

Chapter Nine: 'The Lawful Town': White Shopkeepers, Indian traders and the Construction of a Legalistic Urban Space in Krugersdorp, 1910–1923

Introduction

Embattled on all sides after Union and particularly after 1918, the white middle class sought to remake Krugersdorp as a legalistic space where a grid of laws, ordinances, by-laws and court precedents would restore a sense of order, peace and prosperity. It will be contended that the local elite of white merchants and professionals particularly targeted their Indian rivals, seeking to entangle their competitors in a web of regulations that would eliminate them as competitors. These Indian shopkeepers and hawkers, in turn, used the law to evade attempts to control their commercial activities.

Having abandoned its extra-legal tactics of boycott, intimidation and propaganda, discussed in Chapter Five, the white middle class returned, with a vengeance, to legal remedies to curtail the trading activities of their commercial and professional rivals. In particular, they launched an unsuccessful campaign, through the courts, against Indian shopkeepers, culminating in the landmark legal decision of *Dadoo v Municipality of Krugersdorp*, 1920, in which the Town Council famously lost. These legal attempts to ensnare Indian shopkeepers in by-laws and court actions back-fired and cost the Council a small fortune in legal fees and, at least temporarily, strengthened the right of Indian traders to operate their businesses in the 'white' town.

The campaign waged by the white middle class against their Indian rivals took place against a background of social and political turmoil. The middle-class 'Independent' Town Councillors had faced a relentless political challenge by labourites who were determined to realise their vision of a white working-class town at the expense of ratepayers (see Chapter Eight). Black residents had embarked on an anti-pass protest in 1919, while black miners boycotted mine traders and then went on strike in 1920. Spanish Influenza infected many residents in 1918, and health workers who visited the sick were shocked to see the emergence of slums in parts of Krugersdorp. A number of Krugersdorp's mines were scheduled to be closed down by the Low Grade Mines Commission and economic conditions were very bleak indeed. Even the weather

conspired to make Krugersdorp's prospects appear gloomy as heavy rains flooded some of the mines, washed away roads and left the town isolated from its neighbours.

More seriously, however, white workers had grown increasingly militant and in 1922 a vicious and bloody revolt broke out all along the Rand leading to violent confrontation with government forces (see Chapter Eight). This was a nightmarish experience for the middle class of Krugersdorp, who had fought to 'anchor' what had been a transient and violent mining town into a settled 'family town' (see Chapter Two), only to see the outbreak of anarchy that far surpassed anything experienced by the old 'Devil's Dorp'. It must have seemed that all their work in stabilising the town through the building of permanent structures and in improving Krugersdorp's facilities and infrastructure, had been in vain.

Yet, during the period 1917-1922, and especially by the end of 1922, the fortunes of the white middle class began to turn and its obstinate adherence to legalism and its vision of its town as a legalistic space with law-abiding citizens, began finally to bear fruit. The 'Independents' won a number of important electoral victories over their labourite and Nationalist rivals in a local municipal council by-elections, they built a new location in 1920 in which to confine and discipline some of the town's black residents (see Chapter Six) and, in 1923, lent their support to one of the most ambitious bills ever aimed at the control of black residents in urban areas: the Natives (Urban Areas) Act of 1923. This Act apparently imposed a restrictive grid of regulations upon Krugersdorp's black residents that aimed to curb illegal activities like illicit liquor brewing and consumption and violent crime.

Krugersdorp did, indeed, emerge as a more peaceful, prosperous and settled town after 1923. It finally industrialised, which helped to stabilise the local economy which was particularly vulnerable due to the fragility of the mining industry. A new era, marked by the advent of the Pact government in 1924, led to the introduction of a Colour Bar that protected white 'civilised' labour, thereby dampening white labour militancy. Black residents found that, ironically enough, they were able to challenge many aspects of the

1923 Urban Areas Act in the courts.¹ This, too, helped to curb radicalism. The mid- to late 1920s were characterised by a quiescence unknown to the town since its founding in 1887. This, however, lies outside the period of this study but, it will be contended, the post-war struggle of the white middle class to impose legal solutions to the town's problems laid the foundations of a 'legal town' that eventually contributed to Krugersdorp's stabilisation and revival, heralding a new era for the town in the period after 1923, at which point this study ends.

Attempts to Create a 'Legal Town', 1909–1918

In 1909, while the National Convention negotiated South Africa's future status as a Union and sought ways to weld together diverse provinces, the white commercial and professional elite that dominated Krugersdorp's Town Council focused on ways to isolate the Indian residents and weaken their ability to compete with white merchants, promoting racial division and conflict in the process. The white middle class was presented with an opportunity to renew their legal struggle against Indian shopkeepers who had penetrated the white commercial spaces of the town and refused to leave the location that was situated in the white working-class suburb of Burghershoop.

As Chapter Five demonstrated, originally the Town Council had used legal methods to try to move Indians out of the Location and the commercial spaces of the town. An Indian 'Bazaar' had been established, various by-laws were passed and, under Plague Emergency Regulations, the Indian residents were finally driven out of their homes and businesses into a temporary 'Plague Emergency Camp'. At the time, the Town Council's legalist strategy seemed to be a complete success but this soon proved illusory. The Indian residents resolutely resisted and challenged the Town Council, using the same legal channels, and by the end of 1905 Indians were more firmly entrenched than ever.

As a result of this failure of legalism, the white commercial and professional elite

¹ See L. Menachemson, 'Resistance through the Courts: African Urban Communities and Litigation under the Urban Areas Act, 1923-1959', BA Honours dissertation, University of the Witwatersrand, 1985.

resorted to the extra-legal strategy of employing intimidation to drive Indian traders out of white business areas and from the location. For various reasons dealt with in Chapter Five, a boycott of Indian shops by white residents collapsed and the White League, which was formed to intimidate Indian shopkeepers and their white customers, disappeared into obscurity. It was just at this point, however, that the Dutch-speaking white residents of Burghershoop opened up a new chapter of struggle between the Town Council and the Indian community, by presenting an opportunity to the white shopkeepers to destroy their Indian competitors for once and for all.

The 'poor Burghers' as these Dutch-speaking white residents were invariably referred to, addressed a number of strongly worded complaints about the Indian Location residents to the Town Council in 1909.² The white commercial and professional elite who dominated local government were delighted with this opportunity to attack their Indian rivals and asked the government to appoint a Committee of Inquiry in early 1910³ to investigate these complaints and to examine the 'desirability' of maintaining an Indian residential and business location in close proximity to white residents. The Committee heard evidence from a range of witnesses and presented its report in April 1910.⁴

The white middle-class merchants and professionals saw an opportunity to apply pressure to a new, inexperienced Union government and the Provincial Council, perhaps hoping to re-shape government policies towards Indian residents. By manipulating a new, indulgent government that was hoping to prove itself, the middle class may have attempted to act during a brief window of opportunity to guide government policy towards Indian residents in a way that would utterly cripple Indian commercial interests.

By championing the interests of the 'Burghers', these essentially British middle-class elements may have counted upon a new sensitivity towards 'reconciliation' between

² Central Archives Depot (CAD), Archives of Transvaal Local Government (TPB) 542, File 1408, Rand Townships Registrar to the Assistant Colonial Secretary, 8 March 1909.

³ CAD, TPB 542, File 1408, Town Clerk, Krugersdorp, to the Assistant Colonial Secretary, 15 March 1909.

⁴ *ibid.*, Report of the Krugersdorp Asiatic Locations Committee of Inquiry (Krugersdorp Asiatic

English- and Dutch-speaking citizens that characterised the new government (see Chapters Three and Four). The South African Party, the likely winners of the Union elections, emphasised its vision of 'South Africanism' that would triumph over cultural and linguistic differences to turn hostile Boers and Britons into harmoniously co-existing white South Africans.

By appearing as a sympathetic body concerned about the interests of local burghers, the English-speaking merchants and professionals on Krugersdorp's Town Council may have hoped to persuade the Botha/Smuts government to act firmly against the Indian traders and pass new laws that would force Indians to move to a distant site from the town. While it is difficult to prove this conclusively, the timing of the appointment of the Committee of Inquiry combined with its sudden concern for the welfare of the local 'Burghers' after years of neglect, certainly point in this direction.

The Committee consisted of the local Mining Commissioner, the Supervisor of Asiatics and a local representative from the Town Council.⁵ It is a little puzzling why the Council's representative was not a local white shopkeeper (there were several on the Town Council at the time) and this may have been a tactical decision, perhaps a gesture of neutrality to disguise the Council's hostility towards Indian shopkeepers and its ultimate goal to remove the Indian Location. The Town Council did, however, discreetly attempt to have another local representative appointed to the Committee to ensure that it came to the 'right' decisions in regard to the future of the Indian Location.⁶

The appointment of a Committee marked a return to legalism. The Committee was formally instituted and had the power to hear witnesses, compile a report and advise the government. This was a far cry from trade boycotts, confrontations in the streets and threats to Indian shopkeepers and white standholders who leased to Indian merchants that characterised the period from 1905 to Union. The white shopkeepers need not

Locations Committee), Krugersdorp, 11 April 1910.

⁵ CAD, TPB 542, File 1408, Town Clerk, Krugersdorp, to the Assistant Colonial Secretary, 15 March 1909.

⁶ *ibid.*

have worried about securing an extra representative from a friendly Town Council on the Committee as the various Burghershoop witnesses gave damning evidence against the Indians living in the Location.

The Committee members heard that a number of parents had boycotted a government school which was situated next to the location which meant that some of the schoolchildren had to pass through the location to get to the school.⁷ In Chapter Four it was maintained that the growing numbers of children impacted upon the built environment in Krugersdorp and helped to shape the town. Here is another example of how even the weakest, youngest residents of Krugersdorp could play a role in the making of the town, if only as manipulated subjects in an ideological battle between commercial rivals.

The Committee heard reports of the unpleasant experiences of schoolchildren passing through the Indian Location. One young white girl complained that she had seen an old Indian man urinating against a fence.⁸ Furthermore, it was claimed that some white schoolchildren had fallen ill after eating rotten fruit left lying around the location.⁹ Some parents complained that their children were exposed to foul language used by Coloured women and their children who lived as tenants in one of the houses in the location.¹⁰ The use of children's testimony was likely to have been very effective, particularly in a town that only recently had transformed from a mining camp of single men to a settled town of families, and even more so during the tail-end of the sentimental, child-centred Edwardian era (see Chapter Four).

The better-off residents of Burghershoop, that is, the landlords and businessmen, also made a strong economic case against the Indian residents. They felt strongly that the location cut into their profits and rents. Mr Petersen, a local landlord, gave evidence that he owned a few 'cottages' in Burghershoop near the location that he could not

⁷ *The Standard, Krugersdorp*, 6 March 1909, untitled.

⁸ Krugersdorp Asiatic Locations Committee, 1910, Minutes of Public Sitting held on Wednesday, 2 February 1910, evidence of Mr Nienaber, p. 11.

⁹ *ibid.*, p. 12.

¹⁰ *ibid.*, evidence of Mrs S. Smith, p. 10.

...let...under any conditions unless someone is compelled to take them... it is the smell in the vicinity of the Coolies. When other people have gone to sleep, then the Coolies have church, and they ring a bell, while others scream and sing. Then others, when one of them is sick, walk about with a drum and hit it all night, and if the man dies, the noise is worse. On account of these circumstances, the ground and houses we have near the Location we must let for about half the value because it is unpleasant to live in the houses.¹¹

The Committee took pains to appear even-handed according to the best tradition of British 'fair play'. Indians were also allowed to give evidence and challenged many of the claims made by earlier witnesses. They argued that they had a legal right to remain in the location. Mohandas Gandhi arrived to the rescue of Krugersdorp's Indians once again by acting as their legal representative. Gandhi managed to evade the Committee's objections to his attempts to cross-examine white witnesses by putting his questions through the Committee and in this way he managed to undermine the evidence of the Chief Sanitary Inspector.¹² *The Indian Opinion* also criticised the evidence of white officials to the Committee in its pages.¹³

Nonetheless, the exclusively white Committee of Inquiry was never likely to find in favour of Krugersdorp's Indian community and duly noted, at the end of the hearings, that the location had to be closed down due to the '... extreme undesirability of having an Asiatic Location in such close proximity to a Township inhabited by Whites'. The Committee's Report gave substantial weight to the Burghershooop residents' testimony, particularly the evidence given by children, in presenting their reasons for the location's proposed closure.¹⁴

The white commercial and professional elite, having established a body of 'independent' evidence that they could now use to press for the closure of the Indian location, then set about using their control over the Town Council to create 'alternative' accommodation

¹¹ *ibid.*, evidence of Mr Petersen, p. 13.

¹² *ibid.*, Minutes of Public Sitting held on Thursday, 17 February 1910, evidence of James Munsie, pp. 2–7.

¹³ *The Standard, Krugersdorp*, 2 April 1910, 'Indian Opinion: On Mr. Burger's Evidence'.

for the Indian residents. They chose a site that seemed to be deliberately aimed at isolating and crippling their Indian commercial rivals. The Town Council's site was a hundred yards east of the Old Location, about one mile Northwest of the Market Square, not that much further than the existing Indian Location.¹⁵ It was, nonetheless, situated sufficiently far away from white customers to damage the competitiveness of Indian shopkeepers who would be forced to relocate their businesses there.

The Indian community refused to leave the Indian location against the background of a renewed national Passive Resistance campaign which had been launched in 1911. This Indian resistance aimed at the repeal of the Transvaal Law 3 of 1885 that still prohibited Indians from owning property in the province. The campaign also protested against the Transvaal Gold Law of 1908 that had prohibited trade on 'proclaimed' land owned by the Rand's mining companies while allowing municipalities, under certain conditions, to use the 'surface right' for locations and other purposes.¹⁶

The Krugersdorp Chamber of Commerce became involved at this point and, at first, decided to employ extra-legal tactics against their Indian rivals to complement the Town Council's legal tactics. It circulated a pamphlet addressed to 'the Farmer in particular and the White Man in general',¹⁷ which warned that the 'Asiatic' threatened 'young nations' in Australia, Canada and South Africa and called for a boycott of Indian traders.

The pamphlet rehashed the usual arguments that Indians had a much lower standard of living than 'Europeans' and so could undercut white shopkeepers, that Indians sent money out of the country and had penetrated many different occupations in places as diverse as Natal and British Columbia where 'Asiatics are responsible for practically the whole of agricultural production'.¹⁸ However, apart from this single pamphlet, there

¹⁴ Krugersdorp Asiatics Locations Committee, 1910, p. 11.

¹⁵ *The Standard, Krugersdorp*, 1 June 1912, untitled. See also Krugersdorp Public Library (KPL), *Mayor's Minute*, (Mayors Minute), 1911–12, 'Mayor's Report', p. 22.

¹⁶ M. Swan, *Ghandi: The South African Experience*, (Ghandi), Ravan, Johannesburg, 1985, p. 241.

¹⁷ *The Standard, Krugersdorp*, 4 June 1910, 'Asiatics: Chamber's Warning'.

¹⁸ *ibid.*

appears to be no other attempt to use extra-legal tactics against Indian shopkeepers by the white commercial and professional elite in Krugersdorp. Indeed, as mentioned earlier, the White League was completely discredited when its secretary was 'caught' buying fruit from an Indian seller and severely criticised by the local newspaper.¹⁹

Over the latter part of 1910 and early 1911, however, the white commercial elite in the Town Council pursued a methodical plan to use the law to drive Indians out of the location and into the Asiatic Bazaar. The Town Council took control over the Asiatic Bazaar in mid-August, 1910²⁰ and opened discussions with the Administrator on the question of compensation to Indians.²¹ The Town Council's Licensing Committee also deliberately began to refuse trade licences to Indians as part of a multi-pronged strategy to squeeze Indian shopkeepers out of the town.

This new legalistic strategy commenced with a refusal to grant a butcher's licence to an Indian on 'Naudé's Ground', an area adjoining the location²². The applicant, Ebrahim Lambat, immediately took the Council to court. The Council explained its refusal by pointing out that it planned to remove the location, an event that was 'very probable' and imminent so it made no sense to issue a licence to an Indian butcher on the boundary of that location.²³

Lambat's lawyer pointed out that the only legitimate grounds that the Committee had for rejecting an application was if the applicant was found to be 'undesirable'.²⁴ Apparently this described an applicant who had been 'convicted three times' (presumably for offences relating to health and trading regulations) or whose premises were considered unsuitable. Neither of these conditions applied in this case, he argued. The magistrate concurred and ordered the Town Council to pay costs.²⁵

¹⁹ *The Standard, Krugersdorp*, 27 August 1910, 'Mr. James And the White League: An Amazing Action'.

²⁰ See, for example, *The Standard, Krugersdorp*, 20 August 1910, 'Asiatic Bazaar'.

²¹ *The Standard, Krugersdorp*, 8 October 1910, 'The Coolie Location'.

²² *The Standard, Krugersdorp*, 8 October 1910, 'An Appeal'.

²³ *ibid.*

²⁴ *The Standard, Krugersdorp*, 15 October 1910, 'Lambat's Licence: An Asiatic Appeals, Against Council's Decision'.

²⁵ *ibid.*

The Town Council which appears to have been quite cavalier in its approach to the case – it had not secured any legal representation – was taken aback. This setback may have contributed to the Town Council's decision to tighten up its legalistic strategy by passing a resolution to cancel all existing trade licences held by Indian traders and to offer compensation to these licence holders. The *Indian Opinion* speculated that the Krugersdorp Town Council had, indeed, embarked on a deliberate legal campaign against Indian shopkeepers:

...the resolution of the Krugersdorp Town Council, accepting Volksrust's suggestion that the Indian trade licences should be cancelled and the licences compensated, is significant. We have reason to believe that the Transvaal Indians are face to face with the beginnings of a new campaign.²⁶

While there is no supporting evidence of such a 'resolution' in the Krugersdorp Town Council Minutes or in the local newspaper, nor any corroborating evidence that the Volksrust Town Council communicated this suggestion to its Krugersdorp counterpart, the Town Council did refuse trade licences to some Indian applicants. This suggests that a firm, albeit unpublicised, a decision had been made to use legal tactics against Indians.

The actions of the Krugersdorp Chamber of Commerce underline this; they simultaneously demanded that Town Councils be given 'power to limit the number of licences in accordance with the interests of the community'.²⁷ From August 1911 onwards, it also became clear that the Town Council had begun to make use of the Gold Law to harass Indian hawkers and pedlars trading near mines.²⁸ The members of the local white commercial elite, through their representatives in local government,

²⁶ *The Standard, Krugersdorp*, 5 November 1910, untitled.

²⁷ *The Standard, Krugersdorp*, 5 August 1911, 'Municipal Prosecutions: Illegal Trading on Mining Ground'.

²⁸ See, for example, *The Standard, Krugersdorp*, 30 July 1910, 'Hawkers Fined'.

²⁹ *The Standard, Krugersdorp*, 22 October 1910, 'Asiatic Trading'.

pursued every available avenue to close the Indian location.²⁹ In response, a meeting of Indians unanimously supported the following resolution proposed by Mr Dadoo, a Krugersdorp Indian merchant:

This meeting resolves to resist to the utmost the attempt being made to oust Indian merchants from their positions and businesses, and to suffer imprisonment and other trials during the threatened campaign against them [under] the Gold Law and the Townships Act Amendment of 1908.³⁰

In 1912, these tactics were extended to include the prosecution of white stand holders³¹ who sublet to Indians. Although the Town Council faced a number of delays over its plans to remove the Indian residents legally from the Indian Location³² and transfer them into the Asiatic Bazaar,³³ it did not waver from its legalistic path (although the 'White League' did not completely fade away).³⁴ It likewise continued to refuse applications for trade licences, rejecting, for example, an application by two Indians for a butcher's licence in Burghershoop in 1913.³⁵ Prosecutions under the Gold Law continued during 1913 as well.³⁶

In October, 1913, Indian coalminers went on strike in Northern Natal and Gandhi led a column of strikers to the Transvaal-Natal border to protest a heavy tax that was imposed in the Natal province on ex-indentured Indian labourers.³⁷ The government

³⁰ *The Standard, Krugersdorp*, 26 August 1911, untitled.

³¹ See, for example, *The Standard, Krugersdorp*, 'An Important Case: Letting to Asiatics'. See also 30 November, 1912, 'Fighting the Asiatic: An Owner Fined'.

³² *The Standard, Krugersdorp*, 12 October 1912, 'The Coolie Location at Burghershoop'.

³³ *The Standard, Krugersdorp*, 2 November 1912, 'The White League'.

³⁴ *The Standard, Krugersdorp*, 28 June 1913, 'Butcher's Licence'. See also *The Standard, Krugersdorp*, 2 August 1913, 'Indian Butchers' and 19 August 1913, 'Asiatic Butcher's Licence'.

³⁵ *The Standard, Krugersdorp*, 30 August 1913, 'Asiatic Traders'.

³⁶ Swan, *Gandhi*, p. 247.

³⁷ *ibid.*, pp. 254–6.

crackdown led to arrests and the conviction of the coalminers who had to serve their hard labour sentences in the mines, provoking strong protests by the Indian and British governments. A Commission then heard evidence and repealed the tax. The controversial 'Gandhi–Smuts Agreement' followed closely and supposedly recognised the vested rights of Indians who traded in the Transvaal and in other South African towns up to the time of the agreement. In exchange, Gandhi allegedly accepted severe limits being placed on further Indian immigration into the Transvaal after January 1914.³⁸

It was against this background that the white commercial and professional elite on the Krugersdorp Town Council renewed its attempts to have the Indian Location closed down with even greater determination. Smuts' heavy-handed crackdown from 1911 may have convinced the Council that only a firm, resolute and legal approach could succeed. In August 1913, the Town Council finally overcame bureaucratic delays and the Indian Location was officially transferred to the municipality's control.³⁹ At this point the Town Council acted quickly, and on 31 December 1913, it believed it had the legal grounds in place to give notice to all the Indian residents in the location to vacate their homes. The Town Council hoped to head off resistance by the inhabitants by offering to pay compensation to the Indian residents for their houses and it declared that it was willing to cover transport costs to move residents' furniture and belongings to the Asiatic Bazaar.⁴⁰

The Mayor reported that '... no notice...has been taken by any of the residents' and the Town Council had to apply to the Supreme Court for an 'ejectment' (eviction) order.⁴¹ The Indian residents refused to comply with the subsequent court order and, instead, adopted a tactic of non-co-operation that evoked memories of the national passive resistance campaign. The Town Councillors, determined to enforce the law, resorted to the random eviction of Indian residents from the location under the authority of the court

³⁸ *ibid.*

³⁹ *ibid.*, 'Asiatic Bazaar'.

⁴⁰ *Mayor's Minute*, 1913–4, Mayor's Report, p. 13.

⁴¹ *The Standard, Krugersdorp*, 1 August 1914, 'Asiatic Bazaar'.

⁴² *ibid.*

order.⁴²

This provoked one Indian shopkeeper, Mohamed Hassan, to secure the assistance of a lawyer who requested that the Town Council grant his client more time to vacate his premises.⁴³ The Town Councillors rejected the lawyers' application and when no court case materialised, they may have felt vindicated by their faith in their confrontationist legal approach. The Indian residents realised that there were no more legal avenues available to them and some Indian families began to leave the Indian Location. In September, 1914, nine months after the original declaration, the Mayor was finally able to declare, in words that suggests that their legalistic campaign had been fully vindicated, that '... in view of the legal actions taken by the Town Council, the whole of the Asiatics left the premises'.⁴⁴

What the Mayor neglected to mention, however, was that the Council's policy was little more than a Pyrrhic victory. While it is true that all the Indians had finally left the Indian Location, a decade after the Town Council had first attempted to force them out in response to a plague scare (see Chapter Five), the Mayor failed to mention that not a single Indian resident moved to the Asiatic Bazaar. Instead, the Chief Sanitary Inspector, a paid servant of the Town Council, was left as the bearer of bad news. Mr Munsie pointed out in his annual report that,

...the Old Asiatic Location near Burghershoop has been closed for some time, but instead of the Asiatics being removed to the New Location, they are now occupying premises throughout the various Townships amongst the white population.⁴⁵

The Indian residents' resistance to attempts to remove them from the Indian location and then to confine them to a more distant 'Asiatic Bazaar', flew in the face of the law that the white commercial elite in the Town Council had so carefully applied to defeat their commercial rivals. The Indian community refused to follow the legal 'script' and

⁴³ *ibid.*

⁴⁴ *Mayor's Minute*, 1913–4, Mayor's Report, p. 9.

⁴⁵ *Mayor's Minute*, 1913–4, Chief Sanitary Inspector's Report, p. 105.

move to the Asiatic Bazaar. This resistance threatened to derail the Town Council's legalist strategy as it not only failed to limit Indian trading activity but actually placed Indians in a commercially stronger position than before.

However, the white commercial and professional elite on the Krugersdorp Town Council would not admit defeat. In their view these actions were illegal and had to be resisted if their vision of a legally-bounded urban space was to be achieved. The Town Council now used its authority as a licensing body to deny trading licences to the new Indian shopkeepers who wished to trade in the town, this time using legal representation and attempting to produce valid reasons to justify their refusal. There is evidence that this initiative had been strongly supported by white shopkeepers for some time as the Krugersdorp Chamber of Commerce had met urgently to discuss the 'control of trading licences by municipalities' and 'the illegal occupation of premises by Coloureds' at its meeting in April 1913.⁴⁶

The *modus operandi* of this legalistic approach is illustrated by an application by Laheb Mahomed who appeared in person before the Town Council's licensing committee in February 1914 to apply for a fruiterer's licence for premises in Commissioner Street, Burghershoop.⁴⁷ One of the Town Councillors asked whether it was the Town Council's policy to 'allow Asiatics to oust the white man, or to oust the coolie and get in whites?' The Town Clerk then read a letter by the Chief Sanitary Inspector outlining the 'history' of the applicant. It was then moved that the application be refused because the applicant was 'not a desirable person to hold a licence'.⁴⁸

A similar approach was adopted in the case of Abdul Luvy, a Syrian who had his application for a butcher's licence for premises in Burghershoop refused. An attempt was apparently made to imply that the applicant was a danger to the health of the town as he was asked what he knew about 'diseases of meat' and then was promptly told

⁴⁶ *The Standard, Krugersdorp*, 20 April 1913, 'Chamber of Commerce'.

⁴⁷ *The Standard, Krugersdorp*, 28 February 1914, 'Trade Licences'.

⁴⁸ *ibid.*

that his application had been rejected.⁴⁹ Such incidents occurred throughout the period 1910 to 1923 and suggest that the 'Sanitation Syndrome'⁵⁰ remained an important factor in the conflict between white and Indian shopkeepers (see Chapter Five).

One Indian applicant hired a local lawyer, Mr Retief, who had served on the Town Council a few years before, in an effort to improve his chances of obtaining a butcher's licence on premises in 'Naudé's Ground' near Burghershoop. Retief pointed out that one of the Town Councillors responsible for hearing the application, John Hoatson, ran a butchery business in West Krugersdorp and queried whether he should be allowed to interview his client (see Chapter Eight and Appendix Two). The Town Council upheld this right of Hoatson to put questions to the Indian applicant. The application was unsuccessful despite securing 162 signatures in its support as well as a letter from Mr Naudé, the owner of the land.⁵¹ Not every application seems to have been refused⁵² but fragmentary evidence, mostly newspaper sources, suggest that refusals increased sharply by 1914 and that this was a deliberate approach to use the law to curtail Indian trading activity.

There was, somewhat surprisingly, virtually no attempt by Indian shopkeepers, hawkers and pedlars to challenge these refusals.⁵² One can speculate that one of the reasons was that many Indian traders had engaged in activities that skirted the law (as did most white shopkeepers) such as staying open slightly past the stipulated closing times or were guilty of a technical breach of any of the dozens of by-laws. It would, thus, be relatively easy for the Town Council to deny their applications on grounds of their 'undesirability', a very broad term that could mean just about anything that the Licensing Committee wanted it to mean.

Many applicants were also multiple licence holders as they ran a number of businesses

⁴⁹ *The Standard, Krugersdorp*, 9 May 1914, 'Asiatic Butcher's Licence'.

⁵⁰ M. Swanson, 'The Sanitation Syndrome: Bubonic Plague and Urban Native Policy in the Cape Colony, 1900–1909', *Journal of African History*, 18, 3, 1977, pp. 387–410.

⁵¹ *The Standard, Krugersdorp*, 2 May 1914, 'Asiatic Trading'.

⁵² See, for example, *The Standard, Krugersdorp*, 1 August 1914, 'Asiatic Licences'.

and they may have been worried that a direct challenge to the Licensing Committee could lead to the loss of their existing licences. Litigation was also expensive and Indian traders had limited resources. This might explain Mohamed Hassan's apparent failure to challenge the Committee's refusal of his application for a general dealer's licence (it is possible that he did appeal but the historical records do not exist). Hassan certainly was not afraid of litigation and, as discussed earlier, he challenged the Town Council's attempts to close the location in the courts. Perhaps this earlier litigation had exhausted his resources and could not afford to lose another court case.⁵³

In 1915, the Town Council tried to extend its refusal of trade licences to older, more established Indian residents who had acquired 'vested rights' in their properties ostensibly in terms of the Smuts–Gandhi Agreement. The Town Council had written to the Department of Mines and Industries for clarity on this issue and were informed that the Town Council could 'resist only fresh invasions and the migration of Asiatics from town to town'.⁵⁴

The government warned the Krugersdorp Town Council that Indian traders in Burghershoop had traded for a considerable amount of time in the vicinity. The Councillors were warned that the law courts should be avoided because the issue was 'very complicated and fraught with doubt'. They were cautioned that '...any unsuccessful action would make the position worse than it is now'⁵⁵ and that Indians retained a 'vested right' even if they moved their residences or businesses from place to place in the same Township.⁵⁶

Then, in 1916, the Town Council experienced a number of legal setbacks. An Indian pedlar successfully appealed against the Licensing Committee's refusal to grant him a

⁵³ *The Standard, Krugersdorp*, 2 May 1914, 'Asiatic Trading'.

⁵⁴ *The Standard, Krugersdorp*, 22 August 1914, untitled. Hassan was successful, however, in defending himself against a charge of trading without a licence.

⁵⁵ CAD, Archives of the Protector of Asiatics, MPA 3/203, letter from Acting Secretary for Mines and Industries to the Town Council, Krugersdorp, 2 June 1915, p. 1.

⁵⁶ *ibid.*

⁵⁷ *ibid.*, p. 2.

licence and the Town Council was subsequently forced to review six applications that it had earlier refused under a similar Ordinance.⁵⁷ Although the Town Council decided still to refuse these applications, this wavering of purpose and the success of the Indian pedlar's appeal, inspired hope for no less than thirteen Indian applications for a range of trade licences which suddenly flooded the Town Council. The Council decided to dig in its heels and refused every single application; not one of the applicants challenged these refusals in court.⁵⁸

Later that year, an Indian-owned company, Mohamed, Ismail and Co., applied for a general grocery licence in stand 422 in Commissioner Street in Krugersdorp's Central Business District. The firm had existed for 25 years and operated in Klerksdorp. A white witness from Klerksdorp affirmed that he knew the firm throughout its existence and declared that it only ever conducted 'clean business'.⁵⁹ One of the members of the firm, Ismail Amod Patel, remarked that he joined the company in 1885, that 'he had never had any trouble with the Council' in Klerksdorp and that he engaged white employees, paying his bookkeeper seventeen pounds a month.⁶⁰

Patel's company already possessed a general dealer's licence in Krugersdorp where the customers were 'white people and all other kinds', and the company had spent over 2 000 pounds buying the building and stands and a further 400 pounds on improvements. The applicant could hardly have endeared himself to the Licensing Committee by mentioning that he specialised in catering to white customers as he would be in direct competition with white shopkeepers for a slice of their clientele. The proposed site for the general grocery business, in the heart of the town, was also clearly a threat to local white-owned commerce. The application was refused even though one of the Town Councillors, a lawyer, pointed out that they had no evidence that the applicants were undesirable.⁶¹

⁵⁸ *ibid.*, letter from H. B. Shawe, Acting Secretary for the Interior to the Town Clerk, Krugersdorp, 7 August 1915.

⁵⁹ *The Standard, Krugersdorp*, 11 March 1916, 'Council Meeting'.

⁶⁰ *ibid.*

⁶¹ *The Standard, Krugersdorp*, 17 June 1916, 'Trading Licences'

This case was striking as it was the first that involved an Indian-owned company. It revealed that a number of companies existed that were formed by Indians who had operated businesses on the Rand for a long time. It also highlighted the principle that a company was not the same as its directors. Thus, Mohamed, Ismail and Company was able to evade the various laws and regulations that prevented Indians from personally

procuring property in the Transvaal. Surprisingly, given the strength of their case, the Indian owners of the Company did not challenge the Council's refusal in the local courts. The Town Councillors who supported the legal strategy of curbing Indian trading activities must have felt vindicated that this was the right approach.

The case of Mohamed, Ismail and Company did, however, mark the advent of a major new threat to white commercial activity as it coincided with a decision of the Supreme Court that nothing in the law prevented a Company, in which the majority of the shareholders were Indians, from owning land in the Transvaal.⁶² *The Indian Opinion* agreed that Indian shopkeepers were 'taking advantage of the law' by forming limited liability companies that allowed them to 'indirectly own land'.⁶³

It conceded that white commercial interests, in the form of the Associated Chambers of Commerce, would have acted to prevent the Companies Act from being passed if it could have foreseen these effects. Yet it defended this new approach by Indian traders to evade restrictions on their trading activities by pointing out that the attempt by white merchants to monopolise all avenues of trade was unjust and unfair, and constituted a greater evil than the Indian traders' use of technical details of 'man-made' law to promote their interests.

The newspaper seemed to claim that while Indians conformed to the letter of the law, white mercantile interests were guilty of the much more serious violation of natural

⁶² *ibid.*

⁶³ *Krugersdorp Standard*, 15 July 1916, 'The Health Committee'.

justice and betrayed the ideals of the 'Britisher' who prides himself upon his principles of 'fairplay and justice to all'. The white commercial elite in Krugersdorp defended themselves by pointing out that Indians were able to undercut the prices that were offered to white customers because of their low standard of living and by claiming that they threatened to drive white-owned shops out of business.

White shopkeepers also pointed to the increasingly harsh economic conditions that prevailed in Krugersdorp and suggested that their very economic survival was at stake. War-induced inflation caused crippling increases in the costs of most goods, leading to a falling off of consumer purchasing power and consequently fewer sales. The spirit of 'sacrifice' in the name of the 'War Effort', dealt with in Chapter Seven, also would have cut back consumer spending on a variety of goods, particularly the luxury goods sold by the white commercial elite in Krugersdorp.

As Table Eight below demonstrates, the costs of most goods increased by as much as 50 per cent in just four years and wages, for white as well as for black workers, failed to keep pace. This meant that customers had less to spend on the goods sold by white shopkeepers. Those who did have money were more likely to spend it on cheaper goods sold by Indian shopkeepers. The combination of the decline in the total volume of all commercial transactions and a reduction in the amount of money spent in white-owned shops, began to have a negative impact on the profits made by the white commercial elite and would have made them determined to restrict Indian commercial competition as much as possible.

**Table Eight: Indexes of Retail Prices of Food, Fuel and Light: 1914–1918
Based on Principal Towns in South Africa, 1910 = 1 000**

| Year | Cereals | Dairy Products | Fresh Meat | Fuel and Light |
|------|---------|----------------|------------|----------------|
| 1910 | 1 000 | 1 000 | 1 000 | 1 000 |
| 1914 | 1 322 | 1 098 | 1 133 | 891 |
| 1915 | 1 484 | 1 216 | 1 093 | 888 |

| | | | | |
|-------------|--------------|--------------|--------------|--------------|
| 1916 | 1 586 | 1 237 | 1 159 | 989 |
| 1917 | 1 763 | 1 356 | 1 241 | 1 022 |
| 1918 | 1 823 | 1 251 | 1 375 | 1 141 |

Source: P. Bonner, 'The Transvaal Native Congress, 1917–20, the Radicalisation of the Black Petty Bourgeoisie on the Rand', in S. Marks, and R. Rathbone (eds.), *Industrialisation and Social Change in South Africa: African Class Formation, Culture and Consciousness, 1870-1930*, Longman, Essex, 1982, p. 273, Table 1.

While war-induced inflation affected most towns on the Rand, Krugersdorp was particularly badly affected because, unlike towns like Johannesburg and Springs, it did not industrialise during the import-substitution phase of industrial growth in South Africa, during the war. From 1915–16 to 1919–20, 1 700 factories were established on the Rand and in coastal towns but very few were situated on the West Rand.⁶⁴

The West Rand gold mining industry, which was much less profitable than the central and eastern Rand, was in serious trouble after Union. Already in 1912, the Randfontein Estates G.M. Co. Ltd. was reported to be in a 'serious state of affairs with regard to the shortage of labour'.⁶⁵ While the Witwatersrand Native Labour Association, the Chamber of Mines' recruiting arm, reported an 'actual loss of native labourers' to the amount of 8 000 in May, 10 000 in June and 20 000 in August, for the whole Rand,⁶⁶ this loss of labour seems to have affected Krugersdorp's mines the most.

The Lancaster mine closed down permanently in 1913 as a result of growing

⁶⁴ B. Bozzoli, *The Political Nature of a Ruling Class: Capital and Ideology in South Africa, 1890–1933*, Routledge and Kegan Paul, London, 1981, pp. 143–4. See also P. Cockhead, 'The East Rand: a Geographical Analysis of the Transition of the Economic Base of the Region from Gold Mining to Manufacturing', MA dissertation, University of the Witwatersrand, 1970, p. 9. Cockhead offers an interesting explanation for failure of the West Rand to industrialise, arguing that the East Rand had large flat areas suitable for industries while Krugersdorp's ridges made it more suitable for residential purposes.

⁶⁵ *The Indian Opinion*, 16 November, 1918, 'Asiatic Trading', p. 244.

⁶⁶ *The Standard, Krugersdorp*, 2 August 1913, untitled. See also *The Standard, Krugersdorp*, 20 May 1913, untitled.

⁶⁷ *The Standard, Krugersdorp*, 18 January 1913, untitled. The dependence of local commerce on the local mining industry is highlighted by the article's lament that the closure had thrown a '...considerable number of men out of work, and necessarily operate[d] to the injury of the trading community.'

⁶⁸ *The Standard, Krugersdorp*, 12 January, 1907, untitled.

unprofitability, its demise sealed by the shortage of black labour.⁶⁷ The well-known York mine, re-opened in 1907 by Sir Abe Bailey in an apparent election ploy,⁶⁸ finally closed down in 1914.⁶⁹ The 1913 white miners' strike and the 1914 General strike similarly put a strain on the local mining industry and local businesses (see Chapter Eight).

The First World War made matters worse for Krugersdorp's mining industry. It drained local mines of valued skilled white labour as many supervisors, foremen and even managers volunteered to fight on the side of Britain. Krugersdorp lost at least 1 000 white male adults to the war and this was an important blow to the local economy.⁷⁰ Heavy rains in 1916 caused flooding and subsidence, damaging many local mines. While this affected the whole Rand, Krugersdorp was particularly badly hit as the now derelict York and Lancaster mines were completely flooded causing an overflow into the still operational neighbouring mines in Luipaard's Vlei after exceptionally heavy rains.⁷¹

In 1916 the South Randfontein, North Randfontein and Robinson Randfontein mines were closed down by the Johannesburg Consolidated Investment Corporation (JCI) shortly after it bought these along with other mine belonging to the Randfontein Estates and G.M. Co. Ltd. from J.B. Robinson.⁷² The mines were in a shocking state and required substantial development and repair before mining operations could begin. The JCI sued Robinson on the grounds that he had misrepresented the conditions of the mines to the company and won nearly half a million pounds in damages.⁷³

Despite this injection of cash, the JCI was forced to close down the Porges Randfontein mine in 1917, thereafter only one mine, the Randfontein Central, remained in operation by the end of the year. The company reported that revenue from this mine had 'appreciably declined since 1916' and only one mill was still operational, producing a

⁶⁹ *The Standard, Krugersdorp*, 2 October 1915, untitled.

⁷⁰ *The Standard, Krugersdorp*, 21 October 1916, untitled.

⁷¹ *The Standard, Krugersdorp*, 6 January 1916, untitled.

⁷² *The Standard, Krugersdorp*, 13 November 1919, untitled.

⁷³ G. Wheatcroft, *The Randlords: The Men Who Made South Africa*, George Weidenfeld and Nicholson, London, 1985, p. 209.

meagre 168 000 tons a month.⁷⁴ The French-owned Champ d'Or mine had to close as well, leaving only a handful of mines operating in the region of Krugersdorp. Those that remained, like the West Rand Central and the Luipaard's Vlei Estates and G.M. Co. Ltd. mine, reported low profits and issued low or no dividends at all to shareholders.⁷⁵ The Krugersdorp Inspector of Mines was gloomy about Krugersdorp's mining industry:

...several small concerns which managed to make a little headway last year have been forced to close down. The larger mines have continued to carry on operations but the increased costs due to the war are gradually reducing the small margin between profit and loss on many of these low-grade properties, so that in spite of economic and other improvements, it appears that some of them will be forced to give up the struggle and cease operations during the coming year. The shortage of native labour adds to the difficulty.⁷⁶

The year 1918 was one of the worst years yet for the embattled town of Krugersdorp. Again heavy rains caused severe flooding and subsidence in its mines.⁷⁷ Water pipes were damaged leading to the strike, already mentioned, of 2 000 black miners at Randfontein A compound.⁷⁸ Food and fuel were exorbitantly priced prompting many people in Krugersdorp to cut back on these necessities in the middle of a harsh winter. This compromised the health of many residents just as the Influenza epidemic struck, leading to a number of fatalities.

When the Influenza epidemic struck in 1918 and voluntary aid workers moved from home to home to assist those who had fallen ill, they were shocked by the poverty that they saw amongst white residents. A local Labour Party leader, E. Cresswell, said that he was 'unaware that the slums were so revolting within Krugersdorp itself' (see Chapter Eight).⁷⁹ The Epidemic itself was short but devastating, peaking in October 1918 when it killed large numbers of people of all ages all around the Union. Nearly

⁷⁴ *ibid.*, See also D. Yudelman, *The Emergence of Modern South Africa*, David Philip, 1983, p. 149.

⁷⁵ *The Standard, Krugersdorp*, 8 March 1919, untitled. See also *The Standard, Krugersdorp*, 12 July 1919.

The West Rand Consolidated mine earned a profit of just 4 627 pounds while the Luipaard's Vlei Estate and G.M. Co. Ltd. paid out a dividend of just 6 pence to their shareholders.

⁷⁶ *The Standard, Krugersdorp*, 14 September 1918, untitled.

⁷⁷ *The Standard, Krugersdorp*, 11 November 1919, untitled. See also *The Standard, Krugersdorp*, 10 August 1918, untitled and 31 August 1918, untitled.

⁷⁸ *The Standard, Krugersdorp*, 31 August 1907, untitled.

one-third of the black miners on the Rand were hospitalised and over a thousand died from influenza.⁸⁰

Krugersdorp's local agricultural industry that had helped the town to sustain itself through economic difficulties in the past could no longer perform this safety net function as it was afflicted by crop diseases and extreme weather conditions. In 1918, the same heavy rains that flooded Krugersdorp's mines destroyed crops, washed away roads, bridges and telegraph lines, and even cut off the Hekpoort Valley from all contact with Krugersdorp when the Sterkfontein River burst its banks.⁸¹

Conditions were terrible in the locations and backyards of white homes where black workers struggled on wages far below the official breadline of 1921 of five pounds and three shillings a month for a family of four. Philip Bonner points out that black miners earned only 3 pounds and five shillings per thirty-day shift, which was substantially longer than a month. Male domestic servants or 'houseboys' earned just 40 to 60 shillings a month, a 'store boy' earned 70 to 80 shillings a month and municipal workers earned just 50 shillings a month, although food and accommodation was also provided.⁸²

Against this background of social and economic turmoil, the white shopkeepers and their allies from the local professional elite sharpened their focus on the commercial threat posed by Indian traders and were determined to use this power to destroy their rivals. The economic conditions described above had pushed their revenues and profits dangerously close to breaking-point and some were facing bankruptcy. The Chamber of Commerce remarked upon poor attendance at its annual general meeting in March

⁷⁹ *The Standard, Krugersdorp*, 27 August 1919, untitled.

⁸⁰ See, for example, H. Phillips, 'The Local State and Public Health Reform in South Africa: Bloemfontein and the Consequences of the Spanish 'Flu Epidemic of 1918', *Journal of Southern African Studies*, 13, 2, 1987, pp. 210-233.

⁸¹ *The Standard, Krugersdorp*, 16 February 1918, untitled.

⁸² P. Bonner, 'The 1920 Black Mineworkers' Strike: a Preliminary Account' ('Strike'), in B. Bozzoli (ed.), *Essays in Southern African Labour History*, Johannesburg, 1981, p. 275.

⁸³ *The Standard, Krugersdorp*, 28 March 1918, 'Commerce in Council'. See also *The Standard, Krugersdorp*, 28 March 1918, 'Trade During the War'.

1918, noting that this had been the pattern at all its meetings and could be explained by the '...absence of any chance of being able to rectify any disability under present conditions'.⁸³

The white shopkeepers gained only one hollow victory to celebrate over the previous four years, the closure of the Indian location at Burghershoop. The support of the white residents of Burghershoop for the white commercial elite's attacks on Indian businesses and residences had sustained the white middle class through dark times but even this support could no longer be relied upon because many of Burghershoop's residents signed a petition in support of an Indian trader's application for a trading licence in Burghershoop in 1918.⁸⁴ It was later established that some of the signatures were those of children and that the Indian shopkeeper had promised 'free butter to those who signed the petition', indicating that deteriorating economic conditions had made racial and ethnic alliances less predictable than ever.⁸⁵

These circumstances, where war-induced inflation had caused the price of some basic foodstuffs to rise by 300 per cent between 1914 and 1920 and the pre-war pound had declined to just 13 shillings and 7 pennies over the same period,⁸⁶ help to explain the Town Council's actions during the war and how they would behave even more unfairly towards Indians during the post-war period. While the Council's actions had been malicious towards the local Indian business community during the war, it grew increasingly vicious, desperate, even irrational, during the post-war period of 1918 to 1922.

Krugersdorp's entire population, including the mines, had plummeted from a total of 54 259 in 1911 to 42 525 in 1921.⁸⁷ The bulk of the decline is accounted for in the form

⁸⁴ *The Standard, Krugersdorp*, 7 September 1918, untitled.

⁸⁵ *The Standard, Krugersdorp*, 23 November 1919, untitled.

⁸⁶ Bonner, 'Strike', p. 279.

⁸⁷ U.G. 41, Union of South Africa, Population Census, 7 May 1946, p. 57. Some caution needs to be applied to any census records, particularly the 1921 census which has been criticised as unreliable but it does, nonetheless, indicate an overall downward trend in Krugersdorp's total population over the period 1911–1921.

of black, single male migrant workers who were retrenched as a number of local mines closed down but white miners' numbers must have fallen as well, reducing the total size of the main customer base for the white commercial and professional elite. Out of sheer desperation, the white shopkeepers and professionals who controlled the Town Council blatantly began to abuse ratepayers' money to pursue a legal vendetta against their commercial rivals.

The next section will consider how the white commercial and professional elite reacted to these conditions by deepening and broadening its vision of a 'lawful' town and the construction of legalistic urban space as a means to tackle these threatening trends in the immediate post-war period. What was striking about the post-war period, however, was the determined resistance that Indian traders offered to the Council's attempts to use the law against them. Indian shopkeepers were prepared to challenge the Town Council in the courts to a far greater extent than they had done in the past. The economic difficulties that made the white shopkeepers increasingly determined to crush Indian shopkeepers by using the law, also made Indians determined legally to defend themselves at every opportunity.

The Gloves Come Off: Commercial Rivalry and Legal Space, 1918–1923

Both white and the Indian shopkeepers were becoming desperate in the post-war period and they steadily grew more determined to use the law to pursue their interests. The 'irresistible force' of the white merchants was about to clash with the 'immoveable object' of Indian shopkeepers and a titanic legal clash loomed in 1918. Already Krugersdorp's legalism had captured the attention of many Town Councils across the Rand and Transvaal. Municipalities began to follow Krugersdorp's lead and attempt to restrict Indian access to trading licences by the end of the First World War. Similarly Indians across the Transvaal began to resist these Town Councils in the courts and, like their white counterparts, drew inspiration from the resistance offered by Krugersdorp's Indian residents.⁸⁸

⁸⁸ *The Indian Opinion*, 29 March 1918, p. 52, 'Trading Licences in the Transvaal'. There is no mention of this in the local Krugersdorp newspaper.

Krugersdorp may have followed the lead, in turn, of Natal's white commercial elite that had pressured the Natal Provincial Council to attempt to pass what Palmer called 'two very drastic bills' in 1908, to stop the issue of all new licences to Indians in that year and to ensure that after one decade, that is, in 1918, 'that no licence could be issued, transferred, or held by, or on behalf of an Asiatic'. The Imperial Government refused to allow this legislation to be passed.⁸⁹

The opening shot in the anticipated legal duel was fired in August 1918 when the Indian shopkeeper Mohamed Ebrahim took the Town Council to court over its refusal to grant him a general grocer's licence. The Town Council could not prove to the magistrate's satisfaction that the applicant was 'undesirable',⁹⁰ and he reprimanded the Town Council for acting illegally out of racial prejudice. The magistrate declared that the Town Council had

...acted arbitrarily and capriciously and did not apply or bring their minds to bear on the application and that they were further influenced by improper and ulterior motives in that the appellant was an Indian.⁹¹

This defeat in the courts was just the beginning. The Town Council faced a series of similar court actions over the following year and lost in the majority of cases. The owners of the local newspaper who were broadly sympathetic to the white shopkeepers (who advertised heavily in their columns and who formed part of their readership) remarked bitterly that 'the Asiatic seems to be wonderfully successful in the law courts appealing against the Municipal Council'.⁹²

Krugersdorp's Indian community, which was in the forefront of the legal struggle over commercial spaces, also challenged the attempts made by the Krugersdorp Town Council to deny Indian traders and shopkeepers licences on the grounds that their shops were sited on mining land which was prohibited under the 1908 Gold Law.

⁸⁹ M. Palmer, *The History of Indians in Natal*, Oxford University Press, London, 1957, p. 85.

⁹⁰ *The Indian Opinion*, 11 October 1918, 'What is an 'Undesirable Person'?'.
⁹¹ *The Standard, Krugersdorp*, 7 September 1918, untitled.

This renewed attempt to use the Gold Law was bitterly condemned by Gandhi who claimed that it would turn Indians into 'slaves'⁹³ as most land outside the Indian locations and bazaars was proclaimed land of some kind or another. For Gandhi, this was a breach of the 1914 'agreement' and he began to agitate in India for pressure to be applied on the Union Government so that it would either legislate changes to the Gold Law or dissuade Town Councils from proceeding in this way against Indian businessmen.⁹⁴

This international pressure was complemented by growing determination on the part of local Indians in Krugersdorp to utilise other forms of resistance against the Town Council. This local resistance was led by Ismail Amod Patel who was the Chairman of the Krugersdorp branch of the British Indian Association. Patel helped to compile a petition that was sent to the Union Parliament. The petition pointed out that a 'British Indian', who had held a licence for many years at Krugersdorp, had been recently forced to close his business by Order of Court under sections 130 and 131 of the Gold Law.⁹⁵ The petitioners warned that,

...efforts are now being made, and in several instances have been successfully employed, having for their object the total and final ruination of the Indian traders in the Transvaal and especially on the Witwatersrand Goldfields.⁹⁶

In an effort to escape the provisions of the Gold Law and other laws that discriminated against Indians, growing numbers of Indian traders began to form themselves into limited liability companies. Some of these companies had apparently been in existence for many years, as was pointed out earlier. For example, Mahomed Ismail and Company apparently operated '...for the last 25 years',⁹⁷ while another company,

⁹² *The Standard, Krugersdorp*, 23 November 1919, untitled.

⁹³ *The Indian Opinion*, 26 August 1919, 'The Asiatic Trading Act', 'Correspondence between Mr Gandhi and the Government. of India'.

⁹⁴ *ibid.*

⁹⁵ *ibid.* Unfortunately the Indian shopkeeper or trader is not identified and no other source is available to identify who this person was.

⁹⁶ *The Indian Opinion*, 28 March 1919, 'Indians and the Gold Law'.

⁹⁷ *The Indian Opinion*, 29 March 1918, 'Trading Licences in the Transvaal'.

Dadoo Limited, appears to have operated since the turn of the century.⁹⁸ Others, like Okdia Brothers Limited and Parbhoo Chiba Govind Narain and Company Limited, appear to be more recently established when these were charged in the Krugersdorp courts in 1918 with the contravention of various laws.⁹⁹ All of these Indian-owned companies, whether well-established or more recently formed, were to become the main target of the Krugersdorp Town Council in the post-war period.

The formation of limited liability companies by Indians was considered to be such a threat to white commercial interests that it forced the Union Parliament to appoint a Select Committee to investigate the 'alleged evasion of the law through Indians

becoming property owners by forming themselves into limited liability companies'.¹⁰⁰ It was claimed that Indians had acquired land to the value of 200 000 pounds throughout the Union 'under the cloak' of as many as 370 limited liability companies. Many of these companies were based in Natal and a Durban newspaper, *The Imperialist*, which was sympathetic to white commercial interests, claimed that the Indian-run companies challenged the 'spirit of the law'.¹⁰¹

A Select Committee was formed by Parliament to investigate what the *Standard*, *Krugersdorp* called the 'evasion of the law'.¹⁰² White shopkeepers and their supporters occupied the moral high ground and accused Indians of subverting the law and engaging in fraudulent business activities. This cast aspersions on Indians as 'outlaws', criminalising legitimate Indian businessmen and placing them beyond the Pale in much the same way that white shopkeepers had earlier tried to associate Indians with disease.

⁹⁸ *The Standard, Krugersdorp*, 17 June 1916, 'Trading Licences'.

⁹⁹ *The Standard, Krugersdorp*, 25 May 1918, 'Company Law'.

¹⁰⁰ *The Indian Opinion*, 28 March 1919, 'The Indian Question in Parliament: Select Committee Appointed'.

¹⁰¹ *The Indian Opinion*, 13 June 1919, 'Notes and News'.

¹⁰² *The Standard, Krugersdorp*, 22 March 1919, 'It is Said'.

Indians were now a 'disease' of the body politic, as they undermined the very foundations of civilised society, that is, 'the Law'. This 'infection', cast in legal terms by lawyers rather than in medical terms by doctors, was an attempt to use the power of modern professional knowledge to isolate and then destroy Indian commerce. Indians had been successful in challenging municipalities like Krugersdorp in the past as demonstrated above and had used the 'Law' to defend their rights to trading licences as they were not 'undesirable' under the law. It was now being claimed that Indians were not entitled to legal protection and British principles of justice and 'fair play' as they had violated these principles and now existed outside the 'Law'.

Indian commentators in *The Indian Opinion*, a Durban-based newspaper that circulated widely in Krugersdorp and elsewhere on the Rand, responded to these claims by adopting a broader, more universalistic definition of justice, as was pointed out earlier. Tayal claimed that Gandhi and other writers used the newspaper to construct an universalistic 'counter hegemony' against the dominant ideology of capitalist, imperialist Britain underpinned by its liberal principle of the 'Rule of Law'. This contention has been contested by Klein and Ginwala who claim that Gandhi's newspaper aimed merely to secure the privileged rights of a Gujerati elite 'without seeking to alter the white–African, master–servant relationship',¹⁰³ but this is not impression one gets when studying the newspaper in 1919 and 1920.

The Indian Opinion strongly supported the Transvaal Native Congress' Anti-Pass Campaign in 1919 and the boycott of the Rand's mine stores by black miners in 1920 in protest against inflationary price increases, in a way that belies Klein and Ginwala's argument that the Indian political elite favoured a policy of pursuing narrow, selfish interests. A number of articles appeared in the newspaper that regarded these struggles positively while many columns were devoted to the struggles of the oppressed around the world. For example, an article on race riots in Chicago noted that

The Negroes of America have come to realise that, whilst they

¹⁰³ G. Klein, 'South Africans of Gujerati-Indian descent', p. 209. See M. Tayal, 'Ghandi: the South African Experience', PhD thesis, Oxford University, 1980, and F. Ginwala, 'Class, Consciousness and Control: Indian South Africans, 1860–1946', PhD thesis, Oxford University, 1974.

¹⁰⁴ *The Indian Opinion*, 15 August 1919, 'The Dangers of Racialism'.

are good enough to die on the battlefield, they are not to be allowed to live peaceably along with white people in their own country¹⁰⁴

The same article warned that 'as a man soweth so shall he also reap' and pointed out that this message came 'from all corners of the earth...to arouse the sleeping world'.¹⁰⁵ Another article noted that Gandhi would approach the Indian Government of India to defend the 'human rights of Indians' in the light of oppressive laws that were passed by the Union government.¹⁰⁶ Many similar articles suggest that, at least in the immediate post-war period, that this influential Indian newspaper, founded by Gandhi, adopted a universalistic 'counter-hegemony' in support of the oppressed around the world. It defended the 'human rights' of all those who suffered from racial discrimination that was distinguishable from a British, capitalist-based conception of justice.¹⁰⁷

This defence of human rights was adopted by local Indians in Krugersdorp and may have been influenced by the growing and publicised targeting of Chinese¹⁰⁸ and African traders¹⁰⁹ by Town Councils like Krugersdorp. It was in this context that one of the best-known Indian legal challenges to municipal authorities took place: the case involving the Krugersdorp Town Council and an Indian-managed limited liability company, *Dadoo Limited*.

Mahommed Mamoojee Dadoo originated from Kholvad, India and like other 'passenger' Indians who established businesses in the smaller Transvaal towns, he opened a business in Klerksdorp in the 1890s with his brother Chotabbhai.¹¹⁰ In 1898 they moved to Krugersdorp and set up businesses on a number of stands. In 1904, the two Indian

¹⁰⁵ *ibid.*

¹⁰⁶ *The Indian Opinion*, 22 August 1919, 'An Anti-Asiatic League'.

¹⁰⁷ This claim to a universalistic conception of justice may also have been inspired by the proposal made at the 1918 Imperial conference that Indians should be treated with 'fairness and justice' by the Dominions, see Palmer, *A History of Indians in Natal*, p. 89.

¹⁰⁸ See, for example, *The Standard, Krugersdorp*, 10 March 1917, 'The Granting of Licences'.

¹⁰⁹ See, for example, *The Standard, Krugersdorp*, 20 July 1918, 'Natives and Trading'.

¹¹⁰ S. Bhana and J. Brain, *Setting Down Roots: Indian Migrants in South Africa: 1860–1911*, Witwatersrand University Press, Johannesburg, 1990, p. 210, footnote 18, 'Conversations with Suliman M. Dadoo, Ahmed Dadoo and Ebrahim Dadoo', 19 October 1982, Krugersdorp.

¹¹¹ *The Indian Opinion*, 22 August 1919, 'The View of Our Opponents'.

¹¹² *ibid.*

men formed Dadoo Limited and this limited liability company obtained freehold title to stands 340 and 171 on the corner of Rissik and Commissioner Streets in Krugersdorp. White shopkeepers claimed that Dadoo's company eventually drove a 'firm of white traders' into bankruptcy in 1912.¹¹¹ Dadoo was considered to be the 'wealthiest Indian in Krugersdorp'¹¹² and this, combined with his alleged long-standing evasion of the 'laws of the Transvaal', made him the main target of the white commercial interests in the town.

Sir Abe Bailey, the mining magnate and Member of Parliament for Krugersdorp, positioned himself as a champion of white interests against the 'encroachment' of Indians in the 1920 parliamentary elections when he was faced by a strong Labour challenge. Bailey had not made any statements about Indian competition during this period as Member of the Legislative Assembly from 1907 to 1910, nor did he make anti-Indian speeches during his parliamentary career from Union onwards until 1919.

Suddenly, with elections only a year away, Bailey emerged as an anti-Indian agitator who delivered a number of virulently racist speeches in Parliament. He was appointed President of the 'South Africans' League', an anti-Indian organisation similar to the various White Leagues and Vigilance Associations of the period formed in the period up to Union. A re-invented Bailey promised that Great Britain as the 'mother of white civilisation' would not sacrifice the interests of two-and-a-half million whites in South Africa in favour of two hundred thousand Indians.¹¹³

Bailey strongly supported a Bill to close the loophole in the Company Law and in mid-1919 Parliament passed this Bill into law as the Asiatics (Land and Trading) Amendment Act.¹¹⁴ The Minister of Justice stressed that the act was drawn up with the interests of white South Africans in mind and took no cognisance of the interests of the British Empire, perhaps a riposte aimed at the Indian government's protests against the legislation. This was an unusual statement and hints at a growing mood of

¹¹³ *The Indian Opinion*, 21 November 1919, p. 246, 'Views of Anti-Asiatics'.

Republicanism that was to peak with the election of the Pact government a few years later and the Flag Controversy in the mid-1920s.

He (the Minister) did not ask what India or Canada or Australia was saying, but was only concerned about] what was his duty to South Africa. (Cheers)¹¹⁵

For all their bravado, such statements concealed, or perhaps reflected, pressure on the South African government from the Imperial and Indian governments, as well as the spectre of renewed passive resistance campaigns. Smuts, fresh from his remarkable performance as an international statesman and with the praises for his role in setting up the League of Nations still ringing in his ears, was more cosmopolitan than his Minister of Justice and may have been responsible for the last-minute concessions that were smuggled into the Act in its final form. Act 37 of 1919 prohibited Indians from forming limited liability companies in which they were the principal shareholders, but it recognised existing Indian ownership of land already acquired through these means and so extended the protection of Indian 'vested rights' from 1914 to 1919.¹¹⁶

This amendment seems to have offered legal protection to Dadoo Limited but the Krugersdorp Municipality was not deflected from its pursuit of a legal case against the Indian-owned company. The Town Council's rationale was, in any case, directed against what it claimed was the fraudulent actions of Dadoo who had attempted to evade the law that prohibited Indian ownership of land in the Transvaal by forming a company that would acquire this land as a 'legal person'. Thus, the Town Council claimed, Dadoo would achieve, indirectly, *de facto* ownership of land as one of the directors of the company through fraudulent means.

The court case seemed to go well for the Krugersdorp Town Council at first. To start with, it was ascertained that Dadoo's company had only been registered as a private

¹¹⁴ *The Indian Opinion*, 13 June 1919, p. 103, 'Asiatics Bill Passed Third Reading'.

¹¹⁵ *ibid.*

¹¹⁶ This was the view put forward by Sir George Barnes on behalf of the Government of India to Mr Gandhi, see *The Indian Opinion*, 26 September 1919, 'The Asiatic Trading Act'. The Smuts–Gandhi Agreement did refer to 'vested rights' before 1914 but the Companies Act, which created these rights for Indian-dominated companies, had been passed before this agreement,

joint stock company in Pretoria as late as the 12 February 1915 with a share capital of 15 000 pounds, divided into 150 shares of 100 pounds each.¹¹⁷ While it was not part of the Town Council's case, Dadoo's claim to have accumulated a 'vested right' was considerably weakened as a result, as the original 'Smuts–Ghandi agreement' was made in 1914 and referred to vested rights that had been acquired before this date. The 1919 Company Law had extended claims to 'vested rights' to 1919 but Dadoo's case was not necessarily assisted by this point as this extension of vested rights to a later period had yet to be tested in a court of law.

The Krugersdorp Municipality's contention that Dadoo had committed *fraudem in legis* was also strengthened by the information, revealed by the case, that Dadoo personally owned no less than 149 of the 150 shares issued by his company while a single share was owned by a certain 'Dindar' (not Chattobhai or 'Sindar' as indicated by earlier sources).¹¹⁸ The token nature of 'Dindar's' single share was so blatant that it quickly became clear that Dadoo did the absolute minimum that he needed to do to legally establish a company, complying with the letter but not the spirit of the law, and that he had, thus, formed a company fraudulently, or so the Town Council claimed.

The court records also shed some interesting light as to how Dadoo had acquired his prized corner stand. His company had taken transfer of stand 340, without any conditions attached, in Krugersdorp's Stand Township from J. M. Spiller, a well-known Dutch/Afrikaans-speaking merchant who had served on the Town Council (see Appendix Two). The company had then obtained transfer of stand 171 from two individuals, Fouché and Howell. The title to this stand was originally a right obtained under the Gold Law and had been converted to freehold under Act 34 of 1908 on the condition that the owner could not sublet or transfer the stand to 'any Coloured person'.¹¹⁹ The company Dadoo Limited then 'leased' stand 340 to Dadoo, who

see Palmer, *The History of Indians in Natal*, p. 81.

¹¹⁷ Archives of the Governor-General (GG) 909, vol. 15, files 1030–1062, Supreme Court: Appellate Division: *Dadoo Limited and Others versus Municipal Council of Krugersdorp*, Judgement of C. J. Rose-Innes, p. 1.

¹¹⁸ *ibid.*

¹¹⁹ *ibid.*

¹²⁰ *ibid.*

operated a grocery and general dealers, while Dadoo himself lived on stand 171.¹²⁰ Dadoo's legal manoeuvrings were impressive but they appeared to be *prima facie* an elaborate and fraudulent attempt to evade the law and the Town Council was confident that it would win its case.

The Krugersdorp Town Council formally applied to the Transvaal Provincial Division of the Supreme Court for an order to set aside both transfers 'as being contrary to the law'. The relevant statutes were: Law 3 of 1885, Section 2 which prohibited Indians from owning property and Act 35 of 1908 and Section 130 which prohibited 'Coloured' persons from acquiring property or occupying ground held under the Gold Law. The Municipality held that the stands were 'virtually owned' by Dadoo and that these stands were transferred to the company *Dadoo Limited* in order to 'evade the provisions of the law' as the company was 'manifestly formed to acquire what Dadoo himself could not hold'.¹²¹

Judge Wessels delivered his judgement on 4 December 1919, and the Krugersdorp Town Council was delighted. The Judge ruled that he considered that Dadoo had endeavoured to act *in fraudem legis* by forming a limited liability company to evade what Parliament intended and 'so laugh at the legislature'.¹²² The judge issued an order setting aside both transfers and ordered Dadoo to pay the costs of the application. The court's decision was not only a devastating personal blow to Dadoo but also represented a serious setback to Indians throughout the Transvaal and threatened the loss of all vested interests that had been acquired by Indians who used limited liability companies to buy or lease land in the province.

The judge's decision was made against the background of intense anti-Indian mobilisation by white shopkeepers and their supporters in towns like Krugersdorp. An 'Anti-Asiatic Congress' had been held in Pretoria just a few months earlier.¹²³ Krugersdorp was generally recognised as a leader in the campaign against Indian traders and a former Town Clerk for the Municipality was elected as Chairman. The

¹²¹ *The Standard, Krugersdorp*, 6 December 1919, 'Asiatics Barred'.

¹²² *ibid.*

¹²³ *The Standard, Krugersdorp*, 16 August 1919, 'Local and General'.

Mayor of Krugersdorp, John Hoatson, called a public meeting shortly after the judgement to 'deal with the Asiatic menace'.¹²⁴

The white commercial and professional elite was sufficiently emboldened by this victory to renew its legalistic campaign against Indian traders. In April 1920, Mayor Hoatson gave evidence to the 'Asiatic Commission' that was appointed that year and succinctly summed up what powers the Council required to strengthen its legal campaign against Indians:

Krugersdorp had for years past opposed any legalisation of land or trading rights acquired illegally by Indians in the Transvaal. They advocated the segregation of all Indians in trading and residence. They asked the Commission to seriously consider the advisability of the entire control and issue of all licences, excepting liquor licences, being placed within the powers granted to Municipalities: that there be no appeal from the Municipalities; that no renewals be granted to Indians except for the purpose of trading within bazaars in the Municipal area.¹²⁵

The Krugersdorp Chamber of Commerce sent representatives to the Committee and claimed that since 1902 the Licensing Committee had been forced to grant 125 'Asiatic trading licences' in Krugersdorp and that 34 merchants had been compelled to close down, involving a loss of 150 white wage earners.¹²⁶ This remarkable claim was never mentioned in earlier meetings of the Chamber of Commerce or the Town Council but was suddenly dredged up in time for the Asiatic Inquiry Commission.

It made no references to the difficult economic conditions that prevailed but blamed Indian commercial penetration of the town solely for the closure of white businesses. Other towns, notably Benoni, had also experienced bankruptcies despite preventing Indians from penetrating the town in the period up to Union (see Chapter Five). While it is difficult to ascertain the accuracy of the Chamber's claims, their figures seem, on the face of it, to be implausible and hint at a degree of desperation amongst white

¹²⁴ *The Standard, Krugersdorp*, 27 December 1919, 'Municipality of Krugersdorp: Notice no. 91 of 1919'.

¹²⁵ *The Standard, Krugersdorp*, 17 April 1920, 'Asiatic Trading'.

¹²⁶ *ibid.*

shopkeepers who were experiencing reduced profits during the post-war recession.

The white professional and commercial elite on the Krugersdorp Town Council was, in the meantime, growing increasingly worried that the municipality could no longer afford to mount its legalist campaign on its own and appealed to the Transvaal Municipal Association for assistance to meet the 'considerable expenses' it incurred in taking on Dadoo Limited and other cases. The Town Council was concerned about how it was going to meet the legal expenses of defending itself against Dadoo's appeal to the Appellate Division of the Supreme Court in Bloemfontein.

The Councillors asked for financial contributions from other Town Councils and pointed out that it had defended white interests on an issue that it considered to be 'of particular importance to all Municipalities in the Transvaal', namely that a 'limited liability company composed of Asiatics was not permitted to own land'.¹²⁷ The secretary of the Association replied that the principle of assistance had been agreed and that the Municipalities would be asked to pay a proportionate share of the costs according to of the number of white residents.¹²⁸

While preparing itself for the anticipated appeal case, the Krugersdorp Town Council was suddenly faced with an unprecedented challenge by eleven Chinese traders who protested against the Council's refusal to grant them trading licences. Eight of the licences were for stands on unproclaimed land in Naudé's Ground, Burghershooop and the District Township and three for proclaimed ground in Krugersdorp and suburb of Luipaardsvlei. The lawyer for the Chinese traders argued that the Municipal Council had refused the licences out of 'prejudice, malice and caprice' and that the 'only reason for the refusal was that the applicants were Chinamen'.¹²⁹

Seven of the appeals were successful and judgement in four cases was reserved. Later that afternoon, a lawyer for six 'Asiatics' appeared before the magistrate to appeal against the Municipal Council's decision to refuse general grocers' licences in

¹²⁷ *The Standard, Krugersdorp*, 1 May 1920, 'Asiatic Litigation'.

¹²⁸ *ibid.*

¹²⁹ *The Standard, Krugersdorp*, 12 June 1920, 'Asiatic Trading'.

Krugersdorp and Burghershoop. Again it was argued that the Town Council had acted *male fide* because its refusal to grant licences was 'based on a policy to prevent Asiatics from trading, and not on any question of undesirability relating to the applicants'. The Magistrate agreed and ordered the Town Council to grant all the licences.¹³⁰

These setbacks represented little compared to the reversal that followed one month later. Dadoo had decided to appeal against the Transvaal Supreme Court's decision and the Krugersdorp Town sent legal counsel to Bloemfontein to argue its case before the Appellate Division of the Supreme Court. The Chief Justice, Sir James Rose-Innes, found that the statutes relied upon for the Town Council's argument 'did not apply to joint stock companies, even though their shares were all held by Asiatics or Coloured persons.'¹³¹

In a detailed judgement, Rose-Innes remarked that there was nothing to indicate that the 'contingency of a Company with Asiatic or Coloured shareholders owning land...occurred to the mind of the Legislature when these enactments were passed'.¹³² The judge noted that the recently passed Act 37 of 1919 had explicitly stated that after 1st May 1919, Law 3 of 1885 would be construed as prohibiting the ownership of fixed property by any Company in which Indians had the controlling interest. The Act, however, had no application to property acquired before that date.

Rose-Innes went further and noted that a Company was a 'legal *persona*' that was 'distinct from the members who composed it. He cited Lord Macnaughten in *Salomon v Salomon & Co.* 1897, AC:

...the company is at law a different person altogether from the subscribers in its memorandum, and though it may be that, after incorporation, the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers

¹³⁰ *ibid.*

¹³¹ *The Standard, Krugersdorp*, 10 July 1920, 'Asiatic Trading'.

¹³² GG 909, 15/1030-1062, Judgement of C. J. Rose-Innes, p. 14.

or a trustee for them.¹³³

Rose-Innes made it clear that the separate legal existence of corporations was 'a principle that was accepted in our practice'.¹³⁴ Indeed, it was a fundamental principle that underpinned large swathes of private law which made transactions and operations by companies possible in capitalist society. The conception of the legal existence of a company as a 'separate entity distinct from its shareholders [was] no merely artificial and technical thing', explained the judge, it was a 'matter of substance'.¹³⁵ This principle had been confirmed by the highest court of appeal in the British Empire, by the House of Lords. Dadoo had not taken advantage of a technicality, but had managed to avoid the 'restrictions of the statute...by doing something different in law and in substance from what the statute prohibited'.¹³⁶ Thus Dadoo, the judge confirmed, had won his appeal.

The Town Council was devastated by this legal setback. There was, however, one good piece of news that emerged from the judgement: Judge Rose-Innes had conceded that the Legislature had made its intentions clear in the 1919 law and such an explicit intention was necessary to overcome such an 'elementary right'. This last statement upheld the legitimacy of the Parliament's action in prohibiting Indians from using their positions in companies to acquire land. Thus, Indians could not use the Dadoo case after May 1919, as a precedent to procure land. This was, however, of little comfort to the Krugersdorp Town Council and the local newspaper noted that

Considerable sums have been expended, apparently to no purpose
.... The Local authority is confronted with an exasperating
set-back after all its zealous spade work.¹³⁷

The newspaper appealed to the state 'to step in with legislative safeguards to stem the growing tide of Asiatic commercial encroachment'.¹³⁸ The Town Council's will to continue its legal campaign was nearly completely broken. The Health Committee of the

¹³³ *ibid.*

¹³⁴ *ibid.*

¹³⁵ *ibid.*, p. 16.

¹³⁶ *ibid.*, p. 18.

¹³⁷ *The Standard, Krugersdorp*, 10 July 1920, 'Asiatic Trading'.

Municipal Council reported that it had hear four applications for trading licences for general grocer's licences in Krugersdorp and Burghershoop and while it considered that 'none of the applicants are entitled to a trade licence', it had decided that

...in view of recent decisions by the Magistrates Court and the Supreme Court...to grant the licences, under protest, and that an endorsement to that effect be made on the licence.¹³⁹

Krugersdorp's white shopkeepers and professionals became even more disillusioned with the judicial process during the 17th annual conference of the Transvaal Municipal Association, the following month. Krugersdorp's representatives were in a position to dominate the proceedings not only due to its high profile in the recent court cases but also because its Town Clerk, F.A. Cooper, served as the Honorary Secretary and its Mayor, John Hoatson, served as its President.

Nonetheless, Krugersdorp could only get six municipalities (Brakpan, Germiston, Springs, Heidelberg, Ventersdorp and Volksrust) to support its motion that the Association share the costs of future litigation against Indians. Nine municipalities actively opposed the motion (Barberton, Benoni, Middelburg, Pietersburg, Potchefstroom, Roodepoort-Maraisburg, Rustenberg, Standerton and Vereeniging). Pretoria, Witbank, Johannesburg and Klerksdorp were undecided. It was a bitter blow to Krugersdorp and further weakened its commitment to a legal campaign against Indians.¹⁴⁰

Later that month, the Health Committee granted six more trading licences, again 'under protest'.¹⁴¹ The Town Council began to lose whatever faith it still had in the judicial process and looked, instead, to the Legislature for relief. In the remaining years of the

¹³⁸ *ibid.*

¹³⁹ *The Standard, Krugersdorp*, 17 July 1920, 'Granted Under Protest'. The strategy to 'endorse' the licences suggests that the Town Council had not given up completely on the legalistic approach and may have hoped that later it could use this 'endorsement' of protest to reject these licences. See also *The Indian Opinion*, 25 June 1920, 'Krugersdorp Asiatic Licences', which outlines a number of cases which the Town Council also lost.

¹⁴⁰ *The Standard, Krugersdorp*, 8 August 1920, 'Municipal Conference'.

¹⁴¹ *The Standard, Krugersdorp*, 21 August 1920, untitled.

period under study, from 1921 to 1923, the Krugersdorp Town Council took part in a number of high profile 'Anti-Asiatic' Congresses and similar anti-Indian platforms to apply pressure on the state to 'do something' about the 'Indian Question'.

Rather than use the judicial arm of the state, Krugersdorp's mercantile and professional elite worked through larger bodies and associations to apply pressure on the state to intervene to restrict Indian competition by altering existing legislation. New organisations like the 'South African League' and older bodies, like the Transvaal Municipal Association and the Associated Chambers of Commerce, passed resolutions calling for government commissions that could recommend changes to the existing laws concerning Indians. The 'Law' remained the dominant focus of Krugersdorp's shopkeepers but pressure was now applied to the legislative arm of government to defeat Indians by concentrating on Parliament rather than on the courts.

The first major gathering of Transvaal municipalities and representatives of Chambers of Commerce was held in Pretoria in September 1919, shortly before the Dadoo appeal case was heard.¹⁴² Representatives of twenty-six municipalities, twenty Chambers of Commerce, twelve churches, nine agricultural societies and no less than forty trade unions attended and launched the South African League. Krugersdorp's leading role in the campaign against the 'Asiatic menace' was acknowledged by the election of one of its representatives, attorney L.J. Phillips, as its chairman.¹⁴³ Indians also began to organise themselves into political groups that could apply pressure to Parliament in defence of their rights. In response to the formation of this League and the amendment of the Companies Act (The Transvaal Asiatic Land and Trading Amendment of 1919), Indians launched the South African Indian Congress (SAIC) at a meeting in Johannesburg, in 1920.

The attention of these bodies was focused on the Asiatic Inquiry Commission that had been appointed by the government to inquire into the 'acquisition of land and rights affecting land in the Union by Asiatics...for trading and other purposes'. It also focused

¹⁴² *The Standard, Krugersdorp*, 16 August 1919 'Local and General'.

¹⁴³ *The Standard, Krugersdorp*, 16 August 1919, untitled.

on the trading rights of Indians with a specific instruction to investigate whether it was necessary to 'alter the law in any respect'.¹⁴⁴ The Commission's report noted that the 'presence of Asiatic traders was most keenly resented' in Krugersdorp.¹⁴⁵

The Commission heard evidence from the South African League that shortly after the Smuts–Gandhi Agreement in 1914 and in 'flagrant violation' of that agreement, a number of Indian-owned limited liability companies were formed that acquired land in Krugersdorp. A Select Committee of the House of the Assembly published a report of all the private companies, registered under the Transvaal Companies Act of 1909, in which all of the shareholders were Indians (**see Table Nine**).

The Krugersdorp Chamber of Commerce gave evidence, through their vice-president, who reported that there were 139 Asiatic trading licences in the Krugersdorp municipal area in 1920 and there had been only eleven such trading licences in 1902. This was an increase of 125 trading licences in eighteen years. L.J. Phillips added that there were just five 'European' grocers' licences compared to 27 Indian grocers' licences. The Commission found that, on investigation, that there were only 24 licensed Indian shops and three Chinese shops in the town and its suburbs. It diplomatically remarked that it was 'difficult...to ascertain' how the Chamber of Commerce had arrived at the figure of 139 Asiatic Trading licences. The following table illustrates the number of licences that the Commission claimed 'actually' existed (**see Table Ten**).

Table Nine: Total Number of Private Companies in the Transvaal Where All of the Shareholders were Indians by 1920

| Year | Number of Companies | Nominal Capital (pounds) |
|------|---------------------|--------------------------|
| 1913 | 3 | 7 500 |
| 1914 | 9 | 13 150 |
| 1915 | 38 | 84 274 |
| 1916 | 103 | 132 255 |

¹⁴⁴ U.G. 4–21, *Report of the Asiatic Inquiry Commission*, Cape Town, 1921, p.1, citing Government Notice No. 249 of 4 February 1920.

¹⁴⁵ *ibid.* p. 17.

| | | |
|--------------|------------|----------------|
| 1917 | 91 | 118 229 |
| 1918 | 114 | 113 319 |
| 1919 | 12 | 10 600 |
| TOTAL | 340 | 479 327 |

Source: U.G. 4-21, Report of the Asiatic Inquiry Commission, 1921, *Cape Times Ltd*, Government Printers, Cape Town, 1921, p. 21.

By considering only 'shops with licences', that is, physical structures to which a licence was attached, the Commissioners knew that this would produce a relatively low figure because many shopkeepers held more than one licence and some Indians, like hawkers, held licences but had no building in which to operate. However, even when all occupations that required a licence were taken into consideration, the total number of 'licences' in Indian hands amounted to, at most, 98 'Asiatic trading licences'.

The figure of 98 licences was too high, the Commission pointed out, because tailors' assistants were included and because a number of traders did not operate a business by themselves but were associated with others in a partnership. The total number of general dealers, grocers and dealers in soft goods, as individuals, came to just 32 in total so that, even with this inflated method of counting, the total number of Indian 'businesses' or 'licences' was far below the Krugersdorp Chamber of Commerce's figures.

Table Ten: Total number of Indian shops with Licences in Krugersdorp and its Suburbs in 1920

| Type of Licence | Krugersdorp and Luipaardsvlei | Burghershoop and District Township |
|---|--|---|
| General Dealers with Grocers' Licences | 6 | 4 |
| Soft Goods Shops | 1 | 4 |
| Tailors | 2 | - |
| Shoemaker | 1 | - |
| Butcher | - | 1 |

| | | |
|---------------------|-----------|-----------|
| Cycle Dealer | 1 | - |
| Barbers | - | 2 |
| Laundries | - | 2 |
| TOTAL | 11 | 13 |

Source: U.G.-21, Report of the Asiatic Inquiry Commission, *Cape Times Ltd*, Government Printers, Cape Town, p. 26.

The Commission, furthermore, heard evidence that only seven new Indian businesses had opened in Krugersdorp and its environs since 1914 (six of these were, admittedly, in Burghershoop which may have given the impression of a steep rise because of its concentrated nature) and of these, four were general dealers or dealers in soft goods. During the same period five Indian shops had closed down, according to information supplied by Indian witnesses. Altogether 23 Indian businesses had closed since 1902, suggesting that Indian shopkeepers were also adversely affected by deteriorating economic conditions. Having heard evidence from both Indian and white shopkeepers in Krugersdorp, the Commission concluded that it was satisfied that its own information was correct and that 'the figures supplied by the Chamber of Commerce under this head are inflated and unreliable'.¹⁴⁶

Rather than accept the Commission's report, the white commercial and professional elite in the town preferred a strategy of increasing pressure on the Legislature to pass laws that restricted Indian competition to an even greater extent. Sir Abe Bailey, the Krugersdorp M P, made a point of attacking the Commission in Parliament and continued to demand legislative remedies on many occasions in debates on the 'Indian Question'.

Table Eleven: Schedule of Licensable Occupations of the Indian Population of Krugersdorp in 1920

| Type of Occupation | Krugersdorp and Luipaardsvlei | Burghershoop And District | TOTAL |
|---------------------------|--------------------------------------|----------------------------------|--------------|
|---------------------------|--------------------------------------|----------------------------------|--------------|

¹⁴⁶ U.G.-21, *Report of the Asiatic Inquiry Commission*, *Cape Times*, Government Printers, Cape Town, 1921, p. 27.

| | | Township | |
|------------------------------------|-----------|-----------|-----------|
| Hawkers and Pedlars | 18 | 21 | 39 |
| Grocers and General Dealers | 13 | 14 | 27 |
| General Dealers, Soft Goods | 1 | 4 | 5 |
| Shoemakers | 1 | - | 1 |
| Barbers | 1 | 1 | 2 |
| Tailors and Assistants | 5 | 1 | 6 |
| Bag and Bottle Dealers | 2 | - | 2 |
| Fruit Dealers | 4 | - | 4 |
| Cycle Dealers | - | 1 | 1 |
| Butchers | - | 1 | 1 |
| Laundrymen | - | 10 | 10 |
| GRAND TOTAL | 45 | 53 | 98 |

Source: U.G.-21, Report of the Asiatic Inquiry Commission, *Cape Times, Ltd*, Government Printers, Cape Town, 1921, p. 27.

Bailey attacked the recommendations of the Asiatic Inquiry Commission as ‘the weakest product of any Commission which had ever gone forth’ adding that if they ‘added water to it they would strengthen it’.¹⁴⁷ He said that there was nothing in its report that did not already exist and it recommended ‘voluntary segregation’ and ‘voluntary repatriation’ which had been, in any case, in existence for practical purposes for years in the Transvaal with the result that every town and village had stores run by Indians and they were ‘eating into the vitals of South Africa’.¹⁴⁸ He demanded fresh legislation that would curtail Indian trading activities.

The shift of focus to legislation rather than litigation by the Krugersdorp Town Council was re-inforced by the news that that Council had incurred costs amounting to 670 pounds in pursuing its ‘Asiatic cases’ over the previous year. The Council was advised that ‘before going into Court again, they should seek assurances that other municipalities would bear their *pro rata* share’.¹⁴⁹ Not only did the majority of the Transvaal municipalities refuse to assist with the cost of further litigation but now, it

¹⁴⁷ Archives of the Governor-General (GG) 909, File 15/1059, *Cape Times*, Friday, 18 March 1921, ‘Finances of the Union’.

¹⁴⁸ *ibid.*

¹⁴⁹ *The Standard, Krugersdorp*, 25 June 1921, untitled.

seemed, many of these Town Councils were backing out of earlier promises to help fund the Krugersdorp legal campaign against Indians. As a result, for the rest of the period under consideration, the Krugersdorp Town Council did not engage in any more high profile court cases.

This shift in focus away from the courts is evident in a rare example of a court case involving the Town Council and Indian traders in late 1921. Bando, an Indian fruiterer and greengrocer, was accused of trading without a licence in Burghershoop. His lawyer defended him by arguing that he possessed an existing licence for another stand in Roode Street in the same area which proved that in the past he had been considered to be a 'desirable' person by the Council's Licensing Committee. Furthermore, it was contended that the 'premises on the stand in question were just as desirable as one on the stand for which the licence was granted'.¹⁵⁰

This blatant violation of trade licence regulations by the Indian fruiterer and the disingenuous attempt by his lawyer to stretch the meaning of the law, so that one licence could be used to cover the premises on another stand, was striking. It was symptomatic of the Krugersdorp Town Council's past failure to curb Indian trading activity through its control over licences and access to the courts. The Council had lost so many cases and had been defeated so spectacularly in cases like *Dadoo Limited and Others v Krugersdorp Municipality*, that Indians like Bando believed that they could trade without licences and their lawyers thought that they could argue legal circles around the local authority.

Such was the defeatism that permeated the Town Council and representatives of the court that although the Council won this case (it was, after all, clear-cut and straightforward), it did not protest when the Public Prosecutor declined to press for any penalty, and the accused was merely cautioned and discharged.¹⁵¹ Even when white Burghershoop residents protested against the granting of any further licences to Indians

¹⁵⁰ *The Standard, Krugersdorp*, 31 December 1921, 'Local and General'.

¹⁵¹ A similar case involved a greengrocer called Banoo Cassim, also in Burghershoop, who attempted to 'transfer' his licence from stand 1 to stand 13 'without permission'. He was found guilty but discharged with a caution. Even more remarkable, he was granted a licence to trade on his new

in their suburb in late January 1921, the Town Council could not shake off its disillusionment with litigation. In the past a petition with 219 signatures from the poor residents of Burghershoop would have been a signal for a major campaign against Indian traders. Krugersdorp's white shopkeepers and professionals would not even rise to the bait of the petitioners' claim that the presence of Indians was

...calculated to cause a nuisance and annoyance to persons residing in the neighbourhood, and that the applicants are, by reasons of uncleanness of persons or habits or methods, unfit to be entrusted with the handling of articles of food intended for human consumption.¹⁵²

This failure to use the complaints of Burghershoop's residents and the stigma of disease against Indians was completely out of character and indicates that the white commercial elite was on the point of giving up completely. The Krugersdorp Chamber of Commerce reported that 1921 had been a 'trying year' and that its numbers had fallen from thirty to twenty members over the year.¹⁵³ Not only had the war against Indian traders taken its toll but also the encroachment on trading by mining companies through concession stores and a 'general decline of trade all round' as the strike, in particular, 'brought us back to 1914'.¹⁵⁴ The ongoing malaise in the mining industry in the post-war period, had weighed heavily on the shopkeepers. The Chamber also would have been disappointed that Parliament had decided to postpone legislation concerning Indians until it had time to consider the Report of the Asiatic Inquiry Commission¹⁵⁵

A number of Indians were convicted in 1922 under health regulations for displaying tinned goods for sale that were unfit for human consumption¹⁵⁶ in an apparent return to the 'Sanitation Syndrome' of the pre-Union days. This came not long after the Chief Sanitary Inspector made some 'careful enquiries' among 'various produce

stand. See *The Standard, Krugersdorp*, 28 January 1922, untitled.

¹⁵² *The Standard, Krugersdorp*, 28 January 1922, 'Asiatic Licences'.

¹⁵³ *The Standard, Krugersdorp*, 17 February 1923, 'Chamber of Commerce, Annual Meeting'.

¹⁵⁴ *ibid.*

¹⁵⁵ GG 909, File 15/1062, 'Asiatics Miscellaneous: Asiatic Inquiry Commission: Decision of Union Government to Postpone Legislation with Regard to until Next Session of Parliament', Governor-General to the Right Honourable Winston S. Churchill, MP Colonial Office, 8 April, 1921. See also *Cape Times*, 5 April 1921, 'Asiatic Problem'.

¹⁵⁶ *The Standard, Krugersdorp*, 15 April 1922, untitled and 20 May 1922, 'Unsound Sardines'.

merchants of the town' when Bubonic Plague broke out in the Orange Free State.¹⁵⁷

This marked an apparent revival of the white commercial elite's legalistic campaign and lifted their hopes. The Chamber of Commerce noted optimistically that the 'crest of depression' had been reached and that the good times were on the verge of returning. However, its hopes were cruelly dashed when it was faced with the devastating effects of the Rand Revolt (see Chapter Eight). The destruction caused by the revolt and its suppression was captured in print by contemporary newspapers and the subsequent court trials.¹⁵⁸ The Krugersdorp Chamber of Commerce described the 'trying year' as follows:

Immediately in the new year the strike was declared with results disastrous to us all...the loss of wages to ...those who have been on strike, the loss of business to trade, the fall in value and difficulty in selling all products of farmers, the cessation of all orders from the mines to those who had been dependent on mine orders and work, must all leave scars on the whole community.¹⁵⁹

The Chamber did, however, note that Krugersdorp suffered less than other parts of the Rand from looting and arson. It gave credit to the members of the local strike committee who helped to retain law and order and to the police but the revolt certainly took its toll in local economic terms. Local white shopkeepers also suffered from attempts by the mining industry to monopolise trade with its black workers on the mines through 'distributing societies'.¹⁶⁰ The local Chamber of Commerce had considerable success in litigating against these mine trading stores and distributing societies and forced them to close down.¹⁶¹ The loss of black custom may have pushed some of the more marginal white shopkeepers to the wall, especially if they were 'storekeepers' who specialised in selling goods to black customers. The Associated Reef Chambers of Commerce became defunct, probably because it had failed to effectively address issues of Indian trade competition and the 'Mine Trading Stores'.¹⁶²

¹⁵⁷ *The Standard, Krugersdorp*, 26 June 1920, 'Plague Precautions'.

¹⁵⁸ See, for example, CAD, JUS 1/209/22, selected newspaper clippings on the revolt.

¹⁵⁹ *The Standard, Krugersdorp*, 15 April 1922, 'Commerce and a Trying Year'.

¹⁶⁰ *ibid.*

¹⁶¹ *The Standard, Krugersdorp*, 19 August 1922, 'Mine Trading Stores'.

¹⁶² See *The Standard, Krugersdorp*, 19 August 1922, 'It is Said'.

Towards the end of 1922, the local white commercial elite was faced with a new Shop Hours Ordinance introduced by a Nationalist–Labour alliance in the Transvaal Provincial Council. It forced the ‘large trader’ to close at 5.30 p.m. instead of 6.30 p.m. (the previous closing time) but allowed the ‘smaller native stores’ (white-owned stores with African clientele) to stay open until 7.30 p.m. In an outraged letter to the local newspaper, a ‘Randfontein trader’ commented that this ‘precious piece of Provincial legislation’ would ‘drive white storekeepers into insolvency!’¹⁶³

Nonetheless, towards the end of 1922 and throughout 1923, the white commercial elite was upbeat. Plans were made to form a branch of the ‘White South African League’ – plans that were to be realised early in 1924. The body’s main aim was to ‘deal with the encroachment of natives and Asiatics into the commercial, trade and industrial life of the white community in this country’.¹⁶⁴ Although this may be considered as implying the abandonment of legal tactics, an attempt was also made to introduce a ‘Class Area’ Bill aimed at Indians which would require Indian traders to obtain a permit from the Minister of the Interior before they would be able to apply for a trade licence.

This violated the ‘Smuts–Gandhi Agreement’ on ‘vested interests’ and the SAIC objected ‘emphatically, unequivocally, vigorously and totally’ to the ‘principle of segregation’ contained in the Bill.¹⁶⁵ Smuts’s government, however, fell to a Nationalist–Labour alliance in 1924 and while the new Pact government tried to pass this Bill, it had to withdraw it in the face of fierce Indian resistance and international pressure, especially from the Indian government.¹⁶⁶ The new government did, however, entrench the stipulations of the Companies (Amendment) Act of 1919 into licensing

¹⁶³ *The Standard, Krugersdorp*, 19 August 1922, ‘Correspondence’. Local barbers were also concerned about the earlier closing hours, see *The Standard, Krugersdorp*, 14 October 1922, ‘Local and General’.

¹⁶⁴ *The Standard, Krugersdorp*, 23 February 1924, ‘The White League’.

¹⁶⁵ ‘First Annual Report of the South African Indian Congress’, Pachai Collection, 1924, cited in S. Bhana and B. Pachai (eds.), *A Documentary History of Indian South Africans*, David Philip, Cape Town, 1984, pp. 151–5.

¹⁶⁶ R. Tomaselli, ‘The Indian Flower Sellers of Johannesburg’, MA dissertation, University of the Witwatersrand, Johannesburg, 1983, p. 189.

procedures.¹⁶⁷ Thus, right to the end of the period under study, the white commercial elite remained committed to a legal campaign to eliminate their Indian competitors. Its actions undoubtedly played a role in stabilising Krugersdorp after the traumatic post-war period and helped to herald a quiescent period throughout the 1920s.

Conclusion

The white middle class in Krugersdorp had successfully managed in the past to turn a tough, rough-necked and lawless mining town into a settled, law-abiding family town during the early 1900s. Thus, when they were confronted with what they argued was the widespread lawlessness of the Indian shopkeepers who occupied the 'white' stands of the town's central business district, the white professional and commercial elite resorted to the same approach. They set about throwing a web of legal restrictions around Indian shopkeepers and their allies, thus, planned to establish a 'legal' town in Krugersdorp, one so tightly controlled by the law, that Indians could no longer operate effective businesses.

The main tactic was to use their control over the Town Council to influence the Licensing Committee to refuse new trade licences to Indian applicants. Another tactic was to apply the Gold Law of 1908 strictly, according to the letter of the law, and to close down any Indian shop that operated on 'proclaimed land'. The Town Council also systematically followed legal channels to acquire control over the Indian Location, to close the location, to establish a more distant Municipal Asiatic Bazaar and then move Indian residents to this other site. They succeeded in denying trade licences to Indian applicants and even managed to close the location. At this point, however, their legal strategy ran into trouble.

The first major problem confronting the Town Council, and the white commercial elite that largely controlled it, was the very pointed defiance from the Indian residents who refused to relocate to the Asiatic Bazaar. Rather, these Indian families moved into the 'white' Stand Township, many of them acquiring prime commercial spots (through

¹⁶⁷ *ibid.* p. 222.

sympathetic or mercenary white 'nominees') in the town's Central Business District. There, they proved remarkably resilient in rebuffing the Town Council's attempts to remove them. The second major problem that faced white shopkeepers was the development of companies with Indian 'directors' and 'subscribers' that acquired property in 'white' areas. Companies were 'legal personae' that Indians could and did manipulate to acquire what they could not do themselves, that is, acquire property.

The Krugersdorp Town Council claimed that this approach amounted to a fraudulent distortion of the law by 'lawless' Indians. In the process, they argued, Indian 'directors' 'laughed' at the legislature and snubbed their noses at the law itself. The white commercial and professional elite that controlled Krugersdorp's Municipality no longer portrayed local Indians as diseased bodies but rather as outlaws or bandits whose demands for justice could not be seriously entertained as they had no respect for the law themselves. The Town Council took one of the companies, Dadoo Limited, to court to prove this illegality and as a key step in their increasingly expensive attempts to create a 'legal' town.

The Town Council lost this case and incurred considerable legal costs. It began thereafter, to retreat from this overt legalistic approach to hamstringing their rivals. A less aggressive approach was adopted, one that concentrated on the legislature rather than the judiciary. This began to pay dividends as various laws were passed, some of them influenced by Krugersdorp's Member of Parliament, Sir Abe Bailey, a virulently anti-Indian campaigner, who sought the support of local white shopkeepers. The period ends with a low point in the form of the 1922 Rand Revolt when everything that the white commercial and professional elite had worked for since the inception of Krugersdorp appeared threatened. This was followed by the relative high point of the 1923 Native Urban Areas Act that gave the white middle class considerable powers to pursue their agenda of making Krugersdorp into a 'legal' town. They might not have known it at the time, but after 1923, Krugersdorp was destined to become a great deal quieter. After all the upheaval that its residents had been through, perhaps this was just as well.