

Appendix

Resistance Cases Litigated by Gandhi

February - December, 1907

- *Rex v. Coovadia.*

During the early part of 1907, the Transvaal government continued to rely upon the Peace Preservation Ordinance (the “PPO”) to control immigration. It was in this context that two Indians, Moosa Coovadia¹ and his son, Ismail, were stopped at the border town of Volksrust as they tried to return to Johannesburg from a trip to Natal. The PPO’s requirement of a permit was not enforced against minors under the age of 14. There was some dispute as to Ismail’s age. When the authorities demanded a permit from young Ismail, Moosa produced a letter from a Transvaal permit officer, Captain Hamilton Fowle, indicating that the son could travel with his father without any interference by the government on permit grounds. This letter did not satisfy the border authorities; they promptly arrested Ismail. Trial was set for February 15, 1907 in the Volksrust court of Resident Magistrate Major F.J. Dixon. Gandhi appeared for the defense. Gandhi argued that Fowle’s letter, which Gandhi himself had conveniently arranged for in advance of the Coovadias’ trip, was as good as a permit. Gandhi persuaded the Magistrate that the letter was “sufficient authorisation.” Dixon discharged the boy and sent him and his father on their way back to Johannesburg.²

- *Rex v. Moosagan, Chandaravan and Hassian*

Gandhi represented three Indians charged with living in the Transvaal without the required permits. He put up no opposition to a judgment against Chandaravan that ordered him out of the colony in 7 days. The cases of the two remaining defendants were continued to March 12 and March 19, 1907. Unfortunately, there is no record available of the final disposition of their cases.³

- *Rama and Another v. Rex*

The government routinely refused to issue business licences to those who had not registered under the Ordinance. Gandhi advised his merchant clients not to register but to nonetheless attempt to obtain licences for their businesses. These attempts were unsuccessful. In one case an Indian was arrested for carrying on a business without a licence.⁴ Gandhi's defense – that the defendant was simply managing the shop as an employee and therefore was not one who came under the terms of the prohibition – was upheld by the Transvaal Supreme Court.⁵

- *Rex v. Remgasammy*

The Indians positioned what they called “pickets” around registration offices. These were not sign-carriers, but simply Indian men whose job it was to “reason with any compatriots who might desire to register.”⁶ One such picket who touched the sleeve of a would-be registrant found himself arrested for assault. Gandhi defended and lost. The picket was fined £3. Gandhi immediately filed a notice of appeal. There is no evidence of the appeal having been heard by the Transvaal Supreme Court.⁷

- *Rex v. Chhania*

An Indian picket, charged with obstructing pedestrians by standing in the footpath, was defended by Gandhi before Magistrate Graham Cross. Gandhi succeeded in winning a dismissal of the charge.⁸

- *Rex v. Chinese Pickets*

The Indians had found common cause with Chinese laborers who had been imported into the Transvaal and who also were required to register. Two Chinese pickets were arrested on October 25, 1907 on the now familiar charge of “obstructing the footpath.” When they were tried the next day, Gandhi arrived in the midst of the prosecution’s case to offer his services. The case was postponed. When the defendants were brought back to court on the 30th of October, Magistrate Graham Cross dismissed the charges.⁹

It was to this case or the *Chhania* case that Gandhi was most likely adverting when he wrote in *Satyagraha in South Africa* many years later:

Some of the pickets “were once arrested on a charge of obstructing the public traffic. As non-cooperation did not form a part of the Satyagraha struggle there, defence could be made in the courts, though as a rule advocates for defence were not paid from public funds. The volunteers were declared innocent and acquitted by the court, which still further exalted their spirit.”¹⁰

- *Rex v. Sharfooden, Prag, Vyas and Seschane*

Pretoria had its pickets as well. On November 13, 1907 four Indian pickets were arrested on charges of assault and, in the alternative, inciting to the commission of an offense. They were accused of surrounding Lakshmar, a would-be registrant, on the street and preventing him from making his way to the registration office. To support the incitement charge, the prosecutor also accused the defendants of threatening the alleged victim with harm, should he register against their advice. The case was set over to a later date, so that Gandhi, who that week was trying the Ramsundar Pundit case in Germiston, could travel to Pretoria to represent them.

When the proceedings resumed on November 16, the courtroom and the yard outside the court were packed with Indians. Lakshmar's testimony hurt the prosecution. He made no claim of assault, as a result of which the prosecutor asked to treat the witness as hostile, a motion Gandhi successfully opposed. The chief white witness for the prosecution, under cross-examination by Gandhi, admitted that he "saw no assault take place." He also testified that the accused had not threatened him at all.

At this, the prosecution rested what proved to be an extraordinarily weak case. Gandhi moved the magistrate to discharge all the defendants on all charges. The prosecutor conceded he had no assault case. Gandhi pressed for the dismissal of the incitement charges, too. The prosecutor conceded that portion of the case as well. At the magistrate's ordering the discharge of the defendants, the Indian crowd let out a loud cheer, garlanded the defendants and escorted them down the street for a rally at which Gandhi and other leaders of the Indian movement in Pretoria spoke.¹¹

- *Ramsundar Sequel*

Three Indian supporters of Ramsundar Pundit were arrested for loitering about the jail in which Ramsundar Pundit was imprisoned. When warned to leave, they refused. They were tried for loitering and for refusing to obey the order to leave. Gandhi represented them in a losing cause. Each man was ordered to pay a small fine or spend a day in jail.¹²

- *The Volksrust Cases*

Thirty-seven Indians were detained at the Volksrust border station over a period of three days in early December, 1907. The men were arrested on the grounds that they did not possess permits under the Asiatic Law Amendment Ordinance. By the time the cases came to trial on December 9th, however, the government's Law Department had advised the local prosecutor to charge the men with an offense under the Peace Preservation Ordinance ("PPO") – the registration scheme in place before the passage of the Asiatic Law Amendment Ordinance. Apparently, this change was the result of the Crown realizing that the new Asiatic Law Amendment Ordinance allowed an Indian entering the country eight days within which to obtain a new permit.

The first witness for the prosecution was the border official who detained the Indians. Under questioning from Gandhi, he admitted that the defendants possessed valid PPO permits. The witness even produced the permits on the stand. When he had finished cross-examining the government's witness, Gandhi argued that the prosecution, by admitting and producing the PPO permits, had defeated its own case.

The prosecution's response was short on substance, but long on creativity. The prosecution took the position that the men were required to renew their PPO permits every time they desired to leave and re-enter the colony. Once the men left the colony, the prosecutor argued, their PPO permits "stood cancelled."

Gandhi's response was multi-pronged. First, the Crown had formally charged the defendants with *entering* the colony without PPO permits. There was no re-entry issue. So, the prosecutor's argument that new permits were needed for re-entry dealt with an issue not before the court. Even if there were an issue concerning re-entry, the Transvaal Supreme Court had held in *Bhabha v. Rex*¹³ that "a permit to enter the Colony included permission to leave it and re-enter." Moreover, there was no interpretation of the text of the PPO that could support the notion that it required permit renewals for travelers. Finally, the prosecution's own witness proved that the defendants did, in fact, have valid PPO permits. The formal written charge was that the defendants were without permits under the PPO, a charge the prosecution itself had conclusively disproved.

The Volksrust magistrate was persuaded. He immediately discharged the twenty defendants who were before him, after which the prosecution, bowing to the inevitable, withdrew the Crown's charges against the remaining defendants.¹⁴

- *Rex v. Essak*

Mahomed Essak, a cook returning to the Transvaal from India, was also detained at the Volksrust border station for failing to have a valid permit. When he was taken before

assistant resident magistrate de Villiers, the prosecutor admitted not knowing what exact charge was being brought against the defendant because he had not yet been advised by the government's Law Department on that question. Gandhi argued that the defendant, who had refused bail, should not remain in prison awaiting the Law Department's response. The magistrate raised the possibility of transferring the case to Johannesburg as a more convenient forum, a suggestion embraced by Gandhi. Thereupon the magistrate released the Essak on his own recognizance.

When Essak and Gandhi appeared before Magistrate H. H. Jordan on the 11th of December, the prosecution had settled upon the same charge as that leveled at the other Volksrust defendants – not having a proper permit under the Peace Preservation Ordinance¹⁵ – to which the defendant pled not guilty.

The only witness for the prosecution, a member of the constabulary named Donald Cameron, testified that the defendant did produce a PPO permit. Under cross-examination by Gandhi, Cameron admitted that he had routinely allowed persons with PPO permits to enter the country, but, when he detained Essak, he was under new instructions not to allow persons into the country who lacked a permit under the new Ordinance.

At the conclusion of Cameron's appearance on the stand, Gandhi asked the magistrate whether there was any need for him to put on a case for the defendant inasmuch as the Crown had proved the defendant's case. The prosecutor in Essak's case trotted out the same argument that had failed for the prosecution in the Volksrust cases; he argued that the PPO called for Indians to obtain new permits each time they went out of the country and desired to reenter. It was plain that the PPO did not require such new permits.

Gandhi argued this very evident point and added that the practice of the government had been consistent with this understanding of the PPO for years. Buoyed undoubtedly by his win in Volksrust the day before and in a rare display of sharp speech, Gandhi topped off his argument by calling the prosecution “farcical.”

Like the magistrate in Volksrust, Magistrate Jordan refused to read into the PPO a requirement that a person leaving the Colony and desiring to re-enter obtain another permit under the PPO. Jordan found Essak not guilty and discharged him.

Neither the lawyers nor the magistrate made any mention of the new Ordinance.¹⁶

NOTES

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1. Moosa Coovadia was the brother and business partner of Ebrahim Saleji Coovadia, as well as the treasurer of the British Indians Association.
 2. “Johannesburg Letter”, February 16, 1907, *CWVG* 6, p. 332; “Interesting Permit Prosecution at Volksrust”, February 23, 1907, *Indian Opinion*; “Johannesburg Letter”, February 23, 1907, *CWVG* 6, p. 338.
 3. “Indians Without Permits”, March 6, 1907, *The Transvaal Leader*.
 4. See Ordinance 23 of 1905, Section 5(1).
 5. *Rama and Another v. Rex*, 1907 Reports of Cases Decided in the Supreme Court of the Transvaal 949 (October 21, 1907). Reinhold Gregorowski represented the Indian defendant on appeal.
 6. “Asiatic Registration”, October 26, 1907, *The Transvaal Leader*.
 7. “Indians and the Law” Assault Follows Picketing”, October 25, 1907, *The Transvaal Leader*.
 8. “Johannesburg Letter: Picket Arrested”, October 12, 1907, *CWVG* 7, p. 283 (1962 edition).

9. “Asiatic Registration”, October 26, 1907, *The Transvaal Leader*; “Asiatic Registration: Picket Duty — A Charge of Obstruction”, October 26, 1907, *The Johannesburg Star*; “Asiatic Registration”, October 28, 1907, *The Transvaal Leader*; “Chinamen Discharged”, October 31, 1907, *The Transvaal Leader*.
10. Mohandas K. Gandhi, *Satyagraha in South Africa* (Stanford: Academic Reprints, 1954), p. 135.
11. “Asiatic Registration: Charge of Intimidation”, November 14, 1907, *The Transvaal Leader*; “Pretoria News: – Asiatic Registration – Alleged Intimidation”, November 15, 1907, *The Johannesburg Star*; “The Asiatics: Alleged Intimidation”, November 16, 1907, *The Transvaal Leader*; “Trial of Pickets”, November 23, 1907, *The Collected Works of Mahatma Gandhi* 357 (1962 edition).
12. “Asiatic Test Case: A Germiston Sequel”, November 19, 1907, *The Johannesburg Star*.
13. 1906 *Transvaal Law Reports* 600 (September 10, 1906).
14. “Asiatics: The Act in Operation”, December 7, 1907, *The Transvaal Leader*; “Asiatics: The Border Barred”, December 9, 1907, *The Transvaal Leader*; “Asiatic Question: The Volksrust Cases”, December 10, 1907, *The Transvaal Leader*; “Indians’ Right of Entry”, December 10, 1907, *The Rand Daily Mail*; “Trial of Indians”, December 9, 1907, *CWMG* 7, p. 423 (1962 edition); “Letter to Indian Opinion”, December 12, 1907, *CWMG* 7, p. 425 (1962 edition); “Volksrust Cases”, December 14, 1907, *CWMG* 7, p. 427 (1962 edition); “Attack on Indians”, December 14, 1907, *CWMG* 7, p. 423 (1962 edition).
15. Section 5 of the Peace Preservation Ordinance (Ordinance 5 of 1903) provided: “Any person entering, or residing in this Colony may be called upon by any member of any constabulary or police force or other person authorized thereto by the Colonial Secretary to produce a permit Ordinance or to give satisfactory evidence that he belongs to one of the classes exempted from the necessity of having such a permit under the provisions of section 2. If the person so called upon fails to produce such a permit or give such evidence as aforesaid he may be arrested without a warrant and dealt with as hereinafter provided.”
16. “Asiatic Act: The First Arrest”, December 5, 1907, *The Rand Daily Mail*; “Arrest at Volksrust”, December 5, 1907, *The Transvaal Leader*; “Asiatics: The Act in Operation”, December 7, 1907, *The Transvaal Leader*; “Asiatic Registration”, December 11, 1907, *The Johannesburg Star*; “Indian Test Case: Important Point Decided”, December 12, 1907, *The Rand Daily Mail*; “The Asiatics: No Fresh Permit Necessary”, December 12, 1907, *The Transvaal Leader*; “Trial of Mahomed Essak”, December 14, 1907, *CWMG* 7, p. 411 (1962 edition); “Johannesburg Letter”, December 7, 1907, *CWMG* 7, p. 416 (1962 edition); “An Asiatic Test Case”, December 12, 1907, *The Johannesburg Star*; “Volksrust Cases”, December 14, 1907, *CWMG* 7, p. 427 (1962 edition); “Attack on Indians”, December 14, 1907, *CWMG* 7, p. 429 (1962 edition); “Johannesburg Letter”, December 14, 1907, *CWMG* 7, p. 432 (1962 edition).