

THE INDIAN QUESTION IN SOUTH AFRICA.

1900 - 1914.

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## PREFACE.

It is necessary to make some explanatory remarks as to the treatment that follows hereafter of the South African Indian question.

Firstly I have not considered it incumbent on me to deliver any moral judgments, and have accordingly aimed at a bare presentation of the position of the South African Indian in law from 1900 to 1914, and, as far as possible, his position in the eyes of the European, without expressing any opinion on the ethical aspect of the case.

Secondly, with regard to material, lack of time has prevented the use of newspapers over so long a period and so extended an area; consequently I have relied on the various legislatures as representative of public opinion, as such legislatures profess to be. The Imperial Hansard I have not used, as it was not opinion in England that affected the position in South Africa so much as the expression of that opinion through the Imperial Government, which is clearly set forth in the correspondence in the Imperial Bluebooks. With regard to the position in Natal at the beginning of my period, the speeches of Escombe in introducing the principal bills dealing with Asiatics have been taken as sufficient indication of the motives of the government of the day.

Thirdly what may seem an undue attention has been paid to the position before 1900; this has been necessitated by the fact that History is only divided into periods such as this for purposes of convenience. These servants of History must not be allowed to become its masters; the Indian question did not spring suddenly into being in 1900, and cannot be treated as such, especially in view of the fact that the legal position remained for some years after to a great extent what it was before.

Fourthly, as regards the method of presentation of the subject, the chronological method has necessarily been adopted, history being primarily the telling of a story; at the same time I have thought it advisable for the sake of clearness to treat of the development of the several aspects of the question separately and in each Province, these aspects being immigration and trading, political and municipal franchise, social position, and other facts of the internal situation.

According to this scheme I have first dealt with the position in Natal circa 1900, then the position in the Transvaal at that time and its development up to the Union of the Provinces in 1910, and then, after bringing the situation up to date in Natal and discussing the Orange Free State and the Cape Province at this time as shortly as possible to round off the South African situation, have treated the South African question as a whole up to the settlement in 1914.

The choice of Natal as a starting-point is not purely arbitrary; it has the following advantages. In the treatment of the position of any particular class of person a factor that must often be considered is its size. Certainly it was so with the Indian question in South Africa, causing the question of immigration to loom so large. Now it was Natal that made the most important contribution to this factor; it follows that in order to give it its due meed of attention it is advisable to first examine the situation in Natal round about 1900 before dealing with the storm-centre, the Transvaal, where the dramatic character of the struggle of a comparatively small number of people tends to grip the imagination to the exclusion of more permanent factors. The danger otherwise is that the passive resistance struggle might be regarded as synonymous with the Indian question instead of as a striking presentation of it. Another danger is that it may be thought that each Colony after the Anglo-Boer War treated the Indian situation entirely according

/to its...



to its local conditions and local opinion. If the Colonies are treated separately here for purposes of convenience, it must not be attributed to lack of appreciation of this point, that though the Colonies were governed separately mere contiguity served to direct the attention of each to the situation elsewhere, and that such a tendency was reenforced by the growing realisation that their destinies were bound up together, and the setting up of the ideal of a great united white South African nation.

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NATAL up to 1900

To deal then with Natal in 1900. Chiefly responsible for the considerable size of the Indian population was the system of Indian indentured immigration. *What?*

When they were first introduced in 1860, and for some 25 or more years after, the indentured immigrants were welcomed with open arms as the saving of the country, as a reliable supply of labour was urgently needed in the sugar plantations in place of the native who would only work six months in the year. The Indian Government had stopped the supply from 1866 to 1874, but thereafter acquiesced in it, especially as all the laws regulating the system were submitted to and approved of by them either before passing or after, the system depending entirely on their co-operation; these laws were consolidated in 1891 by Act 25 of that year. All this time the labourers at the end of their period of indenture were entitled to either a return passage to India or to remain in the country, and in the Act of 1891 a clause requiring them to reside another five years in Natal after completing their term of five years if they wished to retain their claim to a free return passage to India (Section 92), was proof of their usefulness.

But a feeling had begun to grow up in Natal that the number of Indians permanently resident in the country was growing too great. The first sign of this was a change in the attitude of the State towards their introduction. In 1874, Law 20 of that year, an Indian Immigration Trust Board had been established consisting of a Government official the Protector of Indian Immigrants with two (a number a few years later increased to four) other members nominated by the Crown, to superintend the introduction and allocation of the labourers. To the costs of this /introduction ....

<sup>1</sup> Od 7265 p.24.

introduction the General Revenue of the Colony made an annual contribution not exceeding £10,000, any extra expense being met by the employers; this sum proportionate to the moneys paid by the introducers of the labour the Government was not only authorised but required to pay by Section 9 of the Law of 1874 (No 20).<sup>1</sup> In May 1894 Harry Escombe, the leading figure of the day in the Natal political world, was successful in discontinuing this compulsory expenditure of public money on behalf of private enterprise by the Indian Immigration Trust Board Bill, No 23 of that year, after previous unsuccessful efforts in the old Legislative Council, notably in January 1891.<sup>2</sup>

As result of this it was considered that as the employers would now be bearing the expense, a nominated Government Board was an anomaly and in the following year it was made elective by the employers, the Protector being removed, his office becoming a Government Department.<sup>3</sup> The attitude now was that the right to fetch labour from where they liked should not be denied the employers, but that they must expect no help from the Government.

At the same time that it was thus felt that even if such immigration should not be discouraged by the Government, it should at least not be encouraged, it was also felt that such labour as did come should return to India immediately on completing their last term of indenture. At the end of 1893 a deputation of two went over to India to try to come to some such an arrangement with the Indian Government. The verbal reply to their written proposals was that there would be no objection to such condition being inserted in the contract, provided that failure to fulfil this condition should not constitute a criminal offence. In view of this last condition the delegates suggested a residence tax on those not fulfilling the contract, and as the Indian Government raised no objections, Act 17 of 1895 was passed imposing an annual tax of £3 on those Indians who failed to

/reindenture ....

2' Escombe: "Speeches" p 190ff, p. 263-5.

1. N.L.A 39 p 2

3. Ibid. p2

reindenture or return to India at the end of their term at the expense of the Board, as they would in future promise to do in their contracts.<sup>1</sup>

Thus the condition in 1900 with regard to indentured immigration was that it had been realised, and recognised in legislation, that the system was having a harmful result in increasing the size of the resident Indian population, and that a measure had been passed which would shortly come into operation. In this case the objection could not have been wholly, or even chiefly an economic one; it must have partly at least an objection to the Indian as Indian, by some possibly as part of a general colour prejudice, by others on the rational grounds that the growth of a large body of people with a different standard of civilisation to the European would be detrimental to the interests of European civilisation.

For it was somewhat doubtful as to how far the ex-indentured Indian did compete with the European. They were engaged chiefly in small farming and market-gardening, and a commission in 1886 had had evidence tendered to the effect that there was very little competition; Escombe had stressed the want of facts in 1890 and suggested a Commission to look into the matter, but in vain. It was certainly generally acknowledged that the great bulk of the Indian traders were not ex-indentured Indians but of the class known as "Arabs," but it was held that these traders had followed in the wake of the labourers and increased proportionately with an increase in the number of labourers.<sup>2</sup>

As to the need for the restriction of free Indian immigrants of the trading class there was no difference of opinion. Towards the end of 1896 two vessels arrived at Durban carrying about six hundred immigrants; in view of the fact that these same vessels had earlier in the year brought a number of free

/immigrants...

<sup>1</sup> Cd 7265 p 25.

<sup>2</sup> Escombe's Speeches p 109, 155 and 264.

immigrants over, the popular imagination conceived of a vast immigration scheme to flood Natal with Indians organised most probably, they thought, by the young Indian lawyer Gandhi, who was returning to Natal on one of these two boats with his wife and children with a view to making a permanent stay in South Africa. While in India he had spoken on Indian disabilities in South Africa at several meetings, and had circulated the lecture on a large scale as a pamphlet; a highly coloured version of the pamphlet cabled by Reuter to England on September 14th had caused great indignation in Natal, so that when he reached Natal on January 4th in the company of a considerable number of Indians the people of Natal girt up their loins and prepared to resist the invasion.<sup>1</sup>

The Government had been considering the passing of an Immigration Restriction Act; on the 15th October the rest of the ministry had sent a telegram to the Prime Minister, who was then in England, saying that five hundred free Indians had arrived that week and that the example of the New South Wales Bill excluding all Asiatics should be followed. On the Prime Minister's return a Bill was drawn up "To Restrict the Immigration of Asiatics into Natal".<sup>2</sup> Meanwhile after an extension of the period of quarantine, the Indians on the "Courland" and the "Nader" had, in the absence of any law to the contrary, to be allowed to land on the 13th January, and the demonstration organised by the Europeans down at the Point fizzled out in the face of the firm though sympathetic attitude of the Government and the assurance that legislation would be passed in the forthcoming session. With the Government of India an agreement was reached that further emigration from India for Natal by the class just landed should be discouraged by the Indian Government pending action by the Natal Legislature, and with the exception of one ship with forty Indians there was no such immigration to Natal in the interval.<sup>3</sup>

<sup>1</sup> Doke pp 40-41, 50  
<sup>3</sup> Ibid pp 329-335.

/The....  
<sup>2</sup> Escombe's Speeches p 324, 326, 328.

The Bill that was eventually passed in 1897 differed materially in form, though not in aim, from the one projected by the Government and clamoured for by the Natalians. The chief reason for this was the nature of the reception the New South Wales Bill had received; it had been reserved since 23rd November and would almost certainly remain in this position until the meeting of Colonial Prime Ministers summoned by Chamberlain discussed Asiatic immigration. To pass a similar law would necessitate a constitutional struggle lasting two or three years, which could only succeed with the help of all South Africa "at a time when it was not easy to secure unanimity of opinion in South Africa on any subject", and most probably the aid of the other Colonies as well. Such object could only be attained by the forcing of their opinions not only on the Imperial but also on the Indian Governments, which had always acted towards them in a friendly way and a rupture with whom would most probably result in the stopping of further indentured labour contrary to the general desire of the Colony (as expressed at the last general election) that the introduction of indentured labour should proceed unhindered so that the wealth of the land might be opened up "for the benefit of the world", to which effect the Government had given pledges.'

If they could accomplish their object equally well, as the Government of Natal believed they could, by an Act not open to the objection that it made the task of the Indian Government difficult by an express slight on the people of India, such Act would be sure of passing. Hence the Immigration Restriction Act of 1897 based on the American Act in prescribing a language or education, S3(a), test but going further in making that language a European language only, a general Act though aimed avowedly at the exclusion of Asiatics."

The only objections levelled against the Bill by the European population were against its method not its aim, firstly  
/that ...

' Escombe's Speeches p 335.

" Ibid pp 327-8.

that it was un-English not to say what you meant, secondly that it would place unnecessary restrictions on English immigrants, the reply being that it was the only way, and that it would not be used to the disadvantage of European immigrants.

In deciding to restrict further free immigration the Government had several considerations in mind. Firstly there was the danger of the new arrivals, largely deck-passengers at £2 or so for the passage, swamping the European population by a competition in trade and agriculture that could not be met, owing to the difference from the European in their habits of life.<sup>1</sup> Another was the danger to the health of the Colony from an influx from a country that was being ravaged by plague, especially in the Bombay Presidency, during the latter half of 1896 and the beginning of 1897.

A third consideration of more weight with regard to the future of the country was the danger "of the whole Social polity of the country being disturbed," and the government being made more difficult than it was. When the Natal political leaders had taken over Responsible Government in 1893 they had realised the responsibility they were incurring in taking over the government not only of a European population of about 50,000 but also of a large unfranchised population of roughly 500,000 together with Indians roughly equal in number to the Europeans; that responsibility was quite great enough, without being added to."

That the franchise was to be purely for Europeans was finally decided that same year, 1897. The Government on taking up office as the first responsible ministry had felt that the responsible system could only be worked on the basis of "pure" franchise, and that the only question was how it was to be achieved."<sup>2</sup> Early in 1894 a Bill was introduced specifically disqualifying for the franchise all Indians except those already in possession of it on an equal footing with Europeans on basis of ownership of immovable property to the value of £50 or payment

/of...

<sup>1</sup> Escombe's Speeches p 325

<sup>2</sup> Ibid pp 324-5

<sup>3</sup> Ibid p 313.

of an annual rent of £10 (Polak)<sup>1</sup>. As the result of representations by the Indians it was disallowed by the Imperial Government, who pointed out that it made no distinction between aliens and British subjects, or between the most ignorant and the most enlightened Indians of the type that were at the moment representing two constituencies in the House of Commons." Consequently the Bill was brought forward in 1896 in an altered form and approved of; Act Number 8 of that year disqualified persons of non-European origin who were natives (or descendants of natives) of countries which had not hitherto possessed elective representative institutions founded on the parliamentary franchise, unless they obtained an order of exemption from the Governor-in-Council or unless they were already registered voters.

The Indians were never to claim political rights; almost the sole importance of this legislation lay in the fact that it in its first form gave occasion to the first organised opposition in Natal certainly, and most probably in South Africa, to legislation as containing a racial taint. The Bill in its general form remained, but the matter had aroused a new feeling of consciousness among the Indians, to consolidate which the temporary Committee that had been formed to represent the Indians on this matter was on Gandhi's advice replaced by a permanent Natal Indian Congress, on the analogy of the Indian National Congress in India but working throughout the year, its members to maintain it by means of subscriptions; Gandhi was to remain in Natal as their adviser, gaining his living by handling the cases of the leading Indians, to which end he obtained admission as an advocate of the Natal Supreme Court, in spite of the opposition, on grounds of colour, by the Law Society."<sup>11</sup>

The second of the considerations of the Government in 1897 as above-mentioned was the economic one of commercial competition. As a further safe-guard there was passed in that

<sup>1</sup> Op. cit. p 60

" Cd 2239 p 6  
of 1904

<sup>11</sup> C.F. Andrews "Mahatma Gandhi at Work" pp 66-72.

/year...



year a Dealers' Licences Act with the object of preventing those Asiatics who might evade the Immigration Law that was being passed at the same time, from obtaining licences; it was also hoped that it would have a deterrent effect on intending immigrants. The Bill, which originated as the result of the petitions of the three principal boroughs of the Colony, took away the right (as a matter of course), of every subject to a licence and placed issue at the discretion of licensing officers appointed in the case of the boroughs by the Municipal Councils, and outside the boroughs by the Colonial Secretary and responsible to him and consequently to the country. Appeal was to lie in the first case to the four Councils, and in the latter case to Licensing Board of the division appointed under the Liquor Act of 1896. The courts were specifically excluded. It was acknowledged that the Bill thus curtailed the liberty of the subject, but this provision was considered absolutely necessary if the Bill was to achieve its object. To the licensing officer was given an absolutely free hand in refusing applications; the granting of a licence, however, was prohibited him in two cases, where the applicant did not keep his books in English and in proper fashion, and where his premises were not in a sanitary condition.

Thus by 1897, by passing these three laws with regard to immigration, franchise and trading, Natal had accepted the principle of omitting reference to a particular race in its legislation, relying on administration of the laws to achieve the desired effect, a policy strongly approved of by Chamberlain at the Colonial Conference of that year, where he urged the other self-governing Colonies to follow Natal's example, particularly with regard to their immigration laws.

Thus in 1900 the position in Natal was briefly as follows. There existed laws capable of administration so as to severely restrict the rights of immigration, trade and political franchise of free Indians, but the numbers of the resident Indian population were steadily increasing as the result of the indenture system

/subject..

subject only to the deterrent of the restriction of such rights, with an annual tax of £3. This position had been conditioned firstly in respect of free Indians by Natal's position as a British Colony, and secondly in respect of indentured and ex-indentured Indians by the absolute dependence of Natal on a continued supply of Indian labour, the first an external circumstance, the second internal.

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TRANSVAAL 1900.

What was the position in the Transvaal at this time? At the end of the Anglo-Boer War, Britain was now (September 1900) about to take over the government as a Crown Colony of the old South African Republic. Under the Republic the position of the Indian in the Transvaal had been regulated by a single law, 3 of 1885 as subsequently amended. This law, passed at the request of the European traders in the Transvaal, dealt specifically with the "native races of Asia, including the so-called Coolies, Arabs, Malays, and Mahomedan subjects of the Turkish Dominion". It provided for the registration, within eight days of their arrival, of all immigrants "for purposes of trade or otherwise" on payment of a fee of £25 (two years later reduced to £3), contravention to be punished by a fine of £10 to £100 or in default fourteen days to six months imprisonment, present settlers to be registered free of charge; prohibited all Asiatics from owning fixed property (later amended to "except in such streets, wards and locations as the Government should appoint for sanitary purposes as their residence"); gave the Government the right to appoint certain streets, wards and locations for the Asiatics to live in (S2(d)); and withheld from them all rights of citizenship such as the franchise. As most of the Indian traders were British subjects the British Government claimed the law contravened the terms of the London Convention of 1884, by Article 14 of which British subjects other than natives conforming themselves to <sup>the</sup> laws of SAR would have full liberty to enter, travel or reside in ~~the~~ SAR, to hire or possess houses, factories, shops, and to carry on commerce either in person or through an agent. The dispute was whether "natives" included Asiatics; the Imperial Government were prepared, however, to accept for "sanitary reasons" legislation re residence in locations. Difference of opinion

/then...

' "Laws Relating to Natives and Coolies in the Transvaal" Barber, MacFadyen and Findlay p 92.

then arose as to whether the term "coolie" covered the educated Indian Trader as opposed to the raw field labourer, as the Imperial Government held that though they had virtually agreed to the passing of such a law they had not at the time supposed that it would apply to such a class of Indian.<sup>1</sup> But the point that was to protract the correspondence till up to the outbreak of the War in 1899, was the Transvaal Government's attempt, by a series of Volksraad Resolutions from 1888 onwards, to restrict Asiatic trading to locations under the provisions of the clause re residence<sup>2</sup>; the dispute on this point was referred for arbitration to the Chief Justice of the Orange Free State, Melius de Villiers, who set aside the claims of both sides, with the proviso that the Transvaal Government was bound and entitled to give full force and effect to Law 3 as amended in 1886, subject to exclusive interpretation by the tribunals of the country, the Imperial Government taking this to mean that the case should be judged on its merits by withdrawal of the Resolution of 1893.<sup>3</sup> The Transvaal Government had been sitting on a decision in the Courts in 1888 in the case of Ismael Suliman and Co. where the Chief Justice could make no distinction between places where persons carried on business, and those where they lived, in interpreting the phrase "ter bewoning";<sup>4</sup> in 1898 this decision was confirmed by a majority of two to one in the case of Tajob Khan, Justice Jorissen dissenting and one of the other two only giving such decision because he felt bound by the finding in the Suliman case.<sup>5</sup> The Imperial Government still felt themselves entitled to make representations on behalf of their Indian subjects, and induced the Transvaal to suspend temporarily a notice they had issued ordering all Asiatics to go to locations for residence and trade by January 1st 1899 with an extension of 3-6 months in deserving cases.<sup>6</sup> Finally the breakdown of negotiations with

/regard...

1. Transvaal Green Book No 1 of 194.  
 2. Transvaal Green Book No 2 of 1894  
 6. Cd 2239 pp 8-9. Barber op at p 97.

3. O 7911 pp 29-30  
 4. O 7911 p 37.  
 5. Cd 2239 p 46.

regard to the position of British Indians and Cape coloured persons in the Transvaal over the matter of the treatment of the latter,<sup>1</sup> was followed by the war.

Thus it came about that an independent (or practically independent) country in practice was able to restrict the Indian less severely than a self-governing Colony of the British Empire; while the Colony was not allowed to place a discriminating law on its Statute-book, the Transvaal had the power to pass such a law but was greatly hindered in the enforcing of it, even to the extent of having it put forward by British Statesmen as one of the causes of the War.<sup>2</sup> Not that the attitude of the Imperial Government was the sole reason for the clear fact that the law was not generally enforced as regards trading and locations.<sup>3</sup> To begin with the general administration of laws in the Transvaal left much to be desired; many laws went no further than the Statute-book. That this should have happened in respect of residence in locations is not surprising in view of the fact that there was no sanction to the particular provision in the form of a penalty, but the provision for registration was backed by a heavy fine, and the case here might have been due to the probable attitude of the South African Republic towards the Asiatic trader. The Asiatic would share the general inferiority of the coloured races in the eyes of the Transvaaler, and thus would be withheld political or social equality; as regards trading, however, the European that was affected by his competition was usually not a Transvaaler but an Uitlander of some sort. Thus consideration of the advantages to the people of cheap prices was not likely to be counterbalanced by much consideration for the white trader.<sup>54</sup>

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<sup>1</sup> Od 2239 p 40

<sup>54</sup>Polak op cat p 73

<sup>2</sup>

<sup>3</sup> Polak opcat Ch II p 7; Od 2239 p 8.

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TRANSVAAL 1900 - 1906.

Now the British Government was concerned chiefly with the legal position in the Transvaal in considering what their policy was to be. Accordingly Lord Milner, as part of his reconstruction policy, set a committee to work collecting the laws of the South African Republic with a view to seeing which laws should be retained, if only temporarily, and which scrapped; a section of this work was the laws dealing with natives and with Asiatics, the latter being covered by Law 3 as we have seen .

It was then decided to retain Law 3, and it was to play an important part in the position of the Indian resident in the Transvaal in the succeeding years. But the immediate question to be dealt with was immigration and Law 3 did not deal at all with this (except in so far as it had a deterrent effect) as Asiatics were free to enter if they were prepared to submit to restricted rights; moreover the registration provided no means of identifying the holder beyond his name, being more in the nature of a receipt or licence (especially when the fee was reduced to £3). Accordingly Asiatics were dealt with by a differential application of the permit law under the Peace Preservation Ordinance of 1902 38 of 1902 (amended by Ordinance No.5 of 1903).<sup>1</sup> All entrants in future were to have permits (issued entirely at the discretion of the Governor) except such as were resident in the Transvaal at the end of the War, May 31st 1902. As the Transvaal had long-extended land borders, the ordinance was aimed chiefly at the prevention of continued residence by unauthorised immigrants by arrest and summons before a Magistrate who, if satisfied that the person had no permit, or a fraudulent one, should order at first that such person should leave the Colony within a specified time, and on failure to do so, then imprisonment for a period of up to six months, together with a fine of up to

/£500....

<sup>1</sup> Barber op. cit. pp 92-97.

£500, followed by further imprisonment of from six to twelve months if such person remained more than 7 days after imprisonment. At first the Magistrate was to be instructed by the Colonial Secretary as to whom he should summons; by the later ordinance any policeman could demand production of a permit or proof of exemption, with a summons consequent on failure to do so.

These permits were granted fairly freely to Europeans, but the policy was to give permits only to such Asiatics as could prove bona-fide pre-war residence in the Transvaal i.e. the returning refugees, though permits seem to have been given somewhat freely prior to December 1902 by the military authorities and the Native Affairs Department.<sup>1</sup> After that the issue of permits was entrusted to the Colonial Secretary's Department, and in October 1903 a Permit Department was created under the control of the Inter-Colonial Council with officers at the ports, the Transvaal contributing a certain amount annually to the Council for this service.<sup>2</sup> The above-mentioned policy was rigidly carried out by this Department right through the Crown Colony period. Nevertheless, in spite of the fact that there was thus control at the coast, as immigrants had to obtain permission at the ports before being allowed to pass through the coastal provinces on their way to the Transvaal, public opinion was not satisfied that Asiatics were not slipping in in large numbers and that once they got in they could be ejected again with any ease.<sup>3</sup>

Hence it was that in 1904 it was decided on the advice of Milner to enforce the provisions of Law 3 re registration in respect of all Asiatics, retaining the fee of £3. Those who could show proof that they had paid it to the South African Republic were to be registered free. Milner gave his promise that once a man had registered he would not again be required to do so, and that the registration would establish his right to be in the Transvaal and to come and go there. Thus it would be not only a means of

/checking...

1 T.L.C. IV 298-9  
2 *ibid.* 524-5, 539, Cf 3887 p36

3 Cf 3308 p6  
4

checking unauthorised immigration, but also a protection to Asiatics lawfully resident in the Colony.<sup>1</sup>

The position was that though the permits issued under the Crown Colony Government contained the signature of the holder or, if he were illiterate, his thumb-print, and later on his photograph as well, the old registration certificates of the South African Republic, which were still valid, contained only the name of the holder while the registers were defective too. So it was decided to have a uniform registration of all, so as to finally decide who were genuine pre-war residents.

The Indians while they felt they were not bound by law to take out fresh permits agreed to do so voluntarily to show that they had no desire for the continuance of illicit immigration, and to conciliate public opinion. Practically all the Indians came forward and the re-registration was completed towards the end of 1905.<sup>2</sup>

Thus the permit system was to continue throughout the Crown Colony period. Proposals for its replacement were made at the same time that the position of resident Indians was being discussed, as will appear; the Transvaal Government, however, satisfied that the system worked well enough, felt that the question of an immigration law could well stand over for the moment.

This immigration policy was the outcome of the general attitude of the Imperial Government towards the Transvaal; their occupation was admittedly a temporary one and in consequence they intended to maintain the status quo as far as possible, particularly with regard to natives and Asiatics, until the day when the Transvaal should gain Responsible Government and be able to make any necessary changes of policy unhampered by the results of any policy of the Crown Colony Government.

This attitude was clearly shown in connection with the

/first....

<sup>1</sup> Bruce p7.

<sup>2</sup> Mahatma Gandhi at Work pp/33-4.



first issue that arose, as to the treatment of Asiatic residents, the question of Municipal Franchise in June 1903. By the retention of Law 3 Asiatics would of course be excluded from the political franchise when the time came for the present nominated Legislative Council to be replaced by elective institutions. For the present it was decided to give to the Transvaalers a system of, and training in, local self-government which they had previously wholly lacked. In the system drawn up by the Johannesburg Town Council to replace Milner's nominated Municipal Councils, and approved of by a Municipal Congress in May 1903, the only point the Government disagreed with was the exclusion of coloured British subjects from the municipal franchise;<sup>1</sup> the Government thereupon forced the Municipalities Elections Draft Ordinance through by use of its official majority against the unanimous opposition of the unofficial members, with a municipal franchise for all British subjects, holding that it would not form any sort of a precedent when the political franchise came to be dealt with, as it had no sort of political significance but was of a business nature, being merely an incident of property, and that it was not withheld in the Cape or Natal on grounds of colour only. The grounds for the opposition were that it would prove the thin end of the wedge; that it was a breach, not of the letter, but certainly of the spirit of the provision in the Treaty of Vereeniging that the natives should remain in the same position as in the past, and that the matter should be held in abeyance until a representative form of government were granted (as not only would the Boers object to it as such a breach of faith, but the British were almost entirely opposed to it too); that the coloured man had never asked for the vote (a defect soon remedied by a petition by the British Indians against the clause on the 15th June<sup>2</sup>) and that it was not a matter of closing the door to the coloured man but of declining for the moment to open it to him. ~~But the chief~~ But the chief difference was a matter of standpoint. The

/opponents...

<sup>1</sup> Basil Worsfold "Milner's Reconstruction Policy in the Transvaal" pp 258-60

<sup>2</sup> T.L.C. I.83

opponents of the coloured Franchise replied to the Government view that the Council "must take care that right should be done man and man irrespective of creed, colour or nationality" that they admitted its force as a matter of abstract justice, but did not propose to deal with the abstract merit of the case, as the first law of Nature was self-preservation, and also because the small white community had great obligations to maintain a high standard of civilisation and must, to fulfil these obligations, have full control.<sup>1</sup>

Eventually in Committee the Government allowed the unofficial members to pass their amendment, not through conviction of the strength of their arguments, but because they had decided that in a matter of this kind the opinion of the Colony as represented by the non-official members should not be overridden,<sup>2</sup> in accordance with the policy of treating the Transvaal as a self-governing colony except where a distinct Imperial interest was concerned.<sup>3</sup> Thus in the matter of granting any new rights the wishes of the Colonists were to be respected; as regarded old rights these were to be retained unaltered during the Crown Colony period. As the result of this policy the Imperial Government came to be accused of inconsistency in not immediately removing all restrictions on Indians in the Transvaal and Orange Free State, in view of the fact that it was believed these restrictions had been one of the causes of the War. The position was that before the War the Imperial Government was solely concerned with asserting the treaty rights of its subjects, irrespective of local interests or prejudices, and that now the force of these sentiments was being brought home to them.<sup>4</sup>

But it was not only to the attitude of the Imperial Government just before the War that the Indians drew attention, but also to various pledges from Sir Charles Napier's onwards of no distinction on grounds of colour, to which the Transvaal

/Government

1 T.L.C. I pp 23-25,32-38.

2 Ibid p 47

3 Cd 2239 pp 8,26

4 Times History of the War in South Africa. p 131 of Vol.VI

Government replied that these were made at a time of complete ignorance of the greater part of the British nation of coloured races, when it was believed all races were capable of the same civilisation, and pledges were then made without any knowledge of the consequences of their fulfilment; to-day the Government perceived what the effect of these concessions would be on the social composition of the country unprotected as it was by its climate, and held that from the point of view of civilisation they must be numbered among the promises that it was a greater crime to keep than to break.<sup>1</sup>

Stress has been here laid on this attitude of the preservation of Western civilisation, called by Gandhi "pseudo-philosophic",<sup>2</sup> as it was the view that was to be held by the leaders of the European communities in South Africa throughout the struggle, and which was to cover stringent immigration, commercial, social and political policies towards the Indian; as regards trade restrictions, these were held necessary to prevent the ruin of a useful and sturdy class of the European population, the traders, while the relation of the other three policies to the general policy above outlined needs little explanation.

Thus it came about that not only was Law 3 of 1885 not repealed, but that the Transvaal Government set about enforcing it properly. Chamberlain in response to representations in the Commons during 1901 as to repeal, stated he would discuss the matter with Milner who was then in England on holiday. Milner  
/convinced...

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\* the first assumption of the Transvaal Government in considering the question was that it was the duty of the statesman to multiply homes for white men. As only the most sanguine would hope to have the unskilled labouring class in South Africa European, and as an increase in the other class depended on an increase in this class, Asiatics were useful while belonging to this class but to this class only, for though while belonging to the small trading class they might reduce the cost of living and lead to an increase in the artisan class this gain would be balanced by the loss to the European shopkeepers. Cd 2239 p 32.

convinced him it was no straightforward matter, and it was agreed that on his return he should submit formal proposals.<sup>1</sup> Those submitted by him on April 3 1902 on the eve of peace were general registration with £3 fee annually, and confinement to locations for residence and business with exemption from these disabilities for those of superior education and manner of life. Also the prohibition against the holding of real property to be repealed, though right was to be restricted to town areas and for period of five years, 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, and refusal of registration or admission to undesirables. At first Chamberlain was not prepared to accept this but after his visit to South Africa, the Transvaal Government issued a notice on April 8th 1903 announcing practically the same policy. Chamberlain's objections to the proposals had been that this would be practically a continuance of the system under the South African Republic that the Imperial Government had protested against; restriction to locations should be on sanitary grounds only, so that it was doubtful whether trading should be so restricted; immigration restriction would be better done at the ports by legislation on the lines of the Natal Act; any law against speculation in land should be a general one, and Asiatics allowed to trade outside locations should be allowed to acquire property on their premises, though others might be prevented.<sup>2</sup> But the notice that he later agreed to was the same except that traders who held licences to trade outside locations before the War, would be allowed to continue thus, but their licences would not be transferable; Asiatics who had been trading thus since, and not before, the War were being granted renewals of licence up to Dec. 31st 1903 and warned that after that they would be required to move into bazaars, and no new licences would be issued to trade outside of

/bazaars...

1 Times History of the War p 132

2 Cd 2239 p 41

1

bazaars; the holding of property was not mentioned.

The point stressed by Milner in forwarding the notice was the sanitary aspect; that the portion of Johannesburg in which the lower class Indians chiefly dwelt was insanitary and dangerously so, was a generally accepted fact, though there was some difference of opinion as to whether it was due wholly to the bad habits of the Indians and not in some part to neglect by the Municipality of any efforts to enforce better conditions.<sup>2</sup> Milner held that if the Indians were removed to locations, the prejudice against them among the Europeans due to fear would be largely removed

Nevertheless the real crux of the matter seems to have been the economic question.<sup>3</sup> It may have been true that feeling about sanitary conditions was wider-spread, but the feeling of those personally affected by the keen competition of the Asiatic was more intense, and it was a feeling prevalent not chiefly in Johannesburg but equally throughout the country districts as well, and it was felt by Mr. Loveday, a man of long pre-war experience of the Transvaal that the probability was that it was not only the white traders that would be threatened with extinction but the small farmers and the artisans as well, though the latter could defend themselves by combination.<sup>4</sup>

The policy outlined in the notice does not seem to have been thoroughly enforced, certainly not during 1903<sup>4</sup>. Locations were certainly decided on by consultation between the Government and the various municipalities, the Government refusing to place the allocation in their hands<sup>5</sup>, an action in which they were justified by the difficulty they experienced in getting the local authorities in the country districts to agree to the fixing of the sites within the municipal areas so as to be easily accessible and suitable for trading purposes, an improvement on the South African Republic locations promised by Milner.<sup>6</sup> These sites were

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1 Cd 1684 of 1903  
 2 Cd 2239 p 9; T.L.C.  
 3 Lieut-Governor Lawley,  
 Cd 2239 p 33

4 T.L.C. III 55  
 5 T.L.C. I 39  
 6 Cd 2239 p 29

laid out in accordance with the conditions of a Resolution of the Legislative Council to enforce the notice of April 8th<sup>1</sup>. In Johannesburg the insanitary area was being expropriated under an Insanitary Areas Improvement Scheme. Yet though the machinery was fully forged, there is no sign of any general use of it; in the reports for Jan. 1903 - May 1904 only one Magistrate made mention of Asiatic locations, and he stated that though a new location had been laid out in the Barberton district, present occupiers of stands had been allowed to remain in the old location, which had been much improved by the erection of better buildings, and by exacting attention to cleanliness, order, and the fencing of stands.<sup>2</sup>

In the case of restriction to locations for trade the policy had not yet been finally decided on, chiefly due to negotiations that were going on at the time with the Government of India. In view of the labour shortage on the Rand, Milner had thought of getting some ten thousand Indian labourers for his railway construction on terms of compulsory repatriation; the Indian Government had not liked the idea, but were prepared to sanction it if in return they could better the position of the Indians resident in the Transvaal. At first their claims were far-reaching, the abolition of registration for Indians generally, locations for residence only and then only for those for whom it was necessary on sanitary grounds, and replacement of the prohibition against the acquisition of real property by a general law against speculative acquisition;<sup>3</sup> later they agreed to the terms of the notice of April 8th provided they were modified in some details, chief of which was that all pre-war traders outside locations should be exempted whether they held licences to trade thus or not. The Transvaal Government were prepared to safeguard the rights of such bona-fide pre-war traders outside locations, in spite of opposition by the Legislative Council and the commercial interests of the Colony,<sup>4</sup> and an agreement might have been

/reached...

1 TLC I p 28.

2 Cd 2104 of 1904 p26

3 Cd 1683 p 5, Cd-2239--pp-42-3

4 Cd 2239 pp 42-3

reached but for the outbreak of plague in Johannesburg and the Nabob Motan decision in the Courts, which led to proposals for stringent measures, and the abandonment by Lord Milner with regret of any further effort to satisfy the Indian Government, and consequently to secure indentured immigration.<sup>1</sup>

The plague broke out towards the end of March and aggravated the anti-Asiatic feeling among Europeans; also the Transvaal Government already knew what the decision of the Courts would be in the Nabob Motan case, that "ter bewoning" meant the place where a man lived not where he carried on business, meaning that restriction in future could only apply to residence,<sup>2</sup> so in April 1904 they urged strongly that Lyttelton agree to an Immigration Ordinance to restrict undesirables and another Ordinance embodying the principles of the famous notice of April 8th 1903. It had been realised by the Government all along that the notice and other measures were only temporary, until such time as legislation could be introduced; these ordinances were now proposed as the best that the Government could carry and as a definite settlement in place of the present chaos, the uncertainty of which was exasperating to the European and harrassing to the Asiatic.<sup>3</sup>

To the Immigration Ordinance Lyttelton agreed, but not to the other, as by prohibiting trade outside locations with the exception only of bona-fide pre-war traders it would have the effect of annulling the decision of the Courts; residence in location of the lower-class Asiatics on purely sanitary grounds he agreed to and this matter was thus finally disposed of.<sup>4</sup>

The Transvaal Government thereupon decided to withdraw its proposals, pressing at the same time that a Commission should be sent out to satisfy themselves as to the strength of local feeling and the grounds for it, and that pending the report of this Commission the Transvaal Government should be authorised to

/introduce...

1 Cd 2239 p 28

2 Cd 2239 pp 26-8

3 Cd 2239 p 27

4 Cd 2239 pp 44-5

introduce an Ordinance suspending the further issue of licences outside of bazaars to Asiatics, to prevent the growth of vested interests in the interval. This was refused, and on being sent again with the weight of a unanimous Legislative Council Resolution behind it was once more refused, as the Imperial Government felt that to yield would be to depart from its declared attitude of the preservation of vested rights.<sup>1</sup>

Consequently it was decided to leave over the situation for consideration by the new Legislature of the Transvaal under the elective system, that was in process of formation, and the matter was shelved. What the old Legislative Council did tackle, however, in its last session was the placing of general registration of Asiatics on a secure footing, making re-registration of the holders of South African Republic certificates compulsory. The Government had hitherto asserted that the Peace Preservation Ordinance was working quite satisfactorily in preventing an influx of Asiatics;<sup>2</sup> they were now, at the beginning of 1906, no longer able to assert with confidence that the law provided efficient machinery for excluding undesirables or detecting them if they managed to slip through. Accordingly Selborne proposed that all Asiatics should now be compelled to take out a new certificate with, as means of identification, the name and the fingerprints of the holder on both certificate and register, these certificates to be checked with the register once a year. The certificates were to be issued free of charge. The proposed ordinance to the above effect was to be called the Asiatic Law Amendment Ordinance.<sup>3</sup> After urgent enquiries by the Transvaal Government, the Secretary of State wired his willingness to accept legislation on the lines proposed.<sup>4</sup>

The Ordinance was accordingly rapidly passed through the Legislative ~~Assembly and~~ Council. It raised a storm of opposition among the Indians, and the deputation of Gandhi and another that

/they.....

1 Basil Worsfold op. cit. 330-1; 2. TLC III 672-9

3 Cd 3308 pp 4,7,10

4 Ibid p 11.



they sent to England was successful in getting the Imperial Government to hold the ordinance up but only till the new Representative Government of the Transvaal should express its opinion on the subject.<sup>1</sup>

As regards immigration the Peace Preservation Ordinance remained in force throughout the Crown Colony period. Throughout the period there had been talk of replacing it by an Immigration Ordinance on the lines of the Cape and Natal Acts, as the Peace Preservation Ordinance had been framed admittedly to suit a certain set of conditions and for a temporary purpose. At first Milner proposed to meet the Indian Government's request that any such ordinance should recognise the Indian vernaculars in the education test,<sup>2</sup> but later stated that the Transvaal Government was now opposed to this as it would be in conflict with the principle laid down at the Bloemfontein Customs Conference that, in view of the coming federation of South Africa, there must be uniformity of legislation with regard to non-European persons, and that the Cape and Natal would have legitimate cause for complaint if the Transvaal test were less stringent than theirs. Other reasons were that the Government thought that it would result in the admission of a large number of the class of Asiatics they wished to exclude, and that an Act less stringent than the Cape and Natal ones would most certainly meet with great popular opposition.<sup>3</sup> The Imperial Government were prepared to accept such legislation with a European education test,<sup>4</sup> but nothing was done during the Crown Colony period as public opinion in the Transvaal was in favour of total exclusion<sup>5</sup> (except in terms of the Labour Importation Ordinance, i.e. except as unskilled labourers on contract). Consequently in 1905 the Governor Lord Selborne gave a pledge to the people of the Transvaal that there would be no more immigration, apart from pre-war residents, till the end of Crown Colony rule, and the Immigration Ordinance was dropped

/for....

1 Cd 3308 p 59  
 2 Cd 2239 p 43  
 3 Ibid pp 26,34,43

4 Cd 2239 p 44  
 5 TLC III 42 ff, 678

for the time being,<sup>1</sup> a proposal being made by the Transvaal Government that in the meantime only temporary permits be issued, but refused by the Imperial Government.<sup>2</sup>

Thus when Crown Colony Government came to an end in 1906 hardly a thing had been done to set on a clear basis immigration, the trading rights of Asiatics, or their social status. As for the latter, the Indians objected strongly to being put on a par with the native socially ~~both~~ in municipal regulations with regard to use of tramways and footpaths. In practice they were allowed to use the footpaths on sufferance;<sup>3</sup> as for the tramways Asiatics at first were not allowed to use them at all, except for special trailer cars run for coloured passengers, but the Indians held the ordinary bye-laws gave no such power of exclusion, and were upheld twice in the Magistrate's Court in Johannesburg.<sup>4</sup> Thereupon the Municipality cancelled the old bye-laws and some time after replaced them by bye-laws distinguishing between coloured persons (including natives) and Asiatics and empowering the Council to set aside separate carriages or compartments for each of these classes, provided that special permits of exemption from these restrictions would be given, presumably, among others to Asiatics of higher class, and putting an obligation on the Council to provide reasonable accommodation for every class of passenger.<sup>5</sup>

On the railways there was no legal restriction on coloured people travelling first-class provided they were of a respectable and educated class. In actual practice the Railway Administration did all they could to prevent the mixture of passengers of different colours, and all the Government could agree to to meet the demands of the European community was the amendment of the railway regulations so as to make provision for suitable carriages of all classes for the exclusive use of coloured persons, so as to help the Administration in its policy.<sup>6</sup>

/The....

1 Cd 3308 pp 3,9

2 Ibid p 12.

3 Addendum to Statement to Transvaal Committee

Neave p 115 ; also 4327 p 9

4 Addendum p 115-6

5 Souvenir Number of "Indian Opinion"

6 T.L.C. II 99 ff.

1912.

The Indian Government had protested against the regulations re pavements and so on, in 1903, and the Transvaal Government in reply had included in its proposals of 1904 the exemption of educated Indians from all such restrictions in the proposed Ordinance to replace Law 3, which, however, came to nought.<sup>1</sup> In 1906 Elgin raised the question again, to which the Transvaal Government replied that they were prepared by means of Proclamation 35 of 1901 (which recognised the principle of exemption of high-class natives) and where necessary by arrangement with the municipalities, to try to secure for Asiatics of European standards of civilisation the same privileges as Europeans with regard to obtaining of liquor, travelling and so on. This could only be done gradually especially where the municipal regulations were concerned.<sup>2</sup>

As far as the Indians themselves were concerned these efforts by the Indian and Imperial Governments were well-meaning, but beside the point. Such regulations, and ordinances such as the Immorality Ordinance of 1903 which included the Indian under the definition of "native", they regarded as a stigma on Indians as a race by placing them on the same footing as primitive races.<sup>3</sup> The status of Indians as a whole must be the same, whether the Indian be a humble coolie or an Indian pundit or prince, as the principle of exemption was distasteful to the Indian leaders;<sup>4</sup> this was a claim the European population would obviously not be prepared to meet. It was on these grounds too that they had objected to the creation of an Asiatic Department, that it indicated that the policy of the Government was to treat the Indian primarily as an Asiatic, as belonging to an alien class who must be carefully watched lest they break the law, and not primarily as a useful citizen of the country.<sup>5</sup> This was to be the real essence of the long struggle that was shortly to commence, an objection to the segregation, or differentiation, in law of the Indian or Asiatic. Even though they might be

/just...

1  
2 Cd 3308 p 12  
3 Cd 2239 pp 16-17

4 Cd 3308 p 11  
5 "Mahatma Gandhi at Work" p 82

just as badly off in practice under a general law, they at least felt that there was no necessary lasting setting aside of their race for differential treatment, and that when and if the day came when there was a change of heart in the majority of Europeans with the adoption if not of a friendly attitude to the Asiatic at least a tolerant and not a hostile one, then that differential treatment could be easily and quietly dropped without the clamour on the part of extremists that would be raised on an attempt to repeal differential legislation.<sup>1</sup>

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1 "Mahatma Gandhi at Work" p 127

TRANSVAAL 1907 - 10.

The first thing that the Transvaal did under Responsible Government was to re-enact in identical terms the registration ordinance of the previous year<sup>1</sup> as the Asiatic Law Amendment Act, No 2 of 1907. The question of the giving of ten fingerprints was to be the rallying point fixed by the leaders of the Indians, as appealing to even the most ignorant Indians who would not be able to grasp the wider issue at stake; holding that the giving of all ten finger-prints was only required elsewhere of criminals,<sup>2</sup> a statement confirmed by the Indian Government<sup>2</sup> the Indian leaders gave such compulsory registration the appearance not only of stamping them an alien community but of branding them as a criminal community into the bargain. The essence of the situation however, was as before as far as the leaders at least were concerned;<sup>3</sup> to them the giving of finger-prints was not a fundamental objection.

The Imperial Government was satisfied that the Asiatic Law Amendment Act had the full weight of public opinion behind it (in spite of Indian representations to the contrary) as being an Act passed unanimously by the elected representatives of the people, and accordingly the Royal assent was given<sup>4</sup> (July 21).

With the coming into force of the Act the Indians began a campaign of passive resistance against it. This was no sudden decision. On September 11th 1906 at a large meeting of Indians in the Old Empire Theatre in Johannesburg among the resolutions passed with respect to the Registration Ordinance was one (Resolution IV), never to submit to the "Black Ordinance" but to suffer all the penalties if it became law,<sup>5</sup> and all had pledged themselves to it with a weighty oath. The Government had since then remedied one of the objections to the measure by omitting

2 Cd 3892 p 3

1 House of Lords Paper 65

of 1907 pp 1-8

3 Cd 4584 p 2

Cd 4327 p 27

4 House of Lords Paper 65 p 9

5 Cd 3308 pp 13-14.

/the....

the registration of women, but this merely gave the Indians greater courage for the struggle on the more important issue.<sup>1</sup>

The oath of resistance was now, following unsuccessful representations in a constitutional way to the Transvaal Parliament, and also, supported by the Cape and Natal Indians, to the Imperial Government, taken over again at fresh meetings to give those with whom the flesh was weak a chance to withdraw, and a Passive Resistance Association formed (it being decided not to use the existing organisations such as the Transvaal British Indian Association) during the period up to the 1st July before registration was due to commence. When that day came not only did the passive resisters refrain from registering but they also picketed the registration offices to present their weak-kneed brethren with pamphlets explaining why they should not register.<sup>2</sup> Eventually when the period expired on 1st November only some five hundred Indians had registered. An extension of the period for registration to 30th November failed to make any substantial difference in the number of Indians or Chinese registered (following on the failure of Chinese ambassadorial representations to the Foreign Office, the Chinese under Leung Quinn had thrown in their lot with the Indians), in spite of a tour by the Registrar of Asiatics of the country districts to make registration as easy as possible.<sup>3</sup>

At one time during the period certain Indians had asked for changes in the regulations under the Act, which the Government had been prepared to make to a certain extent, and likewise the Chinese had asked that they be allowed to register at the Chinese Consulate, but on Gandhi representing to these Indians that in treating with the Government on these details they were damaging the general cause, on October 12th they instructed their solicitors to withdraw their requests and inform the Government that they were free to withdraw such concessions as

/they....

1 "Mahatma Gandhi at Work" pp 149-50

2 Ibid p 176-8

3 Cd 3887 p 37; 4327 p 26

they had been prepared to make, leaving the issue once more repeal of the Act. As for the Chinese, their complete failure to register anywhere showed that they too had returned to first principles.<sup>1</sup>

The Government then decided to see what effect the arrest of the leaders of the movement would have. Accordingly Gandhi, Leung Quinn and Naidoo were summoned on the 18th December to show why, not being registered, they should not be called upon to leave the Transvaal within a given period; on expiration of the given time on January 10th 1908 they were sentenced to imprisonment. Two or three weeks later a settlement was reached through the mediation of the editor of "The Leader" of Johannesburg in terms of which the registration was to be effected voluntarily by the Indians, who now acknowledged the necessity of registration in view of feeling in the Transvaal and were willing to show their good faith and prove they did not desire to upset the objects for which it was being introduced, provided they could do it as an act of grace, and not on compulsion.<sup>2</sup>

The Government for their part were well pleased to be rid of a difficult situation; the object of the Act had been not to harrass the Asiatic community or drive them out of the country but to secure complete and effective registration, and as the Act was such as to come into force once and once only, all that could be done after the period expired was to hARRY the Asiatics; the only means of registration left was voluntary registration, not registration under the Act. In any case the policy of hARRYING the Asiatics did not hold out much promise of success; put them over the border they could not as the other South African Colonies would not have them, and it was doubtful how long the gate Delagoa Bay would remain open; as for imprisonment, this had already been tried on the leaders and several hundred others with noneffect, while the imprisonment of ten thousand men was not only a physical impossibility due to lack of accomodation, but also a moral one as the prestige of the country would

/suffer...

suffer greatly.<sup>1</sup>

Thus the Government hoped that on the advice of their leaders the Indian and Chinese communities would now register practically to a man. As for the registration of future immigrants, there would not be any future Asiatic immigrants. During July 1907 an Immigration Bill, No 15 of 1907, had been brought forward by the Transvaal Government to replace the Peace Preservation Ordinance, outwardly on the lines of the Natal Act complete with European education test, but actually by the action of Section 2 (4) excluding all save persons as would be liable to expulsion through not being registerable under the Asiatic Law Amendment Act, and thus effectually preventing the entry of any more Asiatics.<sup>2</sup> Eventually the Colonial Office agreed to the Act, on Nov 27 1907, in the hope that it would result in more favourable treatment of resident Indians.<sup>3</sup>

This Act was closely linked up with the Asiatic Act. Not only did Section 6 empower the Government to summarily remove from the Colony Asiatics who had refused to obey an order to leave for having neglected to take out a registration certificate under the provisions of Act 2 of 1907, in the expectation of merely being imprisoned under that Act, but there was the further connection that the Immigration Act would only achieve its object so long as the Registration Act remained.

On the publishing of the terms of the settlement and the release of the Asiatic leaders, the voluntary registration began, led by Gandhi. One of the terms of the settlement had been that the same regulations were to remain in force, but were to be administered in a generous manner and with exemption from the giving of fingerprints for such as could provide other satisfactory means of identification; an assault made on Gandhi as he left the registration office by a group of Pathans, a class who held that Gandhi had betrayed them by agreeing to this provision,

1 Cd 4327 pp 5-6  
2 Cd 3887 pp 31-37  
3 Ibid p 58



slowed the registration down somewhat at first,<sup>1</sup> but when the Transvaal Parliament met on 15th June the Governor was able to announce that practically the whole Indian population had tendered voluntary registration.<sup>2</sup> The understanding in January had been that this registration was to be validated during this session by Act of Parliament.

The question that now arose was whether the agreement had been that Act 2 should be repealed at the same time. It certainly was not made a term of the proposals in the letter from Gandhi, Leung Quinn and Naidoo while they were in prison;<sup>3</sup> Gandhi, however, alleged that General Smuts in an interview with him during the negotiations at the end of January specifically promised him repeal of the Act. As this allegation was denied on oath by General Smuts, there cannot be held to be any proof of a specific promise.<sup>4</sup> That the Indians were under the impression during voluntary registration that the Government would act handsomely when registration was complete, seems to be beyond doubt; General Smuts' words at Richmond on February 5th to the effect that he had told the Indians that so long as one single Indian remained unregistered, was taken by them as a promise that so soon as practically every one had registered the Act would be repealed.<sup>5</sup> On February 23rd Gandhi submitted a draft Bill to amend the Immigration Act so as to allow Asiatics who had not yet returned to the Transvaal to take out registration certificates within seven days of arrival (the Act meant that no more pre-war residents would be able to return) and in this draft Act 2 of 1907 was repealed.<sup>6</sup> Thus there was a twofold dispute, as to repeal of Act 2 and as to whether by the settlement voluntary registration should be allowed to those returning after the three months allowed for voluntary registration, forming the subject of correspondence between Smuts and Gandhi during May /and....

1. Cd 4327 p 4

2. T.L.A. II, Section 8 of  
Speech from Throne

3 Cd 3892 p 4

4 Cd 4327 p 58

5 Cd 4327 p 6; p23.

6 Cd 4327 p 16

and June.<sup>1</sup> In the agitation for repeal of Act 2 there was of course now the added objection to it that it prevented the immigration under Act 15 of educated Asiatics.

The Government were adamant holding that these were fresh claims and not provided for in the January settlement,<sup>2</sup> and on June 24th a mass meeting of Indians decided to withdraw their voluntary applications and renew passive resistance. On the Government's refusal to return the applications being upheld by the Supreme Court, they held another meeting at which they burnt their certificates in a huge cauldron on expiration of the time-limit for the ultimatum they had sent to the Government, timed to expire on the day<sup>me</sup> a new Asiatic Registration Amendment Bill was to be introduced into Parliament.<sup>3</sup> The Act<sup>4</sup> was to the Indians generally acceptable as redrafted on the 18th by a Select Committee following on an interview with Gandhi and Leung Quinn by members of the Government and the Opposition, where the Indians were enabled to set forth their demands in a final form; the only point that the Government felt themselves unable to concede was the immigration of educated Indians.<sup>5</sup> The chief objection was that there would now be two parallel laws dealing with the same subject, either of which might be applied in any given case.<sup>6</sup>

In addition to hawking without licences to court arrest (the connection with registration being that a licence could only be taken out on production of a registration certificate) the Indians decided that as the Immigration Act was now part of the subject of the struggle, an Indian capable of passing the education test of the Act but not previously resident in the Transvaal should enter as a challenge, informing the Government of his intention; the chosen man, Sorabji, was allowed to reach Johannesburg, where he was imprisoned following failure to obey an order to leave the Colony.<sup>7</sup>

/Though.....

1 Cd 4327 pp 18-22

2 Ibid pp 26-7, 30

3 "Mahatma Gandhi at Work  
p 265-71

4 Cd 4327 pp 45-9

5 Cd 4327 p 43

6 Cd 4584 pp 2,4-5

7 Cd 4327 pp 24-5

Though there were arrests of hawkers and prohibited immigrants, the Government pursued towards the Indians who had destroyed their certificates a policy of "masterly inactivity" hoping their enthusiasm would die down without any feeling of martyrdom to kindle it, and satisfied with the knowledge that they were practically all registered.

But the Indians then decided to concentrate on immigration not only of educated Indians but also of Natal Indians previously domiciled in the Transvaal, while the Transvaal Indians went to Natal and had themselves arrested along with the Natal Indians for entering the Transvaal without producing the necessary registration certificates, which they had burnt.<sup>1</sup>

The Government then had recourse to a method of breaking the movement that they had hesitated to use during the first movement, deportation. As putting the Indians over the border into Natal merely meant that they returned immediately to the Transvaal an arrangement was made with the authorities of Portuguese East Africa for deportation to India via Lourenco Marques,<sup>2</sup> an action vigorously protested against on the grounds that many of the deportees were either born or domiciled in South Africa, India being consequently a strange land to them.<sup>3</sup> The Indians moreover protested that the Transvaal Government was also trying to break their spirit by overworking them in the gaols while giving them a diet unsuited to their requirements, being practically the same as that given to Native prisoners, and also by offending their religious susceptibilities in various ways.<sup>4</sup> They also attempted to arouse indignation in England and India by relating how Gandhi had been slave-driven at Volksrust Gaol, and how when he was escorted to Johannesburg to give evidence in a case, he was marched through the streets from the station in broad daylight, handcuffed and in his prison clothes; in this connection the impression one receives is that Gandhi underwent such treatment without protest at the time for its martyrological value.<sup>5</sup>

pp273-87

1 "Mahatma Gandhi at Work" p. 2 Cd 5363 p 24,127. 3 Cd 5363 p 32,60, 88 etc.  
 4 Throughout Cd 4584 5363 5 Cd 4584 p 13 onwards

The reply of the Government to these complaints was that such deportation had only taken place in cases where India was the country of origin, or where the man was domiciled in the Transvaal; that in no case had any Indian domiciled in any other of the other South African Colonies been thus deported; and that no distinction had been made between white and coloured persons in the mode of deportation under Act 15 of 1907, seventy-seven whites having been so deported since the Act came into operation on January 1st 1908 as opposed to two Indians, with twelve more Indians shortly to be deported. As to the legality of such summary deportation, by a ruling of the Supreme Court there could be no right of appeal against the order of deportation issued by the magistrate on his being satisfied that the Indian possessed no certificate at all lawfully; Appeal only lay to the Courts from the prior decision of the Registrar as to whether an Indian was entitled to a certificate.<sup>1</sup> In regard to deportation the legality of the Transvaal Government's action was never questioned<sup>3</sup> by the Imperial Government, nor was the arrangement with the Portuguese authorities questioned, the British Consul at Lourenco Marques being instructed not to interfere in the matter.<sup>2</sup> In view, however, of complaints by the Indian Government, the Imperial Government on the 18th June, 1909, urged that deportations be suspended till a settlement be reached, or at least deportations such as to which reasonable exception might be taken. The reply of the Transvaal Government was that instructions had now been issued that registered Asiatics should not be deported; most of the cases mentioned by Indians were those of men never previously resident in the Transvaal entering in a concerted attempt to defy the law, and such men would continue to be deported.<sup>3</sup>

The struggle dragged on through the year 1909, the Transvaal Government believing that the majority of the Indians  
/were....

1 Cd 5363 pp 19-20

2 Cd 5363 p 26

3 Cd 5363 p 37

were "sick to death of the agitation carried on by some of their extreme representatives",<sup>1</sup> while the passive resisters determined to keep on until the two cardinal points were gained, repeal of Act 2 of 1907, and the admission of a limited number of educated Indians per annum as of right, and not as a matter of grace by means of the temporary permit system, the insecurity of which was regarded by them as being humiliating to the holders.<sup>2</sup> In view of the approaching union of the South African Colonies a further appeal to the Imperial Government for intervention on these two points before the united strength of the colonies with their enhanced status would make the task much more difficult, was made by a deputation to the Colonial Office in July 1909.<sup>3</sup> Crewe took the opportunity of the presence of the leading South African statesmen in England in connection with Union for discussing the Indian situation with General Smuts. As result of these discussions, General Smuts formulated on August 26th the limits to which the Transvaal Government were prepared to go, i.e. repeal of Act 2 of 1907, with an amendment of Act 15 so as to delete the ambiguous Section 2(4) and substitute for it a direct prohibition of all Indians not registered under either of the Registration Acts, thus preserving the effect of the old clause but in a more straightforward manner; the application of differential administration to a general law they could not agree to as savouring strongly of "dishonesty and immorality" apart from the practical difficulties of carrying it out, but they were prepared, by an amendment of the Registration Amendment Act, 36 of 1908, to give to not more than six educated Indians per annum permanent registration certificates, the temporary permits being retained to relieve cases of hardship.<sup>4</sup>

This solution was submitted to Gandhi and his fellow delegate who were still in England, and was regarded as sufficiently meeting the practical difficulties of the situation;

/they

1 Cd 5363 p 37  
2 Ibid p 27

3 Ibid p 26 ff  
4 Ibid pp 32-4

they stated, however, that passive resistance must be continued until their claim of equality before the law was recognised.<sup>1</sup> Nevertheless the Imperial Government were prepared to accept the proposals "as the best that could be hoped for and as being on the whole likely to satisfy moderate opinion in the Transvaal and England", and decided to urge the Transvaal Government to introduce the necessary amending legislation during the forthcoming session which was being held for the election of Senators for the Union Parliament, informing the Transvaal Government of Gandhi's attitude but hoping that the majority of the Transvaal Indians would be conciliated by it. Eventually on the 11th February 1910 the Transvaal Government decided that it would be inopportune to introduce Asiatic legislation during the forthcoming session in view of the effect a tour of India by Mr. H. S. L. Polak was creating on public opinion in the Transvaal, and as they were on the eve of a general election; a suitable opportunity could be found when the Union Parliament came, as it needs must, to deal at an early date with the various Immigration Acts of the present Colonies. And thus the situation was left untouched for the Union Parliament to deal with.

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NATAL 1900 - 1910.

Such was the situation in the Transvaal faced by the new Union Government. Though there had been no organised demonstration in Natal against differential treatment of the Indian, it must not be inferred that the Indians had not their grievances there, or that the Government of Natal had not its difficulties in deciding what the Indian's position should be.

The treatment of free immigration remained throughout the period practically as before by means of the act of 1897. The act was repealed by another Immigration Restriction Act (30 of 1903), but the provisions of the former act were retained, except for a tightening up of the application of the education test; under the old act the intending immigrant had to write out his application according to the form scheduled in the act, a task for which he could be schooled without possessing the standard of education required by the act, while now he had to write such an application as would satisfy the Minister.<sup>1</sup> In view, however, of the fact that the intending applicant could just as easily get a more educated Indian to write out a specimen for him to school himself in, the amendment might possibly have been to give the Immigration Department greater freedom in the administration of the law.

The cultural needs of the Indian community were met by the issue of visiting passes, or temporary permits, to Indians versed in the Indian languages and literatures who could not speak English, chiefly priests. The Indians objected that the issue and renewal of such permits was entirely at the discretion (and very arbitrary discretion) of the Immigration Department.<sup>2</sup>

As for the immigration rights of residents the issue of certificates of domicile to Indians resident for three years in Natal, containing means of identification, enabled Indian residents

/who...

1 N.L.A. 33: p 489

2 Polak op cit. I p 8

who would be unable to pass the education test of the Act, to leave the Colony whenever they liked with no fear of being excluded on their return. Of course such as could pass the test had no need of domicile certificates.

The question that arose in 1905 was whether a domiciled Indian could introduce a son who had never been in the country. In consequence of a decision of the Supreme Court in the affirmative, and to prevent a possible influx, an Immigration Restriction Act Amendment Bill (3 of 1906) had then been passed to define clearly what domicile should be considered to mean.<sup>1</sup>

But while a strict check was kept on free immigration, the numbers of the Indians continued to be swelled by indentured immigration. From the European point of view, then, either this flow must be checked or totally abolished, or an effective means be found of compelling the indentured Indian to return to India at the end of his term of indenture.

The Indian Immigration Board, left to its own resources and meeting with a greatly increased demand for indentured labour, had got into difficulties towards the end of the 1890's, which culminated in its practical bankruptcy. In May 1901 it had approached the Government for help, pointing out that not only private employers were dependent on the Indian labour supply but also government concerns (such as the Railways) and the municipalities; the Government were able to make them a loan to tide over the present difficulties. In 1902 they petitioned the Government to provide backing for the raising of a loan of £250,000 sufficient to place them on a firm footing again, the Board's security of a first call on the employers being handed over to the Government. A Select Committee appointed to look into the matter recommended the scheme, and that at the same time a new commission be sent to India to negotiate for expiry of indentures in India.<sup>2</sup> Accordingly a Bill was introduced to

/sanction....

1 N.L.A. 39 p 641

2 N.L.A. 31 pp 166-7.



sanction the loan, but met with a determined attempt at the introduction of an amendment with regard to termination of indentures by those members who had little faith in the Commission, relying on the Prime Minister being able to make representations to the Imperial Government on a forthcoming visit to England, backed up by the other Colonies; in view of coming federation, Natal must tackle the problem decisively, and the Colony had given its decisive opinion at the last elections that indentures must terminate in India. The Government pointed out that the Indian Government held the whiphand, and would most probably discontinue further emigration if such action were taken, without any interference from the Imperial authorities; the amendment was then defeated. So much for the matter of return of the coolies; that the Bill was also a reversal of the established policy that indentured immigration was to be allowed but not supported by the State, was refuted by the Government who pointed out that the loan would be purely a business transaction, and not a potential liability to the State.<sup>1</sup>

So the Board got its money, and the delegation went to India in 1903. Their report was (in the public interest) not made public,<sup>2</sup> but it seems that the Indian Government attempted to bargain on behalf of the Indians resident in Natal, just as they did when Milner applied for Coolies for the Transvaal; their conditions were such as Natalians could not accept, and the negotiations were fruitless.

As yet no one dared to suggest that the importation of indentured Indians be stopped, as the dependence not only of the sugar industry but also of nearly every form of enterprise in the Colony on Indian indentured labour was generally acknowledged. So sterner efforts were now made to enforce the collection of the £3 tax, which had so far (in 1903) been a failure. Act 17 of 1895 had been proclaimed in 1896 and as it

/was....

1 N.L.A 31 pp 313-14, 421-30

2 N.L.A. 36 p 87.

was not retrospective, it came into force in 1901.<sup>1</sup> Then for the next two years the Government made very little effort to collect the tax; with a change of Ministry came a change of policy so that by 1907 there seemed to be a fairly general impression that the number of Indians re-indenturing or returning to India was, due to enforcement of the tax, much more satisfactory.<sup>2</sup>

Not only was administration of the Act improved, but attempts were made to give it a wider application in that an Act, 2 of 1903, was passed applying the tax to children of ex-indentured labourers on their attaining the age of majority (13 & 16 years in case of girls and boys respectively), with only one voice raised in defence of the special claims of the colonial-born Indian, who had signed no contract and to whom India was a strange land;<sup>3</sup> by the wording of the original Act ex-indentured women too were liable to the tax, though such was not intended at the time of its passing. Thus the ex-indentured Indian with a family could be called upon to pay possibly £9 or £12, plus (from 1906) the poll-tax of £1 on all inhabitants of Natal. If he owned property, it could be attached for failure to pay. On the labouring class under free contract there was no such check. To remedy this a proposal mooted some time before,<sup>4</sup> was embodied in an act, 39 of 1905, prohibiting employers from engaging ex-indentured Indians who had not taken out the necessary £3 licence; at the same time the employer was empowered to pay the tax himself on engaging the Indian, and deduct the amount from his wages.<sup>5</sup> By the same act, to make collection by the police easier, it was also provided that all £3 licences should expire at the same time in the year, not as formerly according to when they happened to have been taken out, Moreover no hawker's licences, or licences to trade in Zululand, were to be issued to

/Indians...

1 U.H. IV 3199    2 N.L.A. 42 pp 259-60, 340.

3 N.L.A. 31 pp 310-11, 330

4 N.L.A. 31 p 310

5 N.L.A. 38:219

Indians who had not paid the tax; proposals to extend this principle to prohibition to lease land, obtain mortgages and so on were rejected by the Government as rendering the bill purely class legislation and thus exposing it to veto by the Imperial Government and strong disapproval by the Indian Government, who were already "too sensitive" as to legislation to the disadvantage of Natal Indians. They held too that it was chiefly the employee class that did not pay the tax, and that the bill as it was would deal with 80% of the defaulters.<sup>1</sup>

Nevertheless, in spite of these efforts to improve both the efficiency of collection of the tax and the machinery therefor, there were some that would not be satisfied with anything but abolition, or at the least restriction, of indentured immigration. The question of the continued influx of Indians under the indenture system was raised at the elections in 1906,<sup>2</sup> and at the very beginning of the subsequent session objection was raised to the giving of protective duties to an industry, the sugar industry, whose only gift (they held) to the country was an increase in numbers of the Asiatic;<sup>3</sup> as this was the attitude adopted by several of the hon. members for urban constituencies, there seems to have been some foundation for an idea that had apparently arisen in Natal that town and country members, and town and country interests were antagonistic.<sup>4</sup> This session marked the appearance of a new party, the Labour Party, represented by four members among them one of the figures of the day, Dr. Haggart; this party, though small, was vocal. On July 9th, 1907, Haggart moved the second reading of an Asiatic Immigration Abolition Bill, if not on behalf of his party,<sup>5</sup> certainly in accordance with its views. His position was that the Asiatic question was a problem second in importance only to the native problem on the grounds that, in addition to complicating the native problem, the

/presence...

1 N.L.A. 38 p 261; 39 p 17,26-7  
 2 N.L.A. 41 p 15  
 5 N.L.A. 42 p 193

3 Ibid p 19,47  
 4 Ibid p 52

presence of a large Asiatic population in the Colony, incapable of assimilation as it was to European standards of civilisation, was ipso facto a danger to the purity of that civilisation. If it were shown that the industries concerned were of value, not to a few men, but to Natal as a whole, and that at the same time they could only exist by means of a supply of imported indentured labour, both of which conditions he doubted, let them secure repatriation on termination of indenture; in other words he did not believe that the industries concerned would come to a standstill if the supply of indentured labour ceased, but even if that were so the casting of these industries overboard would be no loss to Natal.<sup>1</sup> As makeweight was added the consideration that a large number of the educated Indians were opposed to the system (which was certainly the case<sup>2</sup>).

Ultimately Haggar had to withdraw his bill for the prevention of further importation after eighteen months, in favour of a resolution authorising the Government to negotiate with the Government of India during the recess with regard to repatriation.<sup>3</sup> If the Government had not previously realised the futility of such efforts, they did so now. Correspondence had passed between the Natal and Imperial Governments on the subject of a Municipal Corporations Bill passed in 1906, which would have the effect of depriving the Indian of the municipal franchise. The Imperial Government would only agree to the Bill on condition that the right of appeal in connection with licences were granted to the Indian. As a meeting of representatives of all the towns and boroughs in the Colony voted unanimously against any yielding to this demand, the Natal Government realised that it could not negotiate with the Indian Government, whose terms were the granting of appeal, without ignoring the wishes of a large section of the population, and accordingly did not act on the resolution. So in 1908 the Government itself came to Parliament /with....

1 N.L.A. 42 pp 193-  
 2 N.L.A. 42 p 337

2 Polak op cit p 50-53

with an Indian Immigration Prevention Bill, whether with any serious hope of passing it it is somewhat doubtful. No fresh considerations were brought forward, and eventually the second reading was only passed on condition that the matter should go before a Parliamentary Commission before being further proceeded with. As the Commission, after going into all the arguments raised during the debates on the question in 1907 and 1908, reported adversely on any stoppage of immigration the bill was dropped and immigration went on as before. The grounds on which the Commission based their conclusions were as follows: that at the present moment there was no alternative supply of reliable continuous labour possible whether of free Indians, natives or Europeans; accordingly the continuance of several industries depended on a supply of indentured Indians, and not only their continuance but their expansion, especially in Zululand, these industries being not only sugar growing but also tea and wattle growing, farming, coal-mining, and certain other industries in which a considerable amount of unskilled labour was required. As the evidence showed that the extinction or restriction of these industries would be serious and irreparable not only to individual but also to the general interests, the conclusion was that the stopping of indentured immigration would be a great blow to the general welfare of the Colony.<sup>1</sup>

At the same time they did not deny that something could be done towards developing other supplies of labour so that a smaller number of Indians would need to be imported. A white labour policy, as advocated by the members of the Labour Party on the strength of an experiment in Queensland the success of which was as yet the subject of profound disagreement, they set aside as impracticable for social reasons, though recommending that a commission be sent to Queensland to see how matters actually did stand there.<sup>2</sup> But they recommended that labour Bureaus be created to increase the employment of such free Indians as sought employment, averse though the majority of

1. Report of Indian Immigration Commission of 1909. /them  
2. Sections 46,48 and 49 Section 4,10

them might be to hard and menial work.<sup>1</sup> Moreover to give greater facilities to employers for reindenturing Indians not up to the best standard, they recommended that the present scale for reindenture, fixed by Section 2 of Law 17 of 1895, (at a higher rate of wages than that fixed for the first period of indenture) be replaced by freedom of contract for a period of from two to five years at a minimum wage equal to the wages of the first year of the first term of indenture.<sup>2</sup>

As for the third alternative, the native, the Commission found that practically the whole of the native supply available for labour in Natal was already in employment during the course of the year; of a supply from outside there was no possible chance, in view of the greater attractions of the gold-mines of the Transvaal, backed up by an agreement of the magnates with the authorities of Portuguese East Africa, the chief source of such labour.<sup>3</sup> The only means of increasing the native supply was by inducing the native to work continuously throughout the whole year instead of for only six months in the year, as he did at present; not only would the supply then be doubled, but the reliability and efficiency of the native worker would be greatly increased, an important factor in the type of work required in the sugar industry. This could only be done by a gradual process of education of the native to continuous work and, at the same time, to the comforts of civilisation, to enjoy which continuous labour would be necessary; the best method would be some system of apprenticeship of native youths before they too slid into the happy-go-lucky way of their forebears.<sup>4</sup>

Thus the view of the employers of indentured labour, that their opponents were starting from the wrong end in proposing to abolish indentured immigration without first supplying an alternative, was upheld against the view, expressed in the Assembly

/in

1 Report of Indian Immigration Commission of 1909. Sections 19,21.  
 2 Ibid Section 31  
 3 Sections 7,38  
 4 Sections 40-42

in 1908, that the "native question had never been solved", and never would be solved, so long as an easy means of obtaining labour existed.

Having demonstrated that, on the evidence, a continued supply of indentured immigration was indispensable for the economic welfare of Natal, and also that the presence of the indentured Indian labourer, practically segregated as he was, was in no way harmful to the European social fabric,<sup>1</sup> the Commission did touch to some extent on the crux of the problem viewed from the standpoint not of the employers of indentured labour or of the economic welfare of Natal, but of the ideal of a "white South Africa" as most strongly expressed perhaps in the rest of South Africa, particularly the Transvaal. And that was the steady increase in numbers of the permanent Indian population in Natal due to a large proportion of the indentured Indians, and practically all of their children, preferring other occupations to re-indenturing or returning to India. As for the latter alternative, the inhabitants of Natal on the whole, or at least such as wielded political power, would have been well-content if all the indentured Indians had remained in Natal in that capacity by means of re-indenture. The Transvaal, however, had never come to lean upon a supply of Indian labour, while at the time they were occupied in repatriating such of the Chinese labourers as still remained; flourishing in spite of this self-denial, and with a better supply of native labour than their poorer brethren in Natal (some of it derived from Natal itself, partly by aid of the **Touts** Act of that colony) they would now have liked to purge the rest of South Africa.<sup>2</sup> In this they had the strong support of the two other colonies; the Orange Free State had expelled such Asiatics as were there in the early 1890's and had maintained a rigid exclusion ever since; the Cape had a

/resident...

1 Indian Immigration Commission Section 1

2 Cd 4327 p 2

resident population of about ten thousand Asiatics, not counting the Malays, whose Asiatic origin had been obscured by the mists of time, proposals for the introduction of other Asiatic labour from van Riebeeck's time onwards not having matured.<sup>1</sup>

This feeling had been formally expressed by a resolution at the Inter-Colonial Customs Conference in 1908, moved by the Cape Premier, Mr. Merriman, and agreed to by all four South African colonies, that further introduction of Asiatics should be prohibited legislatively where such steps had not yet been taken.<sup>2</sup> A desire to conform to the requirements of this resolution to which they had themselves agreed, is the most probable explanation of the action of the Natal Government in introducing their Immigration Prevention Bill in 1908; any formal representations from the Transvaal they denied, saying they were introducing the Bill in the best interests of the Colony.<sup>3</sup> What is clear is that public opinion in the other colonies was ever kept in mind.<sup>4</sup>

Not that the Commission made any reference to opinion in the rest of South Africa; having come to the conclusion that immigration could not be stopped the question arose: "Was the machinery for the return of indentured immigrants adequate and working efficiently?" Their conclusion was that the £3 tax had been of late effective in that a large proportion of the Indians were at the end of their term either re-indenturing or returning to India; out of 7,735 Indians finishing their term of indenture or re-indenture in 1908, 3,989 returned to India and 3,304 re-indentured. Thus by the action of £3 tax, and the inducement offered by an act of 1905 (No 42 of 1905) to ex-indentured Indians who had forfeited their right to a free return passage to India, to regain it by reindenturing (an offer of

/which.....

1 H III 2099

2 Cd 4327 p 25

3 N.L.A. 44 p 327

4 Ibid pp 328,460,464



which 1233 Indians availed themselves in 1908) the problem was solving itself; that the Indian population in Natal in 1908 was less than it was in 1907 was an indication that the tide was turning.<sup>1</sup> Yet the effect of this optimistic conclusion was somewhat spoilt by the recommendation that followed close on it that the Government should as soon as possible once more approach the Government of India with regard to termination of indentures in India.<sup>2</sup>

Thus the system was allowed to continue on the same main lines as before. The only alternations that were made in the last session of the Natal Parliament were in matters of detail; a bill was introduced by the Government to free women from the operation of the £3 tax on the grounds of humanity but, meeting with objections on the ground that the whole object of the tax was to make the ex-indentured Indian's position in Natal untenable and that any easing of the burden would increase the dislike with which the other Colonies, whom Natal was about to join with in Union, viewed the indenture system, it was eventually amended to the giving of discretion to Magistrates "to relieve any woman of payment on grounds of ill-health, old age or for any other just cause."<sup>3</sup> To this Bill were tacked clauses providing for the establishment of the Labour Bureau recommended by the Indian Immigration Commission, and also, as recommended, for the suspension of arrears of the tax during a period of re-indenture; such payment of arrears were to be waived entirely if the Indian availed himself of the free passage to India at the expiry of such term of indenture.<sup>4</sup>

Eventually the blow was to fall from another direction. The Indian Government had for some years past disapproved of a system whereby the best services of a man were taken without his being given a chance afterwards to live a free life in the country he had laboured for.

/In....

1 Indian Immigration Commission p 3,5

2 Ibid p 6

3 N.L.A. 49 pp 341; 403,521-6

4 N.L.A. 49 p 527-8

In 1904 Lord Curzon, Viceroy of India, in replying to Milner's despatch deploring the decision not to allow indentured Indians to be sent to the Transvaal, stated that the Indian Government were not at all anxious for such emigration, as the relief to India would be only infinitesimal, and would be easily outweighed by the crop of troubles they would be laying up for themselves in the future; outside of the Government he knew of no class, community, or individual in India that desired it, in view of the "bitter example of Natal."<sup>1</sup>

To the deputation of 1903 the Indian Government had made the right of appeal to the Supreme Court against refusals of trading licences a condition in return for repatriation of labourers at the end of their indentures. In deciding finally to prohibit the system, their failure to secure this was their chief reason; not only was the system increasing the number of Indians that might ultimately be affected by such measures, but it was aggravating the difficulties in the way of the Indian Government in their efforts to secure fair treatment of the resident population.<sup>2</sup> Certainly it did seem that fear on the part of the European population in Natal increased in proportion to the increase in the numbers of the Indians; the preface to speeches on bills to restrict the rights of Indians was very often a comparison of their numbers at that time with that at former times.<sup>3</sup>

As the result of earnest representations by the Natal Government, however, the promulgation of this decision was postponed for not more than a year, and then until the Union Government should have been formed and have given an indication of its policy towards the resident Indian population; the price of this suspension was the enactment of a law giving the right of appeal against refusal of renewal of existing trading licences.<sup>3</sup>

/Thus....

1 Andrews "Documents re New Asiatic Bill" p 27

2 Ibid p 28

4 Andrews ibid p 28

Thus when Union finally came about, the position the new Government had to face with regard to Indian immigration into Natal, was free immigration capable at least of drastic exclusion by means of the existing law (even if that were not the case at present) and indentured immigration the continuance of which could be ensured only by a radical change of policy towards the Indians already resident in the Colony.

One of the main features of this policy was, as indicated, the restriction of the trading rights. Just as the efficiency of the £3 tax had been doubted, so a belief had gained ground that the provisions of the Licensing Law of 1897 were not far-reaching enough. One of the aims of a Shops Closing Bill (to regulate shop hours), that occupied the attention of the Assembly during 1904 and 1905, was the compulsion of Asiatic traders to observe the same conditions of trade in this respect at least as the European;<sup>1</sup> at the same time it was applauded by some as increasing the ways in which the Asiatic could be "caught out" in the contravention of laws with as result the suspension of his licence. The provisions with regard to this in the Bill were not as drastic as they might have been; the Magistrate was empowered to suspend, for not more than three months, licences of men who had broken the law more than once within a period of six months or less, and not to cancel such licences.<sup>2</sup> It may be pointed out, however, that the breaking of licensing laws was frequently given as the reason for refusal on the part of Licensing Officers to renew licences; It was alleged by the Indians that traps were used to lure the Indians into breaking such a law for this purpose.<sup>3</sup>

Several attempts during 1906 and 1907, by the Labour members, to bring to the attention of the Government the necessity of amending the Licensing Laws to attain "the effective restriction

/and....

1 N.L.A. 36 p 382; 39 pp 503-8,553

2 Ibid p 826 ff

3 Polak op cit p 10

and ultimate prohibition of Asiatic trading in Natal", were treated with scant consideration by the Government, who yet hoped to obtain compulsory repatriation of labourers, in which direction the Imperial Government would only help them on condition not merely that the Trading laws were made no more severe but that appeal should be given.<sup>1</sup> The Government held in 1901 that the only fault lay in the administration of the Licensing Laws, which was generally acknowledged, and that much could be done to "improve" (from the European point of view) that administration.

The idea behind the law of 1897 was, as seen, the restriction of the issue of licences to Indians chiefly on grounds of colour; this idea the Licensing Officers under the Municipalities seemed to have carried out to a fair extent, acting as they were under the instructions of a directly representative body, while the Officers in the country districts and other districts under the direct control of the Government, influenced often by no economic or social considerations, often issued licences either carelessly, the task being entrusted to a junior clerk, or else in accordance with their private convictions of the justice of non-discrimination on grounds of colour alone.<sup>2</sup> Thus the difficulty in the way of any effective attainment of the aim above-mentioned lay in the very nature of the law, whereby issue of licences was left to the discretion of the licensing officer.

The Government proposed to remedy administration by appointing a single licensing officer for all the districts that were under their supervision, thus securing uniformity and care in the issue of licences in place of the present unsatisfactory state of affairs.<sup>3</sup> When, however, the Government proposed to appoint to this position a man of sound judicial training, the Senior Magistrate of the Colony, a man, moreover, it was asserted,

/who....

1 N.L.A. 41 pp 20,137,201; 42 p 400,402

2 N.L.A. 44 pp 357,358,367,371

3 N.L.A. 42 p 402

who had been responsible for the issue of the only two licences existing in Zululand (which might be interpreted as showing a lack of sympathy with the Colonial point of view), and when the Government refused to make any undertaking to give this official definite instructions as to Asiatic licences, the Assembly smelt a rat, suspecting that it was really a change made to suit the Imperial Government. In reply to the Government's argument that they had no legal right under Law of 1897 to issue any such instructions to an official, they replied that it was clear that the Government knew the better path but dare not follow it, and negatived the vote for the expenses of such an official by a large majority.<sup>1</sup>

In 1908, however, the Government introduced along with their Immigration Bill two bills dealing with Indian (amended to "Asiatic") trading licences. No 5 proposed to stop the issue of licences to Indians after 31st December 1908, and Number 6 provided that after 1918 no renewals of licences were to be granted to Asiatics, the holders of licences to be compensated by an amount equal to their profits for the last three years.<sup>2</sup> By this action the Government now acknowledged that the Act of 1897 was unworkable; whether they really believed that the bills would be assented to by the Imperial Government is somewhat doubtful. In any case, in spite of the pronouncements of the constitutional expert among the members of the House, Dr. Haggard, that the use of the veto in cases where Imperial interests were concerned, was dying out,<sup>2</sup> the bills were vetoed. Thus matters remained as they were; the big merchant was left free to supply the Indian with goods on long credit, the owner of land or property to lease to him, and the labourer to buy from him, with no law "to save them from themselves"<sup>3</sup>

Not only did the European population thus fail to improve the state of affairs with regard to Indian trading before Union

/came....

1 N.L.A. 42 pp 454-462

2 N.L.A. 44 p 353ff; 45 pp 62 ff

4 N.L.A. 42 p 401; 246,406

3 N.L.A. 44 p 360-61

44 pp 356,360,366.

came about, but they had also to relinquish any idea of reducing the number of existing licences by refusal of renewal on grounds of colour alone; in 1909 a bill was introduced to deal with a legal situation that had arisen, whereby the Municipalities had power under the Act to issue "retail licences" but not licences to carry on retail shops (a somewhat subtle distinction to the layman),<sup>1</sup> and to this bill another clause was added giving applicants for renewal of licences the right to appeal to the Supreme Court against any decision under the Act of 1897 by a Town Council or Licensing Board. Though the object was to meet the Indian Government's desire, the Government held that it was in strict accord with the principles laid down by the leading municipalities in the country that the licensing officer was only to withdraw existing licences where there had been a wilful disregard of the law.<sup>2</sup> Yet cases of injustice had shown that that principle was not held by all,<sup>3</sup> and by this Act, at least the renewal of licences was subjected to justice in place of expediency.

The Indian hawker would at first sight not have seemed nearly so objectionable as the Indian trader to European opinion as represented by the Natal Legislative Assembly. The possible objections of infuriated householders to street-cries and a constant knocking at the door, would be easily outweighed by the advantage of the cheap, largely Indian-grown, produce the Indian hawker supplied, and the fact that it was an occupation not largely followed by Europeans or at any rate by such type of European as the legislative body would feel much anxiety about.<sup>4</sup>

Yet it was believed that the hawker could, and did, compete with the general dealer; this was recognised by the provision that a hawker carrying imported articles as well as Colonial produce must take out a licence; otherwise no licence

/was.....

1 N.L.A. 48 p 118

2 N.L.A. 48 p 530

3 Ibid p 529

4 N.L.A. 43 p 572

was necessary.<sup>1</sup> To the extent that Colonial produce included not only purely agricultural produce but also the industrial products of the Colony such as sugar, candles and matches, the licensed hawker too competed with the general dealer; also it was suspected that very often there lay under the innocent-looking monkey-nuts, pine-apples and bananas, articles such as cheap garments made in India.<sup>2</sup> But it was the licensed hawkers, or "itinerant traders", that were held the more serious danger, caravans of them constituting a moving store-keeping business without the costs of rent or rates.<sup>3</sup>

To check them the operation of a hawker's licence was limited (by Section 3 of a Stamp Act in 1905) to the Magisterial division in which the licence was taken out,<sup>4</sup> while in 1907, by a Licence and Stamp Bill, the licence for each hawker was increased from £5 to £10, and though the licence for each person employed by him in carrying his goods was reduced from £5 to £3, these assistants were not to be allowed to hawk (to prevent one man taking out a hawker's licence and sending a number of hawkers round the country as his assistants).<sup>5</sup> Finally, under the Indian Existing Licenses Bill (6 of 1908), these Hawking Licences were to be dealt with similarly to the trading licences; hawkers of Colonial produce would of course not be affected, as no licence was necessary.<sup>6</sup> As before mentioned, this Bill never came into force, and hawking remained but little restricted.

Before leaving the question of trading and hawking it is necessary to examine the situation in Zululand, often quoted as the ideal the rest of Natal should pursue. Under the Imperial Government a proclamation had kept Indian traders out of Zululand; when it was proposed in 1895 to pass a Bill annexing Zululand to Natal, it was feared that it would mean the settlement of free

/Indians....

1 N.L.A. 38 p 279

2 U.H. III 2330;

N.L.A. 45 p 136

3 N.L.A. 43 p 572-3

4 N.L.A. 39 p 141; 40 p 12. Acts 1905 p53

5 N.L.A. 43 p 572

6 N.L.A. 45 pp 23-27, 136.

Indians, and when Zululand became part of Natal in 1897 it was with the assurance that trading conditions would not be altered.<sup>1</sup>

The position was not that no Indian could then enter Zululand, but that licences for both store-keeping and hawking were necessary ~~which~~ <sup>and</sup> were issued at the discretion of the Magistrates, the discretion being invariably used in the direction of refusing licences to Indians, presumably on the instructions, express or otherwise, of the Government. A certain amount of free Indians entered as labourers for construction of the railway line from Tugela to St Lucia Bay; later the contractors found a supply of indentured labourers necessary in view of the absence of a supply of natives, and a bill (8 of 1901) was accordingly introduced to extend the provisions of the various Indentured Immigration Acts of Natal to Zululand so as to provide for the introduction of the necessary labourers.<sup>2</sup> The members for Zululand of the Legislative Assembly disliked the measure as likely to lead to the flooding of Zululand by the Arab traders, and, to prevent this, proposed an additional clause that no Indian should be allowed into Zululand or to settle there, without the consent of the Governor-in-Council, whereby there could be secured the restriction of admission to labourers only.

The Government could not accept this as the Indian was at present free to enter Zululand, the inference being that they were afraid that the Imperial Government would veto the Bill (reserved necessarily on account of such clause) as being calculated to diminish existing rights; the Bill must be passed as absolutely necessary for the development of Zululand.<sup>3</sup> Moreover such a clause was unnecessary as the present conditions with regard to licences would be unaffected by the Bill.<sup>3</sup>

These conditions were made absolutely water-tight in 1905 by the Zululand Licences Act (No 31 Section 6) of that year,

/whereby....

1 N.L.A. 30 p 356,359  
3 Ibid pp 238-9

2 N.L.A. 30 p 21



whereby the granting of licences was then made subject to the approval of the Colonial Secretary, the giving or withholding of this approval being at his absolute discretion; there was consequently now a double safeguard against the granting of trading licences.<sup>1</sup> In these circumstances the provision in the law of 1905 with regard to the £3 tax, that licences to trade in Zululand could not be given to people liable to the tax except on production of the receipt for the current year, was almost superfluous.

It does not appear that hawkers were dealt with so severely. The Act 31 of 1905 provided for the taking out of licences month by month by all hawkers at the cost of £1 a month for the dealers in imported goods, hawkers of Colonial produce being freed from this charge.<sup>2</sup> Whether such licences were given or not is not clear; according to the Indians they were not,<sup>5</sup> and the fact that all hawkers had to have licences, free or otherwise, points to this too.

Against ownership and occupation of land for agricultural purposes by Indians no specific measure existed. Objection there was, as is evidenced by notice of a motion on June 6 1901 as to the desirability that, "in the interests of the country, in future no further transfer or title to land in Natal be granted to Natives or Indians", by means of a legislative prohibition. But the motion was withdrawn,<sup>3</sup> and no attempt was made subsequently to introduce legislation to that effect, despite statements to the effect that, if nothing were done, the small farmer would be squeezed out exactly as the small shop-keeper was being, and that the Indian farmers were impoverishing the soil and rendering the country unsightly by their methods of getting the most out of a piece of land without using fertilisers, and then moving on to another twenty acres or so.<sup>4</sup>

/If....

1 N.L.A. 39 p

3 N.L.A. 30 p 223

2 N.L.A. 39 p

4 N.L.A. 31 p 422, 423.

5 ~~N.L.A.~~ Polak op.cit. p 20.

If nothing was done to protect the European small farmer from his land-owning Indian rival, an effort was made to penalise by means of a tax such European landowners, often absentees, as had Indians or natives as squatters or tenants on their property. This Bill, the Private Locations Bill 55 of 1905 was not solely introduced as a matter of policy, but also as a means of taxation in a time of depression, differing in that respect from the £3 "tax"<sup>1</sup>. The bill must have been dropped, as it is not in 'Acts of Natal.' At the same time a scheme for the taxation of land generally, with differential treatment of that not beneficially occupied, had long been in the air, and in 1903 a Lands Commission reported in favour of such; in 1906 such a bill (No 1 of 1906) was opposed as being a contentious matter affecting nine-tenths of the population (100,000 Indians and 900,000 Natives) "introduced" at a time of stress, and was referred to a Select Committee, who were, with only one exception, of opinion that for beneficial occupation there must be European occupation unless the land belonged to the occupier, whether he be European, Indian or Native.<sup>2</sup> The bill was dropped, but finally the desired end was attained by the Income and Land Assessment Act of 1908, where it was laid down "land owned by Europeans shall not be deemed to be beneficially occupied if the same is occupied solely by Natives or Indians, unless such land is not suitable for European cultivation", and a much heavier tax was laid on such land not beneficially occupied.<sup>3</sup> Although the tax was imposed on the owner of the land, there was a possibility of the incidence being shifted on to the coloured tenant.<sup>4</sup> Thus the law might penalise the Indian tenant, while making no difference to the Indian owner in occupation. The cause for this distinction was largely the endeavour to prevent speculation by Europeans who neglected the land as absentee landlords, and left

/it

1 N.L.A. 39 p 672-3

2 N.L.A. 39 p 672 117, 140, 771.

3 Section 34 (2) of the Act

4 N.L.A. 41 p 96

it to be worked by coloured tenants.

In addition to these two economic aspects of the situation in Natal at Union, trading and agriculture on a small scale, there was labour. The indentured Indian scarcely competed at all with the white man; it is true that there were exponents of a white labour policy during the discussions as to whether Indian indentured labour should be stopped, and that they held that the white man could work in the cane-fields without detriment to his health,<sup>1</sup> but they were not dealing with what was, or was at all likely to be, but with what they would like to be. Besides the conclusion of the Immigration Commission of 1909 that it would not be in the interests of the white population of the country to have white men working side by side with coloured men in the fields, it was an economic impossibility on account of the low wages industries such as the sugar industry could pay, wages on which no European could live according to European standards.

Indentured Indians did do a certain amount of semi-skilled work such as tending machines on estates,<sup>2</sup> but most of such work was done by free Indians. The possibility of Europeans doing partly skilled work at the time done by Indians was taken seriously, especially with regard to Government departments, of which the Railways as the biggest of Government enterprises received the most criticism. In 1904 the Legislative Assembly passed a motion that the time had arrived when all railway portering work should be performed by European porters and that a start should be made by employing Europeans only at Pietermaritzburg and Durban stations. Reference was made to the system in European countries of starting on the bottom rung of the ladder, just as the General Manager of the Queensland Railways had done. The Minister responsible, the Minister of Lands, was somewhat pessimistic, but he would do his best. It had been given a trial before, he said, and had failed miserably;

/to.....

1 N.L.A. 44 p 344-5

2 N.L.A. 43 p 197

to this the proposer replied that the former scheme had failed only because European porters had been set to work alongside Indians, and had immediately started ordering them about instead of literally putting their backs into it themselves.<sup>1</sup>

On this occasion some mention was made of the use of Indian clerks in Government offices, and in 1906 the matter of competitive employment was brought forward on a much wider basis than employment of railway porters. A motion was brought forward that, as the welfare of the European population was being severely threatened by the continued increase in the employment of Indian skilled and partly skilled labour in trades, positions and offices suitable for European labour, the Government should appoint a Commission of Enquiry to report on, firstly the number of Indians which the several Government Departments, Municipalities and other public bodies were employing in situations that had been, or might be, filled by Europeans, secondly how much approximately gradual replacement would cost, and thirdly whether, and to what extent, such a course was feasible, and by what means.

The proposer felt such an enquiry was necessary in view of exaggerated statements made on the subject, and the lack of detailed knowledge. Examination of the last census, however, showed that there must be about 1400 Indians falling within the terms of the resolution; there was thus a prima facie case for enquiry.<sup>2</sup> The time of depression, however, that had led largely to the employment of cheaper labour led at the same time to the substitution of an undertaking by the Government to institute an exhaustive enquiry with the ordinary means at their disposal, during the recess.<sup>3</sup> One is tempted to conclude that either the matter was not one of great public importance to be dealt with in this manner, or else that the Government feared that a Commission might place them under an obligation

/to.....

1 N.L.A. 36 pp 348-55

2 N.L.A. 41 p 138-9

3 Ibid p 140

to follow a policy they felt they could not afford.

They were not allowed to leave the matter at that, as the next year Haggart moved that Asiatic employment on the Natal Government Railways was undesirable, in the public interest, in positions where white men were available at reasonable wages; such occupations were those of clerks, assistant guards for which white lads could be used, and gate men at crossings for which disabled Europeans, checkers, cleaners (as firemen and then drivers in embryo), and engine-drivers at Power Stations. The motion was carried.<sup>1</sup>

The Indian Immigration Commission of 1909 recognised that Indians were doing work in Government and Municipal Departments usually done by Europeans, and that wherever this was the case steps should be taken to rectify the matter. They moreover recognised that competition with European youths and mechanics in various spheres of labour by ex-indentured Indians and their children was increasing.<sup>2</sup>

It had been pointed out sarcastically during the debates on the Indian Trading Bills of 1908 that it would be hardly logical to protect only the European trader <sup>and not</sup> but also the professional men and skilled workmen, and that the logical outcome of the spirit of the trading measures would be a sort of Colour Bar Act providing that no Asiatic should be able to follow any occupation other than that of manual labour. The fact that such a suggestion was treated seriously enough to be denied in connection with that particular trading measure,<sup>3</sup> is some indication that such a general colour bar would, if it had been at all feasible, have been very acceptable to European opinion. In the absence of any such comprehensive measure all the supporters of the employment of white labour could do was to see that public bodies at least employed Europeans instead of Indians as far as possible.

1 N.L.A. 43 p 478-484

2 Report Sections 14 and 20

3 N.L.A. 44 pp 360, 370;  
363

EDUCATION. and SOCIAL STATUS.

The general attitude towards education of Indians was the outcome of the attitude towards employment of Indians.

The majority of the Indian schools in the Colony were run by various religious bodies, chiefly the Anglican Church, supported by Government subsidies; these were purely primary schools<sup>1</sup>. The Government schools in Durban and Pietermaritzburg, the Higher Grade Indian Schools, created in 1899 as the result of a decision to prevent the Indians attending the ordinary schools of the Colony, provided education for those that could afford to pay for it, but as the infants' class and Standard I were abolished in 1907, and an age limit of 14 was set the next year, both of these acts being regularised by regulations in 1909, the position was that only primary education, and incomplete at that, could be obtained at the schools too.<sup>2</sup>

An Education Commission in 1909 did not attempt to give an opinion as to the restriction of Indian education to primary education, though they were emphatic on the point that the present provisions for primary education were inadequate, particularly with regard to the children of indentured labourers for the education of whom by the employer no provision was made by the Indentured Immigration Laws; education was given to these only by the generosity of one or two employers. They recommended that it be made compulsory for the owner of an estate on which there were at least twenty children between the ages of five and twelve, to supply them with elementary education at his own cost. For free Indians they recommended the establishment in the most congested districts in the country, of Government primary schools.<sup>3</sup>

Lack of facilities for education was one of the chief grievances of the Indians at the time, but their chief reason

/for.....

1 Report Superintendent Education 1901 p 5

2 Polak op cit pp 65-7

3 Supplement Natal Government Gazette  
(14 Sept. 1909) p 1537

for feeling "that a deliberate attempt is being made to starve the Natal British Indian community intellectually", was not this defect pointed out by the Commission that the education was not wide-spread enough, but that it did not go far enough, that a limit had been put to the standard an Indian might attain to. To this somewhat individualistic argument was attached the consideration that "the condemnation of a section of the population to a condition of illiteracy is bound to affect the general intellectual and moral well-being of the State."<sup>1</sup>

The average Natalian did not appear to regard the Indian as being a constituent element in the State; consequently in this case he looked on education solely from the utilitarian point of view as preparation for a particular occupation in life. As the European believed that even primary education would cause the children of ex-indentured Indians to forsake the arduous life of their fathers for more congenial occupations, which the European wished to preserve for white men, it seemed to him that expenditure on Indian education was a waste of money.<sup>2</sup> The Government, however, defended this expenditure on primary education, rising gradually from about £3000 in 1901 to about £5500 in 1909<sup>3</sup>, as necessary for the production of good citizens (an aspect, as mentioned, disregarded by most) and yet leaving them far below the standard for professional occupations.<sup>4</sup>

It was quite clear that if an Indian wanted to attain to such a standard he would have to do it on his own and entirely at his own expense. With clerical work it was different; in 1909 the primary schools "unfortunately continue to turn out numbers of boys whose education fits them for nothing but clerical work, and the competition between the European and the Indian boy for office employment will soon be very keen indeed."

/Manual.....

1 Short statement p 5-6  
of Indian Grievances  
3 Reports of Superintendent  
1901 to 1909

2 N.L.A. 41 p 32; 43 p 255  
4 N.L.A. 43 p 255

Manual instruction in the shape of basket-making had been introduced, but had been hampered by lack of funds.<sup>1</sup>

This problem continued after Union to occupy the attention of the Natal educational authorities, who felt that adequate provision for vocational training was becoming a necessity, as the present training was almost entirely literary; "the children are inclined to despise the manual occupations by which the majority of them can hope to earn a living."<sup>2</sup> Manual work was then given a larger place in the curriculum, though better trained teachers were necessary and, as many schools still advanced academic studies at the expense of manual and domestic training, it was proposed that a new syllabus should be adopted and enforced by the Government.<sup>3</sup>

The social position of Indians in Natal was much the same as in the Transvaal. In Durban and Pietermaritzburg Indians in national dress were required to travel outside the Municipal tram-cars,<sup>4</sup> and on the Natal Government Railways, by administrative action only, Asiatics were usually placed in separate compartments from Europeans, in whatever class they were travelling; in particular certain compartments were in practice reserved in the third class for Europeans. The Government were pressed in 1904 to set aside separate compartments specifically for Asiatics and for natives, but held they could not do this without legislation, which they were not prepared to undertake as it would most probably be disallowed by the Imperial Government.<sup>5</sup>

Other aspects of a social inequality were non-admission to hotels (as in the Transvaal), the use of lavatories along with natives, and so on. Moreover, under the Municipal Vagrancy Regulations descendants of ex-indentured Indians were not

/allowed....

1 Report of Superintendent for year 1909-10 p 9

2 Report for 1912 p 14

3 Report for 1913 p 13

4 Bolak op cit p 5

5 N.L.A. 36 p 233



allowed in the streets after 9 p.m., unless they carried permits<sup>1</sup>  
Only indentured Indians, however, had to carry passes at all  
times and produce them on demand by the police; the Attorney-  
General had apparently ruled that the relevant section of Law 25  
of 1891 did not apply to free Indians, and accordingly the  
charges brought up against free Indians for wandering about  
without passes had been discharged by the Magistrates. An  
attempt to bring free Indians under this liability by an amend-  
ment to Act 28 of 1903 failed, and the question was not revived.<sup>2</sup>

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1 Polak p 70

2 N.L.A. 31 pp 310-11

ORANGE RIVER COLONY & CAPE.

In the other two provinces of the new Union, the political situation was not so acute as in the Transvaal, nor were the numbers of the Indians as great, <sup>as in Natal</sup>. In the Orange River Colony there were only a few Indian waiters, cooks, and servants on the same social footing as natives.<sup>1</sup> The position there was, in terms of a law of the Orange Free State in 1890 as taken over by the Imperial Government after the Anglo-Boer War, that no Asiatic could remain in the Orange River Colony for longer than two months without permission from the Governor-in-Council thirty days after an application by the Asiatic concerned accompanied by a sworn declaration that he did not intend to carry on a commercial business or farming, directly or indirectly; no such person was to be capable of owning fixed property. The granting or withholding of this permission was entirely at the discretion of the Governor-in-Council, who might if he thought fit institute a local enquiry as to the desirability of granting it.<sup>2</sup> These provisions had been used to maintain a strict exclusion of Asiatics, and were still in force.

In the Cape there was an Indian population of about ten thousand, consisting chiefly of traders. The immigration provisions were contained in the Immigration Act of 1903 (as amended in 1906) embodying the principle of the Natal Act, as recommended by Chamberlain at the Imperial Conference in 1897 as containing nothing that would hurt the feelings of the Indian People.

Certain difficulties arose from the Act, in respect not of new immigrants but of the rights of residents, chiefly with regard to domicile, and the admission of minor children. In neither the 1903 or 1906 Act was there a clear definition of

/domicile,...

1 Polak op.cit. p83

2 Law Book of Orange Free State Chapter 33

domicile, nor were domicile certificates issued which would be always valid on return from a visit outside of the country; instead a permit to return, valid only for a year, had to be taken out on each such occasion, or the Indian was liable to be treated as a prohibited immigrant on his return. From the Indian point of view, the Cape Act of 1906 was thus less fair than the Natal Act. Accordingly the Indians, in a petition in 1908, asked for a clear definition of domicile, and certificates without a time-limit for return. At the same time they asked that the age-limit for minors to be introduced, should be 21, as was recognised by Roman-Dutch law for all other purposes and as had been fixed by the law of 1903, instead of 16 as fixed in 1906; moreover that, in view of the difficulties that had arisen through the Department's suspicions that they were being deceived as to the stated age of minors, an authenticated certificate as to the age of such youth issued by the Magistrate of the district in India from which he came, should be accepted as sufficient proof.<sup>1</sup> A Select Committee of the House of Assembly in 1908 found that generally speaking the Indians were now satisfied with the working of the Act now that certain modifications had been made in the working of the Act, such as extension of the period of the domicile certificate to three years by regulation, and when its recommendation as to the acceptance of certificates of minority from the Indian authorities, coupled with evidence of identity to prevent personation, had been adopted by the Department, the question was regarded as practically closed from the Indian point of view.<sup>2</sup>

The European population of the Cape, however, were not entirely satisfied. Allegations had been made before a Select Committee of the Legislative Council in 1908 (sitting in 1907, 1908 and 1909) on the working of the Act, that certain immigration agents had been bribing the officers of the Immigration  
/Department.....

1 S.C. 16 of 1908 Appendix, Section 3

2 S.C. 16 p 5

Department to favour their clients, and often to admit them illegally, and a judicial enquiry had refuted these charges, though finding that these immigration agents were charging exorbitant prices to intending immigrants.<sup>1</sup> There remained the belief of the Immigration Department that the law was still being constantly evaded in the matter of minor sons, in that Indians were bringing in youths as their alleged sons for shop assistants, such youths being, as the result of "parental" control, practically in the position of indentured assistants; to prevent this the Department felt certificates from the Indian authorities should be made compulsory and not optional.<sup>2</sup>

But the most fundamental objection to the working of the Act was that it was not strong enough to keep out undesirables effectually; the justice of this criticism was acknowledged in effect by the Chief Immigration Officer's action in proposing that the Act be amended so as to empower the Department to prohibit the entry of persons unable to pass an education test considerably in advance of the present one<sup>3</sup> "which", as the Legislative Council Select Committee said in recommending this proposal, "could scarcely be called a test at all"<sup>4</sup>. That the "undesirables" were immigrants of the trading class, among them presumably the Asiatic, may be deduced from the proviso the Immigration Officer suggested, giving the Minister power to dispense with the education test in the specified case of desirable European immigrants who were skilled artisans, farm labourers and of other approved classes, and also from his suggestion that an additional clause be inserted in the Act, prohibiting the entry of any person belonging to any class proclaimed by the Governor-in-Council to be undesirable immigrants.<sup>5</sup>

Though the modification of the Act recommended by the Select Committee of 1909 was not made in the interval before

1 Ci of 1909 p 9      2 Report of Chief Immigration Officer /Union....  
for 1908 pp 4-5  
3 Ci of 1909      4 Ci of 1909 p 6  
Appendix p 7  
5 Ci of 1909 pp 7-8

Union, it is of importance to note that even in the Cape, noted for its liberal policy, there was talk of a more severe restriction of immigration.

The other chief grievance of the Cape Indians was with regard to the working of the General Dealers Act of 1906, on the lines of the Natal Licences Act, conferring the issue of licences on the Municipalities; the Indians complained that all applications for licences by Indians had been refused throughout the municipalities of the Peninsula, except Cape Town itself. The Select Committee of the House of Assembly appointed to enquire into the Asiatic grievances, devoted a large part of its report to the European allegations as to the doubtful business methods and low standard of living of the Asiatic trader, and after deciding that the present law was adequate from the European point of view if adequately enforced,<sup>1</sup> it then recommended "that it would meet the case if in any future legislation on the subject it were provided that after the refusal of a licence, on presentation of a petition signed by the majority of the registered voters of the ward of the Municipality or Division in which the applicant proposed to trade, the Council should be compelled to grant the licence";<sup>2</sup> what the Indians had asked for had been the transfer of the issue of licences to the Magistrates as disinterested parties, which they held the Municipal Councils very often were not.<sup>3</sup> As for hawkers, to whom there had been a general refusal of licences, and for whom the Indians asked such right of appeal as the general dealers had; on this point the majority of the Committee recommended that those of standing in rural areas who were in business before 1906 should be placed on the same footing under the Act as general dealers.<sup>4</sup>

As nothing was done legislatively on lines of the recommendations, the position in the Cape with regard to

/immigration...

1 Sc 16 of 1908 p 4      2 Ibid p 5

3 Ibid Appendix p 4

4 SC 16 of 1908 p 5

immigration and trading was roughly that which the two Select Committees found, apart from such matters as could be settled by administrative action. On other questions there was no general complaint by the Indians, benefiting as they did from the more liberal policy of the Cape towards non-Europeans in matters such as the franchise, both political and municipal. As for the social status, there was apparently only one municipality that had promulgated specific anti-Indian bye-laws by virtue of its powers under Act II of 1895, and that was East London; these regulations prohibited the use of pavements in public streets, required the production of passes after 8 p.m., and residence and trading in locations unless a certificate of exemption was obtained from the Municipality, and differentiated against them in other minor respects.<sup>1</sup> In this the Municipality were acting within their powers, and the Government could take no action even if it wished to.<sup>2</sup>

Such was the situation in Natal and the Cape that the Union Government had to deal with along with the struggle in the Transvaal. Some of these aspects were never to be placed in a prominent position during that struggle, but they were all aspects of the question of the status of the Indian, which is what the Indians in the Transvaal were really carrying on the struggle about. And once the immigration question was settled this other question of what part the Indian was going to play in the State, would have to be decided definitely sooner or later.

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1 Polak p 86

2 S C 16 p 6.

THE UNION 1910 - 1914.

It was, however, the immigration question that occupied the attention of the first Union Government in 1910. The Imperial Government on 7th October continued with them the negotiations with the Transvaal that had reached no settlement, suggesting the passing of an Immigration Act, on the lines of the Australian Act, with differential administration, for the whole Union.<sup>1</sup> This extension of the Transvaal policy of practically complete exclusion to the rest of South Africa was pointed out by the India Office as in prejudice of the existing position of the Indians in the Cape and Natal, which the Imperial Government had announced its intention to safeguard;<sup>2</sup> the Imperial Government, however, did not press the matter in view of the firm attitude of the Union Government, as they had already fully recognised "the right of a self-governing community such as the Union to choose the elements of which it shall be constituted", provided that such exclusion as there was, should not be provided for in a manner that subjected those excluded to unnecessary humiliation.<sup>3</sup> As for inter-provincial migration, the Imperial Government stated their preference of a single immigration area, but offered no resistance to the Union Government's decision to maintain the Provincial boundaries in terms of the existing Immigration Laws.<sup>4</sup> In view of the greater needs of the whole of South Africa the number of educated Indians to be admitted would be about twelve, though the Union Government would act as liberally as possibly in this respect and might find it possible to admit more than that number in any one year. With regard to the Transvaal, Act 2 of 1907 would be repealed.<sup>5</sup>

Accordingly an Immigration Restriction Bill to this effect was introduced in March 1911 rather late in the session,

/which.....

1 Cd 5579 pp 1-3

2 Ibid p 17

3 Ibid pp 3,19

4 Ibid p 4,11

5 Ibid p 4,19

which was to end at the end of April. Chiefly due to opposition to the Bill by the members representing the Orange Free State, supporters of the Government, because the educated Indians to be admitted were to be allowed to enter the Free State ( a violation, they held, of the promise made to that colony at the time of the passing of the Act of Union), the Bill had to be withdrawn at the end of the session.<sup>1</sup> There was also some doubt expressed as to whether the Bill would effect a final settlement as far as both Imperial Government and Indians were concerned; in reply General Smuts assured them that it was an agreed Bill with the Imperial Government, that he did not know whether it would completely satisfy the Indians, and that the Government had decided to be satisfied with a solution that would please the British and Indian Governments.<sup>2</sup>

In withdrawing the Bill on April 25th General Smuts had said that in the meanwhile he hoped to be able to stop passive resistance until the next session of Parliament, when the matter could be dealt with once more.<sup>3</sup> In correspondence with Gandhi during the past few days he had come to a provisional settlement with him that if he, Smuts, gave an assurance on certain points, Gandhi would get his countrymen to suspend passive resistance pending the carrying out of those conditions; they were repeal of Act 2 next session together with an Immigration Bill without a differential taint, passive resisters who had lost their right to register through passage of time only, to be allowed to register now, and temporary certificates were to be issued allowing educated Indians now in the Colony who had never been registerable, to remain to the number of no more than six, in anticipation of the forthcoming legislation. Such were the points agreed to in writing by Smuts and Gandhi; an additional point, required by Gandhi but not touched on by Smuts in his reply, was that the new immigration legislation should not disturb existing rights.

/The.....

1 Od 6283 pI. HI 1745 ff.  
3 HI 2940

2 HI 1766



The correspondence was made public, and the suspension of passive resistance was agreed to at a meeting of British Indians on April 27th after a heated discussion, but with only half a dozen dissentients.<sup>1</sup>

INTERNAL.

As there now seemed to the Indians a fair prospect of a settlement of those points on which they had taken<sup>up</sup> and sustained passive resistance for four years up to the present, the Transvaal Indians now turned to those matters in connection with which they had used constitutional methods such as petitions in the past, and from which the passive resistance movement had throughout those last four years diverted the attention of both Europeans and Asiatics. So in view of the approaching Imperial Conference they drew up a petition setting forth the position of the Indian resident in the Transvaal.<sup>2</sup>

The chief of the grievances was the continuance of Law 3 of 1885. Any demand at present for the political franchise, from which they were excluded by the law, the British Indian Association regarded as outside practical politics; the prohibition of the ownership of landed property except in bazaars and locations, however, they regarded as a serious disability, hampering their trade greatly. They were not even getting the full advantage of the provision allowing ownership in bazaars, as the stands in the locations were only leased for a period not longer than 21 years.

The effect of this provision of the law, however, had been nullified by the creation, under legal advice, of equitable Trusts, whereby European friends took transfer of land for which the Asiatic supplied the money, and though remaining the ostensible owner passed a bond on such land in favour of the equitable owner. According to the Indians those trusts had been recognised by the Courts, and the system was almost as old as Law 3 itself.<sup>3</sup>

/The....

The object of the Indians in showing that this provision of the law was not effective was presumably to show that it might just as well be repealed as being at the same time ineffective and offensive. As a matter of fact it is not at all clear that the Indians received any protection from the law in respect of such trusts; it was held in the case of Lucas' Trustee vs Ismail and Amod<sup>1</sup> in 1906 that Lucas, a European friend of the Indians who held stand licences for them, had legal dominium in the stands and must be regarded in law as holding the stands not as trustee but in his individual capacity. In other words the transaction was neither legal nor illegal.<sup>1</sup> Nevertheless "the toad knows where the harrow grips it", and the statement of the Indians that in practice they could easily evade the law, must be accepted.

This provision was one on which Elgin had on several occasions made representations to the Transvaal Government, both under Crown Colony and Responsible Government.<sup>2</sup> The only relief the Transvaal Government were prepared to grant was the right of the Indians who had acquired property before 1885, to transmit this property to their descendants, a concession from which it appeared only one man would benefit, Aboobaker Amod, and also the right of Indian religious bodies to hold land for purposes of mosques. Provision for both those concessions was made in the Asiatic Law Amendment Ordinance; only the former was repeated in Act 2 of 1907, as the Indians asked for its withdrawal after a judgment of the Supreme Court had decided that an association of coloured persons incorporated under Ordinance No 36 of 1903 was not subject to the disability with regard to the holding of land that coloured persons individually were subject to.<sup>3</sup> All that the Imperial Government could do was prevent the position of the British Indians in the Colonies from becoming worse, as in Natal during the period 1907 - 10. In reply to a complaint by the Government of India in 1907 that they

/had....

1 Cd 3308 pp 12-13  
3. Cd 3308 p 18,34

2 Cd 3308  
Cd 3887 p 30 (May 11th)

had been led to believe that if the conditions of admission and residence of Indians were settled by the registration and Immigration Acts, the treatment of resident Indians would improve, and that there had been no improvement, Elgin stated that he was fully aware of this, but that in such a matter the governing factor must necessarily be the state of public opinion in the Colony, and that in his judgment it would be useless at the present time to endeavour to secure further concessions for resident Asiatics.<sup>1</sup>

The remaining provision of Law 3, residence in locations could not be enforced as the Volksraad had forgotten to attach a penalty to disobedience of it.<sup>2</sup> Thus it must have been that the law was objectionable chiefly on account of its presence on the statute-book as a differential law.

To the Gold Law and Townships Acts, 35 and 34 of 1908 they had strong practical objections, as containing an attempt by the Transvaal Government to attain the object of the unenforceable residence provision of Law 3 by "an obscure interpolation in statutes covering hundreds of sections and ostensibly dealing with matters of quite a different nature", to avoid the Imperial veto that would most probably have been attached to a straightforward attempt to amend Law 3.<sup>3</sup>

The first step taken in pursuit of a policy of segregation had been the removal of Asiatics from Vrededorp, a poor white area to the west of Johannesburg. As the stands in this area had been parcelled out by Kruger on condition of occupation by the owner, and as Indians were incapable of owning fixed property, it followed that the occupation of a large number of these stands was illegal. In now enabling the standholders to acquire a leasehold title, the Vrededorp Stands Ordinance (1906) laid it down as a condition that the lease should not

/be....

1. Cd 4327 p 10, p 12
2. Cd 6087 p 10
3. Cd 6087 p 11

be transferable to a coloured person or Asiatic, the stand should not be sublet to any such person, nor should the lessee permit any such person to reside on his stand except in the capacity of servant to a white man; thus there was perpetuated as far as the Asiatic was concerned the position there had been when the stand must be occupied in person.<sup>1</sup> The Vrededorp Stands Act of 1907 retained this principle, on the one hand helping the white standholder in his obligation, on penalty of a fine, to evict present Asiatic sub-tenants, by providing that the title of present Asiatic tenants from the standholder to remain should be considered cancelled when the leasehold title was ~~re~~<sup>re</sup>quired, and that eviction should take place within four years from such date, on the other hand expressly saving the right under the common law to claim compensation for buildings erected with the consent of the owner of the land.<sup>2</sup> These measures were accepted by the Imperial Government as justifiable in the special circumstances at Vrededorp.<sup>3</sup>

Such a measure had dealt satisfactorily with a particular area and a particular legal situation. What the Government needed was a measure giving "as a matter of sound police and sanitary regulation (and also for the sake of morality), the power to regulate the residence of coloured persons in the populous mining areas of the Witwatersrand," outside of the Municipalities to which Law 3 applied.<sup>4</sup> Consequently in the Precious and Base Metals Act of 1908 (commonly known as the Gold Law), to consolidate the law with regard to mining and prospecting and matters incidental thereto, not only were mining rights and ~~principles~~<sup>privileges</sup> withheld from the non-European as heretofore, but clauses 130 and 131 were inserted prohibiting them from residence on proclaimed land in certain areas, except in locations and other such places as the Mining Commissioner might permit.

/Section.....

1 Cd 3308 pp 53-56

2 Cd 3887 pp 49-51.

3 Cd 3308 p 60

4 Cd 6087 p 7

Section 131 was amended so as to safeguard coloured persons in lawful occupation at the time of passing of the Act.<sup>1</sup> In reply to the suggestion by the Imperial Government that the new law could still deprive coloured persons of the power to acquire rights that were open to them before, the Transvaal Government held that even if Section 133 of the Gold Law of 1898 had not deprived coloured persons of such rights of residence they were nevertheless acting in the spirit of such previous mining laws; as the matter had never yet been tested in the Courts, they were putting in a section providing for the maintenance of such rights as might have been acquired previous to the Act, in case their view as to the law of 1898 were not upheld by the Courts.<sup>2</sup> In this case the Courts proved themselves once again inconvenient to the Government, holding that the Act must be interpreted to mean that not only were Indians who had (by Section 131) directly entered into leases before the passing of the Act protected<sup>3</sup> till those leases expired, but by a further judgment that the Law safeguarded (by Section 77) to stand-holders any rights they had acquired prior to 1908, the effect of which was to free any stands laid out before 1908 from the restrictions with regard to letting to Asiatics.<sup>4</sup>

This protection, however, only applied to stands outside townships. The Townships Act of 1908 gave the Government power to make regulations fixing the conditions to which the issue of freehold title to stands in the leasehold townships should be subject; the conditions as laid down in Government Notices were identical with those in the Vrededorp Stands Ordinance. Consequently the position was as follows; in the townships no Asiatic could occupy a freehold plot with title granted under the Townships Act of 1908, outside he could occupy any stand laid out before 1908, with discretion to the Mining Commissioners to

/dispense....

1 Cd 6087 p 7  
2 Cd 6087 p 7

3 Cd 6087 p 8  
4 Cd 6087 pp 13-14

dispense with the prohibition with regard to the later stands in the case of educated Asiatics.<sup>1</sup> This was the position in December 1911.

The effect of these two Acts (as unaffected by the later Supreme Court decision) Law 3 of 1885, and minor matters such as regulations with regard to footpaths and trams, were the chief grievances formulated (May 1911) by the Transvaal Indians with an eye to the Imperial Conference.

At the same time the Natal and Cape Indians drew attention to their position. With regard to Natal, on the 7th October, 1910, the Union Government had been warned that a decision as to continued indentured emigration from India would have to be taken at an early date.<sup>2</sup> Though the decision lay primarily in the hands of the Indian Government, the Union Government presumably could have prevented that decision by a promise to secure more considerate treatment of resident Indians; as they were unable to do this, the Government of India on the 4th January, 1911, announced its decision to issue a notice in April prohibiting further indentured immigration into Natal from 1st July, on the grounds that after the expiry of their indentures the Indians had no guarantee that they would be accepted by the Union as permanent citizens, due to the divergent attitudes of the Colonists and the Indians.<sup>3</sup>

That this was at the same time virtually a decision of the Union Government, may be inferred from statements in Parliament to the effect that the Union Government had stopped the system. The position was that even if they had desired the continuance of the system, which was doubtful to say the least, the conditions to be fulfilled were such as could not have been fulfilled by legislation except by going against European public opinion with regard to the position of Indians, or by administration without interfering with local authorities with regard to such matters as education, a provincial matter, or

/the....

1 Cd 6087 p  
(28 Dec)

2 Cd 5579 p 1  
3 Cd 5579 p 4

the issue of trading licences, a municipal affair. In directing the attention of the Union Government in October to the matter of indentured immigration, the Colonial Secretary had also directed attention to the grievances of the resident British Indian population of Natal, and had expressed the hope that the Union Government, in whom the control of matters differentially affecting Indians was now vested by Section 147 of the South Africa Act, would view the whole position in a broader and more generous spirit, and would exert their whole influence to secure considerate treatment especially by the municipal bodies;<sup>1</sup> all the Union Government could promise was the securing of vested rights.<sup>2</sup>

As the Natal Indians at this time asked "that the status of British Indians under the Union will be placed on a just, equitable and satisfactory footing, consistently with the declaration made from time to time by His Majesty's Ministers regarding equality of treatment irrespective of race, colour, or creed,"<sup>3</sup> it is clear that the Indian aim was something more than a tenacious grip on vested rights.

At the same time they rejoiced in the end of the indentured system on the grounds not only that the ex-indentured Indian was given no encouragement to improve his position, but also that the system was inherently bad as verging on slavery.<sup>4</sup> They must have realised that though the Indian Government had now lost a valuable weapon for use in their defence, the weapon must have lost most of its former force in dealing with a colony in which the interests of the plantation industries were given every consideration, now that that colony was only an element, and by no means a predominating element, in a country where the other provinces had no such system,; ~~nevertheless~~ <sup>certainly</sup> they felt that most of the disadvantages they had laboured under in the past had been due to this artificial increase in their population.<sup>5</sup>

/Not.....

1 Cd 5579 p 3 ; H.IV 2097 3 Cd 6283 p 10

2 Ibid p 8

4 Ibid p 10

5 see Appendix

Not only did the Cape and Natal now protest against the refusal of licences under their Licensing Acts, Natal stating that a thorough alteration in the Act was necessary, but they both objected to the proposed Immigration Bill as being in diminution of their existing rights, pleased though they were that a settlement had been reached in the Transvaal. The common complaint was that they would lose their facilities for the importation of clerical assistance from India, needing as they did clerks with a knowledge of both English and the Indian vernaculars; in addition both provinces protested against the replacement of the definition of domicile and the giving of permanent domicile certificates by a system of temporary permits, Natal because they were now losing what they had, and the Cape because it meant the continuance of a system to which they had always objected. Natal further held that the rights of entry of wives and children of domiciled Indians were not being secured, and the Cape that instead of full discretion as to qualification of an intending immigrant to enter the Union being left to the Minister, an Immigration Board should be established on the lines of those in Great Britain, with appeal to the Courts from their decisions.<sup>1</sup>

During this breathing-space from the passive resistance struggle the position of British Indians in the Dominions was also discussed at the Imperial Conference in June. The right of the self-governing Dominions to decide for themselves the elements that should constitute their population, was again affirmed, but at the same time it was pointed out what strong claims the Indian had for considerate treatment, and also how the question made the British position in Indian very difficult, uniting as it did all shades of Indian opinion, both moderates and agitators who used it to point out that the British connection was of no use whatsoever if it could not secure considerate

/treatment...



treatment of British Indians in the Dominions; The Secretary of State for the Colonies accordingly urged that the Dominion Governments should do all they could to inform public opinion both as to the strength of this feeling in India, and as to the claim of the Indians to friendly treatment as loyal fellow-subjects of the Crown, and also to institute a first-hand understanding with the Government of India, not only so as to relieve the Imperial Government of its unsavoury task of intervening in such disputes, but also for the sake of the unity of the Empire. It was admitted that there was not possible any complete and perfect solution of the difficulty by "heroic legislation" but much could be done if an "accomodating and friendly spirit" towards India could be fostered.<sup>1</sup> As far as the India Office was concerned, generous treatment of resident Indians would mean the avoidance of any "administrative policy which could be represented as showing an intention to expel them or to reduce them to a position of degradation", involving the avoidance of any measures calculated to take away the means of livelihood from respectable traders by vexatious regulations, the restriction of sanitary measures to such as would cover real sanitary needs and could not be used as an indirect means of disturbing Indian Residents, and the granting of sufficient educational facilities.<sup>2</sup>

In these presentations of the position of British Indian residents in South Africa, and the Dominions generally, the right of exclusion was taken as an accepted fact. South Africa, however, had still to fashion a satisfactory Immigration Act. The Bill of the former year was re-introduced in 1912 with certain alterations, but late in the session during June, after being discussed four times without passing the second reading, was dropped once more for the session. The Orange Free State members  
/were.....

1 Cd 5745 pp 394-399 of 1911

2 Cd 5746-1 of 1911 p 272-8

were not satisfied with an alteration to the effect that the educated Indian immigrants, though still free to enter that Province, should be subject to the conditions of the law with regard to trading and other occupations, and also as far as immigrants from the other Provinces were concerned, replacement of the present law by another forbidding entrance at all. But the lack of enthusiasm for the Bill seems from the debates to have been general; even the Government had throughout the session subordinated it to other legislation on the order list, and their attempt to push it through at the end of the session was met by the Opposition with what amounted to derision of the explanation that they had been waiting for the report of a Tuberculosis Commission to insert one or two clauses that might easily have been dealt with at the Committee stage. Whoever was to blame for the Bill not passing that session, it is clear that the Government could not have regarded it as a matter of the greatest urgency, or they would have held the special session as urged by the Governor-General.<sup>1</sup>

The following year the Bill came up again. It was then that the fundamental weakness of such a bill became most clear and that was its dual purpose, to exclude non-European immigration and to regulate European immigration by exactly the same provisions. It was clear that it was not the policy of the Government to aid European immigration; it was feared that they might go further, and use provisions meant for the exclusion of Asiatics for the purpose of discouraging European immigration. These provisions had to put absolute power into the hands of the Immigration Department to ensure the effective enforcement of the policy of administrative differentiation against the Asiatic. The Government now at this third attempt provided separate machinery for the two purposes; a clause providing for exclusion of people deemed by the Minister to be unsuited to

/the....

1 U.H. Debates 1913. Cd 6283 pp 24,26

the needs of the country on economic grounds, was added to the education test with the assurance that only the latter would be used in connection with Europeans. At the same time, however, it was proposed that the only check on the administration of this latter provision should be Appeal Boards, the Courts being expressly excluded from jurisdiction in this matter; in the end, however, provision was made for the decision by the Supreme Court of points of law arising out of appeals before the Boards.<sup>1</sup>

Thus the difficulty in the Act extraneous to the Indian question was solved. But the matter was not ended when that difficulty had been solved and a method for obtaining exclusion of Indians settled on; there still remained the settlement of the points that had arisen from the passive resistance movement, pending the settlement of which that movement was in abeyance.

While the Bill as finally passed was not expected by either the Union Government or the Imperial Government to completely satisfy Indian demands,<sup>2</sup> a certain amount of consideration was accorded them in the final amendments. The economic test was not to affect the right of inter-provincial movement under the existing laws nor the entry of the small number of educated Indians;<sup>3</sup> with regard to the latter it was proposed that a list should be made up each year if possible with the advice of the Indian Government, and both the selected Indians and the Immigration Department would receive prior notice as to their right to enter.<sup>4</sup> With regard to the rights of domiciled Indians, there would be right of appeal to the Courts by intending immigrants claiming domicile; also the introduction of "the wife or child of a lawful and monogamous marriage duly celebrated according to the rites of any religious faith outside the Union" was authorised, along with the assurance that the de facto monogamous wife of a  
resident...

1 U.H. 1913 Debates on Immigration Restriction Bill.

2 Cd 6940 p 17; H III 2337

3 Cd 6940 p 26,19

4 Cd 6940 pp 26-7

resident Indian would be admitted, whether the marriage was legally recognised or not.<sup>1</sup>

The Bill was passed, and assented to by the Imperial Government on the 23rd August. Meanwhile the Indians had registered their objections in the form of petitions, with the threat to resume passive resistance on the grounds that the provisional settlement of the beginning of 1911 had not been complied with regarding the maintenance of existing rights.<sup>2</sup> The specific objections were formulated by Gandhi in correspondence with Smuts June to September under four heads: (1) that by the definition of domicile, Natal Indians liable to the £3 tax appeared to become prohibited immigrants, and lose rights of domicile; (2) that if this interpretation were correct, descendants of this class, though born in South Africa, would thus be unable to enter the Cape under the provisions of Section 4f (a) of the Act of 1906 which exempted people born in South Africa from the education test; (3) women married in South Africa according to Indian rites returning to South Africa after a visit to India would not be on the same footing as those married in India; fourthly educated immigrants would have to make a specific declaration with regard to commercial occupations on entering the Free State.

On the first and fourth points agreement was reached, the Government giving the assurance that they did not propose to put such an interpretation on the definition of domicile, and that the terms with regard to the Orange Free State would be printed on the form that the educated immigrant would sign at the port of entry. With regard to the first point, the Government intended by the use of the proviso to Section 5 to prevent any entry at all to the Cape except by the education test, as not being one of the terms of the provisional settlement; Gandhi's argument was that as an "existing right" it was safeguarded by the settlement, even though he admittedly had not

/thought....

1 Cd 7111 p 30.

2 Cd 6940 p 25

thought of it at the time, and that it was much more a matter of principle than of practical import.

These three points were matters that should be settled purely by administration; as regards the fourth point, the Indians desired not only the admission of existing plural wives, an administrative matter, but an amendment to the Immigration Act so as to make the admission of de facto monogamous wives clearly legal and not dependent on the good-will of the Government, though an assurance that the present practice would be continued would be quite satisfactory for the present and for purposes of an agreement; such an agreement was good enough for all practical purposes, but an assurance from the Government that they would introduce legislation in the next session legalising de facto monogamous marriages performed in the Union in accordance with rites that recognised polygamy, was an absolute condition of any agreement, as the judgment of the Courts in the case of Kulsan Bibi that his marriage performed in accordance with such rites could be considered a marriage in South Africa had not only invalidated the relevant clause of the Immigration Act, but also deprived wives and children by such marriages of any legal status.<sup>1</sup> As the Government could give no such assurance, and make no concession as to immigration into the Cape, the negotiations broke down.

On the 3rd September Gandhi had warned Smuts that if the negotiations proved abortive, the struggle would be revived on a wider issue. Accordingly on the 28th after the negotiations had broken down, he made a last offer including in addition to the other issues, repeal of the £3 tax.<sup>2</sup> This had been asked for by the Natal Indians consequent on the abolition of further indentured immigration, as being an incident of that system.<sup>3</sup>

During 1912 a cultured Indian, Gokhale, had toured South Africa on an unofficial but approved visit from India, and had announced

/that.....

1 Cd 7111 pp 49-54

3 Cd 6283 p 9; 7111 p 62

3 Ibid p 55

that the Union Government had promised him repeal of the tax; the Union Government denied this, saying that all they had told Gokhale was that there would be no revenue difficulty in the way of abolition, and that they would consider the matter favourably.<sup>1</sup> The Union Government had thereupon in the estimates withdrawn the revenue from the tax from the estimates assigned to Natal, and placed it in the central revenue, giving Natal an equivalent of £10,000. They were thus free to act as they liked without affecting the Province financially. Then they decided to adopt the somewhat federal principle of consulting the Natal members on abolition as a matter of policy, and as the result of the attitude they found, decided to give the idea of total abolition up; not that the opinion of the Natal members was unanimously against abolition.<sup>2</sup> A bill had been introduced right at the end of the session to free women from payment of the tax, as the result of representations by the Imperial Government as to the strong feeling in India for total abolition and advising the removal of the tax from women at least if total abolition were found impossible;<sup>3</sup> brought up for the second reading on the last day of the session, it had been postponed out of existence.<sup>4</sup>

Passive Resistance was now resumed with this new plank; it thereby undoubtedly gained an added impetus,<sup>5</sup> as ex-indentured Indians in Natal were now to be instructed to refuse payment of the tax, and indentured Indians to strike work until it was withdrawn.<sup>6</sup>

It is as well to note here, before dealing with the details of the struggle, that in the official declaration of the reopening of that struggle in the form of letters to the Government and the Press on the 12th September, by Cathalia, President of the Transvaal British Indian Association, in addition to laying down the points demanded by Gandhi, gave a survey of the

/past.....

1 Cd 6940 p 1; 7111 p 62  
2 H III 2724-30  
3 Cd 7111 p 17

4 H III 3538 1  
5 Cd 7265 p  
6 Cd 7111 p 55

past history of the struggle to point out that it had been first and foremost for a principle; that the Asiatic Act had been opposed as humiliating and indicative "of a policy deliberately hostile to the honourable existence of the community in the Transvaal, that the provisional settlement had seemed to them to mean not only the attainment of their specific aims, but also an attitude of friendliness to the Indians such as would lead, they had hoped, to a steady improvement in their status as a permanent element of the new nation that was forming in South Africa;" that they had soon been disillusioned by what they regarded as a breach of this "spirit of the settlement," the increasingly harsh administration of existing laws, in the Transvaal of the Gold and Township Laws, and in the Cape and Natal, due to the pervasive influence of the "Northern Spirit", of the Immigration and Licensing Laws. Thus from their point of view the settlement had been broken both in letter and spirit.<sup>1</sup>

In the actual struggle, the central feature was the crossing from Natal over the border into the Transvaal of a large body of strikers chiefly from the coal-fields, led by Gandhi. They had passed through Volksrust and were marching in the direction of Greylingstad still under the leadership of Gandhi (whom the Government were leaving in charge until they should complete their arrangements) before action was taken. The Government then arrested Gandhi, and sent the passive resisters back to Natal by means of special trains.<sup>2</sup>

Meanwhile allegations of ill-treatment of strikers in order to force them to return to work, on the part of the warders in the gaol-outstations into which eleven mine-compounds had been turned to deal with the extraordinary situation,<sup>3</sup> had aroused great indignation in India, and a public protest in a speech at Madras by the Viceroy, Lord Hardinge, combined with representations through the Imperial Government led the Union Government

/"to.....

1 Od 7111 pp 35-6

2 'Mahatma Gandhi at work' p 355

3 Od 7111 p 65

"to enter once more the path of conciliation and compromise"<sup>1</sup> in the form of the appointment of a Judicial Commission to enquire into the disturbances and their causes. At the same time the intention was that the Commission should recommend legislation on the subject of such grievances. The Indian request that a member to represent the Indians when the wider question was discussed, or else a separate committee for this purpose with Indian representation, was refused; accordingly the Indians decided to give no evidence before the Commission, though a provisional settlement was come to that the Indians would not hamper the Commission by active propaganda and that passive resistance would be suspended pending its report.<sup>2</sup> The Government's reason for refusing to alter the personnel<sup>n</sup> of the Commission was that it must be such that its findings would be generally accepted and be capable of expression in the form of legislation.<sup>3</sup>

With regard to the allegations of violence, in view of the absence of Indian evidence to support them the Commission confined itself to the two serious conflicts at Mount Edgecombe and Esperanza, where altogether nine Indians were killed by the police and about twenty-six wounded; in this respect their finding was that the amount of force used had been in the circumstances entirely justified.<sup>4</sup>

In dealing with Indian grievances, the Commission had the valuable assistance of a high official of the Indian Government, Sir Benjamin Robertson, as well as a few Natal Mahomedan Indians who were not at one with Gandhi. Having no authority to investigate and make recommendations on the general position of Indians in South Africa and their disabilities, the object of the Commission was to deal with the grievances that were to any extent a cause of the strike; for this purpose they took as guide the five points of Cachalia in 1912, as recapitulated....

1 Chirol "India Old and New" p 168

2 Andrews "Documents re Asiatic Bill" p 15. 4 Cd 7265 p 10

3. *Mahatma Gandhi At Work* p 360

~~3 Ibid p~~



recapitulated by Gandhi in refusing to help the Commission. The questions they thus excluded were the property and Gold and Township Laws of the Transvaal, and also the alleged want of proper educational facilities,<sup>and</sup> inability to carry fire-arms and ride in trams in the Transvaal.<sup>1</sup>

Of these five points, the Orange Free State question had been for all practical purposes settled by the assurances of the Government. The withdrawal of the right of South African-born Indians to enter the Cape without passing the education test the Commission regarded as a "shadowy grievance" being one of sentiment rather than of substance, though granting that it was, strictly speaking, a departure from the provisional settlement of 1911, the maintenance of existing rights having been generally claimed by the Indians as a term of the settlement without any repudiation by the Government.<sup>2</sup> The most difficult point of all was the "marriage question". It had four different aspects. With regard to the right of entry into the Union, of a de facto monogamous wife with her children, the principle had been accepted by the Government and the intention of the Legislature in passing the relevant clause had been to that effect; the effect of the decision in the Kulsan Bibi case had<sup>been</sup> to defeat the intention of the Legislature if the strict legal meaning were now to be placed on the words of the clause, and the Commission held it desirable that the law be brought into conformity with the admitted practice.<sup>3</sup>

The question of the admission of existing plural wives had been one of difference in principle between the Government and the Indians. The Commission, however, pointing out that the number affected would be small, well under a hundred, urged that all plural wives at that time resident in India be given twelve months in which to register themselves as such and thereby gain

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1 Cd 7265 p 4,14-15  
2 Cd 7265 p 17

3 Ibid p 18

the right of entry to South Africa; those plural wives at that time resident in South Africa with their husbands, had the usual right to an identification certificate.<sup>1</sup>

The third aspect was the celebration in South Africa of monogamous marriages according to Indian religious rites. It appeared that though the Mohammedans had no great liking for contracting monogamous marriages, as they had not availed themselves of the Cape Act 16 of 1860 or the Natal Act 19 of 1881, the indentured Indians at least had no objections, as over a thousand marriages had been solemnised during 1913 according to Section 70 of Act 25 of 1891 which provided for the solemnisation of non-Christian monogamous marriages by Magistrates or the Protector. Legislation should therefore be passed as early as possible, on the lines of the Cape Act, to provide for the appointment of priests of education and good character to keep registers for such marriages.<sup>2</sup>

Most difficult of all to settle was the status of wife and children under a polygamous marriage even though it were monogamous in fact. To the suggestion for legislation to legalise de facto monogamous marriages, which were the rule among Indians other than Mahomedans, the Commission saw no objection; on registration of the marriage by the supplying of particulars of names and ages of the parties concerned and also the time and place, it would then be regarded as valid in law from the date of contraction, and would then be monogamous in law as well as fact meaning that any subsequent marriage that might be contracted would, while not being illegal, give the wife and children by such marriage no legal status. The legitimising of polygamy the Asiatic could not expect, as it was a principle alien to the country of their adoption.<sup>3</sup>

The fourth point the Commission dealt with was the £3 tax. It did not attempt to decide whether repeal had ever been  
/promised.....

1 Cd 7265 p 18  
3 Cd 7265 pp 21-3

2 Ibid p 21

promised; what was quite clear was that the Indians had been led to believe that such a promise had been made, and that the alleged failure to keep such promise had had a considerable effect in inducing the indentured and ex-indentured labourers to join in the strike.<sup>1</sup> That it should be removed from women was the general opinion of witnesses; it was not intended in 1895 that it should apply to them, it had not been the practice to collect it from them, and the Government would probably remove it from them that session in any case. The Commission, however, recommended that the tax be abolished altogether. Little justification could be found for its application, by Act 2 of 1903, to sons and daughters of ex-indentured Indians. In the case of the rest there was a stronger case against abolition, based on the contract aspect of the tax (and the Commission found that there were no grounds for believing that the indentured labourer was generally ignorant of the conditions he was accepting, and also that the Natal Government had done everything they could in India to make these conditions clear), and on the agreement by the Government of India to the tax, but the question must be considered from the broader point of view of the interests of the Union of South Africa; now the tax was not only objectionable in principle as a penalty on residence but it was unequal in its incidence, falling chiefly on those who were least able to afford it, thus causing considerable irritation and discontent. It must be realised that for better or for worse these Indians brought there to serve the European's needs had, the majority of them, come to stay, and that<sup>it was</sup> in the interests of good government desirable to remove as far as possible any causes of irritation.<sup>2</sup> Having thus come to the conclusion that retention of the tax had definitely harmful effects, the Commission then sought to find whether it served any good purpose. It had been imposed as a

/matter... .

1 Cd 7265 p 14

2 Cd 7265 pp 28-9

matter of policy with a twofold purpose of forcing the Indian either to leave the country at the end of his term of indenture or to re-indenture; of the former purpose the Commission gave no sign of approval or disapproval, but were not satisfied that for the last few years the tax had been achieving this purpose (though before then it appeared to have had considerable effect), due in part to a rise in wages consequent on the stopping of further immigration; with regard to the latter object, which at first was clearly a secondary aim, and which later, on the failure of the first aim, had become to a considerable number of employers the chief good of the tax, the Commission had no sympathy with a system that would seek to compel a man to keep on indenturing for the rest of his life, even if it could be shown that such aim was being secured by the tax, a matter of doubt as the great increase in the percentages of Indians reindenturing could be attributed to the above-mentioned increase in wages.<sup>1</sup>

Thus the Commission recommended that the tax be repealed as being at the same time open to grave objections and of no great use. There now remained only two extraneous considerations. The first argument was that such a concession following immediately on the strike would give the Indians the impression that the Government had yielded to pressure, and would encourage them to use similar methods in the future; in view of the firm attitude adopted by the Government during the strike, the Commission did not believe this would happen, and held that in any case the Government must not be deterred by such considerations from doing the right and proper thing. Presumably this axiom was equally applicable to the other consideration that remission of the £3 tax would have a serious effect on the natives, leading them to the same conclusion as the Indians, that remission was the result of pressure, and thus to an agitation for the repeal of their Hut Tax, ending probably in serious

/ disturbances...

This was a point for consideration by the Government, who were in the best position to gain information on such a point.<sup>1</sup>

There remained only the fifth point of the Indian programme, the administration of existing laws; it was only after careful consideration that the Commission decided that this fell within the terms of their enquiry. The following recommendations were made with regard to the Immigration Act. That the duration of identification certificates be made three years instead of one, that an extreme strictness in purely formal matters in connection with the issue of these be avoided by the Department, that a whole-time official Indian interpreter be engaged by the Department at Cape Town to give Indians an alternative to the often unreliable and extortionate immigration agents complained of as far back as 1908, that thumb-prints were quite sufficient for identification of holders of the above-mentioned certificates, that Indians in the country districts should be enabled to obtain permits to visit another Province from the nearest Magistrate instead of having to appear personally before the Chief Immigration Officer of their Province, together with other minor recommendations with a view to obviating irksome delays or unnecessary expenditure in connection with the exercise by resident Indians of their rights under the Immigration Act.<sup>2</sup>

The only other acts with the administration of which the Commission dealt were the Licensing Acts of the Cape and Natal, as yet unaltered in spite of petitions to the Union Parliament during 1911 from various parts of the country asking for the restriction of the issue of trading licences to Asiatics.<sup>3</sup>

In the Cape, complaints were made to the Commission only about the action of the Cape Town City Council; the Commission found that it was the undoubted practice of the Council to refuse as

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1 Cd 7265 p 33

2 Ibid pp 34-5

3 H I 1454-64. Cd 6087 p 12

a matter of course all applications on the part of Indians for certificates for a general dealer's licence, without which certificates no new licence could be gained from the Revenue Officer. In the same way the transfer of a licence from one Indian to another was prevented; for the annual renewal of licences, however, no certificate was necessary, and renewal was granted as a matter of course. This practice applied to general dealers' licences only, as no certificate was necessary for the issue of butchers' or bakers' licences, and no licence at all for shops in which South African produce only was sold.<sup>1</sup>

In Natal both system and practice were somewhat different. In the boroughs and townships renewals of licences were refused as a matter of course by the licensing officer appointed by the Town Councils just as in Cape Town, but an appeal to the Supreme Court was allowed; the practice with regard to the issue of new licences was not as strict, the aim being chiefly to secure what had been aimed at in the Transvaal, the establishment of reserves for trading purposes, by refusing new licences to trade in quarters of the town in which European traders were, or had once been, predominant. For the areas of Natal outside of the boroughs the Government as represented by a single licensing officer, was responsible. His policy appeared to be more liberal than that of the borough licensing officers; certainly his claim that he made no distinction between Europeans and Indians when granting new licences, was opposed by no Indian complaints to the Commission.<sup>2</sup>

Such was the position of Indians under the Licensing Acts of the Cape and Natal. Where the Government had control, the situation could be remedied wherever necessary by administrative directions to the licensing officers. But complaints were directed chiefly against the municipalities; interference with the municipalities in the exercise of their powers was out of

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1 Cd 7265 p 38

2 Cd 7265 p 39

the question and relief could only be given by legislation depriving them of their licensing power, a step that the Commission could not recommend both because it was outside of the scope of their enquiry and because it would be opposed to public opinion.<sup>1</sup>

Though the Commission did not deal with the position in the Transvaal with regard to the issue of licences, as no complaints were received on that point, it may be pointed out here that by the Financial Relations Act of 1913, it was made competent for any Provincial Council to frame an Ordinance giving discretion to local authorities, or boards, or licensing officers, in regard to the issue of new licences, the right of appeal in cases of renewal of existing licences only being safeguarded. This in effect meant that the Transvaal could do away with the present right of appeal, and come into line with Natal. The Union Government, July 23rd, stated it could not interfere, but would exercise what influence it had to prevent harsh administration.<sup>2</sup>

All the recommendations by the Commission such as required legislative action were carried out by the Indians Relief Act 22 of 1914,<sup>3</sup> the terms of which were submitted to the members of the Commission, who signified their approval through the Chairman. These terms of the Act were submitted to Sir Benjamin Robertson, and also to Gandhi who "on behalf of that portion of the Indian community which recognises him as his leader expressed himself as highly satisfied with its provisions."<sup>4</sup>

At the same time the settlement of various matters by administration was discussed by General Smuts and Gandhi in a series of interviews, and the understanding arrived at was set forth in correspondence of June 30th. Not only did the Government promise to carry out the recommendations of the Commission with regard to the admission of existing plural wives if enquiry

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1 Cd 7265 pp 38,39  
2 Cd 7111 pp 17-18

3 Cd 7644 pp 1-3  
4 Cd Ibid pp 5-6

showed the number to be a small one, and repeat its assurance as to the declaration of educated Indians at the ports being sufficient, and promise that convictions in the past for bona fide passive resistance offences would not be used by the Government in the future against such passive resisters, but the definite promise was given that all the recommendations of the Solomon Commission not dealt with in the Relief Act would be given effect to. In addition a claim not supported by the Commission would be granted in a certain measure; in administering the provisions of Section 4 (1a) of the Immigration Act, the existing practice with regard to South African born Indians seeking to enter the Cape would be continued so long as the movement of such persons assumed no greater dimensions than in the past, the Government reserving the right of applying the provisions of the Immigration Act as soon as the numbers of such entrants increased. All these promises were subject to the unreserved acceptance by the Indian community of the Bill, together with the fulfilment of such promises, as a complete and final settlement of the long controversy. With regard to the general question of the administration of existing laws it always had been and would 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."

Thus all the points demanded by the Indians in their passive resistance struggle had been conceded. Gandhi therefore announced that the long struggle that had lasted from 1906 was now finally closed.<sup>1</sup>

At the same time the Indian question i.e. the position of the Indian in South Africa, could not be said to have been settled. As seen before the principal aim of the passive resistance movement had been to establish the principle of non-differentiation on grounds of race, with the Immigration Law as

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1 Andrews "Documents re New Asiatic Bill" pp 17-18



the particular instance, while the struggle was continued because the Indians felt that the loss of certain existing rights was too great a price to pay for a non-differential law. Now the struggle had been chiefly against the creation of new differential laws; there were in existence throughout the period differential laws such as Law 3 of 1885 which formed no part of the subject of the struggle at all. The Indians had fought to prevent the situation from becoming worse legally; that they now were satisfied that the position as the result of their efforts had not become any worse, did not mean that they were content with such a state of affairs and that they would make no effort in the future to get that position improved. Nor are these considerations deduced merely from a comparison of the sum total of the disabilities of Indians in South Africa at the time, with the issues on which passive resistance had been raised; Gandhi himself, in announcing that the passive resistance struggle was ended, pointed out that the giving of full rights of residence, trade and ownership of land by alteration of the Licensing Laws, and the Gold Law, Townships Act and Law 3 of the Transvaal, would require some day or other further and sympathetic consideration by the Government. "Complete satisfaction cannot be expected until full civic rights have been conceded to the resident Indians."<sup>1</sup>

That the question of the position of Indians in South Africa would not be settled once and for all by the giving of relief on specific points, was a view put forward during the passage of the Relief Bill through the Union Parliament. To some of the diehards the giving of relief appeared the thin end of the wedge, in that the Indians would be encouraged, by the success of the methods they had been using, to use those methods once more in the future to gain further points, with as ultimate aim the attainment of full civil and political rights, including the

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1 Andrews "Mahatma Gandhi at Work" p 30

"Documents re Natal Asiatic Bill" p 28.

right of unrestricted movement in the country from province to province, and the franchise.<sup>1</sup> Whether viewed in this light as setting a bad precedent in yielding to force, even though it were soul force, or from the point of view that "as a body of people advanced in ideas of Western civilisation they were not likely to rest quietly under disabilities placed on them because of their colour and the place they came from,"<sup>2</sup> the settlement clearly was not regarded as absolutely permanent. Nor was it meant as such; it was meant to meet the difficulties of the moment in a satisfactory manner. Any difficulties that might arise in the future (the distant future, it was hoped) would be met as they came.<sup>3</sup>

With the departure for India of Gandhi as soon as the agreement had been reached, the chances of the successful revival of the Indian Question on passive resistance lines became rather remote; it was he had been the inspiration of the movement, keeping ever in the foreground a principle that would appeal to all, rich and poor, the principle of non-differentiation, and it was only with such a principle that the concerted action necessary to such a movement could be preserved. When Gandhi left South Africa he left in the hopes that the Indian population of South Africa would, by granting as a settled question the restriction of immigration and the deprivation of the franchise, be able to gain in the near future, by means of informing public opinion and winning away prejudice, full rights of trade, inter-Provincial migration, and the ownership of landed property.<sup>4</sup>

So much for the Indian attitude towards the settlement. Gandhi called it their Magna Charta as marking a change in the policy of the Government towards them, as establishing their right not only to be considered in matters affecting them, but to have their reasonable wishes respected, and lastly as a proof

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1 U.H.IV 3179-3201  
2 U.H.IV 3180

3 U.H. 3214  
4 Andrews "Documents re Indian Question". p 22

of the efficacy of passive resistance as a weapon, a more effective weapon, he believed, than the vote.<sup>1</sup> Now with regard to the first point, Gandhi was perhaps rather optimistic. The attitude of the Government during the negotiations that led up to the settlement may have justified this feeling; in the actual terms of the agreement the only definite statement as to the future policy of the Government towards the Indians was the promise that the existing laws affecting Indians would be administered in a just manner and with due regard to vested rights.<sup>2</sup>

Now it is difficult to ascertain to what extent, if any, this undertaking bound the Union Government, and its successors, to maintain in the future the position of Indians in the Union in 1914. All that can be done is to say that subsequently the Indians held that they had at the time understood by that, a general understanding that the rights possessed by Indians at the time would not be further diminished; and that this interpretation, that the implication was that no new laws would be passed imposing fresh restrictions on Indians, was supported by the Government of India.<sup>3</sup> To them the agreement meant the correspondence of June 30th.

On July 7th, however, Gandhi had addressed another letter to General Smuts defining "vested rights" in connection with the Gold Law and Townships Acts. Now the subsequent claim of the Government was that the vested rights the Government undertook in 1914 to respect, were only the rights under the Gold Law as defined in this letter, whereas the Indians held that they included such rights in addition to others, and that the letter had not formed part of the agreement as reported in 1914 to the Government of India. Setting aside the question as to whether the letter of 7th July was part of the agreement or not, it is questionable whether a government can set up an agreement that

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1 Andrews' "Documents re Indian Question". p 21

2 Andrews' "Documents re New Asiatic Bill" p 18

will be binding on the country for all time; could the government in power at the time bind subsequent governments to pursue a certain administrative policy, or the legislature not to pass certain acts?<sup>1</sup> It is from this point of view that the settlement must be regarded.

It may be said then that the settlement gave no guarantee that the Indian question would not be taken up again in the fullness of time either by Indian or European. The settlement merely put an end to a struggle on certain issues. To the Indians its value was not so much the achievement of certain material reforms such as the abolition of the £3 tax and the legalisation of Indian Marriages, as the establishment, in the form of a general Immigration Law, of the principle that the legislation of the Union of South Africa should not contain a racial taint as far as Indians were concerned.<sup>2</sup> To the European it meant the achievement of his object, the exclusion of the Asiatic, without leaving the Indian in such a state of dissatisfaction as would cause him to continue to register his objection in a way that was, though not dangerous, at least disconcerting. On these issues the settlement attained its object so well, and in so generous and liberal an atmosphere, that Gandhi sailed from South Africa with an easy mind, hoping that a new era was at hand, and that all bitterness and prejudice would soon disappear in connection with the position of Indians in South Africa.

Yet the settlement contained a serious flaw from the Indian point of view.<sup>3</sup> The Government had in 1913 issued a notice that all Asiatics would be regarded as falling under the clause prohibiting certain classes of people on economic grounds.<sup>4</sup> Now in the Relief Bill, the logical supplement to such a course, the encouragement of voluntary repatriation, was

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1 Patrick Duncan in "Cape Times" Jan 27th 1926.

2 Andrews' Documents re Indian Question. pp 19-20.

3 Andrews' "Documents re Indian Question" p 22

4 U4.R 3206 ff.

for the first time recognised in law. In supplying all Indians who desired it with a free passage to India on condition that they thereupon renounced all rights of domicile, the Government was in effect reiterating the clear, if not previously avowed, policy, that the continued residence of Indians in the country was not regarded as desirable. And as it must have been clear that it was only the Indian who had been unsuccessful commercially in South Africa that would consider such an offer, the motive of the Government could not have been the economic one of saving the white man from the competition of the Indian, but the social one of reducing the size of what was regarded as an alien element in the population. There was of course the consideration that, with a considerable decrease in the numbers of the Indians in South Africa, European prejudice might become less strong, and the Government be in a better position to treat those that were left with greater consideration. Wholesale repatriation by means of compensation was of course out of the question on grounds of expense.<sup>1</sup> Granting this, that it was realised that the only means of depriving a man of a right in a civilised country, in this case the right of residence in that country, was by means of full monetary compensation (whether that giving up of a right were optional or compulsory), and that it was further realised that this was out of the question, the principle yet remained the same. The essential point was that a proposal to reduce the proportion of a certain element of the population meant that that element must have been considered undesirable; in other words the European ideal remained the same, even though abandoned in favour of what was strictly practicable.

In summing up, then, the position of the Indian at the end of 1914, it appears that the material position of the resident Indian was practically what it was in each of the various

/Provinces....

1 Section 6. U.H. III 2317, 2325, 2336, 2551;  
IV 3173, 3185-8, 3197, 3203

Provinces at the time of the Union with the exception of the gaining of those concessions made on the recommendation of the Solomon Commission on the one hand, and on the other hand the loss of certain privileges under the old Immigration Acts. Their position in European public opinion as opposed to this status in law is necessarily more difficult to define, varying as it did in intensity of feeling, if not in nature, in the various Provinces and from individual to individual in the various provinces. Yet it seems clear from the debates in the Union Parliament on both the Immigration Bill and the Relief Bill that the status of the Indian in this sense was no different towards and at the end of the period 1900 - 1914 from what it had been in the beginning, and that though the path of suffering of the Indian certainly did win the admiration and sympathy of individual Europeans, the European for the most part had not departed from his original standpoint, but had merely yielded to the Indian standpoint in one particular respect, that of immigration, in order to put an end to an awkward situation.

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APPENDIX.

A point of interest is the legal position of indentured immigration in 1914. As we have seen, the Government of India had always linked the system up with the condition of the resident Indian, and as long as the attitude of South Africa to the resident Indian remained the same there was very little likelihood of the system being revived. The Labour Party, however, wished to prevent even this possibility, and accordingly endeavoured to secure the legislative prohibition at first, during the debates on the Immigration Bill in 1911, of all importation of contract labour,<sup>1</sup> and then, in 1914 during the passage of the Indians Relief Act in 1914, of indentured Indian labour.<sup>2</sup>

As Col. Creswell was permitted, after an argument with the Speaker, to introduce an amendment to the Relief Act to this effect, it may be assumed that the legal position was that any re-introduction of the system lay in the hands of the Minister, though for the present it was covered by the notice of 1913 declaring all Indians prohibited immigrants. The amendment was defeated, General Smuts giving the assurance that "unless something quite unforeseen happened, no indentured Indian Labour would come into South Africa again."<sup>3</sup>

Connected with this issue was the question, raised in Natal before Union, of the competition of the Indian in the sphere of labour. The members of the Labour Party held that the indentured Indian was competing with the white man with regard to both unskilled and skilled work on the railways, mines, and industrial concerns of Natal, and that the European worker deserved protection just as much as the European shopkeeper did.<sup>4</sup> Thus it was that they not only demanded that the 3500 Indians

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1 U.H. II 3972, U.H. III 2091

2 U.H. IV 3206.

3 U.H. IV 3215

4 U.H. I 1744,1754; II 3972; III 2091,2330

at present indentured on the Railways should not be re-indentured, but that there should be no possibility of further Indian indentured immigrants coming in, and gained a promise in the former case.<sup>1</sup>

In this connection it may be noted that the Economic Commission of 1914 found that while the Indian certainly competed in semi-skilled work in the building trade, boot-repairing, tailoring painting etc., there was no evidence to prove that white skilled labour suffered seriously from the competition of Indians, as their efficiency was distinctly beneath that of the white man, and much of their work "that of the handyman rather than that of the expert artisan."<sup>2</sup> This of course referred to the free Indian, but there is no reason to suppose that the Indian did a higher level of work under indenture.

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1 U.H. I 921,1180

2 U.G. 12 of 1914.