

Revenue (189⁸) Department.

MISCELLANEOUS SERIES.

G.O., No. 1990

DATED 6th May 1898

[Despatch Abstract.]

Forwarding to the Board of Revenue G.O. (Public)
communicating to the Protector of Emigrants and to the
officers concerned letter from the Government of India
forwarding, for information, copy of letter from the Govern-
ment of Bombay regarding the successful prosecution at
Bombay of one Issa Thauer under Section 82 of the
Indian Emigration Act, XXI of 1883.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Revenue 1898 Department Government {1898} of Madras. PUBLIC.

Recd. 26 April } 1898. Enclosures
 Regd. 27 " } Spare copies

G.O., No. 525, 5th April 1898.

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 G.O. mis No. 199046 May 1898
 Forwarded

APRIL.

Sent to the Board SR. 10.5.28.
 L.H.

SAV
 3.5.98

Prosecutions under the Indian Emigration Act.

Communicating to the Protector of Emigrants and to the officers concerned letter from the Government of India forwarding, for information, copy of letter from the Government of Bombay regarding the successful prosecution at Bombay of one Essa Thaver under section 82 of the Indian Emigration Act, XXI of 1883.

GOVERNMENT OF MADRAS.

PUBLIC DEPARTMENT.

READ—the following paper :—

From E. MACONCHIE, Esq., I.C.S., Under Secretary to the Government of India, Department of Revenue and Agriculture (Emigration), to the Chief Secretary to the Government of Madras, dated Calcutta, 24th March 1898, No. 591.

In continuation of the correspondence ending with Mr. Sly's endorsement, No. 1783/5-45, dated the 29th November 1897, I am directed to forward, for the information of the Governor in Council, a copy of a further letter from the Government of Bombay regarding the successful prosecution at Bombay of one Essa Thaver under section 82 of the Indian Emigration Act, XXI of 1883.

2. I am to draw the attention of the Government of Madras to the judgment of the Bombay Court in this case in which it has been held that the "agreement" referred to in section 6 of the Emigration Act of 1883 may be a verbal agreement; and to add that in the opinion of the Government of India, if this decision holds good, a difficult question has been solved in accordance with the policy of Government, and there will be no need to amend the Act on this point.

ENCLOSURES.

From A. C. LOGAN, Esq., I.C.S., Acting Secretary to the Government of Bombay, General Department, to the Secretary to the Government of India, dated Bombay Castle, 18th February 1898, No. 1040.

With reference to paragraph 2 of your letter, No. 599—527, dated the 30th April 1897, I am directed to forward herewith, for the information of the Government of India, copies of the papers noted in the margin regarding a successful prosecution instituted by the Protector of Emigrants, Bombay, under section 82 of the Indian Emigration Act, XXI of 1883.

Memorandum from the Commissioner of Customs, No. 5176, dated the 4th November 1897, and accompaniments.
This Government Memorandum, No. 6371, dated the 17th November 1897.
Telegram to the British Consul, Beira, dated the 22nd November 1897.
Memorandum from the Commissioner of Customs, No. 5578—66 (Confidential), dated the 27th November 1897, and accompaniments.
Telegram from the British Consul, Beira, dated the 25th December 1897.
Letter from the British Consul, Beira, dated the 21st December 1897.
Memorandum from the Commissioner of Customs, No. 558—22 (Confidential), dated the 3rd February 1898, and accompaniments.
Memorandum from the Commissioner of Customs, No. 559, dated the 3rd February 1898.
Resolution of this Government, No. 1039, dated the 18th instant.

From J. WALSH, Esq., Protector of Emigrants, to the Secretary to the Government of Bombay, General Department, dated the 26th October 1897, No. 75.

I have the honour to bring under the notice of Government that on the 6th instant 73 men who arrived from Colombo by the S.S. *Pandua* were brought to me as returned emigrants. These men made such grave statements that I felt compelled to take them down in writing, and I now submit them for the consideration and orders of Government. The men state that of the 567 who went in the steamers *Chybassa* and *Kerbella* in November and December last, they are, with the exception of 15 or 20 who remained behind, the only survivors. As they had no money, they state, to pay their passages back, and the people who took them from Bombay refused to

help them in any way, a public subscription among the Indian population at Beira was got up for them. How far all these serious statements may be entirely true I am not in a position to say, but would venture to advise that the British Consul at Beira be asked to enquire and report, copies of the statements being sent to him. I have not asked Messrs. Mackinnon, Mackenzie & Co., the firm that shipped the coolies, any questions since I am not sure how Government will regard this matter. The facts connected with the departure of these men are contained in Government Resolutions, No. 5220-A, dated 27th November 1896, and Nos. 2401 and 2749, dated 3rd and 20th May 1897, respectively, General Department.

A Pros.,
Feb. 1897,
Nos. 8 to 14.

2. It will be noted that all whose statements have been taken tell the same tale of bad treatment and withholding of wages. I explained to the returned men that they could not expect any help from Government as they had been warned by me before they left; this they acknowledged. I told them that all I could now do was to bring their case under the consideration of Government. The opinion of the Advocate-General, embodied in Government Resolution No. 2401, above quoted, was to the effect that the men by the *Chybassa* and *Kerbella* left India under an agreement to labour for hire at Beira, and that it was an agreement within the meaning of section 6 (1) of the Emigration Act, XXI of 1883, although not expressed in writing. I recovered certain papers from the Head Mukadam of the coolies and I submit them. The nominal lists, in imitation of the forms in use with emigrants going to the Uganda Railway, have the terms of the agreement expressed, it will be noted, at the back of the sheets, but the documents are not signed and seem to have been drawn up merely with the intention of conveying an impression to the coolies that the recruiting was a genuine thing. I would draw particular attention to the papers marked A and to the writing on it in the Urdu character. The document bears the stamp of D. J. Essabhai Thaver, the broker through whom Messrs. Mackinnon, Mackenzie & Co. worked; he was the person who actually recruited the men. The agreements purport to be made, it will be noticed, in the name of Pauling & Co., Limited, contractors of the Chenior-Umtali Extension; they are not signed and are therefore worthless. One of the gravest statements made is that the men were told when they disembarked at Beira that Pauling & Co. had paid in Bombay two months' advance for each of them, and that consequently they were entitled to nothing when they landed.

3. It would seem to me, if Government are disposed to take any action, that the first point is to ascertain, if possible, whether it is true as stated that of the whole 567 men there are only some 88 survivors; in my humble opinion there would seem to me some exaggeration in this, though the men when questioned solemnly assured me that they were speaking only the truth. At the same time enquiry might be made, I submit, on the advance question. Did Messrs. Pauling & Co. actually pay two months' wages for each man? I cannot help thinking that they did, and that the passage-money of the men must have been taken out of the advance.

4. In conclusion, I would report, with reference to the opinion expressed by the Honourable the Advocate-General, embodied in Government Resolution, No. 2401, that the agreement made by Messrs. Mackinnon, Mackenzie & Co. was a valid one, notwithstanding that it was not expressed in writing, was tested by the case in which I prosecuted one Leheribhoy Eduljee for attempting to take 54 men to Delagoa Bay on a verbal agreement. The Chief Presidency Magistrate convicted Leheribhoy Eduljee and fined him Rs. 50, but this will be the subject of a separate report.

B Pros.,
Nov. 1897,
No. 9.

5. If Government decide to take action against Messrs. Mackinnon, Mackenzie & Co. there is, so far as the Protector can see, but one section of the Emigration Act applicable to them, i.e., section 82. They unlawfully recruited and set the Act and Rules completely aside. To prosecute under section 84 would probably be impossible unless the proceedings of Messrs. Mackinnon, Mackenzie & Co. as disclosed in these papers can be said to be fraudulent. A civil action by the returned coolies for wages due would not, I think, be sustainable, as the agreements, such as they are, are not signed on either side.

No. 1.

Goolabshah Lallshah is present and states :—I am a Mahomedan, aged about 30 years. Punjab is my native country. Jhelum is my district. I came to Bombay and the day following I heard that coolies were being engaged for Africa. Myself and a number of other coolies went to Essa Thaver's Mukadam. I was a stranger and did not know in what part of the town we went. Essa Thaver is, I believe, a Khojah. There were great crowds of people there wanting to go. I got employment as a Mukadam, and was told I would get Rs. 45 a month. I was to look after the coolies under me and get the above-mentioned salary. I was to have rations; I was to have a passage there and back, and we were to stay for two months if the place agreed with us, if not, we were to be sent back. I was given a ticket to go by the *Chybassa*. I do not remember the day we left here but we arrived at Beira on the 22nd December last year. I know this because we were, on landing, asked to sign agreements and I know we had eight days of pay for that month to draw. Before starting we did not get any advance. We were told to say that we were going on our own responsibility and paying our own way; if we did not say so that a sahib on board would put us out and we would lose the opportunity of earning our wages. On

the day on which we got the tickets we went down to the dock and embarked on board S.S. *Chybassa*. At night we came out and anchored in the stream. The next day yourself and this other man (Mr. Blunt) came on board. We were warned by you not to go, but we did not heed the warning. I do not remember exactly how many, but certainly more than 200 disembarked at Beira. We landed in the evening. The following morning we were asked by the burra sahib whether we had received any advance in Bombay; we were told that we had received two months' advance each, as advice to that effect had been received from Bombay. A Goanese acted as translator. We were asked to sign that we would stay for two or three years. We refused to do this as we said we had only engaged for two months and promised to stay if the country agreed with us. We were kept prisoners with Kaffir sentries over us; we got nothing to eat, so next day we signed—we all did so, and next day got an advance of £1 each in gold. We were put into a train and got to our destination at the end of four days. We got rations daily, but very bad rice and flour. We were told at Beira that we would get good food—meat, potatoes, just as we had on board the steamer; also that we would have medical attendance and medicines. There were no people from Hindoostan there except some shop-keepers. We were working with Kaffirs who got paid in shillings 5 and 6 shillings a day. We were working at a place called "Mussee Kais." We worked there about five or six months; some of the coolies got much by some *sahib-lok*; even the sick were beaten and taken to work. The coolies began to die. We at length struck. We were not being either fed or paid. We were told to go away. We managed to find our way to Beira. About 60 or more of us came back. Some Bombay people at Beira got up a subscription and sent us back. I received in Africa £5 only. I was told at Beira I would get £5 a month, but I never received any more than one instalment of my pay. The sahib who promised me this on landing I never saw again. No one would listen. We were there about one month when a second batch of coolies came. They worked apart about 13 miles from us, but after a while we were all united. I have not been to Essa Thaver because I have since landing been looking for the sahib who came on board and warned us not to go. I cannot say exactly, but more than half of the number who went are dead. Some have remained. About 50 or 60 are left alive.

CUSTOM HOUSE,
The 8th October 1897.

Before me,
J. WALSH,
Protector of Emigrants.

No. 2.

My name is Bahadur Khan Sherkhan. I left Bombay about ten months ago under agreement with one Essa Thaver, a Khojah of Bombay. He called me and several others to his (*pehdi*) or place of business. When I got there I asked him where he was sending men to. He asked me not to let any Government official or anybody else know that I would be sent with others for employment to Mombassa on railway work if I wished to go. I asked him what pay he would give me if I agree to go. His reply was that he would give me £3 per mensem if I obtained fifty coolies for him who were willing to go. The coolies he said would receive Rs. 16 each per mensem. He also promised to give daily rations as well as the salaries mentioned. I asked him what would the rations consist of. He said rice, flour, salt, dhall, potatoes, onions and flesh every fourth day. I then set about finding the fifty men and succeeded in doing so. They were composed of Pathans, Panjabis and Hindustanis. Besides me there were four others in the same position as myself who undertook to secure or collect fifty men each. These four men also succeeded in enlisting the services of fifty men each—making a total number of 250 men including ourselves. All these men were brought to Essa Thaver's (*pehdi*) or place of business. Essa Thaver then addressed us all telling us that he would give us our month's pay in advance previous to the sailing of the vessel which was to convey us to Mombassa. Essa Thaver then dismissed us telling us to be on board the S.S. *Kerbella* precisely on the following Friday. He handed each of us a ticket before dismissing us by which we would be enabled to proceed from Bombay to Mombassa by the S.S. *Kerbella* and warned us all to say, if we were questioned by any Government official or other person regarding our movements, that we were proceeding to Mombassa on our own account with the hope of obtaining employment on the railway there. When we were on board the S.S. *Kerbella* the gentleman who is in this office—I am informed his name is Mr. Walsh—asked us whether we were being sent to Mombassa by anybody or whether we were proceeding thither on our own account; we all replied "we were going there on our own account"—as we were tutored to say so by Essa Thaver. When Essa Thaver came on board the S.S. *Kerbella* we requested him to give us the month's wages in advance which he promised us. He told us to proceed on our voyage; that on arrival at our destination we would get the advance of pay. Essa Thaver then left the vessel and we proceeded on our voyage. But before leaving Essa Thaver handed over to the Captain of the S.S. *Kerbella* certain papers which he directed the Captain to hand over to the Head of the Railway Company at Mombassa, our place of destination. When we reached Mombassa we were making preparations to land, but were prevented from doing so by the Captain of the vessel, who called in the police to assist in stopping us from landing. The Captain then told us we were to continue our voyage to Beira and that he would land us there. The steamer then

proceeded on her voyage to Beira, which port she reached in about eight days' time. At Beira a Mr. Lolly came on board to see the Captain of the S.S. *Kerbella*. He was directed by the Captain to take charge of us, and the papers that were handed over to the Captain by Essa Thaver at Bombay were handed over to Mr. Lolly, who counted us and took charge of 240 men in all, as ten of our number did not embark at Bombay. Mr. Lolly after counting the men directed us to enter two small boats alongside the S.S. *Kerbella*—140 men got into one boat and 100 men in the other. We were then taken ashore at Beira where there is a railway station; at this place we were supplied with rations. While we were there Mr. Lolly asked us to enter into an agreement with the Railway Company to serve for one year. We asked what pay we were to receive for that period. He told us the jamadars would get £3 per man per mensem and the coolies would get Rs. 16 per man per mensem. He then continued his request to us to sign an agreement for one year. We refused, saying that if the country did not agree with us we should like to get away, but that we had no objection to sign for six months. Mr. Lolly then threatened us saying that if we did not sign at once, we would all be put into prison and locked up, so through fear of having to undergo imprisonment and being in a foreign land we were all frightened, and felt ourselves compelled to sign for one year's service. After we signed the agreement we were informed by Mr. Lolly that we were to proceed up-country about 300 kos the next morning on railway work. We requested Mr. Lolly to give us one month's pay in advance, but he informed us that he had already paid Essa Thaver two months' pay in advance for each of us as well as our passage and ration money for the voyage from Bombay to Beira. We replied that Essa Thaver did not give us any advance of pay in Bombay, but on the other hand informed us before leaving the S.S. *Kerbella* that we would get an advance of pay at Mombassa. Mr. Lolly told us he would send for Essa Thaver from Bombay and ask him about it, and then give us the advance of pay as well as all that was due to us. The next morning we all proceeded by rail up-country, and on the third day reached our destination, when we were told off to work in different sections under our respective jamadars. We then continued working willingly for about eight months when we were paid one month's wages. Those of us who asked for the seven months' wages still due were severely beaten with rhinoceros' hides and our workmen's tickets taken away from us. Some were beaten so severely that from the nasty wounds inflicted they succumbed. Many of our number died from sickness, and out of a total number of 240 souls only 40 remained to return to Bombay, and these poor unfortunate men's passages to Bombay were very kindly paid by subscriptions raised from the local traders (natives of India) who out of compassion for us subscribed the amount necessary for our passage and rations during the voyage.

Before me,
G. W. SALE,
Precentive Officer.
J. WALSH,
Protector of Emigrants.

CUSTOM HOUSE, BOMBAY,
The 14th October 1897.

No. 3.

Abdul Hakim. I am a Mahomedan and an inhabitant of Delhi. I left here about ten months ago in S.S. *Kerbella*. There were 235 men in our gang. We were sent from here by a Khojah named Essa Thaver. I was to receive a full ration and Rs. 16 a month. We were all promised the same thing. We were warned not to go, but we were told not to mind that. When we landed at Beira we signed agreement before a Mr. Lolly. We were told that we must have received an advance of two months. We were told we were to receive £1 a month and rations; a doctor and medicines were to be provided if we fell ill. We were promised return passages. A portion of the men went into the interior, I remained at work at Beira. When I left I did not receive a pie of money in advance. Since going I have received only £3, never received anything more. Mr. Lolly was the first manager, then a Mr. Moore. I asked him for my wages. Mr. Moore said he knew nothing about wages. A Mr. Chinchin, General Manager, sent us back to Bombay. He paid our passages. About our wages Mr. Chinchin said he knew nothing; that the big Engineer, Mr. Lolly, had gone to Europe, when he returned he would settle about our wages. Of the whole number of people who went from Bombay some 70 or 75 only are alive, the others are all dead. Some seven or eight of our men landed at Colombo. About fifteen have taken private service in Beira.

Before me,
J. WALSH,
Protector of Emigrants.

CUSTOM HOUSE,
Dated 8th October 1897.

No. 4.

Medec Khan is my name. I am a Mahomedan. I am an inhabitant of Jhelum. I came to Bombay because of famine in my country. I was going to Mombassa with a party of ten men. We purchased tickets at Rs. 24-2-0 for each from Essa Thaver. He, after a few days, changed

our tickets for Beira and returned Rs. 10 on each ticket. Essa Thaver made me a jamadar over 54 men. Essa Thaver said I was to have Rs. 48 a month and the men Rs. 16 a month and rations. We left by the S.S. *Chybassa*. We were told by you not to go as we were not guaranteed treatment or wages, but we were deceived by Essa Thaver. When we landed at Beira we were told we would have to sign agreements for one year. We refused to sign, saying we were told to try the place for two months and then sign. A sahib before whom we were put said that he would send us to jail if we did not sign. We were kept without food, so next morning we signed. The coolies were to receive £1 a month. I was to receive £3. We received half month's pay, that is, the men £½ each; I received £1½. I and my party went away to some place where we had to cut the jungle away. The men were so badly fed that they got ill and began to die. After about three months the coolies received £½ each and I received £1½.

CUSTOM HOUSE,
Dated 8th October 1897.

Before me,
J. WALSH,
Protector of Emigrants.

No. 5.

- Walaid Shabe Nader Shah is present and says that he left Hazara to come to Bombay because letters had come to his village from Mombassa saying that work was to be had there.

On arrival at Bombay he heard that Essa Thaver was engaging men for Mombassa and applied to him, getting from him a steamer ticket for Mombassa; went in the *Chybassa* to Mombassa; but on arrival at Mombassa, he was told by the Captain that he could not land there, and he must pay Rs. 5 to go on to Beira, and the money was collected at Zanzibar from him and three others; we were the only ones under the impression that they were to land at Mombassa, the others all knowing that they were bound to Beira. On arriving at Beira a Mr. Lolly supplied them with rations and drafted this gang of four into the police at a pay of £1-10-0 per mensem and rations.

He remained in the police for 11½ months, being sent into the interior with an advance of 10 shillings, which was all the pay that he got, but he got his food every month, but at the end of 11½ months his food was stopped, so he started for Beira, taking a month on the way, walking all the way. On arrival at Beira he lived by begging until some merchants paid his passage up to Bombay.

CUSTOM HOUSE, BOMBAY,
Dated 11th October 1897.

Before me,
R. OLIVER,
Dy. Superintendent, P.S.

No. 5176, dated Bombay, 4th November 1897.

Endorsed by the Acting Commissioner of Customs, Salt, Opium and Abkari.

Submitted to Government.

2. After the very careful consideration given at the time to the facts connected with the departure of the men by the S.S. *Kerbella* and the S.S. *Chybassa* and the decision of Government that it was not advisable to institute criminal proceedings in the cases, it might have been thought that the incident was over. But the state of affairs disclosed in these papers is so serious that the Acting Commissioner feels constrained to recommend that the matter should be taken up again. With this view he would respectfully suggest that the preliminary enquiries indicated by the Protector of Emigrants be made as soon as possible.

From J. M. CAMPBELL, Esq., Acting Commissioner of Customs, Salt, Opium and Abkari, to the Solicitor to Government of Bombay, dated Bombay, the 19th November 1897, No. 5446.

With reference to Government Resolution, General Department, No. 2749, dated the 20th May 1897, I have the honour to forward

No. 75, dated 26th October 1897, from Protector of Emigrants.

No. 5176, dated 4th November 1897, from the Commissioner of Customs, Salt, Opium and Abkari.

No. 6371, dated 17th November 1897, from Government, General Department.

herewith the marginally-noted correspondence (to be returned please) regarding Indian labourers who went to Beira by the S.S. *Kerbella* and *Chybassa*, and request that you will be good enough to furnish the report required by Government in their memorandum, No. 6371, of the 17th instant.

From F. A. LITTLE, Esq., Solicitor to Government of Bombay, to the Commissioner of Customs, Salt, Opium and Abkari, dated Bombay, the 24th November 1897, No. 837, (Confidential).

I have the honour to report, in reference to your letter, No. 5446, dated the 19th instant, that I have had an interview with Mr. Walsh (the Protector of Emigrants) and we have together had a consultation with the Honourable the Advocate-General, and as the result I advise the institution of a prosecution against Mr. Essabhoy Thaver, the broker who obtained the men for employment in South Africa.

2. I think there is a fair chance of the prosecution being successful, but I cannot go so far as to advise that it will be successful. Its success or not will, I think, depend upon the view the magistrate takes of the evidence. Should the magistrate hold that the broker did make an agreement with the men the prosecution will probably succeed. In this connection, however, it must be borne in mind that before the men left Bombay they said (having, they now allege, been previously tutored) that no agreement had been entered into, whereas now, believing it to be their interest to do so, they will depose that there was an agreement.

3. I do not advise a prosecution against Mr. Currie, who was the Bombay Agent of Messrs. Mackinnon, Mackenzie & Co. For the arrangement, whatever it was, was made, I think, between the broker and the men, and to bring the case home to Mr. Currie it would be necessary to prove what passed between him and his broker and that he authorized an agreement being made. The broker may or may not have exceeded his instructions: at any rate it would be difficult to prove all that occurred between Mr. Currie and the broker. Moreover, Mr. Currie is not now in Bombay.

4. If a prosecution is to be instituted against the broker, it should, I think, be conducted without loss of time whilst the evidence of the returned men is available.

5. I return all the papers forwarded to me.

From J. M. CAMPBELL, Esq., Acting Commissioner of Customs, Salt, Opium and Abkari, to the Solicitor to Government, Bombay, dated Bombay, the 27th November 1897, No. 5576-64 (Confidential).

In acknowledging the receipt of your confidential letter, No. 837, dated the 24th instant, I have the honour to express agreement in your view that a prosecution should be instituted against the broker, Essabhoy Thaver, with the least possible delay. I have issued the necessary instructions to the Protector of Emigrants.

No. 5577, dated Bombay, 27th November 1897.

Endorsed by the Acting Commissioner of Customs, Salt, Opium and Abkari.

Copies forwarded to the Protector of Emigrants with reference to this office No. 5447, dated the 19th instant, and with the request that he will be good enough to take the necessary steps to institute the prosecution with the least possible delay.

2. The original correspondence ending with Government memorandum, No. 6371, dated the 17th instant, is enclosed, with a request that it may be returned when done with.

No. 5578-66 (Confidential), dated Bombay, 27th November 1897.

Endorsed by the Acting Commissioner of Customs, Salt, Opium and Abkari.

Copies submitted to Government in the General Department with reference to their memorandum, No. 6371, dated the 17th instant. The papers will be returned in due course.

Telegram from the Government of Bombay, to British Consul, Beira, dated the 22nd November 1897.

Of 567 men who left Bombay by *Chybassa* and *Kerbella* in November and December last to work on railway under Chartered Company of South Africa, 73 men have returned. They state that with exception of 20 left behind they are only survivors, owing to gross ill-treatment. Please furnish all information available as to mortality and treatment on arrival and while in the country.

Telegram from the British Consul, Beira, to the Government of Bombay, dated 25th December 1897.

Your telegram, November 22. Having made full inquiry, am sending report. Four hundred eighty men were engaged by Railway. Three hundred died, chiefly fever, dysentery. No evidence of general ill-treatment, but reverse.

From A. CARNEGIE ROSS, Esq., Her Britannic Majesty's Consul, Beira, to the Secretary to the Government of Bombay, General Department, dated the 21st December 1897, No. 24.

I have the honour to acknowledge the receipt on the 25th ultimo of your cablegram of the 22nd of the same month requesting information regarding the mortality and treatment of a number of Indians who came here in the end of last year, and to confirm having to-day telegraphed to you *via* Delagoa Bay that I could find no evidence of general ill-treatment and that the high mortality was due to fever and dysentery.

I have now further to state that, having watched carefully the conduct and treatment of these men from the time they arrived until they left and having since the receipt of your telegram made careful enquiries into the matter, I have come to the conclusion that the statements made by the returned men are much exaggerated.

It must be borne in mind that it was the interest of the Railway contractors, who spent a large sum of money on the introduction of these men and who at the time were much hampered by the scarcity of local native labour, to treat the Indians in such a way as to get a labour return for the money spent and make the men contented so as to induce others to come.

All the men signed agreements in my presence, with one or two exceptions, with evidence of satisfaction at the terms of the same. These were, pay £1 per month, rations according to the Indian Government scale, term one year, on expiry of which a passage to Bombay was to be given or a grant of land in this country. Before any pay was given to the men they had to repay the advances they had received of one or two months' wages. Food stuffs were imported from India for the men's use and rations were liberally served out. Whenever any special work was required the rations were increased or altered as the circumstances demanded. The ideas of the natives by reason of caste and place of origin were given effect to as far as possible and every gang of from 50 to 100 was provided with a serang and an English-speaking native or native-speaking European. Huts of galvanised iron or grass were provided for them in the vicinity of their work. There was a stock of medicines at the disposal of the sick. This was in the hands of an Indian dispenser under the supervision of the contractors' medical officer. There was no hospital however, and this, I am inclined to think, was a deficiency.

The total number of Indians engaged on railway work was 480; of these 380 were employed by Messrs. Pauling & Co., Limited, Contractors, the remainder being in the service of the Beira Railway Company, Limited.

No exact returns of the mortality among the men are attainable, but it is estimated that 300 actually died in this district, some on the railway, but also many in the bush. After a few had died on the line, many deserted, making for the high veldt. The first deserters were arrested and sent back to work in great straits, as the country is very thinly populated and the few natives in it do not like Indians and would not extend charity to them. Subsequently the men appeared to lose heart entirely and would not work when well or take the medicines prescribed to them when ill. They preferred to take to the bush or when ill to lie down and die, some even are reported to have committed suicide. The greatest mortality undoubtedly occurred among the men who left their service.

The very excessive mortality was due—

- (1) To the very unhealthy country in which they were called upon to work between Beira and Massikessi, where during the railway construction the death-rate among Europeans and Africans has been terribly high.
- (2) To the fact that no medical examination of the men was made previous to embarkation. On arrival in Beira many of the Indians were found to be suffering from syphilitic complaints and were predisposed to suffer from fever and dysentery, which even healthy men do not expect to escape in this country.
- (3) To the time of their arrival in this country—the beginning of the rainy and hot season.
- (4) To the fact that the men were street loafers and not men accustomed to hard work, and that under an African sun in a malarial climate. The men were new to the country. They did not meet in it any of their own countrymen who could warn them of its dangers or teach them to avoid these. They are reported to have sold

their rations to the natives and to have drunk freely of any water they came across in a way that Africans even will not do. This ordinary surface water at the beginning of the rains drunk without any sort of purification is almost certain to start dysentery, which combined with fever is said to have caused most of the deaths.

There are still 16 men working for the contractors. These will very shortly be sent back to India on the expiry of their agreements. Out of the total number of labourers introduced they alone have done enough work to recompense their employers for the money laid out on them.

Of the 100 men who were employed by the Beira Railway Company, 40 ran away, 30 died, and 30 were returned to India. In addition to these 116 were sent to India by the local Indian store-keepers, 72 by British India steamer, 22 by German steamer, and 22 by dhow, making a total of 146 returned.

I have been unable to find proof of anything resembling systematic cruelty or gross ill-treatment. Several complaints were made to me that sufficient and proper food was not supplied, but on investigation I ascertained that the shortage had been of some minor article the supply of which had by oversight been allowed to run out at some particular place, but that the shortage had been made good as soon as possible.

There were undoubtedly occasions when lazy or malingering men were obliged to go to work against their will, but the Indians on the whole were such bad and inefficient workers, so dirty and mean in their habits, losing heart when the least bit ill, and so unreliable, that their employers soon gave up attempting to make them work and left them to their own devices.

There is little doubt that an inaccurate idea of the country and its many drawbacks of climate and cost of living was given to the men before embarkation. On their arrival in this country it seems that disappointment and the first deaths among them caused panic and led them to desert in numbers, when privation, the climate and disease did the rest.

The mortality among the Europeans and Africans employed on railway construction, working, and maintenance has been as excessive in this district as in other parts of the East Coast of Africa. About 60 per cent. is said to have been the rate among Europeans on constructions in this district, and that of Africans, though there are no statistics, is probably about the same.

The foregoing information has been obtained from the representative of Messrs. Pauling & Co., Limited, the contractors, the sub-contractors and employes of the firm, the Beira Railway Company, Limited, from Indian store-keepers and from personal observation.

No. 6371, dated Bombay Castle, the 17th November 1897.

Endorsed by the Acting Secretary to Government of Bombay, General Department.

Returned to the Commissioner of Customs with a request that he will be so good as to ask the Solicitor to Government to report, in consultation, if required, with the Protector of Emigrants and the Commissioner of Police, and after obtaining, if necessary, the opinion of the Honourable the Advocate-General, whether any prosecution can be instituted, and, if so, what steps are necessary to be taken. If the law advisers of Government are of opinion that there is a case for successful prosecution, the Commissioner is requested to institute proceedings without delay and to report the fact to Government.

Below Government Memorandum, General Department, No. 6371, dated the 17th November 1897.

No. 558—22 (Confidential), dated Bombay, the 3rd February 1898.

Endorsed by the Acting Commissioner of Customs, Salt, Opium and Abkari.

With reference to the above the Acting Commissioner has the honour to invite reference to this Office No. 5578—66 (Confidential), dated the 27th November last, and to submit copies of No. 71, dated the 26th ultimo, from the Solicitor to Government, and No. 118, dated the 29th ultimo (with accompanying copy of the Chief Presidency Magistrate's judgment), from the Protector of Emigrants, from which it will be seen that the accused, broker Essabhai Thaver (*alias* Dattobhai Jetha), has been convicted and fined Rs. 500 for each of the two occasions on which he induced natives of India to leave for Beira in contravention of section 82 (1) of the Emigration Act, XXI of 1883. The result is satisfactory as the punishment inflicted is the maximum leviable under the Act and the judgment confirms the view that a verbal agreement is an agreement within the meaning of section 6 (1) of the Act.

2. The Solicitor to Government in paragraph 2 of his No. 71 of the 26th ultimo proposes to consult the Advocate-General as to the possibility of a prosecution against Mr. Currie, the Manager of Messrs. Mackinnon, Mackenzie & Co. For the reasons explained in paragraphs 2 and 3 of No. 118 of the 26th ultimo from the Protector of Emigrants, the undersigned ventures to think that a prosecution against Mr. Currie is unnecessary.

From F. A. LITTLE, Esq., Solicitor to the Government of Bombay, Preventive Department, to the Commissioner of Customs, Salt, Opium and Abkari, No. 71, dated Bombay, 26th January 1898.

I have the honour to refer to your letter, No. 5576—64 (Confidential), dated the 27th November last, and to state that the broker, Essabhai Thaver (*alias* Dattobhai Jetha), was to-day convicted by the Chief Presidency Magistrate, firstly, of an infringement of section 82 (1) of Act XXI of 1883 for, in consideration of reward, inducing certain natives of India to leave Bombay in November 1896 in the S.S. *Chybassa* for Beira for the purpose of emigrating; and, secondly, of a like offence in respect of certain natives of India, who in December 1896 left Bombay for Beira in the S.S. *Kerbella*. The magistrate fined the accused Rs. 500 in respect of each offence.

2. As the proceedings in the case throw more light on the matter than we had in November last, as regards the conduct of Messrs. Mackinnon, Mackenzie & Co., and Mr. Currie, who was at the time managing that firm, has now returned to Bombay, I propose, should you approve, to lay a full copy of the Police Court proceedings, including the magistrate's judgment when obtained, before the Advocate-General and to take his opinion as to whether any further proceedings should be instituted.

3. If you approve of the proposal, would you please return to me the papers that accompanied your letter, No. 5446, dated the 19th November last. Should you desire to see the copy proceedings before submitting them to the Honourable Mr. Lang, I will first forward them to you.

No. 118, dated 29th January and 1st February 1898.

Endorsed by the Protector of Emigrants, Bombay.

The Protector of Emigrants has the honour to report that Dattobhai Jetha (trading under the name of Essabhai Thaver) was prosecuted before the Chief Presidency Magistrate for inducing natives of India to leave in the steamers *Chybassa* and *Kerbella* on the 28th November and 24th December 1896. The accused was convicted and fined Rs. 500 on each charge or Rs. 1,000 in all. This was the maximum fine the magistrate could inflict. A copy of the magistrate's judgment is appended. The judgment affirms the contention that a verbal agreement is an agreement within the meaning of section 6 (1) of the Indian Emigration Act, XXI of 1883.

2. With regard to the Solicitor to Government's proposal to send a copy of the proceedings to the Advocate-General for an opinion as to whether further proceedings should be instituted, the undersigned begs to give it as his humble opinion that it is not necessary to proceed further. The law has been vindicated and a judgment obtained that will make it clear to all concerned what the law on the subject is. From the wide publicity given to the case the undersigned is sure that would-be law-breakers will be very careful in future; indeed, from the many that come here now to enquire about emigration matters, it is evident that the case has done much good. The prosecution of Mr. Currie is not, therefore, necessary, especially as the expenses in the case have been really borne, the Protector has reason to think, by Messrs. Mackinnon, Mackenzie & Co. It is true that the papers now in possession connect Messrs. Mackinnon, Mackenzie more closely with the affair than was apparent at first. Still it is also to be borne in mind that Mr. Currie will probably tell the Court that Government permission was, as a matter of fact, given to the departure of those men under the impression that a verbal agreement was not an agreement under the Act. It was a matter of surprise to the Protector that this point was not urged on behalf of his client by Mr. Craigie; had it been, the case would have seemed, as it really thinks. As it is, it is not unlikely that an appeal will be lodged against the magistrate's finding. Another reason for not going on further is that Essabhai Thaver has left Bombay for Zanzibar and will not be back for some time. Without him it would hardly be possible to go on, but of course this means nothing but a little delay.

3. In conclusion, the Protector would venture to say that, except the punishment of Mr. Currie, no purpose would be served by a further prosecution.

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Mr. J. Walsh, Protector of Emigrants, *versus* Essa Thaver.

JUDGMENT.

The accused, Dadabhai Jetha, who carries on business under the name of Essa Thaver, acts as passenger broker to Messrs. Mackinnon, Mackenzie & Co., the local Agents of the British India Steam Navigation Company. He is charged with infringement of the Indian Emigration Act, XXI of 1883, on two separate occasions in that on the 28th November 1896, in consideration of hire or reward, he induced certain natives of India to leave Bombay in the S.S. *Chybassa* for Beira, in Africa, for the purpose of emigrating, and in that on the 24th December 1896, in consideration of hire or reward, he induced certain natives of India to leave Bombay for the same place in the S.S. *Kerbella* for a similar purpose.

Section 82 (1) of the Indian Emigration Act, 1883, provides that whoever, except in conformity with the provisions of the Act or of the rules made under it in consideration of any hire or reward induces, or attempts to induce, any native of India to leave any place for the purpose of emigrating, or otherwise acts, or is employed as a recruiter of emigrants, shall be punished with fine. "Emigrate" is defined by section 6 of the Act to denote 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. In order, therefore, to render the accused liable to the penalty provided by section 82 (1) it appears necessary to prove that the individuals, or some, or one of them, in respect of whom the offence is alleged to have been committed, left Bombay under an agreement to labour for hire in some country beyond the limits of India, Ceylon or the Straits Settlements.

It is obvious that the agreement to labour, mentioned in section 6, is quite different from the agreement to emigrate described in section 36 of the Act. The latter agreement must, to satisfy the provisions of the Act, be reduced to writing; but there is nothing whatever in the definition of "Emigrate" which requires the agreement referred to to be of any particular form or description. It seems to me therefore that it will be sufficient for the prosecution to show that a mere verbal agreement was made under which the natives of India left Bombay in order to prove the purpose of emigrating.

There is no dispute as to the fact that the accused did induce certain natives of India to leave Bombay for Beira by the steam ships *Chybassa* and *Kerbella* on the dates specified above. The principal question in this case is whether the inducement offered to these natives was such as to render the accused liable to the penalties provided. I shall therefore in the first instance examine the evidence upon this point and the statement in writing which the accused has furnished to the Court in explanation and contradiction of that evidence.

The accused himself states, and I have no reason to doubt the correctness of this statement, that when Mr. Currie, of Messrs. Mackinnon, Mackenzie & Co., told accused to procure labourers to proceed to Beira, he expressly instructed him not to make any agreement with the labourers, but that he might make advances to them to the extent of Rs. 32 per head and give them free passages if they could not pay for their tickets. In order to procure labourers the accused circulated a number of Guzrat hand-bills in various parts of the country. One of these hand-bills has been put in (Exhibit K). I may here mention that a considerable amount of correspondence has been put in at the request of both parties as well as certain other documents. It appears to me that the evidence in the case does not show that the accused was privy to this correspondence, and I therefore refrain from considering any part of it or of the other documents to which the accused was not privy.

The want of labourers at Beira having been thus notified, a large number of persons applied to the accused at his place of business at Bombay, and were by him despatched to Beira by the steam ships *Chybassa* and *Kerbella*. Of the passengers by the *Chybassa* Koorba Alisha, Imam Alisha, Amirudin Karimudin, and Abdul Kader Haji Sidik have been called as witnesses. Mr. Craigie on behalf of the accused took objection to the evidence of the last of these witnesses being recorded, on the ground that section 82 (1) refers only to the inducement of natives of India to emigrate, while this witness is a native of Bokhara; but I overruled the objection and admitted his evidence, being of opinion that the engagement of this witness formed part of the same transaction as the engagement of the other persons who went by the *Chybassa* and was therefore relevant to the fact in issue. The two first-named witnesses are natives of India. All of these men had been earning a scanty livelihood in Bombay for some time before they left for Beira.

Koorba Alisha says that he went to the accused's *pehdi* and that the accused told him that the recruit was for Beira, and that if he went there he would get Rs. 16 a month and rations, that the period of the work was a year, and that his passage to Beira and back would be paid; that he then consented to go and made his mark. That accused then said: "You have signed the book and become my servant. If you will go to Beira you will get Rs. 16 a month and rations. This is a ticket for your passage there." This seems to suggest that the witness bound to go, or was at liberty to recede from his consent to go to Beira or not, as to whether he was then month. He states, however, that he was given in charge of a Jamadar Gulabsha by the accused and went on board the *Chybassa*. He also says that his pay was to commence on the day he embarked. He expressly denies that the accused said he could make no agreement with him, and say, "he fixed the period at one year; that is what we understood as the agreement." I did receipt for money paid to me. This witness was subsequently asked whether he had told Mr. Walsh on board the ship that he had not made any agreement. He said at first that he had not told Mr. Walsh so, but afterwards he said that he had told Mr. Walsh that he had not made any agreement because he had been told to say so. In examination-in-chief the witness said that Mr. Walsh told him not to go, but that he had been told by accused that he was not to name him, and that if he did the Sirkar would prevent his going; that the recruiting was against Government rules, and that if he named accused they would prevent his proceeding.

The evidence of the witness, Amirudin Karimudin, is practically the same as that of Koorba Alisha. He also denies at first that he told Mr. Walsh that he had no agreement, but in answer to the question—how did he know you were going without any agreement? he said: "We were told by accused not to mention his name, and we said we were going of our own accord, therefore he warned us." Afterwards he said what I said was this: "I said to Mr. Walsh that there was no agreement. I did say so in answer to a question from him. I did not have any talk with Mr. Walsh about agreements, I only said I had no agreement."

Upon this contradiction in the evidence of the two witnesses I must make this remark. It did not appear to me that they were desirous of misleading the Court, nor did they appear to wish to shelter themselves from the odium of having on a previous occasion made a false statement to Mr. Walsh. I think that their idea of the question put to them was as to whether they had conversation with Mr. Walsh upon the matter of agreements, and they did not grasp the fact that the reply they were asked for was to the question whether they had given a negative reply to the question addressed by Mr. Walsh to the labourers generally in the 'tween decks.

Abdul Kader Haji Sidik gives evidence very much to the same effect but he at once admits that he told Mr. Walsh that he had no agreement, and states that he was induced to do so by the accused. He says that the accused made a *pukka bandabust* with the labourers.

The witnesses who speak to the engagement of the labourers who proceeded by the *Kerbella* are Haji Karimbux Shamsha, Syed Bundeali Syed Nazalali, and Haji Karimbux Nathoo. These men are all natives of India. Haji Karimbux Shamshaw states that he was engaged by the accused as a Jamadar at Rs. 45 a month to take charge of some 200 or 400 men. That he was put in charge of 230 men, and sent on board the *Kerbella* for Beira. That he was to commence on the day he went on board, and that he was to superintend the work of the coolies in constructing a railway, which work was to last for a period of one year. That his pay was to be paid for his passage, his food, and his passage back. That the accused Africa at railway construction for 10 or 10½ months. He states that he worked in the *Kerbella* when I left. He asked me and others where we were going. I said: "To Beira." He asked if I had any agreement. I said that I had signed, and was told by Essa Thaver to say at Beira, if anybody asked me, that I had bought and paid for ticket. On that subject the accused said to me, before I went on board, that if any officer came on board and asked me about the passage, I was, to save his and my life, to say that I had paid for my passage. I did not tell this to Mr. Walsh, but I told him what accused had instructed me to say. I did not tell Walsh what I had been asked by accused to say. I had signed Essa Thaver's book. I told Mr. Walsh that I had been asked by accused to say. I simply told him I had signed in accused's book.

Question.—Did you not tell Mr. Walsh that you had not got any agreement?

Answer.—I said that "I had signed an agreement in Essa Thaver's book. The agreement was with Essa Thaver. That was an agreement to labour for hire at Beira. The agreement (Pauling & Co.) were to pay me my wages. Accused made an agreement with me by which I was to say so to any officer on board the steamer, that officer would not allow me to proceed. The only agreement I refer to is my writing in his book, and his (accused's) saying that he would give me my passage and my rations. Nothing else. I did not tell Mr. Walsh that there was an agreement entered into. I told him what I was told to say. When I said I had signed an agreement I meant the agreement with Essa Thaver about my passage. I say I told Mr. Walsh

that I had signed an agreement in the book. Mr. Walsh did not ask me any question about the agreement at all. Mr. Walsh told us we had no guarantee for our wages or passages back. He thoroughly explained it to us. He gave us this warning because we said we were going to Beira without an agreement. We did tell him so because accused told us to."

This witness denies that the accused distinctly told him that he could not make any agreement with him. He also denies that he received any advance from the accused.

Syed Bundeali states that he went to the accused, and at his orders selected 25 men out of a crowd of people who had collected on hearing that there was some recruiting in progress. That accused took down the names of these 25 people and placed this witness's name at the head of the list saying that he was their Jamadar to supervise their work at the railway at Beira. That the witness was to get Rs. 32 a month, and the other men Rs. 16 a month. That he would pay their passage. They were to work for a year and then have their passage back paid and that their rations were to be provided for them. That he and his 25 men went on board the *Kerbella* and on board that ship he saw Mr. Walsh, who asked the witness if he had entered into an agreement, to which he made no reply. That he went to Beira in charge of the 25 men and worked as arranged. He denies that accused distinctly informed him that he could not make any agreement with him. He says accused was to pay me my wages of Rs. 32 a month after I got to Beira. When I was here I demanded my wages of accused, but he said: "I have my men there. You will get your wages there." Later on he says: "I do not understand what an agreement is. Accused took down my signature, and that was enough for me to go. My signature was not given in receipt for money paid to me." In answer to the Court witness says: "It was the accused who told me that if I went to Beira and worked there I would get an ample fortune and return a rich man."

Haji Karimbux says that he took a ticket from the accused, who was recruiting, and who told him that he was to work on a Railway line, to get Rs. 16 a month, to work for a year, to get his passage paid to Beira and back, and that the pay was to commence on the day he went on board the ship. That he made his mark in a book. That the accused put the witness under Jamadar Bhadurkhan, and told him that if any agent came on board the ship he should not say that he had been sent by Essa Thaver. That the accused did not tell him that he could make no agreement with him. When Mr. Walsh came on board, witness says he asked us if we had made any agreement. I did not say I had no agreement. I told him we had all signed. Then he said: "You are going there, you would not get your money, why are you going?" We said: "Essa Thaver is sending us on some railway work." I said: "We are going of our own accord." Later on he says: "I would not have gone there without any agreement. When he took my signature in his book I thought I was his servant, why should I go without any agreement?"

In explanation and contradiction of this evidence we have the accused's statement that having been expressly instructed by Mr. Currie not to make any agreement with the coolies he did not enter into any agreement with them, but simply told them what terms they might expect to get if they went to Beira; that he collected Rs. 623, passage money, from some of them, and gave the rest free passages; and that with Mr. Currie's permission he made advances to the extent of Rs. 9,109 to the coolies who proceeded by the *Chybassa* and Rs. 7,320 to those who went by the *Kerbella*, and that these advances were to be deducted out of the coolies' wages if they did not themselves pay. That when he made the advances to the coolies he took their signatures to acknowledgments of receipts of the amounts advanced on a piece of paper bearing a Rs. 10 stamp, and that there was no agreement on any part of that paper. He also states that he received his usual brokerage of Re. 1 per head for all the coolies booked by the *Chybassa* and *Kerbella*.

I must now determine whether the evidence for the prosecution is, in my opinion, sufficient to prove that the accused did in fact make agreements with the witnesses to labour for hire at Beira or not. There can be no doubt that the status of those witnesses is very inferior to that of the accused, who is believed by Mr. Carmichael to be a thoroughly respectable, honest and trustworthy man, quite incapable of perpetrating any fraud. In addition to this fact there is also the admitted fact that all of the witnesses who went by the *Chybassa* told Mr. Walsh that they had no agreement, whereas now they allege that they were under agreement to the accused. I have already remarked with reference to two of these witnesses that I do not believe the apparent contradictions they made in their evidence in this Court to have been wilful, but that I am of opinion they were due to a mistaken idea of what the questions addressed to them really comprised. A careful perusal of the evidence of all the six witnesses in respect of whom the offences are alleged will demonstrate their inaptitude generally to grasp the point of a question and to give a coherent answer. A remarkable degree of patience is required to get at the root of a matter with such witnesses as these,—not, I believe, from any desire on their part to conceal the truth, but from sheer inability to concentrate such intellect as they possess upon understanding the questions put to them, and answering them. Mr. Craigie was extremely patient in his cross-examination of these witnesses, and they appear to me to be anxious to tell the truth. Their evidence in both the cases is corroborated by Mr. Walsh. He says that generally speaking the coolies denied that they had any agreement, but that two men were brought to him as having signed an agreement. The probabilities of the case certainly tend to confirm their story; it is extremely unlikely that they would consent to be shipped off to an unknown country without a definite engagement; and

it is equally unlikely that the accused would advance, on behalf of his principals, over Rs. 16,000 to an irresponsible lot of coolies merely on the chance of their undertaking work in accordance with his wishes when they got to Beira. The witnesses here deny that they received any advances, but it is a part of the case for the defence that the coolies generally did, and that they signed for the moneys so advanced. The paper signed, or rather marked, by these people, has not been produced; but I do not consider that a matter of much consequence. The coolies were none of them apparently persons of much education, and it would be impossible to place great weight upon the statements contained in it if it had been forthcoming.

With regard to the evidence of these witnesses it is urged that, as they had told an untruth to Mr. Walsh with regard to their having made no agreements, they have deprived their deposition here of any reliability. It appears, however, that it is only three of these witnesses who told Mr. Walsh that they had no agreement. Mr. Walsh did not put the question as to agreement to each one separately, but to the collected passengers for Beira generally. And with regard to these three witnesses, in dealing with the question of their credibility, I must have question whether they are corroborated or not in what they now depose to. They were, they say, induced by the accused to make the false statement so that they might not be prevented from going, and in saying this they are corroborated by the other three witnesses, who say that accused cautioned them not to mention his name, and to say that they were paying their own passages or were going of their own accord. It is extremely unlikely that these illiterate men would have any knowledge of the Indian Emigration Act and could have concocted between them the story they tell. Then how did that story come out? It appears that the witnesses and others were enabled to return to Bombay from Africa by the charity of Indian merchants at Beira, and that on their arrival in a destitute condition, a doctor who boarded the ship took them to Mr. Walsh, who thereupon made enquiries and instituted the prosecution. If their story is concocted, it must have been concocted with the assistance of Mr. Walsh, if not by himself, and this has not been suggested nor can I imagine it possible. It seems to me, therefore, that these three witnesses are not chiefly to blame for this false statement.

The question naturally arises whether I am prepared to hold, upon the evidence of these six witnesses, that the accused is deliberately stating what is false in his statement to this Court. It appears to me, however, that my acceptance of their evidence as true—as I believe it to be, at least so far as they state that the accused made agreements with them—does not entail such a pronouncement on the accused's statement. There seems from Mr. Walsh's evidence to have been a question throughout as to whether agreement in section 6 did not mean "written agreement", whether it was not a condition precedent to the purpose of emigrating that the agreement to labour for hire must be in writing. If the accused took up this position, and it was tenable, then there was no falsehood in the statement that these people had no agreement, and there is no necessity for me to find that from his own point of view the accused's statement here is untrue. I have, however, dealt with that question before, and have ruled that it is sufficient to bring the accused within the provisions of section 82 (1) to find that a verbal agreement was made with the passengers for Beira, and upon the evidence I find that there was such an agreement in these cases and that the agreement was that the passengers were to labour for hire.

The question now remains whether the accused induced these natives of India to leave Bombay in consideration of hire or reward. The accused admits that he received Re. 1 per head for each passenger booked to Beira. Mr. Craigie contended that this was simply in accordance with his standing arrangement with the B.I.S.N. Company by which he receives certain brokerage for every native passenger booked by him. If, however, he had not induced these passengers to go he would not have received brokerage in respect of them, and it was therefore in consideration of hire or reward that he induced them to go.

I must therefore convict the accused of the offences laid against him. With regard to the penalty to be inflicted it is clear that accused knew perfectly well the risk he was running in the event of a conviction. Mr. Craigie says that there was no intentional offence here, but there can be no doubt that the accused's action was entirely subversive of the policy of the Act and has been attended with very grave results. I can find no extenuating circumstances in the whole case, and I fine the accused the maximum penalty of Rs. 500 in respect of each offence—Rs. 1,000 in all.

26th January 1897.

J. SAUNDERS SLATER.

Below Government No. 422-7 (Confidential), dated 21st January 1898, General Department.

No. 559, dated Bombay, the 3rd February 1898.

Endorsed by the Acting Commissioner of Customs, Salt, Opium and Abkari.

Returned to Government with reference to this Office No. 558 of to-day. The British Consul's letter was shewn to the Solicitor to Government. The case for the prosecution was over when the letter was received and nothing but the Court's decision was awaited.

Extract from the Proceedings of the Government of Bombay, General Department, No. 1039, dated Bombay Castle, the 18th February 1898.

READ—

Memorandum from the Commissioner of Customs, No. 5176, dated the 4th November 1897. Submitting the following letter, No. 75, dated the 26th October 1897, from the Protector of Emigrants, Bombay:—

"I have the honour to bring under the notice of Government that on the 6th instant 73 men, who arrived from Colombo by the S.S. *Pandua*, were brought to me as returned emigrants. These men made such grave statements that I felt compelled to take them down in writing, and I now submit them for the consideration and orders of Government. The men state that of the 567 who went in the steamers *Chyhasa* and *Kerbella* in November and December last they are, with the exception of 15 or 20 who remained behind, the only survivors. As they had no money, they state, to pay their passages back, and the people who took them from Bombay refused to help them in any way, a public subscription among the Indian population at Beira was got up for them. How far all these serious statements may be entirely true I am not in a position to say, but would venture to advise that the British Consul at Beira be asked to enquire and report, copies of the statements being sent to him. I have not asked Messrs. Mackinnon, Mackenzie & Co., the firm that shipped the coolies, any questions, since I am not sure how Government will regard this matter. The facts connected with the departure of these men are contained in Government Resolutions, No. 5220-A., dated 27th November 1896, and Nos. 2401 and 2749, dated 3rd and 20th May 1897, respectively, General Department.

"5. If Government decide to take action against Messrs. Mackinnon, Mackenzie & Co., there is, so far as the Protector can see, but one section of the Emigration Act applicable to them, i.e., section 82. They unlawfully recruited and set the Act and Rules completely aside. To prosecute under section 84 would probably be impossible, unless the proceedings of Messrs. Mackinnon, Mackenzie & Co., as disclosed in these papers, can be said to be fraudulent. A civil action by the returned coolies for wages due would not, I think, be sustainable, as the agreements, such as they are, are not signed on either side."

Memorandum to the Commissioner of Customs, No. 6371, dated the 17th November 1897—

Memorandum from the Commissioner of Customs, No. 5578-66 (Confidential), dated the 27th November 1897—

Submitting a letter, No. 837, dated the 24th idem, from the Solicitor to Government, who advises a prosecution against Mr. Essabhai Thaver, the broker, who obtained the men for employment in South Africa, and also a letter from him to the Solicitor to Government, No. 5576-64 (Confidential), dated the 27th idem, in which he expresses agreement with the opinion that the prosecution should be instituted with the least possible delay, and states that he has issued the necessary instructions to the Protector of Emigrants.

Telegram from the British Consul, Beira, dated the 25th December 1897—

Letter from the British Consul, Beira, No. 24, dated the 21st December 1897—

Submitting, with reference to Government telegram, dated the 22nd November 1897, a report regarding the alleged ill treatment of the 567 men referred to above, and stating that he could find no evidence of general ill-treatment.

Memorandum from the Commissioner of Customs, No. 558-22 (Confidential), dated the 3rd February 1898—

Submitting the papers noted in the margin, from which it appears that the accused broker, Essabhai Thaver alias Dattabhai Jetha, was convicted and fined Rs. 500 for each of the two occasions on which he induced natives of India to leave for Beira in contravention of section 82 (1) of the Emigration Act; stating that the result is satisfactory as the punishment inflicted is the maximum leviable under the Act, and that the judgment confirms the view (Government Resolution, No. 604, dated the 3rd February 1897, No. 622, dated the 4th February 1897, and No. 2401, dated the 3rd May 1897) that a verbal agreement is an agreement within the meaning of section 6 (1) of the Act; and observing with reference to a suggestion to this effect from the Solicitor to Government that a prosecution against Mr. Currie, of the B.I.S.N. Company, is unnecessary.

Memorandum from the Commissioner of Customs, No. 559, dated the 3rd February 1898 —

Returning the letter from the British Consul, Beira, referred to above.

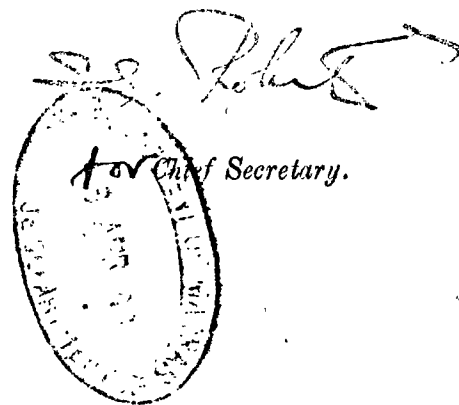
RESOLUTION.—The Law has been vindicated, and having regard to this fact and to the circumstances disclosed in the report from the Consul at Beira, Government do not consider it necessary to direct the institution of further proceedings.

(Signed) A. C. LOGAN,
Ag. Secy. to the Govt. of Bombay.

ORDER—No. 525, Public, dated 5th April 1898.

Communicated, in continuation of G.O., No. 6, dated 4th January 1898, to the Protector of Emigrants and all officers concerned.

(True Extract.)



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. ✓

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189

READ AGAIN G.O., No.

189

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

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LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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