

ORDINARY PRINTED.

G.O., No. 677

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[Despatch Abstract.]

~~Indian Labourers for Beira.~~

Comd to certain officers ^{a letter} ~~forwarding copies of~~ from
the Govt of India ^{relative to the recruitment}
by Messrs Mackinnon Mackenzie & Co of
Bombay - for employment under the Char-
tered Company of South Africa, and ~~the de-~~
siring ~~that~~ ^{in this Presidency} that on the occurrence of a
similar case steps be taken to ensure the
required evidence being promptly obtained
and criminal proceedings instituted against
the parties.

26/97

BACK PAPERS.

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Government { 1897 } of Madras. PUBLIC.

Recd.

Enclosures

Regd.

1897.

Spare copies

G.O., No. 677, 31st May 1897.

MAY.

Indian Labourers for Beira.

Communicating to certain officers a letter from the Government of India forwarding correspondence relative to the recruitment by Messrs. Mackinnon, Mackenzie & Co., of Bombay, of — for employment under the Chartered Company of South Africa, and desiring that, on the occurrence of a similar case in this Presidency, steps be taken to ensure the required evidence being promptly obtained and criminal proceedings instituted against the parties.

GOVERNMENT OF MADRAS.

PUBLIC DEPARTMENT.

READ—again the following paper:—

G.O., No. 631, Public, dated 16th June 1896.

Read—the following letter from D. IBBETSON, Esq., c.s.i., Officiating Secretary to the Government of India, Department of Revenue and Agriculture (Emigration), to the Chief Secretary to the Government of Madras, dated Simla, the 27th May 1896, Circular No. 11—2-28:—

Cases have occurred in which native artizans have been recruited in India for service in the East African colonies and in other countries to which emigration under the provisions of the Indian Emigration Act, XXI of 1883, is not lawful under agreements or promises which have not been fulfilled; and in some cases the treatment of these emigrants has been of such a character as to necessitate the interference of Her Majesty's Consuls in order to prevent their being left entirely unprovided for in a foreign country and to give them the means to pay for their return to India. There are indications that the labour for which there is the greatest demand in the new African colonies is the labour of the artizan and not that of the cooly, and although the Government of India have no desire to interfere with the free emigration of native traders and others who are in a position to take care of their own interests, the facts above mentioned show that it is necessary to provide for the protection of artizans and labourers who are not capable of securing for themselves the fair treatment under promise of which they have been induced to emigrate.

2. The artizans referred to in the preceding paragraph were allowed to leave India without regard to the provisions of the Emigration Act, because the Government of India, as advised at the time of their departure, held that those provisions did not apply to skilled labour, even if manual. On further consideration and advice, however, they are inclined to doubt the correctness of this interpretation. Section 6 (i) of the Emigration Act, XXI of 1883, limits its application to natives of India "under an agreement to labour for hire in some country beyond the limits of India, other than the Island of Ceylon or the Straits Settlements." The Government of India, as now advised, consider that the expression "to labour" is not necessarily restricted to the labour of agriculturists and menial servants. The reasonable interpretation of the clause seems to be that it extends to all persons engaged for labour which is essentially manual, but not to persons engaged for labour which is not so.

3. I am therefore directed to request that this interpretation of the Act may be acted upon unless and until it is judicially declared to be incorrect. In that event it will be necessary to consider the advisability of amending the law.

Order—No. 631, Public, dated 16th June 1896.

Communicated to all officers concerned for information and guidance.

(True Extract.)

(Signed) J. F. PRICE,
Chief Secretary.

To the Protector of Emigrants, Madras.
" British Consular Agent, Pondicherry and Karikal.
" Collectors of Maritime Districts.
" Board of Revenue.

READ—also the following paper:—

From D. IBBETSON, Esq., c.s.i., Secretary to the Government of India, Department of Revenue and Agriculture (Emigration), to the Chief Secretary to the Government of Madras, dated Simla, the 4th May 1897, No. 621—5-29.

I am directed to forward, for the information of the Governor in Council, a copy of the correspondence, noted in the margin, regarding the recruitment of Indian labourers for Beira for employment under the Chartered Company of South Africa.

1. Letter from Messrs. Mackinnon, Mackenzie & Co., No. 3185, dated 11th November 1896.
2. Letter to Messrs. Mackinnon, Mackenzie & Co., No. 2220, dated 25th November 1896.
3. Letter from the Government of Bombay, No. 108, dated 8th January 1897, and enclosures.
4. Letter to the Government of Bombay, No. 90, dated 20th January 1897.
5. Letter from the Government of Bombay, No. 397, dated 23rd January 1897.
6. Telegram to the Government of Bombay, No. 141, dated 30th January 1897.
7. Letter to the Government of Bombay, No. 146, dated 1st February 1897.
8. Letter from the Government of Bombay, No. 1723, dated 29th March 1897, and enclosures.

2. From the letter from the Government of Bombay of the 29th March last, it will be seen that under the circumstances therein set forth, that Government are not prepared to institute criminal proceedings against the parties concerned in the case of the labourers who were embarked for Beira in the S.S. *Kerbella* as suggested by the Government of India in their letter No. 146—5-6 of the 1st February 1897. Should, however, any similar case occur, the Government of India trust that steps will be taken by the Local Government of the Presidency or

Province to ensure that the required evidence is promptly obtained and proceedings instituted against the parties. The view of the law taken by the Honourable the Advocate-General, Bombay, coincides, I am to add, with the opinion of the Government of India.

3. With regard to the proposal of the Bombay Government that the existing law should be amended, I am to state that the question is reserved for further consideration.

ENCLOSURES.

Letter from Messrs. MACKINNON, MACKENZIE & Co., Bombay, to the Secretary to the Government of India, Home Department, dated 11th November 1896, No. 3185.

We have the honour to inform you that our Agent at Beira in South Africa has telegraphed us to forward 500 coolies to Beira for work on the railway now being made by the Chartered Company of South Africa.

The firm of contractors to the Chartered Company is Messrs. Pauling & Co., and they offer to pay the coolies at the rate of one pound sterling per month, to provide all rations free, and to pay the passage to and from Beira; they also guarantee to give the coolies a contract for two years, and they estimate that a further number of coolies will probably be required at an early date.

We are aware that under the Indian Emigration Act XXI of 1883, the coolies cannot be sent to Beira; but in view of the present great scarcity and consequent distress in many parts of India, we think that it may be considered possible to encourage emigration as much as possible, and seeing that the coolies for Beira are applied for under almost similar conditions as those already sent to Mombassa for the Uganda Railway, we have more confidence in applying to you. The coolies could be engaged under similar terms except as to pay for which we offer better terms, and could sign similar agreements to those sent to Mombassa. If the Government of India consider a guarantee should be given, we have no doubt that a deposit of six months' pay could be arranged without difficulty. As the matter is one of some urgency, we have the honour to ask that a reply may be given us at as early a date as practicable. We are in a position to ship coolies early in December.

Letter from the Secretary to the Government of India, Department of Revenue and Agriculture, to Messrs. MACKINNON, MACKENZIE & Co., Bombay, dated 25th November 1896, No. 2220—81-2.

I am directed to acknowledge the receipt of your letter No. 3185, dated the 11th November, in which you ask for permission to recruit and embark 500 Indian labourers for Beira for work on the railway under construction by the Chartered Company of South Africa. It is suggested that, as the labourers cannot be embarked for Beira under the provisions of the Indian Emigration Act, XXI of 1883, they may be allowed to proceed under the same conditions as the labourers who are recruited for, and despatched to, Mombassa for employment on the Uganda Railway.

2. In reply, I am to explain that under Act I of 1896, under which the labourers to whom you refer were recruited for Mombassa, relaxation of the provisions of the Indian Emigration Act is only permitted in the case of labourers departing out of British India under an agreement made with or on behalf of Her Majesty's Government. The Government of India regret, therefore, that they are unable to sanction the recruitment of labour in India for the railway under construction by the Chartered Company of South Africa.

From J. DEC. ATKINS, Esq., Secretary to the Government of Bombay, General Department, to the Secretary to the Government of India, dated Bombay Castle, the 8th January 1897, No. 108.

With reference to Mr. Under Secretary Sly's Memorandum No. 2221—812, dated the 25th ultimo, forwarding copy of a letter addressed by the Government of India to Messrs. Mackinnon, Mackenzie & Co., Bombay, in which they express their inability to sanction the recruitment by that firm of labourers in India for the railway under construction by the Chartered Company of South Africa, I am directed to state that, before the receipt of your communication, this Government received certain papers from the Commissioner of Customs, from which it appeared that Messrs. Mackinnon, Mackenzie & Co. had written to the Protector of Emigrants, Bombay, proposing to send coolies to Beira for employment on the railway in question. The coolies were to go as free labourers, i.e., without any agreement, and would therefore be outside the provisions of the Indian Emigration Act. The Protector of Emigrants did not propose to prevent the men from going as there were no agreements in the case. Though the Commissioner of Customs regarded the case as a distinct attempt to evade the provisions of the Emigration Act, His Excellency the Governor in Council considered that there was no legal power to prevent the men from going if they wished to go, as they were not "under an agreement to labour for hire" in Africa and were not therefore emigrants within the meaning of the Emigration Act, and accordingly directed the Protector of Emigrants not to prevent the men from going but to earnestly warn them against going and explain to them that they had no guarantee regarding treatment, payment of wages, or safe return. I am to forward herewith, for the information of the Government of India, a copy of the papers on the subject, including the Resolution issued by this Government.

2. On receipt from the Government of India of your letter above referred to, the Protector of Emigrants was asked to report whether the men whom this Government had permitted to sail had actually gone. It appears from that officer's reply that 314 men left Bombay on the 28th ultimo for Beira, though he had warned them as instructed by this Government. The Protector of Emigrants further reports that about 250 more men are required for Beira and are being recruited.

3. In view of the facts above reported, His Excellency the Governor in Council would desire to be favoured with the instructions of the Government of India as to the course to be taken by this Government in any future similar case.

From J. WALSH, Esq., Protector of Emigrants, Bombay, to the Under Secretary to the Government of Bombay, General Department, dated the 21st November 1896, No. 50.

I have the honour to submit, for the consideration and orders of Government, a notice in vernacular, of which I enclose a translation, calling for labourers for the railway that the Chartered Company of South Africa is constructing, and which commences from Beira, a Portuguese port. I would explain that on the 27th ultimo I received a letter from Messrs. Mackinnon, Mackenzie, asking whether I had any objection to coolies going to Beira. Copies of the letter and my reply are appended; you will see from the notice I attach that the coolies are being sent as "free labourers," that is, without agreement and therefore without the provisions of the Indian Emigration Act, No. XXI of 1883. I have seen Mr. Currie of Messrs. Mackinnon, Mackenzie, and he tells me that he has written to the Government of India requesting permission to recruit: in the meantime he is advised that there is nothing illegal in his taking as much "free labour" as he can get, that is, men without agreements. The labour, I would beg to say, is for Pauling & Co., a firm of contractors of which I am informed Mr. Cecil Rhodes is a partner, who are constructing for the Chartered Company, and that Pauling & Co. are very wealthy and not likely to stop work for want of funds. Messrs. Mackinnon and Mackenzie are acting here on advice from their agent at Beira, I understand, and not on instructions direct from Pauling & Co. I asked Mr. Currie—who would pay the passages of coolies who come forward in response to his notice; he replied that he would do so in the case of those who declared they were not able to pay. Practically in my humble view he will have to pay the passages of all, for it is not probable that many will declare themselves able, when they learn they can get a passage free by merely saying they cannot pay. Unless Government orders are received to the contrary, I do not propose to stop the men leaving by the S.S. *Chyebassa* about the 28th current, because of the one great fact that there are no agreements in the case. But I would respectfully point out that there are dangers in the situation. I need scarcely add how important it is that I should have early instructions.

P.S.—Respectfully submitted through the Commissioner of Customs, Salt, Opium, and Abkari.

From Messrs. MACKINNON, MACKENZIE & Co., to the Protector of Emigrants, dated Bombay, 27th October 1896, No. 2830.

We have the honour to inform you that we have received a telegram from our agents at Beira, requesting us to send there 500 railway coolies for the Chartered Company, and to inquire if you have any objection to our procuring and sending the men down.

The men would go down on a two years' engagement, and they would receive each 20s. per month with food.

It is possible we may be asked to send some more railway coolies down later.

Requesting the favour of a reply from you as early as possible as we must wire our agent.

From J. WALSH, Esq., Protector of Emigrants, Bombay, to Messrs. MACKINNON, MACKENZIE & Co., dated 29th October 1896, No. 49.

In reply to your No. 2830, of 27th instant, I have the honour to inform you that Beira is not a place to which emigration is lawful under the Indian Emigration Act, XXI of 1883. The coolies you write about cannot therefore be sent. I would advise that the Chartered Company be told to apply to the Government of India for permission to recruit labour in India.

NOTICE.

Monthly rate of wages Rs. 16, and rations will also be given. There has arisen in the town of Beira on the East Coast of Africa a great demand for labourers in connection with the construction of railway by the local Chartered Railway Company, and skilled labourers who are desirous of getting engagement will be given a monthly payment of Rs. 16 *plus* rations by the abovenamed Railway Company. Those that wish to go there should arrange with Messrs. Ewing or Messrs. Souter & Co. at Beira.

To enable the intending labourers to proceed there, the undermentioned signatories have reduced the rates of passage-money. British India Steam Navigation Company's steamers will set sail from here for Beira on the 28th November, 19th December and 16th January. Deck tickets will be had for Rs. 30, inclusive of rations.

Tickets will be had at following places, at Surat and even at Rander :—

Surat—Baker Ali Valad Syed Meer Mia, Valanda Street.

Rander—Rahimbhoy Peerbhai, opposite Moti Masjid.

Bombay—Messrs. Essabhai Thawar and Co., Khoja Street.

BOMBAY, 6th November 1896. MACKINNON, MACKENZIE & Co.,
Agents for the British India Steam Navigation Company.

Memorandum by T. D. MACKENZIE, Esq., Commissioner of Customs, Salt, Opium, and Abkari, Bombay, dated Camp, Metal, the 23rd November 1896, No. 5590.

Submitted to Government in the General Department.

2. It appears to the undersigned that these papers disclose a distinct effort to evade the provisions of the Indian Emigration Act, under the pretext of "free labour," and that pending the orders of the Government of India on the case, the Protector of Emigrants should, in the first place, be instructed not to let the men go by the steamer sailing on 28th instant. The men are necessarily ignorant of every thing beyond that wages will be offered to them at Beira, and that an engagement may there be made with them. But as matters stand, there is no means of enforcing the engagement, and desirable as it may be, especially in present circumstances, to encourage emigration, whether "free" or under the Act, it does not seem advisable to let these men go without any protection of their interest. If they are allowed to go, they should be warned distinctly by the Protector of Emigrants that they go on their own responsibility, are not under Government protection in any way, that no agreement which they make out of India is valid, or can be enforced in any way, and that in the event of their wishing to return to India, they will have to make their own arrangements.

3. It is only too probable that as regards these men difficulties may arise, such as those brought to notice by Her Majesty's Diplomatic Agent and Consul-General, Zanzibar, in his letter No. 55, dated 8th March 1895, copy of which was sent to this office under Government endorsement No. 1282, dated 27th idem.

4. Attention is further requested to the correspondence ending with Government Resolution No. 4266, dated 26th September 1896, and especially paragraph 5 of the Government of India's letter printed in the preamble. It seems likely that if this emigration be prevented, requests will be made to the Government of India by the Chartered Company of South Africa to allow the importation of labour under the Emigration Act, and that if this is done, proper arrangements can be made for the protection of this class of labourers.

5. The present case differs largely from those referred to in the correspondence ending with this office letter No. 4907, dated 9th ultimo, in that it is clear that the persons now under consideration are not emigrating of their own free will, cannot be possessed of means to pay their passages out or home again, and are to be induced to

go to Africa not by invitation from private friends, but by an agent of a public company who promises to pay their passages and assures them of wages on arrival in Africa.

EXTRACT from the Proceedings of the Government of Bombay, General Department, No. 5220 A., dated 27th November 1896.

Read—letter from the Protector of Emigrants, Bombay, to the Secretary to the Government of Bombay, General Department, dated the 21st December 1896, No. 50.

Memorandum from the Commissioner of Customs, Salt, Opium and Abkari, No. 5590, dated the 23rd November 1896, submitting the above with remarks.

Resolution.—The following telegram should be sent to the Protector of Emigrants, Bombay :—

"Your letter 21st, about coolies leaving for Beira to-morrow. Do not prevent them, but earnestly warn them against going, and explain that they have no guarantee regarding treatment, payment of wages, or safe return."

From J. WALSH, Esq., Protector of Emigrants, Bombay, to the Secretary to the Government of Bombay, General Department, No. 54, dated 11th December 1896.

In reference to your urgent Memorandum No. 5436 of yesterday's date, I have the honour to report that 314 coolies left by the S.S. *Chyebassa* on the 28th ultimo for Beira. I went on board, and as directed warned the men that they were going on their own responsibility and without any guarantee as to treatment or payment of wages. The men appeared to be mostly north countrymen, Pathans, Sindhis and some Bokharis, settled in and around Surat. Many had certificates showing that they had worked at railway construction, and I think they must have been attracted to Surat by the prospect of work on the Tapti Valley Railway works. They were, as a body, men accustomed to rely on themselves and very little on the Sirkar, for one of them, when I was explaining the dangers of going without Government protection, replied—Never mind ("kutch parva nihi"). I learn that about 250 more are required for Beira and are being recruited.

From D. IBBETSON, Esq., C.S.I., Secretary to the Government of India, to the Secretary to the Government of Bombay, No. 90—5—2, dated Calcutta, the 20th January 1897.

I am directed to reply to your letter No. 108, dated the 8th January 1897, regarding the recruitment of Indian labourers by Messrs. Mackinnon, Mackenzie & Co., of Bombay, for employment on the railway under construction by the Chartered Company of South Africa. In my letter No. 2220, dated the 25th November 1896, of which a copy was forwarded for the information of the Bombay Government with my endorsement No. 2221 of the same date, the Government of India informed Messrs. Mackinnon, Mackenzie & Co., who had applied for permission to recruit labour for South Africa under the conditions applied to coolies for the Uganda Railway at Mombassa, that they were unable to sanction such recruitment. You now report that the Bombay Government, prior to receiving a copy of this letter, had permitted the departure of a batch of coolies recruited by the Chartered Company for the construction of their railway, because they considered them to be free labourers, and not under an agreement to labour for hire, and held therefore that the provisions of the Indian Emigration Act, XXI of 1883, did not apply to them. And you ask for the instructions of the Government of India as to the course to be followed in future similar cases.

2. The Government of India agree that, under the circumstances as they appear from the papers you enclose, it seems doubtful whether the recruitment in question falls within the strict letter of the law. Under section 6 (1) of that Act "emigration" is defined as the departure by sea out of British India of a native of India under an agreement to labour for hire in some country beyond the limits of India other than the Island of Ceylon or the Straits Settlements; and the question for decision in this particular case is whether any such agreement subsisted in the case of these particular coolies. There is nothing to restrict the meaning of the word "agreement" as used in section 6 (1) of the Act to agreements in writing. And there was clearly an understanding between Messrs. Mackinnon, Mackenzie and Co. and the coolies recruited by them, under which that firm paid the passage-money of the coolies, presumably for some consideration which seemed to them sufficient.

3. The materials before the Government of India are not sufficient to enable them to decide whether such an understanding amounted to an agreement within the meaning of section 6 (1) of the Indian Emigration Act, and I am to suggest that the Bombay Government should place all the available information before their law officers for an opinion upon this point. In the event of that opinion being favourable to the view that the action of the contractors conflicted with the provisions of the Emigration Act, I am to request that it may be acted upon and that emigration under similar conditions may be prohibited in future.

4. If, however, the law officers advise that the facts do not constitute an infraction of the law, the Government of India are inclined to think that it will be advisable to consider the propriety of amending the Act so as to cover such cases which differ entirely from the free emigration to East Africa referred to in the correspondence ending with my letter No. 1947, dated the 28th October 1896. The action of Messrs. Mackinnon, Mackenzie, if not falling within the letter of the law, certainly seems opposed to its spirit; and I am to inquire how far the Governor in Council concurs in the view, whether any previous cases of similar evasion of the law are known to him, whether he anticipates that the evil is probably a growing one, and what alterations (if any) he would propose in the existing law in order to check its growth.

From J. DEC. ATKINS, Esq., Secretary to the Government of Bombay, General Department, to the Secretary to the Government of India, No. 397, dated Bombay Castle, the 23rd January 1897.

In continuation of my letter No. 108, dated the 8th instant, I am directed to forward herewith copy of a letter No. 58, dated the 31st ultimo, from the Protector of Emigrants, Bombay, from which it will be seen that 251 more labourers sailed for Beira on the 26th ultimo for work on the Railway under construction by the Chartered Company of South Africa.

From J. WALSH, Esq., Protector of Emigrants, Bombay, to the Secretary to the Government of Bombay, General Department, No. 58, dated the 31st December 1896.

In continuation of my No. 54 of 11th December 1896, I have the honour to report that 251 coolies left for Beira by the S.S. *Kerbella* on the 26th current. I attended on board and warned the coolies as directed by Government. The men were a different class to those that went by the previous steamer. The coolies by the S.S. *Kerbella* were a more mixed lot, and seemed to me men who were likely to give their employers trouble in Beira. They were in gangs of 25, over which there was a mukkadam. This argues, I submit, an amount of organization which makes it quite apparent that the coolies were under a kind of parole agreement, if not a written one, and I may be pardoned for saying that the whole thing seemed to me a transparent evasion of the law. The men on being questioned answered me they were going of their own free will, that their passage was paid including food, and they were to have Rs. 16 a month and rations at Beira, the mukkadams Rs. 32 and rations. They stoutly denied having signed any agreement, and this was borne out by Mr. Currie, Agent of Messrs. Mackinnon, Mackenzie and Co. who were sending the men.

Mr. Currie said he had the men engaged through brokers, and had paid their passages, but that no agreements were signed as that would bring them within the law. Some of the men were anxious about proceeding after my speaking to them, but I am afraid the warning was too late: they were brought down that morning and were placed on board a few hours before the departure of the vessel.

Telegram from the Revenue Secretary, to the Government of India, Calcutta, to the Secretary to the Government of Bombay, No. 141, dated the 30th January 1897.

Your letter 397 of 23rd January. Please see my letter of 20th. If facts, now reported by Protector, can be proved, *Kerbella* coolies would appear to have come within the Act, since the agreement of section 6 need not be in writing. Please take all necessary measures to enforce emigration law strictly. Letter follows.

From D. IBBETSON, Esq., C.S.I., Secretary to the Government of India, to the Secretary to the Government of Bombay, No. 146—5—5, dated Calcutta, the 1st February 1897.

I am directed to acknowledge the receipt of your letter No. 397, dated the 23rd January, in which you report the departure from Bombay of a further batch of 251 labourers for Beira for employment under the Chartered Company of South Africa.

2. As already stated in my telegram of the 30th January, it appears to the Government of India that, if the facts as reported by the Protector can be proved, the coolies who embarked in the *Kerbella* came within the meaning of the Indian Emigration Act, since they seem to have been under a definite agreement to labour for hire, upon terms fixed and agreed upon beforehand; and the fact that the agreement was not in writing in no way takes them out of the definition of "emigrant" under the Act. If this view is correct, the coolies should not have been allowed to proceed, and the persons who engaged and shipped them are liable to prosecution.

3. Now that the labourers have sailed it may perhaps be difficult to obtain evidence for a criminal prosecution. If, however, the law advisers of the Bombay Government think that a case can be established, the Government of India are of opinion that prosecutions should be instituted against the parties concerned.

4. It is clear that, if the emigration law is to be enforced, such evasions as that now reported must be prevented. The Letter No. 90—5—2, dated 20th January 1897. Government of India have already asked the Governor in Council to favour them with his opinion as to whether any amendment of the law is required. Meanwhile I am to ask that the letter of the existing law may be carefully and strictly enforced.

From J. DEC. ATKINS, Esq., I.C.S., Secretary to the Government of Bombay, General Department, to the Secretary to the Government of India, Department of Revenue and Agriculture (Emigration), Calcutta, No. 1723, dated Bombay Castle, 29th March 1897.

With reference to the correspondence ending with your letter No. 353—3—16, dated the 16th instant, regarding the infraction of the Emigration Act in the case of the shipment from Bombay of two batches of labourers for Beira for employment under the Chartered Company of South Africa and the adoption of measures to prevent emigration against the provisions of the law, I am directed to forward herewith, for the information of the Government of India, copy of the papers noted in the margin.

Resolution of his Government, No. 604, dated the 3rd February 1897.
Resolution of this Government, No. 622, dated 4th February 1897.
Letter from the Commissioner of Customs, Salt, Opium and Abkari, No. 837, dated the 17th February 1897.
Opinion of the Honourable the Advocate-General, Bombay, No. 16, dated the 15th February 1897.

2. I am to observe that His Excellency the Governor in Council is of opinion that in the circumstances brought to notice by the Commissioner of Customs, Salt, Opium and Abkari, it is not advisable to institute criminal prosecutions in the two cases referred to.

3. As regards the question of the propriety of amending the Emigration Act raised by the Government of India, I am to state that the Governor in Council considers that it is advisable to do so, and I am to commend for the favourable consideration of the Government of India the suggestions in this regard that have been made by the Honourable the Advocate-General, Bombay. The Governor in Council would also suggest that power should be taken under the Act to detain, for the purposes of inquiry, for a period not exceeding six days, any ship as regards which in the opinion of Government a reasonable suspicion exists that the law is being evaded or infringed.

Resolution by the Government of Bombay, General Department, No. 601, dated 3rd February 1897.

Read—the following telegram from the Government of India, Revenue and Agricultural Department, dated the 30th January 1897 :—

“141. Your letter 397 of 23rd January. Please see my letter of 20th. If facts now reported by Protector can be proved, *Kerbella* coolies would appear to have come within the Act, since the agreement of section 6 need not be in writing. Please take all necessary measures to enforce emigration law strictly. Letter follows.”

Resolution.—The Commissioner of Customs, Salt, Opium and Abkari should be requested to take such action as he finds possible after consulting the Solicitor to Government. His attention should be invited to Mr. Walsh's letter No. 58 of the 31st December last.

Resolution by the Government of Bombay, General Department, No. 622, dated 4th February 1897.

Read—letter from the Government of India, Revenue and Agricultural Department (Emigration), dated the 1st February 1897, No. 146—5—5.

Resolution.—Copy of the letter from the Government of India should be forwarded to the Commissioner of Customs, Salt, Opium and Abkari and the Protector of Emigrants, Bombay, for information and guidance and report in continuation of Government Resolution No. 604 of the 3rd February 1897.

From the Hon'ble Mr. T. D. MACKENZIE, C.S., Commissioner of Customs, Salt, Opium and Abkari, to the Secretary to the Government of Bombay, General Department, No. 837, dated 17th February 1897.

Adverting to the Government Resolutions noted in the margin and with reference

No. 604, dated 3rd February 1897.

„ 622 „ 4th idem.

further to Government memorandum

No. 537, dated 1st instant, I have the

honour to submit, for information and for

such further action as may be deemed

necessary, the opinion No. 16, dated 15th idem, from the Honourable the Advocate-General, together with accompanying papers forwarded to me with letter No. 121 from the Solicitor to Government regarding the infraction of the Emigration Act by Messrs. Mackinnon, Mackenzie and Co. in despatching on the 26th December last certain coolies for Beira by the S.S. *Kerbella*, as well as others on a previous occasion by the S.S. *Chyebassa*.

2. It will be seen that the Honourable the Advocate-General concurs with the Government of India in the view that a written agreement is not necessary to constitute a breach of the provisions of the Act, that it is probable if the evidence of the coolies could now be obtained, that a criminal prosecution could be successfully instituted, but that in the absence of that evidence which is now not obtainable, such prosecution would probably fail, and that if it is found on enquiry that there have been previous cases of this sort, or that such cases are likely to occur again, then an amendment of the Act in the manner suggested by him is desirable.

3. Now as to the point whether such cases have previously occurred, I cannot find from my records that they have to any material extent. There is the case of the four dhobis disposed of in the correspondence ending with Government Resolution No. 3700, dated 20th August 1896. There is further the attempt in February 1895 by Dr. Oscar Baumann to export coolies *via* Marmagao, which I was able to frustrate, and for the correspondence in this matter I would refer to Government Resolution No. 1383, dated 1st April 1895. Beyond these I am unable to find any cases so that as far as the past is concerned, it does not in my humble opinion, looking to the views expressed by the Government of India, and the Honourable the Advocate-General, Bombay, seem necessary to amend the Act until at least a test case has been tried in the courts and it has been judicially decided that the law is ineffectual to guard against such attempts. So also as regards the future it seems to me that it would be wiser to await the result of trial in any case which may arise. The Protector will know now that any such attempt is *not an evasion but an infraction* of the law, he will refuse to let the emigrants go, and will institute a prosecution.

Opinion of the Honourable the Advocate-General, Bombay, No. 16, dated Bombay, 15th February 1897.

With reference to the letter No. 653 from the Commissioner of Customs, Salt, Opium and Abkari, dated the 11th February 1897, I am of opinion as follows :—

It appears from the letter No. 58 from the Protector of Pilgrims, dated 31st December 1896, that the coolies who left for Beira by the S.S. *Kerbella* on the 26th December 1896 had received a promise or engagement that they would be employed as labourers at Beira, with pay of Rs. 16 a month, and their food, it also appears that the passage-money to Beira was paid for them and that they were organised into gangs, of 25 in each gang, with a mukkadum on the pay of Rs. 32 a month at the head of each gang. The fact that the persons who engaged or sent the coolies paid the passage-money would go to show that the coolies had engaged to work at Beira, and the fact that the coolies consented to go, would go to show that they had been promised work there. I think if the above facts could be established by evidence, they would show that these coolies left India under an agreement to labour for hire at Beira, within the meaning of section 6 of the Indian Emigration Act, 1883, and that there has been a breach of the provisions of that Act. It is not, in my opinion, necessary that there should be an agreement in writing, if there was a verbal promise, or undertaking on the part of the persons who sent the coolies that they would be employed on hire at Beira, and a like undertaking or promise on the part of the coolies that they would work at Beira, if sent there, this would be an agreement within the meaning of the section. I think the circumstances of this case show that the coolies did not leave India merely with the expectation of being employed at Beira, but with no undertaking that they would be employed.

I think it is most probable that the coolies, who left by the S.S. *Chyebassa*, had exactly the same sort of agreement, and a breach of the law in that case also was committed.

It will, however, now be very difficult, if not impossible, to obtain a conviction under the Act, of any of the persons concerned in employing or sending off these coolies. Although the payment of passage-money, which could probably be established by evidence still available in Bombay, would tend to show that an agreement

had been made, this would not be sufficient evidence in a criminal case; it would be necessary to prove affirmatively that the coolies had left under a promise that they would be employed at Beira, and that they had agreed to work. So far as I can judge from the papers sent to me, this could only be done by the evidence of some of the coolies themselves, and none of them are now available as witnesses.

Although I am of opinion that in this particular case, the facts, if they could have been established by evidence, would have justified a conviction under the Act, it is clear that, in all cases of a verbal agreement, or understanding, there must be considerable difficulties in the way of proof, and if it is found on enquiry that there have been previous cases, or that such cases are likely to occur again, I think an amendment of the Act would be desirable. Section 105 (1) as amended by Act I of 1896 prohibits a native of India leaving British India, by land, under, or with a view to entering into an agreement for hire in some country beyond the sea, this section is intended to prevent a native going by land to a Native State, and there entering into an agreement and leaving India. A section might be added, or section 105 (1) and (2) might be amended, prohibiting departure from India with a view to entering into an agreement to labour for hire, and making it an offence to induce, or attempt to induce, a native to depart with that object; at the same time an explanation might be inserted to the effect that the word "agreement" in sections 6 and 105 includes an oral agreement.

ORDER—No. 677, Public, dated 31st May 1897.

Communicated, in continuation of G.O., No. 631, Public, dated 16th June 1896, to the Protector of Emigrants and all officers concerned, for information and guidance, with reference to paragraph 2 of the letter from the Government of India read above.

(True Extract.)

J. F. PRICE,
Chief Secretary.

To the Protector of Emigrants, Madras.
 „ British Consular Agent, Pondicherry and Karikal.
 „ Collectors of Maritime Districts.
 „ Board of Revenue (Separate Revenue), through the Revenue Department.

Ed. Md Pahlavan.

Public (1897) Department.

CURRENT No.

From

The Govt. of India

Order

No. 621
5-29

Dated

Received

Registered

Enclosures

Spare copies.

4
10
11
— 7

5-27

10 of encls. 7; 2; 14
(alter not. recd). Spare
copies of encls 3,
5 & 6 recd 18/5/97

SUBJECT.

Forwarding copy of cor-
respondence re the recruit-
ment of Indian labourers
for Beira for employment
under the chartered Company
of S. Africa.

BACK PAPERS.

G.O.	No.	Department.	Date.
<i>su</i>	<i>360</i> <i>218</i> <i>121</i>	<i>Pul</i>	<i>1-4-97</i> <i>6-3-97</i> <i>1-1-98</i>

FURTHER PAPERS.

G.O.	No.	Department.	Date.

- ② H. E. THE GOVERNOR.
① THE HON'BLE MR. BLISS, C.I.E.
③ THE HON'BLE MR. GROSE, C.I.E.

[G.]
100-25-11-96.

Public dept:

C.No. 1781

SUBJECT.

*Indian Labourers
for Beira*

FOR ORDERS.

*a Portuguese port on the
South-east coast of Africa *sm.*
Praya

The Govt. of India forwards for the information of this Govt. copy of its correspondence with the Govt. of Bombay relative to the recruitment by Messrs. Mackinnon Mackenzie & Co., of that Presy., of Indian labourers for Beira for employment under the Chartered Company of S. Africa.

2. The correspondence is interesting as illustrative of the scope of Act XXI of 1883, the Indian Emigration Act, as amended by Act I of 1896, and in particular of the term "agreement" in section 6 (1) of the former Act, which it will be seen is not to be restricted to an agreement in writing, but includes as well a verbal promise or undertaking.

3. Messrs. Mackinnon Mackenzie & Co. being aware that coolies cannot be sent to Beira under Act XXI of 1883, requested the sanction of the Govt. of India to the coolies being allowed to proceed thither under similar terms to those under which labourers

labourers were recruited for, and despatched to, Mombassa for employment on the Uganda Ry.: India replied that under Act I of 1896, under which the labourers for Mombassa were recruited, relaxation of the provisions of the Indian Emigration Act is only permitted in the case of labourers departing out of British India under an agreement made with, or on behalf of, Her Majesty's Govt. India stated therefore ~~clearly~~ that it was unable to comply with their request.

4. In the meanwhile Messrs. Mackinnon Mackenzie & Co, acting under the advice of their legal advisers, viz., that there was nothing illegal in their securing as much "free labour" as they could, despatched 314 coolies per S.S. Chyebassa on the 28th Novr. last. The Protector of Emigrants, Bombay, acting under telegraphic instructions from the Govt. of India, did not prevent their going, but warned them that they could have no guarantee regarding treatment, payment of wages or safe return.

5. The Govt. of Bombay then reported the matter to India, explaining ~~its action as due to the fact that it could not be proved that the labourers in question were not going on their own free will.~~ As however the Protector of Emigrants reported that about 250 more men were being recruited, Bombay

asked

*that as the coolies
wished to go they could
not legally be stopped, as
there were no agreements
entered into, and they
were therefore "free labourers"
and amenable to the
provisions of the Act.*

asked India for instructions as to the course to be adopted in future similar cases.

6. In reply India agreed that, in the circumstances reported, it was ^{the} doubtful whether recruitment in question fell within the strict ~~sense~~ ^{letter} of the law, but considered that the term "emigration" in section 6 (1) of the Act might have applied to the case of these particular coolies, and that the word "agreement" in the same section was not necessarily restricted to an agreement in writing. It ~~was~~ further remarked that the action of Messrs. Mackinnon Mackenzie & Co., if not falling within the letter of the law, certainly seemed opposed to its spirit; and *asked how far Bombay concurred with this view.*

7. In a subsequent letter to India Bombay reported that 251 more labourers had sailed for Peira on the 26th Decr.

It was pointed out that it was quite apparent that these coolies were under a kind of ~~oral~~ ^{parole} agreement, if not a written one, and "that the ~~latter~~ ^{whole} thing seemed to be transparent evasion of the law." India replied that the term "agreement" in sec:6 of the Act need not necessarily be restricted to one in writing, that the opinion of the Advocate General should be taken in the matter, and that if he thought a case could be established, ^a prosecution should be instituted against Messrs. Mackinnon Mackenzie & Co.

8. The Advocate General, Bombay, agreed in considering that the term "agreement" in sec:6 was not necessarily

to

to be restricted to an agreement in writing, and that there had been a breach of the provisions of the Act; but that, as the coolies had already been ^{embarked} ~~despatched~~, it would be next to impossible to obtain a conviction under the Act, as that could be done only by the evidence of some of the coolies themselves, and these ^{were} ~~are~~ not available.

**(to prove that they had gone under an agreement to labour.)*

9. In summing up he stated that the facts of the case, if they could have been established by evidence, would have justified a conviction under the Act and that ^{if such cases were likely to occur again,} an amendment of the Act was desirable. He observed that sec: 105 (1), ~~and (2)~~ as amended by Act I of 1896, prohibits a native of India leaving British India, by land, under, or with a view to entering into, an agreement for hire in some country beyond the sea, and that this section is intended to prevent a native going by land to a Native State, and there entering into an agreement and leaving India. He thought a section might be added, or that sec: 105 (1) and (2) might be amended, prohibiting departure from India with a view to entering into an agreement to labour for hire, and making it an offence to induce, or attempt to induce, a native to depart with that object. He further considered that an explanation might be inserted to the effect that the word "agreement" in sections 6 and 105 includes an oral agreement.

10. India observes that it concurs in

The question of amending the

in the view of the law taken by the Advocate General, Bombay, and states that should any similar case occur, it trusts that steps will be taken by the local Govt. of the Presy. or Province to ensure that the required evidence is promptly obtained and proceedings instituted against the parties. *He adds that existing law is reserved for further consideration.*
11. The following disposal is submitted for approval:---

*Read again so. n° 631 P. 6. 6. 96
N° 1781 of 1897 (as)*
ORDER *W. 677 of 31st May '97*

A
Communicated ^{to the Protector of Emigrants, and all officers concerned for information and guidance, with reference to para 2 of the letter from the Govt. of India read above.}

To
29/5/97
The Protector of Emigrants, Madras
" British Consular Agent, Pondicherry & Karikal
" Collectors of Maritime districts
" *Head of Rev (Sep Rev) Thero*
Revenue Dept:

21/5/97
C.W. ... A.K.
14/5/97 18/5/97

Pub 677 31-5-9

[35]

The Collectors of *Maritime*
Districts
The District Magistrates of

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- ~~North Arcot, Chittoor.~~
- South Arcot, Cuddalore. 8
- Bellary.
- South Canara, Mangalore. 8
- Chingleput, Saidapet. 8
- Coimbatore.
- Cuddapah.
- Ganjam, Chatrapur. 8
- Godavari, Cocanada. 8
- Kistna, Masulipatam. 8
- Kurnool.
- Madras (when necessary) 4
- Madura. 8
- Malabar, Calicut. 12
- Nilgiris, Ootacamund.
- Nellore. 8
- ~~Salem.~~
- Tanjore. 9
- Tinnevely. 8
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STATEMENT WITH DITTO.

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