

1931.

Kenya

No. 17060.

SUBJECT

CO533/407

Indians.

Participation in Municipal and Legislative Affairs.

Previous

16206/30 (Local Govt -
Municipalities)

15140/28 (Indian Rep. on
Legislative Councils)

Subsequent

3024/33.

Oct. 10

State has been informed that Indian Council
will to participate again in municipal and local
affairs and he has been asked to nominate Indian
legislative Council and municipal bodies; propose to
forward with nomination to municipal bodies but request
information re to legislative Council. Requests early
reply by telegram.

DESTROYED UNDER STATUTE

2

Oct. 11

5 February

Grateful if reply to No. 1 be marked private and
personal.

X
2a

Mr Eastwood & I have
collaborated in the attached memo &
in the off tel herewith for concn.

J. H. Allen

6/2/31

I agree - When the reply
has gone, we will send to

J.O. officially for inf. in
short ofr. - ref No 41 in

X. 150321 re Kenya

copy of No 1 + reply ~~copy~~

with copy of add. N.1.

28/2/31 for ref?

All Parkman

7.2.31

I agree

W.C.S. 7.2.31

Overwriting the
opening words
of the memo at
p. 10. Es.
No 2 is being to
circumvent the
communication
order sent.

Lesl.

letter to J.O.
V. ...

W.C.S.
9.2.31

J.H.A.
9.2.31

3 Tel. to US to Gov. Kenya (P.A.) [No 1 and] -

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5 Gov's Dep. dt. 48 _____ 9 March
No. message from I.A. Indian National Congress
requesting postponement of Indian elections to
Legislative Council in order not to handicap
decision of joint Parliamentary Committee on question of
Common Roll. Also no reason for amending
Royal Instructions as requested.

Under the existing instructions,
nomination of Indian members cannot
take place until ~~the~~ an election
has been held. The Indians are
now willing to accept nomination, but
are unwilling to submit to the
indignity of an election, even though
it is merely a formality, so long
as the communal vote remains.

They were for all for ① a postponement
of the Indian elections & a
② nomination straight away by the
Governor. This would be
contrary to ① the Legis. Council
Order of the Colony & ② the
Additional Instructions of 1927.
Since the Legis. Council has now

Yes, Sir
Dr. J. N. K. will explain
this? Add
instructions in the
minutes after meeting
to
22A
(There will be a P.C.
meeting about the
20 March)

been discussed, I gather it could only
be handled by ~~the Council~~
to a special Order in Council & an
amendment to the Royal Instructions.
It would be physically possible for the
to be done, but it would be causing
a very great deal of inconvenience &
all about nothing - since I cannot
believe that submission by the Indians
to the formality of an entirely
on a communal vote
ineffective election would in the very
least prejudice either the Joint
Ctee or the Govt. in their decision as
to a Common roll.

? telegraph as in other

Eastwood

20-3-31

I have put up a revised draft after discussion
with Mr. Parkinson. The position as stated in Mr.
Eastwood's minute seems correct, and there ^{appears} ~~seems~~ to
be no justification for invoking the elaborate
machinery of the Privy Council.

I also add a draft to the India Office, sending
copy of the correspondence. The correspondence
previously

previously sent in No. 4 sufficiently explains
the position. We are under no obligation
to "counsel" S.O. - but say to keep them
informed.

W.A. Allen

11/3/31

I agree. It is really
going too far to bring
in the Privy Council
as wd. be necessary,
merely to meet an
imaginary objection - &
I do not think "impracticable"
in the opt. is too strong.
If opt. is approved, Dept.
wd. prepare a short
note for the opt. to
circulate to all Joint
Ctee. before the Indians
give evidence (provisionally
8 May).

W.A. Allen

11.3.31

I agree. The position of
the Congress will not be mis understood.

There is however another point

- the Congress does not represent
the whole of Indian opinion in Bengal
and

and although few Indian votes
are on the roll it is quite possible
that at least one Indian (as in
1929) will be nominated and
returned. The Congress may be
offensive to them, as giving
evidence of lack of solidarity, but
are we justified in depriving those
Indians, (if any) who want to
take use of election of their present
right to do so?

The Congress case would be cut by
the fact that a minority exists.

W.A. Allen
Sec of State (changed 8 heads)
as in draft

12.3.31

I agree. I do not know
if it would be wise to say after
"decided" in 4th line. Explain
technical difficulties. This would
make it clear that - apart
from its being unnecessary as
explained later in the telegram -
it is also not an easy thing
to do. But I do not mean it
to do.

no
opt. is not
only the
technical
difficulties
p

W.A. Allen
12.3.31

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8. Gov. tel. 80 _____ 11 March
In message from Lala Das protesting against the nomination of seven Indians to Karachi Municipality submitted by dissentient group of E. S. Indian National Congress and requesting A. J. P.'s intervention.

9. Gov. tel. 81 Conf. _____ 11 March
States Lala Das represents action of which has proceeded from E. S. Indian National Congress, which repudiates Mr. Lala Das' authority to represent it. Govt. continues to recognize Congress.

10. Indian Congress tel. _____ 16 March
Request intervention in election of the representatives.

11. Gov. tel. 92 _____ 16 March
In message from S. A. Mith, President of Indian Association, Bombay requesting intervention in acceptance of recommendations for representation in Karachi and Bombay Municipalities.

12. Dep. Gov. tel. 93 Conf. _____ 16 March
Report Indian members of Karachi and Bombay Municipal authorities nominated in accordance with recommendations of E. S. Indian National Congress.

Sir S. Wilson.

I had discussed this question with Mr. Parkinson (who is engaged all day with the Joint Committee) just when the new telegrams, 10 and 12 came to our notice. No. 11 is fresh but it is nothing to do with 10 and clearly comes from the same section of the divided Indian opinion.

In his original minute Mr. Parkinson had been misled by the obscurity of No. 8, and after discussion we agreed to send the papers forward with a minute in the following lines:-

The reference to the "precedent of informal election" in No. 8 is to the arrangement made in 1924 as a result of discussion with Mr. (now Sir John) Hope Simpson's Committee at a time when it was desired to make interim arrangements in the hope that in a few years the Indians would abandon their attitude of non-cooperation. Please see, for a convenient summary, précis in X.F 2684/26 and in particular Head 12 (3) of that précis.

The arrangement of formal election was made ^{in respect of} under the Legislative Council, for which under the instruments of Government a formal election was laid down, with nomination as a second ^{stage} ~~stage~~ if the election proved fruitless. It was natural, ^{in order} to save the face of the Indian community, that the nominations should be made in accordance with the informally ascertained wishes of the community. The ^{instructions} instructions of Government are, on this point, still in the same form, and it will be reasonable, though not necessary, that the same procedure of informal election should follow a probable abortive formal election for Legislative Council which is due to take place next month.

But the appointments to Municipal bodies are, so far as the Indians are concerned and at their desire, nominative and not elective, and there has been no suggestion, and there is certainly not the same reason for, informal election in this case.

The nominees have already been made, and so has the selection of the Kenya Indian delegates who are to give evidence before the Joint Committee.

We are, I think, not concerned with the details of the split in the East African Indian Congress, or with the question (to which the Governor does not refer), whether the seceders are in a majority, or which, in fact, are the seceders. We have one party who are willing, to some extent at all events, to abandon non-co-operation, and we have another party represented by Mr. Isher Dass and Mr. Seth (his name is new to me) who must be counted as more extreme.

The Governor has clearly adopted the view that the best means of promoting co-operation is to encourage the more moderate section, and it would, I think, be a little quixotic on his part to take any other line.

The promised despatch will be interesting but in the meantime our only course is to support the Governor, as Mr. Parkinson proposes in his draft telegram.

W.C.A. 17.3.31.

Rec of State
(through Dr. Shute)

Jafree
S.H.B.

17.3.31

Jafree!
17.3.31.

P 18/3

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To Gov. Tel No 99-8411 and 18/3/31

14 Do. J.O. (Lofc's 8-9-10-11-12-13) - 26 MAR 1931

15 Gov Byrne Tel 117 - 9 April
Comments on position - submits scheme
for reorganisation of Indian representation

(1) Under the R. 1 - the Legislative Council in Kenya lasts for 3 years - Hence if Indians are elected now they will remain as normal, even if non-active, members of the Council for 3 years.

(2) It appears that on the existing Indian register,

which is not of date and incomplete, there is a number with that "non-co-operators", who have broken with the section of Indians ready to resume co-operation in public affairs, will win the seats - with the result that, despite the willingness of the reasonable section of the Indian community, we shall have no Indian representation on the Council for 3 years.

(3) I agree that the Governor's first alternative is not desirable; & I think that the second alternative is, in the circumstances, the best that can be done. But there are 2 points:

(a) How will such an action be received by Indians in S.A.?

(b) What will the media office think?

As to (a), the Gov. speaks of 'representation' as to the unsatisfactory nature of the present Indian register, but it may well be that these come from Mr. Jha's old Jeean & the section now friendly to Government. In all probability, revision of the R.I. 5 (and the local legislation) to limit the term of Indians now elected until next August or thereabouts will prove the most consideration from the non-co-operating section.

As to (b), we are under no obligation to consult the media office; but this may be thought to be a case in which the S.G. wd. wish to have Mr. Bann in agreement semi-officially before.

action is taken.

(4) I suggest however that we begin with an interim reply, and in order to crystallize ideas I have put up a draft for review.

A.C. Parmanian
15.4.31

G.S. 12.4.31

Sec of State
(through B. Chidambaram)

I am not wildly in love with the proposal; but I agree that there will be no harm done in telegraphing as in draft.

A.H.B.

14.4.31.

Yes! I think this wise and also that we should consult me so.

15.4.31.

P. 14/4

16. P. Gov. Kanya. Tel. No. 129. Conf. memo. 14/4/31

We must wait for Government's reply before approaching I.O.

A.C.P.

15.4.31

[The Indians are not, as yet, to give evidence until 8 May. So we had better defer drafting note for I.O. until this further development is cleared up.]

A.C.P.

Recd. in
only case
1 May for
A.C.P.

17. Mr. Byrne Conf. 14 _____ 22nd March
kindness copy telegram sent by Mr. Baker, Secy to I.O. and copy correspondence with Mr. Baker, Secy to I.O. with Mr. Shams-ud-Din, Secy to I.O. and with Mr. D.B. Patel, Secy to I.O. as to the nomination, which are proceeding.

This helps to explain the somewhat confusing telegrams sent by the various bodies. No action seems necessary until we get a reply to (16)

S. Chidambaram

L. C. Boltong

[To see also No. 15.4.31]

? copy of (17) now go to I.O. for info of (14)

A.C. Parmanian

Wed. 22.4.31 21.4.31

18 So. S.O. (inc 17 renee). — B/IA Conf. 22 APR 1931

19 Nov. 11. 135 — 21st April.
Consider Indian delegates en route for London
may advocate second election as welcome
alternative; propose to fix 23rd May as
polling date. Suggests 9th May for announcement
of amendment to Royal Instructions.

no Parkinson

The action seems to be to send to
I.O. a copy of 15, 16, & 19 ref^s 28
A copy that in view of the
Gov's assurance that there
are unlikely to be serious
represent^{ns} against the course
proposed he proposes to
take steps to have the R.I.
amended so as to limit the
~~term~~ term for which Indians
will be elected ^{this time} until the end
of August ¹⁹³¹ & providing for a
fresh election, so soon thereafter
as may be practicable, on the
new register. But that in the
first place he would be glad
to learn at a very early date
that Mr Benn ~~was in the~~
does not wish to

Recd. first time
to act at 9th April
G

Some need my objection to the 9
course.
Read the letter immediately
& after it has gone to file to
revert in ref. to Mr Duncan
to consider the form which the
amendment must take.

Jackson
23.4.31.

Mr. C. B. Cotton

There is no question of postponing
the Indian election (except for
a week or two to meet local
difficulties on the Governor
has done) — see No. 3 in file
to the Gov's assumption
at K is correct. This
should be explained in meeting
to I.O. — ref. No. 2.

? As prepared with this
addition — a meeting for
ref. the relevant R.I.; but
I did not intend official
ref. to the I.O. — see my
minute of 15.4.31 — I think
it will be a personal letter
from the Gov. to Mr Benn.
All Parkinson
23.4.31

W.C.
Sec of State
(Thompson or Shultz)
23.4.31

Case it is mentioned to you.
I agree that we should write
to I.O. as proposed.

J.H.G.
24.4.31

I agree!
T.P.S.
24.4.31

The P. Sec. brought this down to me
on Sat. morning & asked me to
have a draft prepared for the
S.O. this morning. *Johnston*
27.4.31.

I note here that of course
we cannot announce in
advance an amendment
of the R.I., wh. is the
act of the King in Council.
So we must be careful
in the choice of words
for the announcement.
R. P. Barber
27.4.31

19a

To Mr. Hon. W. Deans
27/4/31

to Deane

Set of R.I. herewith.
Also my copy of Kenya
Laws with Chap 21 -
the also amendment of that
Chap. - k. 11 of Revised
Edition of the Laws (operation)
Ordinance 1926.
Will you, please, advise
as to amendment wh. will
be necessary.

all P. Sec.
29.4.31

At a conference yesterday afternoon between Sir Cecil Bottomley, Mr. Bushe, Mr. Parkinson, Mr. Duncan and Sir Alison Russell, Mr. Bushe said that, while the necessary amendment could legally be made to the Letters Patent - and had, in fact, already been drafted by Sir Alison Russell - he felt that, from a constitutional point of view and on general principles, there were difficulties in the way of overriding local legislation in the manner proposed. H.M. had, by Letters Patent, already delegated powers to the Kenya Legislature, and it was clearly undesirable - however excellent the motives for such a course might be - that certain Members of the Legislative Council, who had in consequence ^{never been} ~~been~~ properly elected for three years under a local law, should now be singled out and deprived, by the passing of special Letters Patent, of their right to sit and vote in the Legislative Council except for the space of a few months. A hostile critic might say that the true object of the amendment could be stated as follows: -
"Whereas it is anticipated that the Indian Elected Members on the register at present in force will or may act contrary to the policy of the Government of Kenya, and it is believed that if an election were held on the new register to be made in August, 1931, the Indian Elected Members to be elected on that register would or might be in favour of the policy of the Government of Kenya".....

Sir Cecil Bottomley recognised the difficulties, which Mr. Bushe had pointed out, and thought, therefore, that the proposed amendment of the Letters Patent should not be made. In these circumstances he said that there appeared to be three alternatives

(Copy attached
to file.)

X

X

alternatives: -

(1) to introduce a Bill when the new Legislative Council meets, with a view to ^{excluding the Indian Members} ~~excluding~~ the Indian Elected Members - which of course, presumably, would necessitate an amendment of the Royal Instructions;

(2) to dissolve the Legislative Council in August, or at some other date subsequent to the completion of the new electoral roll; ~~and or~~

(3) to allow the Indian Elected Members to retain their seats for three years, in accordance with the law as it stands at present.

h.c. Assembly did not use the phrase "excluding" and!

1/5/31

H. Duncan.

[Handwritten signature]

Mr. Buckle

I cannot help thinking that there has been some misunderstanding. I am ready to agree that the Dept. is as much responsible for the misunderstanding as the Legal Branch.

Our idea was that before the Indian election there should only an announcement of Govt. to the effect that as the Indian Empire is ^{unrepresentative} ~~unrepresentative~~ sort of date, ~~proposed~~

the Govt. proposes when the new Council assemble, to introduce the necessary legislation to limit the ~~period~~ ^{period} in which the Indian members elected the next session to a date, say August 1931, when a new representative Indian Mill will be ready - & at the same time to ~~advise~~ ^{advise} the Govt. to advise corresponding ~~an~~ amendment of the R.I.

What the Dept. wanted to know in advance was what ~~the Govt. proposed~~ ^{the necessary amending} R.I. wd. take.

I know well that this very procedure is put down by Mr. Duncan as a possible, & I take it reasonable, alternative to the method of legislation in I.P. which Mr. Russell apparently found it necessary to import - on the assumption that everything which he done

before the election was made
is actually held.

Are we then really
all in agreement? If so,
perhaps the point which
the Sept. 11 report had in
mind could be dealt with

W. J. Duncan
2.5.31

Mr. Parkinson

None of us appreciated that the procedure
which you mention was what the
Department had in mind. Nor can
I understand from the telegram that
this is what the Governor suggested.

In any case the proposed telegram
set out below should clear up the position.

Draft Telegram

- (1) If it is desired before the Legislative
Council meets to alter the period for
which the Indians sit, it seems to be
necessary to alter article 8 of the
Letters Patent of September 11 1920
which incorporate the local law of 1919.
- (2) But if it is desired to wait till
the Legislative Council meets and then
to amend the local law by providing
for another election in three months
for the Indian members and by providing
that the five elected under the present
Act should cease to be members and

that the new Indian members should then
be elected on the revised roll, no alteration
of the Royal Instructions would appear to be
necessary. The period for which members
are elected is prescribed by the local law
of 1919. In any case there has not yet
been taken any decision, but please telegraph
exactly what your proposal is and what
article in the Royal Instructions your
adversaries have in mind.

4/6/31

W. J. Duncan

L. C. B. B. B.

I have had talk about this with
Mr. Durbie & Mr. Duncan; and
I agree that it is desirable to
get quite clear as to what
the Governor's advice
and in mind.

But Mr. Durbie saw Mr. B. B. B.
in a short time yesterday
& I understood that
Mr. B. B. B. (who, as was to
be expected, is not

moderate & cautious to help) told him that this proposal would not really help. The Indian section is definitely communist & even with the new register the fact is probably not found that the Indians elected were genuine co-operators.

Mr. Byrnes is honestly trying to secure the general good of the Colony by having Indians take a real part in the Council - but it is true that action on the line proposed - even as understood by the Dept. when there was no question of 'excluding' Indians duly elected or anything of that kind by amending of U.K. legislation over the heads of the Leg. Council by means of Letters Patent - could be

misinterpreted and the C.M.T. in U.K. might be unfairly attacked

Probably it will be best to drop the proposal & let things go their way, though I hate not backing the new Government in what we know is an honest effort to do right.

As soon as we get replied - I.O. told me that the reply might come today - but in the meantime I think we might well telegraph as suggested by Mr. Duncan, so that we clear things up at the same time indicate difficulties - I submit for comment

Alastair Murray
5.5.51

Mr. Wilson

You need not trouble to read back further than the Parliament last minutes - into the draft. If it

is true that even on the same
 both the Indian representation
 would be non-constitutive,
 there is certainly no harm in
 pursuing the matter. If the
 Governor does not agree with
 Mr. Sastri he will of course say
 so.

W.S. 5.5.31.

Sec of State
 (through Mr. Shields)

196 ✓
 A letter from Mr. Bean of
 5th May is now attached. In
 spite of what he says, I think
 we might commence to work
 forward as in Mr. Parkinson's
 draft.

G.H. 6
 5.5.31

Yes: we must not authorise any action
 in the meantime. From what Mr. Sastri
 said to me, it seems that the Gov's proposals
 would not have the effect he expects. I rather
 fancy that those, like Sastri, who have some
 responsibility for the local situation, doubt like
 the present position among the Kenya Indians,
 and would prefer a period of inaction so that
 they could eliminate some of the undesirable
 factors and get greater unity.
 W.S. 6.5.31.

To be on
 proposed
 P 615

20
 in ~~action~~
 of Mr.
 Parkinson's memo
 of 11/3 should
 outstanding

15
 Gov. Kenya. Tel no 148 Secret 6/5
 6 May '31

Indian Assoc. _____ 5 April
 submit representations on election of representatives
 to Council

22 J. Heaton _____ 22 April
 ✓ Encloses copy letter from S.A. Indian National
 Congress re nomination and request matter be
 looked into.

23 To Mr. J. Heaton (22 and.) 10 May

24 Indian Assoc. _____ 5 April
 submit representations re nominations for
 legislative and municipal Councils

25 Gov. tel. 15 Secret _____ 10 May
 suggests local legislation declaring Indian members
 elected this month shall hold office till proclaimed
 date not later than 31 August and thereafter
 further elections to be held as early as possible.

No. 21 & 24 are identical
 I refer to no. 11 which has
 already been acknowledged.

No. 25. The legal position is
 now clear: if there is to be any
 interference with the existing law,
 the interference required will be an

amendment of the local law &
the local law only.

The question for
decision is whether there
should be any interference at
all. The S. of L. for India
advises against it. The Gov.
on the other hand finds it
difficult to resist on any
reasonable grounds & the arguments
for a fair trial of Indian
opinion.

C. E. S. B. S.
12-5-31.

[The election takes place on
23rd May but presumably an
announcement of the intention
to amend the local law must
be made as long as possible
before that date. The matter
is therefore urgent.]

Mr. Parkinson:

I have discussed with you, and we think
that in all the circumstances it would be well to drop
the proposal to legislate for limiting the term of
Indians elected at the forthcoming election. We had
realised from the first that such a step would be
difficult to defend unless taken with the substantial
agreement of the Indian community. The enquiry
on this point made of the Governor reveals no suffi-
cient ground for acting definitely on such an assump-
tion, and other evidence tends rather in the contrary
direction. Without substantial agreement, it would
be a strong measure to act in advance on the basis
that the Indians now to be elected are bound to be
non-representative. If the Indians elected "do not
sit in Council but use their position solely to block
co-operation" - a possibility foreshadowed by the
Governor in No. 15, then it would be open for the
Governor, if he considered such a course desirable,
to dissolve the whole Council in August, and have new
elections, both European and Indian, on an up-to-date
and complete register. This would avoid prejudging
the issue of the election and any charge of
gerrymandering, and the Governor, in deciding whether
or not to dissolve, would do so in the light of actual
circumstances. The Europeans might, of course, object.
If, however, the life of a Council can, as in 1930, be
extended by special Royal Instructions and legislation
to suit European elected members (see No. 1 on 15942/29)
than the life of another Council may surely, if
circumstances justify it, be shortened by the

exercise

exercise of the Governor's ordinary power of dissolution in order to meet the Indian situation. There is also the point that the European Election Manifesto of 1927^{demand} that "no change in the constitution of Kenya on such lines (i.e. some form of co-operation) shall be brought into force unless and until any proposed scheme has been published and submitted to the Electorate with full opportunity for discussion, and approved by them through the medium of a General Election." An election is now to take place, and the scheme of H.M.G. as regards closer union has been published but if as a result of ^{the} deliberations of the Joint Committee any other scheme were evolved, European elected members would no doubt demand another election. I do not suggest that use should be made of this point, since it would be dangerous to do so, as it might imply that H.M.G. would be prepared, ^{to agree to a} referendum on any constitutional changes finally proposed. But if the Europeans think it right to demand an election in such circumstances, it can hardly be argued that it would be improper for the Governor to insist on an election in order to ascertain whether the (ex hypothesi) non-co-operating Indian members are really representative of the voters on the new register.

We therefore suggest that the Governor's proposal should be dropped, and if in the Governor's opinion, the situation resulting from the election demands it, he should be left to deal with it by a general dissolution after the new register comes into operation. We do not like

(20)

(with Dr. Sheld)

write a short letter giving the decision
acc

like taking a view opposed to that of the Governor who is clearly actuated by a desire to do what he regards as good for the community as a whole, and if our suggestion is adopted, the draft reply should be carefully and sympathetically worded. Also the opening sentence of the Governor's telegram seems to indicate that he is a little hurt by the remark at the beginning of the Secretary of State's telegram of the 6th May that it has been possible to obtain the views of Mr. Sastri informally. It would therefore seem desirable in the reply to explain that Mr. Sastri's views were originally sought by the Secretary of State for India on the suggestion of the Government of India; that before expressing any views, Mr. Sastri undertook the opportunity of sounding the representatives of Indian opinion in East Africa now in London to give evidence before the Joint Committee; that subsequently the matter was discussed informally with Mr. Sastri at the Colonial Office; and that the remarks in the Secretary of State's telegram were based on the views he then expressed.

The decision suggested meets the India Office view, and it does not seem at all necessary to consult them as regards a general dissolution of Council. In that case, all the action required as regards the India Office would be to send [copies of Nos. 20, 25 and the reply to the Governor] to Mr. Wedgwood Benn in a confidential letter from the Secretary of State.

JMK
1957

acc Parkinson
13.5.57

AKB
13/5

For myself, I should prefer to take no definite steps, as Mr. ^{Allen} Parkinson proposes.

It would certainly create an immediate outcry on the part of the non-co-operative section if it is announced that the present elections are to be purely temporary because the Government does not choose to regard them as having a truly representative result. Further, the Indian Congress which is in touch with the Governor is the body which the non-co-operators regard as a mere minority, and it is not possible for anyone to be sure that the results of a new election in August will be more truly representative except, of course, in the sense that they would be based on a larger electoral roll.

On the other hand, the Governor will be disappointed; and it is not very satisfactory that if the necessity arises in August he should be in the position of having to explain to the European members that they must undergo dissolution in order that the Indian representation may be changed.

But I attach most importance to the first point and I do not think that, except for the strongest reasons, we should adopt the attitude of taking it for granted that the Indians now elected will be unsatisfactory, either as members of Council or as representatives of the Indians. Therefore, I agree with Mr. Parkinson.

W. C. S. 13.5.31.

Recd. as to * of Mr. Parkinson's mem. of 11/3

Sec of State
(through Dr. Shole)

Japsee.

J.H.B.

14.5.31.

I think Mr. Allen's minute sound, and agree with all said later. I specially approve our assuming the form of our regret at not being able to take his advice, and of our explaining Mr. Shole's intervention as linked up with the P.A. Indian delegates. We can put most of the responsibility on the 20, as I wish Mr. Joseph to feel that we will back him up with in his well-stated labours.

T.B.S. 15.5.31.

James
P. 18/15

26 Tel No 164 (Immediate) to Governor
Kangra - 14/5/31

on board.

The telegram has gone etc being paraphrased. Write you deal with the letter, please.

The letter has been ^{forwarded} 14.5.31
has now been signed & despatched.

E. J. Boyd

25/5/31

27

To Mr. Hon. Wedgwood Benn 20/5/31

Sir C. Boltonley:

Mr. Parkinson, just before going on leave, told me that Mr. Silver of the India Office had rung him up and enquired whether they might expect an official letter ~~in this~~ ^{my} ~~connection~~ ^{concerning} this matter, which has already been communicated to Mr. Benn in a semi-official letter from Lord Passfield.

Mr. Parkinson replied that confining this later correspondence to semi-official letters between Lord Passfield and Mr. Benn was deliberate, and that no further official communication to the India Office was contemplated. Mr. Silver said that on the receipt of Lord Passfield's original letter, the India Office had consulted the Government of India officially. I gathered that he rather pressed for an official letter, on which apparently it is desired to base some further official communication to the Government of India.

The position is that we are under no obligation to "consult" the India Office in these matters, but we have undertaken to "keep them informed".

Some of the earlier correspondence was sent to the India Office for information in purely formal communications, but when No. 15 was received, Mr. Parkinson minuted, under date 13th April "we are under no obligation to consult the India Office, but this may be thought to be a case in which the Secretary of State would wish to have Mr. Benn in agreement semi-officially before action is taken". Also, in his further minute of the 23rd April, he said "I did not intend

intend official reference to the India Office, see my minute of 13.4.31 - and I think it should be a personal letter from the Secretary of State to Mr. Benn.

The suggestion was agreed, and it is therefore clear that the intention to confine the correspondence to semi-official correspondence was deliberate.

Responsibility in these matters rests with the Secretary of State for the Colonies, and particularly when there is a local domestic quarrel the Governor must be his adviser. As a matter of fact however, the decision meets Mr. Benn's views.

Personally, I ^{am} disapprove sending an official letter to the India Office now, and I suggest that I should be authorised to tell Mr. Silver that it is not proposed to do so.

W. H. Allen
22
24/5/31

28 Gov. tl. secret _____ 22nd May
Reports has received communications from various candidates and from Indian National Congress emphasising importance of election on new roll. C.S. 15. at 29 was sent after discussion see on 23rd May 1931

29 To Gov. tl. 17th secret (28 and) 22nd May

Sir C. Boltonley
of 22 May
Please see my minute above
- ^{was} ~~not~~ intended that 28 & 29
should be entered below it.
W. H. Allen
24/5/31

of 22nd May
W. H.

Dr. S. Wilson

Please see Mr Allen's minutes
of 22/5.

As to scip, we are committed
to keeping S.O. in touch, & although
Mr Penfield's letter should have
been sufficient I think that as
things have turned out I'd like to
send a further letter, personal or
official, as necessary to indicate the
upshot.

If you think that we ought
to help another Dept. out of ga-
ness of its own making, we can
send a summary of the affair in
a confidential official letter,
and let them make what they like

of it; but I suspect that I do
not like the intricacies of a
S.W. and a Colonial Governor
being passed round the very
heterogeneous "four of a kind"

Wed. 26.5.31.

Gen C. Battamley

I agree. The best plan is to
take no action; and, if they return
to the charge, we will (subject to
Sec of State's concurrence) have to point
out that though we are prepared
to keep them informed unofficially
on certain points, we are not ready
to do so officially.

G.H.G.
at once

27.5.31

Mr Allen

We can wait for Mr Silver to
move with the matter again

Wed. 28.5.31

Seen
at 11.6.31

Mr Allen

Mr Parkinson asked me to prepare a note
for the J.A. C. see it of minute of 11.3.31
It does not seem necessary
to go at greater length into the question
of P. Sanderson

? answer now
as to *
min. of 11/3
as to Mr. G. etc

Note is now
with
at 11.6.31

Mr. [unclear]
Ref. letter from Mr. [unclear]
attached. These
per minutes beginning
with Wallace's up
22.5.51 & his note
which is now just below
the letter from Mr. [unclear].
The P.S. I.O. has anticipated
matters, as Mr. [unclear]
has said nothing more to
the Dept.

We do not wish to put
this on an official basis
with I.O. & we do not
wish to send to the I.O.
the subsequent [unclear].
We will only be [unclear]
round India as [unclear]
matter of I.O.

considered our first
S.O. comm. with an
official one to India,
I do not see why they
cannot equally round
off their official comm.
on the basis of the
first S.O. comm. from
C.O. - viz No. 27.

You will now take the
Dept's instructions -
see Mr. S. Wilson's minutes
of 27.5.51?

all [unclear]
11.6.51

As then proposed?
P 186.

- 30 letter by [unclear]
- 31 India Office [unclear] 9 June
- 32 request copies of telegram for [unclear] of India
- 33 [unclear] (3/ans) 5.6.20 JUN 1951

In C. Bolt

Mr Stanley of Adelaide
brought me yesterday a
number of these leaflets
wh. have been sent direct
to him by W. L. H. Doss
from Adelaide - see covering
letter below the leaflets.
I asked what I wd. let him
have a brief note of
their contents & what
it was all about.

Mr Eastwood has
prepared a note, which
I have had copied: may
I hand this to you
Stanley tomorrow morning?
The mtg. meets then at
10.30 to begin the
Indian evidence (W. J. S. &
W. M. D. - a if time.
Mr Patch & Mr Phadke)

all Parkhurst
11.6.31

W.L.S. 11.6.31

Attached will be sent
by Mr Stanley of Adelaide to the
C.C. today & will be circulated
to members.

Publy all M. G. M.
above

34 Indian Association

22 30 May

Photo as to Mr. M. M. Mith's position in regard to
the Indian Association and to the W. L. H. Doss
activities.

In letter referred to at the
beginning of this record in No 21,
and an other copy in No 21.
But Mr Mithan wrote to the Secy in
the subject of No 22 & rec'd a reply (No 23).
But no reply was sent to No 24. It
of the present Comm'n. changes have
come through the Gov. The quarrel is
a domestic one & the letter
may also be put S.

W. L. S.

24/6/31

I quite agree.

all Parkhurst

24/6/31

W. L. S. 25.6.31

J.H.G.

29.6.31.

I hope it has been acknowledged. If not, it
should be.
W.L.S. 29.6.31.

Ack. receipt

P 30/6

27

No. 3
BEST COPY AVAILABLE

is a. ... (OK added)

1st July

140 India Office

28 Aug 1947

36. I.A. Indian Delegation
Enclose copy letter to Joint Committee on
House Union in C. Africa re attitude of Kenya
Indians towards representation on Legislative
Council and Common Roll

This has been ack'd by p.c.

? pub. l.
Glandon
4.7.31

Now get off Lb to Gov.
or no. ack. 6.7.31

37. Gov. Sect (2) - (1/20 34 + 35) - A/P. - 15 JUL 1931

38. Extract from East African Standard dated
20 June 1931

Registered in accordance with minute
of 3/9/31 in 14088/12/31

Thomas
19/8/31

? pub. l.
C. S. Thambiah 2/P

Recall has been started
relate press cuttings &
might be work there.

A. Fraser
H. Allen
2/9/31
A. Paul

39. Extract from East African Standard dated 20 June 1931

In copy correspondence with Govt. of India
hope matter of letter to be afforded an opportunity
of expressing an opinion before decision to dis-
pound is taken by Kenya Govt, when new
register comes into operation, may be met.

Mr. Men

I must say that the latest
from the Govt. of India is being most
unreasonable. The possibility of having
recourse to a dissolution when the new
register comes in, of the Indians not
elector in their position purely for
obstruction, was considered after the
alternatives set forth in (15) (primary
underlined) were abandoned in deference
to the views expressed by the S. of S. for
India in (196). The aim of the
Governor of the S. of S. has been to
do all that is possible to secure
proper representation for Indians within
the limits of the Constitution. If two
possible lines of approach to this end
have been given up at the instance
of the S. of S. for India, there is little
obvious reason why the most favorable
alternative should be held subject to
the opinion of the Govt. of India. If
dissolution were to be decided upon
it would be because the S. of S. or
the Govt. had been forced to the
conclusion that the elected Indians

would I cannot see what value
the view of the Govt of India could
have. They could not diminish the
Indians from non-co-operation
and there is no reason whatever to
suppose that they could suggest a
benign course alternative to dissolution

I would venture to suggest that in
reply to (40) it should be said that
the dissolution idea was reached on
outlines above other, in those cases
in which it might be contemplated,
the S. of S. does not see what benefit
purpose would be served by consultation
with the Govt. of India, though they
would naturally be ~~very~~ informed
if either a dissolution took place

By [Signature]
(Reached here again 4/9/1931) 31. 8. 31

See Clauses 30 & 31 of the Instructions of the 11th Sept. '20.

the question of dissolving the Council is a matter for the discretion of the Governor except that it has in any case to be dissolved three years from the date of the last preceding General Election.

This seems to be another case of the Government of India attempting to interfere unreasonably, and as the particular circumstances which they have in mind, namely the dissolution of the Council on the coming into operation of the new register, have not arisen, I suggest that the reply might be limited as in the draft herewith.

(It will be noted that the I.O. are now putting this matter on an official basis, an attempt which was previously resisted, see for example No. 32 flagged).

(v. 13. The loose 3/0 Corrode now herewith shows that a note on Indians in Kenya is being prepared for this House)

JN Allen

7/9/31

I have passed the draft, and
am sure certain that the Govt
will not act under this year of last
Let Sir S. Wilson in office action

W.C.S.

7.9.31

No. 30. (40 lines)

Conf. 8 - SEP 1931

appear to
attach
numbers
last.

NDS 1428
H3

Under Section 10(c) of the Legislative Council Ordinance, the revised register in each year comes into operation on the 1st August. The Governor took no steps to dissolve the Council last month. On the contrary a new session opened about the 18th of August and is still continuing although the Indians declined to take their seats either on that session or on the session in June which followed the elections in May. Under the Royal Instructions the

Noted
for 25/9
Sir S. Wilson
to see

act on
alone

42

India Office % _____ 2nd September
Inquire results of elections in order that
that may be prepared for Mr. A. Hoar.

113
[Handwritten initials]

% India Office % (42 and.) 5th September

HH Extract from Official Gazette No. 113 dated
25 August 1931.

Registered in accordance with minute
of 23/9/31 or 17059/6/31.

Shousi
25/9/31.

I do not know the cause of this
vacancy. ? part of.

as to appointment of
Rashid Khan to the
Dep. Co.

[It will be seen that in a dispatch
just in (air mail) the Secy says
that he thinks it more than
likely that the Indians will
decide to cooperate.]

Shousi
25.9.31

RB Fisher
25.9.31

113

Spares to
Library.

45 12 copies of "Inquiry into Indian Elections to
Legislative Council" received under cover of Sp. n.
from A/Col. Sec., dated 1st September 1931.

? part

Shousi
3.10.31

[Handwritten initials]
16.10.31

Mr. L. S. Wilson

Received 7/9/31

Seen

[Handwritten initials]
above

17.10.31.

46

Extract from Official Gazette No. 50 dated
13/10/31

? part

Shousi
16.10.31

(I am not sure what the significance of this election is.)

[Handwritten initials]
16

Shousi

17/10

above

[Handwritten initials]

GOVERNMENT NOTICE No. 592.

THE LEGISLATIVE COUNCIL ORDINANCE
(Chapter 24 of the Revised Edition)

AND

THE REVISED EDITION OF THE LAWS
(OPERATION) ORDINANCE, 1926.

UNDER the powers vested in the Governor by section 16 of the Legislative Council (Amendment) (Indian Electoral Area) Rules, 1931, I, Joseph Aloysius Byrne, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Knight Commander of the Most Excellent Order of the British Empire, Companion of the Most Honourable Order of the Bath, having the honorary rank of Brigadier-General in His Majesty's Army, Governor and Commander-in-Chief of the Colony and Protectorate of Kenya, hereby give notice that a Poll will take place in the undermentioned Electoral Area on the 14th November, 1931.

The names of the several candidates and of their proposers, seconders and supporters, and the place at which the Poll will be taken, are set forth below.

J. A. BYRNE,
Brigadier-General,
Governor.

Nairobi,
10th October, 1931.

Candidate.
Chunnilal Motibhai Patil.

Proposer.
Hakam Singh.

Secunder.
D. K. Patel.

Supporters.
Manji Virji.
K. N. Jani.
A. G. Patel.
Abdul Wahid.
I. N. Patel.
U. T. Patel.
M. G. Vasowala.

Candidate.
Shams-ud-Deen.

Proposer.
Mohamed Firoze.

Secunder.
Thakur Dass.

Supporters.
Abdul Karim.
C. Gurditta.
Subha Khan.
Gulam Mohamed.
Mohamed Sadiq.
Alla Bux.
Hakim Nizam Din.

Polling Station.
Office of the District Commissioner, Nairobi.

Electoral Area.
The Colony and Protectorate.

GOVERNMENT NOTICE NO. 593.

WATER BORING REGULATIONS.

THE following Regulations are published for general information in place of those under Government Notices Nos. 501 of 29th September, 1927, and 182 of 26th February, 1929, which are hereby cancelled.

Nairobi.

This 8th day of October, 1931.

W. M. LOGAN,
for Acting Colonial Secretary.

REGULATIONS AND CONDITIONS FOR HIRE OF GOVERNMENT DRILLS FOR WATER BORING, ETC.

1. Government drills may be hired to applicants to bore for water for agricultural and other purposes, provided that, except on the authority of the Director of Public Works they shall not be available to bore for water for private individuals on ground within or attached to any township.

2. Government drills may, subject to the approval of the Director of Public Works, be used for boring for mining or other purposes upon such terms and conditions as may be previously arranged.

3. Particular attention is drawn to the fact that Government accepts no responsibility for the success of any boring operations; neither does Government nor its officers in any way accept responsibility for advice given either with regard to the siting of a bore-hole, possible water supply or pumps, etc., or any technical matter.

PAYMENT OF CHARGES.

4. Payment for the hire of a drill shall be made either—

- (a) by cash in advance;
- (b) by cash on demand after completion of boring operations;
- (c) by three equal annual instalments.

PAYMENT OF CHARGES BY CASH IN ADVANCE.

5. If an applicant is required to pay cash in advance for the hire of a drill, he shall deposit with such officer of the Government as may be duly authorised thereto the sum of Sh. 1,000 before the drill may proceed to the site at which boring is to take place, and thereafter such further deposits as may be required. Provided, however, that when boring operations are completed any amount which has been deposited in excess of the charges fixed under the Regulations shall be refunded.

PAYMENT OF CHARGES BY CASH ON DEMAND.

6. If an applicant, whose application may have been approved, desires to pay cash on demand for the hire of a drill, he shall provide one or more approved sureties or other approved security for the due payment in cash of all boring charges on demand upon completion of the boring operations.

PAYMENT OF CHARGES BY THREE ANNUAL PAYMENTS.

7. An applicant who wishes to pay for the boring charges by means of three equal annual payments, including interest at six per cent, shall provide one or more approved sureties or other approved security

for the due payment of instalments in cash on demand; the first instalment of 85 per cent. of cost on completion of the bore-hole and two other equal instalments at 12-monthly intervals from the date of completion. He shall deposit Sh. 500 in respect of each bore-hole with the Director of Public Works or with any other duly authorised officer of the Government before the drill proceeds to the site at which boring is to take place, and this deposit will be used as part payment of the first or subsequent payments.

SUBMISSION OF APPLICATIONS.

8. Every application for the hire of a drill, except as stated under section 2, shall be submitted on P.W.D. Form No. 170 to the Director of Public Works, who shall make such enquiries as are necessary to ascertain if the application is in order.

APPROVAL OF APPLICATION.

9. The approval or otherwise of an application shall be subject to the discretion of the Director of Public Works.

NOTIFICATION OF APPROVAL OF APPLICATION AND LIABILITY TO CANCELLATION THEREOF.

10. When an application has been approved, notice of its approval shall be sent to the applicant but no such notice of approval shall be understood to render the Government liable to undertake boring for the applicant, and the Director of Public Works may cancel any such notice.

The applicant can cancel or withdraw his application, provided that notice of such cancellation is given in writing to the Director of Public Works before any steps have been taken to carry out the work and before the Government has incurred any expense in connexion therewith.

NOTICE OF THE AVAILABILITY OF DRILL.

11. A minimum notice of 24 hours that a drill is available shall be given to the applicant in writing, and such notice shall set forth the date and place at which he shall take over the drill. If on the expiry of such notice the applicant shall not have taken over the drill, the acceptance of his application may be cancelled and the applicant shall, if required, pay the full charge for delay as prescribed in section 2B (c) of these Regulations.

The taking over of the drill shall preclude the applicant from any denial of liability for its hire.

The cancellation of his application after notice of the availability of a drill has been received by the applicant shall not absolve him from liability to pay full charges for any delay caused by such cancellation.

CLASSIFICATION OF GOVERNMENT DRILLS.

12. The class of drill provided under these Regulations shall be at the discretion of the Director of Public Works.

LABOUR.

13. The Department shall provide a foreman and such other labour as is considered necessary for the satisfactory operation of the drill.

The foreman shall have the entire direct charge of the drill and boring operations.

Should the applicant have any complaint to make, he shall submit it in writing without delay to the Director of Public Works.

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SUBMISSION OF APPLICATIONS.

5. Every application for the hire of a drill, except as stated under section 2, shall be submitted on P.W.D. Form No. 176 to the Director of Public Works, who shall make such enquiries as are necessary to ascertain if the application is in order.

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into Indian
Legislation

B. V. Shiv, Esq.
Narasimha

Report and
Shorthand Notes of Proceedings

Printed by the Government Printer, Madras

REPORT

By an Order dated 15th June, 1931, His Excellency the Governor in Council appointed me to inquire into and report upon the grounds on which the validity of the election of five members to represent the Indian constituency in the Legislative Council had been brought in question by Mr. Thakur Dass, one of the unsuccessful candidates.

2. The inquiry was commenced in the Law Courts, Nairobi, on the 29th June, 1931, at 10 a.m., and was concluded the same day. Due notice of the time and date of the inquiry had been served upon the Hon. the Attorney General, Mr. Hosking, District Commissioner, Nairobi, and upon all of the successful and unsuccessful candidates.

3. Mr. M. H. Malik represented the Petitioner, and the Hon. the Attorney General, with Mr. Abbott, Crown Counsel, appeared on behalf of the District Commissioner, Nairobi, and of the Administration generally. Two of the successful candidates—Mr. Hakim Singh and Mr. Abdul Wahid—appeared in person. The other successful candidates were not represented. The Attorney General also appeared in his capacity as Director of Public Prosecutions.

4. No Rules having been made under section 28 of the Legislative Council Ordinance, it was submitted by the Attorney General that the common law practice was applicable to these proceedings.

5. Mr. Malik withdrew all averments of irregularities alleged to have been committed by officials in the conduct of the elections. This resulted in the striking out of a portion of paragraph 19 and of the whole of paragraphs 20 and 21 of the petition.

6. The following paragraphs were struck out by consent, as they did not affect the question of "validity"—Nos. 1, 2, 3, 4, 24, 25, 26, 28 and 29.

7. Arguments were heard on the question whether evidence of irregularities in the preparation of the Register of Voters would be admissible as affecting the validity of the elections.

The Attorney General stated that the Indian elections had been held on the Register of Voters which had been published in the Official Gazette dated 20th December, 1930.

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The Attorney General stated that the Indian elections had been held on the Register of Voters which had been published in the Official Gazette dated 20th December, 1930.

2.

He further stated that this Register had been certified on 22nd February, 1931. It appeared to me that as the Register had not been certified until 22nd February, 1931, sufficient time had been given for claims to be made as prescribed in Rule 10, Schedule II of the Rules under Chapter 24. Rule 10 (c) provides that the "registers so certified shall come into operation on the first day of January following the publication of the Registers under Rule 9 (a), and shall continue in operation until superseded by other revised registers."

The first day of January following publication was January 1st, 1931, and although it is probable that the Rules contemplate the publication of the Register at an earlier date than the 20th December, I do not think that there is any intention to postpone the use of the new Register until the first day of January following certification. My finding was that immediately the Register had been certified it became a valid Register and one which could not be questioned in proceedings such as these. And the proposition that the validity of an election can be challenged by questioning the validity of the Register of Voters appears to be entirely without precedent. This finding resulted in the striking out of paragraphs 5 to 18 and 22 of the petition.

8. Mr. Malik agreed that the number of persons who were alleged to have been unable to obtain ballot papers at Eldoret was not sufficient to affect the result of the poll, and he consented to the striking out of paragraph 23.

9. There remained only a portion of paragraph 10 and the whole of paragraph 27. Mr. Malik exhibited a copy of the election manifesto which had been issued over the names of the five successful candidates, and he submitted that the terms of the manifesto constituted a using of undue influence. His arguments are at pages 23 to 26 of the proceedings. The Attorney-General drew attention to the distinction between the use of influence and the use of undue influence. Undue influence is defined in section 24 of the Ordinance.

I held that the terms of the manifesto did not amount to the using of undue influence.

10. Mr. Malik wished to call evidence to show that the successful candidates had been guilty, either personally or through their agents, of corrupt practices. It did not appear to me that the remaining portion of paragraph 19 or paragraph 27 contained allegations of corrupt practices which could be

3

held to fall within the definition of the term "corrupt practice" in section 26 of the Ordinance, and I further held that I was precluded from allowing the petition to be amended at this stage. The application for permission to call evidence was therefore disallowed.

11. I respectfully report that I have failed to find any grounds on which the validity of the elections can be questioned. A transcript of the shorthand note of the proceedings is attached herewith.

B. V. SHAW,

Resident Magistrate, Nairobi.

4th July, 1931.

PETITION

Nairobi,

5th June, 1931.

HIS EXCELLENCY THE GOVERNOR IN COUNCIL,

KENYA COLONY,

NAIROBI.

May it please Your Excellency,

I, the undersigned, most humbly and respectfully beg to state that I was duly nominated according to law as a candidate for one of the five Indian seats on the Legislative Council of Kenya Colony, and my name was duly published in the Official Gazette dated 8th April, 1931, *vide* Government Notice No. 209, dated 7th April, 1931, published on page 386 of the Official Gazette for 1931.

1. That numerous defects and anomalies have manifested themselves in the practical operation of the recent election proceedings which entirely negative the real object of the law, i.e. to give an opportunity to the Indian Community to express their popular choice to return their five representatives to be the members of the Council.

2. The election of Indian members was proclaimed for the first time in the history of the Colony, and no Indian advice or consultation was sought for the working of the election.

He further stated that this Register had been certified on 22nd February, 1931. It appeared to me that as the Register had not been certified until 22nd February, 1931, sufficient time had been given for claims to be made as prescribed in Rule 10, Schedule II of the Rules under Chapter 24. Rule 10 (c) provides that the " registers so certified shall come into operation on the first day of January following the publication of the Registers under Rule 9 (a), and shall continue in operation until superseded by other revised registers."

The first day of January following publication was January 1st, 1931, and although it is probable that the Rules contemplate the publication of the Register at an earlier date than the 20th December, I do not think that there is any intention to postpone the use of the new Register until the first day of January following certification. My finding was that immediately the Register had been certified it became a valid Register and one which could not be questioned in proceedings such as these. And the proposition that the validity of an election can be challenged by questioning the validity of the Register of Voters appears to be entirely without precedent. This finding resulted in the striking out of paragraphs 5 to 18 and 22 of the petition.

8. Mr. Malik agreed that the number of persons who were alleged to have been unable to obtain ballot papers at Eldoret was not sufficient to affect the result of the poll, and he consented to the striking out of paragraph 23.

9. There remained only a portion of paragraph 10 and the whole of paragraph 27. Mr. Malik exhibited a copy of the election manifesto which had been issued over the names of the five successful candidates, and he submitted that the terms of the manifesto constituted a use of undue influence. His arguments are at pages 23 to 26 of the proceedings. The Attorney General drew attention to the distinction between the use of influence and the use of undue influence. Undue influence is defined in section 24 of the Ordinance.

I held that the terms of the manifesto did not amount to the using of undue influence.

10. Mr. Malik wished to call evidence to show that the successful candidates had been guilty, either personally or through their agents, of corrupt practices. It did not appear to me that the remaining portion of paragraph 19 or paragraph 27 contained allegations of corrupt practices which could be

held to fall within the definition of the term " corrupt practices " in section 28 of the Ordinance, and I further held that I was precluded from allowing the petition to be amended at this stage. The application for permission to call evidence was therefore disallowed.

11. I respectfully report that I have failed to find any grounds on which the validity of the elections can be questioned. A transcript of the shorthand note of the proceedings is attached herewith.

B. V. SHAW,
Resident Magistrate, Nairobi.

4th July, 1931.

PETITION

Nairobi,
5th June, 1931.

HIS EXCELLENCY THE GOVERNOR IN COUNCIL,
KENYA COLONY,
NAIROBI.

May it please Your Excellency,

I, the undersigned, most humbly and respectfully beg to state that I was duly nominated according to law as a candidate for one of the five Indian seats on the Legislative Council of Kenya Colony, and my name was duly published in the Official Gazette dated 8th April, 1931, vide Government Notice No. 209, dated 7th April, 1931, published on page 386 of the Official Gazette for 1931.

1. That numerous defects and anomalies have manifested themselves in the practical operation of the recent election proceedings which entirely negate the real object of the law, i.e. to give an opportunity to the Indian Community to express their popular choice to return their five representatives to be the members of the Council.

2. The election of Indian members was proclaimed for the first time in the history of the Colony, and no Indian advice or consultation was sought for the working of the election.

3. The whole Colony has been treated as one constituency regardless of local interests of the Indians residing at the Coast or the Lake Area under varying local conditions.

4. Franchise having been extended to all adults, educated or illiterate, with or without knowledge of English language, no facility has been given even to such comparatively few voters who happen to be on the present incomplete Voters' Register to know what was happening. The proclamations were not published in Urdu, Gujarati and Gurmukhi, and as copies of the Voters' Register had not been published in various vernacular languages of the voters the intimation or invitation to voters to participate in elections remained incomplete.

5. According to Rule 8, Schedule II of the Legislative Council Ordinance (Chapter 24, Vol. I of the Revised Edition), as amended by the Legislative Council (Amendment) Rules, 1927, it is required that on or before the 1st January in every year a notification shall be published in the Official Gazette inviting all persons desirous of having their names inserted in the Register of Voters to forward their claims to the Registering Officer before the 1st day of following September.

6. I have made a diligent search in all copies of the Official Gazette for the years 1927 to 1930, and have ascertained that the notifications mentioned above were not published in the years 1928 and 1929.

7. A notification required by Rule 8 was published in 1930 in the Official Gazette dated 14th January, 1930, on page 38, which publication was fourteen days later than the date mentioned in Rule 8 quoted above.

8. Rule 4 and amended Rule 8 (c), Chapter 24, quoted in paragraph 2 of this petition, requires that on the completion of the Register of Voters copies thereof shall be published in the Official Gazette with a notice in the principal newspapers of the Colony to the effect that Voters' Register has been duly published in the Official Gazette with a view to objections being lodged and applications being made to rectify omissions within twenty-eight days thereafter.

9. I have made a diligent search in all issues of the Official Gazette and find that Voters' Register was published in a special issue of the Official Gazette on the 20th December,

1937. No Voters' Register was published in the year 1928; but the Register in question was published in a special issue of the Official Gazette dated 12th February, 1929. In the year 1930 the Voters' Register was published in two special issues of the Official Gazette dated the 15th March and 20th December, 1930, respectively.

10. To the best of my knowledge, information and belief, the notice regarding the publication of the Voters' Register in the Official Gazette has never been published in the principal newspapers of the Colony.

11. As a result of the omission and irregularity in the publication of the statutory notifications and the Voters' Register in the Official Gazette and the principal local papers, the Voters' Register has remained incomplete, irregular and unrepresentative.

12. Rule 9 (a) and (b), Chapter 24, quoted in paragraph 2 of this petition, requires that on or before the 1st day of October in every year the Registering Officer shall prepare a revised Register of Voters and shall insert all names entitled to and expunge from the Register the names of persons who are dead or who have become disqualified or have left the electoral area.

13. The revised Registers have not been prepared according to law inasmuch as all names entitled to have not been inserted and a very large number of persons who are dead, and who have become disqualified, and have left the Colony, have not been expunged.

14. That the Voters' Register has been prepared so carelessly and with such insufficient description of the voters that it does not give the Registering Officer enough means to test the identity of each voter, and that a number of persons who were not on the Voters' Register and were not entitled to vote actually applied for and received ballot papers.

15. Rule 10 (c), Chapter 24, quoted in paragraph 2 of this humble petition, requires that the Registering Officer shall certify the revised Register after it has been duly prepared according to law, and the register so certified shall come into operation on the first day of January following the publication of the Voters' Register, but Rule 10 (a) provides that before such Register is certified and before it comes in operation;

3. The whole Colony has been treated as one constituency regardless of local interests of the Indians residing at the Coast or the Lake Area under varying local conditions.

4. Franchise having been extended to all adults, educated or illiterate, with or without knowledge of English language, no facility has been given even to such comparatively few voters who happen to be on the present incomplete Voters' Register to know what was happening. The proclamations were not published in Urdu, Gujarati and Gurmukhi, and as copies of the Voters' Register had not been published in various vernacular languages of the voters the intimation or invitation to voters to participate in elections remained incomplete.

5. According to Rule 8, Schedule II of the Legislative Council Ordinance (Chapter 24, Vol. I of the Revised Edition), as amended by the Legislative Council (Amendment) Rules, 1927, it is required that on or before the 1st January in every year a notification shall be published in the Official Gazette inviting all persons desirous of having their names inserted in the Register of Voters to forward their claims to the Registering Officer before the 1st day of following September.

6. I have made a diligent search in all copies of the Official Gazette for the years 1927 to 1930, and have ascertained that the notifications mentioned above were not published in the years 1928 and 1929.

7. A notification required by Rule 8 was published in 1930 in the Official Gazette dated 14th January, 1930, on page 38, which publication was fourteen days later than the date mentioned in Rule 8 quoted above.

8. Rule 4 and amended Rule 8 (c), Chapter 24, quoted in paragraph 2 of this petition, requires that on the completion of the Register of Voters copies thereof shall be published in the Official Gazette with a notice in the principal newspapers of the Colony to the effect that Voters' Register has been duly published in the Official Gazette with a view to objections being lodged and applications being made to rectify omissions within twenty-eight days thereafter.

9. I have made a diligent search in all issues of the Official Gazettes and find that Voters' Register was published in a special issue of the Official Gazette on the 20th December,

1927. No Voters' Register was published in the year 1928, but the Register in question was published in a special issue of the Official Gazette dated 12th February, 1929. In the year 1930 the Voters' Register was published in two special issues of the Official Gazette dated the 15th March and 20th December, 1930, respectively.

10. To the best of my knowledge, information and belief, the notice regarding the publication of the Voters' Register in the Official Gazette has never been published in the principal newspapers of the Colony.

11. As a result of the omission and irregularity in the publication of the statutory notifications and the Voters' Register in the Official Gazette and the principal local papers, the Voters' Register has remained incomplete, irregular and unrepresentative.

12. Rule 9 (a) and (b), Chapter 24, quoted in paragraph 3 of this petition, requires that on or before the 1st day of October in every year the Registering Officer shall prepare a revised Register of Voters and shall insert all names entitled to and expunge from the Register the names of persons who are dead or who have become disqualified or have left the electoral area.

13. The revised Registers have not been prepared according to law inasmuch as all names entitled to have not been inserted and a very large number of persons who are dead, and who have become disqualified, and have left the Colony, have not been expunged.

14. That the Voters' Register has been prepared so carelessly and with such insufficient description of the voters that it does not give the Registering Officer enough means to test the identity of each voter, and that a number of persons who were not on the Voters' Register and were not entitled to vote actually applied for and received ballot papers.

15. Rule 10 (c), Chapter 24, quoted in paragraph 3 of this humble petition, requires that the Registering Officer shall certify the revised Register after it has been duly prepared according to law, and the register so certified shall come into operation on the first day of January following the publication of the Voters' Register, but Rule 10 (a) provides that before such Register is certified and before it comes in operation;

four weeks' time shall be given from the date of publication of the Register to enable objections to the published copy of the Register being lodged and a reasonable time thereafter for such objections being heard and disposed of.

16. The Register of Voters on which the recent elections have been held was published in a special issue of the Official Gazette dated the 20th December, 1930, and it could not come into operation on the 1st of January, 1931, as this would allow only eleven days for objection instead of the statutory twenty-eight days. Four weeks allowed for objections after the publication of the Register expired on or about the 18th January, 1931, and presuming that the Register was certified thereafter in accordance with Rule 7, it could only come into operation from 1st January, 1932.

17. Rule 10 (d), Chapter 24, quoted above, provides that if any revised Register has not been prepared in time, the Register in operation immediately before the time at which the new Register ought to have been prepared shall continue in operation until the new Register is prepared. The proper and lawful Register of Voters, on which the elections should have been held, was therefore the Register published on the 15th March, 1930, which, although prepared and published at a date later than the periods prescribed by law in the ordinary course, fulfilled all the requirements as regards allowing time for objections and certification, etc., required by law, and was the Register which came into operation on the 1st January, 1931. This Register (published on the 15th March, 1930) is materially different from that published on the 20th December, 1930.

18. That it is absolutely necessary to remedy and rectify such irregularities and omissions, is instanced by Government Notice No. 351, published on the 17th October, 1929, issued by the command of the Deputy to His Excellency the Governor in Council, wherein new Rules had to be framed whereby the late preparation of the Register of Voters was rectified by these special Rules, but an express provision was made to give four weeks for objections, etc., from the date of the publication of the said Rules, notwithstanding the fact that the time for such objection had long expired.

19. The provisions of Rule 20, published on 27th March, 1931, were totally ignored, inasmuch as the ballot papers in Nairobi were issued indiscriminately with little or no proof of

identity and the same were delivered in batches to candidates and other persons without any authority from the applicants and without any record having been kept as to whom the same had been delivered. Owing to this gross irregularity, ballot papers fell into the hands of persons who either declined to deliver same to the voters or have destroyed the same on the slightest indication from the voters of their intention to vote in a manner otherwise than in accordance with the wishes of the person in whose possession the ballot paper happened to be. This irregularity has deprived me of a large number of votes, which should have ordinarily been recorded in my favour.

20. The provisions of section 21 of the Legislative Council Ordinance No. 22 of 1910 were grossly violated, inasmuch as a complete list of the names of all voters on the Register who had and who had not applied for the ballot paper were supplied to some of the candidates.

21. The principle of secrecy at the time of recording votes was violated in the case of all voters who could not read English, as the voters were taken by the Returning Officer behind a low screen in a room where there were usually a large number of persons present, not excluding candidates, in whose presence the names of all candidates were read out to the voters, and they were asked in Kiswahili, in a loud enough voice to be heard by all present, as to whom they wished to vote for, and the voter's answer thereto was audible to all present in the room.

22. As a further result of the irregularities in the preparation and publication of Voters' Register on due dates, and want of regular proclamations, no less than 5,000 voters (approximately) who registered their names within one week between 11th and 18th January have been debarred from participating in the recent election. There are further no less than ten thousand qualified voters in the Colony who, but for the irregularities mentioned above, should have been on the Voters' Register.

23. Ballot papers were not supplied to the District Officers in sufficient number. A number of voters who were my supporters applied to the Registering Officer at Eldoret for ballot papers on the 18th May, and were informed that there were no ballot papers available.

four weeks' time shall be given from the date of publication of the Register to enable objections to the published copy of the Register being lodged and a reasonable time thereafter for such objections being heard and disposed of.

16. The Register of Voters on which the recent elections have been held was published in a special issue of the Official Gazette dated the 20th December, 1930, and it could not come into operation on the 1st of January, 1931, as this would allow only eleven days for objection instead of the statutory twenty-eight days. Four weeks allowed for objections after the publication of the Register expired on or about the 18th January, 1931, and presuming that the Register was certified thereafter in accordance with Rule 7, it could only come in operation from 1st January, 1932.

17. Rule 10 (d), Chapter 24, quoted above, provides that if any revised Register has not been prepared in time, the Register in operation immediately before the time at which the new Register ought to have been prepared shall continue in operation until the new Register is prepared. The proper and lawful Register of Voters, on which the elections should have been held, was therefore the Register published on the 15th March, 1930, which, although prepared and published at a date later than the periods prescribed by law in the ordinary course, fulfilled all the requirements as regards allowing time for objections and certification, etc., required by law, and was the Register which came into operation on the 1st January, 1931. This Register (published on the 15th March, 1930) is materially different from that published on the 20th December, 1930.

18. That it is absolutely necessary to remedy and rectify such irregularities and omissions, is instanced by Government Notice No. 351, published on the 17th October, 1923, issued by the command of the Deputy to His Excellency the Governor in Council, wherein new Rules had to be framed whereby the late preparation of the Register of Voters was rectified by these special Rules, but an express provision was made to give four weeks for objections, etc., from the date of the publication of the said Rules, notwithstanding the fact that the time for such objection had long expired.

19. The provisions of Rule 20, published on 37th March, 1931, were totally ignored, inasmuch as the ballot papers in Nairobi were issued indiscriminately with little or no proof of

identity and the same were delivered in batches to candidates and other persons without any authority from the applicants and without any record having been kept as to whom the same had been delivered. Owing to this gross irregularity, ballot papers fell into the hands of persons who either declined to deliver same to the voters or have destroyed the same on the slightest indication from the voters of their intention to vote in a manner otherwise than in accordance with the wishes of the person in whose possession the ballot paper happened to be. This irregularity has deprived me of a large number of votes which should have ordinarily been recorded in my favour.

20. The provisions of section 21 of the Legislative Council Ordinance No. 23 of 1919 were grossly violated, inasmuch as a complete list of the names of all voters on the Register who had and who had not applied for the ballot paper were supplied to some of the candidates.

21. The principle of secrecy at the time of recording votes was violated in the case of all voters who could not read English, as the voters were taken by the Returning Officer behind a low screen in a room where there were usually a large number of persons present, not excluding candidates, in whose presence the names of all candidates were read out to the voters, and they were asked in Kiswahili, in a loud enough voice to be heard by all present, as to whom they wished to vote for, and the voter's answer thereto was audible to all present in the room.

22. As a further result of the irregularities in the preparation and publication of Voters' Register on due dates, and want of regular proclamations, no less than 5,000 voters (approximately) who registered their names within one week between 11th and 18th January have been debarred from participating in the recent election. There are further no less than ten thousand qualified voters in the Colony who, but for the irregularities mentioned above, should have been on the Voters' Register.

23. Ballot papers were not supplied to the District Officers in sufficient number. A number of voters who were my supporters applied to the Registering Officer at Eldoret for ballot papers on the 18th May, and were informed that there were no ballot papers available.

24. A very large number of voters did not understand English or Kiswahili, and the Returning Officers in Nairobi and outstations had no assistance or means of ascertaining the intention of the voters by communicating to them in a language understood by them. A large number of applications for ballot papers were signed by the applicants in vernacular languages, and the Registering Officers had no means of scrutinising the genuineness of the signatures and consequently also the identity of the applicant.

25. There are a large number of women voters who observe purdah system, and do not appear before any male person other than their husbands and relatives. No arrangement was made at any of the offices of the Registering Officers for the recording of votes by female voters by lady Registering Officers and consequently I have been deprived of a large number of votes of women voters.

26. The fundamental principle that underlies the law in force for elections is to enable the various communities in the Colony to send their representatives to the Legislative Council by expressing their popular desire through the medium of the lawful machinery for elections.

27. The five candidates who have been declared as elected have influenced the voters by means which are totally contrary to the objects and intentions of the law and have secured the votes not for the purpose intended by the law (i.e. representation and participation in the proceedings of the Legislative Council), but for the purpose of defeating the very object and intention of the law by their abstention from taking the oath of allegiance to His Majesty the King, which is a condition precedent to the participation in the proceedings of the Legislative Council.

28. The first session of the Legislative Council opened on Tuesday, the 2nd June, and the five members declared as duly elected, deliberately and in accordance with their manifesto published by them (a copy of which is attached hereto and marked "A.") absented themselves from the Council and failed to take the oath of allegiance.

29. That should the five members who have been declared as elected be permitted to block the five seats for the ordinary period of three years, the Indian community will suffer a great hardship and injustice, and material harm will be done to the general interest and welfare of the Colony by complete absence of Indian representation on the Council.

I therefore appeal to Your Excellency in accordance with section 28 of the Legislative Council Ordinance, 1919, and request that Your Excellency will be graciously pleased to—

- (a) Set aside the elections held on the 23rd May, 1931, and to declare the same as null and void.
- (b) Order the preparation of a regular, complete and representative Indian Register giving ample time to all Indians in the Colony to have their names registered on the Electoral Roll, and to hold another election which will eliminate all the irregularities, difficulties and disabilities which have been experienced in the recent elections.

Or alternatively—

- (a) To declare the five Indian members—Hakim Singh s/o Nand Singh, Dhanwant Singh, Abdul Wahid, Revashanker Devchand Doshi, and Dr. Amritlal Ujamesh Sheth—as not having been elected in accordance with intents and purposes of law but in contravention and defiance of the fundamental principle of the law enabling Indian representation on the Legislative Council.

I beg to remain,

Your Excellency's
most obedient and humble servant,
THAKUR DASS.

EXHIBIT A.

WHAT THE CONGRESS FIVE STAND FOR.

A Declaration of Policy.

In accordance with the policy decided upon by the Standing Committee in its Resolution No. 2, passed on the 14th March, 1931, the Congress, after mature deliberation, has decided to send their five members on the Legislative Council of the Colony, and supplements this decision with the following declaration—

1. This step has been forced by the rival party, who did their best to persuade the Government to appoint five of their party to the Legislative Council on nomination basis.
3. The rival party has no love for the common roll, but wish to out-vote the will of the people.

24. A very large number of voters did not understand English or Kiswahili, and the Returning Officers in Nairobi and outstations had no assistance or means of ascertaining the intention of the voters by communicating to them in a language understood by them. A large number of applications for ballot papers were signed by the applicants in vernacular languages, and the Registering Officers had no means of scrutinising the genuineness of the signatures and consequently also the identity of the applicant.

25. There are a large number of women voters who observe purdah system, and do not appear before any male person other than their husbands and relatives. No arrangement was made at any of the offices of the Registering Officers for the recording of votes by female voters by lady Registering Officers and consequently I have been deprived of a large number of votes of women voters.

26. The fundamental principle that underlies the law in force for elections is to enable the various communities in the Colony to send their representatives to the Legislative Council by expressing their popular desire through the medium of the lawful machinery for elections.

27. The five candidates who have been declared as elected have influenced the voters by means which are totally contrary to the objects and intentions of the law and have secured the votes not for the purpose intended by the law (i.e. representation and participation in the proceedings of the Legislative Council), but for the purpose of defeating the very object and intention of the law by their abstention from taking the oath of allegiance to His Majesty the King, which is a condition precedent to the participation in the proceedings of the Legislative Council.

28. The first session of the Legislative Council opened on Tuesday, the 2nd June, and the five members declared as duly elected, deliberately and in accordance with their manifesto published by them (a copy of which is attached hereto and marked "A") absented themselves from the Council and failed to take the oath of allegiance.

29. That should the five members who have been declared as elected be permitted to block the five seats for the ordinary period of three years, the Indian community will suffer a great hardship and injustice, and material harm will be done to the general interest and welfare of the Colony by complete absence of Indian representation on the Council.

I therefore appeal to Your Excellency in accordance with section 28 of the Legislative Council Ordinance, 1919, and request that Your Excellency will be graciously pleased to—

- (a) Set aside the elections held on the 28th May, 1931, and to declare the same as null and void.
- (b) Order the preparation of a regular, complete and representative Indian Register giving ample time to all Indians in the Colony to have their names registered on the Electoral Roll, and to hold another election which will eliminate all the irregularities, difficulties and disabilities which have been experienced in the recent elections.

Or, alternatively—

- (c) To declare the five Indian members—Hakim Singh s/o Nand Singh, Dhanwant Singh, Abdul Wahid, Ravashanker Devchand Doshi, and Dr. Amritlal Ujamesh Sheth—as not having been elected in accordance with intent and purposes of law but in contravention and defiance of the fundamental principle of the law enabling Indian representation on the Legislative Council.

I beg to remain,

Your Excellency's
most obedient and humble servant,
THAKUR DASS.

EXHIBIT A.

WHAT THE CONGRESS FIVE STAND FOR. A Declaration of Policy.

In accordance with the policy decided upon by the Standing Committee in its Resolution No. 3, passed on the 14th March, 1931, the Congress, after mature deliberation, has decided to send their five members on the Legislative Council of the Colony, and supplements this decision with the following declaration:—

1. This step has been forced by the rival party, who did their best to persuade the Government to appoint five of their party to the Legislative Council on nomination basis.

2. The rival party has no love for the common roll, but wish to out-vote the will of the people.

3. The Congress party has always held as its principle that the people's voice should be predominant, and in order to test public opinion it has challenged the rival party and the local Government to get a referendum at the polling booth.

4. By entering the Municipal Council, the rival party has defied the will of the people and established a precedent for Council entry without previous informal elections, which was always the practice of the community.

5. From the correspondence exchanged between the rival party and the Government, it is clear that in the absence of candidates for election, the rival party's five men will be nominated by the Government. Congressmen object to this method, and in seeking election the five candidates do so with the following objects:

- To maintain in spirit the mandate of the Congress by not participating in the Legislative Council unless so determined by the Congress.
- To prevent the entry of the nominees of the rival party.
- To obstruct the policy of the local Government in showing to the Imperial Government that the Indian Community are reconciled to the principle of communal franchise.

ISHK DAS,
Hon. General Secretary.

Pledge:

In accordance with the foregoing declaration of policy adopted by the Congress, we, the undersigned candidates for the Legislative Council of Kenya Colony, if elected in coming election to be held on 9th May, 1931, pledge on our honour that—

We will neither take oath of allegiance nor will enter or participate in the said Councils unless and until the Congress mandate is changed in the open session, and further shall under all circumstances abide by the decision of the Congress.

ABDUL WAHID,
HAKIM SINGH,
DEANWANT SINGH,
DR. A. U. SETHI,
R. D. DOSHI.

INQUIRY

NAIROBI,

29th June, 1931.

INQUIRY held before B. V. Shaw, Esq., Resident Magistrate, Nairobi, into the validity of the election of five members to represent the Indian constituency in Legislative Council, brought in question by Mr. Thakur Dass, a person qualified to be elected at such election, through his advocate, M. H. Malik, Esq., under section 28 of the Legislative Council Ordinance. (Chapter 24 of the Revised Edition).

(Transcript of shorthand notes taken by J. H. Githam,
Official Shorthand Writer to His Majesty's Supreme Court of Kenya.)

PRESENT: Mr. M. H. Malik, representing the Petitioner; the Hon. the Attorney General, representing the Administration and the District Commissioner, Nairobi, and also in his capacity as Director of Public Prosecutions; Mr. C. Abbott, Crown Counsel; Mr. E. B. Hosking, District Commissioner, Nairobi; Mr. Hakim Singh; Mr. Abdul Wahid.

THE HON. THE ATTORNEY GENERAL: Before my friend begins, may I explain my presence here, Sir? As you are aware, there are no rules made under section 28 of the Legislative Council Ordinance, and therefore I submit that we are bound to fall back on the common law practice in matters such as these. The practice before the Ballot Act of 1868 provides that the Director of Public Prosecutions is bound to be present, except with the leave of the Court, where allegations of corrupt practice are made, such as there are in this case. That in part accounts for my presence here to-day, Sir, but I would like, with your leave, to appear in two other capacities. Certain allegations are directed against the conduct of the election: allegations as to non-compliance with the rules in Schedule II of the Ordinance. These of course are allegations which amount to allegations of malpractice against the administrative officers of the Government, and on their behalf and in answer to these charges, I submit that I am entitled to appear, and on behalf of the Returning Officer, the District Commissioner, in answer to those allegations that deal with the non-compliance with Schedule III of the Ordinance. If you are prepared to hold, Sir, that on those grounds I am entitled to appear, I have a short submission which I would like to make in the interests of the saving of time, and that is that the whole of the petition

3. The Congress party has always held as its principle that the people's voice should be predominant, and in order to test public opinion it has challenged the rival party and the local Government to get a referendum at the polling booth.

4. By entering the Municipal Council, the rival party has defied the will of the people and established a precedent for Council entry without previous informal elections, which was always the practice of the community.

5. From the correspondence exchanged between the rival party and the Government, it is clear that in the absence of candidates for election, the rival party's five men will be nominated by the Government. Congressmen object to this method, and in seeking election the five candidates do so with the following objects:—

- (a) To maintain in spirit the mandate of the Congress by not participating in the Legislative Council unless so determined by the Congress.
- (b) To prevent the entry of the nominees of the rival party.
- (c) To obstruct the policy of the local Government in showing to the Imperial Government that the Indian Community are reconciled to the principle of communal franchise.

ISHER DASS,
Hon. General Secretary.

Pledge:

In accordance with the foregoing declaration of policy adopted by the Congress, we the undersigned candidates for the Legislative Council of Kenya Colony, if elected in coming election to be held on 9th May, 1931, pledge on our honour that—

We will neither take oath of allegiance nor will enter or participate in the said Councils unless and until the Congress mandate is changed in the open session, and further shall under all circumstances abide by the decision of the Congress.

ABDUL WAHID,
HARAM SINGH,
DHANWANT SINGH,
DR. A. U. SETHI,
B. D. DOSHI.

INQUIRY

NAIROBI.

20th June, 1931.

INQUIRY held before B. V. Shaw, Esq., Resident Magistrate, Nairobi, into the validity of the election of five members to represent the Indian constituency in Legislative Council, brought in question by Mr. Thakur Dass, a person qualified to be elected at such election; through his advocate, M. H. Malik, Esq., under section 28 of the Legislative Council Ordinance (Chapter 24 of the Revised Edition).

(Transcript of shorthand notes taken by J. H. Githam, Official Shorthand Writer to H.M. Supreme Court of Kenya.)

PRESENT: Mr. M. H. Malik, representing the Petitioner; the Hon. the Attorney General, representing the Administration and the District Commissioner, Nairobi, and also in his capacity as Director of Public Prosecutions; Mr. C. Abbott, Crown Counsel; Mr. E. B. Hosking, District Commissioner, Nairobi; Mr. Hakim Singh; Mr. Abdul Wahid.

THE HON. THE ATTORNEY GENERAL: Before my friend begins, may I explain my presence here, Sir? As you are aware, there are no rules made under section 28 of the Legislative Council Ordinance, and therefore I submit that we are bound to fall back on the common law practice in matters such as these. The practice before the Ballot Act of 1868 provides that the Director of Public Prosecutions is bound to be present, except with the leave of the Court, where allegations of corrupt practice are made, such as there are in this case. That in part accounts for my presence here to-day, Sir, but I would like, with your leave, to appear in two other capacities. Certain allegations are directed against the conduct of the election: allegations as to non-compliance with the rules in Schedule II of the Ordinance. These of course are allegations which amount to allegations of malpractice against the administrative officers of the Government, and on their behalf and in answer to these charges, I submit that I am entitled to appear, and on behalf of the Returning Officer, the District Commissioner, in answer to those allegations that deal with the non-compliance with Schedule III of the Ordinance. If you are prepared to hold, Sir, that on those grounds I am entitled to appear, I have a short submission which I would like to make in the interests of the saving of time, and that is that the whole of the petition

COMMISSIONER: There is a step I ought to take, that is to swear the Shorthand Writer.

(Shorthand Writer sworn.)

I think the first step will be to decide who the parties are.

HON. ATTORNEY GENERAL: As you please, Sir.

COMMISSIONER: Of course Mr. Malik is representing the Petitioner, and I suppose all of the Elected Candidates are entitled to be heard if they wish to be heard.

HON. ATTORNEY GENERAL: This being a petition to avoid the election, not to unseat one of them, but to avoid the whole election, each of them is entitled to be present and to be heard.

COMMISSIONER: All of them have been given notice, and I would like to know if any of them are being represented—either personally or by advocate. Are any of the elected candidates present?

(Mr. Hakim Singh s/o Nand Singh and Mr. Abdul Wahid signify their presence.)

Are you representing yourselves or are you appearing by advocate?

HAKIM SINGH AND ABDUL WAHID: Ourselves.

COMMISSIONER: I presume these are the only two candidates who wish to be represented.

Mr. Malik, have you anything to say as regards what the Attorney General has said?

MR. MALIK: No, Sir; nothing with regard to what the Hon. Attorney General has said with regard to his representing the Government or the Returning Officer.

HON. ATTORNEY GENERAL: My submission is shortly this, that the whole of this Petition, with the exception of that portion of paragraph 19 which definitely suggests corrupt practices of one or other of the successful candidates—I refer to the statement, Sir; I will quote the words:—

"Owing to this gross irregularity, ballot papers fell into the hands of persons who either declined to deliver same to the voters or have destroyed the same on the slightest indication from the voters of their intention to vote in a manner otherwise than in accordance with the wishes of the person in whose possession the ballot paper happened to be."

In so far as that paragraph suggests undue influence on the part of any one of the candidates, I have no objection to it. Similarly, Sir, paragraph 37, as I read it, definitely suggests corrupt practice, though of course no particulars of this corrupt practice have yet been given, to all five successful candidates. With the exception of that paragraph, and the portion of 19, and possibly paragraph 29, which is of course a matter on which I submit an opinion cannot yet be pronounced, is a matter for proof ultimately, but with the exception of the paragraphs I have mentioned, my submission is that the whole of this petition is irrelevant and should be struck out. Similarly, in the prayer to the petition, the only portion with which you are concerned, Sir, is that paragraph marked "(c)."

My grounds for so submitting, Sir, can be put quite shortly. The remaining paragraphs, the paragraphs which I submit should be struck out, either deal with what is entirely preliminary matter, which I understand my friend, Mr. Malik, agrees does not come within the purview of this tribunal, or deal with alleged irregularities contrary to Schedule II in the preparation of the Register, or with alleged breaches of the provisions of Schedule III, which deals with the method of conducting the election. You are aware, Sir, that section 37 of the Legislative Council Ordinance provides that no election shall be invalid by reason of non-compliance with the rules of Schedule III, if it appears that the election was conducted in accordance with the principles laid down in such rules and did not affect the result of the election. That is in accordance, in my submission, with the common law provisions, and I refer you first, Sir, to the statement in Rogers on Elections, 19th Edition, Vol. II, page 254:—

"As a general rule, it may be said that to whatever extent the provisions of an Act of Parliament are violated, even wilfully, which does not enact that the consequences of those acts avoid the election, the election will not be invalidated."

That statement is based very largely on the decision in Woodward v. Barsons (1875), which is reported in the Law Reports Common Pleas (1875), Vol. X, at page 743. It is an interesting case for us here to-day, because every conceivable irregularity seems to have been committed by everyone connected with that election; some of them quite indistinguishable from irregularities alleged in this present case. The Court in that

COMMISSIONER: There is a step I ought to take, that is to swear the Shorthand Writer.

(Shorthand Writer sworn.)

I think the first step will be to decide who the parties are.

HON. ATTORNEY GENERAL: As you please, Sir.

COMMISSIONER: Of course Mr. Malik is representing the Petitioner, and I suppose all of the Elected Candidates are entitled to be heard if they wish to be heard.

HON. ATTORNEY GENERAL: This being a petition to avoid the election, not to unseat one of them, but to avoid the whole election, each of them is entitled to be present and to be heard.

COMMISSIONER: All of them have been given notice, and I would like to know if any of them are being represented—either personally or by advocate. Are any of the elected candidates present?

(Mr. Hakim Singh s/o Nand Singh and Mr. Abdul Wahid signify their presence.)

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HARIN SINGH AND ABDUL WAHID: Ourselves.

COMMISSIONER: I presume these are the only two candidates who wish to be represented.

Mr. Malik, have you anything to say as regards what the Attorney General has said?

MR. MALIK: No, Sir; nothing with regard to what the Hon. Attorney General has said with regard to his representing the Government or the Returning Officer.

HON. ATTORNEY GENERAL: My submission is shortly this, that the whole of this Petition, with the exception of that portion of paragraph 19 which definitely suggests corrupt practice of one or other of the successful candidates—I refer to the statement, Sir; I will quote the words:—

“Owing to this gross irregularity, ballot papers fell into the hands of persons who either declined to deliver same to the voters or have destroyed the same on the slightest indication from the voters of their intention to vote in a manner otherwise than in accordance with the wishes of the person in whose possession the ballot paper happened to be.”

In so far as that paragraph suggests undue influence on the part of any one of the candidates, I have no objection to it. Similarly, Sir, paragraph 27, as I read it, definitely suggests corrupt practice, though of course no particulars of this corrupt practice have yet been given, to all five successful candidates. With the exception of that paragraph, and the portion of 19, and possibly paragraph 23, which is of course a matter on which I submit an opinion cannot yet be pronounced, is a matter for proof ultimately, but with the exception of the paragraph I have mentioned, my submission is that the whole of this petition is irrelevant and should be struck out. Similarly, in the prayer to the petition, the only portion with which you are concerned, Sir, is that paragraph marked “(a).”

My grounds for so submitting, Sir, can be put quite shortly. The remaining paragraphs, the paragraphs which I submit should be struck out, either deal with what is entirely preliminary matter, which I understand my friend, Mr. Malik, agrees does not come within the purview of this tribunal, or deal with alleged irregularities contrary to Schedule II in the preparation of the Register, or with alleged breaches of the provisions of Schedule III, which deals with the method of conducting the election. You are aware, Sir, that section 27 of the Legislative Council Ordinance provides that no election shall be invalid by reason of non-compliance with the rules of Schedule III, if it appears that the election was conducted in accordance with the principles laid down in such rules, and did not affect the result of the election. That is in accordance, in my submission, with the common law provisions, and I refer you first, Sir, to the statement in Rogers on Elections, 19th Edition, Vol. II, page 254:—

“As a general rule, it may be said that to whatever extent the provisions of an Act of Parliament are violated, even wilfully, which does not enact that the consequences of those acts avoid the election, the election will not be invalidated.”

That statement is based very largely on the decision in *Woodward v. Sarsons* (1875), which is reported in the Law Reports Common Pleas (1875), Vol. X, at page 743. It is an interesting case for us here to-day, because every conceivable irregularity seems to have been committed by everyone connected with that election, some of them quite indistinguishable from irregularities alleged in this present case. The Court in that

case, Sir, Mr. Justice Brett, Mr. Justice Archibald, and Mr. Justice Denman, with the learned Chief Justice, Lord Coleridge, said as follows:—

"As to the second (second point raised), i.e. that the election was not really conducted under the subsisting election laws at all, we think, though there was an election in the sense of there having been a selection by the will of the constituency, that the question must in like manner be, whether the departure from the prescribed method of election is so great that the tribunal is satisfied, as matter of fact, that the election was not an election under the existing law? It is not enough to say that great mistakes were made in carrying out the election under those laws: it is necessary to be able to say that, either wilfully or erroneously, the election was not carried out under those laws, but under some other method. For instance, if, during the time of the old laws, with the consent of a whole constituency, a candidate had been selected by tossing up a coin, or by the result of a horse-race, it might well have been said that the electors had exercised their free will, but it should have been held that they had exercised it under a law of their own invention, and not under the existing election laws, which prescribed an election by voting. So now, when the election is to be an election by ballot, if, either wilfully or erroneously, a whole constituency were to vote, but not by ballot at all, the election would be a free exercise of their will, but it would not be an election by ballot, and therefore not an election under the existing election-law. But, if in the opinion of the tribunal the election was substantially an election by ballot, then no mistakes or misconduct, however great, in the use of the machinery of the Ballot Act, could justify the tribunal in declaring the election void by the common-law of Parliament. We agree, upon this point, with the answer attributed to Martin, B., before a committee of the House of Commons."

That opinion, Sir, you will find recorded in Rogers on page 257:—

"That he had discussed the matter with Mr. Justice Willes . . . who thought that to whatever extent the provisions of an Act of Parliament were wilfully violated, which did not enact that the consequence of those acts avoided the seat, a person sitting judicially could not avoid the seat."

It may be argued, Sir, that Woodward v. Barsons was a case under the Ballot Act of 1868, and that section 19 of that Act expressly provides that non-compliance with the rules or any mistakes in the use of forms is not to render an election invalid, but that point you will find is dealt with in the last paragraph in the judgment in Woodward v. Barsons, which I have already cited. The Court there said:—

"If this proposition" (the proposition that I have just enunciated) "be closely examined, it will be found to be equivalent to this; that the non-observance of the rules or forms which is to render the election invalid must be so great as to amount to a conducting of the election in a manner contrary to the principle of an election by ballot, and must be so great as to satisfy the tribunal that it did affect or might have affected the majority of the voters, or, in other words, the result of the election. It therefore is, as has been said, an enactment *ex abundanti cautela*, declaring that to be the law applicable to elections under the Ballot Act, which would have been the law to be applied if this section had not existed."

I would remind you, Sir, that every one of the paragraphs from 6 to 23, leaving out of count for the moment the portion of 10 to which I have referred, and the whole of paragraph 23, deal exclusively with the alleged irregularities either in the preparation and publication of the Register or by the Returning Officer, but there is no suggestion of wrongful motive attributed to the Returning Officer in any one of those paragraphs, and I submit with confidence that I have sufficiently established the proposition that on the authorities all those paragraphs, again excepting a portion of 19 and possibly, if my friend is able to establish his ground, paragraph 23, should be struck out. I understand, Sir—I have chosen these paragraphs because I understand that it is common ground that paragraphs 1 to 4, 24 to 26 inclusive, and 28 and 29 are more historical than anything else, and they cannot in any event affect the validity.

COMMISSIONER:—Mr. Attorney-General, I think I could strike these out by consent at once.

HON. ATTORNEY GENERAL: I understood that had been agreed. I think my friend, Mr. Malik, will agree on that point.

MR. MALIK: I would just like to reply in brief to what the Hon. Attorney General has said, and I am very pleased

case, Sir, Mr. Justice Brett, Mr. Justice Archibald, and Mr. Justice Denman, with the learned Chief Justice, Lord Coleridge, said as follows :—

"As to the second (second point raised), i.e. that the election was not really conducted under the subsisting election laws at all, we think, though there was an election in the sense of there having been a selection by the will of the constituency, that the question must in like manner be, whether the departure from the prescribed method of election is so great that the tribunal is satisfied, as matter of fact, that the election was not an election under the existing law? It is not enough to say that great mistakes were made in carrying out the election under those laws : it is necessary to be able to say that, either wilfully or erroneously, the election was not carried out under those laws, but under some other method. For instance, if, during the time of the old laws, with the consent of a whole constituency, a candidate had been selected by tossing up a coin, or by the result of a horse-race, it might well have been said that the electors had exercised their free will, but it should have been held that they had exercised it under a law of their own invention, and not under the existing election laws, which prescribed an election by voting. So now, when the election is to be an election by ballot, if, either wilfully or erroneously, a whole constituency were to vote, but not by ballot at all, the election would be a free exercise of their will, but it would not be an election by ballot, and therefore not an election under the existing election law. But, if in the opinion of the tribunal the election was substantially an election by ballot, then no mistakes or misconduct, however great, in the use of the machinery of the Ballot Act, could justify the tribunal in declaring the election void by the common law of Parliament. We agree, upon this point, with the answer attributed to Martin, B., before a committee of the House of Commons."

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"If this proposition" (the proposition that I have just enunciated) "be closely examined, it will be found to be equivalent to this, that the non-observance of the rules or forms which is to render the election invalid must be so great as to amount to a conducting of the election in a manner contrary to the principle of an election by ballot, and must be so great as to satisfy the tribunal that it did affect or might have affected the majority of the voters, or, in other words, the result of the election. It therefore is, as has been said, an enactment *ex abundanti cautela*, declaring that to be the law applicable to elections under the Ballot Act, which would have been the law to be applied if this section had not existed."

I would remind you, Sir, that every one of the paragraphs from 5 to 23, leaving out of count for the moment the portion of 10 to which I have referred, and the whole of paragraph 23, deal exclusively with the alleged irregularities either in the preparation and publication of the Register or by the Returning Officer, but there is no suggestion of wrongful motive attributed to the Returning Officer in any one of those paragraphs, and I submit with confidence that I have sufficiently established the proposition that on the authorities all those paragraphs, again excepting a portion of 10 and possibly, if my friend is able to establish his ground, paragraph 23, should be struck out. I understand, Sir—I have chosen these paragraphs because I understand that it is common ground that paragraphs 1 to 4, 24 to 26 inclusive, and 28 and 29 are more historical than anything else, and they cannot in any event affect the validity.

COMMISSIONER MR. ATTORNEY GENERAL, I think I could strike these out by consent at once.

HON. ATTORNEY GENERAL: I understood that had been agreed. I think my friend, Mr. Malik, will agree on that point.

MR. MALIK: I would just like to reply in brief to what the Hon. Attorney General has said, and I am very pleased

that the Hon. Attorney General has given the matter very great attention. To start with, I would agree as I have already agreed to state that my client does not allege any bad motives on the part of the Returning Officer at all, Sir. All these irregularities that have been set forth in this election petition are mostly those that are contemplated by section 28 of the Legislative Council Ordinance, which reads:—

"If the validity of an election is brought in question by any person qualified either to be elected or to vote at such election, on the ground of the improper rejection or reception of a nomination or of a vote, or of any corrupt practice in connexion with such election; or for any other cause, such person may, at any time within fifteen days of the publication of the result of such election in the Gazette apply to the Governor in Council to set aside such election."

I lay great stress on the point, Sir, that some of the points that have been raised pertain to this irregularity which is contemplated by these words:—

on the ground of the improper rejection or reception of a vote

Otherwise, as I have stated in the beginning, there is not the slightest intention of the petitioner to attribute any motive to the Returning Officer or those officials concerned in the election. The cases that have been cited by the Hon. Attorney General all pertain to any irregularities that may have occurred or mistakes in the election procedure.

HON. ATTORNEY GENERAL: I have never suggested anything of the sort, Sir. I said that the case of Woodward v. Sarsons contained alleged irregularities which were indistinguishable from those alleged in this petition. These are, as my friend will know if he refers to that case, alleged breach of secrecy and matters of that sort.

MR. MALIK: Breach of secrecy if that falls within one of those irregularities that do not invalidate the election, then I would not pursue with those allegations at all, Sir.

COMMISSIONER: Shall I go through this petition paragraph by paragraph and strike out the ones which obviously do not affect the validity? I propose to strike out paragraphs 1, 2, 3, 4, paragraphs 5, 6, 7, 8, 9, 10 to 18; all concern objections to the validity of the Register. What have you to say as regards those?

MR. MALIK: My submission with regard to those is that since these irregularities are so grave that they violate the terms laid down in the law, and if I am able to establish that the Register on which this election is based had been prepared in total violation of the statute as laid down by the law in the Legislative Council Ordinance, I submit I am entitled to ask you to hold that the Register on which this election is based is irregular, incomplete and unrepresentative.

COMMISSIONER: Paragraph 32—I ought to have included that also. Mr. Attorney General, could you tell me on which of the Registers the election was held?

HON. ATTORNEY GENERAL: The Register was published on the 20th December, 1930. I have the Register here, Sir, if you wish it. It was published in a special issue of the Gazette on 20th December, 1930, and certified on the 22nd February, 1931, by Mr. Hoaking, the Returning Officer.

COMMISSIONER: That is the Register on which the election was held?

MR. MALIK: Yes, Sir, and that in my submission is the basis that supports paragraph 16 (reads):—

"The Register of Voters on which the recent elections have been held was published in a special issue of the Official Gazette dated the 20th December, 1930, and it could not come into operation on the 1st of January, 1931, as this would allow only eleven days for objection instead of the statutory twenty-eight days. Four weeks allowed for objections after the publication of the Register expired on or about the 18th January, 1931, and presuming that the Register was certified thereafter in accordance with Rule 7, it could only come in operation from the 1st January, 1933."

Now, Sir, if you will refer to Rule 10 (c), Chapter 24—

COMMISSIONER: Shall I read it, Mr. Malik? I have it here:—

"The Registering Officer shall certify the revised Registers in manner provided by Rule 7, and the Registers so certified shall come into operation on the first day of January following the publication of the Register under Rule 9 (a), and shall continue in operation until superseded by other revised Registers."

That is Rule 10 (c). That is what you want, I think.

that the Hon. Attorney General has given the matter very great attention. To start with, I would agree as I have already agreed to state that my client does not allege any bad motives on the part of the Returning Officer at all, Sir. All these irregularities that have been set forth in this election petition are mostly those that are contemplated by section 28 of the Legislative Council Ordinance, which reads :—

“ If the validity of an election is brought in question by any person qualified either to be elected or to vote at such election, on the ground of the improper rejection or reception of a nomination or of a vote, or of any corrupt practice in connexion with such election, or for any other cause, such person may, at any time within fifteen days of the publication of the result of such election in the Gazette apply to the Governor in Council to set aside such election.”

I lay great stress on the point, Sir, that some of the points that have been raised pertain to this irregularity which is contemplated by these words :—

“ on the ground of the improper rejection or reception of a vote

Otherwise, as I have stated in the beginning, there is not the slightest intention of the petitioner to attribute any motive to the Returning Officer or those officials concerned in the election. The cases that have been cited by the Hon. Attorney General all pertain to any irregularities that may have occurred or mistakes in the election procedure.

HON. ATTORNEY GENERAL: I have never suggested anything of the sort, Sir. I said that the case of Woodward v. Sarsons contained alleged irregularities which were indistinguishable from those alleged in this petition. These are, as my friend will know if he refers to that case, alleged breach of secrecy and matters of that sort.

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MR. MALIK: My submission with regard to those is that since these irregularities are so grave that they violate the terms laid down in the law, and if I am able to establish that the Register on which this election is based had been prepared in total violation of the statute as laid down by the law in the Legislative Council Ordinance, I submit I am entitled to ask you to hold that the Register on which this election is based is irregular, incomplete and unrepresentative.

COMMISSIONER: Paragraph 22—I ought to have included that also. Mr. Attorney General, could you tell me on which of the Registers the election was held?

HON. ATTORNEY GENERAL: The Register was published on the 20th December, 1930. I have the Register here, Sir, if you wish it. It was published in a special issue of the Gazette on 20th December, 1930, and certified on the 22nd February, 1931, by Mr. Hosking, the Returning Officer.

COMMISSIONER: That is the Register on which the election was held?

MR. MALIK: Yes, Sir, and that in my submission is the basis that supports paragraph 16 (reads) :—

“ The Register of Voters on which the recent elections have been held was published in a special issue of the Official Gazette dated the 20th December, 1930, and it could not come into operation on the 1st of January, 1931, as this would allow only eleven days for objection instead of the statutory twenty-eight days. Four weeks allowed for objections after the publication of the Register expired on or about the 18th January, 1931, and presuming that the Register was certified thereafter in accordance with Rule 7, it could only come into operation from the 1st January, 1932.”

Now, Sir, if you will refer to Rule 10 (c), Chapter 24

COMMISSIONER: Shall I read it, Mr. Malik? I have it here :—

“ The Registering Officer shall certify the revised Registers in manner provided by Rule 7, and the Registers so certified shall come into operation on the first day of January following the publication of the Register under Rule 9 (a), and shall continue in operation until superseded by other revised Registers.”

That is Rule 10 (c). That is what you want, I think.

Mr. MALIK : Yes, Sir. I refer to 9 (a) first. —

"The Registering Officer shall, on or before the first day of the succeeding month of October prepare revised Registers of Voters."

Now, Sir, I lay particular stress on the word "shall" wherever it occurs. Then, Sir, 10 (a), "Claims and objections" and 10 (c), which you were reading. With regard to this, my submission is that this Register on which the election is based was published on the 20th December, and not on or before the first day of the succeeding month of October, which is contemplated by section 9 (a), and then, according to the Rules, there should have been given twenty-eight days' notice for objections. Twenty-eight days' notice was not given, and could not possibly have been given, because it is published on the 20th December, and in order to make it applicable and workable, and to make it operative on the first day of January succeeding the date of publication, namely 20th December, twenty-eight days' full notice should have been given to people to come forward and object. That was not done because the Register was not published as required by this rule in the month of October. And then, Sir, I submit that, according to this Rule 9, the Register which was certified by the District Commissioner on the 22nd February could not operate from the January preceding that month in which it was published. The law contemplates that it shall come into operation on the following January, which would be 1932, and if that is held by you, Sir, to be a correct interpretation of these Rules, I would submit that in that case this Register would be an irregular one. I may point out, Sir, that the Hon. Attorney General has pointed out some irregularities when he quoted that famous case. I submit that none of these irregularities refer to the irregularities of preparation of the Register. These irregularities, I submit, pertain to some mistakes or irregularities in the election procedure. I am quite prepared to concede that any irregularities or mistakes that have been made during the course of the election and any slight departure made from the procedure laid down for elections — on those grounds I am not challenging the validity of these elections. My submission is that the very preparation of the Register is irregular in itself.

COMMISSIONER : You are basing your case more on irregularities in the preparation of the Register than on anything else? More than on irregularities and mistakes committed

during the course of the elections by the Returning Officer or his staff?

HON. ATTORNEY GENERAL : I hope my friend will say "alleged to be made" at this stage.

COMMISSIONER : I see that in Rule 10 (c) it does say—

"the Registers so certified shall come into operation on the first day of January following the publication of the Register."

There is no doubt that the first day of January following the publication of the Register was the first day of January, 1931.

Mr. MALIK : I submit, Sir, that the provision of the law which says twenty-eight days' notice would not in that case be complied with.

COMMISSIONER : It seems to me to turn on whether certification relates back to the January, 1931. Does that make the Register good with effect from the 1st January, 1931?

HON. ATTORNEY GENERAL : I would put it this way, does it matter? Because I would refer again, Sir, to what I have cited:—

"If in the opinion of the tribunal the election was substantially an election by ballot, then no mistakes or misconduct, however great, in the use of the machinery of the Ballot Act, could justify the tribunal in declaring the election void by the common law of Parliament."

Surely, Sir, it is based on the most elementary common sense. The petitioner is asking in effect that His Excellency the Governor in Council should avoid an election because of mistakes made by His Excellency himself through his delegates, a thing that His Excellency normally is not very likely to do. The whole of the use or misuse of the provisions is beside the point. That is an act of State with which this tribunal has nothing whatever to do. That is quite clear. Firstly, on the opinion given to the House of Commons. That was before the Ballot Act, when the procedure on election petitions was the same as it is here, and the House of Commons was master of its own procedure. We have first the opinion of Mr. Baron Martin and Mr. Justice Willes, and secondly the endorsement of that opinion by the Court presided over by the Lord Chief Justice, Lord Coleridge. I submit that my friend is beating the air. I am not to be taken to admit any one of those allegations.

Mr. MALIK : Yes, Sir. I refer to 9 (a) first :—

" The Registering Officer shall, on or before the first day of the succeeding month of October prepare revised Registers of Voters."

Now, Sir, I lay particular stress on the word " shall " wherever it occurs. Then, Sir, 10 (a), " Claims and objections," and 10 (c), which you were reading. With regard to this, my submission is that this Register on which the election is based was published on the 20th December, and not on or before the first day of the succeeding month of October, which is contemplated by section 9 (a), and then, according to the Rules, there should have been given twenty-eight days' notice for objections. Twenty-eight days' notice was not given, and could not possibly have been given, because it is published on the 20th December, and in order to make it applicable and workable, and to make it operative on the first day of January succeeding the date of publication, namely 20th December, twenty-eight days' full notice should have been given to people to come forward and object. That was not done because the Register was not published as required by this rule in the month of October. And then, Sir, I submit that, according to this Rule 9, the Register which was certified by the District Commissioner on the 22nd February could not operate from the January preceding that month in which it was published. The law contemplates that it shall come into operation on the following January, which would be 1932, and if that is held by you, Sir, to be a correct interpretation of these Rules, I would submit that in that case this Register would be an irregular one. I may point out, Sir, that the Hon. Attorney General has pointed out some irregularities when he quoted that famous case. I submit that none of these irregularities refer to the irregularities of preparation of the Register. These irregularities, I submit, pertain to some mistakes or irregularities in the election procedure. I am quite prepared to concede that any irregularities or mistakes that have been made during the course of the election and any slight departure made from the procedure laid down for elections—on those grounds I am not challenging the validity of these elections. My submission is that the very preparation of the Register is irregular in itself.

COMMISSIONER : You are basing your case more on irregularities in the preparation of the Register than on anything else? More than on irregularities and mistakes committed

during the course of the elections by the Returning Officer or his staff?

HON. ATTORNEY GENERAL : I hope my friend will say " alleged to be made " at this stage.

COMMISSIONER : I see that in Rule 10 (c) it does say—

" the Registers so certified shall come into operation on the first day of January following the publication of the Register."

There is no doubt that the first day of January following the publication of the Register was the first day of January, 1931.

Mr. MALIK : I submit, Sir, that the provision of the law which says twenty-eight days' notice would not in that case be complied with.

COMMISSIONER : It seems to me to turn on whether certification relates back to the January, 1931. Does that make the Register good with effect from the 1st January, 1931?

HON. ATTORNEY GENERAL : I would put it this way, does it matter? Because I would refer again, Sir, to what I have cited :—

" If in the opinion of the tribunal the election was substantially an election by ballot, then no mistakes or misconduct, however great, in the use of the machinery of the Ballot Act, could justify the tribunal in declaring the election void by the common law of Parliament."

Surely, Sir, it is based on the most elementary common sense. The petitioner is asking in effect that His Excellency the Governor in Council should avoid an election because of mistakes made by His Excellency himself through his delegates, a thing that His Excellency normally is not very likely to do. The whole of the use or misuse of the provisions is beside the point. That is an act of State with which this tribunal has nothing whatever to do. That is quite clear. Firstly, on the opinion given to the House of Commons.—That was before the Ballot Act, when the procedure on election petitions was the same as it is here, and the House of Commons was master of its own procedure. We have first the opinion of Mr. Baron Martin and Mr. Justice Willes, and secondly the endorsement of that opinion by the Court presided over by the Lord Chief Justice, Lord Coleridge. I submit that my friend is beating the air. I am not to be taken to admit any one of those allegations.

COMMISSIONER: Can you cite any precedents, Mr. Malik, in any former election petition in England, in which objections to the Register, to the preparation of the Register, have been taken?

MR. MALIK: I have got a faint recollection of a petition which was heard in Nairobi in 1920 with regard to the election of Sir N. MacMillan. I do not know exactly the grounds of the petition, but so far as I understand—I have not been able to get the file—it related to the irregularities in the election procedure, and I am given to understand that that election was upset.

COMMISSIONER: Did you find any English case bearing on the subject?

MR. MALIK: I have tried to look up some cases on that point, but I have not been able to get any case on that point. It is on the grounds of the improper reception or rejection of the nomination, or vote, that I am now arguing—section 28.

COMMISSIONER: Are you suggesting if the Registers are not properly prepared, there is a wrongful reception of votes?

MR. MALIK: Yes, Sir. Those people who were entitled to vote were not recorded in that Register and consequently were debarred from voting, and more particularly the improper reception of votes, on which I laid great stress in these allegations. If the Register has been prepared irregularly, all these votes have been received improperly.

COMMISSIONER: Have you anything further to say on that point in connexion with irregularities in preparing the Register?

MR. MALIK: No, Sir.

COMMISSIONER: My finding on that point is that the certification of the Register on the 22nd February must be taken to cure any defects which occurred in the preparation of the Register and the Register is a valid Register on which the election could be held. It seems to me that is common sense.

MR. MALIK: With regard to paragraph 17 of the petition, Rule 10 (d) reads:—

"If any revised Register is not prepared in due time, the Register in operation immediately before the time at which the new Register ought to have been prepared shall continue in operation until the new Register is prepared."

I submit that that is not a mistake of His Excellency at all. The question is, which is the proper Register? As to whether the Register of 20th December, 1930, is the proper Register, which has been prepared in accordance with the terms of the law, or the Register which precedes it? The law here provides that if the Register does not comply with the requirements of the law, the Register which is previous to that, in this case the Register published in the Gazette on the 15th March, 1930, should be the Register on which this election should have been held, and not the other.

COMMISSIONER: I hold that the Register published on 15th March, 1930, would have been the valid Register until this new Register had been certified, and was in fact certified, on the 22nd February, 1931. I hold that the words "in operation until the new Register is prepared" really mean until the new Register is certified. When it is certified it becomes in effect the Register. It seems to me that that is also in accordance with common sense.

MR. MALIK: Provided the new Register has been prepared in accordance with the provisions of the law.

COMMISSIONER: I think it is the duty of any person who objects to take his objection before the Register is certified, and it was not certified until 22nd February, 1931. If it had been certified before the statutory time for making claims and objections had expired there might have been some force in the argument, but ample time was given for claims and objections to be made.

MR. MALIK: It is true that ample time was given, but it was not given in the terms of the Ordinance.

COMMISSIONER: I hold, after hearing both sides, that the Register certified on the 22nd February is a valid Register on which the election could be held.

MR. MALIK: Very good, Sir. It is not by agreement, though, Sir. It is your ruling.

COMMISSIONER: I propose to strike out paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 32.

HON. ATTORNEY GENERAL: I understood my friend to say a few minutes ago that he was abandoning those portions of the remaining paragraphs which suggest failure of duty of the Returning Officer.

MR. MALIK: That is correct, because that would not invalidate the election, except so far as they affect corrupt practice.

COMMISSIONER: Can you cite any precedents, Mr. Malik, in any former election petition in England, in which objections to the Register, to the preparation of the Register, have been taken?

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MR. MALIK: That is correct, because that would not invalidate the election, except so far as they affect corrupt practice.

COMMISSIONER: You abandon 20 and 21?

MR. MALIK: Yes, Sir.

COMMISSIONER: 24 and 25, in my opinion, do not affect validity. Do you agree, Mr. Malik?

MR. MALIK: They would not invalidate the election.

COMMISSIONER: 26 I propose to strike out. Do you agree, Mr. Malik?

MR. MALIK: Yes, Sir.

COMMISSIONER: 28 and 29 I propose to strike out.

MR. MALIK: That is right, Sir.

HON. ATTORNEY GENERAL: I have asked also that the second prayer in the petition be deleted, which is clearly *ultra vires*.

COMMISSIONER: Well, I think, as I have held that the Register certified on the 22nd February, 1931, is a good Register, that must go.

HON. ATTORNEY GENERAL: As I apprehend the position, Sir, we are left with my first submission this morning. A portion of paragraph 19 and the whole of 27, and 23, which contains an allegation about voters at Eldoret. I would ask, Sir, subject to anything my friend has to say, to deal with that allegation first. The Returning Officer is proceeding on leave on the 4th July. Sir, and I am anxious to let him get away as early as possible, but that one paragraph does affect him to a certain extent. Paragraph 23, if we might deal with that first, Sir, and when the allegations of corrupt practices come on, I have only a watching brief.

COMMISSIONER: Do you agree to that, Mr. Malik?

MR. MALIK: I agree to that, yes, Sir.

COMMISSIONER: Mr. Attorney General, I am not sure whether you said anything about the alternative prayer at the end?

HON. ATTORNEY GENERAL: I did suggest that it should be struck out, because it seems to be a very much more laborious way of repeating the first prayer " (a) "

MR. MALIK: It is to me also immaterial, Sir. They both appear to be the same.

HON. ATTORNEY GENERAL: May I make a submission on paragraph 23 also. It is of course, in my submission, a matter for proof by my friend. It would be necessary for Mr. Malik to prove that sufficient voters were deprived of the right of voting at Eldoret to alter the result of the election. That is on the English authorities, Sir, on the issue of a re-count, and I would remind you, Sir, and my friend, that the result was: Hakim Singh, 723; Dhianwant Singh, 719; Abdul Wahid, 708; Mr. Doshi, 693; and Dr. Sheth, 686. The petitioner, Mr. Thakur Dass, 155. There would have to be at least 593 voters affected by this alleged failure at Eldoret before even Dr. Sheth's election can be in jeopardy on this issue.

MR. MALIK: I agree with the Hon. Attorney General that even if these votes had been secured at the election, the result would not have been affected. On that account I would abandon this (paragraph 23) also, Sir.

HON. ATTORNEY GENERAL: That only leaves the allegations of corrupt practice, Sir.

COMMISSIONER: Mr. Malik, I suppose you would not suggest that an allegation on your part of corrupt practice by one candidate would necessarily affect the others?

MR. MALIK: If I am able to show that these five successful candidates employed one machinery and got these votes on one common ticket, then I would make a submission that if it is proved that one of them was guilty of corrupt practice I would ask you to hold that it affects the validity of the election of all the candidates.

HON. ATTORNEY GENERAL: I find myself in a difficult position here, because I asked your indulgence, Sir, to be present here on this issue on the analogy of the Director of Public Prosecutions. To that you acceded. The Director of Public Prosecutions is entitled to be present in England, but can take no part in the proceedings except at the request of the Court, so that I have, I apprehend, a watching brief with my friend, Mr. Abbott; and so we are here as ministers for the criminal law. As my friend is aware, corrupt practice has to be proved directly, and there must be agency and it must be one of the corrupt practices under section 26. It must be brought home to the candidate or to an agent.

COMMISSIONER: Will you open on paragraph 27, Mr. Malik?

COMMISSIONER: You abandon 20 and 21?

MR. MALIK: Yes, Sir.

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COMMISSIONER: Will you open on paragraph 27, Mr. Malik?

Mr. MALIK : Paragraph 27 reads :—

"The five candidates who have been declared as elected have influenced the voters by means which are totally contrary to the objects and intentions of the law and have secured the votes not for the purpose intended by the law (i.e. representation and participation in the proceedings of the Legislative Council), but for the purpose of defeating the very object and intention of the law by their abstention from taking the oath of allegiance to His Majesty the King, which is a condition precedent to the participation in the proceedings of the Legislative Council."

On that I would like to read a pledge which was published by the successful candidates and circulated very extensively throughout the country during the course of the elections. This is the pledge, Sir (Exhibit A attached to the Petition) :—

(Reads pledge.)

I will also read the declaration of policy (same exhibit) :—

(Reads declaration down to para. 1.)

I may here record that Mr. Thakur Dass, the petitioner, did not stand as a candidate belonging to either of the two parties which have so commonly been referred to in the papers. He stood as an independent candidate along with another independent candidate.

(Continues reading remainder of declaration.)

"This, I submit, Sir, proves conclusively that all these five candidates, successful candidates, stood on a sort of common ticket and got votes for the whole of these five candidates, and further that they influenced by this circular and this pledge, they influenced the public to give them votes, not for the purpose of sending their representatives to the Council, which is the fundamental idea underlying the principle of franchise, but with the object of not going to the Council. They ask here, Sir, that since we are not going to the Council, therefore we ask you to come and vote for us. I submit, Sir, that the whole machinery of the election has been used for the purpose of referendum and not for the legitimate purpose of representation of the wishes of the people or the voters on the Legislative Council.

COMMISSIONER : Corrupt practice must come within the definition in section 26 (Legislative Council Ordinance, Chap. 24) :—

"The expression 'corrupt practice' as used in this Ordinance means any of the following offences, namely : treating, undue influence, bribery and personation."

Mr. MALIK : This is undue influence, I submit, Sir.

COMMISSIONER : I really cannot hold that it is undue influence. It is a political consideration. Have you any precedent for saying that such announcement constitutes undue influence?

Mr. MALIK : I submit, Sir, that there could not have been such a thing in England. They ask the electors to come and vote for them because they are going to represent them and not because they are going to obstruct, and it is on this distinct understanding that people come forward to vote, so that they may go and represent them in the House of Commons. There could not possibly be an instance in English elections identical with this.

HON. ATTORNEY GENERAL : I suggest, Sir, that my friend might go to Ireland.

Mr. MALIK : I am just reminded by my friend, Mr. Abbott, of the De Valera case. I have not seen that case. If the Hon. Attorney General, who is very well informed, will kindly assist the Court in the interests of the public in general, that would be a great help.

COMMISSIONER : I must say that I cannot look upon that as undue influence.

HON. ATTORNEY GENERAL : May I say what is the definition of undue influence. It was defined by Mr. Justice Willes in the Lichfield Election Petition in 1860 (Rogers, p. 502) :—

"using any violence or threatening any damage, or resorting to any fraudulent contrivance to restrain the liberty of a voter, so as either to compel or frighten him into voting or abstaining from voting otherwise than he freely will."

COMMISSIONER : Thank you very much. It seems to me that the voters in this case were absolutely free to vote or not as they chose.

Mr. MALIK : I still submit, Sir, that it is undue influence. These voters were led into the belief that if you will vote for us we shall not go to the Council. It is not a straight sort of application to the voters.

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COMMISSIONER: If a voter voluntarily elects someone who is not going to take his seat, it is his own affair.

HON. ATTORNEY GENERAL: I think my friend is confusing influence and undue influence. That those who are now challenged should have published this alleged manifesto may be undoubted; the question is whether there is any undue influence. Mr. Justice Willes said (Rogers; p. 602):

"The law cannot strike at the existence of Influence. The law can no more take away from a man, who has property, or who can give employment, the sensible but powerful influence he has over those whom he can benefit by the proper use of his wealth, (than the law could take away his honesty, his good feeling, his courage, his good looks, or any other qualities which give a man influence over his fellows. It is the abuse of influence with which alone the law can deal. Influence cannot be said to be abused because it exists and operates. It is only abused in cases of this kind, where an inducement is held out by a promise to induce voters to vote or not to vote at an election."

MR. MALIK: I have got evidence that undue influence was used on people in giving these votes. I have got witnesses here who will come before you to support that allegation.

COMMISSIONER: If I hold that this is not undue influence, is there any object in my hearing the witnesses?

MR. MALIK: Not particularly with that, Sir. The witnesses will state that some sort of monetary offer was made to them, and, in fact, some monetary payments were made to some voters with a view to securing their votes.

HON. ATTORNEY GENERAL: This, I think, Sir, comes under bribery.

MR. MALIK: And that in the case of some witnesses who will come forward, they were the tenants of the candidates and were asked to vote under a threat, which amounts to undue influence, as defined in the case just cited by the Hon. Attorney General, and in consequence of that some voting was done.

COMMISSIONER: Would you ask me to read that into the meaning of paragraph 27? There is no suggestion of any bribery in paragraph 27.

MR. MALIK: If you hold that it is not covered in this particular paragraph, I would like to ask you to allow me to amend the petition.

COMMISSIONER: The petition cannot be amended after the time within which the petition has to be submitted has expired.

MR. MALIK: It will shorten the proceedings, because I submit that this has been particularly set forth in another petition which has gone up to His Excellency the Governor. I submit that if these witnesses are taken it will shorten the proceedings.

COMMISSIONER: I am afraid it is beyond my powers, because the time has expired within which the petition has to be presented.

MR. MALIK: Do you hold, Sir, that these cases do not fall within the statement made in paragraph 19 of this petition?

COMMISSIONER: Mr. Attorney General, I would be very grateful for your view.

HON. ATTORNEY GENERAL: I have ample authority here for the proposition that you have just made that amendment is impossible after the expiry of the period limited by statute. In this case, that expired on the 17th June. There is, however, Sir, one way out that I would suggest, and that is that the particulars of the allegations of corrupt practice in both paragraphs 19 and 27 would, I think, normally be ordered, Sir, if asked for by any of the successful candidates, who are the only respondents on those particular paragraphs.

COMMISSIONER: I am afraid I had overlooked that any portion of 19 remained in.

HON. ATTORNEY GENERAL: There is just that portion which definitely gives particulars of an alleged corrupt practice—the withholding of ballot papers from a community entitled to vote.

COMMISSIONER: I do not think there is any provision allowing the distribution of ballot papers in batches, is there?

HON. ATTORNEY GENERAL: The position as I understand it was that a number of persons whose names appear on the Register of Voters made application for ballot papers, and they handed all these applications to the same agent.

COMMISSIONER: If any voter did not get the ballot paper which he expected to get, surely it was his duty to go to the Registering Officer and to report the fact.

COMMISSIONER : If a voter voluntarily elects someone who is not going to take his seat, it is his own affair.

HON. ATTORNEY GENERAL : I think my friend is confusing influence and undue influence. That those who are now challenged should have published this alleged manifesto may be undoubted; the question is whether there was any undue influence. Mr. Justice Willes said (Rogers, p. 503) :

"The law cannot strike at the existence of influence. The law can no more take away from a man, who has property, or who can give employment, the insensible but powerful influence he has over those whom he can benefit by the proper use of his wealth, than the law could take away his honesty, his good feeling, his courage, his good looks, or any other qualities which give a man influence over his fellows. It is the abuse of influence with which alone the law can deal. Influence cannot be said to be abused because it exists and operates. It is only abused in cases of this kind, where an inducement is held out by a promise to induce voters to vote or not to vote at an election."

MR. MALIK : I have got evidence that undue influence was used on people in giving these votes. I have got witnesses here who will come before you to support that allegation.

COMMISSIONER : If I hold that this is not undue influence, is there any object in my hearing the witnesses?

MR. MALIK : Not particularly with that, Sir. The witnesses will state that some sort of monetary offer was made to them, and, in fact, some monetary payments were made to some voters with a view to securing their votes.

HON. ATTORNEY GENERAL : This, I think, Sir, comes under bribery.

MR. MALIK : And that in the case of some witnesses who will come forward, they were the tenants of the candidates and were asked to vote under a threat, which amounts to undue influence, as defined in the case just cited by the Hon. Attorney General, and in consequence of that some voting was done.

COMMISSIONER : Would you ask me to read that into the meaning of paragraph 27? There is no suggestion of any bribery in paragraph 27.

MR. MALIK : If you hold that it is not covered in this particular paragraph, I would like to ask you to allow me to amend the petition.

COMMISSIONER : The petition cannot be amended after the time within which the petition has to be submitted has expired.

MR. MALIK : It will shorten the proceedings, because I submit that this has been particularly set forth in another petition which has gone up to His Excellency the Governor. I submit that if these witnesses are taken it will shorten the proceedings.

COMMISSIONER : I am afraid it is beyond my powers, because the time has expired within which the petition has to be presented.

MR. MALIK : Do you hold, Sir, that these cases do not fall within the statement made in paragraph 19 of this petition?

COMMISSIONER : Mr. Attorney General, I would be very grateful for your view.

HON. ATTORNEY GENERAL : I have ample authority here for the proposition that you have just made that amendment is impossible after the expiry of the period limited by statute. In this case, that expired on the 17th June. There is, however, Sir, one way out that I would suggest, and that is that the particulars of the allegations of corrupt practice in both paragraphs 19 and 27 would, I think, normally be ordered, Sir, if asked for by any of the successful candidates, who are the only respondents on those particular paragraphs.

COMMISSIONER : I am afraid I had overlooked that any portion of 19 remained in.

HON. ATTORNEY GENERAL : There is just that portion which definitely gives particulars of an alleged corrupt practice—the withholding of ballot papers from a community entitled to vote.

COMMISSIONER : I do not think there is any provision allowing the distribution of ballot papers in batches, is there?

HON. ATTORNEY GENERAL : The position as I understand it was that a number of persons whose names appear on the Register of Voters made application for ballot papers, and they handed all these applications to the same agent.

COMMISSIONER : If any voter did not get the ballot paper which he expected to get, surely it was his duty to go to the Registering Officer and to report the fact.

HON. ATTORNEY GENERAL: One would have thought so, Sir. Whether it is in fact a corrupt practice within the meaning of section 26 remains to be shown.

COMMISSIONER: Of course none of the candidates have asked me to order particulars.

HON. ATTORNEY GENERAL: No, Sir, and I do not apprehend that it is any part of my functions here to ask you to do so.

COMMISSIONER: It seems to be really a question as to whether paragraph 27 supports any suggestion of corrupt practice as defined. I do not know whether it is open to me to ask your opinion on that point, Mr. Attorney General.

HON. ATTORNEY GENERAL: I am only too anxious to help in any way I can. My own emphatic submission, were I appearing for any one of the successful candidates, is that there is nothing in that, however carefully one may read it, that amounts to a definite allegation of corrupt practice. It seems to me, Sir, that the part of the Indian Community which the five successful candidates represent has a considerable amount of influence with the Indian electorate.

MR. MALIK: That I question very much, Sir.

HON. ATTORNEY GENERAL: And as a result of that influence they have been returned, although it was well known to everyone who voted for them that they had pledged themselves not to appear in the Legislative Council. That, Sir, is influence—it may be bad influence, but I cannot see that it can be said to be undue influence. One has only to go to the Irish Fair for an exact analogy.

COMMISSIONER: Have you any evidence that any elector did not get his ballot paper because it had been destroyed? Surely he would have made a complaint and would have asked for another paper.

MR. MALIK: There is evidence, Sir, that some people were in gaol and their ballot papers were issued to other people.

HON. ATTORNEY GENERAL: That, Sir, is personation, which again is not alleged anywhere.

COMMISSIONER: It says nothing about personation in paragraph 10.

(Mr. Malik reads paragraph 10.)

HON. ATTORNEY GENERAL: All that has been struck out, Sir. All that portion has been struck out.

MR. MALIK: Personation, I think, would be in this way, Sir, that if a man who should have got his ballot paper and it should have been delivered to him, if it was delivered to someone else, who personated as being the person entitled to vote, I submit that would be personation, Sir.

HON. ATTORNEY GENERAL: I do not find that alleged anywhere, Sir.

MR. MALIK: The ballot papers were issued indiscriminately.

COMMISSIONER: That has all been struck out.

MR. MALIK: That, I submit, Sir, would go so far as the irregularity in the preparation of the Register or some irregularity in the election were concerned. If those irregularities were in connexion with the conduct of the election, I submit that that would not, even if proved, invalidate the election. But personation, when another person has got the ballot papers for the original voter would, I submit that part of the statement is not eliminated from paragraph 10.

COMMISSIONER: Section 27 provides that no election shall be invalid by reason of a non-compliance with the rules contained in Schedule III if it appears that the election was conducted in accordance with the principles laid down in such rules, or that such non-compliance did not affect the result of the election.

MR. MALIK: That is election procedure, Sir. I am talking about personation—ballot papers issued to another man.

COMMISSIONER: Mr. Attorney General, you are interested in the prevention of corrupt practices. I would be glad to have your views on paragraph 10, if you are willing to give them.

HON. ATTORNEY GENERAL: As I understand it, Sir, paragraph 10 is now reduced to a pale shadow, and the only part that you are now concerned with is that beginning with the word "ballot" in the eighth line. If, Sir, the person into whose hands ballot papers fell was either a candidate or agent of a candidate and his failure to deliver the paper to the voter or his destruction of the paper amounted to undue influence, then there would have been a corrupt practice, but it would be necessary to prove all the circumstances of each individual

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case. I cannot, personally, Sir, read anything approximating to personation into that paragraph at all.

MR. MALIK : On the question of amendment, Sir, I would like you to hear me.

COMMISSIONER : Yes.

MR. MALIK (*Quoting from News Digest, Vol. 8, p. 325*) :

"Leave to amend a petition so as to include further charges may be given where such charges have only been discovered since the delivery of the particulars, provided they come within the petition."

This is an Irish case—1860, Carrickfergus Borough.

HON. ATTORNEY GENERAL : You will appreciate, Sir, that that was a case in which particulars had been ordered.

MR. MALIK : It is also that provided they come within the petition.

HON. ATTORNEY GENERAL : Furthermore, Sir, that was a case of corrupt treating. The petition alleged corrupt treating by the successful candidate before the election. It subsequently came to the knowledge of the petitioner that it continued after the election, so that you have a continuing time in which to present your petition, Sir, and the petitioner asked leave to give particulars of cases that had occurred after the election. So that again he was within the statutory time. It is discussed on pages 90-93 of the English and Empire Digest, Vol. 20, and also on page 298 of Rogers on Elections, where you will find, Sir, that in cases like that the Court requires an affidavit showing what the further charges are. They must be new matters, Sir, and the absence of negligence on the part of the petitioner and his agents in the matter must be proved. It is based on the Cheltenham Case, 1869, and the Wigan Case, 1869.

MR. MALIK : In this case, I say, Sir, that the facts have only recently come to knowledge.

COMMISSIONER : Have you anything further to say on that point?

MR. MALIK : Nothing further to say on that point, Sir.

COMMISSIONER : I hold that paragraphs 19 and 27 do not contain allegations of corrupt practice as defined in section 26 of the Legislative Council Ordinance, and I am precluded from allowing you to amend the petition at this stage.

HON. ATTORNEY GENERAL : The answer to the prayer, Sir, is that you will recommend to His Excellency that no action to void the election be taken.

COMMISSIONER : I do not think I am called upon to make any recommendation at all.

HON. ATTORNEY GENERAL : I should have used the word "report," Sir.

COMMISSIONER : Yes; I will report the result of my inquiry.

The proceedings then terminated.

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The proceedings then terminated.

Colony and Protectorate of Kenya

PROCLAMATION No. 79.

THE LEGISLATIVE COUNCIL ORDINANCE
(Chapter 24 of the Revised Edition)

AND

THE REVISED EDITION OF THE LAWS
(OPERATION) ORDINANCE, 1926.

PROCLAMATION.

IN EXERCISE of the powers conferred upon me, the Governor's Deputy, by the Instructions Passed under the Royal Sign Manual and Signet to the Governor and Commander-in-Chief of the Colony of Kenya, dated the 11th day of September, 1920, and all other powers thereunto enabling me, I, Humphrey Trice Martin, Commander of the Most Excellent Order of the British Empire, Governor's Deputy of the Colony and Protectorate of Kenya, do hereby appoint that the election of a Member of the Legislative Council for the Indian Electoral Area be held on the 8th day of October, 1931, at the office of the District Commissioner, Nairobi.

Nairobi,

22nd August, 1931.

H. T. MARTIN,

Governor's Deputy.

GOD SAVE THE KING.

PROCLAMATION No. 80.

THE DISEASES OF ANIMALS ORDINANCE
(Chapter 157 of the Revised Edition, Section 14.)

AND

THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE
(Chapter 1 of the Revised Edition, Section 13.)

GOVERNMENT NOTICE No. 231 of 1919.

PROCLAMATION.

IN EXERCISE of the powers thereunto enabling me, I hereby declare the area defined in the Schedule hereto to be infected with East Coast Fever, and I hereby further declare that the said area shall be known as an "Infected Area" for the purposes of Rules under the Diseases of Animals Ordinance.

Proclamation No. 5 dated the 15th day of January, 1930, is hereby amended accordingly.

Given under my hand at Nairobi this 19th day of August, 1931.

H. H. BRASSEY EDWARDS,
Chief Veterinary Officer.

SCHEDULE

Farm L.R. No. or other description	Owner	District	Date of commencement of Quarantine
Farms L.R. No. 5692	Capt. R. H. Pringle, Tuloa Farm, Molo.	Nakuru	8th August, 1931

44 45 A

Colony and Protectorate of Kenya

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L.R. No. 5692	Capt. R. H. Pringle, Tuloa Farm, Molo.	Nakuru	8th August, 1931

PROCLAMATION No. 81.

THE DISEASES OF ANIMALS ORDINANCE.
(Chapter 137 of the Revised Edition, section 4.)

AND

THE INTERPRETATION AND GENERAL
CLAUSES ORDINANCE.
(Chapter 1 of the Revised Edition, section 18.)

GOVERNMENT NOTICE No. 281 of 1919.

PROCLAMATION.

IN EXERCISE of the powers thereunto enabling me, I hereby declare the following areas to be infected areas for the purposes of the said Diseases of Animals Ordinance.

RINDERPEST.

Farm L.R. No. 1902, Mr. T. H. Brown, Kaimosi, North Kavirondo District.

Farm L.R. No. 1757, Mrs. S. Jorgeson, Kipkurren, Usin Gishu District.

Given under my hand at Nairobi this 19th day of August, 1931.

H. H. BRASSEY EDWARDS,
Chief Veterinary Officer.

GOVERNMENT NOTICE No. 493.

THE COURTS ORDINANCE.

NOTICE.

IN EXERCISE of the powers conferred upon him by section 7 of the Courts Ordinance (Chapter 5 of the Revised Edition), His Excellency the Governor has been pleased to appoint the person for the time being holding the post of District Commissioner in Eldoret to exercise jurisdiction in the Nzoia Province in the area comprised in Farms L.O. Nos. 1869, 1687, 5688, 6272, 6261, 6260, 5690, 6258, 6259, 1866, 5647 and 3841.

By Command of His Excellency the Governor.

Nairobi,

This 10th day of August, 1931.

A. DE V. WADE,
for Acting Colonial Secretary.

GOVERNMENT NOTICE No. 494.

THE LOCAL GOVERNMENT (MUNICIPALITIES) ORDINANCE, 1928.

NAIROBI MUNICIPAL ELECTION.

IT is hereby notified for public information that the following candidates were declared to be duly elected at the election held on Thursday, the 20th August, 1931, in respect of the Central and Parklands Wards—

Central Ward ... Charles Udall.

Parklands Ward ... Fred Raper.

Nairobi,

22nd August, 1931.

W. R. McGEAGH,
for Acting Commissioner for Local Government,
Lands and Settlement.

GOVERNMENT NOTICE No. 495.

THE NATIVE AUTHORITY ORDINANCE.
(Chapter 129 of the Revised Edition, section 8 (1).)

AND

THE INTERPRETATION AND GENERAL
CLAUSES ORDINANCE.
(Chapter 1 of the Revised Edition, section 18.)

GOVERNMENT NOTICE No. 406 of 1928.

APPOINTMENT.

IN EXERCISE of the powers thereunto enabling me, I have appointed the person named in the Schedule annexed hereto to be Official Headman for the area named therein.

Kisumu,

17th August, 1931.

C. B. THOMPSON,
Acting Provincial Commissioner.

SCHEDULE.

CENTRAL KAVIRONDO DISTRICT, NYANZA PROVINCE.

Name.	Area.	With effect from	Remarks.
Ismail Owor	Asembo Location	14th August, 1931	On probation for 6 months, vice Daniel Odindo—resigned, appointed vide G. G. Notice No. 380, dated 28th Nov., 1918.

GOVERNMENT NOTICE No. 496.

THE NATIVE LANDS TRUST ORDINANCE, 1930.

ADVISORY BOARDS.

BY virtue of and in exercise of the powers conferred upon him by section 5 of the Native Lands Trust Ordinance, 1930, His Excellency the Governor has been pleased to nominate the person named in the Schedule hereto to be the African member of the Advisory Board of the district named therein.

Government Notice No. 282 of the 28th April, 1931, is hereby cancelled.

By Command of His Excellency the Governor.

Nairobi,

This 20th August, 1931.

A. A. SELDON,
for Acting Colonial Secretary.

SCHEDULE.

Province and District.	Member.
Kikuyu Province—Kiambu District	Chief Koinange wa Mbio, vice Chief Waruhlu wa Kungu

O.F.O.

17060/31 Kenya

46
H

Mr. Chamberlain 3/9

Mr. ~~Sir~~ Allen 2/9

Mr.

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Sir G. Grindle.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Semi official for Mr. Allen's signature

Downing Street,

5 September, 1933

10
253



Dear Turner,

DRAFT. (m.m.)

Your letter of the 2nd

E.J. TURNER, ESQ. *CAF.*

(India Office)

September regarding Indian participation in the Kenya Legislative Council

has been referred to me as Mr. Ishaer Dass *Successor* in the E. African Department on promotion *Parkinson has gone to the Middle East*

~~I give below such information~~

~~as we have at present on the particular points raised in your letter.~~

(This is based on No 33 in 17060)

Some months ago there was a split in Indian opinion in the Colony since which time two rival bodies each calling itself the Eastern Africa Indian National Congress have been in existence. The body of which Mr. Ishaer Dass is Secretary, consists of

of the extremist element of the community;

the more moderate section is prepared to

take part in the local government and has

been recognised by the Government of the

Colony who have appointed members of it

to various municipal councils.

At the elections for the Legisla-

tive Council which took place on the 23rd

May, the moderate section and two independent

candidates were heavily defeated by the

candidates put up by the extremist section

who ~~are~~ ^{were} thus elected to fill the five

Indian seats. Their names are:-

Abdul Wahid

Hakam Singh

Dhanwant Singh

Dr. A.U. Seth

R.D. Doshi

The programme of the extremists

who ~~have now~~ ^{were} been elected is:-

(a) To maintain in spirit the mandate of the Congress by not participating in the Legislative Council unless so determined by the Congress.

(b) To prevent the entry of the nominees of the rival party.

See 33

n 17060

39 n 17060

(c) To obstruct the policy of the local Government in showing to the Imperial Government that the Indian community are reconciled to the principle of communal franchise.

They have pledged themselves as follows:-

"We will neither take the oath of allegiance nor will enter or participate in the said Council unless and until the Congress mandate is changed in the open session and further shall under all circumstances abide by the decision of the Congress."

Kenia Cmt
26/7/51

17235/51
L1
Suzette
L39

2. taken place before the elections
sessions

of the Council have been held in June and second opened in the middle of August and so in August but information has been

negotiation in
Tanzania

26 m 17/73/51

received from the Governor of Kenya that the Indian members elected have declined to take their seats.

JMA

INDIA OFFICE,
WHITEHALL. S.W.1.

4
H2

210. 6274/31.

2nd September 1931.

Dear Parkinson,

About three months ago, when the elections for the Kenya Legislative Council were impending, we heard that there were Indian candidates for election but that those of them who were likely to be elected intended to boycott the Council after their election. We have not heard anything further, and as I have now been asked to write a note on Indians in Kenya for Sir Samuel Hoare I shall be obliged if you will kindly let me know what the result of the election was.

The essential points on which I need information are (1) whether Indians were elected, (2) if so whether the persons elected are believed to intend to absent themselves from all meetings of the Council; (3) whether the Council has yet met, and (4) if so, whether Indians have attended any meetings of the Council.

I shall of course be grateful for any further information you can give by way of elucidating the position but a little information supplied within a few days - if this is possible - will be more welcome than a fuller statement/

A. C. C. Parkinson, Esq.,
C.N.G., O.B.E.,
Colonial Office.

40
statement of the position that could not be sent without
longer delay.

Yours sincerely,

E. Turner

O. O.

17060/31.

Mr. Allen. 7/9
Mr.
Mr.

Mr. Tomlinson.
X Sir C. Bottomley. 7.9.31
Sir J. Shuckburgh.
Sir G. Grindle.
Parli. U.S. of S.
Parly. U.S. of S.
Secretary of State.

Downing Street.

8th September, 1931.

CONFIDENTIAL.

C.D.
R 7SEP
D 8

Sir,

DRAFT. Cas:
V. minute

THE U.S. OF S.,
(ECONOMIC & OVERSEAS
DEPARTMENT,
INDIA OFFICE).

(40)

I am directed by Mr. Secretary Thomas to acknowledge the receipt of your letter of the 28th of August, E. & O. 5873/31, with regard to the desire of the Government of India to be afforded an opportunity of expressing their opinion before any decision is taken by the Governor of Kenya in regard to the dissolution of the Legislative Council when the new register comes into force.

2. In reply I am to request you to inform Secretary Sir Samuel Hoare that the Indian members elected to the Legislative Council in May last declined

to

to take their seats at the session of the Council held in June, and that, although the new register came into operation on the 1st of August, the Governor took no steps to dissolve the Council. On the contrary a further session of the Council was opened in the middle of August and is still continuing.

It is understood, however, that the Indian members again declined to take their seats.

3. The contingency contemplated by the Government of India therefore did not arise.

I am, etc., 3

① as regards the new register I quote below the relevant section of Sec. II of the Rules to Cap. 24 (p. 232 Vol I.)

9a. The registering officer shall on or before the first day of the succeeding month of May prepare revised registers of voters and copies of such revised registers shall be published --- "

10c

The registering officer shall certify the revised registers --- and the registers so certified shall come into operation on the first day of August following the publication of the register under Rule 9a --- "

The revised Indian register was published in Gazette No. 67 of the 20th Dec. 1930, and so came into force on the 1st August 1931.

② as regards the dissolution of Leg. Co. see XXX and XXXI of the Royal Instructions of 11/9/20 and the Additional Instruction of 20/1/30.

The Gov. may dissolve Leg. Co. whenever he likes.

Sturgeson 4/9

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"The registering officer shall certify the revised registers - - - and the registers so certified shall come into operation on the first day of August following the publication of the register under Rule 9 a - - -"

The revised Indian register was published in Gazette No. 67 of the 20th Dec. 1930, and so came into force on the 1st August 1931.

② as regards the dissolution of Leg. Co. see XXX and XXXI of the Royal Instructions of 11/9/20 and the Additional Instruction of 20/1/30.

The Gov. may dissolve Leg. Co. whenever he likes.

W. Allen 4/9

Any further communication on this subject should be addressed to—
The Under Secretary of State for India,
Economic & Overseas Department,
India Office, London, S.W. 1,
and the following reference quoted—
E. & O. 5873/31



Conf.
52
INDIA OFFICE,
WHITEHALL,
LONDON, S.W. 1.

RECEIVED
28 AUG 1931
COL. OFFICE

28 August 1931.

Confidential.

Sir,

With reference to previous correspondence, I am directed by the Secretary of State for India to transmit, for the information of the Secretary of State for the Colonies, copy of the marginally-noted correspondence with the Government of India on the question of holding fresh elections for the Kenya Legislative Council when the new Indian register is available.

To Government of India dated 26th June 1931.
From Government of India dated 30th July 1931.

2. It will be observed that in their

letter of the 30th July, the Government of India ask that they may be given an opportunity of expressing their opinion before any decision is taken by the Governor of Kenya in regard to the dissolution of the Council when the new register comes into force. The Secretary of State trusts that the Secretary of State for the Colonies will be able to meet the wishes of the Government of India in this matter.

I am, Sir,

Your obedient Servant,

S. S. Stewart

The Under Secretary of State,
Colonial Office,
S. W. 1.

Ann. 31-51-1931

B. & O. 3130/31.

26 JUN 1931 June, 1931

CONFIDENTIAL.

BY AIR MAIL, 4/27/31

Duplicate by hand 4/27/31

Indian elections for the Kenya Legislative
Council.

Sir,

With reference to correspondence ending with Government of India's telegram of the 1st May 1931, No. 1217-S, on the above subject, I am directed by the Secretary of State for India to say that he consulted Mr. Sastri in accordance with the request made in that telegram.

Mr. Sastri's advice, given after consulting Messrs. Patal and Medh, was that unofficial opinion in India would look with suspicion on the course suggested by the Governor of Kenya and supported by the Colonial Office; that the party recognised by the Governor as in control of the Congress (though willing temporarily to enter the Council by way of nomination) would not even once seek election on a communal roll and were not registering the supporters for the purpose. He consequently advised that the best course would be to hold the elections on the existing Indian register and to make no provision, at any rate in present circumstances, for further elections during the next three years.

The Secretary of State accepted Mr. Sastri's advice and informed Lord Passfield accordingly.

Lord Passfield thereupon decided that in all the circumstances the wisest course would be to refrain from taking any steps to limit the term of the Indians who

might/

Secretary to the Government of India,
Department of Education, Health & Lands.

might be elected. In communicating this decision to the Governor he pointed out that if, as has been suggested, the Indians now elected do not sit on the Council, but use their position solely to block co-operation, it will be open to him to consider the advisability of dissolving the whole Council when the new register comes into operation.

I am, Sir,

Your obedient servant,

(Sd.) E. J. TURNER.

Secretary,

Economic & Overseas Department.

CONFIDENTIAL.

No. 238-03.

5873

1931

Government of India.

Department of Education, Health and Land

Simla, the 30th July, 1931.

From

G. S. Bajpai, Esquire, C.I.E., C.B.E., I.C.S.,
Offg: Secretary to the Government of India,

To

His Majesty's Under Secretary of State for India
Economic and Overseas Department,
India Office, LONDON.

Indian Elections for the Kenya
Legislative Council.

Sir,

I am directed to refer to the correspondence ending with Mr. Turner's confidential letter No. 3138/31 dated the 26th June, 1931, on the above subject, and to say that in the event of the Governor of Kenya considering it desirable to dissolve the whole Council when the new register comes into operation, the Government of India will be grateful if they are afforded an opportunity of expressing their opinion before such a decision is taken.

I have the honour to be,

Sir,

Your most obedient servant,

Sd. Ram Chandra Lal,

for Offg: Secretary

~~CONFIDENTIAL.~~

5873

55

No. 238-03.

1931

Government of India.

Department of Education, Health and Lands.
Simla, the 30th July, 1931.

From

G. S. Bajpai, Esquire, C.I.E., C.B.E., I.C.S.,
Offg: Secretary to the Government of India,

To

His Majesty's Under Secretary of State for India,
Economic and Overseas Department,
India Office, LONDON.

Indian Elections for the Kenya
Legislative Council.

Sir,

I am directed to refer to the correspondence ending with Mr. Turner's confidential letter No. 3138/31, dated the 23th June, 1931, on the above subject, and to say that in the event of the Governor of Kenya considering it desirable to dissolve the whole Council when the new register comes into operation, the Government of India will be grateful if they are afforded an opportunity of expressing their opinion before such a decision is taken.

I have the honour to be,

Sir,

Your most obedient servant.

Sd. Ram Chandra.

for Offg: Secretary.

Petition Against Validity.

Commissioner's Report.

NO ACTION NECESSARY TO HAVE RESULT SET ASIDE.

Mr. R. M. Shaw, Resident Magistrate of Nairobi, sat as a Commissioner yesterday to inquire into the petition to have set aside the Indian elections of May 28 last. He will report to the Governor that no action need be taken.

The petition was in the name of Thakur Dass, one of the defeated candidates for the representation of the Indian community on the Legislative Council of Kenya. It contained 20 paragraphs, which concluded with the prayer that His Excellency the Governor would be pleased to

(a) Set aside the elections held on the 28rd May, 1931, and to declare the same as null and void;

(b) Order the preparation of register, complete and representative Indian register giving ample time to all Indians in the Colony to have their names registered on the Electoral Roll and to hold another election which will eliminate all the irregularities, difficulties and disabilities which have been experienced in the recent elections. Or, alternatively, (a) To declare the five Indian members, Hakim Singh, S/o Nand Singh, Dhanwant Singh, Abdul Wahid, Revashanker Devchand Doshi and Dr. Amritlal Ujamesh Sheth as not having been elected in accordance with intents and purposes of law but in contravention and defiance of the fundamental principle of the law enabling Indian representation on the Legislative Council.

The Attorney General, who appeared as Director of Public Prosecution, also appeared, because of the allegations of malpractices against the administrative officers of the Government, and on behalf of the Returning Officer, the District Commissioner of Nairobi.

Mr. M. H. Malik represented the petitioner, Thakur Dass. Messrs. Hakim Singh and Abdul Wahid, two of the successful candidates, appeared in person.

Mr. O. Abbott, Crown Counsel, was with the Attorney General.

Irrelevant Paragraphs

The Attorney General submitted that the whole of the petition was irrelevant and should be struck out, with the exception of part of paragraph 19. Ballot papers fell into the hands of persons who either declined to deliver same to the voters or have destroyed the same on the slightest indication from the voters of their intention to vote in a manner otherwise than in accordance with the wishes of the person in whose possession the ballot paper happened to be; paragraph 27, which suggested corrupt practices by the five successful candidates, possibly 28, which dealt with insufficient ballot papers; and part of the prayer.

After hearing Mr. Malik, the Commissioner struck out paragraphs 1 to 4 by agreement. He then heard arguments on paragraph 19. This alleged irregularities and omissions in the register, and the election should have been held on the registers of March 15, 1930, and not the one of December 20, 1930.

As one result, there had been improper rejection of votes.

Mr. Shaw held that the register of December 20, was the proper one on which the elections should be held. It became effective when certified on February 22, 1931. Ample time had thus been given for objections. He therefore struck out paragraphs 5 to 18, and 22; paragraph 19, except as to corrupt practice, 20, 21, 24, 25, 26, 28 and 29 all by agreement, and the second part of the prayer asking for another register to be prepared.

Further Deletions.

This left only a portion of paragraph 19, the whole of 28 and 27. The prayer was, further, confined to asking His Excellency to "set aside the elections held on May 28 and to declare the same as null and void."

Mr. Malik consented to abandon paragraph 28. This alleged insufficient ballot papers at Eldoret; but he admitted that the number of votes which might have been secured would not have effected the election of Thakur Dass, the petitioner.

Alleged Undue Influence.

The inquiry then concentrated on paragraph 27, which read—
"The five candidates who have declared as elected have influenced the voters by means which are totally contrary to the objects and intentions of the law and have secured the votes not for the pur-

(Continued on page 8).

KEY POINTS IN DECISIONS.

(Continued from page 7.)

pose intended by the law (i.e. representation and participation in the proceedings of the Legislative Council) but for the purpose of defeating the very object and intention of the law by their abstention from taking the oath of allegiance to His Majesty the King which is a condition precedent to the participation in the proceedings of the Legislative Council." Mr. Malik supported this by quoting the "pledge", circularised by the five successful candidates during the elections, that would not take the oaths or participate in the Council. This, he held, influenced many voters. Thakur Dass stood as an independent.

The Commissioner could not hold that this was "undue influence" within the meaning of the Ordinance; voters were free to vote.

Mr. Malik stated that he had witnesses as to monetary offers and payment for votes; and of votes under threats which amounted to "undue influence."

This, said Mr. Shaw, would mean amending the petition, but the period for so doing had expired.

As to the portion of paragraph 19—the submission of petitioner was that ballot papers of people in gaol were issued to others who were not, hence it was impersonation, but the Attorney General could not read this meaning into it.

Commissioner's Ruling.

The Commissioner held that paragraphs 19 and 27 did not contain any allegation of corrupt practice as defined in Section 26 of Legislative Council Ordinance, and that the petition could not be amended.

The Attorney General: So that you will report to His Excellency the Governor that no action to void this election be taken?

The Commissioner: Yes.

The proceedings then closed.

KENYA INDIAN ELECTIONS.

Petition Against Validity.

Commissioner's Report.

NO ACTION NECESSARY TO HAVE RESULT SET ASIDE.

Mr R M Shaw Resident Magistrate of Nairobi, sat as a Commissioner yesterday to inquire into the petition to have set aside the Indian elections of May 23 last. He will report to the Governor that no action need be taken.

The petition was in the name of Thakur Dass, one of the defeated candidates for the representation of the Indian community on the Legislative Council of Kenya. It contained 29 paragraphs which concluded with the prayer that His Excellency the Governor would be pleased to set aside the elections held on the 23rd May 1931 and to declare the same as null and void. (1) Order the preparation of registers complete and representative Indian register giving ample time to all Indians in the Colony to have their names registered on the Electoral Roll and to hold another election which will eliminate all the irregularities, difficulties and disabilities which have been experienced at the recent elections. Or, alternatively (a) To declare the five Indian members, Hakim Singh S/o Nand Singh, Dhanwant Singh, Abdul Wahid, Ravshanker Deychand Doshi and Dr Amritlal Ujamesh Sheth as not having been elected in accordance with the intent and purposes of law but in contravention and defiance of the fundamental principle of the law enabling Indian representation on the Legislative Council.

The Attorney General, who appeared as Director of Public Prosecution, also appeared, because of the allegations of malpractices against the administrative officers of the Government, and on behalf of the Returning Officer, the District Commissioner of Nairobi.

Mr. M. H. Malik represented the petitioner, Thakur Dass. Messrs. Hakim Singh and Abdul Wahid, two of the successful candidates, appeared in person.

Mr. O. Abbott, Crown Counsel, was with the Attorney General.

Irrelevant Paragraphs

The Attorney General submitted that the whole of the petition was irrelevant and should be struck out, with the exception of part of paragraph 19—'Ballot papers fell into the hands of persons who either declined to deliver same to the voters or have destroyed the same on the slightest indication from the voters of their intention to vote in a manner otherwise than in accordance with the wishes of the person in whose possession the ballot paper happened to be.' paragraph 27, which suggested corrupt practices by the five successful candidates, possibly 28, which dealt with insufficient ballot papers and part of the prayer.

After hearing Mr. Malik, the Commissioner struck out paragraphs 1 to 4 by agreement. He then heard arguments on paragraph 18. This alleged irregularities and omissions in the registers, and the election should have been held on the registers of March 15 1930, and not the one of December 20 1930.

As one result there had been improper rejection of votes.

Mr. Shaw held that the register of December 20, was the proper one on which the elections should be held. It became effective when certified on February 22 1931. Ample time had thus been given for objections. He therefore struck out paragraphs 5 to 18 and 22, paragraph 19 except as to corrupt practice, 20, 21, 24, 25, 26, 28 and 29 all by agreement, and the second part of the prayer asking for another register to be prepared.

Further Deletions.

This left only a portion of paragraph 19 the whole of 23 and 27. The prayer was, further, confined to asking His Excellency to set aside the elections held on May 23 and to declare the same as null and void.

Mr. Malik consented to abandon paragraph 28. This alleged insufficient ballot papers at Eldoret, but he admitted that the number of votes which might have been secured would not have effected the election of Thakur Dass, the petitioner.

Alleged Undue Influence

The inquiry then concentrated on paragraph 27, which read—'The five candidates who have declared as elected have influenced the voters by means which are totally contrary to the objects and intentions of the law and have secured the votes not for the pur-

KENYA INDIAN ELECTIONS.

(Continued from page 7.)

pose intended by the law (i.e. representation and participation in the proceedings of the Legislative Council) but for the purpose of defeating the very object and intention of the law by their abstention from taking the oath of allegiance to His Majesty the King which is a condition precedent to the participation in the proceedings of the Legislative Council.' Mr. Malik supported this by quoting the 'pledge' circularised by the five successful candidates during the elections, that would not take the oaths or participate in the Council. This he held influenced many voters. Thakur Dass stood as an independent.

The Commissioner could not hold that this was undue influence within the meaning of the ordinance, voters were free to vote.

Mr. Malik stated that he had witnesses as to monetary offers and payment for votes, and of votes under threats which amounted to undue influence.

This, said Mr. Shaw, would mean attending the petition but the period for so doing had expired.

As to the portion of paragraph 19 the submission of petitioner was that ballot papers of people in jail were issued to others who were not behind it was impersonation but the Attorney General could not read this meaning into it.

Commissioner's Ruling

The Commissioner held that paragraphs 19 and 27 did not contain any allegation of corrupt practice as defined in Section 26 of Legislative Council Ordinance and that the petition could not be amended.

The Attorney General so that you will report to His Excellency the Governor that no action to void this election be taken.

The Commissioner 'Yes'.
The proceedings then closed.

(Continued on page 8.)

INDIAN ELECTIONS TO LEGISLATIVE COUNCIL.

Petition Against the Result.

ENQUIRY ORDERED.

Alleged Irregularities in Roll and Voting.

The validity of the election of five members to represent the Indian constituency in Legislative Council having been brought in question by Mr. Thakur Das, a person qualified to be elected at such election, through his advocate, M. H. Malik, Esq., His Excellency the Governor of the Colony, in virtue of the powers conferred on him by section 28 of the Legislative Council Ordinance (Chapter 24 of the Revised Edition) has been pleased to appoint Mr. J. V. Shaw, Esq. Resident Magistrate, Nairobi, to be a Commissioner to inquire into and report on the grounds on which the validity of the said election is brought in question as aforesaid.

The foregoing is taken from the Kenya "Official Gazette" of this week, and is the sequel to the recent Indian elections. When the result was gazetted, a petition was forwarded to the Governor protesting on behalf of one of the defeated candidates, on the ground of certain irregularities. Under the Legislative Council Ordinance the Governor has the right to order an inquiry or not, as he thinks fit. He has directed that an inquiry shall be held.

Grounds of Petition.

The grounds of the petition are enumerated under 29 heads. It is stated in the petition that the election of the Indian members was proclaimed for the first time in the history of the Colony and no Indian advice or consultation was sought for the working of the election. It is also pointed out that the whole Colony was treated as one constituency regardless of local interests of Indians living in the Coast or the Lake area under varying conditions. The proclamations were not published in the vernacular and as copies of voters' register had not been published in the vernacular the "intention or invitation to voters to participate in elections remained incomplete."

It is also alleged that the notice regarding the publication of the voters' register in the "Official Gazette" had never been published in the principal newspapers of the Colony. It is stated that the register remained incomplete, irregular and unrepresentative. The petition states: "The revised registers have not been prepared according to law inasmuch as all names entitled to, have not been inserted and a very large number of persons who are dead, and who have become disqualified, and have left the Colony have not been expunged. It is alleged that only 11 days were allowed for objections to the register instead of the statutory 25 days."

Secrecy Violated.

Another allegation is that the principle of secrecy at the time of recording votes was violated in the case of all voters who could not read English as the registers were taken by the Returning Officer behind a low screen in a room where there were usually a large number of persons present, not excluding candidates, in whose presence the names of all candidates were read out to the voters and they were asked in Kiswahili in a loud enough voice for to be heard by all present as to whom they wished to vote for, and the voters answers were audible to all present in the room.

It is stated that owing to irregularities in the preparation and publication of the voters register and the want of regular proclamations, no less than 8,000 voters who registered their names within one week between January 11 and 18 were debarred from participating in the recent election, and that there are no less than 10,000 qualified voters in the Colony who, but for the irregularities mentioned, should have been on the voters' register. Ballot papers, it is declared, were not supplied to the District Officers in sufficient number, and that numbers of voters who were petitioner's supporters, who applied to the Registering Officer at Eldoret for ballot papers on May 18, were informed that there were no ballot papers available.

The petition also argues that a very large number of applications for ballot papers were signed by the applicants in vernacular language and the Registering Officers had no means of scrutinising the genuineness of the signatures and consequently also the identity of the applicants.

Purdah Women.

Appar is made of the fact that there are a large number of women voters who observe the purdah system and do not appear before any

INDIAN ELECTIONS TO LEGISLATIVE COUNCIL.

(Continued from page 7.)

male person other than their husbands and relatives. No arrangement, it is affirmed, was made at any of the offices of the Registering Officers and consequently petitioner was deprived of a large number of the votes of women voters.

The five candidates who have been declared as elected have influenced the voters by means which are totally contrary to the objects and intentions of the law, the petition alleges, and have secured the votes not for the purpose intended by the law, but for the purpose of defeating the voters' election and infraction of the law by abstention from giving their allegiance to the Government (which is a violation of section 2 of the Legislative Council Ordinance).

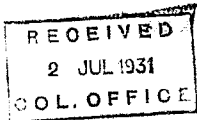
The petitioners pray that the elections held on May 18, 1931, shall be set aside and that a new order shall be made for the preparation of a register, complete and representative, giving ample time to all Indians in the Colony to have their names registered on the Electoral Roll and to hold another election which will eliminate all the irregularities, difficulties and disabilities, which are alleged to have been experienced in the recent elections. Alternatively, it is requested that the five Indian members elected shall be declared as not having been elected in accordance with the intent and purpose of law, but in contravention and defiance of the fundamental principle of the law enabling Indian representation on the Legislative Council.

EAST AFRICAN INDIAN DELEGATION. 58

48, DANES INN HOUSE,
265, STRAND,
LONDON, W.C.2.

Telephone: HOLBORN 8865.
Telegrams: Code KALOPH, ESTRAND, LONDON.

July 1st, 1931.



The Under Secretary of State,
COLONIAL OFFICE

Sir,

I have the honour to enclose herewith, for the information of the Secretary of State, a copy of a letter I have addressed to the Chairman of the Joint Select Committee on East Africa, relating to certain matters raised in the evidence of other witnesses before the Committee.

I am, Sir,
Your Obedient Servant,

Abdullah

Representative of Kenya Indians

The Rt. Hon. Lord Stanley of Alderley,
Chairman, Joint Select Committee on East Africa,
HOUSE OF LORDS

My Lord,

I am venturing to write this letter at this late stage because I see from the questions and answers before the Committee that some misunderstanding exists in the minds of some members of the Committee on the attitude of Kenya Indians towards some important matters.

Your Lordship is aware that many members of the Committee were not present when the Kenya Indian Delegation was examined, probably owing to previous important engagements, and therefore certain questions put to other witnesses directly affecting Kenya Indians and that ought to have been put to us also remained unanswered from our point of view. Particularly it appears certain questions put to the Rt. Hon. V. S. Srinivasa Sastry, the representative of the Government of India, and Mr P. V. Mohd, the Uganda Indian representative, concerning the representation of Indians on the Kenya Legislative Council ought to have been put to us.

It appears from a question put to Mr Mohd that some members assume that Kenya Indians accept the unequal ratio of representation on the Kenya Legislative Council existing at present. Kenya Indians have always maintained that they should have equal political and economic opportunities with the European community, and necessarily equal political representation. As a matter of fact, in the year 1922, they demanded the introduction of the Common Roll, or, in the alternative, an equal number of seats. That the Indian Community state is that they are entitled to and should have perfect equality with the European Community in political representation, but, in order to attain and achieve the introduction of the Common Roll, which they value most dearly, they are prepared to make heavy sacrifices by way of agreeing to accept unequal representation and restricted franchise in order to allay European apprehensions of swamping.

From the discussions and questions and answers before the Committee, there appears some assumption on the part of some members, that Europeans and Natives are the only taxpayers, without entering into details in the matter, which I am not entitled to do at this stage, I may submit that the taxes paid by non-Natives include the taxes paid by Indians, and a substantial part of non-Native Customs Revenue, death duties, stamp duties, licences, etc., is paid by Indians. In some cases, such as trading licences, they pay a very large proportion indeed of the amount realised.

I have the honour to be,
My Lord,
Your Lordship's Obedient Servant,

(Sd.) A. B. PATEL

A representative of Kenya Indians

The Indian Association.

17060/913/2
60

TELEPHONE No. 152.

President: A. RAHMAN, Barrister-at-Law.
Secretary: R. K. BULEMAN VERJEE.
KUNJIVIHARI H. SHAH.

RECEIVED
10 JUN 1931
P.O. OFFICE
Mombasa, 30th May 1931

P. O. Box 105

R

The Right Honourable Lord Passfield
Secretary of State for Colonies
L O N D O N.

Kya 3c

May it please Your Lordship.

The attention of my Committee has been drawn to a letter addressed to Your Lordship (Summary of which appeared in the Manchester Guardian) by one Mr. A.U. Seth, styling himself to be the President of the Indian Association, Mombasa, and my Committee therefore feels the necessity to put true facts regarding the matters raised in the said letter.

(1). We submit that the Association alleged to exist under the presidentship of Mr. A.U. Seth does not represent the Indian Community. The last Annual Session of the Eastern Africa National Congress was held in the second week in January 1931 at Nairobi. The Executive Committee of the Congress elected by the delegates from all important centres, was not acceptable to Mr. Seth and his friends. In March last at a public meeting convened under the auspices of the Eastern Africa Indian National Congress

Copy - Gov. Secy (2) 15 1931 H/1

and very largely attended, passed a vote of non-confidence in the committee presided over by Mr. Seth and elected a committee of which I am the duly elected president.

(2). Admittedly, the policy of the Congress, has been throughout consistent in maintaining its opposition to the Communal Form of Franchise. The Government had been always willing to allow Indian Representation on Councils on nomination basis, but the Indian Community, owing to want of confidence, in Sir Edward Grigg the then Governor, was not in a mood to accept nominations and to co-operate. Circumstances however materially changed soon after the appointment of the present Governor, Sir Joseph Byrne, and the Congress was seriously then considering co-operation on its own merits. To suggest, therefore that there was any private understanding between the Government and Leaders of the Congress is to say the least of it, without any foundation.

(3). The circumstances that led to the unfortunate breaking up of the Congress are, that one Mr. Ishar Dass, who is a Communist, and who went so far to identify himself with the Communist Party in England, that he stood as a Communist Candidate for the Parliamentary Election two years ago, but in the absence of any financial support from this Country, he had to withdraw. But true to his Communist principles he endeavoured to cause troubles amongst the Indian Masses and classes here, and wanted to maintain

permanently the boycott of Councils. The responsible section of the Community could not endorse his views, and at the Subject Committee of the Congress, at which delegates from every centre in the Country were present, the feeling was strongly in favour of entry into Municipal Councils. Mr. Dass being one in hopeless minority, then threatened that the Congress shall be destroyed, which he actually did, on the next day. The delegates from all the centres, assembled and elected the Executive Committee to carry on the work of the Congress in the year 1931, and thereafter all the centres passed resolutions of confidence in the said Committee.

(4). . After the break up of the Congress, the various sections of the Indian Community were so excited, that allowing them to meet in a mass meeting would have resulted in great danger to public peace, and although Mr. Dass was very anxious to bring about such a situation, the Congress Leaders, with commendable foresight forbade participation in such rowdy meetings.

(5). It is really surprising and amusing, that while Mr. A. U. Bath president of the alleged Association, expressing himself so strongly in favour of Common Roll, has offered himself a candidate for the Legislative Council on the Communal Franchise. Whereas the Congress has asked the Indian Community to refrain from voting on the

Communal Roll, and as a result thereof, the so-called supporters of the Common Roll, who did not hesitate to go through an election purely on Communal Roll, were supported by about only 700 voters out of a registered total of 3500 voters and qualified voters of nearly 20,000.

(6). This alleged Association having forfeited its representative capacity, as explained in paragraph No.1. of this statement, it is but logical, that Mr. Seth's communications were not considered as representative by the Government.

(7). With regard to the allegation that Messrs. Phadke and Patel, delegates on behalf of Kenya, do not represent the Country and enjoy the confidence of the people, the following facts are submitted for your information:

Mr. A.B. Patel was elected by the largest majority, as a delegate, at a Mass Meeting in July 1930 held at Mombasa and the same measure of support was accorded to him from Nairobi, Kisumu, and other centres in Kenya, and was also supported by Uganda. At a meeting of the Standing Committee of the Congress held in October, 1930 at Nairobi, he was unanimously elected by delegates from all centres in the Country, at a time, when there was no split in the Indian Community. He was again elected unanimously at the Subject Committee of the Congress of January 1931. The Executive Committee of the Congress therefore recommended his name to the

Government. To question his representative character is sheer ignorance of facts, and seems to be inspired by personal motives.

With regard to Mr. V.V. Phadke, at a meeting where Mr. Ishar Dass and his friends were present, he was requested to accept the nomination, and no other name in his place was suggested by anybody at the meeting. Both these gentlemen command the confidence of an overwhelming majority of the Indian Community in this Country.

In conclusion, we are sure, that Mr. Seth's communication hardly deserves any consideration, and we have only endeavoured to place the facts as they are before Your Lordship.

I beg to remain,
My Lord,

Your humble servant,

A. Rahman
President

Indian Association, Bombay.

The Chairman of the Committee has received from Mr. Isher Dass, who signs himself the General Secretary of the East African Indian National Congress, various papers, copies of which are attached, regarding the recent Indian elections in Kenya and the representation of Kenya Indians before the Committee.

Some months ago there was a split in Indian opinion in the Colony, since which time two rival bodies, each calling itself the Eastern Africa Indian National Congress, have been in existence. The body of which Mr. Isher Dass is secretary consists of the extremist element of the community; the more moderate section is prepared to take part in the local government, and has been recognised by the Government of the Colony, who have appointed members of it to various municipal councils.

The correspondence now forwarded shows that The elections for the Legislative Council which took place on the 23rd May the moderate section and two independent candidates were heavily defeated by the candidates put up by the extremist section, who thus are elected to fill the five Indian seats.

The extremist candidates received an average of 700 votes apiece, the two independents 197 and 155, and the moderates an average of about 150 apiece.

The programme of the extremists who have now been

been elected is:

- "(a) To maintain in spirit the mandate of the Congress by not participating in the Legislative Council unless so determined by the Congress.
- (b) To prevent the entry of the nominees of the rival party.
- (c) To obstruct the policy of the Local Government in showing to the Imperial Government that the Indian community are reconciled to the principle of communal franchise"

The members elected have pledged themselves as follows:

"We will neither take the oath of allegiance, nor will enter or participate in the said Council unless and until the Congress Mandate is changed in the open session, and further shall under all circumstances abide by the decision of the Congress".

The same section of the community also passed on the 8th May a resolution requesting Mr. V.V. Phadke to secure a vote of confidence from the public at an open meeting, in view of the fact that his appointment as a witness to the Joint Parliamentary Committee had been forced on the Indian community by the Local Government at the instance of the 1951 Congress and in the teeth of opposition.

INDIAN ELECTIONS RESULTS.

E. A. I. N. CONGRESS

	Votes.
Hakam Singh	723
Dhanwant Singh	719
Abdul Wahud	708
R. D. Doshi	693
Dr A. U. Sheth	686

INDEPENDENTS.

A. H. Malik	197
Thakar Dass	155

1931 BOGUS CONGRESS

Abdul Karim	176
Noormohamed	142
Gulam Mohamed	137
Gulam Nabi	127
Abdul Aziz	115

I. DASS,

Hon. General Secretary, E.A.I.N. Congress.

Mass Meeting 5 p.m. Sunday 24th May, Gurdwara Maidan.

E. A. I. N. CONGRESS.

Resolution.

In view of the fact that Mr. V. V. Phadke's appointment as a witness to the Joint Parliamentary Committee has been forced on the Indian Community by the local Government at the instance of the 1931 Congress, and in the teeth of opposition, the Executive Committee of the E. A. I. N. Congress requests Mr. Phadke to secure a Vote of confidence from the public at an open meeting.

Nairobi,
8th May, 1931.

ISHER DASS,
Hon. G. Secretary.

ई. आ. ई. नेशनल कांग्रेस
ठरव.

१९३१नी नामधारी काँग्रेसनी सलाहथी, जादेर हिंदी प्रजासत्ताकी अवगणुना करीन अत्रेनी स्थानिक सरकारे जेजन्ट पार्लामेन्टरी कमीटी समक्ष जुआनी आपना माटे कामनी मरछ विरुध्द मी. वी. वी. इडकेनी पसंद्गी करी छे; तथा ई. आ. ई. नेशनल काँग्रेसनी अजीक्युटीव कमीटी मी. इडकेने विनंती करे छे के तंत्रांज जादेरसभामां जादेर प्रजासत्ता विश्वासना मत मणायवा जाईअ

नाधरेणी.

इशरदास.

ता. ८ ५ ३१

आन. जनरल सेक्रेटरी.

YOUR CONGRESS

And its Candidates Stand for

1. **NO** Oath of Allegiance.
2. **NO** Participation in Legislative Council.
3. **NO** Surrender to Government until

COMMON ROLL IS GRANTED.

Masses, you are bigger than
Government and Leaders.

ISHER DASS,

Hon. General Secretary.

E. A. I. N. CONGRESS.

—याह राणो डे—

ज्यां सुधी कोमनरोल भणे नहि
त्यां सुधी काँग्रेसना उमेदवारो धारासबाभां जेसवाना नथी
सोअन खेवाना नथी, डे

सरकारने ताण्णे थवाना नथी
तथीज

काँग्रेसना साया उमेदवारोने तमारो मत आपो.

ईशरदास.

जो. जनरल सेक्रेटरी.

ध. गा. उ. ने. इण्डिया.

WHAT THE CONGRESS FIVE STAND FOR.

A DECLARATION OF POLICY.

In accordance with the policy decided upon by the Standing Committee in its resolution No. 2 passed on the 14th March 1931, the Congress after mature deliberation has decided to send their 5 members on the Legislative Council of the Colony and supplements this decision with the following declaration:

1. This step has been forced by the rival party who did their best to persuade the Government to appoint five of their party to the Legislative Council on nomination basis.

2. The rival party has no love for the common roll, but wish to out-vote the will of the people.

3. The Congress party has always held as its principle that the people's voice should be predominant, and in order to test public opinion, it has challenged the rival party and the local Government to get a referendum at the polling booth.

4. By entering the Municipal Council, the rival party has defied the will of the people and established a precedent for council entry without previous informal elections which was always the practice of the community.

5. From the correspondence exchanged between the rival party and the Government, it is clear that in the absence of candidates for election, the rival party's five men will be nominated by the Government. Congressmen object to this method and in seeking election, the five candidates do so with the following objects:

(a) To maintain in spirit the mandate of the Congress by not participating in the Legislative Council unless so determined by the Congress.

(b) To prevent the entry of the nominees of the rival party.

(c) To obstruct the policy of the local Government in showing to the Imperial Government that the Indian Community are reconciled to the principle of communal franchise.

ISHER DASS,
Hon. General Secretary.

PLEDGE.

In accordance with the foregoing declaration of policy adopted by the Congress, we the undersigned candidates for the Legislative Council of Kenya Colony, if elected in coming election to be held on 9th May 1931, pledge on our honour that:-

We will neither take oath of allegiance nor will enter or participate in the said Councils unless and until the Congress mandate is changed in the open session, and further shall under all circumstances abide by the decision of the Congress.

Abdul Wahid,
Hakim Singh,
Dhanwant Singh,
Dr. A. U. Seth,
R. D. Doshi.

કોંગ્રેસના પાંચ ઉમેદવારો શા માટે બહાર પડ્યા છે?

તેઓ કેવું વલણ લેશે ?

તા. ૧૪માર્ચ ૧૯૩૧ને રાજ મળેલી સ્ટેન્ડીંગ કમીટીએ કરેલ કાર્ય મુજબ કોંગ્રેસે કેનીયાની ધારાસભા ઉપર પોતાના પાંચ ઉમેદવારો મોકલવાનું નક્કી કર્યું છે અને તેમને અંગે નીચે મુજબની અહેરાત બહાર પાડવામાં આવે છે.

(૧) હરીફ ટાળીએ પોતાના પાંચ મેમ્બરોને ધારાસભામાં નોમીનેટ કરવા સરકારને સમજાવવાથી પ્રતિક્ષ પાર્ટીને આ પગલું ભરવાની અનિવાર્ય જરૂર પડી છે.

(૨) એ હરીફ ટાળી કામનવેલ્થની બહુ દરકાર કરતી વી. પલ્કુ અહેર પ્રખની કચ્છાને ઠોકરે મારવા માગે છે.

(૩) કાંગ્રેસ પાર્ટીનો હ મેથા અંગ સિંધ્યાન છે કે તે અવાજને સર્વોપરી માની નેને માન આપવું; અને તેને પ્રત્યક્ત બહુવા કોંગ્રેસ પાર્ટીએ હરીફ ટાળીને સરકારને પોલીંગ પર આ બાબત નિર્ણય કરવા મંજૂર આપી છે.

(૪) મ્યુનિસીપલ કાઉન્સીલમાં ધુસી જઈ હરીફ ટાળીએ અહેર પ્રખ મંતને ઠોકરે માર્યા છે; અને ધારાસભામાં જતા પહેલાં રીતસર રૂ ચુંટણી કરવાની આપણી મંતી પ્રથા હતી તે પ્રથાને પલ્કુ ઠોકરે મારી હવે તે ટાળી ચુંટણી આની ચુંટણી વગર ધારાસભામાં ધુસી જવા માગે છે.

(૫) આ હરીફ ટાળા અને સરકાર વચ્ચે આલેક્ષા પત્ર વલણથી હવે સુદલુ થયું છે કે ચુંટણીમાં કાંઈ ઉમેદવારો નોમીનેટ કરે. કોંગ્રેસ આ રીત સહામે વાંધા લાવે છે; અને ચુંટણીની પ્રથા કાયમ રાખી નીચેના કારણો પર લાવવા પાંચ ઉમેદવારો નાસુદ કરે છે.

(અ) કોંગ્રેસનો આદેશ છે કે ધારાસભામાં જતું નહિ. કોંગ્રેસના આદેશ અનુસાર ધારાસભામાં નહિ જવાની આપણી જે લડત ચાલુ રહી છે તેને ચાલુ રાખવી.

(બ) હરીફ ટાળીના માણસોને ધારાસભામાં ધુસી જતા અટકાવવા.

(ક) અહિંની સ્થાનિક સરકાર આની સમતોદવારો શાહી સરકારને એમ સમજાવવા માગે છે કે હિંદી કાસ હવે સમજી ગઈ છે અને કાંગ્રી-મતદારોને પસંદ કરે છે. સ્થાનિક સરકારની આ પોલીસીને આગળ વધતી અટકાવવી.

ઈશરદાસ,
જાન. જનરલ સેક્રટરી.

સોગનનામું.

કોંગ્રેસે અખાત્યાર કરેલી નીતિ અનુસાર ઉપરની બાહોરાત કાલમાં આવેલી હોમ તે અનુસાર અધી કેનીયા કોલોનીની ધારાસભાના ઉમેદવારો તા. ૯ મે ૧૯૩૧ના રોજ અત્યાર ચુંટણીમાં એ ચુંટણીએ તે સોગન લઈએ છીએ કે:—

અમે ધારાસભામાં સોગન લખશું નહિ, કે કોંગ્રેસ ખુદસી બેઠકમાં બાહોર કરે નહિ ત્યાં સુધી ધારાસભામાં જઈશું નહિ કે તેના કામકાજમાં ભાગ લઈશું નહિ. અમે કોંગ્રેસના નિર્ણયને હરકોઈ સંયોગમાં માન આપીશું.

અમદાવ વાહીદ
હાકમ સીંગ
ધનવંતરીંગ
ડા. એ. યુ. શેઠ
આર. ડી. દોરી

WHAT THE CONGRESS FIVE STAND FOR.

A DECLARATION OF POLICY.

In accordance with the policy decided upon by the Standing Committee in its resolution No. 2 passed on the 14th March 1931, the Congress after mature deliberation has decided to send their 5 members on the Legislative Council of the Colony and supplements this decision with the following declaration:

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The Congress party has always held as its principle that the people's voice should be predominant, and in order to test public opinion, it has challenged the rival party and the local Government to get a referendum at the polling booth

4. By entering the Municipal Council, the rival party has defied the will of the people and established a precedent for council entry without previous informal elections-which was always the practice of the community.

5. From the correspondence exchanged between the rival party and the Government, it is clear that in the absence of candidates for election, the rival party's five men will be nominated by the Government. Congressmen object to this method and in seeking election, the five candidates do so with the following objects:

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ISHER DASS,
Hon. General Secretary.

PLEDGE.

In accordance with the foregoing declaration of policy adopted by the Congress, we the undersigned candidates for the Legislative Council of Kenya Colony, if elected in coming election to be held on 9th May 1931, pledge on our honour that:-

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Abdul Wahid,
Hakam Singh,
Dhanwant Singh,
Dr. A. U. Seth,
R. D. Doshi.

1232

C. O.

Mr. Allen 17/6
Mr. Tomlinson 18/6/31

X.17060/31 Kenya

O. D.
R 20 JUN
B 20 7

Mr.
Mr. Tomlinson
Sir G. Bottomley 18.6
Sir J. Shuckburgh
Sir G. Grindle

~~S.P.~~
For Mr. Pardo's realization

+ Permt. U.S. of S. 196/31
Parly. U.S. of S. 196/31
Secretary of State

20 June, 1931.

DRAFT. India

M. J. CLAUSON, ESQ.

India Office

Dear Sir

I have submitted your

letter to ~~Lord~~ of the

9th June regarding the recent Kenya

Indian

Elections has been submitted to

Lord Passfield who instructs me to

say that while the C.O. will of

course continue to keep the India

Office informed on important matters

affecting Indians in Kenya he feels

that it must be left to his

discretion to decide in any

particular case whether this should

be done officially or semi-officially

and whether the terms or only the

substance of his correspondence

with

1232

C. O.

Mr. Allen 176
Mr. Salunson 186/72

X.17060/31 Kenya.

Mr.
Mrs. Tomlinson.

~~SPD~~

O. O.
20 JUN
1931

Sir G. Bottomley. 18-6
Sir J. Shuckburgh.
Sir G. Grindale.

For Mr. Pardo's signature

Permt. U.S. of S. 19.6.31
Parly. U.S. of S. 19.6.31

Secretary of State

20 June, 1931.

DRAFT. Paris

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India Office

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with the Governor should be communicated.

In the case in point Lord Passfield thought it desirable to ascertain Mr. Benn's views before coming to a decision. He preferred to do so by a personal letter, and also to communicate the decision in the same way.

Lord Passfield quite appreciates the desirability of informing the Govt. of India of that decision but he feels that ~~the terms~~ of his letter to Mr. Benn of the 20th May affords all the material necessary for the purpose.

Yours sincerely

For me
L. S. S. L.

2

3

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~~of~~ his letter to Mr. Benn of the 20th May
affords all the material necessary for the
purpose.

James Buchanan

James Buchanan



R

India Office,
Whitehall.

9th June 1931.

Dear Boyd,

Would you kindly refer to the correspondence about the Kenya Elections ending with Lord Passfield's letter to Mr. Benn dated ²⁰25th May? The Secretary of State had to consult the Government of India officially by secret telegram on this matter before replying to Lord Passfield's original letter, and it is naturally desirable to inform the Government of India of the result. Would it be possible, for this purpose, to let the India Office have officially the subsequent telegrams exchanged with the Government of Kenya so that they can be sent to the Government of India for their information?

Yours sincerely,

L.B. Boyd, Esq.

Mr. Parkinson.

I spoke to Sir C. Bottomley about this. I am saying nothing to Mr. Silver, but if he reminds, the idea is that he should be told that our view is on the lines of Sir S. Wilson's minute, but we should have to get the Secretary of State's concurrence in that view, and if Mr. Silver wants to press it, the matter should be taken up between Private Secretaries.

Place in
minutes
(this)

Stratton

28. 5. 31

75 2
A.C.C.P. 21.5.31.
Sir C. Bottomley. 22.5.31. at once.

(Sir S. Wilson has agreed to the substance of this).

X. 17060/31. Kenya.

PARAPHRASE TELEGRAM from the Secretary of State for the Colonies to the Governor of Kenya.

(Sent 8.0 p.m. 22nd May. 1931)

Important.

No. 172. Secret. Your telegram of 22nd May Secret. I am obliged to you for sending me the further information which you have obtained but I do not feel that I can vary now the decision which I conveyed in my telegram of 19th May. If the Indians elected refuse to cooperate as a result of the present election it will be open to you to consider a dissolution of the Council as a whole with a view to further general election on the new register and I feel still ^{that} in all the circumstances the wisest thing is to allow present elections to take their course.

PARAPHRASE TELEGRAM from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 22nd May, 1931.

(Received Colonial Office 12.16 p.m. 22nd May, 1931)

Important.

Secret. Unnumbered. Since receipt of your telegram of the 19th May Secret No. 164 I have received two communications one on behalf of six candidates standing at forthcoming selection the other on behalf of Indian National Congress emphasising the importance in view of the admitted defects in the existing roll which have already been communicated to you of having an election on a new roll. The former even goes so far as to threaten moving for Mandamus before Supreme Court on the ground of irregularities in the existing roll as until electoral roll has been revised and completed they consider it futile to hold election. While I am fully sensible of the grave considerations which have actuated your decision I feel that if I did not give you this further information at once I should be failing in my duty as in my view it gives the strongest corroboration to the opinion formed locally on the best information available that contrary to Sastri's view the Indian community is prepared to cooperate provided it can be satisfied that it is being asked to do so on a fair and representative basis. It is no doubt true that they would prefer election postponed to the end of the year in the hope that by that time the question of common roll would have been settled by Joint

Committee

No. 26

Amos. del. 22/5/31

Committee but I have every reason to believe that they would accept, indeed they are committed, to an election at an earlier date which should in best interests of all communities here be held at earliest possible date for reasons I have already explained particularly in connection with Select Committee on Estimates.

C. O.

Mr. Allen ¹⁸⁷⁵

X.17060/31 Kenya.

Mr. ~~Lawson~~ ^{1875/27}

Mr.

Mr. Tomlinson.

Private and Confidential.

Mr. C. Bottomley. 18.6

Sir J. Stuckburgh.

Downing Street,

Sir G. Grindall.

For Sof's signature.

20 May, 1931.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

My dear Benn,

DRAFT.

(19B)

Rt. Hon. W. Wedgwood Benn,
D.S.O., D.F.C., M.P.

Since I received your letter of the 5th May I have been in further consultation with the Governor of Kenya, and I am now writing to say that I have decided that having regard to all the circumstances, the wisest course will be to refrain from taking any steps to limit the term of the Indians who may be elected at the forthcoming polls in Kenya. I have so informed the Governor by telegraph, and in doing so, I have pointed out to him that if, as has been suggested, the Indians now elected do not sit on the Council but use their position solely to block co-operation, it will be open to him to consider the advisability of dissolving the whole Council when the new register comes into operation.

Yours very truly,
(Signed) PASSEFIELD

2 drafts.

17060/31.

26

Paraphrase telegram from the Secretary of State for the Colonies to the Governor of Kenya.

(Sent 4.15 p.m., 19th May, 1931.)

Immediate.
No.164. Secret.

23

Your telegram No.155. Secret. After further consideration and careful review of all the circumstances I have come to the conclusion that wisest course would be to refrain from taking any steps at forthcoming polls to limit term of Indians elected. In event of opposition from any part of Indian community it would be difficult to rebut accusation of interference by Government and to defend action based on assumption that Indians now to be elected will be unsatisfactory either as representatives of Indian community or as members of Council. If as suggested in your telegram No.117 Indians to be elected now do not sit on Council but use their position solely to block co-operation it will be open to you to consider advisability of dissolving Council as a whole when the new register comes into operation. This course would avoid prejudging issue of forthcoming election and you would be able in deciding whether or not to dissolve to do so in the light of actual circumstances. I realise that you were actuated in making your proposal solely by a desire to take the course which you consider to be in the best interests of the Colony as a whole. I was myself disposed at first to think that action might be taken

taken on the lines which you suggested and I hope you will accept my assurance that it is only with great reluctance that I have felt obliged to take a different view. I wish also to explain reference to Sastri in my telegram No.148. His views were sought originally by the Secretary of State for India at the suggestion of the Government of India and he sounded representatives of Indian opinion now in London to give evidence before the Joint Committee. Subsequently informal discussion took place between him and Parliamentary Under Secretary of State at Colonial Office and remarks in my telegram were based on views then expressed by Sastri.

10

PARAPHRASE TELEGRAM from the Governor of Kenya to the
Secretary of State for the Colonies.

Dated 10th May, 1931. Received in the Colonial Office
at 11.9 a.m. on 11th May.

No. 156. Secret.

20.20

Your telegram No. 148 secret. I am unaware what views
Sastri holds as to policy of Indian co-operation in Kenya or
what are his sources of information as to local Indian
opinion. I am however anxious that I should have full
representation of Elected Members of each race at forthcoming
meetings of Legislative Council and that such Members should
be present regularly throughout debates. The Indian
Congress have definitely committed themselves to the
proposition that a fully-compiled voters' roll ~~will result~~
in the proper representation of opinion of Indians which
it is admitted that present state roll does not do. I find
it difficult to resist on any reasonable grounds this
argument for a fair trial of Indian opinion. The
alternative would be the postponement of the Indian
Elections but I attach much importance to clinching the
proposition that an immediate election to which both non
co-operators and co-operators are now committed should be
so held. On the legal side I suggest local legislation
declaring that notwithstanding Chapter 24, Section 14,
Indian Members elected this month shall hold office till a
proclaimed date not later than 31st August and thereafter
further election to be held as early as possible. Existing
register will be published as early as possible and full

opportunity

Amos tel. reply 19/5/31

opportunity will be given before further election is held for all eligible voters to get on roll. If you approve of proposed action I will introduce necessary legislation as early as possible after June 2nd when Council meets. I agree that no amendment of Letters Patent or Royal Instructions would be strictly necessary then.

THE INDIAN ASSOCIATION.

P.O. Box No. 129.

MOMBASA, 5th. April 1931.

1766/31
The Rt. Hon. Lord Passfield,

The Secretary of State for the Colonies

LONDON.

May it please your Lordship,

RECEIVED
4 MAY 1931
COL. OFFICE

The Managing Committee of the Indian Association, Mombasa, beg leave to draw your Lordship's attention to the discourteous and highbanded manner in which the local Government have treated certain communications and representations recently made by us in regard to matters concerning the well-being of the Indian Community of Kenya. These complaints formed the subject matter of a cablegram which we sent to your Lordship on March 16th last, an per copy attached. I am therefore directed by the Managing Committee to place before your Lordship the following facts in explanation of the cablegram referred to above, and in the earnest hope that your Lordship will give the matter serious consideration.

As your Lordship is aware, the Indians in Kenya had decided a few years ago to boycott the Legislative and Municipal Councils as a protest against the continuance of the communal (racial) system of franchise. This decision formed the subject of a special resolution unanimously passed at successive sessions of the Eastern Africa Indian National Congress since 1927. From time to time the local Government endeavoured to 'induce' the Indian Community to abandon their policy of the boycott of the Councils and these efforts reached their climax towards the middle of 1930 when, probably at the suggestion of the then Governor, Sir Edward Grigg, the Commissioner of Lands, Settlement and Local self-government made it his business to call upon certain Indians in Nairobi. He actually called upon them at their offices in the town and had protracted conversations the outcome of which appears to be that he got a definite assurance from two or three Indian gentlemen that they would very soon arrange to send Indian representatives to the Legislative a

and Municipal Councils with the acquiescence of the Congress if possible, and without if necessary. The Government, on their part, seem to have assured these people that they would nominate any persons whom they might suggest, and would pay no heed to any protests which may be made by the Indian Community.

The last session of the Congress was held in Nairobi during the second week of January 1931, and the Indian gentlemen who had already given undertaking to the Government that they would commence participation in the Councils at an early date, found that they would not be able to induce the Congress to lift the boycott of Councils as the general feeling was that the boycott should be continued till a change in the system of franchise is effected.

Finding that the Congress would not be amenable to their views, these few gentlemen with the help of a few hooligans started a riot at the Congress pandal and broke up the session. After this, the small minority group had the audacity to declare itself the "E.A. Indian National Congress" and proceeded to appoint a President and other office bearers and what is said to be the "Congress Executive", at a private meeting held in a private residence in Nairobi. What is more, for reasons which may easily be imagined, the local Government began to give official recognition and countenance to this newly constituted bogus Congress Executive, and this is causing no end of resentment and bitterness throughout the country. The old and properly constituted Congress Executive at Nairobi is disowned by the Government and when its President ^{and} officers asked for an interview with H.E. the Governor their request was refused. And soon after this, ignoring the protests of the Indian Community all over the country, the local Government have nominated certain Indians to ~~on~~ the Municipal Councils at Nairobi and Mombasa in accordance with the recommendations made to them by the bogus "Executive".

We are aware of the fact that the local Government are empowered to nominate any Indians they liked on the Municipal Councils although in previous years informal elections were held

held and successful candidates were automatically nominated. If certain Indians were forthcoming for nomination on the Municipal Councils, the Government were absolutely within their rights to nominate them, and the Indian Community can have no quarrel with the Government on that score, but our submission is that the Government are not justified in declaring that the men whom they had so nominated were recommended to them by the "Congress Executive". By accepted usage the word "Congress" has come to mean the accredited representative body of Indian public opinion in the country, and we submit that it is quite improper for the Government to magnify for their own purposes the importance and the representative character of a handful of private individuals merely because they had agreed to co-operate on the Councils.

It is not as though the local Government are doing what they are doing in the bona fide belief that the party whom they are officially supporting has a majority following of the Community and is, therefore, entitled to call itself the "Congress" even though it may not have been properly constituted. They know for a fact that the so-called "Executive" on whose recommendations they had nominated certain Indians on the Municipal Councils dare not convene a public meeting and secure a mandate for the Council Entry. From the reports submitted to the Government by the Police and C.I.D. Officials who are in the know of the things, the former must be aware of the fact that the meetings of the pro-council men are always held behind closed doors with a bare few hundred men while the meetings held to demonstrate against the Council entry are always held in ^{the} open and after giving due public notice and are always attended by thousands of people and unanimous resolutions passed.

In these circumstances, our Managing Committee wishes your Lordship to appreciate the fact that the Indian Community in Kenya are as firm as ever in their demand for the introduction of a Common Voters Roll and that the few mistaken persons who are now ^{sitting} ~~sitting~~ on the Municipal Councils both at Nairobi and Mombasa by nomination have done so against the wishes

wishes of the Community and with a foolish desire to please the officials at the Secretariat. Now the introduction of a system of a Common Voters Roll is the only remedy for the many evils to which the body politic of Kenya is subject, has already been dealt with fully in several representations made previously to the Imperial Government.

The Indian Association of Mombasa is the only representative body of Indian public opinion at the Coast with which the local Government have ~~dealt~~ always dealt in all matters concerning the Indian Community. Till as late as 12th February the date of arrival here of His Excellency Sir Joseph Byrne, the Government did recognize our Managing Committee in as much as they had dealt through us in regard to messages of welcome on behalf of the Indian Community as well as His Excellency's reply thereto, and ~~the~~ at the public luncheon given here in honour of His Excellency's ~~honour~~ arrival, the writer was invited to attend that function in his capacity of the President of the Indian Association, but simply because we wrote soon after to the Government that they should take no notice of any recommendations made to them by unauthorized individuals and that we were the only legitimate body empowered to communicate with them on such matters, they decided forthwith to ignore our Association. We submit to your Lordship that ~~there~~ ^{this} is a very drastic and highhanded procedure for the local Government to adopt.

The cablegram of which a copy is attached hereto was originally sent to the Hon'ble Colonial Secretary at Nairobi on March 3rd 1931 for favour of transmission to your Lordship. Uptill now it has been ^{the} _Linvariable practice of the Secretariat to first forward all such cables at our request and then collect the cost from us, but in this particular instance they evidently wished to delay the transmission of the message as much as possible. Accordingly, the Hon'ble Colonial Secretary wrote to us from Nairobi on March 9th informing us that the transmission of the cable would cost Shgs.131/10 and on receipt of that sum the request contained in our letter will be dealt with. We immediately remitted

Secretary received on March 10th, but in spite of this we understood that the cable was only sent to your Lordship on March 16th.

Prior to his departure from England, the Governor-elect, Sir Joseph Byrne, had stated that he was coming over to this country with an open mind and that he would study things for himself at first hand on arrival here. When Sir Joseph arrived in Mombasa he only stayed here for a few hours and could not in that short space of time naturally make himself acquainted with the affairs of the Indians or any other Community. From the outset it was clear to us that the older officials at the Secretariat were stampeding His Excellency into giving his sanction for the nomination of certain Indians on the Municipal Councils, and that His Excellency did not know the actual state of affairs. Our Managing Committee felt, therefore, that some of us should go to Nairobi and wait upon His Excellency and explain things. Accordingly we wired (reply paid) on March 2nd last to the Private Secretary of the Governor as follows:-

- " Indian Association Mombasa anxious that small
- " deputation wait upon His Excellency to discuss
- " important questions concerning Community. Could His
- " Excellency kindly grant us interview on 4th instant
- " prior to reported departure interior on long tour.
- " Kindly confirm to enable the members of the deputation
- " to leave for Nairobi by to-morrow's train "

To which we received the following reply from the District Commissioner, Mombasa on the following day:-

- "I am directed to inform you that His Excellency regrets
- "that he is unable to receive the deputation proposed
- "by you in your telegram of March 2nd 1931 "

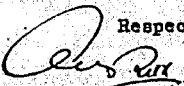
In conclusion we submit that it is obviously unfair and unjust for the local Government to act in the way they have done. As we have said, if there are certain Indians who wish to address the Municipal Councils against the mandate of the Congress, the

the Government are entitled to nominate them. But it certainly is very wrong for them to be a party to uphold the absurd claims of a small number of people, and to proclaim to the Imperial Government and to the world, that not only they have nominated certain Indians on the Municipal Councils but that the names of those Indians had been recommended to the Government by the "Congress".

The apprehensions referred to in our cable that even in the matter of selecting witnesses to the Joint Parliamentary Committee the local Government would not respect Indian public opinion have proved true and they have selected Messrs. A.B. Patel and V.V. Phadake, which does not meet with the wishes of the Community. For your Lordship's information we may say that the first named gentleman (Mr. A.B. Patel) was known to have had a private interview with Sir Samuel Wilson at Mombasa and assured him that the Indian Community would be prepared to resume participation in the Councils by nomination provided the Government gave certain assurances and this action of his was very much resented by the Community and was openly denounced by the Congress. As regards the second gentleman (Mr. V.V. Phadake) he has not taken any part in the politics of the Community for several years past. To be brief neither of these two gentlemen enjoys the confidence of the Indian Community of Kenya.

We hope that your Lordship will instruct the Government of Kenya not to resort to these questionable and underhand and undignified methods of political chicanery.

Respectfully yours,



A. U. SHETH.

President,
The Indian Association, Mombasa.

Copy to:-
The Hon'ble Colonial Secretary
Nairobi,
For his information.

Copy of the cable.

Lord Passfield

London

Indian Community long ago decided boycott Municipal Legislative Councils pending introduction Common Roll and Secretariat Nairobi recently acceded wishes small minority group nominated Indians Nairobi Mombasa Municipalities and Our Association only recognized legitimate body make such recommendations we wrote Secretariat 12th ultimo suggesting that no names submitted by un authorized persons be considered and letter still unacknowledged and meantime nominations made without reference our Association and great indignation felt Indian Community Government should encourage recognized deal with mushroom bodies in preference old established properly constituted Congress Nairobi and Indian Association Mombasa which command confidence overwhelming majority Indians and Government also likely discard suggestions regarding selection witnesses Joint Parliamentary Committee and show favouritism to unrepresentative persons and Pray intervene

A.U.Sheth

President, Indian Association, Mombasa.

89/23

C. O.

Mr. Parkingson. 257a/17

Mr.
Mr.
Mr. Tomlinson.

For Mr. Boyd's sig.

DOWNING STREET,

1 May
April, 1931.

Sir C. Bottomley. 25-4

Sir J. Shuckburgh.

Sir G. Grindle.

Permt. U.S. of S. *[Handwritten initials]*

Parly. U.S. of S.

Secretary of State. *Cons on 1/5*

R 29 APR
D 1/11/31

Shan. Mrs. Mather,

DRAFT.

JAMES MAXTON, ESQ., M.P.

[Handwritten initials]

[Handwritten: "Hilwaic"]

I am desired by Lord Passfield to acknowledge the receipt of your letter of the 22nd April in which you forwarded to him a letter from Mr. *Isher Dass* ~~Isher Dass~~ of the 23rd March, with correspondence regarding the nomination of Indians to the Nairobi Municipality and the selection of Indians from Kenya to give evidence before the Joint Select Committee on East-Africa. ^{The} This correspondence ^{on these subjects} has already reached Lord Passfield, and replies have been sent through the Governor of Kenya. The Secretary of State ^{has felt} does not feel able to intervene so far as concerns the first point mentioned; while, ^{on} the second point,

he

he has sent a message, at the request
of the Chairman of the Joint Select
Committee, stating that the Committee
are not prepared to intervene, but
that they are giving full consideration
to any written statements from
persons desiring to give evidence,
and that if a written statement is
submitted it will be carefully
considered, provided that it is
directed towards the ~~proposed~~ *proposals* for
closing down which is the matter
before the Committee.

[No. 109 vi 2 Good/M/21]
w/c/c.

Sp. N. [unclear]
(Sd.) G. B. Boyd.

R

17000/3/1
XEA

22

22nd April, 1931.

RECEIVED
24 APR 1931
COL. OFFICE

Rt. Hon. Lord Passfield,
Secretary of State for the Colonies.

Dear Lord Passfield,

I have had a complaint from the Eastern Africa Indian National Congress in Nairobi, setting forth a grievance with reference to the nomination of Indians on the Nairobi Municipality and the selection of Indian witnesses to the Joint Parliamentary Committee. I would be very glad if you will look into the matter of their complaint.

Yours truly,

Jashminton

Ans of 1/3/31

91
The Eastern Africa Indian National Congress.

Executive Committee's Office,

Nairobi, 23rd March, 1931.

James Maxton, Esq.,
C/o House of Commons,
London.

Dear Sir,

I am directed by the Executive of the E.A.I.N. Congress to forward to you the confirmation copies of the cablegram of 16th instant, together with the correspondence passed between the Local Government and my Executive on the subject of nomination of Indians on Nairobi Municipality and selection of Indian witnesses to Joint Parliamentary Committee, with a request that you will be kind enough to raise the question in the House of Commons.

Thanking you in anticipation,

I am, etc.,

(Sd.) ISHER DASS

Hon. General Secretary.

11

The Eastern Africa Indian National Congress.

Executive Committee's Office,

Nairobi, 16th March, 1931.

The Hon. The Colonial Secretary,
Secretariat, Nairobi.

Sir,

I am directed by the Executive Committee of the E.A.I.N Congress to acknowledge receipt of your letter No.S/D/GMN.2/13/11 dated 12th inst. and to express my committee's regret that you should have thought it proper to accord your recognition to a group of people who style themselves as the "1931 Executive of the E.A.I.N. Congress", in spite of the fact that several communications have been sent to you informing you of the true position of the parties concerned. My Executive note with disappointment that you do not wish to grant it an interview on the ground that the said "1931 Executive Committee" has submitted you two names for the Indian Delegates to the Joint Parliamentary Committee, which names it would appear have met with your approval. In view of your persistent attitude to ignore representations and to be guided in matters concerning the Indian Community by persons whose representative character the community and my Executive have always challenged, as they do it now, my Executive had no alternative left but to communicate

directly

directly with the Colonial Office placing before His Majesty's Government our case as well as it could be done in a telegraphic message a copy of which has been forwarded to you for your information.

With reference to a point raised in your letter, my Executive directs me to observe that your statement that "1931 Executive Committee of the B.A.I.N. Congress" is not borne out by actual facts. In my letter of the 23rd January which was acknowledged by your office on the 26th, you were informed by me of two Executive bodies, and my committee have reasons to believe that you were in communication with the "1931 Committee" earlier than the above date, on the 14th of February, the second day of the arrival of His Excellency the Governor in Nairobi, the appointment of Indians on the local bodies of Nairobi and Mombasa was approved on the recommendations of the said "1931 Committee" deliberately ignoring our representations and past procedures in the matter of such appointments. On the 17th of February you addressed my Executive a letter in which a reply was sent by me, on the 19th of February. You did not, on receipt of the said letter of the 19th, inform me that your letter of the 17th was not intended for my Executive, subsequently, on the 25th of February, I sent you a further communication informing you that the name of the two witnesses would be submitted to you

94
on the 17th March. You did not, even then, inform me that your letter was sent to us by mistake.

In the meantime, on the 23rd of February, I forwarded you a telegram for transmission to the Colonial Office on the subject of the appointment of the Indian Municipal Councillors against which my Executive had recorded its protest. No notice was taken of my request until the 4th instant, when I sent you a reminder to which you replied on the 5th asking for the cost of the telegram, a practice which your office had not adopted until then. On receipt of the amount sent to you, you wrote to me on the 12th inst. that the telegram had been despatched. By a strange coincidence, your intimation to me that your letter of the 17th February was not intended for my Executive, was dated the same 12th March! Under the circumstances, my Executive are driven to the conclusion that your letter of the 12th instant, was the result of an afterthought and that you had not, until the receipt of our draft telegram to the Colonial Office, decided to disown my Executive.

My Executive beg leave to suggest to you that the least that would be expected from a Government under the existing circumstances, and failing a reconciliation between the two parties, was that an opportunity would be afforded

to

to either party to present its case to the Joint Parliamentary Committee by means of the appointment of one witness from each side. As it is, you have helped to intensify the division in the community and have compelled by executive to adopt such measures as are available to it to agitate for redress to be obtained for its grievances by all constitutional means.

I am to add that, in the interests of the community, my executive have decided to release this letter for publication in the local and foreign press, together with the relative correspondence.

I have, etc.,

(Sd.) ISHER DASS.

Hon. General Secretary.

East African Indian National Congress.

96
The Eastern Africa Indian National Congress,

Executive Committee's Office,

Nairobi. 23rd February, 1931.

CONFIRMATION COPY OF THE TELEGRAM SENT THROUGH LOCAL
GOVERNMENT ON 23rd February 1931.

COLONIAL OFFICE LONDON.

"EXECUTIVE EAST AFRICAN INDIAN NATIONAL CONGRESS RESPECTFULLY
LAYS PROTEST AGAINST LOCAL GOVERNMENT NOMINATING SEVEN INDIANS
NAIROBI MUNICIPALITY AGAINST WISHES MAJORITY COMMUNITY STOP
ELEVENTH JANUARY CONGRESS SESSION DISSOLVED AFTER DISORDER
SMALL GROUP DISSENTIENTS FORMED THEMSELVES INTO COMMITTEE
STYLING EXECUTIVE CONGRESS AND BEGAN NEGOTIATIONS WITH
GOVERNMENT STOP 1st FEBRUARY SAME BODY FORMED RIVAL INDIAN
ASSOCIATION OPPOSITION TO ONE ALREADY EXISTING AND SUBMITTED
GOVERNMENT SEVEN NAMES FOR NAIROBI MUNICIPALITY STOP NAIROBI
INDIAN ASSOCIATION ALSO SUBMITTED EQUAL NUMBER ASKING INFORMAL
ELECTION UNDER GOVERNMENT SUPERVISION STOP INTERVIEW REQUESTED
NOT GRANTED STOP MEANTIME GOVERNMENT OVERLOOKING PRECEDENCE
INFORMAL ELECTION SIDED WITH AND NOMINATED RIVAL MINORITY
PARTY MEMBERS STOP MY EXECUTIVE FEARS GOVERNMENT LIKELY ADOPT
SUCH UNFAIR METHODS COMING LEGISLATIVE ELECTION AND SELECTION
INDIAN

INDIAN WITNESSES JOINT COMMITTEE STOP EXECUTIVE CONSIDERS
GOVERNMENTS INTERVENTION FAVOUR MINORITY PARTY HIGHLY
PREJUDICIAL EXISTENCE INDIAN POLITICAL INSTITUTIONS STOP
REQUEST YOUR INTERVENTION.

INDIAN CONGRESS

ISHER DASS

Hon. General Secretary.
E.A.I.N. Congress.

The Eastern Africa Indian National Congress.

Executive Committee's Office,

Nairobi. 16th March, 1931.

By Kenya Radio.

COLONIAL OFFICE

INDIA OFFICE

JAMES MAXTON COMMONS

CHAIRMAN JOINT PARLIAMENTARY COMMITTEE CARE COLONIAL OFFICE

FENNER BROCKWAY COMMONS

COLONEL WEDGWOOD COMMONS

MANCHESTER GUARDIAN

TIMES

ORMSBY GORE COMMONS.

REFERENCE OUR TELEGRAM PROTESTING LOCAL GOVERNMENT'S
NOMINATION INDIANS MUNICIPALITIES AND EXPRESSING FEARS GOVERN-
MENT'S UNFAIR METHODS APPOINTMENT INDIAN DELEGATES JOINT
COMMITTEE STOP EXECUTIVE CONGRESS REITERATES PROTEST
GOVERNMENT PERSISTENTLY IGNORING OUR REPRESENTATIONS STOP
OUR LAST TELEGRAM COLONIAL OFFICE DELIVERED SECRETARIAT
TWENTYTHIRD FEBRUARY OFFERING DEFRAID EXPENSES STOP NINTH
MARCH RECEIVED ACKNOWLEDGEMENT AND COST MESSAGE PAID STOP
INTERVIEW REQUESTED REFUSED STOP UNDERSTAND SELECTION TWO
DELEGATES MADE SUGGESTION MINORITY PARTY STOP GOVERNMENT
NOMINEE UNREPRESENTATIVE INDIAN COMMUNITY STOP PRAY INTER-
VENTION STOP LOCAL GOVERNMENT SUPPLIED COPY THIS MESSAGE.

INDIAN CONGRESS BOX 186.

ISHER DASS

THE SECRETARIAT,
NAIROBI, KENYA.

No. S/D/CMH. 2/13/11.

10th March, 1931.
12

P.O. Box 621.

Sir,

I have the honour to acknowledge the receipt of your letters of the 19th and 25th February 1931, and to say that my letter of the 17th February 1931, was intended for the 1931 Executive Committee of the East African Indian National Congress, which is recognised by Government as the Executive of the Congress. The names of the two Indian witnesses for the Joint Committee have already been put forward by this Committee, and therefore no useful purpose would be served by my granting you the interview asked for in your letter of the 25th February.

I have, etc.,

(Sd.) H.M.M. MOORE.

Colonial Secretary.

11

ISHER DASS ESQ.;
P.O. Box 186,
Nairobi.

No. S/D/SMM. 2/13/vol.11/54.

P.O. BOX No.621.

17th February, 1931.

Sir,

I am directed to inform you that the Joint Parliamentary Committee on Closer Union has agreed to the departure of Kenya European witnesses being postponed until 18th April or if necessary, to the 2nd May.

If, in the circumstances, Kenya Indian witnesses do not wish to sail until the same date, the Committee is agreeable to their departure being similarly postponed.

2. I should be glad if you would inform me as soon as possible of the personnel of the Indian witnesses and of the arrangements they desire to be made in respect of their passages to England.

I have, etc.,

(Sd.) G.N. SANFORD

For Colonial Secretary.

The Hon. General Secretary,
East African Indian National Congress.
P.O. Box 186, Nairobi.

MOHAGA, 8th, April 1931.

101

Handwritten signature/initials

R

Kya

The Rt.Hon.Lord Passfield,

The Secretary of State for the Colonies,

LONDON.

RECEIVED
29 APR 1931
COL. OFFICE

May it please your Lordship,

The Managing Committee of the Indian Association, Mombasa, beg leave to draw your Lordship's attention to the discourteous and highhanded manner in which the local Government have treated certain communications and representations recently made by us in regard to matters concerning the well-being of the Indian Community of Kenya. These complaints formed the subject matter of a cablegram which we sent to your Lordship on March 16th last, as per copy attached. I am therefore directed by the Managing Committee to place before your Lordship the following facts in explanation of the cablegram referred to above, and in the earnest hope that your Lordship will give the matter serious consideration.

As your Lordship is aware, the Indians in Kenya had decided a few years ago to boycott the Legislative and Municipal Councils as a protest against the continuance of the communal (racial) system of franchise. This decision formed the subject of a special resolution unanimously passed at successive sessions of the Eastern Africa Indian National Congress since 1927. From time to time the local Government endeavoured to 'induce' the Indian Community to abandon their policy of the boycott of the Councils and these efforts reached their climax towards the middle of 1930 when, probably at the suggestion of the then Governor, Sir Edward Grigg, the Commissioner of Lands, Settlement and Local self-government made it his business to call upon certain Indians in Nairobi. He actually called upon them at their offices in the town and had protracted conversations the outcome of which appears to be that he got a definite assurance from two or three Indian gentlemen that they would very soon arrange to send Indian representatives to the Legislative and

and Municipal Councils with the acquiescence of the Congress if possible, and without if necessary. The Government, on their part, must have assured these people that they would nominate any persons whom they might suggest, and would pay no heed to any protests which may be made by the Indian Community.

The last session of the Congress was held in Nairobi during the second week of January 1951, and the Indian gentlemen who had already given undertaking to the Government that they would commence participation in the Councils at an early date, found that they would not be able to induce the Congress to lift the boycott of Councils as the general feeling was that the boycott should be continued till a change in the system of franchise is effected.

Finding that the Congress would not be amenable to their views, these few gentlemen with the help of a few hooligans started a riot at the Congress pandal and broke up the session. After this, the small minority group had the audacity to declare itself the "E.A. Indian National Congress" and proceeded to appoint a President and other office bearers and what is said to be the "Congress Executive", at a private meeting held in a private residence in Nairobi. What is more, for reasons which may easily be imagined, the local Government began to give official recognition and countenance to this newly constituted bogus Congress Executive, and this is causing no end of resentment and bitterness throughout the country. The old and properly constituted Congress Executive at Nairobi is disowned by the Government and when its President ^{and} officers asked for an interview with H.E. the Governor their request was refused. And soon after this, ignoring the protests of the Indian Community all over the country, the local Government have nominated certain Indians ^{on} to the Municipal Councils at Nairobi and Embasa in accordance with the recommendations made to them by the bogus "Executive".

We are aware of the fact that the local Government are empowered to nominate any Indians they liked on the Municipal Councils although in previous years informal elections were held

2.
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held and successful candidates were automatically nominated. If ^{the} certain Indians were forthcoming for nomination on the Municipal Councils, the Government were absolutely within their rights to nominate them, and the Indian Community can have no quarrel with the Government on that score, but our submission is that the Government are not justified in declaring that the men whom they had so nominated were recommended to them by the "Congress Executive". By asserted usage the word "Congress" has come to mean the accredited representative body of Indian public opinion in the country, and we submit that it is quite improper for the Government to magnify for their own purposes the importance and the representative character of a handful of private individuals merely because they had agreed to co-operate on the Councils.

It is not as though the local Government are doing what they are doing in the bona fide belief that the party whom they are officially supporting has a majority following of the community and is, therefore, entitled to call itself the "Congress" even though it may not have been properly constituted. They knew for a fact that the so-called "Executive" on whose recommendations they had nominated certain Indians on the Municipal Councils dare not convene a public meeting and secure a mandate for the Council Entry. From the reports submitted to the Government by the Police and C.I.D. Officials who are in the know of the things, the former must be aware of the fact that the meetings of the pro-council men are always held behind closed doors with a bare few hundred men while the meetings held to demonstrate against the Council entry are always held in ^{the} open and after giving due public notice and are always attended by thousands of people and unanimous resolutions passed.

In these circumstances, our Managing Committee wishes your Lordship to appreciate the fact that the Indian Community in Kenya are as firm as ever in their demand for the introduction of a Common Voters Roll and that the few mistaken persons who are now ^{acting} ~~acting~~ on the Municipal Councils both at Nairobi and Mombasa by nomination have done so against the wishes

wishes of the Community and with a foolish desire to please the officials at the Secretariat. Now the introduction of a system of a Common Voters Roll is the only remedy for the many evils to which the body politic of Kenya is subject, has already been dealt with fully in several representations made previously to the Imperial Government.

The Indian Association of Mombasa is the only representative body of Indian public opinion at the Coast with which the local Government have ~~dealt~~ always dealt in all matters concerning the Indian Community. Till as late as 12th February the date of arrival here of His Excellency Sir Joseph Byrne, the Government did recognise our Managing Committee in as much as they had dealt through us in regard to messages of welcome on behalf of the Indian Community as well as His Excellency's reply thereto, and ~~the~~ at the public luncheon given here in honour of His Excellency's recent arrival, the writer was invited to attend that function in his capacity of the President of the Indian Association, but simply because we wrote soon after to the Government that they should take no notice of any recommendations made to them by unauthorised individuals and that we were the only legitimate body empowered to communicate with them on such matters, they decided forthwith to ignore our Association. We submit to ^{this} your Lordship that ~~this~~ is a very drastic and highhanded procedure for the local Government to adopt.

The cablegram of which a copy is attached hereto was originally sent to the Hon'ble Colonial Secretary at Nairobi on March 3rd 1931 for favour of transmission to your Lordship. ^{the} ~~Uptill~~ now it has been ~~an~~variable practice of the Secretariat to first forward all such cables at our request and then collect the cost from us, but in this particular instance they evidently wished to delay the transmission of the message as much as possible. Accordingly, the Hon'ble Colonial Secretary wrote to us from Nairobi on March 9th informing us that the transmission of the cable would cost Shgs.151/10 and on receipt of that sum the request contained in our letter will be dealt with. We immediately remitted

remitted the amount to Nairobi (cash) which the Hon'ble Colonial Secretary received on March 10th, but in spite of this we understood that the cable was only sent to your Lordship on March 16th.

Prior to his departure from England, the Governor-elect, Sir Joseph Byrns, had stated that he was coming over to this country with an open mind and that he would study things for himself at first hand on arrival here. When Sir Joseph arrived in Mombasa he only stayed here for a few hours and could not in that short space of time naturally make himself acquainted with the affairs of the Indians or any other Community. From the outset it was clear to us that the older officials at the Secretariat were stampeding His Excellency into giving his sanction for the nomination of certain Indians on the Municipal Councils, and that His Excellency did not know the actual state of affairs. Our Managing Committee felt, therefore, that some of us should go to Nairobi and wait upon His Excellency and explain things. Accordingly we wired (reply paid) on March 2nd last to the Private Secretary of the Governor as follows:-

- " Indian Association Mombasa anxious that a deputation wait upon His Excellency to discuss important questions concerning Community. Could His Excellency kindly grant us interview on 4th instant prior to reported departure interior on long tour.
- " Kindly confirm to enable the members of the deputation to leave for Nairobi by to-morrow's train "

To which we received the following reply from the District Commissioner, Mombasa on the following day:-

- " I am directed to inform you that His Excellency regrets that he is unable to receive the deputation proposed by you in your telegram of March 2nd 1931 "

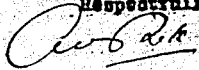
In conclusion we submit that it is obviously unfair and unjust for the local Government to get in the way they have done. As we have said, if there are certain Indians who wish to address the Municipal Councils against the mandate of the Congress, the

the Government are entitled to nominate them. But it certainly is very wrong for them to be a party to uphold the absurd claims of a small number of people, and to proclaim to the Imperial Government and to the world, that not only they have nominated certain Indians on the Municipal Councils but that the names of these Indians had been recommended to the Government by the "Congress".

The apprehensions referred to in our cable that even in the matter of selecting witnesses to the Joint Parliamentary Committee the local Government would not respect Indian public opinion have proved true and they have selected Messrs. A.B. Patel and V.V. Phadake, which does not meet with the wishes of the Community. For your Lordship's information we may say that the first named gentleman (Mr. A.B. Patel) was known to have had a private interview with Sir Samuel Wilson at Mombasa and assured him that the Indian Community would be prepared to resume participation in the Councils by nomination provided the Government gave certain assurances and this action of his was very much resented by the Community and was openly denounced by the Congress. As regards the second gentleman (Mr. V.V. Phadake) he has not taken any part in the politics of the Community for several years past. To be brief, neither of these two gentlemen enjoys the confidence of the Indian Community of Kenya.

We hope that your Lordship will instruct the Government of Kenya not to resort to these questionable and underhand and undignified methods of political shicanery.

Respectfully yours,



A.U. SHETTY.

President,
The Indian Association, Mombasa.

Copy to:-
The Hon'ble Colonial Secretary
Nairobi.
For his information.

Copy of the cable.

Lord Passfield

London

Indian Community long ago decided boycott Municipal
Legislative Councils pending introduction Common Roll and
Secretariat Nairobi recently acceded wishes small minority
group nominated Indians Nairobi Embasa Municipalities and
Our Association only recognized legitimate body make such
recommendations we wrote Secretariat 18th ultimo suggesting
that no names submitted by un authorized persons be considered
and latter still unacknowledged and meantime nominations made
without reference our Association and great indignation felt
Indian Community Government should encourage recognized deal
with maharaja bodies in preference old established properly
constituted Congress Nairobi and Indian Association Embasa
which command confidence overwhelming majority Indians and
Government also likely discard suggestions regarding selection
witnesses Joint Parliamentary Committee and show favouritism
to unrepresentative persons and Proxy intervers

A.U. Sheth

President, Indian Association, Embasa.

Copy of the cable.

Lord Passfield

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A.U.Sheth

President, Indian Association, Nombasa.

A.C.C.P. 5.5.31
H.P.B. 6.5.
Sir C. Bottomley 5.5.
S.H.W. 5.5.31

T.D.S. 6.5.
S. of S. approves D.G.M. 6.5.31.

20. 108

17060/A.

for conson.

Adh No 25

PARAPHRASE TELEGRAM from the Secretary of State for the Colonies
to the Governor of Kenya.
(Sent 7.0 p.m., 6th May, 1931).

No.148. IMMEDIATE.

19. SECRET. Your telegram No.135 cipher. Position has now been^{examined}
more closely with my Legal Advisers and it has been possible to obtain
the views of Sostri informally. From what Sostri says I judge that
even if there were a fresh Indian election next August on new
register position might not be materially different and I am very
doubtful whether it would be worth while for Government of Kenya
to expose itself to attack on ground of interference with opinion of
Indians in the Colony as declared at the polls however unjustified
such allegations might be in fact.

But I have not reached final decision yet and I will
telegraph again. Meanwhile I should be glad if you^{would} send me a further
telegram to explain precisely the action which you contemplate under
15 the second alternative in your telegram No.117 and what article in
the Royal Instructions your advisers have in mind. If it were
desired to alter before the Legislative Council meets the period for
which the Indians will sit it would seem necessary to alter article 6
of the Letters Patent of 11th September 1920 which incorporate Kenya
law of 1919. On the other hand if it is desired to wait until
the Council meets and then to amend the local law by providing for
another election of Indians in three months time and by providing that
the five Indians elected on the present roll should cease to be members
and that new Indian members should then be elected on the revised roll
it would appear that no alteration of the Royal Instructions would be
necessary as the period for which members are elected is prescribed
by

16 by the local law of 1919. When telegraphing on the 14th April
I did not contemplate that action should be taken by way of
Letters Patent altering Kenya law before Council meets and I should
in any case find it very difficult to agree to that.



R

176
India Office,

110 5/5-

Whitehall.

5th May 1931.

Private and Confidential.

My dear Passfield

In reply to your letter of the 27th April, I have now received the views of the Government of India on the proposal to hold fresh elections for the Kenya Legislative Council not later than September next, when the new Indian register is available, and on their suggestion I have also consulted Sastri, who has taken the opportunity over the week-end of sounding representatives of Indian opinion in East Africa now in London to give evidence before the Joint Committee.

As the result of these consultations, I consider that the best course will be to hold the elections on the existing Indian register, and to make no provision, at any rate in present circumstances, for further elections during the next three years.

Yours sincerely

Wedwood Benn

The Right Hon. The Lord Passfield.

O.O.

Mr. Eastwood 27/4 For S. of S's signature.

192
[Signature]

Mr. Poulson 27.4.31
Mr. Tomlinson.

Downing Street,
27 April, 1931.

Sir C. Boltonley 27.4
Sir J. Stuckburgh
Mr. Bopp 27/4/31
Sir G. Knicker

Very urgent & confidential

Permt. U.S. of S.
Parly. U.S. of S.
Secretary of State.

Amal 196

My dear Benn,

DRAFT.

The Rt. Hon. W. Wedgwood Benn,
D.S.O., M.P.

D.F.C.

You have no doubt seen the
correspondence which has been sent to
your Office ^{officially from this Dept.} by the Colonial Office
about the participation of Indians in
the Municipalities and Legislative
Council of Kenya. The last ^{Comm. Ofc.} ~~copy~~
letter was dated the 22nd April,

reference 17060/31

comin

I now enclose three further
telegrams which I think are intelligible
in the light of the correspondence
which your Office already has.
Briefly, the position is that under
the existing Royal Instructions the
Legislative Council in Kenya lasts
for three years. Hence, if Indians
are elected now they will remain

[18]

Tel
Fr. Gov L No. 117
No. 15

To Gov. Tel. No. 129
No. 15

Fr. Gov. Tel. No. 135
No. 15

Let. of Royal Instructions
let. handed to

Copies of each attached

as nominal, even if non-active, members
of the Council, for three years. On the
other hand, it appears that on the existing
Indian register which is out of date and
incomplete, there is a serious risk that
"non co-operators", who have broken with
the section of Indians ready to resume
co-operation in public affairs, will win
the seats - with the result that, despite
the willingness of the reasonable section
of the Indian community, we shall have no
Indian representation on the Council for
three years.

I agree with the Governor that the
first alternative suggested in his telegram
No. 117 (namely, to pass legislation as soon
as the Council meets to disqualify members
who fail to attend with reasonable regularity)
is not desirable, and I think that the
second alternative is in the circumstances
the best that can be done, especially now
that I have the Governor's assurance that
there are unlikely to be serious representations

against

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against

against it. I therefore propose to make steps to have the Royal Instructions amended so as to limit the term for which Indians will be elected, this time until the end of August 1931, and so as to provide for a fresh election so soon thereafter as may be practicable on the new Register.

Before I do anything, however, I should like to be assured that you do not wish to raise any objection to this course. ~~It would be convenient if you could let me know as soon as possible if you have no objection~~

(19) I should incidentally explain that the Governor is correct in the assumption in his telegram No. 135 that the Indian delegates to the Joint Committee will fail to obtain my agreement to a Royal Instruction postponing the elections for the Indian community.

I have already decided that this cannot be done - see my telegram

against it. I therefore propose to make steps to have the Royal Instructions amended so as to limit the term for which Indians will be elected, this time until the end of August 1931, and so as to provide for a fresh election so soon thereafter as may be practicable on the new register.

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No. 43 enclosed in Colonial Office

letter 17060/31 of the 12th February.

(No. 3 & 4)

~~The postponement of the elections for~~

~~the Colonies to be held on the~~

~~23rd and 24th of the~~

~~month of March 1955~~

~~is hereby postponed to~~

~~the 27th and 28th of the~~

~~month of April 1955~~

~~and the Royal Instructions on~~

(12)

I enclose a set of the Royal

Instructions governing the position.

The matter is very
urgent, & I wd. ask
that you let me have
your reply by the
1st May at latest.

Yours very truly,

(Signed) PASSFIELD.

No. 43 enclosed in Colonial Office

letter 17060/31 of the 12th February. (No. 3 & 4)

~~The postponement of the elections for~~

~~of the Council of the 20th 21st and~~

~~the 22nd 23rd 24th 25th 26th 27th 28th~~

~~and 29th 30th 31st 1st 2nd 3rd 4th 5th~~

~~6th 7th 8th 9th 10th 11th 12th 13th~~

~~14th 15th 16th 17th 18th 19th 20th 21st~~

~~22nd 23rd 24th 25th 26th 27th 28th~~

~~29th 30th 31st 1st 2nd 3rd 4th 5th~~

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(Signed) PASSFIELD.

PARAPHRASE telegram from the Governor of Kenya to the Secretary of State for the Colonies.

(Dated 21st April 1931. Received, Colonial Office,

12.35 p.m.

21st April 1931).

No.135.

Your telegram No.129 Cypher I am glad to have received your ^{own} concurrence generally with my opinion that the desire for co-operation of local Indians should be put to the test of a properly compiled electoral roll.

This test of a second election when roll is complete will

I am advised be welcomed whole heartedly by Co-operating section who are now in control of Indian Congress and I

am also advised that Indian delegates now en route to England may, if they fail to obtain your agreement to a

Royal Instruction postponing Elections (as I imagine they will), possibly themselves advocate this second election as a welcome alternative. I do not consider that any

representations made objecting to an election based on completed roll can be entertained on reasonable grounds and I doubt whether even on other grounds they are likely to be made. On behalf of Indian Candidates I have been

asked to postpone to May 23rd immediate polling date on account of difficulties of postal voting and propose so to fix that date. The date of announcement to which you

refer should be as soon as possible and preferably should enable you to receive any representations on the subject

which you may be willing to allow from Indian Delegation

and I suggest May 9th. Separate legislation may I consider

Copy to Hon. D. Wedgwood Benn - 27/4/31
Dund. Tel. edno 6/5/31

No. 16

X

PARAPHRASE telegram from the Governor of Kenya to the Secretary of State for the Colonies.

(Dated 21st April 1931. Received, Colonial Office, 12.35 p.m. 21st April 1931).

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Copy to Hon. W. Wedgwood Benn - 27/4/31
and sec. ed. - 6/5/31

No. 16

X

||

be required on its own merits to ensure a reasonable amount of attendance, if they wish to retain their seats, by elected Members of the Legislative Council but before taking any definite step I shall address you further on this point.



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

KENYA.

No. 47

CONFIDENTIAL.

RECEIVED
20 APR 1931
COL. OFFICE

22nd March, 1931.

My Lord,

With reference to Your Lordship's telegram of the 18th March and to my Confidential telegram No.93 of the 16th March, I have the honour to furnish Your Lordship with the following information as to the circumstances attending the recent nomination of Indian members of the Nairobi Municipal Council and the Mombasa Municipal Board, in explanation of the messages addressed to Your Lordship by Mr. Isher Dass and the Indian Association, Mombasa, as contained in my telegrams No.80 of the 11th March and No.92 of the 16th March respectively, and of the telegram which I am informed was despatched direct to Your Lordship by Mr. Isher Dass on the 16th March, of which I enclose a copy supplied by him. I transmit, at the request of Mr. Isher Dass, a letter addressed to Your Lordship by him enclosing a copy of the message contained in my telegram No.80 of the 11th March.

2. Mr. Isher Dass was Honorary General Secretary of the Eastern Africa Indian National Congress for the year 1930. At the session of the Congress held in Nairobi in January last the election of an Executive Committee and General Secretary for the present year provided the occasion for open demonstration of the division of opinion already existing between the moderate and extremist parties in the Congress. According to such evidence as available

THE RIGHT HONOURABLE LORD PASSFIELD, P.C.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON. S.W.1

Copy I.O. B/A 23 APR 1931. Lord.

No. 13
No. 12
No. 8
No. 11
No. 10
No. 8

available, Mr. Shams ud Deen was elected in proper form to the post of Honorary General Secretary and an Executive Committee, composed of his adherents, duly appointed.

I enclose a copy of a letter, dated the 28th February, addressed to the Colonial Secretary by Mr. Shams ud Deen in his capacity as Hon. General Secretary to the Congress, in which he explains that Mr. Isher Dass is not entitled to send cables in the name of the Congress. So far as I am aware, the account of the position given in this letter is correct.

3. The 1931 Executive Committee passed and forwarded to the Government, immediately on its appointment, a Resolution to the effect that it was in favour of co-operation by Indians on Municipal Councils and Boards without prejudice to the common roll issue, and on the 4th February the General Secretary submitted the names of seven Indians for nomination to the Nairobi Municipal Council. The Acting Governor informed Your Lordship in his telegram No. 40 of the 5th February that he proposed to proceed with the nomination of Indians to municipal bodies and the seven Indians whose names were submitted by the Congress were nominated on the 14th February.

NO. 1

On that day, Mr. Isher Dass, who had not until then been in communication with Government on this or any other related subject since the Congress meeting in January, wrote to the Colonial Secretary, signing as Hon. Secretary of the Indian Association, Nairobi, and requested an interview "to discuss the question of nomination of the Indian members on the Municipal Council of Nairobi". He was informed that, since the nominations had already been made, it appeared that no good purpose would be served by the granting of an interview. He thereupon convened on the 15th February a mass meeting, said to have been attended by over 3000 Indians, at which

a vote of censure was passed

" on those members of the Subjects Committee who, having styled themselves as the Committee of Representatives of Congress Executive with Mr. Shams ud Deen as the General Secretary and Mr. T.M. Jeevanjee as the Vice President are acting in the name of the Congress or its Executive",

and at which "all communications and negotiations carried on by them in the name of the Indian Community" were repudiated.

NO 9

On the 23rd February, Mr. Isher Dass, now signing as Hon. General Secretary of the Congress, submitted the telegram which was transmitted to Your Lordship in my telegram of the 11th March. His letter was written on Congress notepaper of a type which had not been previously seen and which quoted as his address the Post Office Box number of the Indian Association, and a copy of the letter was accordingly sent to the officially recognised Secretary of the Congress, who was asked to state whether the telegram addressed to Your Lordship should properly go forward as a message from the Congress. A copy of the Secretary's reply dated the 28th February is enclosed as noted in paragraph 2 above.

4. In regard to Mombasa, a representative meeting of Indians held at Mombasa on the 6th February under the chairmanship of Mr. A.B. Patel, resolved in favour of nomination of Indians to the Municipal Board and seven names were duly submitted on the 9th February for nomination, which was effected on the 14th February.

I enclose for Your Lordship's information a copy of a letter, dated the 8th February, addressed by Mr. Patel to the General Secretary of the Congress.

On the 12th February the Hon. Secretary of the Indian Association, Mombasa wrote to the Colonial Secretary stating that the names submitted were not representative, and was informed in reply that the names had been submitted by the Congress. The Association thereupon submitted

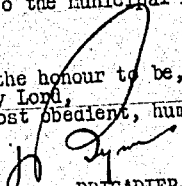
submitted the telegram communicated to Your Lordship in
No. 12 my telegram of the 16th March.

In a letter dated the 6th March Mr. R.K.S. Verjee, signing as Hon. Secretary of the Indian Association, Mombasa communicated to the Government the resolutions passed at a mass meeting held at Mombasa on the 1st March. These resolutions, after providing for the dissolution of the Managing Committee of the Association and the appointment of a new Committee, express the fullest confidence in the Executive Committee of the Congress and in the seven Indian members nominated to the Municipal Board. It appears, therefore, that at the time when Mr. Sheth submitted his telegram to Your Lordship in the name of the Association, a rival Committee had already come into existence.

5. In dealing solely with the Congress in this matter through its duly appointed executive, the Government has adhered to precedent and cannot be accused of recognising only one party.

Mr. Isher Dass has no claim to represent the Indian community or the Congress. His following, which is understood to fluctuate somewhat rapidly in extent, may be regarded as a highly articulate minority. So far as participation in local Government bodies is concerned, the Indian members both at Nairobi and Mombasa have taken their seats and are taking part in the work of the authorities. Names have now been received from the Congress for nomination to the Nakuru Municipal Board and it is anticipated that Indian membership will shortly be restored by similar means to the Municipal Board at Eldoret.

I have the honour to be,
My Lord,
Your Lordship's most obedient, humble servant,


BRIGADIER-GENERAL.
GOVERNOR.

COPY/

119

THE EASTERN AFRICA INDIAN NATIONAL CONGRESS.

Executive Committee's Office.

P.O.Box No.186.

NAIROBI. 16th March, 1951.

By Kenya Radio.

..... L.C.O.

COLONIAL OFFICE LONDON.
INDIAN OFFICE LONDON.
CHAIRMAN JOINT PARLIAMENTARY COMMITTEE CARE COLONIAL
OFFICE, LONDON.

REFERENCE OUR TELEGRAM PROTESTING LOCAL GOVERNMENT'S
NOMINATION INDIANS MUNICIPALITIES AND EXPRESSING FEARS
GOVERNMENT'S UNFAIR METHODS APPOINTMENT INDIAN DELEGATES
JOINT COMMITTEE STOP EXECUTIVE CONGRESS REITERATES
PROTEST GOVERNMENT PERSISTENTLY IGNORING OUR REPRESENTA-
TIONS STOP OUR LAST TELEGRAM COLONIAL OFFICE DELIVERED
SECRETARIAT 23rd FEBRUARY OFFERING DEFRAY EXPENSES STOP
NO NOTICE TAKEN UNTIL REMINDER SENT 4th MARCH STOP 9th
MARCH RECEIVED ACKNOWLEDGEMENT AND COST MESSAGE PAID
STOP INTERVIEW REQUESTED REFUSED STOP UNDERSTAND
SELECTION TWO DELEGATES MADE SUGGESTION MINORITY PARTY
STOP GOVERNMENT NOMINEE UNREPRESENTATIVE INDIAN
COMMUNITY STOP PRAY INTERVENTION STOP LOCAL GOVERNMENT
SUPPLIED COPY THIS MESSAGE.

INDIAN CONGRESS.

(Sgd.) Isher Dass.

HON. GENERAL SECRETARY.

EAST AFRICAN INDIAN NATIONAL CONGRESS.

The Eastern Africa Indian National Congress.

P.O. BOX NO. 188.
TELE. ADD. "CONGRESS"

EXECUTIVE COMMITTEE'S OFFICE.

NAIROBI, 16th March 1931.
(KENYA COLONY.)

Rt. Hon. The Secretary of State for the Colonies,

L o n d o n.

Through The Local Government.

Sir,

I am directed by the Executive of the East African Indian National Congress to forward to you the confirmation copy of the telegram sent to you to day.

I have the honour to be,

Sir,

Your obedient servant

J. S. D. Doss

Gen. General Secretary.

E. A. I. N. Congress.

The Eastern Africa Indian National Congress.

P. O. BOX NO. 186.
TELE. ADD. "CONGRESS"

EXECUTIVE COMMITTEE'S OFFICE.

NAIROBI, 23rd, February 1931.
(KENYA COLONY.)

CONFIRMATION COPY OF THE TELEGRAM SENT THROUGH LOCAL GOVERNMENT
ON 23rd February 1931.

COLONIAL OFFICE LONDON.

EXECUTIVE EAST AFRICAN INDIAN NATIONAL CONGRESS RESPECTFULLY LAYS PROTEST
AGAINST LOCAL GOVERNMENT NOMINATING SEVEN INDIANS NAIROBI MUNICIPALITY
AGAINST WISHES MAJORITY COMMUNITY STOP ELEVENTH JANUARY CONGRESS SESSION
DISSOLVED AFTER DISORDER STOP SMALL GROUP DISSIDENTS FORMED THEMSELVES
INTO COMMITTEE STYLING EXECUTIVE CONGRESS AND BEGAN NEGOTIATIONS WITH
GOVERNMENT STOP 1st FEBRUARY SAME BODY FORMED RIVAL INDIAN ASSOCIATION
OPPOSITION TO ONE ALREADY EXISTING AND SUBMITTED GOVERNMENT SEVEN NAMES
FOR NAIROBI MUNICIPALITY STOP NAIROBI INDIAN ASSOCIATION ALSO SUBMITTED
EQUAL NUMBER ASKING INFORMAL ELECTION UNDER GOVERNMENT SUPERVISION STOP
INTERVIEW REQUESTED NOT GRANTED STOP MEANTIME GOVERNMENT OVERLOOKING
PRECEDENCE INFORMAL ELECTION SIDED WITH AND NOMINATED RIVAL MINORITY
PARTY MEMBERS STOP MY EXECUTIVE FEARS GOVERNMENT LIKELY ADOPT SUCH
UNFAIR METHODS COMING LEGISLATIVE ELECTION AND SELECTION INDIAN WITNESSES
JOINT COMMITTEE STOP EXECUTIVE CONSIDERS GOVERNMENT'S INTERVENTION FAVOUR
MINORITY PARTY HIGHLY PREJUDICIAL EXISTENCE INDIAN POLITICAL INSTITUTIONS
STOP REQUEST YOUR INTERVENTION

INDIAN CONGRESS.

A. S. D. S.
Hon. General Secretary,
E. A. I. N. Congress.

EASTERN AFRICA INDIAN NATIONAL CONGRESS.Office of the EXECUTIVE COMMITTEE
for 1931.

P.O.Box 117.

Nairobi. 28th February, 1931.

The Hon.Colonial Secretary,
P.O.Box No.621,
Nairobi.

Sir,

I gratefully beg to acknowledge the receipt of your letter No.S.Mun.2/1/1/51 dated the 26th inst.

Mr.Isherdass was Hon.General Secretary of the Eastern Africa Indian National Congress for 1930. He voluntarily withdraw in open congress on Saturday the 10th January 1931 in presence of thousands of people. The same evening I was unanimously elected Hon.General Secretary of the Congress, for 1931, by the representatives of the whole country who had met in the subjects committee. On Sunday the 11th January Mr.Isherdass unsuccessfully tried to challenge my appointment in the open Congress which broke up in disorder.

Mr.Isherdass and only a few of the members of the executive committee appointed for the last year, still try to maintain that although appointed for 1930 they retain office during the current year.

Mr.Isherdass and his confreres can by no possible stretch of imagination send cables in the name of the congress. There is nothing however to prevent Mr. Isherdass sending any telegrams in his personal capacity.

I have the honour to be,
Sir,
Your obedient servant,

(Sgd.) Shams ud Deen.

Hon.General Secretary.

8th February, 1931.

To.
The Hon. General Secretary,
The E.A.I.N. Congress,
Nairobi.

Dear Sir,

In order that the attitude of those on whose behalf I am writing this letter may be properly understood I take your leave to trace in brief the history of the question of Indian representation on Municipal Board, Mombasa.

The Session of the Congress held under the presidentship of Pandit Kunzru in April 1929 and the Session held under the presidentship of Mr. Sarojini Naidu in December 1929 resolved inter alia that in view of the special circumstances of Mombasa Indians in relation to Mombasa Municipal Board, Congress had no objection to Mombasa Indians participating in the Municipal affairs of Mombasa but at the same time they were requested by the Congress not to participate in order to maintain the solidarity of the Indian Community in the whole country and to avoid misrepresentation of the attitude of the Indians on the question of franchise. It was then argued and almost all people agreed that the question of franchise did not affect the Indian representation on Mombasa Municipal Board because the Local Government Ordinance provided the constitution of the Board by nominations of Indians and Europeans alike. The White Paper of 1923 laid down amongst other things that whenever an elective principle will be applied to Municipalities in Kenya it shall be governed by Communal Franchise which the Indians refused to accept. In order to avoid conflict on the issue of franchise, the Indians in Mombasa had suggested that the elective principle should not be introduced in the constitution of Mombasa Municipal Board and that all members should take seats thereon by nomination. The Local Government Ordinance accordingly provided that the Mombasa Municipal Board will be constituted by nominations and that until the Board so resolved no elective principle will be introduced. In or about December 1928 the Government and the Local Indian Association, after negotiations, arrived at an amicable settlement as regards the allocation of seats to Indians on the Board whereby it was agreed that apart from the seven non-official seats reserved for Indians at least there will be one Indian in the list of members nominated to represent Government interests. Practically there was no reason in January 1929 why Mombasa Indians should not have joined the Municipal Board. But the then General Secretary of the Congress and Mr. Varma persuaded Mombasa Indians not to participate on the Board on the grounds that Sir Edward Grigg might misinterpret and misrepresent to the Imperial Government our attitude on the question of franchise. But after the issue of the White Paper of 1930 wherein the Imperial Government have accepted Common Franchise as an object to be aimed at and attained no grounds remained for non-participation on Mombasa Municipal Board. It was the advice of the Imperial Indian Citizenship Association, Bombay and our friends overseas that in view of the satisfactory

pronouncement

pronouncement of the Imperial Government particularly on the question of franchise Indians in Kenya should join all Government Bodies including Legislative Council in order to strengthen their cause and the hands of the Imperial Government in enforcing the new policy. And many prominent Indians in this country shared that view. It was considered that if the Joint Parliamentary Committee concluded against us status quo can be resumed which will place an effective instrument in our hands to register our protest against an unfavourable conclusion, if any. Particularly after departure of Sir Edward Grigg who it was feared might misinterpret our attitude, no ground existed for not considering the revision of our policy of non-participation. When this subject was raised at the Standing Committee Meeting of the Congress held at Nairobi in October last opinion of majority was in favour of revision of our policy of non-participation in view of changed circumstances but it was suggested that the consideration be deferred until the arrival of the new Governor. At the last Congress the Subjects Committee discussed the question when all the delegates present appeared in favour of the revision of our present policy. But owing to the unfortunate break up of the Congress it was not finally decided. However many prominent citizens were watching with keen interest your representation to the Government on the question of Municipal entry and postponement of Legislative Council elections until the Joint Parliamentary Committee completed its work. They have noted with great satisfaction the decision of the Mass meeting of Nairobi Indians held at the Empire Theatre authorising the Executive Committee of the Congress to negotiate with the Government the question of entry on Nairobi Municipality. They have later on learnt that your Executive Committee have submitted to the Government seven names of members for nomination on Nairobi Municipality.

Prominent citizens and a large number of people here were feeling that there was no reason why the Mombasa Indians should not join the Municipal Board. But they were aware that Mr. Isher Dass and his supporters were against it without advancing any reasonable grounds against same. They were also aware that Mr. Siri Ram Neb and his Managing Committee had at the instructions of Mr. Isher Dass passed a resolution in their Committee advocating non-participation on the Board and they would put all possible obstructions in the way of policy of participation in order to support Mr. Isher Dass.

In these circumstances in order to avoid a stormy meeting which might lead to unforeseen troubles and breach of peace resulting in very unpleasant situation few prominent citizens of Mombasa including Messrs. Rahman, Pandya, Karve, F.E. Jivanjee, Mathuradas Purshottan, Moosajee Jivanjee, Rajabali K.S. Verjee and others decided to call a private meeting which should be as representative as possible under the circumstances. The meeting was convened at the seashore bungalow of Messrs. Esmailji Jivanjee and Co. at 8.30 p.m. on the 6th February which continued its deliberations up to 1 a.m. next morning. About 200 people were present in the meeting where all the several sections of the Indian Community were fully represented. Amongst others the persons as per list herewith were present. This list will give you an idea of the representative and influential character of the meeting. I was elected unanimously to preside over the deliberations of the meeting. After prolonged and careful deliberations and thought provoking speeches following four resolutions were unanimously passed.

"1. That in view of the changed circumstances this meeting of the representatives of the several sections of the Indian community resolve that the Mombasa Indians should participate on the Mombasa Municipal Board."

"2. That the Executive Committee of the E.A.I.N. Congress be requested to submit to the Government the names of Messrs. Abdul Rahman (2) Dr. S.D. Karve (3) Fazale Abbas Esmailjee Jivanjee (4) Tailbali Adamjee (5) Rajabali Kassam Suleman Verjee (6) Gulamali Alibhai and (7) Abdulla Jafer Dewjee."

"3. That Messrs. Becharbhai G. Patel and H.H. Modi be considered as substitute or substitutes in case any of the aforesaid seven members is unwilling to accept nomination."

"4. That Mr. A.B. Patel, the president of this Meeting is hereby authorised to communicate the above three resolutions together with explanatory letter to the Congress Secretary and other proper quarters and that he should attend to any further correspondence arising out of this question."

In accordance with resolution No. 3. I beg to address this letter to you and I trust that you will take necessary action thereon. The acceptance signed by seven persons willing to act is enclosed herewith. A copy of this letter has been sent to the Resident Commissioner, Mombasa who is the Chairman of the Mombasa Municipal Board.

Yours faithfully,

(Sgd.) A.B. Patel.

President.

A.C.C.P. 13.4.31.
Sir G. Grindle 13.
S.H.W. 14/4/31.
T.D.S. 14/4/31
Secretary of State 14/4 conson.

Mack 14.19

X.17060/1 Kenya.

PARAPHRASE TELEGRAM from the Secretary of State for the Colonies to the Governor of Kenya.

(Sent 4.50 p.m. 14th April, 1931)

Immediate.

Confidential. No. 129.

Your telegram No. 117. I agree with you in thinking that first alternative would not be satisfactory. I think second alternative is possible but I should be glad to know before deciding whether so far as you can judge action on those lines is likely to provoke serious criticism from any substantial part of the Indian community.

If amendment of Royal Instructions is decided upon, an announcement of this intention should clearly be made before present election actually takes place. What is latest date on which it would be possible to make such announcement?

Copy Re: Ken. W. D. Colquhoun Rem 2/4/31

PARAPHRASE

127/5

S. 14
S. 14

PARAPHRASE TELEGRAM from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 9th April, 1931. Received in the Colonial Office at 11.5 a.m. on 9th April, 1931.

No. 117. hob

Your telegram No. 90, 13th March. Although there has been no change of importance in respect of Indian situation I feel that I should inform you of latest position with regard to Elections for Legislative Council. 14 nominations have been made for 5 Indian vacancies, these nominations being distributed between Section which desires to co-operate and opposing bodies. I have received strong representations that present Indian Electoral Roll is unrepresentative and incomplete and I see no reason to doubt this since it contains ^{only} some 3,000 names. It is further possible that this roll supports largely non-cooperative minority whose representatives will not sit in Council if elected but will use their position solely to block co-operation. I am advised that in order to deal with situation two courses are open, the first is to pass, as soon as Council meets, legislation disqualifying members who fail to attend with reasonable regularity. the other is to limit by an amended Royal Instruction the period for which Indian members are now elected to a date when new and complete Indian electoral roll will be ready. || I cannot regard the first alternative as wholly satisfactory for this particular purpose since by nominal appearance intention of any proposed Ordinance can be defeated. Very large number, already exceeding 5,000, of new applications for registration as voters now being received suggests that second alternative will meet the situation.

Copy to Sec. Hon. Desai & Ram 3/4/31
14/4/31
Ansd. Sec. by the

Amended

2

Amended Royal Instruction would of course be applicable only to the current year for the purpose of putting in order an admittedly stale and incomplete voters roll. I am anxious that the forthcoming Budget Session should represent as fully as possible all communities concerned and I trust you will be able to see your way to advise issue of Instruction to limit the term of Indians elected during this month to a date which will allow an election to be held not later than September on new register. Holding of Indian Election during present month for members who may sit at one Session of Legislative Council only may appear of doubtful utility, but I am very anxious to determine past period of non representation of Indians and also to ensure that Indian community is represented as from same date as other communities, at least technically.

DECODE

129 / 12

Telegram from the Deputy of the Governor of Kenya to
the Secretary of State for the Colonies

Dated 16 March. Received 2.46 p.m. 16 March 1931

- No. 11 No. 93. Confidential. My telegram No. 92 and my telegram
- No. 9 No. 81 Confidential Indian members Nairobi and Mombasa
Municipal authorities have been nominated in accord-
ance with recommendations Eastern African Indian
National Congress. Despatch follows.

Copy. J. O. M. R. 26 MAR 1931

DECODE

RECEIVED
17 MAR 1931
COL. OFFICE

TELEGRAM from the Governor of Kenya to the Secretary of State
for the Colonies

Dated 16 March, 1931. Received 4.7 p.m. 16 March, 1931.

No.92. Following from A.U.Sheth, President of the Indian Association
Mombasa. Begins. Indian Community long ago decided to boycott
Municipal Legislative Council pending introduction of common rolls.
Secretariat at Nairobi recently acceded to small minority group
of Nominated Indians Nairobi and Mombasa Municipalities. Our
Association the only recognised legitimate Body make such recommendation
we wrote to the Secretariat 12th February suggesting that no names
submitted by unauthorized persons be considered. Letter still
unacknowledged. Meantime nominations made without reference to our
Association. Great indignation felt Indian Community Government
should encourage recognition deal with mushroom Body in preference
to old established properly constituted Congress Nairobi and
Indian Association Mombasa which commands confidence of overwhelming
majority of Indians. Government also likely discard suggestion
regarding selection of witnesses for the Joint Parliamentary
Committee and show favouritism to unrepresentative persons.
Pray intervene. Recoverable.

Ans. & Tel. No. 99 - 18/3/31.

26 MAR 1931

3.0. B/A

W

POST OFFICE



TELEGRAPHS.

10
No.

Office Stamp
WHITEH
MIR 18
31

Charges to pay

d.

This form, and if possible, the envelope should accompany any enquiry respecting this Telegram.

Received from

Office of Origin, Foreign Number, No. of Words, Date, Time handed in, and Service Instructions.

61 K 6 NAIROBI 98 16 1320 KENYA RADIO

Sent 3.52 M

To

By

LCO. COLONIAL OFFICE LONDON =

REFERENCE OUR TELEGRAM PROTESTING LOCAL GOVERNMENTS
NOMINATION INDIANS MUNICIPALITIES AND EXPRESSING FEARS
GOVERNMENTS UNFAIR METHODS APPOINTMENT INDIAN DELEGATES
JOINT COMMITTEE STOP EXECUTIVE CONGRESS REITERATES PROTEST
GOVERNMENT PERSISTENTLY IGNORING OUR REPRESENTATIONS STOP
OUR LAST TELEGRAM COLONIAL OFFICE DELIVERED SECRETARIAT
TWENTYTHIRD FEBRUARY OFFERING DEFRAY EXPENSES STOP NO NOTICE

WIRELESS TELEGRAPH SERVICE
No. 8
1/10/1919

POST OFFICE



TELEGRAPHS.

No.....

Office Stamp:

This form, and if possible, the envelope should accompany any enquiry respecting this Telegram.

Office of Origin, Foreign Number, No. of Words, Date, Time handed in, and Service Instructions:

Sent

.....M

To

By.....

TAKEN UNTIL REMINDER SENT FOURTH MARCH STOP NINTH MARCH
 RECEIVED ACKNOWLEDGEMENT AND COST MESSAGE PAID STOP INTERVIEW
 REQUESTED REFUSED STOP UNDERSTAND SELECTION TWO DELEGATES MADE
 SUGGESTION MINORITY PARTY STOP GOVERNMENT NOMINEE UNREPRESENT
 : ATIVE INDIAN COMMUNITY STOP PRAY INTERVENTION STOP LOCAL
 GOVERNMENT SUPPLIED COPY THIS MESSAGE = INDIA CONGRESS BOX 186

TELEGRAM from the India Congress to the
Secretary of State for the Colonies.

(Received, Colonial Office, 16th March, 1931).

Reference our telegram protesting local
Government's nomination Indians Municipalities
and expressing fears Government's unfair methods
appointment Indian delegates Joint Committee.
Executive Congress reiterates protest Government
persistently ignoring our representations. Our last
telegram Colonial Office delivered Secretariat 23rd
February offering defray expenses. No notice taken
until reminder sent 4th March. 9th March received
acknowledgment and cost message paid. Interview
requested refused. Understand selection two delegates
made suggestion minority party. Government nominee
unrepresentative Indian Community. Pray intervention.
Local Government supplied copy this message.

INDIA CONGRESS BOX 186.

RECORDED

1060/31

133 9

TELEGRAM from the Governor of Kenya to the Secretary of State for the Colonies.

Dated the 11th March, 1931. Received at 2.30 p.m. on the 11th March.

8

No. 8

No. 61 CONFIDENTIAL. My telegram No. 60. Message therein is submitted by Isher Dass signing as Honorary General Secretary of the East African Indian National Congress. He represents a section which has seceded and his authority to represent Congress is repudiated by Congress itself which Government continues to recognise.

copy. J. O. B/A. 26 MAR 1931

DECODE

11060/31

133 9

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Dated the 11th March, 1931. Received at 2.30 p.m. on the 11th March.

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copy. C. O. B/A. 26 MAR 1931

7000/3
8
DECODE

TELEGRAM from the Governor of Kenya to the Secretary of State
for the Colonies.

Dated 11 March, 1931. Received 2.7 p.m. 11 March, 1931.

No. 80. Following from Inher Dass, Begins. Executive of East African
Indian National Congress respectfully lay protest against local
Government nominating 7 Indians Nairobi Municipality against the
wishes of majority of community. 11th January Congress Session
dissolved after disorder. Small group of dissentients formed the
selves into Committee styling Executive of Congress and began
negotiations with the Government. 1st February name body formed
rival Indian Association opposition to one already existing and
submitted to the Government seven names for Nairobi Municipality.
Nairobi Indian Association also submitted equal number asking
informal election under Government supervision. Interview request
not granted. Meantime Government overlooked ^{precedence of} informal
election sided with and nominated rival minority party members.
My Executive fear that Government likely to adopt such unfair
methods coming Legislative election and selection of Indian
witnesses Joint Committee. Executive consider Government inter-
vention in favour of minority party highly prejudicial to exists
of Indian political institutions. Request your intervention. Ends
Recoverable.

20. B/1021/13/31
Duss 2 Tel 1931 - 18/3/31 - 2.07 p.m.

C. O.

- Mr. Eastwood. 10.3.
- Mr. Allen 11/3
- Mr. Parkinson. 11.3.31
- Mr. J. N. N. 11/3/31
- Mr. Tomkinson.

10 C
 12.30/13/3/31
 100 W. K. N. 1078

X Sir C. Bottomley. 11.3

Sir J. Shuckburgh.

Sir G. Grindale.

+ Parly. U.S. of S. 12.3.31

X Parly. U.S. of S.

X Secretary of State. 12/3

Please inform Congress

that I fear it is impracticable
 to postpone Indian Elections as
 desired. They may however

DRAFT, CODE TELEGRAM

For consen. re minutes.

GOVERNOR,
 NAIROBI.

rest assured that I will explain
 position fully to Joint Committee
 and ~~that~~ they need have no fear
 that formal proceedings for
 election of members followed,
 abortive, by nomination of
 members by Governor will
 prejudice Committee in consid-
 ing question of ^{Common} ~~Common~~ roll
 influence His Majesty's Govern-
 ment in arriving at decision
 when Committee reports.

Copy C. O. W 3 MAR 1931

29/3

DECODE

RECEIVED
10 MAR 1931
COL. OFFICE

5
136

Telegram from the Governor's Deputy, Kenya, to the Secretary of State for the Colonies.

Dated 9th March, 1931. Received 4.39 p.m. on the 9th March, 1931.

-----000-----

No. 70. Following from East African Indian National

Congress: begins: Legislative Council dissolved.
Nomination day for new election End April. Since
question common roll under investigation by Joint
Parliamentary Committee request that election of
Indian Members be postponed for 1 year meantime
Indian Community prepared participate in Council
on nomination by the Governor. Election by
communal roll seriously prejudicial to Indian claim
for common roll. Local Government say postponement
of election not possible according to existing law.
Respectfully request Royal Instructions or some
other special measure postpone Indian election in
order not to hamper or handicap free decision of
Joint Parliamentary Committee. Ends. Recoverable.
See my telegram No 40. This Government sees no
reason for amending Royal Instructions.

Copy 3.0
17 MAR 1931
And tel. 13/3/31

No. 1

1513

17060/31
Kenya

O. O.

10 FEB.

Mr. Eastwood 6/2/31

Mr. Allen 6/2/31

Mr. Parkinson 7.2.31

Mr. J. H. Riley 9/2/31

Sir C. Bottomley 9.2.31

Sir J. Shuchburgh.

Sir G. Grindle.

Permt. U.S. of S. 8/11/31

Parly. U.S. of S. 10.1.31

Secretary of State. For conon. v. minutes. 019/2

Bearing Street,

February, 1931.

Private and Personal.

Following is reply to your telegram

DRAFT. CODE TELEGRAM

Important

GOVERNOR

NAIROBI.

No. 40. Begins:- No. 43 I am

much gratified to learn that Indians desire to participate again in legislative and municipal affairs and confirm your assurance that their claim to a common roll will not be prejudiced by their accepting nomination on these public bodies.

As regards Legislative Council postponement of election would involve amendment of Royal Instructions as well as of Legislative Council Ordinance and I agree that there is no alternative except to proceed with formal election of Indians and for you to make nominations subsequently if election

Recirc. urgently to Mr. Allen for draft to India Office.

A.C.C.P.

Copy forwarded on 11 May 5 (O. 12 FEB 1931)

proves abortive. In that case would

you propose to nominate for shorter

period than life of Legislative Council ?

See end of Clause II of Additional Royal

Instructions 28th March 1927.

You will no doubt explain to the

Indian Congress the reasons for proceeding

with elections so that there may be no

room for misunderstanding on their part.

As regards municipal bodies presume

that where necessary further proclamations

would be issued providing for Indian

representation. Ends.

Secy

1. Municipalities.

In 1928 the Local Government (Municipalities) Ordinance was passed by the Government of Kenya to give effect to the recommendations of what was known as the Peetham Commission on Local Government. There was considerable difficulty in getting the legislation through owing to the opposition of the Indians, but ultimately a round table conference was set up in which the Indians, who were then refusing to serve on the Legislative Council, took part. Agreement was reached and the legislation went through satisfactorily.

(a) Nairobi and Mombasa.

The law laid down the constitution of the Municipal Council of Nairobi and the Municipal Board of Mombasa. Each was to contain 7 Indian members to be nominated by the Governor.

Subsequent to the conference referred to in the ^{first} previous paragraph, the Indians reversed their decision to co-operate, and Sir Jacob Barth, who was then administering the Government, found it impossible to obtain the names of 7 representative Indians for nomination to the Councils. In these circumstances it was impossible to proceed with the constitution of the Municipalities without amendment of the law. The Secretary of State accordingly approved the introduction of an amending Bill. A copy of the law as passed is flagged B on 15552/29.

This law permitted the constitution of Municipal Councils without Indian representation. It

15552/29,
No. 17 flagged A.

M E M O R A N D U M.

1. Municipalities.

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15552/29
No. 17 flagged A.

left the door open, however, for the Indian community to take their share in municipal government whenever they were prepared to do so, and no amending legislation will be necessary *now that they are going to participate again.*

(b) Other Municipalities.

The Local Government (Municipalities) Ordinance referred to above also permitted the Governor to declare ^{areas to be} other Municipalities, and to constitute their Councils and Boards by proclamation. Such Municipalities have been constituted in Eldoret and Nakuru ^(2 at Nakuru). In the case of Eldoret, the Indians after co-operating for a time have now ceased to co-operate. If they reverse this decision all that will be necessary is that the O.A.G. should revoke the existing proclamation setting out the Constitution of the Board without Indian representatives and substitute a proclamation constituting a Board containing Indian representatives. This proclamation would presumably be in the form of the draft marked A below No. 21 on 15552/29, flagged D.

*See No. 10 Bill
on 15552/29.*

See No. 4 on
16206/30

2. District Councils.

The Local Government (District Councils) Ordinance 1928 provided that if a District Council were constituted in the Kisumu-Londiani District it should contain one elected Indian member. The law was subsequently amended so as to make the Council properly constituted if no Indian sat on it. In this case no amendment of the law will be necessary if the Indians now decide to participate again.

See enclosure
to 28 on
155521/29,
flagged F.

3. Legislative Council.

Under the additional Royal Instructions of the 28th March 1927 the Legislative Council shall contain: "Indian elected members not exceeding five in number provided

that

that if after a dissolution of the Council less than five persons are elected to be Indian elected members, or if at any time the number of Indian elected members is less than five the vacancy or vacancies so arising may be filled by the appointment of ^{Indian} nominated/un-official Indian members". Such nominated Indian unofficial members hold their places during His Majesty's pleasure, but must in any case vacate their seats at the next dissolution of the Council after their appointment or at such earlier date as may be provided, in accordance with instructions received from ^{The King through one of His Ministers} Secretary of State, in their instrument of appointment.

One ^{Indian} ~~native~~ member was elected in 1927 and took his seat. The four other seats were ultimately filled by nomination up to the 31st January 1928. An election for these seats was held in March 1928, but no ^{candidates stood,} ~~nominees were~~ nominated, and the Governor has not subsequently exercised his power to fill vacancies by nomination of suitable persons from the Electoral Roll, since it proved impossible to obtain persons in any way representative of the Indian community.

The O.A.G. has now been asked ^{by the Indians} to make nominations to the Legislative Council after the dissolution.

The Indians have, however, asked that if possible the Indian elections to the Legislative Council may not take place in April when the other elections for the new Legislative Council will take place, but may be postponed until His Majesty's Government has come to a final decision on the franchise question. In the meantime they would like ^{to} nominated Indian members to be appointed who could carry on. They have, however, not made their request for participation in the Legislative Council dependent on such a postponement.

d: I
 ✓
 * They must be
 nominated from
 the Electoral roll
 J.M.

d: II
 (2 no. Malak)
 re 15740/1/28

Under the Royal Instructions as quoted above no nomination can be made until the formality of an election has been gone through. Presumably therefore if the request of the Indians were to be granted an amendment of the Royal Instructions would be necessary. The O.A.G. is also advised that the postponement of the elections for one community only would entail an amendment of the law, presumably of the Legislative Council Ordinance - copy attached.

See sec 15 of ap 24 when read with sec 3 as replaced by 7 of 1926 J.S.R.

See 15942/29

If the law is to be amended it would have to be done at a special session of the Legislative Council to be held before the 20th February, when the Legislative Council is automatically dissolved. In the circumstances ^{O.A.G.} the Governor does not consider it practicable to agree to the suggestions of the Indians. The O.A.G. therefore proposes to allow the formal elections to take place. These will prove abortive (since the Indians will never recognise a communal franchise), and he will subsequently make nominations. In the circumstances this seems the only feasible course.

1 seal

Unless special provision is made by direction of the Secretary of State in their instruments of appointment any members nominated would hold their seats during pleasure, or until the next dissolution of the Council. It is for consideration whether the Secretary of State should not direct that the appointments should be made for a shorter period than three years in case the Indians subsequently show a desire for elections. The point need not, however, be decided until after the formal elections have taken place in April, and perhaps it would suffice to say in telegraphing to the Governor that

It would appear that there will be no desire for this until a decision is taken regarding the franchise. If there were no communal franchise the Governor would have to wait elections. If there were a communal franchise the Governor would be a dissolution.

submitting

submitting the names of those whom he proposes to nominate whether he considers that their nomination should be for a shorter period than the life of the Legislative Council .

Edmund

6-2-31.

DECODE

-5 FEB 1931
COL. OFFICE

143
END

TELEGRAM from the Officer Administering the Government of Kenya
to the Secretary of State for the Colonies.

Dated 5 February, 1931. Received 9.20 a.m. 5 February, 1931.

No. 37 on
1501/28

No. 40. My telegram No. 165 of the 22nd June, 1928. I have been
officially informed by the 1931 Executive Committee of the
Eastern African Indian National Congress that the Indian Community
now desire to participate again in municipal and legislative
affairs and I have been asked to make nomination(s) of Indian(s)
to the Legislative Council after dissolution as provided for
in additional Royal Instructions of the 28th March, 1927, and also
to municipal bodies on the lines of 1928 Agreement embodied in
Local Government Municipal Ordinance, 1928. The Congress Executive
has accepted my assurance that Indian claim to a common roll
need not be prejudiced by Indians accepting nomination on these
public bodies and I trust that you will find no obstacle to
confirming my views in the matter. They have also asked that if
possible Indian election to the Legislative Council be postponed
until His Majesty's Government has come to a final decision on
the franchise question during which period nominated Indian
members could carry on, though they have not made their request
for participation in the Legislative Council dependent on such a
postponement. I am advised that such a postponement of election to
one community only would entail an amendment of the law which I do
not in the circumstances consider practicable. I propose now to
proceed with the nomination of Indians to municipal bodies as
provided for by the Law, but as regards the Legislative Council
no nomination(s) as things now stand can be made until formal
elections of Indians have proved abortive. I should be glad if
your approval of this course of action could be sent by telegram
as early as possible.

5404/28

in Allen

Quoted in 10/2/31
copy to I.O. 12 FEB 1931

(S.O.R.)

[Handwritten mark]