to be furnished by any applicant or the guardian of any applicant for the purpose of or in connection with such application ;
- (3) prescribing the form of certificates of registration ;
- (4) prescribing the particulars to be supplied and the means of identification to be furnished—
 - (a) by the guardian of any Asiatic child under the age of eight years under Section six of this Act ;
 - (b) by any Asiatic upon such demand as is in Section nine of this Act mentioned ;
 - (c) by any Asiatic applying for the renewal of any certificate of registration which has been lost or destroyed ;
 - (d) by any Asiatic applying for a trading license ;
- (5) prescribing the form of permit to be issued under Section seventeen of this Act.

19. Any Asiatic or the guardian of any Asiatic failing to comply with any requirement of this Act shall except where otherwise specified be liable on conviction to a fine not exceeding one hundred pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

General penalties.

20. Notwithstanding anything contained in the Labour Importation Ordinance, 1904, no Asiatic who is the lawful holder of a certificate of registration and no Asiatic who was lawfully resident in this Colony or allowed to enter it under a proper permit before the date of the said Ordinance shall be prohibited from entering or residing in or being introduced into this Colony by reason of the fact that he is under a contract of service and has not entered into the contract referred to in Section eight of the said Ordinance.

21. Notwithstanding anything contained in sub-section (b) of Article two of Law No. 3 of 1885 as amended by Volksraad Resolution Article 1419 of the twelfth day of August 1886 any fixed property in this Colony acquired by an Asiatic before the taking effect of such Law and registered in the name of such Asiatic whether before or after the taking effect of such Law may be transmitted by such Asiatic to another Asiatic by testamentary or other inheritance.

22. This Act may be cited for all purposes as the Asiatic Law Amendment Act, 1907, and shall not take effect unless and until the Governor shall proclaim in the "Gazette" that it is His Majesty's pleasure not to disallow the same and thereafter it shall take effect upon such date as the Governor shall notify by Proclamation.

Passed by the Legislative Council.

E. M. O. CLOUGH,

Clerk of the Council.

Passed by the House of Assembly.

Grs. R. HOFMEYR,

Clerk of the House.

APPENDIX VIII.

Act No. 15 of 1907.

An Act to place restrictions on Immigration into this Colony to provide for the removal therefrom of prohibited immigrants and other persons and to establish and maintain an Immigration Department.

(Assented to 15th August 1907.)

Be it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of the Transvaal as follows :—

1. The Peace Preservation Ordinance 1903 shall be and is hereby repealed; provided that Repeal of Ordinance no such repeal shall affect or abridge any powers or jurisdiction by the Asiatic Law Amendment Act No. 5 of 1903. Act 1907 conferred for the purpose of carrying out such Act; but the said Ordinance shall for all the purposes of such Act be deemed to remain of full force and effect.

2. In this Act and in any regulation made thereunder unless inconsistent with the context;

“department” shall mean the Immigration Department established and maintained under the provisions of this Act; Interpretation of terms.

“Governor” shall mean the officer for the time being administering the government of this Colony acting by and with the advice of the Executive Council;

“imprisonment” shall mean imprisonment with or without hard labour as the court sentencing an offender to imprisonment may direct;

“magistrate” shall include a resident magistrate and an assistant resident magistrate of any district of the Colony;

“Minister” shall mean the Colonial Secretary or such other Minister to whom the Governor may from time to time assign the carrying out of this Act;

“minor” shall mean any person under the age of sixteen years;

“police officer” shall mean any member of a police force lawfully established in this Colony;

“prohibited immigrant” shall mean and include any of the following classes of persons desiring to enter or entering this Colony after the date of the taking effect of this Act:

(1) any person who when asked whether within or outside this Colony by a duly authorized officer shall be unable through deficient education to write out (from dictation or otherwise) and sign in the characters of an European language an application for permission to enter this Colony or such other document as such officer may require; provided that for the purposes of this sub-section Yiddish shall be accepted as an European language; provided further that

(a) if the Minister publish a notice in the *Gazette* that arrangements have been made with the government of any country for regulating the admission to this Colony of the subjects or citizens of such country such subjects or citizens shall not while such notice is in force be required to comply with the provisions of this sub-section;

(b) the Minister shall not issue any such notice unless such arrangements have been sanctioned by resolution of both Houses of Parliament;

(c) any such notice shall cease to have effect as soon as it is cancelled by further notice of the Minister in the *Gazette*.

(2) any person who has not in his possession or at his disposal means to support himself for a reasonable time within this Colony or who is likely to become a public charge if he were allowed to enter therein;

(3) any prostitute or person living on the earnings of prostitution or procuring women for immoral purposes;

(4) any person who at the date of his entering or attempting to enter this Colony is subject or would if he entered this Colony be subject to the provisions of any law in force at such date which might render him liable either at such date or thereafter if found therein to be removed from or to be ordered to leave this Colony whether on conviction of an offence against such law or for failure to comply with its provisions or otherwise in accordance with its provisions; provided that such conviction be not the result of the commission by such person elsewhere than in this Colony of an offence for which he has received a free pardon;

(5) any person who is a lunatic within the meaning of the Lunacy Proclamation 1902 or any amendment thereof;

(6) any person who is a leper or is suffering from such infectious or contagious disease of a loathsome or dangerous character as may from time to time be prescribed by regulation ;

(7) any person who owing to information officially received by the Minister from any Secretary of State or from a member of any colonial government (whether British or foreign) or through diplomatic channels from an officer of any foreign state is deemed by the Minister to be an undesirable ;

(8) any person who the Minister has reasonable grounds for believing would be dangerous to the peace order and good government of this Colony if he entered therein ; but shall not include

(a) members of His Majesty's regular forces ;

(b) the officers and crew of any public ship of a foreign state ;

(c) any person who is duly accredited to this Colony by or under the authority of His Majesty or of the government of a foreign state together with his wife family and servants ;

(d) any person who has served in any of His Majesty's volunteer forces in South Africa and has received a good discharge and who does not come within the scope of sub-sections (3) (4) (5) (6) (7) or (8) of the definition of " prohibited immigrant "

(e) the wife or minor child of any person who is not a " prohibited immigrant " ;

(f) any European person who has been at any time lawfully resident within this Colony and who has not under the provisions of any law been removed from or ordered to leave this Colony ;

(g) any Asiatic who is eligible for or has obtained a certificate of registration under the Asiatic Law Amendment Act 1907 and who does not come within the scope of sub-sections (3) (4) (5) (6) (7) or (8) of the definition of " prohibited immigrant " ;

(h) descendants of the aboriginal races of Africa south of the Equator who do not come within the scope of sub-sections (3) (4) (5) (6) (7) or (8) of the definition of " prohibited immigrants " ;

(i) European persons who are agricultural or domestic servants skilled artificers mechanics workmen or miners who are able to produce a certificate signed by the Agent-General of this Colony in England or by an officer in England or elsewhere appointed for the purpose by the Governor to the effect that the person named therein has been engaged to serve immediately on arrival in this Colony an employer therein of repute at an adequate remuneration and for a reasonable period of time ; provided that such persons do not come within the scope of any sub-section of the definition of " prohibited immigrant " other than sub-section (2).

" regulation " shall mean any regulation made under section fifteen of this Act.

3. (1) The Governor may establish and maintain out of moneys voted by Parliament for the purpose a department to be known as the " Immigration Department " which shall be under the control of the Minister and in charge of such officer as he may from time to time appoint.

(2) The function of the department shall be the performance of all work whether within or outside this Colony necessary for or incidental to the prevention of the entrance into the Colony of prohibited immigrants or their removal therefrom and the carrying out of any powers or duties that may be specially conferred or imposed on it by this Act or by regulation.

(3) The Governor may from time to time appoint and remove such officers as he may think necessary or expedient to assist in the administration of the department who shall have such powers and perform such duties within or outside this Colony as may be conferred upon them by this Act or by regulation.

4. The Governor may from time to time enter into agreement with the government of any colony or territory in South Africa for the doing of such acts or things as are necessary or expedient for the carrying out of the objects and purposes of this Act.

5. Every prohibited immigrant entering into or found within this Colony shall be guilty of an offence and shall be liable on conviction

(1) to a fine not exceeding one hundred pounds or in default of payment to imprisonment for a period not exceeding six months or to both such fine and such imprisonment ; and

(2) to be removed at any time from the Colony by warrant under the hand of the Minister and pending such removal to be detained in such custody as may be prescribed ; provided that

(a) such prohibited immigrant may be discharged from such detention if he find two approved sureties in this Colony (each in the sum of one hundred pounds) for his leaving the Colony within one month ;

Establishment
functions and
officers of the
Immigration
Department.

Agreements with
governments of
neighbouring
colonies for the
carrying out of Act.
Penalties for prohibi-
ted immigration.

(b) if such prohibited immigrant be sentenced to imprisonment such imprisonment shall terminate as soon as he is removed from the Colony.

6. Any person who

- (a) is convicted after the date of the taking effect of this Act of a contravention of sections three, thirteen or twenty-one of the Immorality Ordinance 1903 or any amendment of such sections ; or
- (b) is deemed by the Minister on reasonable grounds to be dangerous to the peace order and good government of this Colony if he remain therein ; or
- (c) having been ordered under any law to leave this Colony fails to comply with the terms of such order ;

Removal from Colony of certain persons convicted under Immorality Ordinance, 1903, and of dangerous persons.

may be arrested and removed from this Colony by warrant under the hand of the Minister and pending removal may be detained in such custody as may be prescribed by regulation ; provided that no such person as is in paragraph (b) hereof described shall be removed from this Colony except on the order of Governor ; provided further that every such person arrested shall be discharged from custody unless an order be made by the Governor for his removal from this Colony within ten days after the date of his arrest.

7. Any person who

- (1) wilfully aids or abets a prohibited immigrant in entering or remaining in this Colony ; or
- (2) wilfully aids or abets a person ordered to be removed under section six in remaining in this Colony ; or
- (3) enters into or purports to enter into a contract as employer with any person outside this Colony with intent that the provisions of this Act be evaded or at the time of entering into or purporting to enter into such contract shall be unable to fulfil his part thereof or has no reasonable expectation of being so able ; or
- (4) uses or attempts to use any certificate issued under paragraph (i) of the classes of persons excluded from the definition of " prohibited immigrant " unless he be the lawful holder of such certificate ; or
- (5) forges or uses knowing the same to be forged any document purporting to be such certificate

Offences of aiding or being accessory to prohibited immigration.

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred pounds or in default of payment to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

8. No prohibited immigrant shall be entitled to obtain a licence to carry on in this Colony any trade or calling or to acquire therein any interest in land whether leasehold freehold or other interest ; and any such licence (if obtained) or any contract deed or other document by which such interest is acquired in contravention of this section shall on conviction of such immigrant under acquire interest in land section five of this Act be null and void.

Prohibited immigrant not exempt from Act by reason of trade or calling.

9. Every person found in this Colony who is reasonably suspected of being a prohibited immigrant may be arrested without warrant by any magistrate justice of the peace police officer or officer of the department and shall as soon as possible be brought before a court of resident magistrate to be dealt with according to law.

Arrest without warrant of persons suspected of being prohibited immigrants.

10. No prohibited immigrant shall be exempt from the provisions of this Act or allowed to remain in this Colony by reason only that he had not been informed that he could not enter this Colony or that he may have been allowed to enter through oversight or owing to the fact being undiscovered that he was a prohibited immigrant.

Prohibited immigrant not exempt from Act by reason that he was allowed to enter through oversight.

11. Any person ordered to be removed from this Colony under this Act and any other person who shall have been convicted under section seven of aiding or abetting him in entering or remaining in the Colony in contravention of this Act shall be liable to pay all expenditure incurred by the government in carrying out such removal whether from the Colony or South Africa or in the detention within the Colony or elsewhere of any person pending his removal ; and the amount of such expenditure on production to the Sheriff of the certificate of an officer of the department stating the items and total amount of such expenditure shall be recovered by execution levied on the property within the Colony of the person so liable in manner provided for execution levied under a judgment of the Supreme Court ; and the proceeds of such execution shall be paid by the Sheriff to the treasurer who after deduction of the amount of expenditure aforesaid and the costs of execution shall remit the balance to the person so liable or to any person appointed by him to receive same.

Prohibited immigrant, etc., and person assisting him liable to pay expense of his removal and custody.

12. (1) It shall be the duty of every keeper or person having the management of a place used as an hotel boarding-house lodging house or other place wherein persons receive sleeping accommodation for money or valuable consideration to cause to be kept a book in which every

Keeping of books by hotel boarding-house and lodging-house keepers.

person immediately he first receives such accommodation shall enter his name and place from which he last came.

(2) Every such book shall be open to the inspection of any police officer or officer of the department at all reasonable times.

(3) Any person failing to comply with the requirements of this section or obstructing or preventing any such officer in carrying out his powers thereunder or making any false entry in such book shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty pounds or in default of payment to imprisonment not exceeding one month or to both such fine and such imprisonment.

Evidence.

13. The burden of proving that a person has not entered or remained in the Colony in contravention of this Act or any regulation shall in any prosecution for such contravention lie upon the accused person.

Special jurisdiction
of resident magis-
trates.
Regulations for
purposes of Act.

14. Every court of resident magistrate shall have jurisdiction to impose the maximum penalties for all contraventions of this Act or of any regulation.

15. The Governor may from time to time make alter or rescind regulations not inconsistent with the provisions of this Act for all or any of the following purposes:—

- (a) prescribing the powers and duties of officers of the department;
- (b) for preventing the entrance of prohibited immigrants into this Colony;
- (c) for the removal from this Colony of persons ordered under this Act to be removed therefrom;
- (d) for the detention pending removal of persons ordered under this Act to be removed from the Colony;
- (e) prescribing the diseases which are infectious or contagious diseases for the purposes of sub-section (6) of the definition of "prohibited immigrant";
- (f) prescribing the forms of—
 - (i) the certificate mentioned in paragraph (i) of the classes of persons excluded from the definition of "prohibited immigrant";
 - (ii) the warrants to be issued by the Minister under sections *five* and *six*;
 - (iii) the book to be kept under section *twelve*;
- (g) prescribing the conditions under which prohibited immigrants may be allowed to pass through this Colony while journeying to a place outside the same;
- (h) generally for the better carrying out of the objects and purposes of this Act;

and may by any such regulations prescribe penalties for contraventions thereof not exceeding a fine of one hundred pounds or in default of payment imprisonment for a period not exceeding six months or both such fine and such imprisonment.

Title and date of
taking effect.

16. This Act may be cited for all purposes as the Immigrants Restriction Act 1907 and shall not take effect unless and until the Governor shall proclaim in the Gazette that it is His Majesty's pleasure not to disallow the same and thereafter it shall take effect upon such date as the Governor, shall notify by proclamation,

APPENDIX IX.

No. 36 of 1908.

BE IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of the Transvaal as follows:—

Preliminary.

1. In this Act unless inconsistent with the context:—

- "adult" shall mean of the age of sixteen years or over;
- "application for registration" shall mean an application to be placed on the register of Asiatics made in the manner and form prescribed by regulation and accompanied by the particulars and means of identification required by regulation;
- "Asiatic" shall mean any male person belonging to one of the native races of Asia and shall include a coorie, an Arab and a Malay but shall not include—
- (a) a Malay born and resident in any British Colony or possession in South Africa; or
- (b) a person introduced into this Colony under the Labour Importation Ordinance 1904; or
- (c) an officer of any consular service;
- "certificate of registration" shall mean a certificate of registration under Act No. 2 of 1907, or a certificate under this Act in the form set forth in the Schedule to this Act or as prescribed by regulation;
- "commencement of this Act" shall mean the date on which this Act came into operation;
- "Governor" shall mean the officer for the time being administering the Government of this Colony acting by and with the advice and consent of the Executive Council thereof;
- "guardian" shall mean the parent of a minor Asiatic or any other person under whose care such minor is living for the time being, or failing any such person the employer of such minor;
- "lawful holder" as used in relation to any certificate of registration shall mean the person (other than a minor named therein) whose registration is thereby certified;
- "minor" shall mean under the age of sixteen years;
- "register of Asiatics" shall mean the register to be kept for purposes of this Act in manner prescribed by regulation;
- "registrar" shall mean the officer appointed by the Governor to keep the register of Asiatics and any person lawfully acting in such capacity;
- "regulation" shall mean any regulation made under section *seventeen* of this Act;
- "unregistered Asiatic" shall mean an adult Asiatic who is not the holder of a certificate of registration.

Interpretation of terms.

PART I.

Validation of Voluntary Registration.

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 to the 10th 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.

Registration of Asiatics after the commencement of this Act.

3. An Asiatic shall be entitled to registration under this Act if—

- (a) he satisfies the conditions described in sub-sections (2) or (3) of section *four*, he was or was not in this Colony at the commencement of this Act; or

Asiatic who be registered under this Act.

- (b) being the lawful holder of a certificate of registration issued under Act No. 2 of 1907, he desires to exchange such certificate for a certificate of registration under this Act; or
- (c) having been a minor resident in this Colony at the commencement of this Act, he first entered the Colony with an adult Asiatic who was his guardian and who was registered under Law No. 3 of 1885 or any amendment thereof or is registered or entitled to registration under this Act; or
- (d) he was born in any part of South Africa which was at the date of his birth within the boundaries of the Transvaal.

registration of
adult Asiatics.

4.—(1) Every unregistered adult Asiatic resident in this Colony at the commencement of this Act shall before such date or dates and at such place or places and to such person or persons as the Colonial Secretary may by notice in the *Gazette* prescribe for particular areas of this Colony make application for registration and the registrar shall, on being satisfied that such Asiatic is entitled to registration, issue to him a certificate of registration.

(2) Every unregistered adult Asiatic resident outside the Colony at the commencement of this Act, shall,

- (a) if he was resident in the Transvaal for three years prior to the eleventh day of October 1899; and
- (b) upon application for registration from a place in South Africa but outside the Colony within one year after the commencement of this Act; and
- (c) upon satisfying the registrar of the facts mentioned in this sub-section;

be entitled to obtain a certificate of registration.

(3) Every unregistered adult Asiatic resident outside this Colony at the commencement of this Act but who was—

- (a) duly authorised to enter and reside in this Colony by a permit issued under the Indemnity and Peace Preservation Ordinance 1902 or any amendment thereof or issued between the first day of September 1900 and the date of the passing of the said Ordinance (unless such permit shall have been fraudulently obtained); or
- (b) was resident and actually in this Colony on the thirty-first day of May 1902;

shall be entitled, upon satisfying the registrar of the fact set forth in paragraph (a) or (b) of this sub-section and upon application for registration from a place in South Africa but outside the Colony, to obtain a certificate of registration.

minor Asiatics.

5. In respect of every unregistered minor Asiatic born in this Colony, not being the child of a labourer introduced into this Colony under the Labour Importation Ordinance 1904, the following provision shall apply:—

- (1) If his guardian is an Asiatic, the minor's name, his age, his residence and his relationship to his guardian shall be included in the certificate of registration of his guardian.
- (2) Within one month after such minor attains the age of sixteen years he shall make application to the registrar for a certificate of registration; provided that, if he be absent from the Colony on attaining that age or one month thereafter, he may, from a place in South Africa but outside the Colony, make application to the registrar for registration and upon satisfying the registrar that he is entitled to registration, the registrar shall issue to him a certificate of registration, and his name shall thereupon be expunged from the register of Asiatics as a minor and shall be deemed to be no longer included in his guardian's certificate of registration.

registrar not to
register an Asiatic
who is not entitled
to registration and
procedure in case of
refusal to register.

6. (1) Whenever the registrar is satisfied that any Asiatic claiming to be entitled to registration under section *three* is not so entitled, he shall refuse to issue to him a certificate of registration, and notice of the refusal shall be sent by post to such Asiatic at the address given upon his form of application,

(2) In every case of refusal by the registrar to issue a certificate of registration, an appeal may, within fourteen days of the date of the notice of refusal, be noted by letter addressed to the Colonial Secretary, and such appeal shall be heard by a magistrate specially assigned by the Governor to hear such appeals, and such magistrate shall be deemed, when hearing any such appeal, to be an inferior court within the meaning of section *nineteen* of the Administration of Justice Proclamation 1902.

(3) In the case of an Asiatic who is in South Africa but outside this Colony, the officer in charge of the Immigration Department shall, as soon as the date has been fixed for the hearing of such appeal, send by post to the appellant at the address given upon his application for registration a temporary permit entitling him to enter and remain in the Colony until the appeal has been determined. If the appeal be dismissed, the said magistrate shall make an order in writing directing the appellant to be removed from the Colony, and every such order shall be deemed to be an order made under section *six* of the Immigrants Restriction Act 1907 or any amendment thereof,

(4) In the case of an adult Asiatic in the Colony who has not within a period prescribed by sub-section (2) of this section noted an appeal or whose appeal having been noted has not been proceeded with or has been dismissed, the said magistrate shall make an order in writing directing such Asiatic to be removed from the Colony, and every such order shall be deemed to be an order made under section six of the Immigrants Restriction Act 1907 or any amendment thereof.

7. Any adult Asiatic who, after such date or dates as may be notified by the Colonial Secretary in the *Gazette*, is found within the Colony and fails, upon such demand as is mentioned in section nine to produce a certificate of registration of which he is the lawful holder, may be arrested without warrant and brought before a resident or assistant resident magistrate and if he fails to satisfy such magistrate that he is the lawful holder of a certificate of registration or that the time within which is required to make application for such certificate has not expired the magistrate shall, save as in the next succeeding section is provided, make an order in writing directing him to be removed from this Colony and every such order shall be deemed to be an order made under section six of the Immigrants Restriction Act 1907 or any amendment thereof.

8. If an adult Asiatic who has failed to make application for registration in accordance with the provisions of sub-section (1) of section four shall satisfy the magistrate before whom he is brought that such failure was due to some good and sufficient cause, the magistrate may, instead of making such order as aforesaid, direct such Asiatic forthwith to make application for registration within eight days, and if such Asiatic shall comply with such direction, his application shall be dealt with in all respects as if it had been made in accordance with the provisions of the said sub-section and all the provisions of this Act which would have applied if the application had been so made shall apply accordingly, but, if he shall fail to comply with such direction, the magistrate shall make an order for removal as aforesaid in respect of such Asiatic and any such order shall be deemed to be an order made under section six of the Immigrants Restriction Act 1907 or any amendment thereof.

PART III.

General and Miscellaneous.

9. Every Asiatic who enters or is within this Colony shall, upon demand made upon him by any European member of a Police force lawfully established therein or by any other European person authorised thereto by the Colonial Secretary, produce the certificate of registration of which he is the lawful holder, and shall also on like demand supply such particulars and furnish such means of identification as may be prescribed by regulation. Any Asiatic who fails upon lawful demand to produce such certificate shall, unless he is the lawful holder of a certificate of registration, be liable to be dealt with in manner mentioned in section eight.

10. (1) If at any time any certificate of registration is lost or destroyed, the person to whom it was issued shall forthwith apply to the registrar to have the same renewed and the registrar shall, upon compliance by such person with such procedure as is prescribed by regulation and upon payment of a fee of five shillings, renew the certificate. Such fee shall be denoted by means of revenue stamps to be affixed to the application for renewal and shall be defaced by the said registrar.

(2) Any person into whose hands shall have come any such certificate shall, unless he is the person to whom it was issued, forthwith deliver or transmit the same as soon as may be to the Registrar of Asiatics, Pretoria.

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.

12. Whenever, in any prosecution or other proceeding under this Act, the age of any Asiatic is in question such Asiatic shall unless and until the contrary be proved be taken to be of the age which the registrar shall in any certificate issued under his hand certify to be in his opinion the apparent age of such Asiatic.

13. Any affidavit or sworn declaration which is required by regulation to be made by any person who makes an application for registration shall be exempt from stamp duty.

14. (1) No Asiatic shall obtain any trading licence under the Revenue Licences Ordinance 1905 or any amendment thereof or under any by-law or regulation in force within the jurisdiction of a local authority, unless he produce to the person appointed to issue the licence a certificate of registration of which he is the lawful holder and either give his signature in English or supply such other or additional particulars or furnish such means of identification as the Colonial Secretary may either generally or in particular cases prescribe.

(2) Any trading licence issued under such Ordinance or under any such by-law or regulation before the tenth day of February 1908 and the commencement of this Act to an Asiatic who

made such application as is prescribed in sub-section (1) (b) of section *two* of this Act shall, notwithstanding anything in section *thirteen* of Act No. 2 of 1907 contained, be deemed to have been lawfully issued.

(3) Section *thirteen* of Act No. 2 of 1907 shall be and is hereby repealed.

Offences relating to applications for registration and to registration certificates.

15. Any person who—

- (a) for the purpose of or in connection with an application for registration or for the purpose of obtaining a certificate of registration, commits any fraudulent act, or makes any false statement or false pretence;
- (b) forges or prior to the commencement of this Act has forged any document in the form set forth in the Schedule to this Act or forges any certificate of registration or utters any such document or certificate knowing the same to be forged; or
- (c) uses or attempts to use as a certificate of registration any such forged document or any such certificate of which he is not the lawful holder;

shall be guilty of an offence and liable to a fine not exceeding five hundred pounds or, in default of payment, to imprisonment with or without hard labour for a period not exceeding two years or to both such fine and imprisonment, and any person who incites to, or aids or abets any other person in, the commission of any such offence shall be liable to the like penalty.

Power to issue permits to Asiatics to remain in Colony for limited period.

16. Notwithstanding anything in the Immigrants Restriction Act 1907 or this Act contained, the Governor may approve the issue of a permit, in the form prescribed by regulation, authorising an Asiatic to enter and remain in the Colony for any period named in such permit, and after the expiry of such period the person in respect of whom such permit was issued shall be deemed to be a person not duly authorised to be in this Colony, and if found may be arrested without warrant and the provisions of section *six* of the Immigrants Restriction Act or any amendment thereof shall apply to such person, as if he were a person mentioned in paragraph (c) thereof.

Power to make regulations.

17. The Governor may from time to time make, alter, or rescind regulations for any of the following purposes:—

- (1) Prescribing the form of the register to be kept for the purposes of this Act.
- (2) Prescribing the manner and form in which application shall be made for registration, the particulars to be supplied and the means of identification to be furnished by any applicant for the purpose of or in connection with such application.
- (3) Prescribing the form of certificates of registration.
- (4) Prescribing the particulars to be supplied and the means of identification to be furnished.
 - (a) by any Asiatic upon such demand as is mentioned in section *nine*;
 - (b) by any Asiatic applying for the renewal of any certificate of registration which has been lost or destroyed.
- (5) Prescribing the procedure to be observed on or in connection with appeals to the magistrate mentioned in section *six*.
- (6) Prescribing the form of permit to be issued under section *sixteen*.
- (7) Generally for the better carrying out of the objects and purposes of this Act.

General penalties.

18. Any Asiatic or the guardian of any Asiatic failing to comply with any requirement of this Act or of the regulations shall, except where otherwise specified, be liable on conviction to a fine not exceeding one hundred pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

Special powers to register transfer of certain fixed property.

19. Notwithstanding anything to the contrary in sub-section (b) of Law No. 3 of 1885 as amended by Volksraad Resolution Article 1419 of the twelfth day of August 1886 the portion of Erf. No. 373 Church Street Pretoria which was registered in the name of the late Aboobaker Amod and which at the commencement of this Act was registered in the name of Henry Salomon Leon Polak may be transferred into the name of the heirs of the said Aboobaker Amod.

Title and date of operation of Act.

20. This Act may be cited for all purposes as the Asiatics Registration Amendment Act 1908 and shall not come into operation unless and until the Governor shall have declared by proclamation in the *Gazette* that it is His Majesty's pleasure not to disallow the Act and thereafter it shall come into operation on such date as the Governor shall by like proclamation declare.

SCHEDULE.

Transvaal Asiatic Registration Certificate.

Name in full
Race
Description

Age Height



Right Thumb
Impression.

Registrar of Asiatics.

Date of Issue
Holder's Signature

Name of Wife

Residence

Sons and Male Wards under the age of 16 years.

Names.	Age.	Residence.	Relationship to Guardian.

No alterations or endorsements are to be made on the face of this Certificate except by the Registrar of Asiatics.

As passed by the Legislative Council As passed by the Legislative Assembly,

O. CLOUGH,
Clerk.

Gvo. R. HOFMEYER,
Clerk.

APPENDIX X.

EXTRACT FROM LAW No. 25 OF 1891.

* * * * *

XXVI.—*Certificates of Discharge.*

106. Every Immigrant who may have completed, or who may hereafter complete the term of service under indenture for which he was indentured on leaving India for this Colony, or whose indenture may have been, or may hereafter be duly cancelled, shall be entitled to demand and receive from the Protector of Indian Immigrants, free of charge, a certificate of discharge from service in form of Schedule H hereto, and the possession of such certificate shall be evidence of such immigrant being released from obligation to perform further service in this Colony under indenture.

* * * * *

SCHEDULE H.

(SECTION 106).

Certificate of Discharge.

No. Date

I hereby certify that _____, Indian Immigrant no. _____ has duly completed his term of indenture of five years in terms of Indian Immigration Law no. 18 and is released from his obligation to perform further service in this Colony under indenture.

Protector of Immigrants.

* * * * *

§ 1 F

APPENDIX XL

*Assented to by the Governor General in Council
on the 29th May, 1923.*

*(Promulgated 14th June 1923).
(No. 5, 1923).*

ORDINANCE.

*" To grant Additional Powers to Town Councils and Local Boards in respect of the sale or lease of
immoveable property "*

Be it enacted by the Provincial Council of the Province of Natal, as follows :—

Conditions of Sale
or Lease of Land.

1. The Town Council of any Borough or the Local Board of any Township constituted under Law no. 11, 1881, in selling or leasing any immoveable property belonging to the Borough or Township, 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 restrictions.

2. This Ordinance may be cited as " The Borough and Township Lands Ordinance, Short Title, 1923 "

APPENDIX XII.

UNION OF SOUTH AFRICA.

AREAS RESERVATION AND IMMIGRATION AND REGISTRATION
(FURTHER PROVISION) BILL.*(To be read a Second Time on Monday, 22nd February, 1926.)*

BILL

TO

Make provision for the reservation of residential and trading areas in urban areas for certain persons having racial characteristics in common ; to amend the Immigrants Regulation Act, 1913 (no. 22 of 1913), the Indians Relief Act, 1914 (no. 22 of 1914), and the Asiatic Registration Amendment Act, 1908 (Transvaal) (no. 36 of 1908) ; and to repeal the Chinese Exclusion Act, 1904 (Cape) (no. 37 of 1904) and Act no. 28 of 1897 (Natal).

(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:—

CHAPTER I.

RESERVATION OF AREAS.

1. (1) Whenever an urban local authority intimates to the Minister—

Request by urban local authority for application of Chapter I.

- (a) that any area within its jurisdiction is wholly or for the greater part occupied for residential or trading purposes or both such purposes by a particular class of persons ; and
- (b) that it is desirable that the provisions of this Chapter should be applied in respect of such area,

the Minister may appoint a commission consisting of not more than three persons (hereinafter called the commission) to investigate and report upon the desirability of applying to such area and to the jurisdiction of the urban local authority within which it is situated the provisions of this Chapter.

(2) One of the members of the commission shall be designated by the Minister as the chairman thereof, and the Minister may make rules for the conduct of the business of the commission and governing the tenure of office of the members. In the event of the commission consisting of three members, two members shall form a quorum.

2. (1) It shall be the duty of the commission to enquire into and report to the Minister upon the following matters:—

Duty and powers of commission.

- (a) the extent and nature of the area which was the subject of intimation under section one ;
- (b) the number, dimensions, situation and nature of sites occupied in such area for residential or trading purposes or both such purposes, as the case may be ;
- (c) whether such area affords proper and adequate facilities for residences or trading sites or both, as the case may be, for the particular class of persons concerned ;
- (d) whether due and proper provision exists or is assured for water, lighting, sanitary and other necessary services within such area ;

- (e) whether it is desirable that the provisions of this Chapter should be applied in respect of such area ;
- (f) whether there is, within the jurisdiction of the urban local authority concerned, any other area which is wholly or for the greater part occupied for residential or trading purposes or both such purposes by the particular class of persons concerned, and if there is such other area, the extent and nature thereof, and the number, dimensions, situation and nature of sites occupied in such other area for residential or trading purposes or for both such purposes as the case may be ;
- (g) whether any other area within the jurisdiction of the urban local authority concerned is available for the exclusive occupation for residential or trading purposes or both such purposes by the particular class of persons concerned ; and
- (h) any other matter which the Minister or the commission may deem necessary or desirable.

(2) The commission shall have all such powers, jurisdiction and privileges as were conferred upon the commission referred to in Ordinance no. 30 of 1902 of the Transvaal, and all and several the provisions of that Ordinance shall *mutatis mutandis* apply in respect of the commission and its proceedings.

Proclamation of class areas.

3. (1) At any time within six months after the receipt of the report of the commission, the Governor-General may by proclamation in the *Gazette* declare that, on and after a date to be mentioned in the proclamation, the area defined in the proclamation shall be a class residential area or a class trading area, or a class residential and trading area within the jurisdiction of the urban local authority concerned.

(2) More than one area within such jurisdiction may, by any such proclamation, be defined as class residential areas, or as class trading areas, or as class residential and trading areas, as the case may be.

(3) Notwithstanding anything contained in the Precious and Base Minerals Act of the Transvaal (Act no. 35 of 1908) or any amendment thereof, or in any other law, a class trading area or a class residential and trading area may be established under this Chapter on land within the jurisdiction of an urban local authority which, in terms of the said Act no. 35 of 1908, or any amendment thereof, is proclaimed land or land held under mining title.

Acquisition of immovable property in class areas.

4. (1) Save as is provided in sections *eleven* and *twelve*, whenever a proclamation establishing a class residential area within the jurisdiction of an urban local authority has been issued under this Chapter no person shall, after the date of such establishment, for residential purposes acquire or hire, or take over, or as lessee renew the lease of, any immovable property situate—

- (a) within such area unless such person belongs to the class of persons in respect of which such area was established, or
- (b) elsewhere within such jurisdiction than within such area if such person belongs to such class.

(2) Save as is provided in sections *eleven* and *twelve*, whenever a proclamation establishing a class trading area within the jurisdiction of an urban local authority has been issued under this Chapter, no person shall, after the date of such establishment, for trading purposes acquire or hire, or take over, or as lessee renew the lease of, any immovable property situate—

- (a) within such area unless such person belongs to the class of persons in respect of which such area was established, or

(b) elsewhere within such jurisdiction than within such area if such person belongs to such class.

(3) Save as is provided in sections eleven and twelve, whenever a proclamation establishing a class residential and trading area within the jurisdiction of an urban local authority has been issued under this Chapter, no person shall, after the date of such establishment, for any purpose acquire or hire, or take over, or as lessee renew the lease of, any immovable property situate—

(a) within such area unless such person belongs to the class of persons in respect of which such area was established ; or

(b) elsewhere within such jurisdiction than within such area if such person belongs to such class.

(4) Nothing in this section contained shall apply to the renewal of a lease of immovable property where the right of renewal was created by a written lease prior to the first day of August, 1925.

5. (1) From and after the date mentioned in any proclamation issued under this Chapter establishing a class trading area or a class residential and trading area within the jurisdiction of any urban local authority, it shall not be lawful for any licensing court, board or authority, or for any person authorized to grant or issue licences or permits to carry on any trade or business within such jurisdiction—

Trading in class trading area or class residential and trading area.

(a) to grant or issue to any person other than a person of the class concerned any licence, permit or other authority to carry on any trade or business within the class trading area or class residential and trading area, as the case may be ; or

(b) to grant or issue to any person of the class concerned any licence or permit to carry on any trade or business within such jurisdiction elsewhere than in the class trading area, or class residential and trading area, as the case may be :

Provided that if the Governor-General is satisfied that it is in the general interests of the public that it should be permitted to—

(i) persons of the class concerned or any restricted number of such persons to carry on any particular trade or business within such jurisdiction elsewhere than in the class trading area or class residential and trading area, as the case may be ; or

(ii) persons other than person of the class concerned or any restricted number of such other persons to carry on any particular trade or business in the class trading area or class residential and trading area, as the case may be.

he may, by proclamation in the *Gazette* for such period as he may therein fix, exempt such persons or a restricted number of such persons from the operation of paragraph (a) or (b) of this sub-section in respect of that particular trade or business.

(2) No person holding, at the date mentioned in any proclamation issued under this Chapter establishing a class trading area or a class residential and trading area within the jurisdiction of any urban local authority, any licence, permit, or other authority to carry on any trade or business, which is actually being carried on, shall be deemed to be prevented by anything contained in this section from being granted a renewal of such licence, permit or other authority.

6. (1) Whenever, in the opinion of the urban local authority concerned, any area established under this Chapter as a class residential area or a class trading area or a class residential and trading area, proves inadequate or more than adequate

Extension or reduction of class areas.

for, or unsuitable either wholly or in part to, the requirements of the population of that class within the jurisdiction of such local authority and such local authority deems it desirable to extend or reduce any such area or to alter the boundaries thereof, or to create a new class residential area or class trading area or class residential and trading area, such local authority may communicate its opinion to the Minister, who thereupon may take all such steps as he may take upon receipt of an intimation under section one.

(2) All and several the powers exercisable under this Chapter in respect of the establishment of a class residential area or a class trading area or a class residential and trading area shall be exercisable in respect of the creation of a new area or the extension or reduction of any existing area of like character or the alteration of the boundaries thereof.

(3) Nothing in this section contained shall be deemed to affect in any manner whatever any right to the renewal of a lease of immovable property where such right was held under a written lease existing on the first day of August, 1925, nor shall any person holding at the date mentioned in any proclamation issued in pursuance of this section any licence, permit, or other authority to carry on any trade or business which is actually being carried on, be deemed to be prevented by anything contained in this section from being granted a renewal of such licence, permit or other authority.

Suspension of provisions of Act.

7. (1) If at any time the Governor-General is satisfied that a class residential area or a class trading area or a class residential and trading area established under this Chapter is inadequate for, or wholly or partly unsuitable to, the requirements of the population of that class within the jurisdiction of the urban local authority concerned, and that, by reason of the delay which would necessarily take place in removing the causes of the inadequacy or unsuitability, serious prejudice would be suffered by that population unless the provisions of this Chapter in respect of such inadequate or unsuitable area be suspended, he may, by proclamation in the *Gazette* declare that, from and after a date to be therein mentioned, the provisions of this Chapter shall be suspended in respect of the class residential area or class trading area or class residential and trading area concerned.

(2) From and after such date the provisions of this Chapter shall in all respects cease to apply to the area deemed to be inadequate or unsuitable, and, in respect of such inadequate or unsuitable area, to the other parts of the jurisdiction of the urban local authority within which it is situated.

(3) The Governor-General, may, whenever he deems fit, reproclaim as a class residential area or a class trading area or a class residential and trading area, as the case may be, any area which has been the subject of a suspending proclamation under sub-section (1) of this section, or proclaim as a class residential area or a class trading area or a class residential and trading area under this Chapter any area which wholly or partly includes any area which has been the subject of a suspending proclamation under sub-section (1) of this section.

Class area for Asiatics to be deemed to be area in which under Law No. 3, 1885 (Transvaal) Asiatics may own fixed property.

8. Any class residential area, or class trading area, or class residential and trading area established under this Chapter for any Asiatic race shall, for the purposes of section two (b) of Law no. 3 of 1885 of the Transvaal, be deemed to be an area within which, in terms of that law, fixed property may be acquired and owned by Asiatics.

Class Advisory board.

9.(1) For every class residential area, or class trading area, or class residential and trading area established under this Chapter there shall be established an advisory board consisting of not less than three persons of the class concerned resident within the jurisdiction of the urban local authority concerned,

in addition to a chairman who in the case of a non-European class area may be a European or white person. The mode of election or selection of members of any such board, the period and conditions of office of members, and the procedure of the board shall be defined by regulations made by the urban local authority concerned and approved by the Minister.

(2) It shall be the function of an advisory board established under this section to advise the urban local authority concerned in respect of any matter referred to it by such authority for advice, and no by-laws or regulations particularly affecting the interests of the class of persons concerned shall be made, amended or withdrawn by an urban local authority unless the advice of such advisory board has first been obtained in respect of the making, amendment or withdrawal, as the case may be, of such by-law or regulation.

10. (1) Save as provided in sections *eleven* and *twelve*, and in respect of the renewal of leases in sub-section (4) of section *four*, the Governor-General may by proclamation in the *Gazette* declare that from and after a date therein specified, not being earlier than the first day of August, 1925, no person of any class indicated in such proclamation shall—

(a) anywhere within the Union, hire or take over, or, as lessee, renew the lease of any immovable property for a period exceeding five years; or

(b) in the provinces of the Cape of Good Hope and Natal acquire any immovable property,

save for residential purposes in a class residential area or for trading purposes in a class trading area, or for any purpose in a class residential and trading area established for the class of persons indicated in a proclamation issued under section *four*.

(2) Notwithstanding anything contained in sub-section (1), the Governor-General may by proclamation in the *Gazette* declare that from and after a date to be specified therein a person of any class indicated therein may in the coast belt acquire immovable property or hire or renew the lease of immovable property from a person of the same class, but from no other person: Provided that where the immovable property is situate within a class area established under this Chapter within the coast belt, the provisions of section *four* shall apply in lieu of the provisions of this sub-section.

(3) From and after the date specified in any proclamation issued under sub-section (2), no person of any class indicated in such proclamation shall, by testamentary disposition, acquire any land or interest in land or the right to hire or occupy any immovable property in the coast belt, except from a person of the same class: Provided that where such land or immovable property is situated within a class area established under this Chapter within the coast belt the provisions of section *four* shall apply in lieu of the provisions of this sub-section.

(4) For the purposes of this section "the coast belt" means so much of the province of Natal as lies between the coast and a line to be defined by the Governor-General by proclamation in the *Gazette*, corresponding as far as practicable with the coast and drawn at an approximate distance of thirty miles therefrom, but shall not include any part of Zululand.

(5) Nothing in this section contained shall be deemed to affect the operation within the coast belt of any other provision of this Chapter.

11. Subject to the provisions of sub-section (3) of section *Savings*, section *eight* and sub-section (3) of section *ten* of this Chapter, nothing in this Chapter contained shall be deemed—

(a) to affect the operation of Law No. 3 of 1885 of the Transvaal or any amendment thereof; or section *two*.

of Act No. 18 of 1923 ; of Act No. 37 of 1919 ; of Chapter CXIII of the Orange Free State Law Book, or any amendment thereof ; or of any other law prohibiting, restricting, regulating or in any way affecting the ownership or occupation of immovable property or trading by persons of non-European descent ; or

- (b) to prohibit the acquisition by the Government or any urban local authority for educational, municipal or any other public purpose of the ownership or occupation of any immovable property ; or
- (c) to prohibit the acquisition at any time of land or interests in land or the lease or occupation of any immovable property by devolution, or succession on death whether under will or on intestacy from a person of the same class ; or
- (d) to prohibit any executor of a deceased estate or any trustee in insolvency, or any assignee under the law relating to insolvency, from holding any immovable property or trading under any licence where power to do any such thing is conferred upon him by any law ; or
- (e) to invalidate or affect in any manner whatever any agreement or other transaction for the sale or purchase of land lawfully entered into prior to the first day of August, 1925.

Exemptions.

12. (1) The Governor General may grant to any person a certificate exempting him either wholly or for such period as he may therein specify from all or any of the provisions of this chapter, and such person shall either wholly or for such period, as the case may be, be so exempted.

(2) Nothing in this chapter contained shall be deemed—

- (a) to affect any person who is duly accredited to the Union by or under the authority of His Majesty or the Government of any foreign state, or the wife, family, staff or servants of any such person ;
- (b) to refer to natives as that term is defined in section *twenty-nine* of the Natives (Urban Areas) Act, 1923 (Act No. 21 of 1923) ;
- (c) to refer to—
 - (i) persons born in the Union and ordinarily resident in the Province of the Cape of Good Hope who are members of the class or race known as “ Cape Coloured ” or of the class or race known as “ Cape Malays ” ;
 - (ii) persons born in the Union and ordinarily resident in the Union elsewhere than in the Province of the Cape of Good Hope who would if resident in that Province, be regarded as members of either of the classes or races known as “ Cape Coloured ” or “ Cape Malays ” ; or
 - (iii) persons who are members of the class or race known as “ Mauritius Creoles ” or St. Helena persons or their descendants born in the Union.

(3) Notwithstanding anything contained in this Chapter all Europeans or white persons shall be regarded as having common racial characteristics.

Interpretation of terms.

13. In the Chapter unless inconsistent with the context—
 “ class ” or “ class of persons ” includes any persons having in the opinion of the Minister, common racial characteristics ;
 “ person of a class ” includes any company or association of persons whether registered under any law or not

in which one or more persons of the class referred to have a controlling interest ;

“ Minister ” means the Minister of the Interior or any other Minister to whom the Governor-General may assign the administration of this Chapter ;

“ urban local authority ” means any municipal council, borough council, town council or village council, or any town board, village management board, local board or health board.

CHAPTER II.

IMMIGRANTS REGULATIONS.

14. Section two of the Immigrants Regulation Act, 1913, Amendment of section two of Act (hereinafter in this Chapter called the principal Act) is hereby amended by the deletion from sub-section (7) of the words : “ sufficient in the opinion of the Minister ” and the substitution thereof of the following words : “ fixed by the immigration officer not exceeding one hundred pounds.”

15. Section three of the principal Act is hereby amended— Amendment of section three of Act No. 22 of 1913.
(a) by the addition at the end of sub-section (2) of the words : “ From any such opinion there shall be an appeal to the Appellate Division of the Supreme Court ” ;

(b) by the deletion from sub-section (3) thereof of the following words : “ and ‘ a superior court having jurisdiction ’ shall mean the Provincial Division of the Supreme Court which has jurisdiction where the board was sitting or any judge of such division or the Eastern Districts Local Division having such jurisdiction or any judge thereof.”

16. Section four of the principal Act is hereby amended— Amendment of section four of Act No. 22 of 1913.

(a) by the addition to paragraph (f) of sub-section (1) after the words “ have been stolen ” of the following words : “ incest, sodomy, bestiality, any offence under the law relating to insolvency ” ; and

(b) by the deletion of paragraph (a) of sub-section (2) and

(c) by the insertion of the following new sub-section (5) : “ For the purpose of this section the Northern Districts of Natal, as described in section three of ‘ The Northern Districts Annexation Act, 1902 ’ (Act No. 1, of 1903, Natal) shall be deemed to be included in the Province of the Transvaal.”

17. Section five of the principal Act as amended by section three of the Indians Relief Act, 1914, is hereby amended by the deletion of paragraph (e) and (g) and the substitution thereof of the following new paragraphs :— Amendment of section five of Act No. 22 of 1913.

(e) any British subject who was born in any part of South Africa included in the Union and whose parents were at the time of his birth lawfully resident therein and were not at that time restricted to temporary or conditional residence therein by any law then in force : Provided that any person who, if he were a prohibited immigrant, would be included within any class of persons which has, in terms of paragraph (a) of sub-section (1) of section four, been deemed by the Minister to be unsuited to the requirements of the Union or any province thereof, shall lose the protection accorded by this paragraph if he has acquired or shall acquire a domicile in a province of the Union other than that in which he was born ;

(g) any person who is proved to the satisfaction of an immigration officer or in the case of an appeal to the satisfaction of the Board, to be the wife, or the child under the age of sixteen years, of any person exempted by paragraph (f) of this section :

Provided—

- (i) that the wife or child (as the case may be) is not such a person as is described in paragraph (d), (e), (f), (g) or (h) of sub-section (1) of section four or any amendment thereof; and
- (ii) that where the exempted person belongs to any class of persons which has in terms of paragraph (a) of sub-section (1) of section four been deemed by the Minister to be unsuited to the requirements of the Union or any province thereof, the wife or child (as the case may be) enters the Union within five years after the first day of August, 1925, or within ten years after the date of the first entry of the person so exempted into the Union, whichever period may be the longer.

In the interpretation of this paragraph "the wife" shall include any one woman between whom and the exempted person mentioned there exists a union recognised as a marriage under the tenets of an Indian religion notwithstanding that by those tenets the union of that exempted person with other woman at the same time would also be recognised as a marriage. Provided that no woman shall be deemed to be the wife of such exempted person—

- (i) if such a union exists between him and any other woman who has under any law relating to immigration or to Asiatic registration been recognised within the Union as the wife of such person and has resided or resides or is domiciled in any province; or
- (ii) if such exempted person has offspring resident or domiciled in any province by any woman who is still living,

and a union shall not for the purposes of this section be deemed to have ceased to exist by reason only of the fact that according to the tenets of an Indian religion it has been dissolved.

"The child under the age of sixteen" shall mean a child who is the offspring of the exempted person and the wife as herein defined or the child of the exempted person and a deceased woman who if she had been alive could have been recognised at the time of the birth of the child as the wife (as herein defined) or whose union with the exempted person could have been registered at the time of the birth of the child as a marriage under section two of the Indians Relief Act, 1914: Provided such exempted person has no offspring resident or domiciled in any province by any other woman.

Amendment of section ten of Act No. 22 of 1913.

18. Section ten of the principal Act is hereby amended by the addition at the end thereof of the following words:—

Any such prohibited immigrant shall be dealt with in terms of section nineteen of this Act. If he is in possession of a registration certificate or a certificate of domicile, or any other document authorizing him to remain in the Union or any province, it shall be competent for any board to which he may appeal, if it is proved to the satisfaction of the board that such certificate or other document was obtained by fraudulent representations by him or on his behalf, to order that such certificate or other document be cancelled and that he be dealt with

in terms of this Act. Provided that if he fails to appeal to a board the Principal Immigration Officer concerned may exercise all such powers as to the cancellation of any certificate or other document as are by this section conferred upon a Board.

19. Section *twenty-two* of the principal Act is hereby amended by the addition, after paragraph (c), of the following new paragraph :—

Amendment of section *twenty-two* of Act No. 22 of 1913.

(d) for any offence under section *twenty* of this Act for which imprisonment is imposed without the option of a fine.

20. Section *thirty* of the principal Act is hereby amended by the deletion of the definition of the term "domicile," and the substitution thereof of the following definition :—

Amendment of section *thirty* of Act No. 22 of 1913.

"domicile" shall mean the place in which a person has his present permanent home or present permanent residence, or to which he returns as his present permanent abode, and not for a mere special or temporary purpose; and a person shall not be deemed to have a domicile within the Union or any province (as the case may be) for the purposes of this Act unless he has lawfully resided therein for a continuous period of three years, otherwise than under terms of conditional or temporary residence permitted by this Act or any other law, or as a person under detention in prison, gaol, reformatory or mental hospital, and a person shall be deemed for the purposes of this Act to have lost his domicile within the Union or any province (as the case may be) if he absents himself from the Union or that province (as the case may be) and does not return to the Union or that province (as the case may be) within three years from the date of departure therefrom, or in the case of a person who absented himself from the Union or any province (as the case may be) prior to the 1st August, 1925, does not return to the Union or that province (as the case may be) before the 1st August, 1928; Provided that in cases where a person proceeds overseas for a special or temporary purpose the Minister may authorize the issue of a certificate of identity under the provisions of sub-section (2) of Section *twenty-five* of this Act, allowing the person concerned to return to and resume his residence in the province named within the period specified in such certificate or any extension thereof, not exceeding ten years in all.

21. Section *six* of the Indians Relief Act, 1914, is hereby amended by the insertion after the words "any port in India" of the words "or elsewhere."

Amendment of section *six* of Act No. 22 of 1914.

CHAPTER III.

REGISTRATION OF ASIATICS.

22. A registration certificate issued under the provisions of the Asiatic Law Amendment Act, 1907, of the Transvaal (Act No. 2 of 1907) or the Asiatics Registration Amendment Act, 1908, of the Transvaal (Act No. 36 of 1908), may be surrendered by the holder to the Registrar of Asiatics, and such surrender shall be conclusive evidence that such holder has abandoned any right of or incidental to entry, residence or domicile in the Transvaal Province.

Surrender of Asiatic registration certificate.

Circumstances in which application for Asiatic registration certificate may be made.

23. If an Asiatic, who has failed to make application for registration in accordance with the provisions of paragraph (2) of section five of the Asiatics Registration Amendment Act, 1908, of the Transvaal, satisfies the Registrar of Asiatics that such failure was due to some good and sufficient cause, the Minister of the Interior may, in his discretion, authorize the Registrar to receive an application for registration from such Asiatic, and the application shall be dealt with in all respects as if it had been made in accordance with the provisions of the said section and all the provisions of Act No. 36 of 1908 of the Transvaal as amended by this Act which would have applied if the application had been so made shall apply accordingly.

Amendment of section seven of Act No. 36 of 1908 of Transvaal.

24. Section seven of the Asiatics Registration Amendment Act, 1908, of the Transvaal, is hereby amended by the deletion of the words "save as in the next succeeding section is provided."

Amendment of section nine of Act No. 36 of 1908 of Transvaal.

25. Section nine of the Asiatics Registration Amendment Act, 1908, of the Transvaal, is hereby amended by the deletion of the last sentence thereof.

CHAPTER IV.

SUPPLEMENTARY.

Repeal of laws.

26. The laws mentioned in the Schedule to this Act are hereby repealed to the extent set out in the fourth column of that Schedule.

Short title.

27. This Act may be cited as the Areas Reservation and Immigration and Registration (Further Provision) Act, 1926.

SCHEDULE.

Province.	Number and year of law.	Title or subject of law.	Extent of repeal.
Natal ..	Act No. 28 of 1897.	To protect uncovenanted Indians from arrest in mistake for absconding indentured Indian servants.	The whole.
Cape --	Act No. 37 of 1904.	The Chinese Exclusion Act, 1904.	The whole.
Transvaal	Act No. 36 of 1908.	The Asiatics Registration Amendment Act, 1908.	Sections three, four five (paragraph one), six, eight, sixteen, seventeen (paragraphs five and six).
Union ..	Act No. 22 of 1914.	Indians Relief Act, 1914	Section three.

APPENDIX XIII.

NATAL ACT 22 OF 1909.

[No. 22, 1909.]

ACT.

"To remove doubts as to the meaning of Act No. 18, 1897, entitled 'Act 'to amend the Law relating to licenses to whole-sale and retail dealers'."

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

1. The provisions of Act No. 18, 1897, in regard to wholesale and retail licenses shall respectively apply and be deemed to have applied to all licenses of the nature of licenses for wholesale or retail business, including shop licenses, issued in municipal boroughs or in townships under Law No. 11, 1881, whether the same be issued under Ordinance No. 3, 1850, or under any other Law or Act applicable to boroughs or townships.

2. It shall be competent for the applicant for the renewal of a license or for a person who has duly lodged an objection to such renewal, to appeal to the Supreme Court or to a Circuit Court against any decision given under Section 6 of Act No. 18, 1897, by a town council, town board, or licensing board, and the Court may order that the renewal applied for be granted or that it be not granted, or may in any case remit the application for re-hearing.

3. The Court may also in its discretion award the costs of the appeal against either of the parties thereto.

4. Given at Government House, Pietermartizburg, this Fourteenth day of December 1909.

By command of His Excellency the Governor.

C. O'GRADY GUBBINS,
Colonial Secretary.

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

Correspondence between the Government of India
and the Government of the Union of
South Africa regarding the position
of Indians in South Africa.



DELHI
GOVERNMENT OF INDIA PRESS
1926

TELEGRAM TO THE GOVERNOR GENERAL OF THE UNION OF SOUTH AFRICA,
No. 14-C., DATED THE 8TH APRIL 1925.

We have the honour to address you regarding position of Indian community in South Africa. During last four years it has frequently formed subject of representations on our part both in its general aspect and with reference to particular measures such as Durban and Natal Land Alienation Ordinances, Natal Rural Dealer's Licensing Ordinance, Class Areas Bill, and more recently Natal Boroughs and Township Ordinance. Last enactment though provincial in scope has given rise to feelings of profound apprehension in this country and, so far as we are aware, among Indian community throughout Union as to latter's future. Provisions of Mines and Works Act Amending Bill, which we understand has now been referred to a select committee of Union Assembly, and private bill introduced by Mr. Collins, which was designed to restrict still further Indian trading rights in Transvaal but which we learn has now been withdrawn, have, in conjunction with avowed determination of a strong party in South Africa to curtail Indian civil and economic privileges as much as possible, deepened sentiments of uncertainty and alarm.

2. We think it will serve no useful purpose to attempt to analyse causes and consequence of present situation. We recognise that Your Excellency's Government are bound to take account of public opinion in South Africa and that at least in two provinces an important section of electorate is not friendly to Indians. We are also anxious not to aggravate a delicate situation by indulging in generalisations about aims and motives. The problems of South Africa, we believe, are probably racial only on surface. They rest on differences in history, outlook and civilisation of constituent elements of its population which penetrate deeper than colour of their skins. To solve these problems can be no easy task. All that we wish to urge is that a satisfactory and permanent solution can be possible only if leaders of races concerned will exercise to their utmost qualities of mutual understanding and forbearance. We are confident that such a solution is as anxiously desired by Your Excellency's Ministers no matter from what political party they may be drawn, as it is by Government and people of India.

3. Our interest in Indian question in South Africa requires no justification. In their minute No. 984, dated 15th December 1922, Ministers of Your Excellency's predecessor observed that they fully realised "the interest taken by Government of India in this question and their sense of responsibility for welfare of Indian population in those provinces where the law does not accord to it privilege of franchise." We take liberty to assume that this is also view of Your Excellency's present Ministers. For our part we are less anxious to lay stress on our responsibility than on our earnest desire to assist in finding a satisfactory and abiding solution of Indian problem. In aiming at this objective we are inspired by a larger ideal than mere protection of interests of Indians in South Africa. That ideal is maintenance of relations of cordiality and good will between India and South Africa. We trust that proposal which we now make will be received and considered in same spirit.

4. In our opinion an essential preliminary to formulation of a comprehensive Indian policy in South Africa which will be acceptable to more reasonable sections of all parties concerned is a conference in which representatives of Your Excellency's Government and of Government of India should participate. Unless opportunity is provided for a full, frank and personal discussion between accredited spokesmen of these two Governments requisite conditions, for a ready understanding of divergent points of view and for prompt adjustment thereof in a spirit of compromise will not be established. Correspondence can never be an adequate substitute for personal discussion especially when both distance and psychological difficulties tend to delay a settlement. During his visit to South Africa last September Mr. Thomas, then His Majesty's Principal Secretary of State for Colonies, made an informal suggestion more or less to this effect in a speech which he delivered at Pietermaritzburg. It was also pressed upon us

by a remarkably representative deputation consisting of members of Indian Legislature and prominent European businessmen and members of the Indian commercial community who waited upon His Excellency the Viceroy last January to draw attention to seriousness and urgency of this problem. We had hoped that Your Excellency's Government would take official cognisance of Mr. Thomas' suggestion. As they have not done so we now venture to take initiative and put it forward ourselves for their favourable consideration. We are not committed to any particular form or venue for this conference. We should prefer that it should be held in South Africa which is scene of action and where views of parties directly affected can most quickly be ascertained; but if for any reason Your Excellency's Government do not favour idea we shall be glad to invite your representatives to India or depute our delegates to any other convenient centre such as Geneva for purposes of discussion. Thus, during forthcoming session of Assembly of League of Nations representatives of two Governments could confidentially exchange views on this important question.

5. We do not propose at this stage to indicate in any detailed scope of these discussions. In our opinion economic and educational issues are of immediate practical importance and if Union Government consider that such a course would help in the acceptance of principle our suggestion we should be willing to consider desirability of excluding question of political equality from purview of proposed conversations. Educated opinion in India looks upon realisation of this ideal as a matter of vital national concern and our readiness not to raise this question for the present is an earnest of sincerity of our desire to arrive at a common basis of discussion. If none of these suggestions commend themselves to Your Excellency's Minister, we shall be glad to explore any other avenue that holds out prospects of a settlement which will ensure progress and contentment of Indian community in South Africa on a permanent footing and in a manner consistent with their national self-respect. We would repeat what we have already said that our main anxiety is to seek a settlement. We are not committed to any particular method.

6. There is one aspect of question on which we would like to dwell before we conclude. We understand that in replying to a deputation from the Natal Indian Congress which waited on your Government at Pretoria on 9th December in connection with Natal Boroughs Ordinance the Prime Minister stated that the constitution reserved the right to legislate on certain local matters to the provinces that Natal was acting entirely within its rights in the matter of this Ordinance, which had the support of the people and that it was hardly within the province of the Union Government to interfere with those rights unless it were prepared to substitute some other machinery to meet the wishes of the people. It would be presumptuous for us to question view of so high an authority on a point of domestic constitutional convention and we hope that our observations on subject will not be misunderstood. All that we wish to urge is that any piece of legislation that adversely affects existing Indian rights, even if its operation is to be strictly confined to boundaries of one province, has wider repercussions. It disturbs domiciled Indian community throughout Union; it agitates opinion all over India; it affects relations of two countries as a whole. We venture, therefore, to submit that such measures should be adjusted not in light of strict constitutional principles but in broader light of imperial and international considerations.

(2)

TELEGRAM FROM THE GOVERNOR GENERAL, SOUTH AFRICA, DATED THE 16TH JUNE 1925.

Your telegram dated 8th April. My Ministers have asked me to convey to you their observations on proposed conference to discuss *position of* Indians in South Africa in following terms. In response to communication from Government of India Ministers wish to express their sincere appreciation of every friendly spirit which pervades that document and of sympathetic understanding of their peculiar difficulty and evident desire *on part* Government of India *not in* any way to complicate a delicate situation.

In connection with reference in paragraph 3 of communication Ministers gladly endorse sentiment that it is only natural for Government of India to take an interest in welfare of Indians and generally in Indian questions in South Africa *especially in view of possible effect of position in South Africa on disposition of people of India*. They cannot therefore regard any representation and suggestion which Government of India may make otherwise than in a friendly light and as actuated by a sincere desire to promote welfare and contentment of Indians generally as well as good relations between their respective countries. Ministers further gladly recognise that although ultimate responsibility and decision in regard to South African problem rests with South Africa alone a friendly exchange of views between Government of India and South Africa on particular aspect of Indian question may lead to a better understanding of each other's standpoint and assist materially in its solution.

Such a conference as suggested in 4th paragraph of *communication between representatives of Government of India and South Africa* respectively has had most serious consideration of Ministers who feel however that difficulties surrounding this line of action are such that they find themselves unable to agree to it however much they would like to meet wishes of Government of India. Practically all parties in South Africa agree on broad principles that by strict prohibition of Indian immigration and by means of active repatriation that Indian population in South Africa shall be reduced as nearly as possible to irreducible minimum. For years this has actually been recognised and unchallenged policy of successive Governments whatever measure of success may have been which has attended their efforts. Under the circumstances it is evident to Ministers and they would desire to impress this on Government of India that feeling in South Africa in connection with political, economic and racial status of Indians bear a direct relation to and is almost entirely dependent upon effectiveness or otherwise of repatriation. In view of this it must further be evident that public opinion in South Africa will regard with gravest suspicion such a conference as suggested which does not explicitly open prospect of such a reduction of Indian population as will be considered satisfactory and will almost certainly look upon it as an interference from outside. If a satisfactory and effective process of repatriation could be initiated, Ministers feel assured that alarm of European population will be so considerably allayed that public opinion will come to look much more favourably upon existing and future rights of Indians than has hitherto been the case. Any helpful suggestion which Government of India might, at any time, put forward in this respect will be cordially welcomed by Ministers.

(3)

TELEGRAM TO THE GOVERNOR GENERAL, SOUTH AFRICA, CAPE TOWN,
No. 403, DATED THE 14TH JULY 1925.

We thank you for your telegram dated 16th June in which you communicate views of your Ministers on proposal for conference adumbrated in our telegram of 8th April. We deeply appreciate courteous and friendly tone of communication though we cannot disguise our profound disappointment at conclusion at which your Ministers have arrived. In view, however, of their apparent and earnest desire to grapple with Indian problem in a broad and sympathetic spirit and their invitation to us to offer suggestions on the question of repatriation, we venture to renew the suggestion in the hope that it may be reconsidered, in the light of the observations set out below.

2. So far as we can gather the main objection to our proposal is that public opinion in South Africa will view with gravest suspicion and as an interference from outside any conference which does not explicitly open prospect of a reduction of Indian population by strict prohibition of immigration and active repatriation. So far as prohibition of immigration is concerned Government of India acquiesced in principle in 1918 when right of each community to regulate composition of its population by means of suitable immigration laws was explicitly recognised and it was never our purpose to re-open that question. In regard to repatriation, we are quite

willing to explore this question with your Government and indeed this is a subject which the Conference, we suggest, could usefully discuss. But as responsible opinion in South Africa recognises, repatriation by itself cannot provide effective solution of problem of European and Asiatic competition in economic sphere which is in the main responsible for present tension between two communities since nearly 63 per cent. of resident Indian population was born in South Africa and the majority of that element regard that country as their home, and are hardly likely to return to India unless compelled to do so. If, as we are confident, your Ministers do not contemplate to make repatriation obligatory methods of improving present situation other than encouragement of resident Indians to return voluntarily to India will have to be explored. Thus the possibility of diverting Indians into channels of activity where they may not come into intimate or extensive competition with the European or of so regulating the conditions of employment as to render competition in spheres where it is unavoidable strictly equal and fair deserves careful investigation. It was with a view to assist in this task and work out a scheme which could be commended to both communities as offering basis for settlement safe and honourable to both communities that we asked for a conference. We venture to think that if the scope of the proposed discussions were fully explained and it were made quite clear that they did not commit the Union Government to the acceptance of any agreement that may result from them without consultation with the South African Parliament and public the conference could probably meet without arousing misgiving or suspicion.

3. We are repeating the suggestion with a single-hearted desire to secure a speedy, complete and amicable solution of a problem which for years has been a progressive source of danger to the continuance of friendly relations between the two countries, and we earnestly hope that Your Excellency's Government will consider it in the same broad and friendly spirit.

(4)

LETTER FROM THE GOVERNOR GENERAL OF SOUTH AFRICA, CAPE TOWN, TO HIS EXCELLENCY THE RIGHT HONOURABLE THE EARL OF READING, G.M.S.I., G.M.I.E., G.C.B., K.C.V.O., ETC., ETC., ETC., VICEROY OF INDIA, No. 15-1262, DATED THE 28TH JULY 1925.

I have the honour to transmit, herewith ten copies of the Areas Reservation and Immigration and Registration (Further Provision) Bill which was introduced into the House of Assembly on the 23rd July, together with a press report of the speech made by the Minister of the Interior on that occasion. Parliament was prorogued on the 25th idem and in the ordinary course of events will not reassemble until early next year. As Your Excellency will see from the Minister's remarks, the Bill has been introduced at this juncture in order that an opportunity may be offered for criticism before the matter is discussed in Parliament.



UNION OF SOUTH AFRICA.

**Areas Reservation and Immigration and Registration (Further Provision)
Bill.**

(To be read a Second Time on Monday, 27th July 1925.)

BILL

TO

Make provisions for the reservation of residential and trading areas in urban areas for certain persons having racial characteristics in common; to amend the Immigrants Regulation Act, 1913 (No. 22 of 1913), the Indians Relief Act, 1914 (No. 22 of 1914), and the Asiatic Registration Amendment Act (Transvaal), 1908 (No. 36 of 1908); and to amend or repeal certain laws.

(Introduced by the MINISTER OF THE INTERIOR.)

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(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:—

CHAPTER I.

RESERVATION OF AREAS.

Request by urban local authority for application of Chapter I.

1. (1) Whenever an urban local authority shall intimate to the Minister—
 - (a) that any area within its limits is wholly or for the greater part occupied for residential or trading purposes or both such purposes by a particular class of persons;
 - (b) that it is desirable that the provisions of this Chapter should be applied in respect of such area,

the Minister may appoint a commission consisting of not more than three persons (hereinafter called the commission) to investigate and report upon the desirability of applying to such area and to the urban area within which it is situated the provisions of this Chapter:

(2) One of the members of the commission shall be designated by the Minister as the chairman thereof, and the Minister may make rules for the conduct of the business of the commission and governing the tenure of office of the members. In the event of the commission consisting of three members, two members shall form a quorum.

Duty and powers of commission.

2. (1) It shall be the duty of the commission to enquire and report to the Minister upon the following matters:—

- (a) The extent and nature of the area which was the subject of intimation under section one;
- (b) the number, dimensions, situation and nature of sites occupied in such area for residential or trading purposes or both such purposes as the case may be;
- (c) whether there would be afforded by such area proper and adequate facilities for residences or trading sites or both, as the case may be, for the particular class of persons concerned;
- (d) whether due and proper provision exists or is assured for water, lighting, sanitary and other necessary services within such area;
- (e) whether it is desirable that the provisions of this Chapter should be applied in respect of such area;
- (f) whether there is, within the limits of the urban local authority concerned, any other area which is wholly or for the greater part occupied for residential or trading purposes or both such purposes by the particular class of persons concerned, and if there be such other area, the extent and nature thereof, and the number, dimensions, situation and nature of sites occupied in such other area for residential or trading purposes or for both such purposes as the case may be;

- (g) whether any other area within the limits of the urban local authority concerned is available for the exclusive occupation for residential or trading purposes or both such purposes by the particular class of persons concerned; and
- (h) any other matter which the Minister or the commission may deem necessary or desirable.

(2) The commission shall have all such powers, jurisdiction and privileges as were conferred upon the commission referred to in Ordinance No. 30 of 1902 of the Transvaal, and all and several the provisions of that Ordinance shall *mutatis mutandis* apply in respect of the commission and its proceedings.

3. (1) At any time within six months after the receipt of the report of the commission, the Governor General may, by proclamation in the *Gazette*, declare that, on and after a date to be mentioned in the proclamation, the area defined in the proclamation shall be a class residential area, or a class trading area, or a class residential and trading area, within the urban area. Proclamation class areas.

(2) More than one area within the urban area may, by any such proclamation, be defined as class residential areas, or as class trading areas, or as class residential and trading areas, as the case may be.

(3) Notwithstanding anything contained in the Precious and Base Minerals Act of the Transvaal (Act No. 35 of 1908) or any amendment thereof, or in any other law, a class trading area or a class residential and trading area may be established under this Chapter on land within an urban area which, in terms of the said Act No. 35 of 1908, or any amendment thereof, is proclaimed land or land held under mining title.

4. From and after the date mentioned in any proclamation issued under this Chapter establishing a class residential area or a class trading area, or a class residential and trading area, it shall not be lawful, save as provided in section ten— Acquisition immovable prop in class areas.

- (a) for any person other than a person of the class concerned to acquire immovable property or a lease or renewal of lease of immovable property within any such area; or
- (b) for any person of the class concerned to acquire immovable property or a lease or renewal of lease of immovable property anywhere within the urban area save within the limits of the class residential area or of the class trading area or of the class residential and trading area, as the case may be:

Provided that nothing in this Chapter contained shall apply to the renewal of a lease of immovable property where the right to renewal was held under a written lease existing at the commencement of this Act.

5. (1) From and after the date mentioned in any proclamation issued under this Chapter establishing a class trading area or a class residential and trading area within any urban area, it shall not be lawful for any licensing court, board or authority, or for any person authorised to grant or issue licences or permits to carry on any trade or business within that urban area— Trading in trading area or residential and trading area.

- (a) to grant or issue to any person other than a person of the class concerned any licences, permit or other authority to carry on any trade or business within the class trading area or class residential and trading area, as the case may be; or
- (b) to grant or issue to any person of the class concerned any licence or permit to carry on any trade or business within the urban area elsewhere than in the class trading area or class residential and trading area, as the case may be:

Provided however, that if the Governor General is satisfied that it is in the general interests of the public that it should be permitted to persons of the class concerned or any restricted number of such persons to carry on any particular trade or business within the urban area elsewhere than in the class trading area or class residential and trading area, as the case may be, he may, by proclamation in the *Gazette* for such period as he may therein fix, exempt persons of the class concerned or a restricted number of such persons from the operation of paragraph (b) of this sub-section in respect of that particular trade or business.

(2) Nothing in this section contained shall be deemed to prohibit the grant to any person holding, at the date mentioned in any proclamation issued under this Chapter establishing a class trading area or a class residential and trading area within any urban area any licence, permit, or other authority to carry on any trade or business, which is actually being carried on, of a renewal of such licence, permit or other authority.

Extension or
reduction of
class areas.

6. (1) Whenever, in the opinion of the urban local authority concerned, any area established under this Chapter as a class residential area or a class trading area, or a class residential and trading area proves inadequate or more than adequate for, or unsuitable either wholly or in part to, the requirements of the population of that class in the urban area, and the urban local authority deems it desirable to extend or reduce any such area or to alter the boundaries thereof, or to create a new class residential area or class trading area or class residential and trading area, the urban local authority may communicate its opinion to the Minister, who thereupon may take all such steps as he may take upon receipt of an intimation under section one.

(2) All and several the powers exercisable under this Chapter in respect of the establishment of a class residential area or a class trading area or a class residential and trading area shall be exercisable in respect of the creation of a new area or the extension or reduction of any existing area of like character or the alteration or the boundaries thereof.

(3) Nothing in this section contained shall be deemed to affect in any manner whatever any right to the renewal of a lease of immovable property where such rights was held under a written lease existing at the commencement of this Act or any right to the grant to any person holding at the date mentioned in any proclamation issued in pursuance of this section any licence, permit, or other authority to carry on any trade or business which is actually being carried on, or a renewal of such licence, permit or other authority.

Suspension of
provisions of Act.

7. (1) If at anytime the Governor General is satisfied that a class residential area or a class trading area or a class residential and trading area established under this Chapter is inadequate for, or wholly or partly unsuitable to, the requirements of the population of that class in the urban area concerned, and that, by reason of the delay which would necessarily take place in removing the causes of the inadequacy or unsuitability, serious prejudice would be suffered by that population unless the provisions of this Chapter in respect of such inadequate or unsuitable area be suspended, he may, by proclamation in the *Gazette* declare that, from and after a date to be therein mentioned, the provisions of this Chapter shall be suspended in respect of the class residential area or class trading area or class residential and trading area concerned.

(2) From and after such date the provisions of this Chapter shall in all respects cease to apply to the area deemed to be inadequate or unsuitable, and, in respect of such inadequate or unsuitable area, to the other parts of the urban area within which it is situated.

(3) The Governor General may, whenever he may deem fit, re proclaim as a class residential area or a class trading area or a class residential and trading area, as the case may be, any area which has been the subject of a suspending proclamation under sub-section (1) of this section, or proclaim as a class residential area or a class trading area or a class residential and trading area under this Chapter any area which wholly or partly includes any area which has been the subject of a suspending proclamation under sub-section (1) of this section.

Class area for
Asiatics to be
deemed to be area
in which under
Law 3, 1885
(Transvaal), Asiatics
may own fixed
property.

8. Any class residential area, or class trading area, or class residential and trading area established under this Chapter for any Asiatic race shall, for the purposes of section two (b) of Law No. 3 of 1885 of the Transvaal, be deemed to be an area within which, in terms of that law, fixed property may be acquired and owned by Asiatics.

Class advisory
board.

9. (1) For every class residential area, or class trading area, or class residential and trading area established under this Chapter there shall be an advisory board consisting of not less than three persons of the class concerned

resident within the urban area, in addition to a chairman who in the case of a non-European class area may be a European. The mode of election or selection of members of any such board, the period and conditions of office of members, and the procedure of the board shall be defined by regulations made by the urban local authority and approved by the Minister.

(2) It shall be the function of an advisory board established under this section to advise the urban local authority in respect of any matter referred to it by such authority for advice, and no by-laws or regulations particularly affecting the interests of the class of persons concerned shall be made or withdrawn by an urban local authority unless the advice of such advisory board shall first have been obtained in respect of the making or withdrawal, as the case may be, of such by-law or regulation.

10. (1) The Governor-General may by proclamation in the *Gazette* declare that from and after a date to be specified therein no member of any race indicated therein shall acquire immovable property or the lease or renewal of lease of immovable property in the Province of Natal save in the coast belt as provided in sub-section (2) of this section: Provided that nothing in this section contained shall be deemed to prohibit a renewal of a lease of immovable property held under written lease at the commencement of this Act.

Acquisition of immovable property by certain persons in Natal, except in class areas, prohibited.

(2) A person who is a member of the race indicated in any proclamation issued under sub-section (1) of this section may acquire immovable property or the lease or renewal of lease of immovable property in the coast belt, from a person who is a member of the same race, but from no other person, except where the immovable property or the lease or renewal of lease of the immovable property acquired is within the limits of a class area established under this Chapter within the coast belt.

(3) From and after the date specified in any proclamation issued under sub-section (1) of this section, no member of any race indicated in such proclamation shall by testamentary disposition acquire any land or interest in land or the lease or occupation of any immovable property in the coast belt, except from a member of the same race.

(4) For the purpose of this section the coast belt means so much of the Province of Natal as lies between the coast line and a line to be defined by the Governor-General by proclamation in the *Gazette* corresponding as far as practicable with the coast line and drawn at an approximate distance of thirty miles therefrom.

(5) Nothing in this section contained shall be deemed to affect the operation within the coast belt of any other provision of this Chapter.

11. (1) Subject to the provisions of sub-section (3) of section *three*, *Savings*, section *eight* and sub-section (3) of section *ten* of this Chapter, nothing in this Chapter contained shall be deemed—

- (a) to affect the operation of Law No. 3 of 1885 of the Transvaal or any amendment thereof; of section *two* of Act No. 18 of 1913; of Act No. 37 of 1919; of Chapter CXIII of the Orange Free State Law Book or any amendment thereof; or of any other law prohibiting, restricting, regulating, or in any way affecting, the ownership or occupation of immovable property or trading by persons of non-European descent; or
- (b) to prohibit the acquisition by the Government or any urban local authority for educational, municipal or any other public purpose of the ownership or occupation of any immovable property; or
- (c) to prohibit the acquisition at any time of land or interests in land or the lease or occupation of any immovable property by devolution or succession on death whether under will or on intestacy from a person of the same race; or
- (d) to prohibit any executor of a deceased estate, or any trustee in insolvency from holding any immovable property or trading under any licence where power to do any such thing is conferred upon him by any law; or

- (e) to invalidate or affect in any manner whatever any agreement or other transaction for the sale or purchase of land lawfully entered into prior to the date mentioned in any proclamation under this Chapter establishing a class residential area or a class trading area or a class residential and trading area or extending or reducing any existing area of like character, or altering the boundaries thereof.

Exemptions.

12. (1) The Governor-General may grant to any person a certificate exempting him either wholly or for such period as he may therein specify from all or any of the provisions of this Chapter; and such person shall either wholly or for such period, as the case may be, be so exempted.

(2) Nothing in this Chapter contained shall be deemed—

- (a) to affect any person who is duly accredited to the Union by or under the authority of His Majesty or the Government of any foreign state, or the wife, family, staff or servants of any such person;
- (b) to refer to natives as that term is defined in section *twenty-nine* of the Native (Urban Areas) Act, 1923, (Act No. 21 of 1923);
- (c) to refer to—
- (i) persons born in the Union and ordinarily resident in the Province of the Cape of Good Hope who are members of the class or race known as "Cape Coloured" or of the class or race known as "Cape Malays";
 - (ii) persons born in the Union and ordinarily resident in the Union elsewhere than in the Province of the Cape of Good Hope who would if resident in that Province, be regarded as members of either of the classes or races known as "Cape Coloured" or "Cape Malays"; and
 - (iii) the people known as Mauritius Creoles or St. Helena persons or their descendants born in the Union.

Interpretation of terms.

13. In this Chapter unless inconsistent with the context—

- "class or class of persons" includes any persons having, in the opinion of the Minister, common racial characteristics, and all white persons shall be regarded as having common racial characteristics;
- "person of a class" or "member of a race" includes any company or association of persons whether registered under any law or not in which one or more persons of the class or members of the race referred to have a controlling interest;
- "Minister" means the Minister of the Interior or any other Minister to whom the Governor-General may assign the administration of this Act;
- "urban area" means any area under the jurisdiction of an urban local authority;
- "urban local authority" means any municipal council, borough council, town council or village council, or any town board, village management board, local board or health board.

CHAPTER II.

IMMIGRANTS REGULATION.

Amendment of section two of Act No. 23 of 1913.

14. Section *two* of the Immigrants Regulation Act, 1913 (hereinafter in this Chapter called the principal Act) is hereby amended by the deletion from sub-section (7) of the words "sufficient in the opinion of the Minister" and the substitution therefor of the following words "fixed by the immigration officer not exceeding one hundred pounds".

15. Section *three* of the principal Act is hereby amended—

Amendment of
section *three* of
Act No. 22 of
1913.

- (a) by the addition to sub-section (2) of the words "From any such opinion there shall be an appeal to the Appellate Division of the supreme Court";
- (b) by the deletion from sub-section (3) thereof of the following words:

"and 'a superior court having jurisdiction' shall mean the Provincial Division of the Supreme Court which has jurisdiction where the board was sitting or any judge of such division or the Eastern Districts Local Division having jurisdiction or any judge thereof".

16. Section *four* of the principal Act is hereby amended—

Amendment of
section *four* of
Act No. 22 of

- (a) by the addition to paragraph (a) of sub-section (1) of the following words "Provided that for the purpose of this section the Northern Districts of Natal, as described in section *three* of 'The Northern Districts Annexation Act, 1902' (Act No. 1, 1903, Natal) shall be deemed to be included in the Province of the Transvaal"; and
- (b) by the addition to paragraph (f) of sub-section (1) after the words "have been stolen" of the following words:
- "incest, sodomy, bestiality, any offence involving fraudulent conduct in connection with any insolvency"; and
- (c) by the deletion of paragraph (a) of sub-section (2).

17. Section *five* of the principal Act as amended by section *three* of the Indians Relief Act, 1914, is hereby amended by the deletion of paragraphs (e) and (g) and the substitution thereof of the following new paragraphs:—

Amendment of
section *five* of
Act No. 22 of 1913

- (e) any person other than an alien, who was born in any part of South Africa included in the Union and whose parents were at that time restricted to temporary or conditional residence therein by any law then in force: Provided that any person who, if he were a prohibited immigrant, would be included within any class of persons which has, in terms of paragraph (a) of sub-section (1) of section *four*, been deemed by the Minister to be unsuited to the requirements of the Union or any province thereof shall lose the protection accorded by this paragraph if he has acquired or shall acquire a domicile in a province of the Union other than that in which he was born;
- (g) any person who is proved to the satisfaction of an immigration officer or in the case of an appeal to the satisfaction of the board, to be the wife or child under the age of sixteen years of any person exempted by paragraph (f) of this section:

Provided

- (e) that the wife or child (as the case may be) is not such a person as is described in paragraph (d), (e), (f), (g) or (h) of sub-section (1) of section *four*; and
- (i) that where exempted person belongs to one of the clauses described in paragraph (a) of sub-section (1) of section *four* the wife or child (as the case may be) enters the Union within five years after the first day of August, 1925, or within ten years after the date of the first entry into the Union, whichever period may be the longer, of the person so exempted."

In the interpretation of this paragraph "the wife" shall include any one woman between whom and the exempted person mentioned there exists a union recognised as a marriage under the tenets of an Indian religion notwithstanding that by those tenets the union of that exempted person with

other women at the same time would also be recognised as a marriage : Provided that no woman shall be deemed to be the wife of such exempted person—

- (i) if such a union exists between him and any other woman who has under any law relating to immigration or to Asiatic registration been recognised within the Union as the wife of such person and has resided or reside or is domiciled in any province ; or
- (ii) if such exempted person has offspring resident or domiciled in any province by any woman who is still living,

and a union shall not be for the purposes of this section be deemed to have ceased to exist by reason only of the fact that according to the tenets of an Indian religion it has been dissolved.

“The child under the age of sixteen” shall mean a child who is the offspring of the exempted person and the wife as herein defined or the child of the exempted person and a deceased woman who, if she had been alive could have been recognised at the time of the birth of the child as the wife (as herein defined) or whose union with the exempted person could have been registered at the time of the birth of the child as a marriage under section *two* of the Indians Relief Act, 1914.

18. Section *ten* of the principal Act is hereby amended by the addition of the following words :—

Any such person may be declared to be a prohibited immigrant and dealt with in terms of section *nineteen* of this Act and if such person is in possession of a registration certificate or a certificate of domicile or any other document authorizing him to remain in the Union or any province it shall be competent for any board to which he may appeal, if it be proved to the satisfaction of the board that such certificate or other document was obtained by fraudulent representations by or on behalf of the holder, to order that such certificate or other document be cancelled and the holder thereof be dealt with as a prohibited immigrant : Provided that if such person fails to appeal to a board the Principal Immigration Officer concerned may exercise all such powers as to the cancellation of any certificate or other document as are by this section conferred upon a board.

19. Section *twenty-two* of the principal Act is hereby amended by the addition of the following paragraph :—

- (d) for any offence under section *twenty* of this Act for which imprisonment is imposed without the option of a fine.

20. Section *thirty* of the principal Act is hereby amended by the deletion of the definition of the term “domicile” and the substitution therefor of the following definition :—

“domicile” shall mean the place in which a person has his present permanent home, or present permanent residence or, to which he returns as his present permanent abode and not for a mere special or temporary purpose ; and a person shall not be deemed to have a domicile within the Union or any province (as the case may be) for the purposes of this Act unless he has lawfully resided therein for a continuous period of three years, otherwise than under terms of conditional or temporary residence permitted by this Act or any other law or as a person under detention in prison, gaol, reformatory or mental hospital, and a person shall be deemed for the purposes of this Act to have lost his domicile within the Union or any province (as the case may be) if he absents himself from the Union or that province (as the case may be) and does not return to the Union or that province (as the case may be) within three years from the date of departure therefrom or in the case of a person who absented himself from the Union or any province (as the case may be) prior to the 1st August, 1925, does not return to the Union or that province (as the case may be) before the 1st August, 1928 : Provided that in cases where a person proceeds overseas for a special or temporary purpose the

Amendment of section *ten* of Act No. 22 of 1913.

Amendment of section *twenty-two* of Act No. 22 of 1913.

Amendment of section *thirty* of Act No. 22 of 1913.

Minister may authorize the issue of a certificate of identity under the provisions of sub-section (2) of section *twenty-five* of this Act allowing the person concerned to return to, and resume his residence in the province named within the period specified in such certificate or any extension thereof not exceeding ten years in all.

21. Section *six* of the Indians Relief Act, 1914, is hereby amended by the addition after the words "any port in India" of the words "or elsewhere." Amendment of section *six* of Act No. 22 of 1914.

CHAPTER III.

REGISTRATION OF ASIATICS.

22. A registration certificate issued under the provisions of the Asiatic Law Amendment Act, 1907, of the Transvaal (Act No. 2 of 1907), or the Asiatics Registration Amendment Act, 1908, of the Transvaal (Act No. 36 of 1908), may be surrendered by the holder to the Registrar of Asiatics and such surrender shall be conclusive evidence that such Indian has abandoned any right of or incidental to entry, residence or domicile in the Transvaal Province. Surrender of Asiatic registration certificate.

23. If an Asiatic, who has failed to make application for registration in accordance with the provisions of paragraph (2) of section *five* of the Asiatics Registration Amendment Act, 1908, of the Transvaal, shall satisfy the Registrar of Asiatics that such failure was due to some good and sufficient cause, the Minister of the Interior may, in his discretion, authorize the Registrar to receive an application for registration from such Asiatic and the application shall be dealt with in all respects as if it had been made in accordance with the provisions of the said section and all the provisions of Act No. 36 of 1908 of the Transvaal as amended by this Act which would have applied if the application had been so made shall apply accordingly. Circumstances in which application for Asiatic registration certificate may be made.

24. Section *seven* of the Asiatics Registration Amendment Act, 1908, of the Transvaal, is hereby amended by the deletion of the words "save as in the next succeeding section is provided." Amendment of section *seven* of Act No. 36 of 1908 of Transvaal.

25. Section *nine* of the Asiatics Registration Amendment Act, 1908, of the Transvaal, is hereby amended by the deletion of the words: "any Asiatic who fails upon lawful demand to produce such certificate shall, unless he is the lawful holder of a certificate of registration be liable to be dealt with in manner mentioned in section *eight*." Amendment of section *nine* of Act No. 36 of 1908 of Transvaal.

CHAPTER IV.

SUPPLEMENTARY.

26. The laws mentioned in the Schedule to this Act shall be and are hereby repealed to the extent set out in the fourth column of that Schedule. Repeal of laws.

27. This Act may be cited as the Areas Reservation and Immigration and Registration (Further Provision) Act, 1925, and shall come into force on the first day of August, 1925. Short title and commencement of Act.

Schedule.

Province.	No. and year of Law.	Title or Subject of Law.	Extent of Repeal.
Natal	Act No. 28 of 1897	To protect unconvicted Indians from arrest in mistake for absconding indentured Indian servants.	The whole.
Cape	Act No. 37 of 1904 .	The Chinese Exclusion Act, 1904.	The whole.
Transvaal	Act No. 36 of 1908 .	The Asiatics Registration Amendment Act, 1908.	Sections <i>three, four, five</i> (paragraph one), <i>six, eight, sixteen, seventeen</i> (paragraphs five and six).

TELEGRAM TO THE GOVERNOR GENERAL OF SOUTH AFRICA, CAPE TOWN,
No. 522-Os., DATED THE 7TH SEPTEMBER 1925.

I thank you for your despatch No. 15-1262, dated 28th July 1925, forwarding copies of Areas Reservation and Immigration and Registration (Further Provision) Bill introduced into House of Assembly on 23rd July. I would be failing in my duty if I did not inform Your Excellency that my Government and I feel deep concern at the provisions of the Bill. We propose to address you at length on the subject when we have had an opportunity of examining fully all implications of the measure.

2. We have not yet received a reply to our telegram dated the 14th July repeating the proposal for a Conference to discuss position of Indians in South Africa. We should be glad to learn the views of your Government as soon as possible and trust that it may be possible for them to accept our suggestion.

TELEGRAM FROM THE GOVERNOR GENERAL, SOUTH AFRICA, PRETORIA, DATED
THE 24TH SEPTEMBER 1925.

Your telegram dated 14th July. Indian question in South Africa. My Ministers very much regret their reply has been delayed so long. They wish, however, to assure the Government of India that this delay was due entirely to circumstances over which they had no control.

2. In the light of the views expressed in your telegram, my Ministers have very earnestly reconsidered their previous attitude with regard to holding of a conference on Indian question. They regret, however, that they cannot find sufficient reasons for departing from their views as conveyed in my telegram dated the 15th June. Being in close contact with the public feeling in South Africa and knowing as they do how holding of a conference on the Indian question without limiting the scope of such conference to some definite and concrete questions is likely to be looked upon and resented by the people here as an interference from outside. My Ministers are satisfied by deciding as they have, they merely give expression to great masses of responsible public opinion in the country.

3. My Ministers further wish to express their satisfaction and gratitude for readiness of Government of India to explore with them the possibility of more effective repatriation scheme which will result in a considerable reduction of Indian population in South Africa and which, if successful, is sure to facilitate enormously a generally acceptable and final solution of the general question of political, social and economic status of that residue which cannot be repatriated. In this connection my Ministers wish to point out that the extent to which repatriation is possible is not necessarily limited to number of Indians born overseas, as is evidently supposed by Government of India, as official figures show more than one-third of Indians hitherto voluntarily repatriated are South African born.

4. The question whether conversations between Government of India and Union Government with regard to repatriation shall be carried on through ordinary channel or at a conference as proposed must, in the views of my Ministers, depend upon the nature and practicability of any concrete proposals which during the preliminary discussions might tentatively and provisionally be brought forward. In order to give the Government of India some indications of the lines on which the Union Government have been thinking, my Ministers state that for a considerable time they have contemplated the possibility of supplementing the inducements now offered to voluntary repatriates by land settlement scheme in India or some adjacent territory together with such other provision for those who do not intend to settle on the land as may prove to be practicable. Such a scheme or schemes can naturally only be

undertaken with the co-operation of the Government of India, which co-operation together with further suggestions will be heartily welcomed by my Ministers.

5. With regard to the points raised by the Government of India as to "the possibility of diverting Indians into channels of activity where they may not come into intimate or extensive competition with the Europeans or of so regulating the conditions of employment as to render competition in spheres, where it is unavoidable, strictly equal and fair," my Ministers will gladly welcome any concrete suggestions which the Government of India might desire to make. They further wish to state that if further discussions about repatriation, as indicated above, might point the way to the holding of a conference definitely restricted in scope, they will raise no objection to the inclusion of this particular aspect of the question within the range of the conference.

(7)

TELEGRAM TO THE GOVERNOR GENERAL, SOUTH AFRICA, CAPE TOWN, No. 606,
DATED THE 9TH OCTOBER 1925.

Your telegram dated September 24th. Indian question in South Africa. We greatly regret that we have been unable to persuade Your Excellency's Ministers to agree to a conference, as we had hoped that the limitations on its scope suggested in our telegram of July 14th would have assisted them in acceding to our wishes.

Paragraph 2.—The Government of India are as ever ready to help the Union Government in finding a just and satisfactory solution of this difficult question, but they feel it only right to point out that a misunderstanding has arisen regarding the intention underlying the reference to repatriation in my telegram of July 14th. It was not our intention to suggest that we were willing to co-operate with Your Excellency's Ministers in exploring the possibility of more effective repatriation with the object of bringing about a considerable reduction in the Indian population in South Africa. All that we meant was that while repatriation would never by itself afford a solution of the problem, the existing scheme of repatriation on a purely voluntary basis might be re-examined with a view to ascertaining what difficulties had arisen in its working and how these difficulties could best be smoothed away. Conference of which the main object was to expedite Indian repatriation was not contemplated by us.

Paragraph 3.—Your Excellency's Ministers refer to the ultimate possibility of a conference regarding repatriation in certain circumstances, but the Government of India feel that they are not in a position to enter into a discussion of the repatriation question without fuller knowledge of local conditions than they at present possess. We note with satisfaction that your Excellency's Ministers would welcome any concrete suggestions which we have to offer either on this question or on the general question of mitigating direct competition between Europeans and Indians. We should be glad to avail ourselves of this offer, but feel that as a preliminary to entering into such a discussion, it is essential that we should be equipped with full and up-to-date knowledge of local conditions. We should therefore like, if your Government see no objection, to send a deputation to South Africa with instructions to collect information regarding the economic position of Indians and to investigate their general condition. We are anxious that this preliminary investigation should be completed as soon as possible in order that no avoidable delay may occur in arriving at a satisfactory conclusion. We trust that your Ministers will be able to accept this suggestion and hope that by this means we may be able to be of real assistance to them. As the object of our deputation would be to suggest an alternative solution of the Indian question to that embodied in the Areas Reservation and Immigration and Registration (Further Provision) Bill, we trust that your Government will have no objection to postponing further progress with that Bill until our considered suggestions are before them.

TELEGRAM TO HIS EXCELLENCY THE GOVERNOR GENERAL OF SOUTH AFRICA,
CAPE TOWN, No. 609-Os., DATED THE 12TH OCTOBER 1925.

Reference Areas Reservation and Immigration and Registration (Further Provision) Bill, copies of which were received with Your Excellency's despatch No. 15-1262 of 28th July. We have carefully examined above Bill and, as foreshadowed in my telegram of 7th September, beg leave to make following observations on it:—

(1) According to statement made by Minister when introducing it, Bill assumes that Indian is an alien element in population of Union and is designed to reduce that element considerably. We question whether the Indian population, of which more than 60 per cent. is South African by birth, can justly be regarded as alien element. Bulk of them have been settled in Union for long periods, have in their own respective spheres contributed to development of country, and proved their value to the other elements in the population. They have acquired vested interests and established manifold associations severance of which will be a source of distress to many and great economic dislocation and loss. As British subjects resident in South Africa they look, and, we submit, are entitled to look upon Union Government as the trustee of their interests equally with other elements in the population.

(2) *Chapter I.*—(a) As regards residential and commercial segregation Bill in the main reproduces provisions of the class Areas Bill of the late Government. Our objections to the principle of racial segregation were set forth in paragraphs 7 to 9 of our despatch of August 23rd, 1923, and to the provisions of the Class Areas Bill in our telegram of March 14th, 1924, No. 257. In our opinion those objections have lost none of their force. Materially applications of these provisions will entail loss on Indian community by reducing value of immoveable property now owned by Indians outside areas to be set apart for them and restrict their opportunity for trade. Socially Indian community will regard measure as inflicting humiliation, sense of which, we fear, will be aggravated by clause 12 of new Bill which excludes classes known as Cape Coloured and Cape Malaya from its scope.

(b) Clause 10 is evidently based on recommendation made by majority of Asiatic Inquiry Commission but is wider and more drastic in that it is evidently intended to apply not only to agricultural land and purports to restrict the right of Asiatics to acquire immoveable property within reserved belt from non-Asiatics, except within urban class areas set apart for them. To prohibit acquisition of agricultural land except from existing Indian holders would increase congestion in areas round Durban and at such places as Stanger where it is already so great that the Indian cultivators can hardly obtain a living from the small patch which he cultivates. As Indians in coast belt are largely descendants of agricultural labourers introduced some generations ago such prohibition will be a source of great hardship to them. In Minute No. 984 of your predecessor's Minister, dated 15th December 1922, we were informed that the recommendation of the Commission did not commend itself to them. We earnestly hope that in light of the consideration now put forward as well as those advanced in paragraph 6 of our despatch No. 307-R. A. of 19th-27th December 1921, your present advisers will consent even now to revise decision in matter.

(3) *Chapter II.*—(i) Clause 16 (c) of Bill will have effect of restricting further entry of Asiatics lawfully resident in other parts of Union into Natal and Cape of Good Hope. The reasons for proposing this provision are unknown to us, but we venture to point out that the restriction of freedom of inter-provincial movement must seriously affect vested interests. Again imposition of time-limit in respect of entry into Union of wives and children of lawfully resident Indians prescribed in (ii) of proviso to clause 17 is scarcely in consonance with terms of paragraph 3 of reciprocity resolution of 1918, which did not contemplate any such limitation and which representatives of South Africa accepted. In view of disparity between two sexes of resident population, it will inflict great hardship on unmarried Indians.

(ii) Sub-section (e) which clause 17 of Bill substitutes for present sub-section (e) of section 5 of Immigrants' Regulation Act (No. 22 of 1913) empowers Ministers to withdraw from Asiatics born of parents lawfully resident in any province of the Union, domicile that they have already acquired or may hereafter acquire in another province. Here, again, we fear that existing rights will be seriously prejudiced.

(4) *Chapter III. Registration.*—We have no comments of principle to make in regard to provisions in this chapter.

(5) In our previous telegrams we have drawn attention to widespread apprehension which recent developments in regard to position of Asiatics in Union have created in India. Terms of new Bill, text of which has been published in newspapers, are regarded here as deliberately harsh and oppressive towards Indians. We have always pleaded with utmost earnestness for comprehensive consideration of Asiatic problem in broad and dispassionate spirit with a view to finding some solution acceptable to all communities in South Africa. In our opinion Bill will destroy hope of ever arriving at such solution and will have most harmful reaction on public opinion here. A conference on lines suggested in our telegrams of 8th April and 14th July would, in our opinion have provided best opportunity for exploring situation, but we have learnt with regret from your telegram of 24th September that idea does not commend itself to your Ministers. We trust, however, that they will accede to request made in our telegram dated 9th October to send a deputation to South Africa to collect information regarding economic and general conditions of Indian community so as to enable us to suggest solution of this difficult problem less unacceptable than that embodied in the Bill, and will also agree to postpone further progress of measure until our alternative proposals are before them.

(9)

TELEGRAM FROM THE GOVERNOR-GENERAL, SOUTH AFRICA, TO VICEROY,
DELHI, DATED THE 10TH NOVEMBER 1925.

10th November. In reply to your telegram 9th October 1925, 606-Os., my Ministers state that they very much regret that Government of India find it impossible to co-operate with them in devising some more effective scheme of voluntary repatriation. They do so more especially because as they have previously pointed out there exists no better and surer means of favourably influencing the attitude of European population and thus of eventual furthering general interest of Indians in South Africa than the reduction of present Indian population to irreducible minimum. They feel that it is not necessary to add that any assistance which the Government of India might be able and willing to render to ensure the more effective working of existing repatriation arrangements will be heartily welcome.

(ii) Ministers have very carefully and sympathetically considered request to postpone their proposed legislation until the Government of India shall have taken certain steps as outlined in your last communication. If such postponement is to mean that Asiatic question will not be effectively and, if possible, finally dealt with during the forthcoming session of Parliament as seems likely to be the case, they very much regret that they will be unable to meet the wishes of the Government of India. In this connection they desire to point out that their proposed legislation is not only generally considered to be very urgent, but that it is also admittedly long overdue. Apart from the fact that present Government have publicly undertaken to introduce their Bill and have actually done so during the last session but were unable to pass it, similar legislation, as must be well known, was already attempted in the form of Class Areas Bill by my Minister's predecessors and would probably have been enacted by this time if dissolution of Parliament and a change of Government had not intervened. Furthermore my Ministers wish to point out that on broad lines the Areas Reservation and Immigration and Registration (Further Provision) Bill follow the recommendations of the

Asiatic Enquiry Commission which reported as far back as March 1921 and that of these recommendations the Government of India cannot have been unaware nor were their views in this connection unrepresented as throughout that Commission of Enquiry they were officially represented by Sir Benjamin Robertson, late Chief Commissioner of the Central Provinces, India, accompanied by Mr. G. L. Corbett of Indian Civil Service.

(iii) With regard to the proposal to send a deputation to South Africa for the purpose of investigation my Ministers state that if Government of India consider this to be best and most desired method of obtaining such first hand information as they require no objection will be raised by them against proposed course of action. Ministers naturally realise that under certain circumstances and without exercise of all due discretion it is possible that an enquiry of this nature may exercise a disturbing effect on the minds of Indian population in South Africa and may in the beginning increase the Union Government's difficulties and lead to profound irritation on the part of the European population but in spite of this they have sufficient confidence in good intention and discretion of the Government of India to concur in the action they desire.

(iv) With reference to the contents of your later telegram dated 12th October 1925, No. 609, my Ministers wish to assure the Government of India that their observation on various provisions of Areas Reservation and Immigration and Registration (Further Provision) Bill will have their fullest and most earnest consideration.

(10)

TELEGRAM TO THE GOVERNOR-GENERAL OF SOUTH AFRICA, No. 667-Os.,
DATED THE 18TH NOVEMBER 1925.

Clear the line.—Your telegram dated 10th November 1925. We are most grateful to Your Excellency's Government for agreeing to our sending deputation to South Africa to make certain enquiries. Deputation will consist of one senior British official of the Indian Civil Service and two prominent Indian non-officials who either have been or are members of the Indian Legislature, as members, one officer of the Indian Civil Service as Secretary and possibly one clerk. We shall communicate to you the names of the gentlemen composing the deputation as soon as they have been selected. Its defined purpose will be to inquire into and report to us on economic position and general condition of Indians in South Africa and Your Ministers may rest assured that we fully appreciate the importance of selecting representatives who will exercise due discretion in the conduct of such an enquiry.

2. We are trying to arrange that deputation should sail from Bombay per S.S. "Cargola" on 25th November. It is possible that special facilities in regard to its travelling and accommodation in South Africa may be required. We shall address you again on this point as soon as personnel of deputation is settled, and trust that Your Excellency's Government will be ready to assist us.

3. It was not our intention to suggest that no attempt should be made during the forthcoming session of the Union Parliament to deal with Indian problem. It would be sufficient if next stage in the progress of the Areas Reservation and Immigration and Registration (Further Provision) Bill could be postponed until we have had time to consider report of our deputation and make representations in light of that report. If, as we anticipate, deputation complete their work rapidly, we should be in a position to formulate our conclusions early in the New Year. If after consideration of our views Your Ministers decide to proceed with Bill, they would still, we believe, have sufficient time before end of session. We shall therefore be grateful if Your Ministers would agree to defer action relating to Bill for short time to enable us after receipt of views and suggestions of deputation to submit representations for your consideration.

4. We thank you for assurance that remarks on the provisions of the Areas Reservation and Immigration and Registration (Further Provision) Bill communicated in our telegram No. 609 of the 12th October will receive fullest and most earnest consideration of Ministers.

(11)

TELEGRAM TO THE GOVERNOR-GENERAL, SOUTH AFRICA, No. 703-Os., DATED DELHI, THE 26TH NOVEMBER 1925.

Please refer to my telegram of November 18th. Our deputation has now sailed, and we hope that they will complete their investigations and telegraph a summary of their conclusions to us five or six weeks after their arrival at Durban. In paragraph 4 of your telegram dated September 24th your Government expressed the opinion that the question whether conversations between Government of India and Union Government with regard to repatriation should be carried on through ordinary channels or at a conference must depend on the nature and practicability of any concrete proposals which during the preliminary discussions might tentatively and provisionally be brought forward. In sending our deputation, we have, as we explained in paragraph 3 of our telegram of October 9th kept the possibility of a conference in view and have hopes that the proposals which we may be in position to put forward as result of deputation's report may form acceptable basis for conversations between Union Government and our representatives. We trust that Union Government on their part will not in meantime take any action that will preclude possibility of such conversations, if it is ultimately agreed that they are desirable.

(12)

TELEGRAM TO THE GOVERNOR-GENERAL, SOUTH AFRICA, PRETORIA, No. 705, DATED THE 28TH NOVEMBER 1925.

Reference my telegram dated November 18th. Personal of deputation, which sailed from Bombay for South Africa by S.S. "Karagola" on 25th November, is as follows:—

G. F. Paddison, C.S.I., I.C.S., Commissioner of Labour, Madras—*Leader.*

Hon'ble Syed Raza Ali, Member of Council of State—*Member.*

G. S. Bajpai, C.B.E., I.C.S., Acting Deputy Secretary to the Government of India—*Secretary.*

C. S. Ricketts—*Assistant.*

It is anticipated that the third and only remaining member of deputation whose name will be communicated in a few days, will sail by boat leaving Bombay on December 6th. The deputation will then be complete.

2. Deputation will arrange its programme of work after reaching Durban and we would welcome any assistance that Your Excellency's Ministers and administrative officers may be able to give them in carrying out the duties entrusted to them. Deputation will probably have to travel extensively and as it is important that its report should be completed as quickly as possible, much of the work connected with preparation of report will probably have to be done in the train. We should, therefore, be grateful if your Government could see its way to placing a special saloon with kitchen, on payment if desired, at their disposal. This arrangement may be useful if difficulties arise up-country about accommodation in hotels. Where the deputation has to stop at any place for a number of days and cannot live in the train, we should appreciate any assistance that can be given them in securing suitable accommodation. Paddison is accompanied by his wife.

(13)

TELEGRAM TO THE GOVERNOR-GENERAL, SOUTH AFRICA, PRETORIA, No. 713,
DATED THE 1ST DECEMBER 1925.

My telegram No. 705, dated 28th November. Third Member of Indian deputation to South Africa is Sir Deva Prasad Sarvadhikary, Kt., C.I.E., Member of the Council of State, recently dissolved. He will sail for South Africa from Bombay per S.S. "Karapara" on 9th December arriving at Durban, about the 30th December and is accompanied by his son.

(14)

TELEGRAM FROM THE GOVERNOR-GENERAL, SOUTH AFRICA, PRETORIA,
DATED THE 9TH DECEMBER 1925.

Your telegram 18th November, 667-Os., and 28th November, 705. My Ministers have noted that the Government of India is sending a deputation to South Africa to enquire into and report upon (the) Economic position and general condition of the Indians in South Africa and they appreciate the undertaking to select representatives who will exercise due discretion in the conduct (of) such an enquiry.

2. Union Government will grant without payment facilities for deputation in regard to its travelling in South Africa and will also render all possible assistance if difficulties arise in connection with accommodation in hotels. If suitable accommodation cannot be secured arrangement will be made for saloon to be available for this purpose.

3. Ministers add that Areas Reservation and Registration and Immigration (Further Provision) Bill will be introduced early in forthcoming session which will begin on 22nd January next but that in ordinary course of Parliamentary procedure some time will necessarily elapse before second reading stage will be reached. This will probably give deputation as much time as they will require for their investigation. Government intend to move that after second reading Bill shall be referred to a select committee and will favour fullest opportunity being given to deputation laying case of Indians before that committee if it desires to do so.

(15)

TELEGRAM TO THE GOVERNOR-GENERAL OF SOUTH AFRICA, PRETORIA,
No. 745-Os., DATED THE 15TH DECEMBER 1925.

Your telegram dated 9th December. We are most grateful for courtesy of Your Excellency's Government in undertaking to grant without payment travelling facilities for our deputation and promising to render all possible assistance if difficulties arise in connection with accommodation in hotels.

2. We also desire to thank Your Excellency's Ministers for assurance that they will favour fullest opportunity being given to our deputation of laying case of Indians if so desired before Select Committee on Areas Reservation and Immigration and Registration (Further Provision) Bill. We will address you further on this point as soon as we have received report from our deputation and have considered their conclusions and recommendations. In the meantime we would be glad to be informed as soon as Your Excellency's Government are in a position to do so, of date on which it is proposed to take second reading of Bill.

TELEGRAM TO THE GOVERNOR-GENERAL OF SOUTH AFRICA, DATED THE
10TH JANUARY 1926.

Clear the line.—Our deputation after enquiry in Natal have telegraphed their interim and provisional conclusions and recommendations to us. Firstly, they have been unable to find any justification for the general opinion held by Europeans in Natal that Indian competition in trade is increasing and is closing fruitful avenues of employment to Europeans. Similarly, they are unable to obtain accurate or complete statistics to indicate how far, if at all, Indians have recently displaced Europeans in skilled or semi-skilled occupations. They suggest that a fresh survey of the situation, if one were undertaken, would probably prove fears to be unfounded, so far at least as trade and commerce are concerned. Their investigations tend to show that during the last few years, Indian penetration has increased only in certain trades, such as tailoring and furniture, especially in Durban area, while in the sphere of business proper the Indian has not improved his position since the report of the Asiatic Enquiry Commission. Further expansion of Indian trade is barred by action of Municipalities, who refuse issue of any new licenses to Indians, and frequently refuse transfer of old licenses to new premises even in close proximity to old ones. Same policy is being followed by Licensing Boards in rural areas. For these reasons, they suggest that, in order to verify the facts on which demand for Bill is based, a fresh enquiry is advisable.

2. Secondly, our deputation lay stress on the point that it is questionable whether the Bill will effect any mitigation in the economic competition between the two races, which European opinion in Natal regards as crux of whole Asiatic problem. The positive remedies which Bill contemplated are—

- (1) commercial separation ;
- (2) residential separation ; and
- (3) restriction provided for in clause 10.

As regards (1), our deputation find that municipal administration of existing licensing laws has already resulted in Indian traders being concentrated in areas distinct from those occupied by Europeans, except in the case of certain old-established Indian firms which carry on business in European quarters. From European point of view, therefore, legislation now proposed appears unnecessary, while it will seriously aggravate position of Indian trading community. They assume that elimination of Indians from trade is not aimed at, as such a policy would not be in accordance with general standard of fairness, particularly since they report that aliens from Europe are monopolising new opportunities for trade. If object aimed at is mitigation of competition, other remedies seem more likely to be effective. Allegation of unfairness of Indian competition is said to be based on payment of lower wages to shop assistants and evasion of regulations governing terms of employment. They consider that means could be devised to prevent such evasion and are strongly of opinion that matter deserves investigation, especially as they have been told that if board and lodging and other amenities allowed free to Indian assistants are included, the total wages of the latter equal those paid for the same class of work by European employers.

3. With regard to (2) residential segregation, the enquiries of our deputation confirm the objections to this measure which we have consistently urged upon Your Excellency's Government. They report that condition of many localities occupied by Indians around South Africa causes Indian community to be full of apprehension that class area created for them will share similar fate. Any measure tending to depress the social and economic standards of Asiatics may be expected to intensify rather than to mitigate industrial and commercial competition between them and the white population.

4. Clause 10 of the Bill will in the opinion of our deputation, have most serious consequences. They point out firstly, that Indian market gardeners, who tend to cluster in every township in Natal and a large proportion of whom

held land on monthly and yearly tenure from Europeans, will be driven into coast belt where no fresh land is available for them as area within that belt owned by Indians is small and almost entirely taken up. Secondly, Indian market gardeners, who are now tenants of Europeans, will be deprived of their means of livelihood. Thirdly, Indian traders outside belt, who now carry on business in premises leased from Europeans, will be driven into belt on expiration of their lease. This will not only impose great hardship on Indians but many Europeans will suffer as well. Asiatic congestion around Durban which is already great will be seriously intensified. Sanitary conditions of Asiatic suburbs of Durban which are already regarded as a menace will become a greater source of danger to public health. Indians shut off from land will turn for a living to more or less skilled trades in which position of Europeans will be further threatened. It is stated by our deputation that Durban Corporation seems to be alive to sanitary danger of this provision of Bill and they add that Europeans with whom they have discussed the question have also begun to realise its probable effects.

5. These facts and considerations strengthen our conviction, which we have often pressed on Union Government, that a Round Table Conference would be most satisfactory method of dealing with the situation and we hope that, as result of discussion during the last few months and of wider appreciation of implication of Bill, there may have been some such modification in attitude of European public referred to in your telegram of September 24th as to justify your Government in reconsidering view they have taken of this proposal. We wish to make it clear that we are still willing and anxious to participate in a Round Table Conference in any place or manner which may seem to them most convenient.

6. If the Government of South Africa for any reason find themselves still unable to agree to a Round Table Conference, we hope that Union Government will agree that there is a *prima facie* case for some fresh enquiry before the proposed legislation is proceeded with. Apart from other considerations, the enquiry appears to be necessary firstly, because exact facts regarding extent of Indian competition in trade and industry do not seem to be fully known and secondly, because ultimate consequences of proposed legislation may be reverse of those which are expected and desired. Our deputation will we understand reach Cape Town on January 10th and we should be gratified if a Minister of the Government would consent to receive them informally and give them an opportunity of explaining and illustrating more fully the arguments in favour of holding an enquiry which we have only been able to indicate in brief outline. We believe that there is a great deal to be said in favour of allowing representatives of Indian community in South Africa and our representatives to place their views before a Committee of Enquiry before the Bill is proceeded with any further. The moral effect of holding the enquiry would be great. It would convince Indian opinion that Union Government were not averse to hearing representations which can be urged against policy embodied in Bill and that Parliament will not allow Indian case to be prejudiced in consequence of their not being represented politically.

(17)

TELEGRAM FROM THE GOVERNOR-GENERAL OF SOUTH AFRICA, DATED THE 5TH (RECEIVED 6TH) FEBRUARY 1926.

Your telegram dated 10th January 8-Overseas. My Ministers desire me to thank Your Excellency very cordially for your courtesy in communicating to them so fully and promptly the interim and provisional conclusions and recommendations of Deputation sent to South Africa to enquire into position of Indian population in Union.

2. With regard to Your Excellency's suggestion that it might still be possible for Union Government to agree to the holding of a Round Table Conference, my Ministers fully appreciate desire and motive of Government of India in pressing for this particular method of dealing with problem. They

wish me to state, however, that they have repeatedly given their most earnest and anxious consideration to the proposal but that for reasons already stated and in spite of their desire to meet the wishes of Your Excellency's Government, if possible, they cannot see their way to alter decision to which they have previously come.

3. With regard to observation in deputation report on general situation in South Africa and more particularly on probable effect of various (group omitted) on its proposed legislation my Ministers wish to point out that any conclusions to which deputation have come must necessarily and do admittedly rest on very fragmentary evidence gathered within a very limited period. They agree, therefore, in general conclusion this evidence must be supplemented before final and reasoned judgment shall be possible. They cannot, however, agree such further evidence must be collected by means of a fresh enquiry on the part of a commission appointed for purpose as this course seems to be unnecessary in view of similar and very exhaustive enquiry by Asiatic enquiry Commission held only a few years ago and of information which can be made available from official sources. Besides a fresh enquiry as suggested will of necessity further delay legislation which is urgent and is already long overdue while on the other hand the Parliamentary select committee to which it is proposed to refer Bill will provide most suitable means and opportunity to supplement, as far as such may be required, any evidence which is already in hand.

4. Whilst on one hand my Ministers must regret their inability to accede to request of Government of India for a round table Conference or a fresh enquiry they on the other hand fully realize the anxiety of that Government to place as fully as possible the case of the Indian Community in South Africa before the Government of the Union. It is for this reason that they previously adumbrated the possibility of evidence before a parliamentary Select Committee by the deputation from the Government of India now in the country after Bill shall have passed the second reading. Although reference to a Select Committee after second reading will imply maintenance of the general principle of Bill it will at the same time offer a very wide scope for evidence and will not even exclude evidence on such a fundamental question in which Government of India is primarily concerned as to whether proposed segregation shall be voluntary or compulsory. To this suggestion which they have offered my Ministers have thus far received no reply and they are consequently in doubt as to the existence of any difficulty on the part of the Government of India in accepting the same. If such difficulty should, however, exist on the ground of too great a restriction of evidence which deputation might desire to bring forward my Ministers would agree to propose reference of Bill to a Select Committee before second reading thus widening scope for evidence so as to include principle of Bill. They wish it, however, to be understood that such a proposal on their part will be subject to Government of India intimating their willingness to availing themselves of this opportunity specially offered to place evidence before select committee through their deputation now in South Africa and further that it will be subject to Select Committee being required to report to Parliament within such limited period as will enable Parliament to deal finally during the present session with legislation proposed.

5. My Ministers have gladly acceded to the request of Your Excellency's Government that deputation who are now in Cape Town shall be received by one of Members of the Union Government. Intimation to this effect was sent to head of deputation immediately after the receipt of Your Excellency's last communication and proposed interview has already taken place.

TELEGRAM TO THE GOVERNOR-GENERAL OF SOUTH AFRICA, CAPE TOWN,
No. 105-Os., DATED DELHI, THE 9TH FEBRUARY 1926.

Priority—

We are in receipt of Your Excellency's telegram dated the 5th February and would be grateful if you would be so good as to convey to Your Excellency's

Ministers our warm appreciation of the courtesy and consideration they have extended to us and to our deputation.

2. While we cannot conceal from Your Excellency our deep disappointment that Your Excellency's Ministers have found it impossible to agree to either of the alternative methods put forward by us as best calculated to lead to a satisfactory solution of this problem we recognise that our proposals have been given the fullest and most anxious consideration. We further understand that the offer now made to us involves a departure from normal parliamentary practice and procedure, and we see in this another proof of the desire of Your Excellency's Ministers to find a solution of this difficult question. My Government are in the circumstances prepared to accept, subject to the conditions stipulated in Your Excellency's telegram and to our observation in the succeeding paragraph, the offer made by Your Excellency's Ministers of an enquiry by a Parliamentary Select Committee before the second reading of the Bill. We note with satisfaction that terms of reference to the Committee will be sufficiently wide to include consideration of the principles of the Bill and we assume it is intention of Your Excellency's Ministers also to allow representatives of Indian opinion in South Africa an opportunity of presenting their case to the Committee which we feel sure Your Excellency's Ministers will agree could not fail materially to assist the Committee in its task.

3. As Union Government are aware our objections to the Bill are fundamental and are against the principles on which the Bill is based. We propose therefore to instruct our Deputation to present the case before the Select Committee in respect of the general principles, although it necessarily follows from our arguments that we object also to the details of the Bill. We realise that Your Excellency's Ministers are anxious to avoid unnecessary delay but we trust in view of the very grave consequences for Indians which the proposed legislation must involve, fullest possible opportunity compatible with the limitation laid down in Your Excellency's telegram will be afforded for presentation of Indian case.

4. We are anxious that the offer made by Your Excellency's Ministers and our reply thereto should be published here with least possible delay and should be glad to know urgently by telegram when it is proposed to make these public in South Africa to enable us to arrange for publication here.

(19)

TELEGRAM FROM THE GOVERNOR-GENERAL OF SOUTH AFRICA, CAPE TOWN,
DATED THE 12TH FEBRUARY 1926.

Your telegram dated 9th February, 105-O. S. My Ministers note with great pleasure and appreciation the readiness of Government of India to avail themselves of opportunity specially offered to them for presentment of Indian case through their deputation now in South Africa in accordance with the contents of my telegram dated the 5th February. With reference to observations in paragraphs 2 and 3 of Your Excellency's telegram and for further information of Government of India they desire to state that ample time will be given to proposed Select Committee to hear and consider evidence and that reference of Bill to a Select Committee before second reading implies that Indian community in South Africa will, through their representatives, have same opportunity and scope for presenting their case as will be accorded to deputation from India. With reference to last paragraph of your telegram I am informed by my Ministers that they propose to lay on the table of House a copy of correspondence between the Government of India and Government of the Union with regard to the position of Indians in South Africa on Wednesday afternoon the seventeenth instant. The Honourable the Minister of the Interior will then make a statement in the House and give notice that he will move reference of Bill to a Select Committee before second reading. My Ministers submit that it will be suitable if publication referred to in your telegram could take place in India at the same time.

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

Further correspondence between the Government
of India and the Government of the Union
of South Africa regarding the position
of Indians in South Africa.



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1926

TELEGRAM TO THE GOVERNOR GENERAL OF SOUTH AFRICA, CAPE TOWN, NO. 135-OS.,
DATED DELHI, THE 20TH FEBRUARY 1926.

Government of India understand from reports which they have received that the Minister of Interior in his speech moving that the Areas Reservation Bill be referred to Select Committee before second reading stated that the Government of India had been informed by the Union Government that, while they were not opposed in principle to a Round Table Conference, the discussions must include question of ways and means required to make the scheme of voluntary repatriation of Indians more effective. Had Government of India agreed to this point being included in agenda Round Table Conference would have been held. But as we did not see our way to agree to discussion of this particular point, Union Government could not agree to conference.

2. If Dr. Malan has been correctly reported, we fear that there has been some misunderstanding regarding our attitude on this point. In our telegram dated October 9th, we made it clear that a conference of which the main object was to expedite Indian repatriation was not contemplated by us. We nevertheless indicated that we were prepared to discuss the working of the existing system of voluntary repatriation and maintained the same attitude in subsequent communications. We have never refused to include the question of repatriation as above described within the scope of discussion of proposed conference. We are as anxious as ever to participate in a Round Table Conference which would include repatriation question limited as above stated within its scope.

3. We should be very grateful if Minister of Interior would take an early opportunity of dispelling the misconception to which, we fear, his speech may have given rise. We understand that the "Cape Times" in a leading article on February 18th has already taken the point that the attitude of the Government of India in refusing to discuss voluntary repatriation made the holding of conference impossible. We are most anxious to secure an unprejudiced reception for the statement which our representatives will shortly make before the Select Committee and are confident that Your Excellency's Ministers will understand our desire to remove any misapprehension which might possibly prejudice public opinion against the case which they will present.

(21)

TELEGRAM FROM THE GOVERNOR GENERAL OF SOUTH AFRICA, CAPETOWN, DATED THE
10TH (RECEIVED 11TH) MARCH 1926.

Your telegram dated 20th February. 135-Overseas. My Ministers desire to state that in their opinion no discrepancies exist between the statements of the Minister of the Interior in the Assembly to which you refer and the actual course of negotiations as revealed in the published correspondence.

Reference to my telegrams dated 16th June 1925 and 24th September 1925 must in their view remove all possible doubts. It was clearly the attitude of the Union Government that no conference however restricted in scope was possible unless some definite prospect was held out beforehand that it would result in a considerable reduction of the Indian population. They further clearly intimated that they welcomed tentative and provisional proposals to this effect and that their attitude with regard to holding of a conference would eventually depend upon the nature and practicability of any repatriation scheme offered as a basis for further discussions at such conference. They even went so far as to suggest the particular form of additional inducements which, with the assistance and co-operation of Government of India, might be offered to Indians as a part of such repatriation scheme besides agreeing to inclusion of at least one other important aspect of Indian problem which had been put forward by your Government within range of proposed conference.

It was only after the Government of India had intimated in your telegram of 9th October 1925, that they did not intend to explore possibilities of more effective repatriation with the object of bringing about a considerable

reduction of the Indian population but wished merely to confine themselves to helpful suggestions in connection with the existing repatriation (scheme 1) that further attempts on the part of Union Government to arrive at a satisfactory basis for a conference were dropped. My Ministers accept the assurance expressed in the second paragraph of your telegram that the real attitude of the Government of India has been misunderstood by them. They also note that according to Your Excellency's telegram dated the 26th November 1923, it was clearly the intention of that Government to put forward definite proposals in connection with repatriation after they had considered report of their deputation to the Union. Under these circumstances my Ministers wish to assure the Government of India that, provided they could be made to feel that they have the necessary assurance of the probability that the problem will really and effectively be solved through instrumentality of a Conference thus affording them a real basis for consenting to a round table conference, they are prepared to take such steps as are still at their disposal to keep the door open for a further consideration of the question.

They trust that the Government of India will realize that the progress of the Bill through Parliament cannot be held up unless such action can be clearly justified to Parliament and in the eyes of the people of South Africa by nature and adequacy of the assurance given and therefore unless Ministers are enabled to point to some very definite and substantial prospective results to be anticipated from proposed Conference they cannot contemplate the possibility of agreeing at this stage to holding of such a Conference.

The Government of India will therefore understand that the assistance so far offered by them in connection with the system of repatriation at present obtaining is for the purpose of formulating a satisfactory basis for a Conference altogether inadequate.

(22)

TELEGRAM TO THE GOVERNOR GENERAL OF SOUTH AFRICA, CAPE TOWN, NO. 257-O.S., DATED THE 26TH MARCH 1926.

Your telegram dated March 10th. We have not yet seen text of speech delivered by Minister of Interior on February 17th, and are therefore glad to receive assurance from Your Excellency's Government that it was in no way discrepant with the actual course of negotiations.

2. Your Excellency's telegram makes it clear to us that Union Government are not averse to idea of a conference provided that they are satisfied that such conference will hold out definite prospect of leading to real and effective solution of Indian problem. We appreciate desire of Your Excellency's Ministers to obtain assurance on this point and to find a formula acceptable to your Government and mine as basis of Conference which would enable discussions to be initiated. We ourselves are equally anxious that if a conference takes place, it should not prove abortive or lead to misunderstanding and it is with this object in view that we desire that there should be no misapprehension about our own attitude. As we explained in our telegram of October 9th, we are unable to agree to enter a conference of which the object would be to effect a considerable reduction of the Indian population and we still adhere to this opinion. In our view the right method of arriving at a real and effective solution of the Indian question would be for both parties to enter the conference without being committed in advance to any particular solution of the questions at issue. We ourselves should enter such a conference with the sincere intention of discussing frankly with the Union Government all possible methods of settling the Asiatic question, of understanding the difficulties which have led to the present policy of South African Government and of explaining our own difficulties in acquiescing in that policy and the objects which we have in view. In the atmosphere of better mutual understanding which we believe this exchange of views will establish, we are hopeful that agreement may be rendered possible as to general lines on which question can be finally settled.

3. As preliminary step we would suggest that Union Ministers might consent to confer informally with Leader of our deputation with a view to ascertaining whether obstacles in way of conference cannot be overcome. We cannot of course agree to invest Paddison with plenipotentiary powers to act on our behalf and any arrangement suggested after consultation with Your Excellency's Ministers would be subject to our confirmation after receipt by us of his report and after discussion with him. We are impressed with difficulty

of arriving at understanding by telegraphic correspondence and it is on this account that we propose personal discussion and have always held that conference affords most hopeful method of dealing with this question.

4. In the event of agreement being reached regarding Conference, meetings between representatives of this Government and of Union Government might conveniently be held, either formally or informally, at time of meetings in October next of Imperial Conference or, if necessary, at an earlier date. We assume that progress with regard to pending legislation would be held up until Conference has had opportunity of discussing question in all its bearings.

(23)

TELEGRAM FROM THE GOVERNOR GENERAL OF SOUTH AFRICA, DATED THE 13TH (RECEIVED 14TH) APRIL 1926.

In reply to your telegram dated 26th March, 257-Os., my Ministers desire to inform Government of India that in compliance with their request the Prime Minister and the Minister of the Interior have informally conferred with Mr. Paddison, Leader, and Mr. Bajpai, Secretary, of deputation and that conversations have undoubtedly resulted in a mutually better understanding and appreciation of respective points of view and difficulties of the two Governments.

2. My Ministers do not consider the divergence in point of view or the difficulties so great that it should be deemed impossible to find a satisfactory basis for formal conversations, which might lead to an amicable settlement, as long as it remains understood that such conversations shall on both sides be entered into and conducted with sincere desire and intention to cooperate in finding a real and effective solution of the Indian problem. Any conference which could justly be interpreted as a mere attempt from outside to prevent the Union Government from dealing with its own problems in its own way will be resented by the people of South Africa and is and will continue to be unacceptable.

3. As was pointed out in previous correspondence the European community in South Africa consider that their economic position and civilization are seriously menaced by the presence and unfair competition of Asiatics and the demand on their part that steps shall be taken without delay to counteract that menace is insistent and practically unanimous. This fact has been corroborated to fullest extent by evidence laid before the Select Committee. My Ministers therefore wish to impress upon the Government of India that public opinion in South Africa will not view with favour any settlement which does not hold out a reasonable prospect of safeguarding the maintenance of western standards of life by just and legitimate means. If the Government of India could accept this presentation of position as the correct one and could further express their willingness to assist in exploring all possible methods of settling the Asiatic question, the Union Government will be ready to accept their offer to enter into a Conference for the purpose. Any proposal which such a Conference might make would be subject to confirmation by the Governments of the two countries.

4. In order to ensure that the Conference, if finally agreed upon, should meet under best auspices my Ministers have decided, subject to the approval of the Select Committee and Parliament, not to proceed further with the Areas Reservation and Immigration and Registration (Further Provision) Bill until results of Conference are available.

5. Should the reply of the Government of India be favourable and final agreement in regard to the holding of a Conference be reached my Ministers suggest such agreement shall be embodied in following terms which could form basis and be included in any official public statement to be made at a later date :
 "The Government of Union of South Africa and Government of India have been further in communication with each other regarding the best method of arriving at an amicable solution of Indian problem. The Government of the Union have impressed upon Government of India that public opinion in South Africa will not view with favour any settlement which does not hold out a reasonable prospect of safeguarding the maintenance of western standard of life by just and legitimate means. The Government of India are prepared to assist in exploring all possible methods of settling Asiatic question and have offered to enter into a Conference with the Union for the purpose. Any proposal that Conference might make would be subject to confirmation by the Governments of the two countries. The Union Government have accepted offer of Government of India and in order to ensure that Conference should meet under best auspices have decided, subject to approval of Select Committee and Parliament, not to

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proceed further with Areas Reservation and Immigration and Registration (Further Provision) Bill until results of Conference are available."

6. With a view to the limited time of Select Committee and in order that they may be enabled to make the necessary recommendation my Ministers will be glad to be favoured with an early reply.

(24)

TELEGRAM TO THE GOVERNOR GENERAL OF SOUTH AFRICA, CAPETOWN, NO. 277, DATED THE 17TH APRIL 1926.

Your telegram dated April 13th. We learn with great satisfaction that conversations between Your Excellency's Ministers and the Leader and Secretary of our deputation have led to a better understanding and appreciation of the respective points of view and difficulties of the two Governments and that as a result of them, Union Government are prepared to enter into a Conference with us with object of exploring all possible methods of settling Asiatic question in South Africa consistent with maintenance of western standard of life. We have constantly affirmed our belief that Conference affords most hopeful method of dealing with this question, and we gladly therefore accept the proposal which is now made to us. The terms in which it is proposed to embody the agreement to hold a Conference afford, in our opinion, a suitable basis for its proceedings, and have our complete concurrence. We accept the statement of Your Excellency's Government that public opinion in South Africa would not view with favour any settlement which does not hold out a reasonable prospect of safeguarding the maintenance of western standards of life by just and legitimate means, and for our own part, will enter the Conference with the sincere desire of cooperating with Union Government in finding a solution of the Asiatic question which can be honourably accepted by the Governments and peoples both of South Africa and of India. We agree further that it is essential that any proposals that the Conference may make should be subject to confirmation by the Governments of both countries.

2. It is understood that in presenting the report of the Select Committee on the Areas Reservation Bill, Minister of Interior will announce the agreement that has been arrived at between the two Governments and will move that Parliament should not proceed further with the Bill until results of Conference are available. We should be glad to know on what date this announcement will be made in order that we may arrange for simultaneous publication in this country.

COMMERCIAL RELATIONS WITH SOUTH AFRICA.

It is probable that the question of commercial relations between India and South Africa will be an important, perhaps a vital, factor in the Conference. The present volume of trade, though not inconsiderable, is disproportionate to the size and importance of the two countries. Facing each other across the Indian Ocean and connected by easy sea communications, India and South Africa have not yet developed the economic ties which would appear to be the natural consequence of their geographical position.

2. It is known that South Africa is anxious to improve her commercial relations with India, and it is probable that this anxiety is affecting the attitude of the Union Government towards the Indian question in South Africa. On the other hand, closer commercial relations with South Africa would be advantageous to India

- (a) economically, to develop a convenient market for Indian produce and manufactures; and
- (b) politically, to facilitate a solution of the Indian question in South Africa on a basis of mutual self-interest.

3. The following statements are appended:—

- (1) Statistics of exports from India and of imports into South Africa;
- (2) Statistics of imports into India and of exports from South Africa;
- (3) Notes on these statistics, indicating the existing trade between India and South Africa and possibilities of development;
- (4) A note on cold storage in India, and a memorandum by the Railway Board on refrigerator vans;
- (5) Sections 5 to 10 of the South African Customs Tariff and Excise Duties Amendment Act, 1925, as amended;
- (6) Abstract of terms of tariff arrangements between South Africa and New Zealand;
- (7) Abstract of South African duties on articles in which India is specially interested.

4. The representatives of the Union Government are likely to be more interested in their exports to India than in their imports from India. At present, if gold and silver bullion and diamonds are excluded, the balance of trade is heavily and increasingly in India's favour. According to the Indian trade returns, the figures for the last three years have been :—

	From South Africa to India.	From India to South Africa.
	Rs. lakhs.	Rs. lakhs.
1923-24	77	2,16
1924-25	59	2,68
1925-26	42	2,85

The fall in India's imports from South Africa is due to the steadily diminishing imports of South African coal. On the other hand, the export of gunny bags from India to South Africa has increased. Trade, to be healthy, should be developed in both directions; and from this point of view, increased imports from South Africa would be advantageous also to India. At the same time, India is not less interested in what she can sell to South Africa than in what she can buy.

5. South Africa's imports from India, according to the South African trade returns, in 1925 included :—

	£ (thousands).
Apparel	99
Coir	12
Rice	423
Beans	31
*Oils (vegetable)	40
*Paraffin wax	86
Provisions	22
*Spices	18
*Tea	220
*Cotton piece-goods	41
Jute manufactures	1,657
*Wood and timber	106

Trade in the articles marked with an asterisk, and perhaps in some others, could probably be increased.

Additional possibilities of development include :—

- Coffee ;
- Drugs (including senna, cinchona and nux vomica) ;
- Tanning substances ;
- Wheat ;
- Lac ;
- Pig iron ;

Lead ;
Mica ;
Seeds ;
Tobacco.

6. The principal exports from South Africa to India in 1925 were :—

	£ (thousands).
Coal	212
Wattle bark and extracts	42
Gold	11,714
Silver	155

South African diamonds come to India via Europe, where they are cut. At least three-quarters of the diamonds imported into India, valued at about £400,000, are South African.

Articles produced in South Africa, for which there might be a market in India, include :—

Fruit, fresh and dried, canned and bottled ;
Meat, frozen and preserved (including bacon and hams) ;
Fish, canned and preserved ;
Other provisions, jam, butter, cheese and eggs ;
Wine ;
Copper ;
Tin ;
Sugar ;
Raw cotton ;
Raw wool.

Fresh fruit and frozen meat depend on the provision of cold storage, on which a separate note is appended.

7. Proposals made by the Union Government for developing commercial relations with India should be sympathetically received. In particular, methods and suggestions for stimulating South Africa's exports to India should be considered and discussed.

The Government of India are prepared to give all reasonable facilities and encouragement to South African trade. They would welcome the appointment of a South African Trade Commissioner to India, who would study and extend the Indian market for South African goods, or of expert agents to organise and develop trade in special lines, like fruit ; and they would furnish all information and assistance possible. Their Railway Department would also be prepared to provide refrigerator vans for the distribution of fresh fruit and frozen meat,

if traffic offered, and might even undertake to establish cold storage depôts at points of origin of traffic.

At the same time it should be impressed on the Union Government that the development of trade in India depends ultimately on the good-will of the Indian buyer. Without this, South African goods will not be popularised, and may be boycotted. The friendly feeling towards South Africa, which is now apparent in India, might be consolidated into a valuable commercial asset by fair treatment of the Indians in South Africa.

8. It is possible, however, that the Union Government may desire something more definite than this, and may propose a trade agreement or tariff arrangement. Such arrangements have not infrequently been concluded between the Governments of different parts of the Empire, *viz* :—

Between South Africa and New Zealand ;

Between South Africa and Australia (now withdrawn) ;

Between South Africa and Canada ;

Between Australia and New Zealand ;

Between Canada and Australia ;

Between Canada and New Zealand ;
and

Between Canada and the West Indies.

In these arrangements, each contracting party usually provides, on a reciprocal basis, for special rates or rebates of duty on certain specified articles, being the produce or manufacture of the other contracting party. As the parties, being members of the same Empire, are not foreign countries to each other, these special rates or rebates of duty do not conflict with "most-favoured-nation" agreements with foreign countries, which ordinarily provide only for treatment not less favourable than the treatment accorded to any other *foreign* country. Sometimes, however, the benefit of these special rates or rebates is extended voluntarily to like articles, being the produce or manufacture of the United Kingdom.

9. The South African Customs Tariff and Excise Duties Amendment Act, 1925, makes definite provision for special tariff arrangements with other parts of the Empire. A copy of sections 5 to 10 is appended. Section 6 enables the Governor-General to conclude an agreement with any British Dominion, colony or possession, whereby, in consideration of the extension to the Union of equivalent reciprocal privileges in respect of goods

imported into such dominion, colony or possession from the Union, rates of duty not lower than the minimum rates of duty set forth in the First Schedule to the Act may be extended to specific goods grown, produced or manufactured in and imported from such dominion, colony or possession into the Union.

The section also provides that from the date such rates become effective they shall apply also to similar goods grown, produced or manufactured in the United Kingdom.

Section 8 provides that no agreement concluded under section 6 shall have any force or effect until approved of by resolution of both Houses of Parliament.

10. It is possible, therefore, that the Union Government may propose to conclude an agreement with India under section 6 of this Act. It is obvious that such an agreement might be very advantageous to India, both economically and politically. Economically, it would operate generally to develop commercial relations with South Africa, and in particular to obtain useful tariff concessions for Indian produce and manufactures. Politically, the existence of such an agreement would be a valuable security for the fair treatment of Indians in South Africa.

11. The Indian tariff, however, as now constructed, is a general or "one decker" tariff, and does not provide for special rates or rebates of duty in favour of particular countries. Any change in the structure of the tariff for this purpose would be a fundamental change of policy, and would necessitate an amendment of the Schedules to the Indian Tariff Act, which would require the approval of the Indian Legislature.

Alternatively, without any change in the structure of the tariff, India might reduce the general duty on any article in which South Africa is specially interested, *e.g.*, fresh fruit,—such reduction being equally applicable to the produce or manufactures of all countries alike. This also, however, would involve an amendment of the Schedules to the Indian Tariff Act and would require the approval of the Indian Legislature.

If, therefore, the Union Government suggest the possibility of a trade or tariff agreement, it may be said that, subject to the approval of the Indian Legislature, the Government of India would be prepared at a later stage to enter into negotiations for this purpose. It would be

explained that the approval of the Indian Legislature would naturally depend on the result of the present Conference, and the manner in which the Indian question in South Africa is treated by the Union Government.

12. It should then be ascertained, so far as is possible, what kind of trade agreement the Union Government are contemplating, and in particular what tariff concessions they are likely to ask or are prepared to offer.

Some idea of the concessions in which the Union Government are specially interested may be obtained from the terms of their arrangement with New Zealand, which has been abstracted in the Appendix to this memorandum. The articles on which New Zealand concedes special rates of duty to the produce and manufactures of South Africa include:—

- Feathers (*i.e.*, ostrich) ;
- Fish ;
- Fruit, both dried and fresh ;
- Sugar ;
- Tea ;
- Wine.

All other articles (except spirits and tobacco) pay 3 per cent. less than the duty that would otherwise be payable.

The different rates of duties in the South African tariff on articles in which India is specially interested have also been abstracted in the Appendix.

13. It is anticipated that the articles regarding which the Union Government may wish to ascertain the attitude of the Government of India, are:—

- Coal ;
- Tanning bark (wattle) ;
- Fruit ;
- Wines ; and
- Sugar.

(1) *Coal*.—There is now an import duty of 8 annas per ton on all coal imported into India. The Indian delegation will be familiar with the recent reports of the Indian Coal Committee and the Indian Tariff Board on the coal industry. The position is that South African coal is now in direct competition with Indian coal, not only in the markets of India, but also at Colombo and Singapore, and other places in the East. The Tariff Board found that South African coal for export was assisted by freight concessions on the South African

Railways in a manner which was equivalent to a bounty within the meaning of section 8-A of the Indian Tariff Act, and that a countervailing duty might be imposed under that section. The Government of India, accepting the finding of the majority of the Tariff Board have decided that in present circumstances the imposition of a countervailing duty is not advisable. But it should be clearly understood that the Government of India will not encourage in any way the import of South African coal into India.

(2) *Tanning bark (Wattle).*—Representations were received last year from the tanning industry in Madras and the United Provinces that the existing import duty of 15 per cent. on tanning barks should be removed on the ground that such barks are the raw material of an important industry. The Government of India have already accepted the proposal in principle, but have postponed further action in view of the present negotiations with South Africa.

(3) *Fruit.*—The Government of India have reason to believe that the Union Government are specially anxious to develop the export of fresh fruit to India, and it was suggested unofficially by a member of the recent South African deputation that it would be of assistance if the present import duty of 15 per cent. on fresh fruit were reduced or removed. From the Indian point of view, it would also be advantageous to encourage the import of a healthy and acceptable article of food. And as imports are now small, the revenue involved would not be important. The Government of India would, therefore, be prepared to consider favourably a proposal to reduce or remove the import duty on fresh fruit.

Imports of canned or bottled fruits are also small and the duty might be reduced or removed without serious financial difficulty. But imports of dried and preserved fruits are large, being valued at about Rs. 1½ crores, on which the duty at 15 per cent. would amount to more than Rs. 20 lakhs. It might, however, be possible to reduce or remove the duty on some specified kind of dried or preserved fruit in which South Africa was particularly interested. Recently for instance, the duty on currants was reduced as part of a trade agreement with Greece. A similar reduction, e.g., on dried peaches, might suitably be considered as part of a trade agreement with South Africa.

(4) *Wines*.—Imports of wines into India are considerable, amounting in 1925-26 to 275 000 gallons, valued at Rs. 29 lakhs. The rates of duty are high, yielding Rs. 14 lakhs in 1925-26. A general reduction of duty would not be possible, and in any case would not assist South African wines which are unable to face the competition of continental wines on equal terms. Effective assistance could only be given by a special rate of duty, for which the Indian tariff, as explained above, does not now provide.

(5) *Sugar*.—The import duty on refined white sugar is Rs. 4-8 per cwt. and is one of the most important items in the Indian tariff, yielding about Rs. 6½ crores in 1925-26. Here again, a general reduction would not be possible, and in any case would not assist South African sugar, which cannot compete with Java sugar on equal terms. The Fiscal Commission, in paragraph 265 of their report, suggested the possibility of special rates of duty for sugar produced in parts of the Empire where it is grown largely by Indians. But for this, again, the Indian tariff does not now provide.

14. On the other side, India is interested in the following articles, for which the Union tariff provides special rates :—

		Maximum.	Minimum.
Beans	per 100 lbs.	2s. 0d.	1s. 10d.
Wheat	Do.	1s. 7d.	1s. 5d.
Fig iron	<i>Ad valorem</i>	3 p. c.	Free.
Micanite sheets	Do.	20 p. c.	15 p. c.
Spices—			
(a) not ground or crushed	per lb.	¼d.	Free.
(b) other . . . . .	..	2¼d.	2d.
Chatneys and other condiments . . . . .	..	2¼d.	2d.
Cotton piece-goods, the <i>f. o. b.</i> price of which per yard does not exceed 1s. 3d.	<i>Ad valorem</i>	12½ p. c.	7½ p. c.
Wood unmanufactured	Do.	3 p. c.	Free.

The benefit of the minimum rate for cotton piece-goods would be valuable to the Indian cotton textile industry, which is seeking to develop overseas markets especially in Africa.

15. The instructions to the Indian delegation may be briefly summarised as follows :—

- (1) Proposals made by the Union Government for developing commercial relations with India should be sympathetically received, and methods should be considered and discussed.

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(2) It may be said that the Government of India are prepared to give all reasonable facilities and encouragement to South African trade, and would welcome the appointment of a South African Trade Commissioner to India, or of expert agents to organise and develop trade in special lines, like fruit.

(3) It should, however, be impressed on the Union Government that the development of trade in India depends ultimately on the good-will of the Indian buyer, which depends again on the fair treatment of Indians in South Africa.

(4) If a trade agreement is suggested, it should be explained that either—

(a) special rates of duty for the produce and manufactures of South Africa, or

(b) a reduction of the general duty on articles in which South Africa is specially interested,

would require the approval of the Indian Legislature.

Subject, however, to the approval of the Indian Legislature, which would naturally depend on the result of the present Conference, the Government of India would be prepared at a later stage to enter into negotiations with the Union Government for the conclusion of a trade agreement.

(5) It should be ascertained, so far as is possible, what kind of trade agreement the Union Government are contemplating, and in particular, what tariff concessions they are likely to ask or are prepared to offer.

16. If the Union Government press for anything more definite, the Indian delegation should refer the matter to the Government of India for instructions, with their recommendations, having regard in particular to the effect on the present Conference.

**Statement showing Indian exports
to all countries and imports
into the Union of South Africa.**

Articles.	Indian Exports to all countries (value in lakhs of rupees).												Imports into Union of South Africa (in thousands of £ sterling).									
	1922-23.			1923-24.			1924-25.			1925-26.			1923.			1924.			1925.			
	To British Empire.	To Foreign countries.	Total.	To British Empire.	To Foreign countries.	Total.	To British Empire.	To Foreign countries.	Total.	To British Empire.	To Foreign countries.	Total.	From India.	From British Empire other than India.	From Foreign countries.	Total.	From India.	From British Empire (other than India).	From Foreign countries.	Total.		
Animals	22	1	23	25	2	27	30	2	32	35	37	29	4	33	129	21	1	22.2	47	3	50	
Apparel (including drapery, uniforms, and accoutrements, but excluding hosiery and boots and shoes).	24	3	27	16	9	25	19	10	29	34	37	3,332	242	3,574	129	4,943	927	5,999	99	5,241	1,011	6,351
Bristles	13	1	14	19	1	20	24	1	25	19	21	1	1	2	3	1	1.3	77	2	2	2.2	
Building and engineering materials other than of iron, steel or wood.	5	7	12	4	9	13	4	12	16	21	21	74	49	123	74	136	210	77	38	115	115	
Candles	8	7	15	9	6	15	8	3	11	16	16	1	5	1.5	6	3	9	1	1	1	2	
Casein	2	3	5	2	1	3	1	2	3	4	4	2	2	2	2	1	3	1	4	4	1.4	
Coal	15	..	15	22	2	22	27	..	37	35	35	..	1	1	1	3	1.3	4	2	2	4.2	
Coffee	63	61	1,24	73	84	1,57	98	111	2,09	1,85	1,85	47	742	789	41	986	1,027	1	66	1,131	1,198	
Coir—Manufactured ..	46	63	1,09	36	66	1,02	34	67	1,21	1,07	1,07	..	..	..	9	1	10	12	1	..	13
Chemicals	36	4	40	29	1	30	28	3	31	26	26	685	414	1,099	2	810	451	1,261.2	746	279	1,025	
Drugs and Medicines (excluding chemicals and narcotics, but including senna, cinchona bark, nux vomica, etc.).	9	14	23	18	11	29	23	12	35	37	37	136	44	179	1	94	27	122	3	320	197	520

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Articles.	Indian Exports to all countries (value in lakhs of rupees).												Imports into Union of South Africa (in thousands of £ sterling).											
	1922-23.			1923-24.			1924-25.			1925-26.			1923.				1924.				1925.			
	To British Empire.	To Foreign countries.	Total.	To British Empire.	To Foreign countries.	Total.	To British Empire.	To Foreign countries.	Total.	To British Empire.	To Foreign countries.	Total.	From India.	From British Empire (other than India).	From Foreign countries.	Total.	From India.	From British Empire (other than India).	From Foreign countries.	Total.	From India.	From British Empire (other than India).	From Foreign countries.	Total.
Dyeing and Tanning substances—Total.	69	51	1,20	66	66	1,32	74	62	1,36	..	..	1,33	6	44	30	80	3	42	34	79	5	18	6	28
Myrabolans	86	38	74	36	37	73	39	40	79	..	..	74	..	..	..	..	..	..	..	..	..	..	..	..
Fibre for brushes and brooms	3	14	17	5	19	24	4	22	26	..	..	22	8	4	15	5-4	..	1	9	10	7	13	3	20-3
Fish (other than canned) ..	54	..	54	62	1	63	71	1	72	..	..	76	4	53	15	72	3	54	15	72	3	183	182	368
Fodder, bran and pollards ..	1,01	25	1,26	1,12	17	1,29	2,46	13	1,59	..	..	1,29	..	..	..	..	..	2	..	2	..	..	..	..
Fruits and Vegetables—																								
Dried, salted or preserved ..	17	6	23	17	9	26	12	13	25	..	..	35	1	6	39	46	2	54	53	100	1	43	49	93
Fresh fruits and vegetables	39	1	40	44	1	45	46	1	47	..	..	49	..	6	9	15	..	14	17	31	5	68	73	146
Grain, Pulse and Flour—																								
Barley	11	8	19	1,04	73	1,77	2,49	2,71	5,20	..	..	56	..	..	..	..	..	1	6	7	..	..	..	..
Rice, not in the husk ..	18,65	16,05	34,70	15,07	19,55	34,62	16,23	20,74	36,97	..	..	39,61	346	13	125	484	370	13	119	502	423	2	136	561
Beans	27	28	55	28	30	58	11	25	36	7	28	35	..	..	..	..	..	..	..	..	31*	20*	12*	63
Wheat flour	1,01	29	1,30	64	50	1,14	76	92	1,68	..	..	1,50	2	557	18	575-2	5	515	4	519-5	1	431	28	460
Gram	25	7	32	40	39	79	77	89	1,66	9	36	45	..	..	..	..	..	..	..	..	..	..	..	..
Wheat	3,09	36	3,45	7,12	2,00	9,12	11,32	5,38	17,20	1,72	1,88	3,60	58	980	196	1,234	123	1,162	143	1,428	..	1,334	307*	1,641

*Beans, peas and lentils.

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Articles.	Indian Exports to all countries (value in lakhs of rupees.)												Imports into Union of South Africa (in thousands of £ Sterling).												
	1922-23.			1923-24.			1924-25.			1925-26.			1923.				1924.				1925.				
	To British Empire.	To Foreign countries.	Total.	To British Empire.	To Foreign countries.	Total.	To British Empire.	To Foreign countries.	Total.	To British Empire.	To Foreign countries.	Total.	From India.	From British Empire (other than India).	From Foreign countries.	Total.	From India.	From British Empire (other than India).	From Foreign countries.	Total.	From India.	From British Empire (other than India).	From Foreign countries.	Total.	
Seeds—																									
Essential oils	84	19	53	82	21	53	80	12	42	..	..	31	..	..	..	..	..	..	..	..	..	..	..	..
Non-essential—																									
Castor	85	1,40	1,84	42	1,85	2,27	75	2,13	2,88	72	1,90	2,68	..	..	..	..	..	..	..	..	..	..	..	..
Cotton	1,97	..	1,97	1,71	..	1,71	1,82	9	1,91	2,13	5	2,18	..	..	..	..	..	..	..	..	..	..	..	..
Groundnuts	33	7,23	7,56	45	6,73	7,18	1,03	9,64	10,67	25	11,77	12,02	..	..	..	..	..	..	..	..	..	..	..	..
Linseed	4,14	3,22	7,36	5,04	4,58	9,62	3,75	5,99	9,74	3,40	4,09	8,09	..	..	..	..	..	..	..	..	..	..	..	..
Rape	1,01	4,67	5,68	1,46	5,90	7,36	1,00	5,04	6,04	62	2,06	2,68	..	..	..	..	..	..	..	..	..	..	..	..
Sesamum	7	1,02	1,09	9	23	29	4	90	94	4	1,13	1,17	..	..	..	..	..	..	..	..	..	..	..	..
Total Seeds (All kinds)	8,63	18,73	27,36	9,68	20,14	29,82	8,83	24,34	33,17	..	..	29,64	7	36	17	60	5	38	23	60	3	4	18	25
Spices	73	37	1,10	74	37	1,11	70	37	1,07	37	1,49	1,76	12	20	5	37	9	24	10	43	18	32	14	64	
Sugar	8	2	10	95	2	97	50	2	52	..	..	8	..	9	83	92	..	6	4	10	6	84	124	209-6
Tea	21,17	87	22,04	30,18	1,47	31,65	31,85	1,55	33,40	..	..	27,12	219	425	49	693	227	196	47	470	220	521	50	791
Tallow, Stearine and wax ..	3	1	4	5	1	6	3	1	4	..	..	5	6	50	70	106	..	110	48	158	..	125	17	142

20,1

Textiles—																										
Cotton—																										
Raw..	..	..	4,38	66,59	70,97	8,80	89,67	98,47	4,77	80,46	91,23	..	..	94,99	..	..	..	..	1	..	1	4	4	..	4.4	
Waste	..	..	21	76	97	29	76	1,05	23	26	49	..	..	66	-1	19	7	26.1	5	35	2	42	4	39	2	45
Kapok	..	..	3	9	12	7	13	20	6	18	24	..	..	..	6	5	1	12	2	7	1	11	6	4	4	10.4
Twist and yarn	..	..	4,59	89	5,48	2,43	1,23	3,66	2,04	1,66	3,70	..	..	2,93	..	..	..	..	..	3	..	3	..	..	..	..
Piecegoods	..	..	5,08	1,95	7,03	4,80	1,84	6,64	4,85	2,00	6,85	4,37	1,79	6,16	32	3,518	591	4,141	26	3,190	764	3,980	41	3,081	980	4,102
Haberdashery and millinery	3	3	6	4	3	7	3	3	6	..	..	8	1	590	572	1,163	-4	622	629	1,251.4	1	657	619	1,277		
Hemp (chiefly senn) raw	..	..	17	44	61	19	57	76	43	1,30	1,73	..	..	1,59	..	..	..	..	..	..	..	..	-3	6	4	6.7
Jute—																										
Raw..	..	..	5,96	16,57	22,53	4,64	15,36	20,00	7,27	21,83	29,10	..	..	37,95	..	..	..	..	..	5	..	5	..	6	..	6
Twist and yarn	..	..	2	7	9	9	7	16	1	2	3	..	..	6	..	..	..	..	..	..	..	..	..	..	..	..
Manufactures	..	..	10,88	29,53	40,41	11,91	30,22	42,18	14,13	37,60	51,73	..	..	58,79	1,007	115	5	1,122.5	695	140	2	637	1,657	149	4	1,810
Silk, raw, including waste and cocoons.	..	..	14	24	38	19	31	50	14	24	38	..	..	36	..	..	..	..	..	..	..	..	..	..	..	..
Wood and timber	..	..	66	31	97	94	33	1,27	1,00	41	1,41	..	..	1,96	108	122	1,140	1,370	86	175	1,031	1,292	106	145	1,349	1,600
Wool—																										
Raw	..	..	4,32	10	4,42	3,00	17	3,17	4,58	49	5,07	3,37	43	3,80	..	11	1	11.1	-3	6	..	6.3	..	8	..	8
Manufactures	..	..	78	21	99	62	20	82	86	29	1,15	..	..	80	-2	1,444	102	1,546.2	..	861	72	933	7	979	134	1,120
Tobacco—																										
Manufactured and unmanufactured.	72	11	83	75	28	1,03	86	39	1,25	1,11	..	41	42	83	..	29	45	74	4	33	47	80.4

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**Statement showing imports into
India from all countries, and
exports from the Union of
South Africa.**

Articles.	Imports into India from all Countries. (Value in lakhs of rupees.)									Exports from Union of South Africa. (In thousands of £ sterling.)																										
	1922-23.			1923-24.			1924-25.			1925-26.	1923.			1924.			1925.																			
	From British Empire.	From Foreign Countries.	Total.	From British Empire.	From Foreign Countries.	Total.	From British Empire.	From Foreign Countries.	Total.	Total.	To India.	To other countries.	Total.	To India.	To other countries.	Total.	To India.	To other countries.	Total.																	
Animals, living—																																				
Horses	24	..	24	18	..	18	3	..	3	28	..	28	32	..	32	2	..	2	5	..	5	7	..	7	10	..	10	4	..	4	14	..	14	23	..	23
Other kinds	1	26	126	2	..	2	3	..	3	2	..	2	12	..	12	3	..	3	23	..	23	14	..	14	14	..	14	2	..	2	18	..	18
Apparel	62	47	109	75	66	141	75	79	154	166	..	166	1	..	1	1	..	1	3	..	3	3	..	3	4	..	4
Asbestos, crude	175	..	175	111	..	111	102	..	102
Boots and shoes	14	4	18	18	7	25	21	8	29	40	..	40	..	..	..	1	..	1	1	..	1	..	..	..	1	..	1	..	..	..	1	..	1
Cement	82	24	106	65	10	75	61	8	69	65	..	65	..	..	..	2	..	2	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Chemicals—																																				
Sulphur	1	11	12	..	..	..	13	..	13	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Sodium carbonate	45	..	45	52	..	52	53	3	56	47	..	47	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Sulphur	1	11	12	..	..	..	13	..	13	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Sal, cargo	2,82	27	3,09	1,21	45	1,66	89	31	1,20	88	322	868	1,150	238	973	1,211	212	860	1,072	..	1,072	..	..	..	..	..	..	..	..	..	..	..	..
Silk	13	..	13	10	..	10	13	..	13	9	18	17	35	18	12	30	25	4	29	..	29	..	..	..	..	..	..	..	..	..	..	..	..
Drugs and Medicines	52	74	1,06	96	85	1,81	98	83	1,81	1,84	..	1,84	..	..	..	1	..	1	..	..	..	..	..	..	..	..	..	..	..	..	4	..	4
Buchu leaves .. .. .	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	16	..	16
..			
Dyeing and Tanning Substances—																																				
Dyeing substances	35	2,42	2,77	44	2,49	2,93	24	2,65	2,89	1,75	..	1,75	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Tanning barks	1	5	15	1	..	1	2	..	2	7	..	7	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Bark (wattle) .. .. .	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Bark, extract .. .. .	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
..			
Earthenware and Porcelain—																																				
.. .. .	45	35	80	34	37	71	32	43	75	76	..	76	1	..	1			
..			
.. .. .	4	9	13	3	11	14	6	9	15	21	..	21	17	..	17			
.. .. .	5	14	19	5	8	13	8	13	21	28	..	28	276	..	276			
Foodstuffs—																																				
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Articles.	Imports into India from all Countries. (Value in lakhs of rupees.)									Exports from Union of South Africa. (In thousands of £ sterling.)								
	1922-23.			1923-24.			1924-25.			1925-26.	1923.		1924.		1925.			
	From British Empire.	From Foreign Countries.	Total.	From British Empire.	From Foreign Countries.	Total.	From British Empire.	From Foreign Countries.	Total.	Total.	To India.	To other countries.	Total.	To India.	To other countries.			
Liquors—																		
Ale, beer and porter.	58	26	84	51	27	78	52	32	84	85	..	8	8	..	7	7	..	6
Other spirits ..	1,61	67	2,28	1,40	69	2,09	1,33	77	2,10	2,19	2	11	11.2	..	30	30	..	4
Wines ..	16	15	30	12	14	26	14	20	34	29	..	105	105	..	68	68	..	24
Matche ..	1	1,61	1,62	2	1,44	1,46	1	88	89	98	..	2	2	..	1	1	..	2
Metals and Ores—																		
Brass, bronze, etc.	1,83	99	2,82	1,61	91	2,52	1,61	1,58	3,17	2,63	..	1	1	..	..	..	..	..
Copper, wrought ..	91	70	1,61	69	71	1,30	21	1,16	1,37	1,50	..	182	182	..	417	417	..	438
Copper, ores and concentrates.	..	..	..	..	..	..	..	..	..	8	..	81	81	..	14	14	..	7
Lead, bar, pig and ingot.	1.6	..	1.5	1	..	1	1	..	1.5	1	..	82	92	..	131	131	..	66
Coccolum, crude ..	..	..	..	..	..	..	..	..	..	..	..	36	36	..	14	14	..	19
Fluorspar ..	..	..	..	..	..	..	..	..	..	..	..	25	25	..	34	34	..	23
Iron and steel—																		
Sheets and plates ..	5,77	1,46	7,23	7,63	1,14	8,77	7,84	1,54	9,38	9,93	..	..	..	..	..	..	..	..
Bars, and channels.*	56	2,34	3,40	49	2,29	2,89	31	2,17	2,48	1,49	..	2†	2	..	7†	7	..	1
Beams, pillars, etc.*	75	61	1,26	74	55	1,30	68	55	1,23	1,32	..	6	6	..	..	..	..	..
Pipes, tubes and fittings.	1,22	92	2,14	91	27	1,18	84	61	1,45	1,11	..	1	1	..	1	1	..	2
Hoops and strips ..	41	18	69	56	14	70	45	23	68	67	..	..	..	..	..	..	..	..
Tin ..	56	1	66	63	1	64	86	1	87	96	..	148	148	..	222	222	1	216
Machinery and Mill-work—																		
Agricultural, including parts.	2	3	5	3	3	6	5	3	8	12	..	..	..	..	..	..	..	4
Engines and parts	1,68	22	1,50	1,87	15	2,02	1,74	12	1,86	2,12	..	..	..	..	..	..	..	..
Other machinery and parts.	14,22	3,28	21,51	14,38	2,68	17,06	10,67	2,12	12,79	18,64	..	6	5	..	4	4	..	9
Railway plant and rolling stock.	10,58	46	11,06	11,26	46	11,72	5,42	66	6,08	5,00	..	7	7	..	..	..	..	1
Miscellaneous apparatus ..	1,32	63	2,15	1,73	53	2,26	1,41	66	1,97	2,25	..	4	4	..	1	1	..	..
Belting for machinery ..	72	11	83	76	12	88	80	14	94	92	..	..	..	..	50	50	..	..
Oils—																		
Kerosene ..	32	3,06	3,38	11	4,31	4,42	12	4,66	4,78	5,17	..	..	..	..	..	..	..	..
Lubricating oil ..	36	1,44	1,80	24	1,59	1,74	25	1,93	2,18	2,08	..	..	..	..	..	..	..	..
Animal ..	4	..	4	2	..	2	4	..	4	1	..	254	254	..	285	285	..	471
Paints and Colours ..	89	22	1,11	88	17	1,05	80	23	1,03	1,02	..	4	4	..	2	2	..	3
Paper—																		
Paper, printing, wrapping and bags.	..	..	..	..	..	..	..	..	..	..	..	3	3	..	5	5	..	1
Paste boards ..	1,37	1,42	2,79	1,37	1,34	2,71	1,33	1,71	3,04	2,81	..	3	3	..	..	..	..	..
All other sorts ..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1	..	2
Precious stones and pearls, uncut, excluding diamonds.	1,04	1,22	2,26	57	38	95	35	29	64	50	..	3	3	..	4	4	..	1
Diamonds ..	..	..	..	28	57	85	17	39	56	73	..	7,207	7,207	..	7,133	7,133	..	8,000

* Channels "included under beams and pillars" from 1924-25 in the Indian figures.

† Excludes "channels" but includes pig and ingot.

Articles.	Imports into India from all Countries. (Value in lakhs of rupees.)									Exports from Union of South Africa. (In thousands of £ sterling.)													
	1922-23.			1923-24.			1924-25.			1925-26.	1923.			1924.			1925.						
	From British Empire.	From Foreign Countries.	Total.	From British Empire.	From Foreign Countries.	Total.	From British Empire.	From Foreign Countries.	Total.	Total.	To India.	To other countries.	Total.	To India.	To other countries.	Total.	To India.	To other countries.	Total.				
Provisions—																							
Jams and Jellies ..	7	..	7	8	..	8	9	..	9	8	..	8	..	7	7	1	7	7	..	6	6		
Meat canned and preserved (including bacon and lams).	16	..	16	14	..	14	16	..	16	19	..	19	..	5	5	..	3	3	..	2	2		
Meats, fresh or frozen				Not separately shown.									..	11	11	..	100	100	..	263	263		
Milk and cream, preserved and dried.	27	17	44	13	34	47	23	34	57	62	..	62	..	..	..	..	..	..	..	1	1
Pickles, sauces and vinegar.	5	1	6	5	1	6	6	1	7	6	..	6	..	2	2	..	3	3	..	..	..
Biscuits and bread*	25	2	27	26	1	27	34	2	36	42	..	42	..	4	4	..	3	3	..	4	4		
Butter .. .. .	..	..	1	..	..	1	..	..	2	2	..	2	..	35	35	..	32	32	..	68	68
Cheese	4	8	12	4	8	12	4	8	12	12	1	12	1	6	7	..	7	7	..	7	7		
Eggs				Not separately shown.									..	116	116	..	160	160	..	178	178		
Fruit juices and syrups.				Ditto.									..	1	2	2	2	2	2	3	3	3	3
Rubber manufactures	95	85	1,80	87	81	1,68	89	69	1,56	2,16	..	2,16	..	..	..	..	4	4	..	3	3
Salt	1,12	57	1,69	63	47	1,10	74	69	1,43	1,04	..	1,04	..	3	3	..	3	3	..	2	2		
Seeds	3	1	4	4	1	5	8	2	10	17	..	17	..	43	43	..	45	45	..	44	44		
Soap	1,08	6	1,14	1,12	7	1,19	1,26	6	1,32	1,46	..	1,46	..	4	4	..	5	5	..	4	4		
Spices	2,42	3	2,45	2,53	6	2,59	2,60	6	2,66	3,28	..	3,28	..	..	..	..	..	..	..	..	..
Stationery	58	34	92	54	35	89	52	30	82	89	1	89	1	16	16	..	11	11	..	10	10		
Sugar, molasses ..	..	42	42	..	45	45	..	30	30	38	..	38	..	23	23	..	32	32	..	22	22	
Sugar, other sorts (excluding confectionery).	1,46	13,43	14,89	45	14,34	14,79	3,90	16,47	20,37	15,20	..	15,20	..	656	656	..	179	179	..	767	767		
Confectionery ..	16	3	19	17	4	21	19	4	23	25	..	25	..	2	2	..	2	2	..	2	2		
Tea chests	59	3	62	50	15	65	75	18	93	85	..	85	..	..	..	..	..	..	..	..	..
Textiles—																							
Cotton—																							
Raw	1,55	18	1,73	2,10	40	2,50	3,68	37	4,25	3,64	..	3,64	..	124	124	..	171	171	..	350	350		
Twist and yarn ..	5,71	3,55	9,26	4,63	3,31	7,94	4,56	5,10	9,66	7,77	..	7,77	..	..	..	..	..	..	..	..	..
Hosiery	9	71	80	9	85	94	13	99	1,12	1,40	..	1,40	..	..	..	..	..	..	..	..	..
Piecegoods	32,55	5,96	38,51	49,67	7,18	56,85	60,64	8,78	69,42	45,50	..	45,50	..	..	..	..	..	..	..	..	..
Silk, raw	28	1,30	1,58	14	1,05	1,19	19	1,00	1,19	94	..	94	..	..	..	..	..	..	..	..	..
Silk, yarn	2	61	63	6	65	71	4	98	1,02	35	..	35	..	..	..	..	..	..	..	..	..
Silk piece goods ..	41	1,86	2,27	13	2,17	2,30	16	2,17	2,33	2,12	..	2,12	..	..	..	..	..	..	..	..	..
Wool, raw	9	4	13	35	5	40	66	13	79	43	..	43	..	12,388	12,388	..	15,764	15,764	..	15,065	15,065		
Woolen piece goods	67	32	99	1,09	69	1,78	1,57	1,04	2,61	2,92	..	2,92	..	..	..	..	..	..	..	..	..
Haberdashery and millinery.	37	56	93	34	65	99	31	85	1,16	1,10	..	1,10	..	1	1	..	1	1	..	2	2		
Umbrellas and fittings.	19	24	43	23	33	56	19	29	48	51	..	51	..	..	..	..	..	..	..	..	..
Timber	13	33	46	10	25	35	7	31	38	48	..	48	..	11	11	..	6	6	..	8	8		
Tobacco (cigarettes)	1,81	4	1,85	1,54	3	1,57	1,21	1	1,22	1,59	..	1,59	..	14	14	..	15	15	..	18	18		
Gold, bar and concentrates. †	32,35	3,08	35,43	26,04	4,21	30,25	50,07	24,22	74,29	35,23	1,968	37,484	39,452	14,123	26,063	4,216	1,714	22,629	34,3				
Silver, bar and concentrates. ‡	14,05	6,00	20,05	12,29	9,81	22,10	8,25	16,03	24,28	19,90	..	172	172	113	12	125	135	9	14				
Gold contained in lead bars. †				Not separately shown.									..	..	..	..	3	3	..	8	8
Silver contained in lead bars. ‡				Ditto.									..	..	..	..	..	..	..	..	..

* Indian figures are for Biscuits and cakes.
 † Including golden syrup.
 ‡ The figures of Indian imports represent gold and silver coin and bullion, § figures for "silver".

APPENDIX 3.

NOTES ON STATISTICS IN APPENDICES 1 AND 2.

A.—INDIAN EXPORTS AND SOUTH AFRICAN IMPORTS.

I. *Apparel*—

South Africa imported more than £6 millions in 1925, including about £100,000 from India. Indian exports in 1925-26 were 24 lakhs, but this does not include hosiery and boots and shoes.

II. *Coffee*—

South African imports are about £1,200,000, the great bulk of which comes from Brazil. India exports nearly 2 crores, but sends practically none to South Africa. There appear to be opportunities for development here.

III. *Coin*—

South Africa's imports in 1925 were £13,000, practically all from India.

IV. *Drugs and Medicines*—

South Africa's imports in 1925 exceeded £500,000, of which only £3,000 came from India. India's exports, including senna, cinchona and nux vomica, were 37 lakhs in 1925-26.

V. *Tanning Substances*—

India exports large quantities of tanning substances, including myrabolans, amounting to about 2 crores. South Africa's imports are now only £28,000, of which £5,000 comes from India. But South Africa has large quantities of hides, exporting about £3 millions. As the tanning industry develops in South Africa she will require increased quantities of tanning substances, which India might supply.

VI. *Fruits and Vegetables*—

Dried.—South African imports in 1925 were valued at £49,000 from foreign countries. The chief items are currants (from Australia and Greece), dates (from Mesopotamia), figs (from Turkey), prunes, raisins, etc. Indian exports are about Rs. 35 lakhs, of which very little goes to South Africa.

Fresh.—South African imports from foreign countries amount to £73,000 and she takes only £5,000 worth from India (excluding small imports of coconuts which have been classed under food-stuffs). Indian exports amount to nearly ½ crore, largely onions.

VII. *Grain, pulse and flour*—

(1) *Rice*.—South Africa already draws the bulk of her imports of rice from India, who, however, could supply her total demand.

(2) *Beans*.—South Africa's imports in 1925 were £63,000, about half of which came from India. India's exports in 1925-26 were 35 lakhs.

(3) *Wheat*.—South Africa imports wheat to the value of more than 1½ million pounds sterling, but none from India. India's exports vary from year to year, reaching as much as 17 crores in 1924-25. She could well supply some to South Africa.

VIII. *Hides and Skins*—

South African imports are mainly of the tanned article. Perhaps, however, she could make use of the Madras product.

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IX. *Lac*—

South Africa's imports are now only £10,000. India already supplies the bulk, and should retain her market as it expands.

X. *Metals*—

(1) *Iron and steel*.—In 1925 South Africa imported iron and steel to the value of £5 millions, but only £4,000 from India. India's exports, which are chiefly pig-iron, have risen in the last few years to about 2 crores. Of this the greater part goes to Japan and the United States of America. In 1925 South Africa took pig-iron worth about £33,000, and might well buy from India.

(2) *Lead*.—South African imports in 1925 were valued at £84,000, mainly manufactured lead. India exports about 2 crores, nearly all pig-lead and might supply what pig-lead South Africa requires.

(3) *Mica*.—South African imports in 1925 were about £6,000, of which only a small amount came from India. India is one of the large mica-producing countries of the world, exporting more than a crore in 1925-26.

XI. *Oils*—

Mineral.—South Africa imports large quantities, but takes practically nothing from India. But the whole Indian output of kerosene, and practically the whole output of petrol, are now required for home consumption.

Vegetable.—South Africa's imports in 1925 were £180,000 of which £40,000 came from India. Indian exports in 1925-26 were nearly ¼ crore. India's exports of seeds are very large, but little goes to South Africa. South Africa's requirements are not clear from the trade returns.

XII. *Paraffin Wax*—

South African imports in 1925 were £143,000, of which £96,000 were supplied by India. Total Indian exports are 1½ crores.

XIII. *Provisions*—

South Africa's imports in 1925 exceeded £1,100,000, including £22,000 from India. India's exports in 1925-26 were 64 lakhs.

XIV. *Spices*—

South Africa's imports in 1925 were £64,000, of which £18,000 came from India. India's exports in 1925-26 were 1½ crores.

XV. *Tea*—

South Africa already imports more than £200,000 worth of tea from India, but her total imports in 1925 were nearly £800,000. India should be able to extend her market.

XVI. *Textiles*—

(1) *Cotton piece-goods*.—South Africa's imports exceed £4 millions, of which only £40,000 come from India. There appears to be scope for considerable increase.

(2) *Jute manufactures*.—This is one of India's main items of export to South Africa, being valued in 1925 at about £1,650,000 out of total imports into South Africa of £1,800,000.

XVII. *Wood and Timber*—

South Africa has very little timber of her own and imports heavily from other countries. In 1925 total imports were over £1½ millions, coming mainly from Baltic States (pine), Japan (oak), the United States of America (oak and pine), Canada (pine). Indian supplies are limited to teak which was valued at about £100,000. Here she competes with Siam who supplied teak to the value of £30,000. Indian exports to foreign countries amount to 30 or 40

lakhs, and she could probably supply much more to South Africa, if the export of woods, other than teak, were developed. As the demand in South Africa will presumably increase steadily with the growth of population, this deserves examination.

XVIII. *Tobacco*—

South Africa grows tobacco, but imported £80,000 in 1925. India's exports in 1925-26 exceed a crore.

I. Animals—

South African exports of horses were valued at £23,000 last year. India takes most of her requirements from Australia, but in 1924, she took horses worth £10,000 from South Africa and this trade might be developed. India imports hardly any other animals.

II. Coal—

This is one of South Africa's main items of exports. About one-fifth now comes to India, where in recent years it has competed successfully with Indian coal. But South Africa is now steadily losing ground in Indian markets, which it is not desired that she should recover.

III. Dyeing and Tanning Substances—

India makes heavy imports from foreign countries, and South Africa makes large exports of wattle bark and bark extract, which together were valued at £1 million last year. Indian imports from South Africa amounted in 1925 to £42,000 and are apparently on the increase: they were only £3,000 in 1923 and £6,000 in 1924.

IV. Fish—

Canned and Preserved.—South African exports amount to £300,000 and Indian imports from foreign countries to 13 lakhs. Something might be done to increase trade between India and South Africa in this respect.

V. Fruits and Vegetables—

A. Fresh.—South African exports are evidently increasing. They amounted to £746,000 last year. Practically none went to India. Indian imports have been rising steadily from 9 lakhs in 1922-23 to 17 lakhs in 1925-26, but fresh fruits (excluding coconuts) amounted to only Rs. 4 lakhs. There is no reason why India should not consume a good deal of South African fruit, especially with the development of cold storage (see separate note).

B. Dried and Preserved.—South African exports amount to about £200,000, none of which goes to India. Indian imports amount to 1½ crores of which about 1 crore represents dates from Mesopotamia and Persia. The import of other kinds from South Africa might be developed.

C. Canned and Bottled.—Indian imports amount to 9 or 10 lakhs. South African exports amounted to £42,000 in 1923, since when they have not appeared in the published returns as a separate item.

VI. Grain—

Pulse and flour. South African exports are almost entirely of maize which India also produces.

VII. Liquors—

South African exports are mainly of wines which show a decrease from £105,000 in 1923, to £58,000 in 1924, and £24,000 in 1925, none of which goes to India. Indian imports from foreign countries vary between 12 and 20 lakhs per annum, and she might well take something from South Africa.

VIII. Metals—

Wrought copper.—In the last two years South Africa's exports have exceeded £400,000, none of which goes to India. Indian imports are about 1½ crores, mainly from Germany.

Tin.—South Africa's exports are valued at £200,000, practically none of which goes to India. Indian imports are now nearly 1 crore, mainly from the Straits Settlements and Labuan.

IX. Precious Stones—

Diamonds are one of South Africa's most important items of export, being valued at over £8 millions last year and over £7 millions in previous years. None comes direct to India. Indian imports of diamonds in 1925-26, amounted to Rs. 73 lakhs, of which probably at least three-quarters are South African stones coming via Europe where they are cut.

X. Provisions—

Meat.—South African exports of fresh and frozen meat are rapidly increasing. They were valued at £11,000 in 1923 and £100,000 in 1924 and £268,000 in 1925. None goes to India. With the development of cold storage, some export to India might be possible.

Jam, butter, cheese and eggs.—Here again, South African exports are progressing. India's imports are not large, but could probably be developed.

XI. Sugar—

Here again, South Africa's exports are increasing. They reached £767,000 last year, none going to India. Indian imports of sugar are about Rs. 15 crores, mainly from Java, with which South Africa could not compete without some tariff concession, such as she receives from the United Kingdom.

XII. Textiles—

(1) **Raw cotton.**—South Africa has now begun to export raw cotton, reaching £350,000 in 1925, India's imports in 1925-26, were more than 8½ crores largely from Uganda. She might buy from South Africa, if the staple is suitable.

(2) **Raw wool.**—This is one of South Africa's principal exports, exceeding £15 millions in 1925, but none goes to India. India's imports in 1925-26 were Rs. 43 lakhs.

XIII. Gold—

This is South Africa's largest item of export, amounting to £34 millions in 1925. India is already her best customer after the United Kingdom, taking nearly £12 millions in 1925.

XIV. Silver—

India takes practically the whole of South Africa's silver, £135,000 out of £144,000 in 1925.

NOTE ON COLD STORAGE IN INDIA.

1. In the last few years the possibility of developing cold storage in India has begun to attract attention. The Railways in particular have experimented in the provision of cold storage vans for the carriage of fruit and other perishable goods and initial difficulties have now been surmounted. The development of an extended system of cold storage traffic has, however, been retarded by the absence of any general demand for refrigeration and of depots at suitable market points which could be served by the railway vans. Up-country, therefore, the results on the Railways have practically been limited to the use of ice cooled vans for the carriage of fruit, but the experience gained will make it possible to extend the Railway facilities for cold storage as soon as there is a greater demand for them.

2. It is probable that such a demand will gradually develop. At Calcutta and Bombay cold storage depots have already been established. In Calcutta several firms have constructed storage rooms for their own purposes and the Lightfoot Refrigeration Company own three stores with a total capacity of 30,000 cubic feet, which is utilised by leading provision merchants and by shipowners whose vessels are under repair. In Bombay the same Company has two smaller stores, and the Municipality has a refrigerator with a capacity of 13,200 cubic feet. The erection of larger cold stores is under contemplation.

3. If cold storage depots of this description could be established at suitable intervals and regular traffic created between them, the Railways would be prepared to provide the requisite vans. They would even undertake to establish such depots themselves at the points of origin of traffic, but as depots would have to be run on commercial lines, and would involve setting up a regular business in touch with the consumer, they must generally be left to private enterprise.

4. It would, thus, appear that Australian or South African exporters of meat and fruit might now well find a market for their goods in India. It should be possible to get into touch with suitable Indian firms and to arrange with them for the establishment of cold storage depots at important trade centres and for the marketing of the goods. The Railway authorities on being assured of a regular traffic would provide the vans and perhaps assist in the establishment of depots.

MEMORANDUM BY THE RAILWAY BOARD ON THE USE OF REFRIGERATOR VANS.

The question of the use of refrigerator vans on Indian Railways first received attention in the year 1908 when Captain Freeland, an Indian Railway Officer, was deputed to attend a Conference on the subject at Paris and submitted a report. The possible methods of reducing the temperature in Railway vans are:—

(a) the use of refrigerating machinery in the van worked either by small engine or off the axle,

(b) the use of insulated vans which are cooled either in a cold storage shed or by introduction of ice, and the low temperature maintained by ice bunkers.

In this note the term "refrigerating van" is used to describe the former type and "insulated van" to denote the latter.

Conditions in India were at the time considered unfavourable for the introduction of either description of van. Three years later, in 1911, the Railway Board were approached by the Bengal Fisheries Company in connection with the conveyance of fish in refrigerator vans. Designs were got out by the Eastern Bengal and the Bengal Nagpur Railways, but the Company failed to develop the proposal.

2. Inquiries as to the possibilities of fruit traffic such as would require refrigeration, made in 1912, showed that from one of the most promising localities—the Frontier at Peshawar—only some 30 tons of fruit per day would be available for 3 months in the year and out of the 3 months only during one month would actual refrigeration or cooling be required.

3. Inquiries were, however, continued with a view to seeing whether the fruit traffic could be developed and what was required and the assistance of Mr. A. Howard, Imperial Economic Botanist, was sought. Mr. Howard favoured the Railways with a memorandum on the subject the substance of which was as follows.

The special conditions attaching to India were that the fruit had to be carried considerable distances through hot and humid regions; that the trade was in the hands of small traders who did not combine, with the consequence that the packages of fruit booked were small and in miscellaneous shapes and sizes, while the method of packing was primitive. No large business existed and cheapness was essential. No market for high class fruit existed, as for example, in the United States. The results of experiments carried out at Pusa and Calcutta, had shown that Bihar peaches, if properly packed, would last 72 hours in the hottest season without damage, though no ice was used. It may be noted that the conditions described by Mr. Howard probably continue very much the same as when he wrote in 1913. A special enquiry, however, regarding the amount of traffic offering and facilities for the transport for fruit on Indian railways is being made and will be the subject of a separate memorandum.

4. The question of refrigeration was discussed by the Railway Conference in 1913 and they came to the conclusion that there was no demand at present in India for refrigerator vans, but that Railways should experiment with special fruit vans. Certain suggestions put forward by Mr. Howard for the improvement of the fruit traffic were carried out, namely, the free return of improved types of boxes used in packing, and charging consignees on the collective weight instead of individual packages.

5. The North Western Railway was meanwhile experimenting with a form of insulated

van, and inquiries were instituted from the Consulting Engineers in England and Firms in India as regards the design of refrigerator cars and machinery. The opinions received were all adverse to refrigerator cars owing to loss of space, haulage of extra dead weight, difficulties of examining running machinery *en route*, difficulties of keeping the temperature low while the van was stationary, if the alternative of working machinery from an axle was adopted.

6. In the meantime the Great Indian Peninsula Railway had introduced a special refrigerator car, intended to keep consignments cool and fitted with an apparatus for cooling carriage on trains. In 1916 the Great Indian Peninsula Railway car and the North Western Railway insulated vans were transferred to the Eastern Bengal Railway with a view to carrying out further experiments. The result showed that the Great Indian Peninsula Railway car was a failure and that the North Western Railway vans were not sufficiently insulated.

7. The Eastern Bengal Railway were then instructed to build new types of insulated vans and a successful van was constructed. The result of the experiment on the Eastern Bengal Railway was set out in a press communiqué dated 6th October 1917 a copy of which is enclosed.

8. At the same time all Railways were addressed by the Railway Board to consider sympathetically any reasonable proposals to provide an experimental service of insulated vans and were encouraged to provide cooling rooms at the points at which traffic might originate. Local Governments were also addressed asking for their co-operation and for meetings to be arranged with Railways with a view to ascertaining what measures could be taken to promote such traffic. The Local Governments were practically unanimous in their opinion that the proposals could not be made remunerative and that there was at present no demand for refrigeration. Interest, however, on the subject was displayed at Bombay and Karachi and further endeavours were, therefore, made to establish a service between certain particular points—Bombay to Ahmedabad, Bombay to Poona, Karachi to Lahore, Karachi to Delhi—but nothing developed.

9. In this connection the conclusions of the Honorary Director of Madras Fisheries on the subject may be quoted:—

- (1) I am not certain that, except for the shoal fish of the West Coast and northern parts of the East Coast, fish are really abundant in our seas, specially fish of the better classes;
- (2) Even if abundant they will not be caught abundantly for many years to come by reason of the conditions of the fisher-folk, the want and cost of bigger boats, ice, motors, etc., and want of harbours and artificers;
- (3) If caught they would on reaching shore often be of questionable or worse condition unless we have large boats, ice, motors, etc.;
- (4) Capital and enterprise will hardly be found to establish an ice factory without an assurance of a large and sound fish supply, or a fishing fleet

without a prior ice factory; even if point (1) is established, capital would require to start an ice factory and fishing fleet in co-operation;

- (5) The expenses of fleet and factory in this climate would be very heavy owing to climate, cost of ice and superintendence, etc., so also the cost of transport, distribution, etc.;
- (6) Hence the cost of fish would prohibit the fish in question from reaching the masses;
- (7) Nevertheless it may be possible, in certain exceptional areas, to freeze and chill masses of the frequent surpluses of shoal fish so that they may reach a larger market than at present and in better condition, at quite moderate rates;
- (8) But for the "masses" properly so called, who consider one anna per pound of dried fish a quite sufficiently high price, iced or fresh is out of the question for many years."

10. In the meantime the Eastern Bengal Railway endeavoured to popularise the use of the new type of insulated vans, ice cooled, for the fish traffic between Goalundo and Calcutta, but this failed owing to the fact of the traffic being widely distributed, and no cold storage being available at destination even at Calcutta. These vans were subsequently transferred to the North Western Railway for the carriage of fruit.

Particulars had also been obtained of types of vans used on the L. and S. W. Railway in England and in Australia and it was ascertained that only insulated vans were used in England and Australia and no attempts made with cars containing refrigerating machinery.

11. In 1919 endeavours were again made to establish refrigerated traffic in consultation with the Lightfoot Refrigeration Company who were called on to prepare schemes for fish traffic between Goalundo and Calcutta, Bombay and Poona, Karachi and Delhi and for fruit traffic between Peshawar and Delhi. But this only resulted in an offer from the Company for the sale of oil driven refrigerating vans.

12. Ice cooled insulated vans were, however, introduced on the B. B. and C. I. Railway and on the East Indian Railway, but though private cold storage existed to a limited extent local bodies could not be got to take up the subject.

13. In 1921 Major Sir Edward Avery approached Railways with a view to the formation of a Company for the construction of coastal depôts and the introduction of an inland service. The Railways agreed to allow the Company the privilege of owning cold storage vans subject to the right of the Railway Board to take them over at a valuation at the end of 5 years. The Company then endeavoured to obtain, from the Secretary of State, sanction to the issue of a prospectus which implied that they were being given special privileges in the shape of sites of military and railway land and that fish rations were to be issued for troops. This could not be agreed to and nothing more was heard from the Company.

14. It will be seen that speaking generally the results so far have therefore been limited to

the use of ice cooled insulated vans for the carriage of more delicate kinds of fruit chiefly on the North Western Railway. The extensive use of refrigerator or cold storage vans depends entirely on the creation of a suitable traffic and the establishment of cold storage depôts at suitable market points. Such cold storage depôts have to be run on commercial lines and involve setting up a regular business which depends on supply and demand and constant touch with marketing. For this reason the Railways have not undertaken the establishment of cold storage depôts, though, as already stated, they were prepared to establish such depôts at the points of origin of the traffic. To a small extent cold storage depôts exist at Calcutta and Bombay but until Railways are satisfied that there are cold storage depôts established up-country they cannot undertake to provide refrigerator or cold storage vans. If the demand arises there will be no difficulty in providing and running such vans and it may be added that the railways are anxious to undertake any form of transportation work if it can be shown that a demand exists and can be developed into a commercial success. It should, however, be noted that it is open to question whether State managed railways would be justified financially or as a matter of policy in undertaking the whole enterprise of the cold storage business.

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A commencement was made with a refrigerating van which had been in use for a short time on the Great Indian Peninsula Railway together with a number of insulated vans which had been built and placed in traffic by the North Western Railway. The Great Indian Peninsula Railway van was a self-contained freezing plant with, in addition, a compartment for the carriage of perishable articles in cold storage. The North Western Railway vans had no freezing apparatus. They were provided with a measure of insulation with the object of maintaining the vans at an even temperature and with compartments for the reception of ice to produce a suitable low temperature.

Soon after the commencement of the experiments it became evident that a system which called for the provision of freezing machinery in a vehicle could not be expected to be satisfactory or remunerative having regard to the large number of installations which would be required to deal with any considerable volume of traffic, the loss of space, the difficulties and cost of maintenance and the large amount of additional dead weight which must be hauled. Moreover, experiments with the North Western Railway insulated vans proved conclusively that the method of insulation adopted for these was not the most suitable for the Indian climate and could not be depended upon to maintain the vans at a low temperature. It was decided therefore to build a number of new experimental insulated vans cooled by chambers filled with ice. To determine their efficiency and ascertain their financial possibilities, the considerable fish traffic, which moves from Sara and Goalundo to Calcutta, was selected as being suitable for the trials of these vehicles.

At the same time the carriage of fruit in cold storage was considered. There are prospects of a considerable demand arising for this

class of accommodation but a different type of vehicle is required, as, apart from temperature, the carbon dioxide given off by fruit hastens its decomposition. Provision has, therefore, to be made for adequate ventilation, and, for the trials, certain of the North Western Railway insulated vans were rebuilt to a modified design fitted with ventilating appliances.

The first step in the experiments was to ascertain the best form of insulation. Many substances have been and are used for this purpose, and it is generally considered that cork slab is one of the most efficient insulating materials. This, and many other insulators were tried with varying results, but it was found that having regard to the three factors—weight, non-conductivity and cost, none could be considered entirely satisfactory. Moreover, there was the further disadvantage that cork slab was difficult to obtain in sufficient quantities. Investigations were made, therefore, as to the possibility of obtaining some substance which is indigenous to India and at the same time an efficient insulator. After experiment, the choice fell on the variety of cotton tree known as "Simul" (*Bombax Malabaricum*) which is common in India and which proved a more efficient insulator even than cork. It is cheap, light in weight, and can be procured in large quantities. Further, and an important point, it is only slightly absorbent of moisture, the exclusion of which is necessary to efficient insulation.

Four types of cold storage vans were constructed and one was later modified to a fifth type. The insulation generally consisted of some 12 to 8 inches of non-conducting material. Ice compartments were provided at one or both ends of the vehicles and both in the stationary trial, before the vans were put into traffic, and in the actual traffic trials, the circulation of air over the ice and through the van was induced by electric fans. The fourth type was constructed with Simul as an insulating material, and in the trial prior to the vehicle being brought into traffic, the temperature of the van was reduced from 90° F. to 48° F. or 42° F. in 24 hours; the "heat leakage" or rate at which the temperature of the van increased on the exhaustion of the ice supply was 1 in practically 4 hours.

The type of van now evolved is thoroughly insulated and suitable for the carriage of fish and other perishable commodities which do not require ventilation in cold storage. For long distance traffic it is considered that electric fans may be omitted, the natural circulation of the cooled air being sufficient.

The present method of despatching fish by rail from Goalundo to Calcutta in the hot weather is to pack fish mixed with ice into baskets or boxes, the ice required being obtained from Calcutta. This entails considerable loss *en route*, and in addition to the wastage of ice a proportion of the fish may arrive at destination in a stale condition. The consignments of fish booked in the experimental vans reached Calcutta in excellent condition and, in one case, in which fish was kept in the van for a trip from Goalundo to Calcutta and back again to Goalundo, a period of about 40 hours, it was found to be still in fresh condition and fit for human consumption.

The cold storage fruit vans referred to above have also been put under trial both in the railway shops and under actual traffic conditions. In the stationary trials two selections of mangoes, peaches and plantains in the thoroughly ripe condition were subjected to trial in the insulated fruit van and in a ventilated box, respectively.

The conditions to which the fruit in the box was exposed were made as nearly as possible similar to those under which fruit travels in kouvred vans. The trial ran for 4 days when the fruit in the van was found to be in excellent condition while that in the box had rotted. A trial consignment of peaches and grapes was then consigned in this van from Peshawar to Howrah. The full consignment arrived in excellent condition, none of the fruit being lost through damage or decomposition. The experience of the fruit dealers with their consignment of the previous day in ordinary vans in which 73 per cent. of the fruit despatched decomposed and rotted *en route* may be quoted by comparison. Under ordinary circumstances the loss of fruit in transit by deterioration amounts to from 12½ to 50 per cent. of the consignment according to the speed of the train by which it is booked. The experiments with these fruit vans are continuing.

The question of providing facilities which will make available in increasing quantities throughout the country perishable products, such as fruits from the North West Frontier and fish from the coasts of India, is an important one. Experience in other countries shows that improvements are always being made and that the last word has not yet been said on the subject, but so far as transport over the railways is concerned, it can be claimed as the result of the experiments detailed, that the matter has now been put on a sound practical footing. What remains is to improve the methods of dealing with such products at the despatching and receiving points. To take the fish traffic, for instance, under present arrangements, the fish after removal from the boats may be left in a hot atmosphere for some hours, and it is desirable to provide some form of cooling room into which the fish van be taken direct from the boats. It is proposed to provide a place of this kind at Sara for the fish traffic over the Eastern Bengal Railway to Calcutta, and similar facilities will no doubt be provided by railways at other points where they are found to be necessary. As regards the points of destination, it is desirable also that cold storage rooms should be set up in the markets themselves or other convenient places, and it is the intention that this matter should be taken up with the local authorities concerned.

APPENDIX 5.

SECTIONS 5 TO 10 OF THE SOUTH AFRICAN CUSTOMS TARIFF AND EXCISE DUTIES AMENDMENT ACT, 36 OF 1925, AS AMENDED BY ACT 34 OF 1926.

* * * * *

5. *Granting of preferential rebates to United Kingdom.*—The customs duties charged on the goods specified in part I. of the Second Schedule to this Act shall be rebated to the extent shown in the fourth column thereof, in respect of goods which having been grown, produced or manufactured in the United Kingdom are imported therefrom for consumption in the Union.

6. *Granting of minimum rates of duty to British Possessions.*—(1) The Governor-General may conclude an agreement with any British dominion, colony or possession, whereby, in consideration of the extension to the Union of equivalent reciprocal privileges in respect of goods imported into such dominion, colony or possession from the Union, rates of duty not lower than the minimum rates of duty set forth in the First Schedule to this Act may be extended to specific goods grown, produced or manufactured in and imported from such dominion, colony or possession into the Union: Provided that from the date such rates become effective they shall apply also to similar goods grown, produced or manufactured in the United Kingdom [and imported into the Union therefrom].*

(2) Until such time as agreements have been concluded and brought into effect under the provisions of this section with the Dominion of Canada, the Commonwealth of Australia and the Dominion of New Zealand, as the case may be, the customs duties charged on the goods specified in Parts II, III and IV respectively of the Second Schedule to this Act shall be rebated to the extent shown in the fourth column thereof in respect of goods which having been grown, produced or manufactured in Canada, Australia or New Zealand, as the case may be, are imported therefrom for consumption in the Union [Provided that any rebates in operation under this sub-section shall in like manner apply to similar goods grown, produced or manufactured in the United Kingdom and imported into the Union therefrom].*

[(3) In the event of one of the dominions mentioned in sub-section (2) withdrawing the preferential tariff rates applicable at the commencement of this Act to goods grown, produced or manufactured in the Union, that part of the Second Schedule to this Act which applies to goods grown, produced or manufactured in the said dominion shall cease to have force and effect as from the date of such withdrawal: Provided that such preferential rates shall continue to apply to goods shipped to the Union from any such dominion prior to the date of such withdrawal].*

7. *Granting of minimum rates of duty to Foreign States.*—(1) The Governor General may conclude an agreement with any foreign State in consideration of the extension by that State of equivalent reciprocal privileges in respect of

goods imported into its territory from the Union, whereby there may be accorded to that State most-favoured foreign nation treatment in respect of customs duties leviable on goods imported from that State or whereby rates of duty not lower than the minimum rates of duty set forth in the First Schedule to this Act may be extended to specific goods grown, produced or manufactured in and imported from the territory of that State into the Union: Provided that such minimum rates—

(a) shall not be extended to any goods specified in Part I of the Second Schedule to this Act; and

(b) shall, from the date they become effective in respect of goods imported from any foreign State, be extended *ipso facto* to similar goods grown, produced or manufactured in and imported from the United Kingdom.

8. *Approval by Parliament of agreement under section six or seven.*—No agreement concluded under section six or seven shall have any force or effect until approved of by resolution of both Houses of Parliament; nor shall any rates to be brought into operation under any such agreement have effect until the Governor General shall have notified the same by proclamation in the *Gazette*, which shall be issued forthwith upon the passing of such resolution.

9. *Conditions regarding manufactured goods.*—

(1) The manufactured goods in respect of which rebates may be allowed under sections five and six or minimum rates of duty applied under sections six and seven shall be *bond fide* the manufacture of the country to whose products such rebates and rates apply, that is to say they shall be either wholly manufactured in such country, or, if partially manufactured therein, at least twenty-five per cent. of the factory cost of each article in its finished state shall be represented by the products and labour of such country.

(2) In the event of any question arising as to whether any goods are entitled to any such rebate or minimum rate, the decision of the Minister shall be final.

10. *Agreements with Governments of other South African countries.*—(1) The Governor General may enter into an agreement with the Government of any country contiguous to the Union or to the mandated territory of South-West Africa, providing—

(a) that goods grown, produced or manufactured in the Union shall be admitted into that country free of customs duty, and that goods grown, produced or manufactured in that country shall be admitted into the Union free of customs duty; and

(b) that one party to the agreement shall collect on behalf of the other party the customs duties imposed in respect of goods which, having been imported into its territory, are removed into the territory of the other party.

3) Every such agreement shall provide that in the event of an excise duty or surtax being imposed on any goods grown, produced or manufactured in or imported into the Union, a corresponding duty or surtax shall be levied on like goods, which, having been grown, produced or manufactured in or imported into the territory of the other party to the agreement, are imported into the Union.

(3) Notwithstanding the repeal by this Act of section eleven and paragraph (c) of section

fourteen of the Customs Tariff Act, 1914, all agreements entered into in terms thereof and in force at the commencement of this Act, shall be considered as entered into under the provisions of this section and to be in full force and effect, and any regulation made under the paragraph mentioned shall remain in full force and effect unless and until superseded by a regulation made under this Act.

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APPENDIX B.

ABSTRACT OF TERMS OF TARIFF ARRANGEMENT BETWEEN SOUTH AFRICA AND NEW ZEALAND.

A.—Rates of duty levied in New Zealand on South African goods under New Zealand Order in Council, dated 7th September 1925, and corresponding rates of duty leviable under the ordinary New Zealand Tariff.

Articles.	Tariff No.	Special rates on imports from South Africa.	Items in the ordinary Tariff.	Rates of duty according to the ordinary New Zealand Tariff.		
				British Preferential.	Intermedi-ate.	General.
Feathers, ornamental (including ostrich <i>n. e. i.</i>)	645	15 per cent. <i>ad val.</i>	229	25 per cent. <i>ad val.</i>	35 per cent. <i>ad val.</i>	40 per cent. <i>ad val.</i>
Fish, fresh, smoked, dried, pickled, salted, preserved by cold process, or preserved by sulphurous acid, <i>n. e. i.</i>	646	1½d. per lb.	47	10s. per cwt.	12s. 6d. per cwt.	15s. per cwt.
Fish, potted, and preserved, <i>vis.</i> , salmon, including any liquor, oil, or sauce.	Do.	Do.	48	1½d. per lb.	3d. per lb.	3d. per lb.
Fish, potted, and preserved, <i>n. e. i.</i>	Do.	Do.	49	2d. per lb. including any liquor, oil, or sauce.	3d. "	3d. "
<i>NOTE.</i> —The term 'fish' is used in the Tariff in its widest sense, and includes shell fish, crustaceans and other foods obtained from the fisheries.						
Fruits, dried, <i>vis.</i> , currants, raisins, figs, dates	647	Free.	50	Free.	1d. per lb.*	2d. per lb.
Fruits, dried, <i>vis.</i> , prunes	Do.	Do.	51	Do.	Free.	Free.
Fruits, dried, <i>n. e. i.</i>	Do.	Free (other than dried apples.)	52	2d. per lb.	3d. per lb.	4d. per lb.
Fruits, fresh, <i>vis.</i> , apples and pears	648	Free.	53	1d. "	1½d. "	1½d. "
Fruits, fresh, <i>vis.</i> , plums, cherries, peaches, nectarines, medlars, apricots, quinces, tomatoes, grapes, lemons and passion-fruit.	Do.	Do.	54	1d. "	1d. "	1d. "
Fruits, fresh, <i>vis.</i> , currants, raspberries, gooseberries, blackberries, and strawberries.	Do.	Do.	55	1d. "	1d. "	1d. "
Fruits, fresh, <i>vis.</i> , bananas, oranges, mandarins and grape-fruit.	Do.	Do.	56	Free.	1d. "	1d. "
Fruits, fresh, <i>n. e. i.</i>	Do.	Do.	57	Do.	Free.	Free.
Sugar, of Number 22 colour or over (Dutch Standard).	650	Do.	91	½d. per lb.	½d. per lb.	½d. per lb.
Sugar <i>n. e. i.</i>	650	Do.	92	Free.	Free.	Free.
Tea, in bulk, <i>vis.</i> , in packages of 5 lbs. or over net weight of tea.	651	Do.	83	Do.	2d. per lb.	2d. per lb.
Tea, <i>n. e. i.</i>	651	1d. per lb.	84	2d. per lb.	4d. per lb.	4d. per lb.
Wine, Australian (not including sparkling), containing not more than 40 per cent. of proof spirit; per gallon, or for six reputed quart bottles, or the equivalent in bottles of a larger or smaller reputed capacity.	652	3s. 6d. per gal.	118	5s. per gal.	5s. per gal.	5s. per gal.
Wine (except sparkling and Australian), containing not more than 40 per cent. of proof spirit; per gallon, or six reputed quart bottles, or the equivalent in bottles of a larger or smaller reputed capacity.	652	3s. 6d. per gal.	119	6s. per gal.	6s. per gal.	6s. per gal.
Wine, sparkling all kinds, containing not more than 40 per cent. of proof spirit; per gallon, or six reputed quart bottles, or the equivalent in bottles of a larger or smaller reputed capacity.	653	3s. 6d. per gal.	120	15s. per gal.	15s. per gal.	15s. per gal.
All other goods (except spirits and tobacco)	654—655	3 per cent. less than the duty which would otherwise be payable.	...	...	...	...

* Suspended duty, which may be brought into operation by Order in Council.

B.—Statement showing preferential rebates of duty granted by South Africa to certain products and manufactures of New Zealand.

Tariff Item.	Articles.	Maximum duty.	Amount of Rebate.
5	Butter	£ s. d. 0 0 2½ per lb.	£ s. d. 0 0 0¼ per lb.
8(a)	Cheese: made from milk or cream, from which no fat has been abstracted, and to which no animal or vegetable fat has been added	30 per cent. ad val. or £ s. d. 0 0 4 per lb.	5 per cent. ad val. or £ s. d. 0 0 0¼ per lb.
21(b)	Foods: patent or proprietary farinaceous and cereal foods	25 per cent. ad val. whichever duty shall	be the greater. 5 per cent. ad val.
26	Hops: in bulk	5 " "	Free.
30(b)	Meats: other than bacon and ham	£ s. d. 0 0 1¼ per lb.	£ s. d. 0 0 0¼ per lb.

Note.—As regards agreements in accordance with section 8 of the South African Tariff Act, it is understood that no special arrangement exists as between South Africa and New Zealand, but the above special rates of duty are in force.

APPENDIX 7.

Abstract of South African duties on articles in which India is specially interested.

Item.	Article.		Maximum duty.	Minimum duty.	Rebates granted by S. Africa to other countries.		
					U. K.	Canada.	New Zealand.
I.—APPAREL.							
65	Clothing—						
	(a) Bespoke, or made by a tailor or dress-maker to the order of an individual (not including under clothing).	<i>Ad val.</i>	30 per cent.	30 per cent.			
	(b) Ready-made—						
	(i) New coats, vests and trousers for men (not including boys' and infants' and not including oilskin clothing).	"	20 per cent.	20 per cent.			
	(ii) Other, including under clothing, <i>n. e. c.</i>	"	15 per cent.	15 per cent.			
	(c) Shirts, collars and pyjamas of silk or artificial silk or mixtures thereof with any other material.	"	25 per cent.	25 per cent.			
	(d) Second-hand, for sale—						
	(i) Overcoats	<i>sq. yd.</i> thereafter or <i>ad val.</i>	<i>£ s. d.</i> 0 3 6 up to 30th June 1927. 0 4 0 in each case.	<i>£ s. d.</i> 0 3 6 0 4 0 in each case.			
	(ii) Coats, vests, trousers, cloaks, mantles or shawls.	<i>each</i> thereafter or <i>ad val.</i>	<i>£ s. d.</i> 0 3 0 up to 30th June 1927. 0 3 6 in each case.	<i>£ s. d.</i> 0 3 0 0 3 6 in each case.			
			25 per cent.	25 per cent.			
			whichever duty shall be the greater.	whichever duty shall be the greater.			
			25 per cent.	25 per cent.			
			whichever duty shall be the greater.	whichever duty shall be the greater.			
II.—COFFEES.							
13	Coffee—						
	(a) Raw	<i>per lb.</i>	<i>£ s. d.</i> 0 0 0½	<i>£ s. d.</i> 0 0 0½			
	(b) Roasted or ground	"	0 0 2	0 0 2			
	(c) Mixed	"	0 0 3	0 0 3			
III.—COIRS.							
64	Coir, including twisted coir yarn, raw, waste and unmanufactured.	...	Free.	Free.			
63	(b) Coir mats and coir matting	<i>Ad. val.</i>	25 per cent.	25 per cent.			
IV.—DRUGS AND MEDICINES.							
224	Drugs and apothecary ware, <i>n. e. c.</i>	"	20 per cent.	20 per cent.			
V.—TANNING SUBSTANCES.							
263	Substances for tanning industry	...	Free.	Free.			
VI.—FRUITS AND VEGETABLES.							
22	Fruits—						
	(a) Fresh or Green	<i>Ad. val.</i>	5 per cent.	Free.			
	(b)*						
	(c) Dates—						
	(1) in bulk	<i>per lb.</i>	<i>£ s. d.</i> 0 0 0½	<i>£ s. d.</i> 0 0 0½			
	(2) in cartons	"	0 0 1	0 0 1			
	(d) Dried of all kinds, not including dates and nuts.	"	0 0 2½	0 0 2			

Items.	Articles.	Maximum duty.	Minimum duty.	Rebates granted by S. Africa to other countries.		
				U. K.	Canada.	New Zealand.
VI.—FRUITS AND VEGETABLES—contd.						
46	Vegetables—					
	(a) Fresh or Green, but not including potatoes, onions or garlic.	Free.	Free.	...	...	...
	(b)*					
VII.—GRAIN, PULSES AND FLOUR.						
15	(d) Rice, in the grain	per 100 lbs. £ s. d. 0 1 0	£ s. d. 0 1 0			
35	(e) Beans, dried	" 0 2 0	0 1 10			
15	(e) (i) Wheat, in the grain	" 0 1 7	0 1 5	£ s. d. 0 0 2 per 100 lbs. on the maximum duty. (vide Sec. 6 of the South African Cust. and Exc. Act 1926.)	£ s. d. 0 0 2 per 100 lbs. on the maximum duty.	
VIII.—HIDES AND SKINS.						
4	Skins of animals, not being manufactured, polished or further prepared than dried or cleaned, but in their raw and unmanufactured state.	Free.	Free.			
254	Leather, in the piece—					
	(a) Patent and enamelled					
	(b) Morocco, and sheepskin tanned with sumac and grained to imitate morocco.	Free.	Free.			
	(c) Pig skin					
	(d) Valve hide					
255	Leather, in the piece, viz—					
	(a) Black calf, being whole skins, the free on board price of which is not less than 1s. 3d. per square foot.	Free.	Free.			
	(b) Coloured calf (other than black), being whole skins, the free on board price of which is not less than 1s. 6d. per square foot.	Free.	Free.			
	(c) Black glaze kid, the free on board price of which is not less than 1s. 3d. per square foot.	Free.	Free.			
	(d) Coloured glaze kid (other than black), the free on board price of which is not less than 1s. 6d. per square foot.					
	(e) Suede, Velour and Velvet finish leathers (not including the made from split goat or sheep skins and not including leather known as chamois), the free on board price of which is not less than 1s. 6d. per square foot.	Free.	Free.			
	(f) Lining leather, notwithstanding any thing contained in sub-sections (a) to (e).					

(b)* Vegetables, tinned, etc., are shown under "Provisions".

Item.	Articles.	—	Maximum duty.	Minimum duty.	Rebates granted by S. Africa to other countries.		
					U. K.	Canada.	New Zealand.
VIII.—HIDES AND SKINS— <i>concid.</i>							
256	Leather, in the piece, not elsewhere enumerated:—						
	(a) Bellies and shoulders, imported separately.	<i>Ad val.</i>	20 per cent.	20 per cent.	...	...	...
	(b) Other	Per lb. or <i>ad val.</i>	£ s. d. 0 0 6 20 per cent.	£ s. d. 0 0 6 20 per cent.	...	...	...
			whichever duty shall be the greater.				
IX.—LAC.							
205	Shellac, dry, in bulk	<i>Ad val.</i>	5 per cent.	5 per cent.	...	...	...
371	Shellac, dry, in bulk for industrial purposes.	...	Free.	Free.	...	...	...
X.—METALS.							
122	Iron and Steel—						
	(a) In blocks, ingots, pigs, billets, slabs, blooms, and like crude manufactures, and scrap.	<i>Ad val.</i>	3 per cent.	Free.	The whole duty.	...	...
	(b) Plates and sheets: plain, corrugated or galvanized, including tin plate but not including lacquered, enamelled, varnished, printed, lithographed or embossed.	"	3 per cent.	"		...	...
	(c) Angle, bar, channel, hoop, rod, H, T, and similar iron or steel, not perforated or put together or worked up in any way, and not specially provided for and baling clips.	"	3 per cent.	"		...	...
	(d) Drill steel	"	3 per cent.	"		...	...
	(e) Tool steel . . . . .	"	"	"		...	...
	(f) Hoop Iron and Hoop Steel, shaped or fashioned for Cooperage . . . . .	...	Free.	"		...	...
	(g) Metal parts of Steel window frames	<i>Ad val.</i>	15 per cent.	15 per cent.		...	...
123	Lead: Sheet and foil . . . . .	...	Free.	Free.	...	...
126	Metals of all sorts, other than iron and steel s. c. c. . . . .	...	"	"	...	...
180	(b) Micanite sheets	<i>Ad val.</i>	20 per cent.	15 per cent.	...	...
XI.—OILS.							
200	Oils, mineral—						
	(a) Crude	<i>Ad val.</i>	20 per cent.	15 per cent.	...	...	...
	(b) Illuminating and burning having a specific gravity of less than 900 at 60° Fahrenheit and a flashpoint of not more than 150° Fahrenheit	Per Imp. gallon.	£ s. d. 0 0 1	£ s. d. 0 0 1	...	...	...
	(c) transformer and tranzil	Per Imp. gallon.	£ s. d. 0 0 1	£ s. d. 0 0 1	...	...	...
	(d) Other, s.c.c.	<i>Ad val.</i>	20 per cent.	15 per cent.	...	...	...
375	Crude mineral oils for manufacture of preparations for roadmaking.	...	Free.	Free.	...	...	...
202	Oils, vegetable or animal, s.c.c.	<i>Ad val.</i>	20 per cent.	20 per cent.	...	...	...
343, 353, 360 & 371	{ Linseed and Castor oils, imported for specified industrial purposes and Cotton seed oil imported for general industrial purposes. }	...	Free.	Free.	...	...	...

Item.	Article.	—	Maximum duty.	Minimum duty.	Rebates granted by S. Africa to other countries.		
					U. K.	Canada.	New Zealand.
XII.—PARAFFIN WAX.							
210	(b) Waxes, other, <i>s.e.c.</i>	<i>Ad val.</i>	20 per cent.	20 per cent.			
345, 360 & 371	{ Paraffin wax imported for industrial purposes.	...	Free.	Free.			
XIII.—PROVISIONS.							
36	(a) Pickles, sauces, chutneys, and other condiments.	Per lb.	£ s. d. 0 0 2½	£ s. d. 0 0 2			
46	(b) Vegetables, tinned or otherwise preserved.	<i>Ad val.</i>	20 per cent.	20 per cent.			
22	(b) Fruits, bottled, tinned or otherwise preserved, except crystallized fruits; but including pulp and candied peel.	per lb.	£ s. d. 0 0 2½	£ s. d. 0 0 2	...	...	...
27	Jams, Jellies and honey	per lb. or <i>ad val.</i>	0 0 2½ 30 per cent.	0 0 2½ 30 per cent.	...	...	...
5	Butter	per lb.	0 0 2½	0 0 2	0 0 0½ per lb. on maximum duty (<i>s.e.c.</i> sec. 6 of the S.A. Cust. and Exc. Act).	...	0 0 0½ per lb. on maximum duty.
20	Macaroni, spaghetti and vermicelli	<i>Ad val.</i>	20 per cent.	20 per cent.	...	...	...
XIV.—SPICES.							
41	Spices—		£ s. d.	£ s. d.			
	(a) Not ground or crushed	per lb.	0 0 0½	Free.	...	...	...
	(b) Other	"	0 0 2½	0 0 2	...	...	...
XV.—TEA.							
45	Tea—		£ s. d.	£ s. d.			
	(a) In packets or tins, not exceeding 10 lbs. each in weight.	per lb.	0 0 6	0 0 6	...	...	...
	(b) In larger containers	"	0 0 4	0 0 4	...	...	...
XVI.—TEXTILES.							
Cotton piece-goods—							
76	Piece-goods, not being blanketing or Kafir sheeting—						
	(a) Cotton (that is, piece-goods containing 50 per cent. or more of cotton), the free on board price of which per yard—						
	(i) does not exceed 1s. 3d.	<i>Ad val.</i>	12½ per cent.	7½ per cent.	5 per cent. on the maximum duty.	...	...
	(ii) exceeds 1s. 3d.	<i>Ad val.</i>	12½ per cent.	12½ per cent.	...	...	...
NOTE.—In the case of piece-goods exceeding 50 ins. in width "yard" shall mean 93 ins. by 50 ins. in width, and the price shall be calculated proportionately to the width.							
Jute Manufactures—							
59	(b) Jute bags, bagging and sacking, in the piece	...	Free	Free	...	...	...

Item.	Article.	Maximum duty.	Minimum duty.	Rebates granted by S. Africa to other countries.		
				U. K.	Canada.	New Zealand.
XVII.—WOOD AND TIMBER.						
279	Wood:—					
	(a) Unmanufactured	<i>Ad val.</i> 3 per cent.	Free	The whole duty (<i>vide</i> section 6 of the S. A. Cust and Exc. Act, 1926).	The whole duty.	
	(b) Ceiling and flooring boards, planed, tongued and grooved.	3 per cent.	3 per cent.			
XVIII.—TOBACCO.						
53	Cigars and Cigarillos	Per lb. (and in addition <i>ad val.</i>) £ s. d. 0 8 6 15 per cent.	£ s. d. 0 8 6 15 per cent.			
54	Cigarettes	Per lb (and in addition <i>ad val.</i>) 0 6 0 15 per cent.	0 6 0 15 per cent.			
55	Goorak or gooracco and hookah mixture and all imitations or substitutes therefor or for tobacco.	Per lb. 0 6 0	0 6 0			
56	Snuff	" 0 4 0	0 4 0			
57	Tobacco, manufactured	" 0 5 0	0 5 0			
58	Tobacco, unmanufactured.	" 0 3 6	0 3 6			