

London Municipality in that Colony, the power to frame Bye-Laws prohibiting Indians from walking on the foot-paths and making them live in locations. It has issued instructions to the authorities of East Griqualand not to issue any trading licences to the Indians. The Cape Government are in communication with the Home Government with a view to induce them to sanction legislation restricting the influx of the Asiatics. The people in the Chartered territories are endeavouring to close the country against the Asiatic trader. In Zululand, a Crown Colony, we cannot own or acquire landed property in the townships of Eshowe and Nondweni. This question is now before Mr. Chamberlain for consideration. As in the Transvaal there also it is criminal for an Indian to buy native gold.

Thus we are hemmed in on all sides by restrictions. And if nothing further were to be done here and in England on our behalf, it is merely a question of time when the respectable Indian in South Africa will be absolutely extinct.

Nor is this merely a local question. It is as the *London Times* puts it, "that of the status of the British Indian outside India." "If," says the *Thunderer*, "they fail to secure that position, (that is of equal status) in South Africa, it will be difficult for them to attain it elsewhere." I have no doubt you have read in the papers that Australian Colonies have passed legislation to prevent Indians from settling in that part of the World. It will be interesting to know how the Home Government deal with that question.

The real cause of all this prejudice may be expressed in the words of the leading organ in South Africa,





namely, the *Cape Times*, when it was under the editorship of the prince of South African journalists, Mr. St. Lager.

It is the position of these merchants which is productive of no little hostility to this day. And it is in considering their position that their rivals in trade have sought to inflict upon them through the medium of the State, what looks on the face of it something very like an injustice for the benefit of self.

Continues the same organ:—

The injustice to the Indians is so glaring that one is almost ashamed of one's countrymen in wishing to have these men treated as native (i.e., of South Africa,) simply because of their success in trade. The very reason that they have been so successful against the dominant race is sufficient to raise them above that degrading level.

If this was true in 1889 when the above was written, it is doubly so now, because the legislators of South Africa have shown phenomenal activity in passing measures restricting the liberty of the Queen's Indian subjects. Other objections also have been raised to our presence there, but they will not bear scrutiny and I have dealt with them in the Green Pamphlet. I venture, however, to quote, from the *Natal Advertiser*, which states one of them and prescribes a statesman-like remedy also. And so far as the objection may be valid, we are in perfect accord with the *Advertiser's* suggestion. This paper which is under European management was at one time violently against us. Dealing with the whole question from an Imperial standpoint it concludes:—

It will, therefore, probably yet be found that the removal of the drawbacks at present incidental to the immigration of Indians into British Colonies is not to be effected so much by the adoption of an obsolete policy of exclusion as by an enlightened and progressive application of ameliorating laws to those Indians who settle in them. One of the chief objections to Indians is that they do not live in accordance with European rules. The remedy for this is to gradually raise their mode of life by compelling them to live in better dwellings and by creating among them new wants. It will probably be found easier, because, more in accord with the





great onward movements of mankind, to demand of such settlers that they shall rise to their new conditions than to endeavour to maintain the *status quo ante* by their entire exclusion.

We believe also that much of the ill-feeling is due to the want of proper knowledge in South Africa about the Indians in India. We are, therefore, endeavouring to educate public opinion in South Africa by imparting the necessary information. With regard to the legal disabilities we have tried to influence in our favour the public opinion both in England and here. As you know both the Conservatives and Liberals have supported us in England without distinction. The *London Times* has given eight leading articles to our cause in a very sympathetic spirit. This alone has raised us a step higher in the estimation of the Europeans in South Africa, and has considerably affected for the better the tone of newspapers there. The British Committee of the Congress has been working for us for a very long time. Ever since he entered Parliament, Mr. Bhownagree has been pleading our cause in season and out of season. Says one of our best sympathisers in London :—

The wrong is so serious that it has only to be known in order I hope to be remedied. I feel it my duty on all occasions and in all suitable ways to insist that the Indian subjects of the Crown should enjoy the full status of British subject throughout the whole British Empire and in allied states. This is the position which you and our Indian friends in South Africa should firmly take up. In such a question compromise is impossible. For any compromise would relinquish the fundamental right of the Indian races to the complete status of British subjects—a right which they have earned by their loyalty in peace and by their services in war, a right which was solemnly guaranteed to them by the Queen's Proclamation in 1857, and which has now been explicitly recognised by Her Majesty's Government."

Says the same gentleman in another letter :—

I have great hopes that justice will, in the end, be done. You have a good cause .... You have only to take up your position strongly in order to be successful. That position is that the British Indian subjects in South Africa are alike in our own Colonies and





an independent friendly States being deprived of their status as British subjects guaranteed to them by the Sovereign and the British Parliament.

An ex-Liberal member of the House of Commons says :—

You are infamously treated by the Colonial Government and you will be so treated by the Home Government if they do not compel the Colonies to alter their policy.

A Conservative member says :—

I am quite aware that the situation is surrounded with many difficulties ; but some points stand out clear and, as far as I can make out it is true to say that breaches of what in India is a civil contract are punishable in South Africa as though they were criminal offences. This is beyond doubt contrary to the principles of the Indian Code and seems to me an infringement of the privileges guaranteed to British subjects in India. Again it is perfectly evident that in the Boer republic and possibly in Natal it is the direct obvious intention of the Government to "hunt" natives of India and to compel them to carry on their business under degrading conditions. The excuses which are put forward to defend the infringements of the liberties of British subjects in the Transvaal are too flimsy to be worth a moment's attention." Yet another Conservative member says : "Your activity is praiseworthy and demands justice. I am, therefore, willing to help you as far as lies in my power."

Such is the sympathy evoked in England. Here, too, I know we have the same sympathy, but I humbly think that our cause may occupy your attention still more largely.

What is required in India has been well put by the *Moslem Chronicle* in a forcibly written leader :—

What with a strong and intelligent public opinion here and a well meaning Government the difficulties we have to contend with, are not at all commensurate with those that retard the well-being of our countrymen in that country. It is therefore quite time that all public bodies should at once turn their attention to this important subject to create an intelligent public opinion with a view to organise an agitation for the removal of the grievances under which our brethren are labouring. Indeed, these grievances have become and are day by day becoming so unbearable and offensive that the requisite agitation cannot be taken up one day too soon.



I may state our position a little more clearly. We are aware that the insults and indignities that we are subjected to at the hands of the populace cannot be directly removed by the intervention of the Home Government. We do not appeal to it for any such intervention. We bring them to the notice of the public so that the fairminded of all communities and the Press may be expressing their disapproval, materially reduce their rigour and possibly eradicate them ultimately. But we certainly do appeal and we hope not vainly to the Home Government for protection against reproduction of such ill-feeling in legislation. We certainly beseech the Home Government to disallow all the Acts of the Legislative bodies of the Colonies restricting our freedom in any shape or form. And this brings me to the last question, namely, how far can the Home Government interfere with such action on the part of the Colonies and the allied States. As for Zululand there can be no question since it is a Crown Colony directly governed from Downing Street through a Governor. It is not a self-governing or a responsibly-governed Colony as the Colonies of Natal and the Cape of Good Hope are. With regard to the last two their Constitution Act provides that Her Majesty may disallow any Act of the Local Parliament within two years even after it has become law having received the Governor's assent. That is one safeguard against oppressive measures by the Colonies. The Royal instructions to the Governor as also the Constitution Act enumerate certain Bills which cannot be assented to by the Governor without Her Majesty's previous sanction. Among such are Bills which have for their object class legislation such as the Franchise Bill or Immigration Bill, Her Majesty's intervention





is thus direct and precise. While it is true that the Home Government is slow to interfere with the Acts of the Colonial Legislatures, there are instances where it has not hesitated to put its foot down on occasions less urgent than the present one. As you are aware, the repeal of the first Franchise Bill was due to such wholesome intervention. What is more the Colonists are ever afraid of it. And as a result of the sympathy expressed in England and the sympathetic answer given by Mr Chamberlain to the Deputation that waited on him some months ago most of the papers in South Africa, at any rate in Natal have veered round considerably. As to the Transvaal there is the convention. As to the Orange Free State I can only say that it is an unfriendly act on the part of a friendly State to shut her doors against any portion of Her Majesty's subjects. And as such I humbly think it can be effectively checked.

It may not be amiss to quote a few passages from the London *Times* articles bearing on the question of intervention as well as the whole question generally :

The whole question resolves itself into this. Are Her Majesty's Indian subjects to be treated as a degraded and an outcaste race by a friendly government or are they to have the same rights and status as other British subjects enjoy? Are leading Muhammadan merchants who might sit in the Legislative Council at Bombay, to be liable to indignities and outrage in the South African Republic? We are continually telling our Indian subjects that the economic future of their country depends on their ability to spread themselves out and to develop their foreign trade. What answer can our Indian Government give them if it fails to secure to them the same protection abroad which is secured to the subjects of every other dependency of the Crown?

It is a mockery to urge our Indian fellow-subjects to embark on external commerce if the moment they leave India they lose their rights as British subjects, and can be treated by foreign governments as a degraded and an outcaste race.

In another article it says :—

The matter is eminently one for good offices and for influence, for that "friendly negotiation" which Mr. Chamberlain promises.





though he warns the deputation that it may be tedious and will certainly not be easy. As to the Cape Colony and Natal, the question is to a certain extent simplified since, of course, the Colonial Office can speak to them with greater authority.

The incident is one of those which suggests wider questions than any that directly offer themselves for official replies. We are at the centre of a world-wide Empire, at a period when locomotion is easy and is every day becoming easier, both in time and cost. Some portions of the Empire are crowded, others are comparatively empty, and the flow from the congested to the under-peopled districts is continuous. What is to happen when subjects differing in colour, religion and habits from ourselves or from the natives of a particular spot emigrate to that spot for their living? How are race prejudices and antipathies, the jealousies of trade, the fear of competition to be controlled? The answer, of course, must be by intelligent policy at the Colonial Office.

Small as are the requirements of the Indian the steady growth of the population of India is such that a certain outward movement is inevitable, and it is a movement that will increase. It is very desirable that our white fellow-subjects in Africa should understand that there will, in all probability, be this current flowing from India, that it is perfectly within the rights of the British Indian to seek his subsistence at the Cape, and that he ought, in the common interest of the Empire to be well treated when he comes there. It is indeed to be feared that the ordinary Colonist, wherever settled, thinks much more of his immediate interests than of those of the great empire which protects him, and he has some difficulty in recognising a fellow-subject in the Hindu or the Parsee. The duty of the Colonial Office is to enlighten him and to see that fair treatment is extended to British subjects of whatever colour.

Again:—

In India the British, the Hindu and the Mussalman communities find themselves face to face with the question as to whether at the outset of the new industrial movements which have been so long and anxiously awaited, Indian traders and workers are or are not to have the same status before the law as all other British subjects enjoy. May they or may they not go freely from one British possession to another and claim the rights of British subjects in allied states or are they to be treated as outcaste races, subjected to a system of permits and passes when travelling on their ordinary business avocations, and relegated, as the Transvaal Government would relegate them to a ghetto at the permanent centres of their trade? These are questions which applied to all Indians who seek to better their fortunes outside the limits of the Indian Empire. Mr. Chamberlain's words and the determined





attitude taken up by every section of the Indian press show that for two such questions there can be but one answer.

I shall take the liberty to give one more quotation from the same journal :—

The question with which Mr. Chamberlain was called upon to deal cannot be so easily reduced to concrete terms. On the one hand he clearly laid down the principle of the "equal rights" and equal privilege of all British subjects in regard to redress from foreign States. It would, indeed, have been impossible to deny that principle. Our Indian subjects have been fighting the battles of Great Britain over half the old world with the loyalty and courage which have won the admiration of all British men. The fighting reserve which Great Britain has in the Indian races adds greatly to her political influence and prestige and it would be a violation of the British sense of justice to use the blood and the valour of these races in war and yet to deny them the protection of the British name in the enterprise of peace. The Indian workers and traders are slowly spreading across the earth from Central Asia to the Australian Colonies and from the Straits Settlements to the Canary Islands. Wherever the Indian goes he is the same useful well-doing man, lawabiding under whatever form of Government he may find himself, frugal in his wants and industrious in his habits. But these very virtues make him a formidable competitor in the labour markets to which he resorts. Although numbering in the aggregate some hundreds of thousands, the immigrant Indian labourers and small dealers have only recently appeared in the foreign countries or British Colonies in numbers sufficient to arouse jealousy and to expose them to political injustice.

But the facts which we brought to notice in June, and which were urged on Mr. Chamberlain by a deputation of Indians last week, show that the necessity has now arisen for protecting the Indian labourer from such jealousy, and for securing to him the same rights as other British subjects enjoy.

Gentlemen, Bombay has spoken in no uncertain terms. We are yet young and inexperienced, we have a right to appeal to you, our elder and freer brethren for protection. Being under the yoke of oppression we can merely cry out in anguish. You have heard our cry. The blame will now lie on your shoulders if the yoke is not removed from our necks.





## DEPUTATION TO LORD SELBORNE

*Messrs. Abdul Gani (Chairman, British Indian Association), Mr. Haji Habib (Secretary, Pretoria Committee), Mr. E. S. Coovadia, Mr. P. Moonsamy Moonlight, Mr. Ayob Haeje Beg Mahomed and Mr. M. K. Gandhi formed a deputation that waited on Lord Selborne on November, 22nd, 1905. On behalf of the deputation, Mr. Gandhi presented the following statement of the position to His Excellency :—*

## STATEMENT

There are, besides laws affecting coloured people and therefore British Indian's the Peace Preservation Ordinance and Law 3 of 1885 as amended in 1886.

## THE PEACE PRESERVATION ORDINANCE

The Peace Preservation Ordinance, as its name implies although framed to keep out of the Colony dangerous character, is being used mainly to prevent British Indians from entering the Transvaal. The working of the law has always been harsh and oppressive—and this in spite of the desire of the Chief Secretary for Permits that it should not be so. He has to receive instructions from the Colonial Office, so that the harsh working is due, not to the chief officer in charge of the Department, but to the system under which it is being worked. (a) There are still hundreds of refugees waiting to come. (b) Boys with their parents or without are required to take out permits. (c) Men with old £3 registrations coming into the country without permits are, though refugees being sent away and required to make formal application. (d) Even wives of Transvaal residents are expected to take out permits if they are alone, and to pay £3 registration, whether with or without their husbands. (Correspondence is now going on between the Government and the British Indian Association on the point.) (e) Children under sixteen, if it cannot be proved that their parents are dead, or are residents of the Transvaal, are being sent away or are refused permits, in spite of the fact that they may be supported by their relatives who are their guardian and who are residing in the Transvaal. (f) No non-refugee British Indians are allowed to enter the Colony, no matter what their station may be in life. (The last prohibition causes serious inconvenience to the established merchants, who, by reason thereof, are prevented from drawing upon India for confidential managers or clerks.)

In spite of the declarations of her late Majesty's ministers, and assurances of relief after the establishment of civil Govern-





ment, this law remains on the statute book, and is being fully enforced, though many laws, which were considered to be in conflict with the British constitution, were repealed as soon as British authority was proclaimed in the Transvaal. Law 3 of 1885 is insulting to British Indians, and was accepted totally under a misapprehension. It imposes the following restrictions on Indians:—(a) It prevents them from enjoying burger rights. (b) It prohibits ownership of fixed property, except in streets, wards, or locations set apart for the residence of Indians. (c) It contemplates compulsory segregation in locations of British Indians for purposes of sanitation. And (d) It imposes a levy of £3 on every Indian who may enter the Colony for purposes of trade or the like.

#### REFORMED ADMINISTRATION OF ORDINANCE

It is respectfully submitted, on behalf of the British Indian Association that the Peace Preservation Ordinances should be so administered that (a) it should facilitate the entry of all refugees without delay. (b) Children under sixteen should be exempt from any restriction whatsoever, if they have their parents or supporters with them. (c) Female relatives of British Indians should be entirely free from interference or restriction as to the rights on entry. And (d) a limited number of Indians, though not refugees, should on the application of resident traders who may satisfy the Permit Officer that they require the services of such men, be granted permits for residence during the period of their contract of service. (e) Indians with educational attainment should be allowed to enter the Colony on application.

#### REPEAL OF COLOUR LEGISLATION.

Both the Law of 1885 and the Peace Preservation Ordinance and all other colour legislation affecting British Indians, should be repealed so soon as possible and they should be assured as to—

(a) Their right to own landed property. (b) To live where they like, subject to the general sanitary laws of the Colony. (c) Exemption from any special payment. (d) And generally freedom from special legislation and enjoyment of civil rights and liberty in the same manner and to the same extent as the other Colonists.

#### SUBSTITUTES SUGGESTED

Though the British Indian Association does not share the fear of the European inhabitants that an unrestricted immigration from India will swamp the latter, as an earnest of its intention to work in harmony with them and to conciliate them, it has all along submitted that—(a) The Peace Preservation Ordinance should be replaced by an immigration law of a general character, on the Cape or the Natal basis, provided that the educational test recognises the great Indian languages and that power be given to the Government to grant residential permits to such men as may be required for





the wants of Indians who may be themselves already established in businesses. (b) A Dealer's Licences Law of a general character may be passed, applicable to all sections of the community, whereby the Town Councils or Local Boards could control the issue of new trade licenses, subject to appeal to the Supreme Court to review the decisions of such Councils or Local Boards. Under such a law whilst the then existing licenses would be fully protected, except when the premises licensed are not kept in a sanitary condition, all new applicants would have to be approved or by the Town Councils or the Local Boards, so that the increase of licenses would be largely dependent upon the bodies above-named.

### MR. GANDHI'S ADDRESS

*Before presenting the statement to Lord Selborne, Mr. Gandhi addressed His Excellency as follows :—*

#### PRELIMINARY REPRESENTATIONS

Before I deal with the statement I am to hand to your Excellency, I have been asked to mention two matters that have occurred during your recent tour through the Transvaal. Your Excellency is reported to have said at Potchefstroom that "no non-refugee British Indians would be allowed to enter the Colony until the Representative Assembly has considered the question next year." If the report is correct, it would, as I hope to show this afternoon, be a very grave injustice to the vested rights of the Indian community. At Ermelo, your Excellency is reported to have used the expression "coolie storekeepers." This expression has given very great offence to the British Indians in the Colony, but the British Indian Association has assured them that the expression has probably not been used by your Excellency, or, if it has, your Excellency is incapable of giving thereby any intentional offence to British Indian storekeepers. The use of the word "coolie" has caused a great deal of





mischiefs in Natal. At one time it became so serious that the then Justice, Sir Walter Wagg, had to intervene and to put down the use of that expression in connection with any but indentured Indians, it having been imported into the Court of Justice. As your Excellency may be aware, it means "labourer" or "porter." Used, therefore, in connection with traders, it is not only offensive, but a contradiction in terms.

#### THE PEACE PRESERVATION ORDINANCE

Coming to the statement that the British Indian Association is submitting to your Excellency, I would take first the Peace Preservation Ordinance. Soon after the Transvaal became part of the British Dominions, the services rendered during the war by the dhooly-bearers that came with Sir George White, and those rendered by the Indian Ambulance Corps in Natal, were on many people's lips. Sir George White spoke in glowing terms of the heroism of Parbhur Singh, who, perched up in a tree, never once failed to ring the gong as a notice to the inhabitants each time the Boer gun was fired from the Umbulwana Hill. General Buller's despatches, praising the work of the corps, were just out and the administration was in the hands of the military officers who knew the Indians. The first batch of refugees, therefore, who were waiting at the ports, entered the country without any difficulty, but the civilian population became alarmed, and called for the restriction of the entry of even the refugees. The result was that the country was dotted with Asiatic officers, and from that time up to-day the Indian community has known no rest; whereas aliens, in every sense of the term, as a rule, got their permits at the ports on application there and then, the Indian, even





though a refugee had to write to the supervisors of Asiatics, who had to refer the application to the Colonial Office, before permits were issued. The process took a very long time, from two to six months, and even one year and more, and then, too, the Colonial office had laid down a rule that only so many permits should be issued to British Indian refugees per week. The result of this mode of operation was that corruption became rampant, and there grew up a gang of permit-agents who simply fleeced innocent refugees; and it was a matter of notoriety that each refugee who wanted to enter the Transvaal had to spend from £15 to £30 or more. The matter came to the notice of the British Indian Association, repeated representations were made, and ultimately the Asiatic offices were wiped out. The mode of granting permits was however, unfortunately still kept up, and the Chief Secretary for Permits has been always subject to instruction from the Colonial Office. Thus the Peace Preservation Ordinances, which was intended to apply to dangerous character and political offenders, under the influence of the Colonial Office had become an Indian Immigration Restriction Law, as it remains to this day. Under the present regime, too, therefore, it is a most difficult matter for even *bona fide* refugees to get permits, and it is only in rare cases that it is possible to get them, except after a delay of months. Every one, no matter what his status may be, has to make an application on a special form, give two references, and put his thumb impression upon the form. The matter is then investigated, and the permit is granted. As if this were not enough, owing to the charges made by Mr. Loveday and his friends, the Chief Secretary for Permits received instructions to insist on European references.





This was tantamount to the denial of the right of British Indian refugees to enter the country. It would be hard to find twenty Indians who would be known to respectable Europeans by name as well as appearance. The British Indian Association had to correspond with the Government, and, in the meantime, the issue of permits was suspended, and it has been only lately realised that the insisting upon European reference was a serious injustice.

#### THE ENTRY OF CHILDREN

But still the difficulties apart from the necessity for European references are there. Male children under sixteen years of age are now called upon to take out permits before they can enter the Colony, so that it has been not an uncommon experience for little children of ten years of age and under to be torn away from their parents at the border towns. Why such a rule has been imposed we fail to understand.

The High Commissioner: Have you ever known a case where the parents have stated beforehand that they have children and which children have been refused permission to come in?

Mr. Gandhi: Yes; and the parents have been obliged to make affidavits before the children have been allowed to come in.

If the parents have the right to enter, so far as I am aware, every civilised country has admitted the right of minor children also to enter with them, and, in any case, children under sixteen years, if they cannot prove their parents are dead, or that their parents have been resident in the Transvaal, before the war, are not al-





lowed to enter or remain in the Colony. This is a very serious matter. As your Excellency is aware, the "joint-family" system prevails all over India. Brothers and sisters and their children live under the same roof from generation to generation, and the eldest member in the family is nominally, as well as in reality, the supporter and the bread-earner. There is, therefore, nothing unusual in Indians bringing the children of their relatives into the country, and it is submitted that it will be a very serious injustice if such children, who have hitherto been left unmolested, are either deported from the Colony or prevented from entering the Colony. The Government, again, intend to require the female relatives of resident Indians also to be registered, in the same manner as the males. The British Indian Association has sent an emphatic protest against any such measure, and has even submitted that it would be prepared to fight the question in a court of law, as, according to the advice given to it, wives of resident Indians are not required to take out registration certificates and pay £ 3.

#### THE ENTRY OF SPECIAL CLERKS, ETC.

No new permits are granted by the Government, no matter how necessary it may be in certain cases. We were all extremely pleased to read in the papers your Excellency's emphatic declaration that the vested interests of the Indians who are already settled in the country should not be disturbed or touched. There are merchants who have constantly to draw upon India for confidential clerks, in order to enable them to carry on their business. It is not easy to pick out reliable men from the resident population. That is the experience of merchants all over, and belonging to all communities. If therefore,





new Indians are absolutely shut out of the country until the establishment of representative government, it will seriously interfere with these vested interests, and in any case, it is difficult to see why men of attainments and education, whether they be refugees or not, should not be able to have their permits on application. And, in spite of all these hardships, our anti-Indian friends are never tired of saying the country is flooded with British Indians who were never in the Transvaal. They have made a point of saying that every Indian who was before in the country was registered. I hardly think it is necessary for me to dilate upon this matter, as your Excellency has been told that all the facts with reference to this charge are wrong, but I may be pardoned for referring your Excellency to a case that happened in 1893. Shire and Dumat were large contractors of labour. They brought into the country at one time 800 Indian labourers. How many more they brought I do not know. The then State Attorney insisted that they should take out registration certificates and pay £ 3 each. Shire and Dumat tested the matter in the High Court, and the then Chief Justice, Kotze, held that these men were not, in the terms of the law, called upon to pay £3, as they did not enter for "purposes of trade," and that he could not help the Government, even if the men, after the contract was over, subsequently remained in the country. That is only one instance, which cannot be gainsaid, in which hundreds of Indians remained in the country without paying £3 each. The British Indian Association has always submitted, and that from personal experience, that hundreds of Indians, who did not take out trade licences, remained in the country without ever registering themselves and paying £ 3.





## BAZAARS AND LOCATIONS

Coming to Law 3 of 1885, it has been often urged that Indians, after the establishment of British Government in this country, have received relief with reference to trade licences. Nothing, however, can be farther from the truth. Before the war, we were able to trade anywhere we liked, as against tender of payment for licence money. The long arm of the British Government was then strong enough to protect us, and up to the very eve of the war, in spite of the constant threats of the then Government to prosecute British Indians who were trading, no action was taken. It is true that now, owing to the decision of the Supreme Court, Indian trade is unfettered but that is in spite of the Government. Up to the very last moment the Government declined to come to the rescue and a notice was published called the "Bazaars Notice," which stated that, after a certain date, every Indian who did not hold a licence to trade at the outbreak of war outside locations, would be expected not only to remove to locations, but to trade there also. After the notice was published locations were established in almost every town, and when every effort to get justice at the hands of the Government was exhausted, as a last resort it was decided to test the matter in a Court of Law. The whole of the Government machinery was then set in motion against us. Before the war a similar case was fought, and the British Government aided the Indians to seek an interpretation of the law, which we have now received from the present Supreme Court. After the establishment of the British Government, all these forces were against us. It is a cruel irony of fate, and there is no use disguising the fact that we have felt it most keenly, and this, I may state, as





has now transpired, in spite of the fact that the then Attorney-General told the Government that the interpretation they sought to place upon the law was bad, that, if it went to the Supreme Court, the matter would be decided in favour of British Indians. If, therefore, British Indians have not been sent to locations and are free to trade anywhere they like, and to live where they like—as I say, it is because it is notwithstanding the intentions of the Government to the contrary. In every instance, Law 3 of 1885 has been, so far as the Indians are concerned, most strictly interpreted against us, and we have not been allowed advantage of any loopholes that are left in it in our favour. For instance, British Indians are not debarred from owning landed property in "streets, wards, or locations that may be set apart" by the Government. The Government have resolutely declined to consider the words "streets and wards," and have simply clung to the word locations, and these locations, too, have been established miles away. We have pleaded hard, saying that the Government have the power to give us the right to ownership of land in streets and wards, that they should make use of that power in our favour, but the plea has been in vain. Even land which is being used for religious purposes, the Government would not transfer in the names of the trustees, as in Johannesburg, Heidelberg, Pretoria and Potchefstroom, although the mosque premises are good in every respect, from a sanitary standpoint. It is time, we therefore submit, that some relief was granted to us, while new legislation is under consideration.

#### CLASS LEGISLATION

As to the new legislation to replace Law 3 of 1885 the despatch drawn by Sir Arthur Lawley has caused us





a very great deal of pain. It insists on legislation affecting British Indians, or Asiatics, as such. It also insists on the principle of compulsory segregation both of which are in conflict with the repeated assurances given to British Indians. Sir Arthur Lawley, I wish to say with the greatest deference, has allowed himself to be led astray by what he saw in Natal. Natal has been held up as an example of what the Transvaal would be, but the responsible politicians in Natal have always admitted that Indians have been the saving of the Colony. Sir James Hulett stated before the Native Affairs Commission that the Indian, even as a trader, was a desirable citizen, and formed a better link between the white wholesale merchant and the Native. Sir Arthur Lawley had also stated that, even if promises were made to British Indians, they were made in ignorance of the facts as they now are, and therefore it would be a greater duty to break them than to carry them out. With the greatest deference, I venture to submit that this is a wrong view to take of the promises. We are not dealing with promises that were made fifty years ago, though we undoubtedly rely upon the Proclamation of 1858 as our "Magna Charta." That proclamation has been reaffirmed more than once. Viceroy after Viceroy has stated emphatically that it was a promise acted upon. At the Conference of the Colonial Premiers, Mr. Chamberlain laid down the same doctrine and told the Premiers that no legislation affecting British Indians as such would be countenanced by Her late Majesty's Government, that it would be putting an affront quite unnecessarily on millions of the loyal subjects of the crown, and that, therefore, the legislation that was passed could only be of a general character. It was for that





reason that the first Immigration Restriction Act of Australia was vetoed. It was for the same reason that the first Natal Franchise Act was vetoed, and it was for the same reason that the Colony of Natal, after submitting a draft bill applicable to Asiatics as such, had to draft another measure. There are matters, not of years gone by, but of recent years. It cannot be said that there are to-day any new facts that have come to light to change all this. Indeed, even immediately before the war, declarations were made by Ministers that one of the reasons was to protect the rights of British Indians. Lastly, but not least, your Excellency, too, gave expression to similar sentiments on the eve of the war. Though, therefore, the manner in which Sir Arthur Lawley has approached the question is, in our humble opinion, very unjust and inconsistent with the British traditions, we, in order to show that we wish to co-operate with the white colonists, have submitted that, even though no such law existed before, there may now be an Immigration Act after the basis of the Cape or Natal, except that, as to the educational test, the great Indian languages should be recognised and that the already established British Indian merchants should have facilities afforded to them for importing temporarily men whom they may require in their businesses. That will at once do away with the fear of what has been termed an Asiatic invasion. We have also submitted that with reference to trade licences, which have caused so much grumbling, the power should be given to the Local Boards or Town Councils to regulate the issue of any new licence subject to the control of the Supreme Court. All the existing licences should be taken out of the operation of any such statute, because they represent vested interests.





We feel that, if those two measures were passed, and Law 3 of 1885 were repealed, some measure and only some measure of justice would be done to Indians. We submit that we ought to have perfect freedom of owning landed property and of living where we like under the general municipal regulations as to sanitation and appearance of buildings, and during the time that the legislation is being formed, the Peace Preservation Ordinance should be regulated in accordance with the spirit of such regulation, and liberal interpretation should be placed upon Law 3 of 1885. It seems to me to be foreign to the nature of the British Constitution as I have been taught from my childhood, and it is difficult for my countrymen to understand that, under the British flag which protects aliens, its own subjects should be debarred from holding a foot of landed property so long as good use is made of it. Under the conditions, therefore, submitted by the Association, it ought to be possible for the Government to free the Statute Book of the Colony from legislation that necessarily insults British Indians. I do not wish to touch on such questions as footpath regulations, when we have to consider the question of bread and butter and life and death. What we want is not political power; but we do wish to live side by side with other British subjects in peace and amity, and with dignity and self-respect. We, therefore, feel that the moment His Majesty's Government decide so pass legislation differentiating between class and class, there would be an end to that freedom which we have learned to cherish as a priceless heritage of living under the British Crown.





## DEPUTATION TO LORD ELGIN

*The deputation to the Earl of Selborne, High Commissioner in South Africa, having failed in its efforts to obtain redress, the Indians led by Mr. Gandhi organised an agitation in England and succeeded in enlisting the sympathy of many Englishmen in the cause of the South African Indians. An influential Committee with Lord Amphilh as President, Sir M.M. Bhownaggee as Executive Chairman and Mr. Ritch as Secretary, was formed to guard over Indian interests and a deputation from among the leading sympathisers of the cause of British Indians in South Africa was organised to wait on the Earl of Elgin, the Colonial Secretary. The deputation which consisted of Lord Stanley of Alderley, Mr. H. O. Ally, Mr. M. K. Gandhi, Sir Lepel Griffin, 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. Dadabhai Naoroji, Sir M. M. Bhownaggee, K.C.I.E., Mr. Amir Ali, Mr. Harold Cox, M. P., and Mr. Thornton, C.S.I., waited on Lord Elgin on Thursday, November, 8, 1906, at the Colonial office. Lord Elgin began by saying that his sentiments would all be in favour of doing anything he could for the interest of British Indians. Sir Lepel Griffin having introduced the Delegates in a neat little speech, Mr. Gandhi, as one of the two delegates from South Africa, spoke as follows :*

Both Mr. Ally 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. Ally and myself is very difficult because your Lordship, in reply to the cablegram





sent to you through Lord Selborne, after the great 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 strong 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. Ally 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, 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 it 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 sprang his Bazaar Notice on British Indians, the whole of South Africa rang with the 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 Durban, Mr. Ellis Brown, 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 fee referred to by Mr. Duncan is quite illusory, because all we British Indians resident in the Transvaal, who are obliged to pay £3 under Law 3 of 1885, and those who, under Lord Selborne's promises are likely to be allowed to re-enter the Transvaal, have paid the £3 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 thus 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 sentiment, that is, in connection with the land owned by the late Aboobaker. The 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 the Ordinance for British Indians; and certainly the Indian community can never exchange, for the relief given to the heirs of the land of Aboobaker, 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 legislation is severe enough. I hold in my hands returns from the Court of the Magistrate at Volkerust. 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. Ally, from the Transvaal Government. Your Lordship will see that it is merely a receipt for £3. 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 the 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 Pania case, wherein a poor Indian woman in the company of 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 eleven years was also arrested and sentenced to pay a fine of £30 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 upon itself 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 that 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 6000 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 enter the United Kingdom. There was also the question of 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 thrashed 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.

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### BEFORE THE COURT IN 1907

*Mr. Gandhi's appeal to Lord Elgin and the efforts of the British Committee in London were successful only to the extent of securing from Lord Elgin a declaration that the ordinance would be hung up until the matter had received the consideration of the Transvaal Parliament that was shortly to come into being. A constitutional Government was soon after formed in the Transvaal and the new measure received the Royal Assent and became Law. The Indian Community in Transvaal, seeing that their efforts were all in vain, determined to fight and risk the consequences of disobedience in accordance with the resolution passed at a vast mass meeting of some 3,000 British Indians held at the Empire Theatre, Johannesburg.*

*On the 26th December, 1907, the Royal Assent to the Immigration Act was announced and simultaneously came the news that a number of the leaders of the two Asiatic communities were warned to appear before the Magistrate to show cause why, having failed to apply for registration, as required by the law, they should not be ordered to leave the Transvaal. They were directed to leave the Colony*





*within a given period, and failing to do so, they were sentenced to simple imprisonment for two months. Mr. Gandhi was one of those arrested and brought to trial.*

*In Christmas week of 1907 Mr. Gandhi received a telephone message from Mr. H. F. D. Papenfus, Acting Commissioner of Police for the Transvaal, asking him to call at Marlborough House. Upon arriving there, he was informed that the arrests had been ordered of himself and 25 others.*

*The following account of the proceedings in Court is taken from the "Indian Opinion."*

Mr. Gandhi gave his word that all would appear before the respective magistrates at 10 A.M. next day and the Commissioner accepted this guarantee. Next morning when he attended at the B. Criminal Court he was asked by the Superintendent whether he held duly issued registration certificates under law 2 of 1907, and upon receiving replies in the negative, he was promptly arrested and charged under section 8 sub-section 2 of Act 2 of 1907, in that he was in the Transvaal without a registration certificate issued under the act. The Court was crowded to excess, and it seemed as if, at one time, the barrier would be overthrown.

Mr. D. J. Shurman prosecuted on behalf of the Crown.

Mr. Gandhi pleaded guilty.

Sup. Vernon gave evidence as to the arrest.

Mr. Gandhi asked no questions, but went into the box prepared to make a statement. He said what he was about to state was not evidence but he hoped the Court would grant him indulgence to make a short explanation





seeing that he was an officer of that Court. He wished to say why he had not submitted to this.

Mr. Jordan (Magistrate) : I don't think that has anything to do with it. The law is there, and you have disobeyed it. I do not want any political speeches made.

Mr. Gandhi ; I do not want to make any political speeches.

Mr. Jordan : The question is, have you registered or not ? If you have not registered there is an end of the case. If you have any explanation to offer as regards the order I am going to make that is another story. There is the law, which has been passed by the Transvaal legislature and sanctioned by the Imperial Government. All I have to do and all I can do is to administer that law as it stands.

Mr. Gandhi : I do not wish to give any evidence in extenuation and I know that legally I cannot give evidence at all.

Mr. Jordan : All I have to deal with is legal evidence. What you want to say, I suppose, is that you do not approve of the law and you conscientiously resist it.

Mr. Gandhi : That is perfectly true.

Mr. Jordan : I will take the evidence if you say you conscientiously object.

Mr. Gandhi was proceeding to state when he came to the Transvaal and the fact that he was Secretary to the British Indian Association when Mr. Jordan said he did not see how that affected the case.

Mr. Gandhi : I said that before and I simply asked the indulgence of the Court for five minutes.

Mr. Jordan : I don't think this is a case in which the Court should grant any indulgence ; you have defied the law.





Mr. Gandhi: Very well, sir, then I have nothing more to say.

The Magistrate then ordered Mr. Gandhi to leave the country in 48 hours.

*On the 11th January 1908 Mr. Gandhi appeared before the Court, and he pleaded guilty to the charge of disobeying the order of the Court to leave the Colony within 48 hours.*

Mr. Gandhi asked leave to make a short statement and having obtained it, he said he thought there should be distinction made between his case and those who were to follow. He had just received a message from Pretoria stating that his compatriots had been tried there and had been sentenced to three months' imprisonment with hard labour, and they had been fined a heavy amount in lieu of payment of which they would receive a further period of three months' hard labour. If these men had committed an offence, he had committed a greater offence, and he asked the magistrate to impose upon him the heaviest penalty.

Mr. Jordan: You asked for the heaviest penalty which the law authorised?

Mr. Gandhi: Yes, Sir.

Mr. Jordan: I must say I do not feel inclined to accede to your request of passing the heaviest sentence which is six months' hard labour with a fine of £500. That appears to me to be totally out of proportion to the offence which you have committed. The offence practically is contempt of Court in having disobeyed the order of December, 28, 1907. This is more or less a political offence, and if it had not been for the political defiance set to the law, I should have thought it my duty to pass the lowest sentence which I am authorised by the act.





Under the circumstance, I think a fair sentence to meet the case would be two months' imprisonment without hard labour.

Mr. Gandhi was then removed in custody.

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### ATTITUDE TOWARDS THE ASSAILANTS.

*As licences to trade or to hawk were refused without the production of the new registration certificates many men were sentenced to imprisonment for hawking without a licence, until the Johannesburg gaol was uncomfortably crowded. Realising that there was no sign of the passive resistance movement breaking down and impressed by the determination of the Asiatic communities, as well as the increasing pressure of public opinion not only in England and India, but also in South Africa and the Transvaal itself, General Smuts decided to try a truce, and accordingly invited negotiations from the imprisoned Indian leaders. As a result of these negotiations, General Smuts suspended the operation of the Act, and agreed to accept voluntary re-registration promising at the same time to introduce repealing legislation in the next Session of Parliament, provided that voluntary re-registration had been satisfactorily effected. True to his promise, Mr. Gandhi took to voluntary re-registration and began advising his countrymen to do so.*

*One morning in February, 1908, when Mr. Gandhi set out to fulfil his pledge to the Transvaal Government that he would undertake voluntary registration, he was attacked by a small section of the Passive Resisters who imagined that Mr. Gandhi was playing the coward and betraying his trust. Though bleeding profusely he refused to seek*





*police protection against his own countrymen and would not permit the Doctor to stitch up his face before completing the form of application for voluntary registration. That same day, though tossing with fever, he issued the following manifesto from his sick bed :—*

Those who have committed the act did not know what they were doing. They thought that I was doing what was wrong. They have had their redress in the only manner they know. I, therefore, request that no steps be taken against them.

Seeing that the assault was committed by a Mahomedan or Mahomedans, the Hindus might probably feel hurt. If so, they would put themselves in the wrong before the world and their Maker. Rather let the blood spilt to-day cement the two communities indissolubly—such is my heartfelt prayer. May God grant it! . . . . The spirit of passive resistance rightly understood should make the people fear none and nothing but God—no cowardly fear, therefore, should deter the vast majority of sober-minded Indians from doing their duty. The promise of repeal of the Act, against voluntary registration, having been given, it is the sacred duty of every true Indian to help the Government and the Colony to the uttermost.





## THE ISSUE AT STAKE

*Undisturbed in any way by the murderous attack on him Mr. Gandhi was able to secure the voluntary re-registration of his countrymen by the middle of May, 1908. It was now time for Genl. Smuts to carry out his promise to repeal the obnoxious act. It was clear, however, Genl. Smuts was determined to depart from his promise and to "break faith." Immediate protests were made by both the British Indian and Chinese leaders to General Smuts, who, however, failed to satisfy them, constantly evading the issue. Finally he invited Mr. Gandhi to discuss the difficulty with him, and at the interview produced a Draft Bill to repeal the Act on condition that Mr. Gandhi, on behalf of the British Indian community, would consent to regard certain classes of Indians as prohibited emigrants, including even those who could pass the most severe education test of the Immigration Act. Recognising at once that General Smuts' intention was to substitute for one piece of insulting legislation an even more humiliating law, Mr. Gandhi indignantly refused to contemplate the suggestion and negotiations were abruptly broken off. The agitation was in full swing; the jails became crowded as usual; a deputation was sent to England to explain to the British public how General Smuts had broken faith and was playing with the liberty and the conscience of the Indian community. The following statement issued by Mr. Gandhi and Mr. Haji Habib on the 5th Nov. 1909 in London gives an account of the abortive negotiation made in England by Mr. Gandhi and the British Committee there for redressing the wrongs of the Transvaal Indians:—*





The Transvaal British Indian Deputation arrived in London on the 10th day of July last. The enclosed statement of the British Indian case in that Colony was prepared immediately after the arrival in London of that Deputation, but it was not issued as delicate negotiations with a view to arriving at a quiet settlement were in progress. We have now learnt that these have proved abortive and that the position remains unchanged. It has, therefore, become necessary for us to inform the public as to how the matter stands and what the struggle of the British Indians in the Transvaal means.

The ex-Colonial Secretary of the Transvaal, during its administration as a Crown Colony, writing in a magazine in South Africa in the month of February last, thus correctly summed up the question :

"The position of the Indian leaders is that they will tolerate no law which does not put them on an equality with Europeans in regard to restriction on immigration. They are willing to see the number of Asiatics limited by administrative action..... They insist on equality in the terms of the law itself.

That is still the position.

Mr. Smuts, the present Colonial Secretary of the Transvaal, offers to repeal the Registration Law around which the struggle has been raging for the last three years, and to concede to a limited number of British Indians, other than former residents of the Transvaal, certificates of permanent residence. Were the object aimed at by the British Indians the admission into the Colony of a few more of their brethren, this concession would be material, but the object they have had in view in agitating for the repeal of the Law being to secure legal or theoretical equality in respect of immigration, their purpose is by the proposed maintenance of the legal disability not advanced a step. We are not aware whether the above





modification of the present law proposed by Mr. Smuts will take place irrespective of the continuance of the passive resistance at present being offered by the British Indians of the Transvaal, but we are in a position to state that the proposed concession will not satisfy passive resisters. The struggle of the Indian community of that Colony was undertaken in order to obtain the removal of the stigma cast upon the whole of India by this legislation, which imports a racial and colour bar into the Immigration Laws of a British Colony for the first time in the history of Colonial legislation. The principle so laid down that British Indians may not enter the Transvaal because they are British Indians is a radical departure from traditional policy, is un-British and intolerable, and if that principle is accepted even tacitly by British Indians, we consider that they will be untrue to themselves, to the land of their birth, and to the Empire to which they belong. Nor is it the passive resisters in the Transvaal who, in a matter of this kind, have alone to be considered. The whole of India is now awakened to a sense of the insult that the Transvaal legislation offers to her, and we feel that the people here, at the heart of the Empire, cannot remain unmoved by this departure, so unprecedented and so vital, from Imperial traditions. Mr. Smuts' proposal brings out the issue in the clearest manner possible. If we were fighting not for a principle but for loaves and fishes, he would be prepared to throw them at us in the shape of residential permits for the small number of cultured British Indians that may be required for our wants, but because we insist upon the removal of the implied racial taint from the legislation of the Colony, he is not prepared to yield an inch. He would give us the husk without the kernel. He declines to





remove the badge of inferiority, but is ready to change the present rough looking symbol for a nicely polished one. British Indians, however, decline to be deluded. They may yield everything, occupy any position, but the badge must be removed first. We, therefore, trust that the public will not be misled by the specious concessions that are being offered, into the belief that British Indians, because they do not accept them, are unreasonable in their demands, that they are uncompromising, and that, therefore, they do not deserve the sympathy and support of a common sense and practical public. In the final reply received by us from Lord Crewe the following is the position that is taken up:

His Lordship explained to you that Mr. Smuts was unable to accept the claim that Asiatics should be placed in a position of equality with Europeans in respect of right of entry or otherwise.

Herein lies the crux. Legal equality in respect of the right of entry, even though never a man does enter, is what British Indians have been fighting for, and according to the reports we have received from the Transvaal, is what some of them, at least, will die for. The only possible justification for holding together the different communities of the Empire under the same sovereignty is the fact of elementary equality, and it is because the Transvaal legislation cuts at the very root of this principle that British Indians have offered a stubborn resistance.

It would be contrary to fact to argue that no relief can be had in this matter because the Transvaal is a Self-Governing Colony, and because now South Africa has got its Union. The difficulty of the situation is due to a mistake committed at the centre of the Empire. The Imperial Government are party to the crime against the Imperial Constitution. They sanctioned when they need





not have, and when it was their duty not to have sanctioned the legislation in question. They are now undoubtedly most anxious to settle this troublesome matter. Lord Crewe has endeavoured to bring about a satisfactory result, but he is too late. Mr. Smuts, perhaps, very properly has reminded his Lordship of the fact that the legislation in question had received Imperial sanction, and that he should or could now be called upon to retrace his steps, because the British Indians in the Transvaal had undertaken to disregard the legislation, and to suffer the penalties of such disregard. His position as a politician and as an aspirant to high office "in a white South Africa" is unquestionable, but neither the British public nor the Indian public are interested in his position nor are they party to this crime of the Imperial Government.

We may add that, during the last four months, arrests and imprisonments have gone on unabated. The leaders of the community continue to go to prison. The severity of the prison regulations is maintained. The Prison diet has been altered for the worse. Prominent medical men of Johannesburg have certified that the present dietary scale for Indian prisoners is deficient. The authorities, unlike their action during last year, have ignored the religious scruples of Mahomedan prisoners, and have refused to give facilities for observing the sacred annual fast which millions of Mahomedans scrupulously undergo from year to year. Sixty passive resisters recently came out of the Pretoria gaol emaciated and weak. Their message to us is that, starved as they were, they are ready to be re-arrested as soon as the Government wish to lay their hands on them. The acting Chairman of the British Indian Association has





only just been arrested and sentenced to be imprisoned for three months with hard labour. This is his third term. He is a Mahomedan. A brave Parsee, a well-educated man, was deported to Natal. He re-entered and is now undergoing six months' imprisonment with hard labour. He is in gaol for the fifth time. A young Indian, an ex-Volunteer Sergeant, has also gone to gaol for the third time on the same terms as the Parsee. Wives of imprisoned British Indians and their children either take up baskets of fruit, hawk about and earn their living in order to support themselves, or are being supported from contributions. Mr. Smuts, when he re-embarked for South Africa, said that he had arrived at an understanding with Lord Crewe that would satisfy the large body of British Indians who were heartily sick of the agitation. His prophecy has been totally disproved by what has happened since.

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## THE MARRIAGE QUESTION

*The £3 tax was not the only disability of South African Indians. Among the various legal disabilities to which Indians were subjected, the most galling was the one concerning the introduction of the plural wives of Asiatics into the Transvaal. The law involved great hardship on the Muslims in particular. Mr. Gandhi urged on the Minister "not for a general recognition of polygamy", but contended "that, in continuation of the practice hitherto followed, existing plural wives of domiciled residents should be allowed to enter." On this question the following correspondence between Mr. Gandhi and Mr. E. M. Gorges took place in September, 1913. In reply to Mr. Gorges' letter, Mr. Gandhi wrote on 22nd September:—*





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 Parliament during its next session to legalise monogamous marriages already solemnised or hereafter to be solemnised 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 their legal status. The admission is to be restricted only to plural wives already married to Indians who may be found to be 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 though it might have covered 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.

Pray always consider me to be one 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.

*To this Mr. Gorges replied that the minister after full consideration had asked him to say that it would*





*not be possible for him to give any assurance that legislation on the lines indicated by him would be introduced at the next session. Mr. Gandhi thereupon replied on 28th September:—*

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 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 tax on completion of their indenture to strike work until the tax is withdrawn. I feel that, in view of Lord Amphill'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 re-consider his decision on the points already submitted and on the question of the £3 tax, and, whether this letter is favourably considered or not, may I anticipate the assurance that it will in no wise be taken to be a threat?

(Sd.) M. K. GANDHI.





## BEFORE THE COURT IN 1913

While Mr. Gandhi was leading a deputation to England, another deputation led by Mr. Polak came to India to press the question of the repeal of the £3 tax. Then followed an agitation in England and India in 1910-1912 which compelled attention of the authorities. Mr. Gokhale subsequently visited South Africa and made special representations to the Union Ministers on this particular question and a definite undertaking was given to him that the tax would be repealed. For a time it appeared that settlement was possible. But General Smuts again evaded and the tension became more when in 1913 a measure was introduced into the Union Parliament exempting women only from its operation. Mr. Gandhi wired to Mr. Gokhale asking whether the promise of repeal was limited to women only. Mr. Gokhale replied that it applied to all who were affected by the tax. Mr. Gandhi reminded the Union Government of the promise and asked for a definite undertaking to repeal it in 1914. The Union Government declined. It was then that Mr. Gandhi organised the great movement advising indentured Indians to suspend work till the tax was repealed. Under his lead the Indian labourers gathered in thousands and they passed mine after mine adding to their numbers. Then commenced the historic March into the Transvaal allowing themselves to be freely arrested. The Government hoping to demoralise the Indians issued a warrant to arrest Mr. Gandhi.

Mr. Gandhi, was, on the 11th November, 1913, charged on three counts, before the Resident Magistrate, Mr. J. W. Cross, of Dundee, with inducing indentured immigrants to leave the Province. The Court was crowded with Indians





and Europeans. Mr. W. Daizell-Turnbull was specially instructed by the Attorney-General to appear for the prosecution, and Mr. Advocate J. W. Godfrey appeared for Mr. Gandhi. Mr. Gandhi pleaded guilty to the charges.

Mr. Turnbull read the section and left the matter in the hands of the Magistrate.

Mr. Godfrey stated that he was under an obligation to the defendant not to plead in mitigation in any way whatsoever. The circumstances which had brought Mr. Gandhi before the Magistrate were well known to all persons, and he was only expressing the desire of the defendant when he stated that the Magistrate had a duty to perform, and that he was expected to perform that duty fearlessly, and should therefore not hesitate to impose the highest sentence upon the prisoner if he felt that the circumstances in the case justified it.

Mr. Gandhi obtained the permission of the Court, and made the following statement:—

As a member of the profession, and being an old resident of Natal, he thought that, in justice to himself and the public, he should state that the counts against him were of such a nature that he took the responsibility imposed upon him, for he believed that the demonstration for which these people were taken out of the Colony was one for a worthy object. He felt that he should say that he had nothing against the employers, and regretted that in this campaign serious losses were being caused to them. He appealed to the employers also, and he felt that the tax was one which was heavily weighing down his countrymen, and should be removed. He also felt that he was in honour bound, in view of the position of things between Mr. Smuts and Professor



Gokhale, to produce a striking demonstration. He was aware of the miseries caused to the women and babes in arms. On the whole, he felt he had not gone beyond the principles and honour of the profession of which he was a member. He felt that he had only done his duty in advising his countrymen, and it was his duty to advise them again, that, until the tax were removed, to leave work and subsist upon rations obtained by charity. He was certain that without suffering it was not possible for them to get their grievance remedied.

*The Magistrate finally in pronouncing sentence said :—*

*It was a painful duty to pass a sentence upon the conduct of a gentleman like Mr. Gandhi, upon the deliberate contravention of the law, but he had a duty to perform, and Mr. Godfrey, his counsel, had asked him fearlessly to perform that duty. The accused having pleaded guilty, he (the Magistrate) accepted that plea, and passed the following sentences :—Count 1, £20, or three months' imprisonment, with hard labour : Count 2, £20, or three months' imprisonment, with hard labour, to take effect upon the expiration of the sentence in respect to count 1 ; Count 3, £20 or three months' imprisonment, with hard labour, this to take effect upon the expiration of the sentence imposed in count 2.*

*Mr. Gandhi, in a clear and calm voice, said :—" I elect to go to gaol."*

*His counsel visited him later, and, through him, desired it to be stated that he was cheerful and confident, and sent as his message to the strikers the following :—*

*" No cessation of the strike without the repeal of the £3 tax. The Government, having imprisoned me, can gracefully make a declaration regarding the repeal."*





## THE SOLOMON COMMISSION.

*While Mr. Gandhi and his compatriots were suffering in jail, his countrymen in India, under the guidance of Mr. Gokhale, continued to render all possible assistance to keep up the firm attitude of the South African Indians. Money was raised in thousands for the help of the distressed in South Africa. And in December, 1913, Lord Hardinge's famous speech in Madras opened the eyes of the Imperial Government to the gravity of the situation created by the Union Government. Soon after a Royal Commission to enquire into the condition of Indians in South Africa was appointed. In view of the forthcoming Commission's enquiry, Mr. Gandhi and his colleagues were released from prison. Soon after release Mr. Gandhi made the following statement :--*

We were discharged unconditionally on the 18th instant, on the recommendation of the Commission. We were not told at the time of our relief why we were being relieved. It is not true that after relief we went to Pretoria to see the Ministers. Knowing as we do the feelings of Mr. Esselen, and Colonel Wylie towards Indians, it is impossible for us not to feel strongly that the Commission has not been appointed to give us fair-play, but it is a packed body and intended to hoodwink the Government and the public both in England and in India. The Chairman's integrity and impartiality is undoubted, but Mr. Esselen and Colonel Wylie are well known and admitted generally to be amongst the strongest and most violent opponents of Indians in South Africa. Mr. Esselen has emphatically declared from the public platform on many occasions extreme anti-Asiatic views and is so intimately related politically to the Union





Ministers that he is regarded here practically as a non-official member of the Ministry. Only recently he expressed himself, privately, most offensively about the Indians to a member of the Union Parliament, named Mr. Meyer, who has publicly protested against his appointment. Colonel Wylie has been our bitterest opponent in Natal for more than twenty years. So far back as 1896 he led a mob to demonstrate against the landing of Indians who had arrived at Durban in two vessels, advocated at a public meeting the sinking of the ships with all Indians on board and commending a remark made by another speaker that he would willingly put down one month's pay for one shot at the Indians and asked how many were prepared to put down similarly a month's pay on those terms; and he has consistently been our enemy all these years. Moreover, he is Colonel of the Defence Force whose acts are the subject of inquiry and he is also the Legal Adviser of many estate owners and during the present agitation he has openly said that the £ 3 tax ought not to be repealed.

The Commission is not merely judicial but also political, investigating not only the facts as to ill-treatment, but also recommending a policy for the future, and it is impossible that the Chairman will control the views of his colleagues in matters of policy. The appointment of Messrs. Esselen and Wylie to investigate our grievances and to stigmatise our protests against their appointment as an unwarranted reflection on their impartiality is to add insult to injury. Almost the entire South African Press admits the reasonableness of our suggestions as to the additional members. Ministers of religion and other European friends are working to remove the present deadlock and secure us fair-play. We would be





prepared to lead evidence before Sir William Solomon alone if it was a question merely of enquiring into the charges of flogging, acts of military and other ill-treatment, but this inquiry includes an examination of grievances also. Before our release, public meetings had been held at all Indian centres throughout South Africa protesting strongly against the personnel of the Commission and urging the appointment of Mr. Schreiner and Judge Rose-Innes to counterbalance Messrs. Esselen and Wylie. Immediately on our release, as soon as we took the situation in, we addressed a letter to the Ministry asking for these additions to the Commission. Objection has been taken to the form in which this request was put forward by us, but we are confronted with a terrible crisis and it is not easy always to weigh carefully the niceties of form at such a juncture. The Indian position has always been to insist on the community being consulted at least informally regarding matters vitally affecting it since it is voteless.

In the constitution of the present Commission, Indian sentiment not only was not consulted but was contemptuously trampled on. During the recent deadlock in connection with the European railwaymen's grievances, the men were permitted to choose their nominees by a referendum. We merely asked for informal consultation when we were released.

We found that the indignation of our countrymen was at white heat owing to floggings which had been seen with their own eyes, shooting which they believed to be unjustified and other acts of ill-treatment, and this indignation was further intensified by the harrowing accounts of prison treatment which the passive resisters including ladies who were released at this time on the expiry