APPENDIX VIII

IMMIGRANTS RESTRICTION BILL

BILL

TO

Consolidate and Amend the Laws In force in the various Provinces of Union relating to Restrictions upon Immigration thereto, to provide for the Establishment of an Union immigration Department and to regulate immigration into the Union or any Province thereof.

To be introduced by The Minister of the Interior

Be it enacted by the King's Most Excellent Majesty, the Senate, and the House of Assembly of the Union of South Africa as follows:

PRELIMINARY

1. The laws mentioned in the First Schedule to this Act shall be and are hereby repealed to the extent set out in the fourth column of that Schedule, together with so much of any other law as may be repugnant to or inconsistent with the provisions of this Act.

2. In this Act, and in the regulations made thereunder, unless inconsistent with the context
"department" shall mean the Immigration Department established under this Act;

"immigration officer" shall mean the chief immigration officer or any other officer of the department, or any other person, whether an officer of the department or not, on whom powers have been conferred or to whom duties have been assigned by the Minister as to the carrying out of this Act or the regulations;

"magistrate" shall mean a chief magistrate or a resident or assistant resident magistrate;

"master", in relation to a ship, shall mean any person (other than a pilot) for the time being in charge or command of any ship;

"Minister" shall mean the Minister of the Interior, or any other Minister to whom the Governor-General may assign the administration of this Act;

"owner", in relation to a ship, shall, in addition to the actual owner, include the charterer of the ship, or any agent within the Union of the owner or charterer;

"police officer" shall mean any member of a police force established in the Union under the authority of law;

"port" or "port of entry" shall mean
(a) any place on the coast of the Union; or
(b) any railway station or place within the Union at or near any border thereof, at which entry into the Union can be effected;
"regulation" shall mean a regulation made and in force under this Act;
"ship" shall include any vessel or boat of any kind whatsoever used in navigation, whether propelled by sails, steam power, or other mechanical means, or by towing or oars or in any other manner whatever.

The Immigration Department

3. (1) The Governor-General may establish and, out of moneys voted by Parliament for the purpose, maintain a department to be known as the Immigration Department, which shall be under the control of the Minister.

(2) The function of the department shall be the performance of all work, whether within or outside the Union, necessary for or incidental to the prevention of the entrance of prohibited immigrants into the Union, or the entrance of persons into a Province wherein their residence is unlawful, or necessary for or incidental to the removal from the Union or any such Province. The department shall further carry out any other powers and duties specially conferred or imposed upon it by this Act or by regulation.

CHAPTER I

Prohibited Immigration

4. The entry into the Union by land or sea of any such person as is described in this section (in this Act and the regulations referred to as a "prohibited immigrant") is forbidden, namely,
(a) any person who, when an immigration officer dictates to him not less than fifty words in the language selected by such an officer, fails to write out those words in that language to the satisfaction of that officer;

(b) any person who is likely, if he entered the Union, to become a public charge, by reason of infirmity of mind or body) or because he is not in possession for his own use of sufficient means to support himself and his dependents;

(c) any person who, from information received from any Government (whether British or foreign) through official or diplomatic channels, is deemed by the Minister to be an undesirable inhabitant visitor to the Union;

(d) any prostitute, or any person, male or female, who lives on or knowingly receives any part of the earnings of prostitution or who procures women for immoral purposes.

(e) any person who has been convicted in any country of any of the following offences (unless he has received a free pardon therefore), namely, murder, rape, arson, theft, receiving stolen goods knowing the same to have been stolen, fraud, forgery or uttering forged documents knowing the same to have been forged, counterfeiting coin or uttering coin knowing the same to be counterfeit, house-breaking with intent to commit an offence, burglary, robbery with violence, threats by letter or otherwise with intent to extort, or of any attempt to commit any such offence, and by reason of the circumstances connected
with the offence, is deemed by the Minister to be an undesirable inhabitant of or visitor to the Union;

(f) any idiot or epileptic, or any person who is insane or mentally deficient, or any person who is deaf and dumb, or deaf and blind, or dumb and blind, or otherwise physically afflicted, unless in any such case he or a person accompanying him or some other person give security to the satisfaction of the Minister for his permanent support in the Union, or for his removal there-from whenever required Minister;

(g) any person who is afflicted with leprosy or with any such infectious, contagious or loathsome or other disease, as is defined by regulation, or who is of a low or degenerate type of the human species.

Persons Not Prohibited

5. The following persons or classes of persons shall not be prohibited immigrants for the purposes of this Act, namely,

(a) any member of His Majesty's Regular Naval or Military Forces;

(b) the officers and crew of a public ship of any foreign State;

(c) any person who is duly accredited to the Union by or under the authority of His Majesty or the Government of any foreign State, or the wife, family, staff or servants of any such person;
(d) any person who enters the Union, under such conditions as may be prescribed from time to time in accordance with any law or under any convention with the Government of a neighbouring territory or state and who is not such a person as is described in paragraph (b), (e), (d), (e), (f), or (g) of the last preceding section.

Offences and Penalties

6. (1) Every prohibited immigrant who, after the commencement of this Act, enters or is found within the Union, shall be guilty of an offence and liable on conviction

(a) to imprisonment with or without hard labour for a period not exceeding three months without the option of a fine; and

(b) to be removed at any time by the Minister's warrant from the Union

(2) Pending the removal, the prohibited immigrant may be detained in such custody as may be prescribed by regulation.

(3) The prohibited immigrant may be discharged from the imprisonment or custody aforesaid if security be given to the satisfaction of the Minister that prohibited immigrant will within one month leave the Union, and not return thereto.

(4) Every such sentence of imprisonment shall terminate as soon as the prohibited immigrant is removed from the Union.
(5) Every officer in charge of a prison or gaol shall, if the warrant of removal be produced to him, deliver the prisoner named therein to any police officer or immigration officer, and the prisoner shall be deemed to be in lawful custody so long as he is in the custody of any such police officer or immigration officer, or of any police officer or immigration officer for the time being in possession of the warrant.

Provincial Restriction

7. The provisions of the last preceding section shall apply mutatis mutandis in respect of every person who, though domiciled in any Province, enters or is found in any other Province in which, according to the provisions of any law in force at or immediately prior to the commencement of this Act, he has unlawfully entered or has been found to be residing unlawfully, and any such person shall, in respect of the said other Province, be liable to be dealt with as in the last preceding section is described and removed to the Province wherein he is domiciled. For the purposes of this Act every such person shall be a prohibited immigrant in respect of the said other Province.

Trading Licences

8. (1) No prohibited immigrant shall be entitled to obtain a licence to carry on any trade or calling in the Union or (as the case may be) in any Province wherein his residence is unlawful or to acquire therein any interest in land, whether leasehold or freehold.
(2) Any such licence (if obtained by a prohibited immigrant) or any contract, or other document by which any such interest in land is acquired in contravention of this section, shall, on conviction of the prohibited immigrant as such, be null and void.

**Arrests**

9. (1) Every person who is suspected on reasonable grounds of being a prohibited immigrant may be arrested without warrant by an immigration officer or police officer, and shall be brought as soon as possible before a court of resident magistrate to be dealt with according to law.

(2) Any magistrate may, if information on oath be laid before him that there upon any premises a named or described person reasonably suspected of being a prohibited immigrant issue a warrant empowering a police officer of or above the rank of sergeant to enter those premises and search for the person named or described in that warrant, and arrest him.

**Plea of Ignorance**

10. No prohibited immigrant shall be exempt from the provisions of this Act or the regulations, or be allowed to remain in the Union, or in any Province wherein his residence is unlawful, by reason only that he had not been informed that he could not enter the Union or (as the case may be) that Province, or that he had been allowed to enter through
oversight, misrepresentation, or owing to the fact having been undiscovered that he was such a prohibited immigrant.

CHAPTR II

Special Powers for preventing entry of and dealing with Prohibited Immigrants at Ports of Entry

11. (1) Any immigration officer may, as and when he deems fit, board any ship which is entering or has entered a port.

(2) Any immigration officer may, whenever it is necessary for the more effectual carrying out of this Act or the regulations, prohibit or regulate any communication with, or landing on the shore from, any ship on which the immigration officer is proceeding with the examination of persons or which has on board or is suspected of having on board any prohibited immigrant, and the immigration officer may take such steps to carry out any such prohibition or regulation as the Minister may approve.

(3) Any immigration officer may order the master of any ship to moor or anchor the ship at such distance from the shore or landing place or in such position as the immigration officer may consider expedient for enabling the provisions of this Act or the regulations to be carried out effectually.

Duties of Ships' Captains

12. It shall be the duty of the master of any ship which enters any port to deliver to an immigration officer upon demand
(a) a list of all passengers on board the ship, classified according to respective ports of destination and specifying the class which each passenger has voyaged and such further particulars as may be prescribed by regulation;

(b) a list of stowaways, if any have been discovered;

(c) a list of the crew and all persons (other than passengers or stowaways) employed or carried on the ship in any capacity by or on behalf of the owner;

(d) a certificate under the hand of the medical officer (if any) of the ship or, if there be no medical officer, under his own hand, stating any known cases of disease whether infectious or otherwise which have occurred upon the voyage or any known cases of physical or mental infirmity or affliction, the names of the persons who have suffered or are suffering therefrom and the nature in each case of the disease infirmity or affliction.

Place of Detention

13. (1) If it appear to an immigration officer (whether upon the representation of the master or otherwise) that any person prohibited from landing ought, for the better carrying out of the objects and purposes of this Act, to be kept elsewhere than on the ship which conveyed him, the immigration officer may cause him to be removed in custody from the ship and to be detained in any other place, whether
float or on shore, which may be appointed by the Minister for the detention of prohibited immigrants.

(2) Every such person shall, while detained, whether on board the ship or at any such other place aforesaid, be deemed to be in the custody of the master and not of the immigration officer, and the master shall further be liable to pay the cost or the landing, removal, detention, maintenance, and control of any such person so detained.

(3) As soon as the ship is about to sail (due notice whereof shall be given by the master to the immigration officer) any prohibited immigrant removed under this section from the ship shall, if the immigration officer so require, be placed thereon again.

(4) The immigration officer may, prior to the said person being landed, require the master or the owner of the ship to deposit a sum sufficient to cover any expense that may be incurred by the department in connection with the landing, removal, detention, maintenance and control aforesaid.

(5) If for any reason any such prohibited immigrant be not placed again on the ship, in accordance with sub-section (3), the owner shall, without payment by the Government, provide, at the request of the immigration officer, a passage with proper food and accommodation, in another ship, for the prohibited immigrant to the place at which he originally embarked.

(6) Any such person who escapes or attempts to escape from detention) while being dealt with under the powers of this section, may be arrested without warrant, and shall, in addition to any other offence which he may have committed under this Act, be deemed to have committed an offence in respect of the escape or attempt to escape.
Forfeits

14. (1) If after a ship has arrived at any port, any prohibited immigrant lands from the ship at that port without proper authority, the master or the owner shall forfeit a sum to be fixed by the Minister but not exceeding one hundred pounds in respect of every such prohibited immigrant.

(2) Until the sum so fixed has been paid and until the owner or the master has, to the satisfaction of the immigration officer, provided for the removal from the Union of every such prohibited immigrant, no clearance papers shall be given to the master or to the owner.

(3) The ship may be declared executable by order of a Superior Court to satisfy any forfeiture incurred under this section.

Members of the Crew

15. (1) On or after the arrival and again before the sailing of a ship at any port, an immigration officer may require the master to muster his crew and may serve upon him a list of such of the crew as are prohibited immigrants.

(2) If any of the crew, being prohibited immigrants, do not answer to the names at the later muster, the master or the owner of the ship may be required before the ship sails to deposit with the immigration officer a sum of twenty pounds in respect of each such person so missing.
(3) Any such sum shall be forfeited to the Government unless the master or owner prove to the satisfaction of the chief immigration officer, within six months.

(4) Until any sum required under this section is deposited no clearance papers shall be given to the master or owner.

(5) The ship may be declared executable by order of a Superior Court to satisfy any forfeiture incurred under this section.

An Agreement

16. For the purpose of facilitating the clearance of the ships habitually calling at the various ports, the Minister may, in his discretion, enter into a bond or agreement with the owner whereby the owner undertakes that he or the masters of ships belonging to him and so calling to him and so calling at ports will carry out so much of the provisions of last two preceding sections as relate to the owner or the master, and there provisions of the said bond or agreement shall be substituted for those sections so far as they relate to the payment or deposit of moneys by the master or the owner.

Clearance Papers

17. A port captain or harbour master shall not permit a ship to leave port or to go to any outer harbour or anchorage unless clearance papers be produced to him.
CHAPTER III

General and Miscellaneous

18. An immigration officer may require any person entering the Union to make a declaration in the form prescribed by regulation that he, or any person accompanying him, is not a prohibited immigrant and to state in the declaration such further particulars as may be prescribed by regulation, and may require him to fill in and complete in every respect that form and to produce, in support of the declaration, documentary or other evidence.

Every such declaration shall be exempt from any stamp duty ordinarily by law on affidavits and solemn declarations, anything to the contrary notwithstanding in any law in force in the Union relating to stamp duty.

Any person who fails on demand to comply with any provision of this section or who declares upon the form anything as a fact or produces or gives such as aforesaid, which he knows to be false, shall be guilty of an offence.

Personal Examination

19. (1) Every person entering the Union shall, if required, appear before immigration officer and furnish such information as is prescribed by this Act or regulations relative to his claim to enter the Union.

(2) Every person entering the Union who is on reasonable grounds of being afflicted with any disease or physical or mental
infirmity which would under this Act or the regulations render him a prohibited immigrant shall, if required by an immigration officer, submit himself to examination by a medical practitioner appointed by the Minister for the purpose.

Aiding and Abetting

20. Any person, who

(a) aids or abets any person in entering or remaining within the Union or any Province in contravention of this Act or the or knowing that person to be prohibited from so entering or remaining;

(b) aids or abets a person ordered to be removed from the Union or any Province in evading the order, or harbours any such person knowing him to be the subject of any such order;

(c) for the purpose of entering the Union, or any Province wherein his residence is unlawful, or of assisting the entrance of any other person, in contravention of this Act or the regulations, commits any fraudulent act or makes any false representation by conduct, statement or otherwise,

shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds or, in default of payment, to imprisonment with or without hard labour for a period not exceeding six months, or to such imprisonment without the option of a fine.
Immoral and Other Offences

21. Any person, who

(a) has been convicted, whether before or after the commencement of this Act, of a contravention of any of the provisions enumerated in the Second Schedule thereto, or of any amendment of those provisions;

(b) having been removed at the expense, either whole or partial, of any Government from the Union or any part thereof now included in the Union, or being the subject of an order issued under any law to leave the Union or any part thereof now included in the Union, returns thereto without lawful authority, or has failed to comply with the terms of any such order;

(c) having been refused by an immigration officer permission to enter the Union or any Province, has entered the Union or that Province;

(d) admits to an immigration officer in a written document that he is a prohibited immigrant either in the Union or in any Province,

may, if not already, under detention, be arrested without warrant and removed from the or (as the case may be) from the Province, by the Minister's warrant and, pending removal may be detained in such custody as may be prescribed by regulation.
Deportation

22. Any person (not being a natural born British subject, or a person naturalized in any part of His Majesty's dominion), who, whether before or after the commencement of this Act, if serving a sentence of imprisonment for any of the offences mentioned in paragraph (e) of section four and who by reason of the circumstances connected with the offence is deemed by the Minister to be an undesirable inhabitant of the Union, may, during or at the expiration of his sentence, be removed from the Union by the Minister's warrant, and, pending removal, may be detained in such custody as may be prescribed by regulation. The provisions of sub-sections (4) and (5) of section six shall be deemed to be incorporated mutatis mutandis, in this section.

The Burden of Proving

23 (1) The burden of Proving that a person has not entered or remained in the Union or any Provinces in contravention of this Act or any regulation shall, in any prosecution for or in respect of such a contravention, lie upon the accused person.

(2) Any order, warrant, or other document, which under this Act or the regulations may be issued by the Minister, shall be good and effectual if signed by any officer in the public service authorized by the Minister by notice in the Gazette to sign such an order, warrant, or other document, and when so signed shall be evidence in all courts of law and for other purposes that it was issued in accordance with the provisions of this Act or the regulations.
Magistrates’ Powers

24. A court of resident magistrate shall have special jurisdiction to impose the maximum penalties provided for a contravention of this Act or the regulations, any to the contrary notwithstanding in any law relating to courts of resident magistrate.

Temporary Permits

25. (1) Anything to the contrary notwithstanding in this Act contained, the Minister may in his discretion issue a temporary permit to any prohibited immigrant to enter and reside in the Union or any particular Province upon such conditions as to period of residence or otherwise as the Minister may in the permit specify.

(2) The Minister may also in his discretion issue a permit to any person who at the commencement of this Act is lawfully resident in the Union or any Province and who, desiring to proceed thereout with the intention of returning thereto, is for any reason apprehensive that he will be unable to prove on his return that he is not a prohibited immigrant. The permit in this sub-section mentioned shall expressly authorise the person named therein to return to the Union or the particular Province (as the case may be), but before issuing the permit the Minister shall require such proof of the said person's identity and such means of identification to be furnished as may be prescribed by regulation.
26. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing

(a) the duties of immigration officer;

(b) the steps to be taken to prevent the entrance of prohibited immigrants into the Union or the entrance of persons into any Province in their residence is unlawful;

(c) the times, places, and conduct of the enquiry or the examination, medical or otherwise, of persons entering or desiring to enter the Union or any Province or who, being found in the Union Province, are suspected of being prohibited immigrants or unlawfully resident therein;

(d) the procedure for, and the manner of, the detention of prohibited immigrants and unlawful residents pending their removal from the Union or any Province, and the procedure necessary for and the manner of any such removal;

(e) lists of infectious, contagious, loathsome or other diseases, the affliction with which will render a person a prohibited immigrant;

(f) the issue of permits described in the last preceding section, the conditions upon which
any such permit may be issued, the fees which may be charged therefor, and the amount and the nature of the security to be found for the due carrying out of any such conditions; the conditions under which prohibited immigrants may be allowed to pass through the Union while journeying or being conveyed to a place outside the Union or from one Province to another within the Union;

(h) the forms of warrants, permits, certificates, declarations, books, or other documents to be used, or to be made or kept, for the purposes of this Act or the regulations, and the particulars to be inserted on or in any such document;

and generally for the better carrying out of the objects and purposes of this Act.

(2) The regulations may provide penalties for the contravention thereof or failure to comply therewith, not exceeding the penalties mentioned in the next succeeding section.

Penalties

27. Any person, who

(a) for the purpose of entering the Union or any particular Province, or of remaining there in contravention of this
Act or any other law, or assisting any other person so to enter or so to remain, fabricates or falsifies any permit or other document or utters, uses or attempts to use any permit or other document which has not been issued by lawful authority or which though issued by lawful authority, he is not entitled to use or any fabricated or falsified permit or other document knowing it to have been falsified; or

(b) fails to comply with or contravenes the conditions under which any permit or other document has been issued to him under this Act or the regulations; or

(c) obstructs, hinders, or opposes an immigration officer or police officer in the execution of his duty under this Act or the regulations; or

(d) contravenes or fails to comply with any provision of this Act or the regulations for the contravention whereof or failure to comply therewith no penalty is specially provided;

shall be liable on conviction to a fine not exceeding fifty pounds, or, in default of payment, to imprisonment with or without hard labour for a period not exceeding three months, and, in the case of a contravention of paragraph (a) or (b) of this section to such imprisonment without the option of a fine.

Title of the Act

28. This Act may be cited for all purposes as the Immigrants' Restriction Act, 1911, and shall commence and come into operation on the first day of 1911
### FIRST SCHEDULE

**LAWS REPEALED**

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Indian Opinion, 4-3-1911