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MADRAS RECORD OFFICE.

Government of Madras.

Public DEPARTMENT.

G.O. No. 87/

Press
Mis.

Dated 17-6-1918/

Not to be folded or roughly handled

Proceedings of the Madras Government, Public Department,

17th June 1871.

Read the following papers:—

No. 151. From S. PINSENT, Esq., Advocate and Attorney, Durban, Natal, to His Excellency the Right Honourable the Governor of Madras, dated Natal, 4th February 1871.

I have been professionally consulted by a deputation of the coolies about to return to India by the *Red Riding Hood*, respecting a claim which they allege they have against this Government for the payment of £10 per head on their return to India. The facts of this case will appear by the correspondence which I have had with the Government, copy of which I have the honour to enclose.

2. I am ready to admit that, in a legal point of view, I can make nothing of this claim for £10. After the appeal to our Government I cannot suppose that, as a fact, the Government did authorize such a promise to be made. Nor from my ignorance of the language and character of the coolies, and from the incompetence of the Interpreters they brought me, had I the means of judging of the *bona fides* of their story. It is very possible that it is a trumped-up story. Still they assert that the promise was made to them by Mr. Collins, then our Postmaster-General, who was sent to India with a view to facilitate the immigration. He is now residing here, but from mental disease he cannot be appealed to, and it is quite possible that the story may have been invented by the coolies.

3. But, in reference to the claim for the allowance of 25 shillings per month, the matter stands on a very different footing. I am aware that in the case of Europeans, who had set up an unfounded claim, it would sadly prejudice them as to a claim of greater justice. But, considering what Asiatics are, I think they are entitled to all that has been promised them notwithstanding their having fraudulently set up a claim that cannot be substantiated if fraudulent this is. And I consider I should not be doing them justice as their legal adviser if I refrained, on that account, from pressing a just claim, even though they were unaware of it, till I pointed it out to them in every way in my power. And as I was only consulted on the 31st January last, and the mail by the *Red Riding Hood* closes this day, it is obvious I cannot stop the ship, and have no opportunity of bringing the case before any of our Courts. I am not sure that your Excellency can do anything for these men; but, as the last resource, I venture to bring the matter before the notice of your Excellency that, at least by the expression of an opinion, this Government may be guided in dealing with the next batch of coolies that return.

4. I cannot denounce in too strong terms the injustice of the course of the Natal Legislature in altering the terms of hundreds of contracts by an *ex post facto* law. In America, the Supreme Court of the United States would set aside the law as unconstitutional on that very ground. And any independent British Judge would struggle against his sense of the omnipotence of Parliament in such a case, and lay hold of the slightest excuse for determining that the law did not apply. As a Parliamentary contract the law of 1870 must fail, for there is not a pretence for saying that the coolies were a consenting party to it. But I submit that a judge would not have far to go for a reason for a decision in accordance with the dictates of justice. There is not a word in the preamble, nor, as far as I am aware, in any other part of the law, that clearly shows an intention that this law shall apply in all its details to coolies.

Vide extracts enclosed.

immigrants introduced under the law of 1859. If, however, I am wrong in this view, and the Courts should be compelled to hold that the Legislature in its omnipotence and injustice had effectually altered the terms of a class of existing contracts, I have no doubt that your Excellency will see the propriety of calling the attention of the Imperial Government to the matter with a view to the repeal of such an obnoxious un-British law.

5. I cannot admit the sufficiency of the excuse offered by the Colonial Secretary, that the law was framed in accordance with the provisions of the law of 1859 on this head, and subsequently altered by the action of the elective members. The Lieutenant-Governor had the option in that case of disallowing the Bill, or of reserving it for the signification of Her Majesty's pleasure thereon. By assenting thereto, His Excellency has adopted and approved of the acts of the Legislative Council as his own. Now, even if the provisions of 1859 are to be considered as improvident and extravagant, would that justify the alteration. Twenty-five shillings a month would little more than cover, if at all, the usual rate of wages and cost of food. But be that as it may, a bargain is a bargain; and the Legislature of one of Her Majesty's Colonies should surely have abstained from withdrawing by an *ex post facto* law the rights which were conferred by a previous law on a poor, ignorant, half-civilized set of men whom this Government had invited to come to our shores.

6. I beg to assure your Excellency that I took up this case not so much in a professional spirit to make out a case against this Government as with the hope that I might disabuse the coolies of any idea that they had been deceived; or, at least, that this Government had any part in that deception. I hoped to be able to assure them that, in my opinion, this Government had throughout dealt honourably with them. But, without pressing the point as to the law of 1870 beyond its fair limit, I am sorry to think that the coolies have not had fair treatment in this respect, and that this Government have committed a mistake in attempting to apply such a law to their case.

P.S.—I have forwarded a copy of this letter to our Colonial Secretary, so that he may observe on it if the ship is delayed, which is possible.

From S. PINSENT, Esq., Advocate and Attorney, Durban, to the Colonial Secretary, Natal, dated Durban, 1st February 1871.

I have been consulted by the coolies about to leave for India by the *Red Riding Hood* respecting an alleged claim, which they are evidently sincere in thinking they have against the Government, for the payment of £10 a head before their return after a residence of ten years in the Colony and an industrial residence of five years. I undertook their case, I am ready to own, with no expectation of being able to make out a legal case against the Government. But, if there was little chance of success, I hoped to be able to explain matters to them as to remove any idea that Her Majesty's Government had anything to do with any promise of the sort. And I should be obliged if you could, by return, give me any information which would tend to bring about this result.

2. I learn that this £10 is a matter that has been talked of among them for some time, and has not been mentioned for the first time recently. They mention that the promise was made to them by the white men who were engaged in securing their services for Natal, and that these

promises were made only to the immigrants by the first four ships. There is an air of truth about these statements; and I can only hope, for the honour of our country and the future interests of Natal, that, if these promises were made with the sanction of this Government, they may be fulfilled, however burdensome it may be to the Colony. And, if this Government deny having given any such authority, I was requested by the coolies to ask that you would be good enough to give a certificate that no £10 a head has been paid here.

3. But, whatever may be thought of the claim for £10, it appears to me that, under the law under which they were introduced into Natal, they have a claim upon Government which I trust it will satisfy or be able to show good, common sense, untechnical reasons why it is not to be satisfied. When I came to read the terms under which, by Law 14 of 1849, they were entitled to a return passage, I read to them the 26th Section, and found that the 25 shillings a month had not been paid to them. I admit that they did not seem to be aware of them. But, as I fear it is hopeless to expect that I shall be able to obtain the fulfilment of promises by which they appear to have been beguiled, there is all the more reason why I should see that they should get what the law entitles them to, though they may be not aware of it.

4. I understand that their ten years expired in November, and that shortly after they applied for a passage back. This would entitle them to three months' statutory allowance. Or, even if my facts are denied, they have been hanging about town at least for a month and must be entitled to 25 shillings.

5. Mr. Mason says that a passage has been offered them. But I submit that the "offer" and the "opportunity" are the same; and that they are entitled to be paid to the actual departure.

6. Mr. Mason referred me to the law of 1870. I can scarcely believe (for I have not had the time to examine) that that law applies to immigrants under former laws. If it does, then I would not hesitate to denounce it as an illegal and immoral law. The effect of it would be to show that the Government and the Council had combined, for their own benefit, to alter by the force of law the stipulation of contracts which a poor, ignorant, defenceless people had entered into on the faith of the British Government.

7. Mr. Mason intimated in a sort of threat that the ship should be sent off to-morrow. The Government can easily defeat my efforts on their behalf. But at what expense? I don't take this case up as a matter of litigation. I should like to get them their rights if rights they have. But, if they are not entitled to it, I want to be able to assure them that I have done the best for them, but that the Government are not to blame for the failure. Will you help me by return with such information as will enable me to do this.

From the Colonial Secretary, Natal, to S. PINSENT, Esq., Advocate and Attorney, Durban, dated Natal, 3rd February 1871.

I am directed by the Lieutenant-Governor to acknowledge the receipt of your letter of the 1st instant, and to inform you, in reply, that in no shape whatever has this Government promised a payment of £10 sterling, or of any other sum, to coolies after a residence of ten years in the Colony. The only way in which the Lieutenant-Governor can imagine that such an idea can have arisen is that the Government is empowered by law to give an equivalent in land to a return passage to any coolie who may prefer it, and that land to the value of £10 sterling has been usually considered as about such an equivalent. With regard to the remaining portion of your letter I am directed to inform you that the Lieutenant-Governor is advised that by Law 14 of 1859, Section 26, it was enacted that "there shall be paid to every coolie immigrant who shall become entitled to a free passage to India the sum of 25 shillings for every calendar month which shall intervene between his application for such passage and his receiving an actual offer of, or opportunity for, the same."

2. In 1869, a law was introduced by the Government to consolidate the existing Coolie Laws, and that in this law the same section was inserted. The Legislative Council, however, entirely altered the section and ultimately enacted in lieu thereof the 49th Section of the coolie "Consolidation Law," by which both the Government and the coolies are bound.

17th June 1871.

3. Assuming that the coolies did apply for a passage as alleged in November 1870, it is only after the expiration of two months from the date of such application that their title to payment begins to accrue, and the rate of payment has been reduced to 10 shillings per month, and, supposing that these applications were made on a certain day in November, 10 shillings will be payable to each coolie on the expiry of the third month from that day.

4. So far from these coolies having been "hanging about" they have been kept in the dépôt at the Government expense, having been informed that the ship would probably sail between the 15th and 20th of last month, on which latter day the ship arrived.

Extract from Law No. 14 of 1859.

24. Every coolie immigrant shall be entitled to a free passage back to India who shall have resided ten years in the Colony, and during the said ten years shall have completed an industrial residence of five years. Provided always that no such free passage shall be applied for, except within eighteen months of the term at which it shall have become due.

25. And be it enacted that the Governor shall give to each applicant for a return passage at least three months' notice, as precise as circumstances render possible, of the period at which such passage will be offered him.

26. And be it enacted that there shall be paid to every coolie immigrant, who shall become entitled to a free passage to India the sum of twenty-five shillings for every calendar month which shall intervene between his application for such passage and his receiving an actual offer of, or opportunity for, the same.

27. And be it enacted that the Governor may provide a back passage, at the expense of the Colony, for any coolie immigrant who may have become unfit for labour at any period of his industrial residence.

28. When any coolie immigrant shall be desirous to commute his right to a free passage for the value in land to the amount of the cost of such passage, and the Lieutenant-Governor shall see fit to grant to such immigrant out of the Crown lands of the Colony a piece or parcel of land, equal in value, at the upset price of Crown lands, to the amount of the cost of such return passage, such immigrant shall have the same in lieu of his right to a free passage.

Extract from Law No. 2 of 1870.

Whereas it is expedient to amend and consolidate the laws relating to the introduction of coolie immigrants into this Colony, and to the regulation and government of such coolie immigrants:

Be it, therefore, enacted by the Lieutenant-Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. The several laws and ordinances following shall be, and the same are hereby, repealed, save and except so far as regards any appointment of Coolie Immigration Agent, or other appointment made under the said laws and ordinances, or any of the same, and save also, and except so far as regards all existing engagements to labour, and the payment of any duties now due and owing to Her Majesty, and all fines and penalties incurred under the said laws and ordinances, or any of the same, all which engagements to labour may be enforced, and all which duties, fines, and penalties shall and may be sued for and recovered under this law, save also that all entries heretofore made in the general register of immigrants by the Coolie Immigration Agent shall be valid, and all engagements to labour, assignments of services and certificates, heretofore made and granted, and all matters and things done heretofore, under or by virtue of any of said laws or ordinances, shall be and continue in force in the same manner as if this law had not been passed.

46. Every coolie immigrant shall be entitled to a free passage back to India who shall have resided ten years in the Colony, and during the said ten years shall have completed an industrial residence of five years. Provided always that no such free passage shall be granted unless applied for within three years of the term at which it shall have become due.

17th June 1871.

47. When any question shall arise whether any coolie immigrant has completed a residence of ten years within this Colony, the burden of proof shall lie on the coolie immigrant or other person alleging that such coolie immigrant has completed such residence.

48. The Lieutenant-Governor shall give to each applicant for a return passage at least fourteen days' notice of the period at which such passage will be offered him.

49. There shall be paid to every coolie immigrant, who shall become entitled to a free passage to India, the sum of 10 shillings for every calendar month which shall intervene after the expiration of two months from the date of his application for such passage and his receiving an actual offer of, or opportunity for, the same. Provided that, should the Government or any private person offer such coolie employment during that period at the current rate of wages, he shall not be entitled to such allowance.

50. The Governor may provide a return passage, at the expense of the Colony, for any coolie immigrant who may have become unfit for labour at any period of his industrial residence.

51. When any coolie immigrant shall be desirous to commute his right to a free passage for the value in land to the amount of the cost of such passage, and the Lieutenant-Governor shall see fit to grant to such immigrant out of the Crown lands of the Colony a piece or parcel of land equal in value, at the upset price of Crown lands, to the amount of the cost of such return passage, such immigrant shall have the same in lieu of his right to a free passage.

No. 152. From the Acting Protector of Emigrants, to the Acting Chief Secretary to Government, Fort St. George, dated Madras, 5th June 1871,
No. 28-N.

With reference to paragraphs 2 and 3 of the Government Order, dated 5th May 1871, No. 589, requesting me to furnish any information to be found in the records of this office regarding the conditions on which coolies were sent to Natal about ten years ago, I have the honour to inform you that it appears from a letter from Mr. Franklin, Protector of Emigrants, to the Colonial Secretary of Natal, dated 11th October 1860, 340 emigrants were sent from Madras to Natal on the following conditions:—Field labourers were to receive not less than 12, 13, and 14 shillings per mensem for the first three years. House servants were to receive 18 shillings, and were not to be put to field labour.

2. Under the Natal Government Act, No. XIV. of 1859, all coolies are entitled to a free passage back to India after ten years' residence in Natal, five of which must have been passed in "industrial residence."

3. Eighteen months before the expiration of the ten years the coolies should give notice of their wish to return to their country, and, after giving such notice, they are entitled to 25 shillings for every month they are detained beyond the ten years.

4. There is no allusion in the record or Act to any payment of £10 to coolies on their return to India.

5. Mr. Burton informs me that the coolies were recruited and sent to Natal under the same conditions as those sent to the Mauritius, and that no promise of £10 was ever made to them.

6. I think it is not improbable that the idea of a gratuity of £10 may have arisen from the somewhat obscure wording of Section 26 of the Natal Act No. XIV. of 1859, and also from the fact that the payment made for detention might occasionally amount to £10 or £12.

*Proceedings of the Madras Government, Public Department,
17th June 1871.*

No. 153.

ORDER THEREON, 17th June 1871, No. 871.

Ordered that a copy of the letter from the Acting Protector of Emigrants be forwarded to the Natal Government in continuation of the letter to the Secretary to that Government, dated 5th May 1871, No. 590.

2. Ordered, also, that a copy of the Acting Protector's letter be forwarded to Mr. S. Pinsent, with reference to his letter dated the 4th February last.

(True Extract.)

Acting Chief Secretary.

To the Protector of Emigrants.
To S. Pinsent, Esq.

Exd. J. Wright.

No. 872.

To

THE HONOURABLE THE COLONIAL SECRETARY AT NATAL.

SIR,

In continuation of my letter, dated the 5th ultimo, No. 590, I am directed to forward copy of a letter from the Protector of Emigrants, Madras, affording information as to the conditions on which coolies from this Presidency were understood to be engaged for Natal.

2. There seems to be no reason for supposing that the emigrants were deluded by any promise of a gratuity of £10 on return from the Natal Government Agency here, although the idea has grown up among them from some misapprehension of the conditions of engagement.

I have the honour to be,

Sir,

Your most obedient servant,

FORT ST. GEORGE,
17th June 1871.

Acting Chief Secretary.

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Exd. J. Wright.

GOVT. OF 1871

PUBLIC.

THE PROTECTOR OF EMIGRANTS,
Secy. to Govt.

Dated June, 17th.

Recd.

G. O. 17th June 1871, No. 871.

JUNE.

Nos. 151-154.

Directing that copies of the letter from the Protector of Emigrants, Madras, affording information as to the conditions on which coolies from this Presidency were understood to be engaged for Natal, be forwarded to the Natal Government and to Mr. S. Piusat.

Durban Natal

14th Feb 1871

To His Excellency the Rt. Honble
Lord Napier of Magdala
Governor of Madras.

May it please your Excellency.

I have been professionally consulted by a
Deputation of the Coolies about to return to India by the Red
Riding Hood respecting a claim which they allege they
have against this Government for the payment of £10 per head
on their return to India. The facts of this case will appear
by the correspondence which I have had with the Government
copy of which I have the honor to inclose.

I am ready to admit that in a legal point of view
I can make nothing of this claim for £10. After the appeal
to our Government I cannot suppose that as a fact the
Government did authorize such a promise to be made.
Nor from my ignorance of the language and character
of the Coolies and from the incompetence of the interpreters
they brought me; had I the means of judging of the
bona fides of their story. It is very possible that it is a
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(of

Vol. of 1871

PUBLIC.

THE HONOURABLE THE COLONIAL
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I cannot denounce in too strong terms the injustice of the course of the Natal Legislature in altering the terms of hundreds of Contracts by an ex post facto law. In America the Supreme Court of the United States would set aside the Law as unconstitutional on that very ground. And any independent British Judge would struggle against his sense of the omnipotence of Parliament in such a case and lay hold of the slightest excuse for determining that the Law did not apply. As a Parliamentary Contract the Law of 1870 must fail; for there is not a pretence for saying that the Coolies were a consenting party to it. But I submit that

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See Extracts enclosed

a Judge would not have far to go for a reason for a decision in accordance with the dictates of justice. There is not a word in the preamble nor as far as I am aware in any other part of the Law that clearly shews an intention that this Law shall apply in all its details to Coolie Immigrants introduced under the Law of 1859. If however I am wrong in this view, and the Courts should be compelled to hold that the Legislature in its omnipotence and injustice had effectually altered the terms of a class of existing Contracts, I have no doubt that your Excellency will see the propriety of calling the attention of the Imperial Government to the matter with a view to the repeal of such an obnoxious and British Law.

I cannot admit the sufficiency of the excuse offered by the Colonial Secretary; - that the Law was framed in accordance with the provisions of the Law of 1859 on this head and subsequently altered by the action of the Elective Members. The Lieutenant Governor had the option in that case of disallowing the Bill, or of receiving it for the signification of Her Majesty's pleasure thereon. By assenting thereto his Excellency has adopted and approved of the acts of the Legislative Council as his own. Now even if the provisions of 1859 are to be considered as improvident and extravagant, would that justify the alteration. Twenty five shillings a month would little more than cover, if at all, the usual rate of wages and cost of food. But be that as it may, a bargain is a bargain: and the Legislature of one of Her Majesty's Colonies should surely have abstained from withdrawing by an ex post facto law, the rights which were conferred by a previous law on a poor ignorant half civilized set of men whom this Government

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Your Lordship's most obedient
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Savery Punsent

Advocate & Attorney

I have forwarded a copy of this letter to our Colonial
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Forwarded to the
Chief Secretary
to Govt. N.

Post. 5 Aug 71, No 24-28
to April 1878

Public 27, 28, 29

From
Messrs. J. P. P. & Co.
Attorneys & Solicitors.
Durban Natal.

27th Feb 1871.
By 15th May 1871.

Enc. N. 995

Addressing Govt. with
reference to the claims &
certain allowances for
services by the Cooks about
to return to India by the
"Red Riding Hood."

24/6
1871

17
Durban 1 Feb 1871

Hon Major Erskine
Colonial Secretary
Sir,

I have been consulted by the Cooks about
to leave for India by the Red Riding Hood, respecting an alleged
claim, which they are evidently sincere in thinking they have
against the Government, for the payment of £10 a head before their return,
after a residence of ten years in the Colony, and an industrious residence
of five years. I undertook their case, I am ready to own, with no expectation
of being able to make out a legal case against the Government. But if
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to me that under the law under which they were introduced into
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why it is not to be satisfied. When I came to read the terms under which by Law 14. 1859 they were entitled to a return passage, I read to them the 26 section & found that the 25/- a month had not been paid to them. I admit that they did not seem to be aware of this. But as I fear it is hopeless to expect that I shall be able to obtain the fulfilment of promises by which they appear to have been beguiled; there is all the more reason why I should see that they should get what the Law entitles them to, though they may be not aware of it.

I understand that their ten years expired in November and that shortly after they applied for a passage back. This would entitle them to three months statutory allowance. Or even if my facts are denied they have been hanging about towns at least a month and must be entitled to 25/-

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Yours very respectfully
E. J. Benson

Public Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letters.

From Mr. S. Vincent. 4th February 1871.

From the Off. Protector of Emigrants 4th June 1871. No. 4.

Order thereon 17 June 1871. No. 87.

Ordered that a copy of the letter from the Acting Protector of Emigrants be forwarded to the Acting General Agent in continuation of the letter to the Secretary to that Government dated 8th May 1871 No. 590 -

WJ

2. Ordered also that a copy of the Off. Protective letter be forwarded to Mr. S. Vincent with reference to his letter dated the 14th February last.

LB

To the Protector of Emigrants
Mr. S. Vincent Esq. } 15/6/71

J. 1871
in 10 7 25

25. 2/17 June/71
in B. 2/157

dep 4/7

Public Department
No 872

To. The Honorable the Colonial Secretary
at Natal

Sir,

In continuation of my
letter dated the 5th ultimo
No 590, I am directed to
forward copy of a letter
from the Protector of
Emigrants, Madras,
affording information
of the conditions on which
Coolies from this Presidency
undertook the voyage for
were sent to Natal.

L. J. J.

There seems to be no
reason for supposing
that the Emigrants were
debarred from any pecuniary
or gratuity of £10. on
return, from the Natal
Govt. agency house.
altho' the idea has

158

Govt. of 1871 Madras.
Public
The Protector of Emigrants
Secy
Dated 1871, No. 871
Recd.
Nos. 107-112.
Respecting that, which
will be taken from the Protector
of Emigrants, Madras, affording
information on the conditions
on which coolies from this Presy.
were undertaken the voyage
for Natal, as forwarded to
the Natal Govt. & to the
Colonists.

24/6
1871



7th 8th Gen
by Lamb/7c

The following is a list of the
 names of the persons who

211/6
Rip