



Print

EAST AFR. PROT  
14234

14234  
18

Field 277  
1914  
26 March  
next previous Paper.  
5091  
Nyasaland

Enteric Fever

413

Reports 25 cases in 1912 & 24 in 1913. No evidence that any of the patients had been inoculated prior to natural onset of the disease.

Dr. Fildes

H. J. R.  
21/12/14

Print & circulate

AF 27/1/14 alone

Mr. Reed

The question of population in 1912 was apparently 5,151 (see Table III, Ann. Med. Report for 1912), but it would be safer to ask for the European population figures for the two years.

AF.  
18/5/14

at once  
to J. R.

18/5/14

Circulate to TAMS Committee

21 May 1914

again 25 Aug 1914

Vol. 3 487 into 20 May 14

next subsequent Paper.

26+23

Gov/142707 EAP

417

Gov

214  
28

30 April 1914

Sir

I have the pleasure to acknowledge the receipt of your Conf<sup>l</sup> despatch of

(14270) The 25<sup>th</sup> of March 1914 with its enclosures, and to request you to inform Mr Messman that I have received his petition, but that I am unable to interfere with the decisions of the Post. Courts.

*[Signature]*

W. L. HARCOURT

DRAFT.

AP. AP Conf

Mr. P. H. C. Belford KCMS.

MINUTE.

Mr. D. W. Hill 25-4-14  
Mr. J. G. Fiddes 27-4-14  
Mr. B. H. J. 27

- Sir G. Fiddes.
- Sir H. Just.
- Sir J. Anderson.
- Lord Emmott.
- Mr. Harcourt.

*[Handwritten flourish]*

Nairobi.

6th March 1914.

Sir,

In reply to your letter of the 2nd ultimo enclosing a petition addressed to the Governor I am desired to inform you that His Excellency is not prepared to express an opinion upon the points raised nor to order any further enquiry.

I have etc.,

Sd. C.C. BOWRING.

Chief Secretary.

Messman Esq.,

Clerk,

National Bank of India Ltd.,

Nairobi.

kindly consider the following points and to kindly decide whether there is any ground for the petitioner to claim justice and to ask for an enquiry in the matter.

1. The evidence of the witness of the accused viz. Mr H.N. Mody, on whose evidence the Town Magistrate's Court framed its judgment, believing him to be an independent witness, in spite of the fact that Mr Mody was a witness against Mr Kharas in Town Magistrate's Court case, P. Nowroji versus B.P. Kharas. Can such a witness be relied upon as an independent witness?
2. Was the judgment in the High Court Civil Case No. 43 of 1912 in accordance with the recorded evidence before that Court?
3. Did the Appeal Court in Civil Appeal No. 5 of 1913 discussed the ground of appeal lodged by the Plaintiff and delivered their judgment accordingly?
4. Had the Presiding Judge in the High Court Civil case No. 33 of 1913 power to reject the Plaint, when he had already presided over and given judgment in Civil Appeal No. 5 of 1913?

I beg most humbly to request your Excellency to kindly decide these points, and to give justice to the poor petitioner and by deciding whether the words uttered by the Defendant are true, and whether such words have caused damage to the reputation of the petitioner.

Without troubling your Excellency further in the matter, and wishing your Excellency long life and prosperity, and apologising for the trouble given,

I beg, etc.,

Sd. P.B. MESSMAN

Clerk, National Bank of India Ltd.,  
Nairobi.

Nairobi, 2nd February 1914.

411

To

His Excellency Sir Henry Conway Belfield, K.C.M.G.,  
Governor, East Africa Protectorate, Nairobi.

Your Excellency,

Town Magistrate's Court Criminal  
Case No. 1232 of 1912. P.B.  
Messman, Clerk, National Bank of  
India Limited, Nairobi.....  
Plaintiff.

—versus  
J.P. Virji, Head Clerk, Attorney  
General's Office, Nairobi.....  
Accused.

and  
High Court Civil Case No. 33 of  
1913.

P.B. Messman versus J.P. Virji.  
-----

I, the undersigned P.B. Messman,  
Plaintiff in the above cases, beg to submit my  
humble petition and hope that your Excellency  
will kindly consider my grievances at leisure  
and give me justice in due course, for which act  
of benevolence I shall ever remain under Your  
Excellency's deep gratitude.

I beg to enclose copies of Court  
proceedings and sundry correspondence etc.  
relating to this affair (also an enclos.). I am  
very sorry to give your Excellency so much  
trouble, but as my case requires careful  
enquiries, and as there is no other authority to  
which I can approach in the matter, I am obliged  
to depend upon your Excellency's kind assistance  
and decision, and I hope that my entreaties to  
claim Justice will be granted by your Excellency,  
and thereby save the honour of the respectable  
citizens from the infamy under which they suffer  
at present.

I beg to request your Excellency to  
kindly

1 Enclosure. Registered. Nairobi, 2nd February 1914.

To

*Conf* ENCLOSURE No. 3  
*In* Despatch No. 61 of 25-3-1914

Honourable Mr C.C. Bowring, C.M.G.,

Chief Secretary to the Government,  
Nairobi.

413

Sir,

I beg to acknowledge receipt of your letter of the 17th January (No. 7663) and note with regret that His Excellency the Governor has rejected my humble petition owing to my comments on the Judicial proceedings of the Law Courts in the cases referred to.

At the time of submitting my petition I had no idea that it was against the practice to comment on merits of the Court Judgments, I therefore respectfully beg His Excellency's permission to allow me to withdraw my petition of the 17th ultimo, and beg to submit herewith a fresh petition drawn up in a very brief form explaining my grievances. I shall be much obliged if you will kindly place before His Excellency this petition on my behalf, together with this letter explaining the matter, and I am confident that His Excellency will give it his most favourable consideration and give me justice.

Hoping to be excused for giving so much trouble, and thanking you in anticipation for your kindness,

I beg etc.

Sd. P.B. MESSMAN

Clerk, National Bank of India Ltd.  
Nairobi.

7663

14270  
8/14

The Secretariat,  
Nairobi.

17th January 1914.

INCLOSURE No 2  
Despatch No. 61 of 25-3-1914

412

Sir,

With reference to your petition, of the 10th instant, addressed to His Excellency the Governor, regarding an alleged slander by Mr J.P. Virji, I am directed by His Excellency to inform you that he declines to consider the grievances of any person who can so far forget himself as to refer to His Majesty's Judges in such opprobrious and disgusting terms as you have seen fit to employ with reference to the judicial proceedings under discussion.

2. His Excellency refuses to re-open the subject, or to make any inquiry concerning it, and is unable to comply with your request that the matter should be referred to the Secretary of State for the Colonies.

I have etc.,

Sd. C.C. BOWRING  
Chief Secretary.

B. Messman,  
Clerk,

National Bank of India,  
Nairobi.

In the District Registry of the High Court at Nairobi.

Civil Case No. 33 of 1913.

P.B. Messman versus J.P. Virji.

-----

List of witnesses summoned by the Plaintiff in the above case.

ORIGINAL

No. 7.

411

1. Mr. A. J. Barry, Advocate, Nairobi.
2. Mr. H. Outhbert Smith, Editor "Indian Voice" Nairobi, also to bring with him during the hearing the original manuscript of the article appeared on the page 6 of the issue of Wednesday 2nd October 1912 re proceedings in the Town Magistrate's Court Criminal Case No. 1232 of 1912, P. B. Messman versus J. P. Virji.
3. Mr. Cowasji Jamshedji Khambatta, General Merchant, Nairobi.
4. <sup>Mr.</sup> Pestonji Kaikobad Ghandy, Advocate, Nairobi.
5. Mr. Dinshaw Ruttonji Mehta, Cashier, National Bank, Nairobi.
6. ~~Mr.~~ <sup>Mr.</sup> Aloysius Lawrence Fernandez, Clerk, National Bank, Nairobi.
7. Cooverji Burjorji Makasam Clerk, The Treasury, Nairobi.
8. Mr. Adarji Manekji Mehta, Cashier, The Treasury, Nairobi.
9. Mrs. Dhunbai Pestonji Ghandy, wife of Advocate Mr. Ghandy.
10. Mr. Nariman Framji Daruvalla, Clerk, Messrs. Childs, Parr & Joseph, Nairobi.
11. Mrs. Gulbai Adarji Mehta, wife of the Cashier of the Treasury.
12. Mrs. Dhunbai Ardeshir Dadalangrana, mother of Miss Mehra Framji, the witness of the Defendant.



Extract from "INDIAN VOICE" Dated Wednesday 2nd October  
1912. (comments on the Criminal Case Messman versus Virji).

410

=====  
Last week we noticed a rather malodorous case in the Court,  
certainly indecorous is too mild a term in which to regard it.  
It was <sup>a</sup> case proving the weakness, we will not say the immorality  
of the sexes, but it was most assuredly a case which could and  
should have been settled out of Court, had better counsels  
prevailed. As it is, names have been besmirched and the reputation  
of individuals, hitherto believed impeccable, irretrievably damaged.  
=====  
What a pity it is that human nature is so weak, but education does  
not seem after all to be able to curb the lusts of the flesh, but  
common honesty to the woman should, she is accredited as the  
weaker vessel and a mistake once made by her she is for ever ruined  
not so with the man, who is probably the one more to blame. A man  
can blazon it out anywhere, but the poor woman who may fall in a  
weak moment cannot retrace her steps and her own sex condemn her  
most. Why then could not a little common sense and acumen have  
been brought to bear ~~upon~~ in this case involving a hitherto  
irreproachable Parsi family. The Parsi community is not numerous  
here and has hitherto been without scandal. T'is human to err is  
an old saying, but many mistakes have occurred in the past  
involving the character of woman which have been arranged sub rosa  
and none of the outside world been the wiser. Why could it not have  
been so in this particular case.  
=====

He has not been able to quote any authority in support of his contention and it cannot in my opinion be argued successfully that the words complained of here impute that the Appellant was unchaste. Merely to state that a married woman is kissed by a man who is not her husband cannot be held to be an imputation of unchastity against her. Unless such imputation is unmistakable an action of damages cannot be maintained on the words alone.

For these reasons I think that the decision of the Court below was right and that the appeal should be dismissed.

(Sd) R. W. Hamilton.

8-10-13.

409

I agree and have nothing to add.

(Sd) Wm. Morris-Carter.

8-10-13.

I concur.

(Sd) A. T. B. Carter

8-10-13.

In His Majesty's Court of Appeal for Eastern Africa.

Civil Appeal No. 5 of 1913.

(From Original decree in Civil Case No. 42 of 1912 of H. M.  
High Court of East Africa in the District Registry at Nairobi).

Shirinbai Burjorji Kharas.....Appellant (Original  
Plaintiff)

Versus

Jehangir Pestonjee Virji.....Respondent (Original  
Defendant).

JUDGMENT :-

463

This is an Appeal from a judgment of Barth J. sitting in the High Court of East Africa at Nairobi.

Both the parties are Parsees and the Appellant, a married woman, sued the Respondent for damages for slander in that he said in the presence of her husband and two other persons, Messman and Makasa, "Messman kisses and embraces ~~h~~ your wife".

The respondent pleaded truth; and the action in the Court below was mainly fought on the question of whether in fact the words complained of were true.

No question appears to have been raised as to whether the words were actionable per se as imputing unchastity to the Appellant, and the learned Judge was by no means satisfied with the evidence given before him on the issue "are the words true?" He, however, concluded his judgment by holding that it mattered little whether the words were true or not as the words by themselves did not impute unchastity and ~~are~~ were not actionable.

The Appellant in her memorandum of Appeal only alleges that the Judgment is against the weight of evidence, but we have permitted her counsel to argue also against the finding of the learned Judge that the words were not actionable.

He has contended that "unchastity" means and includes improper conduct, or indecent behaviour and does not necessarily imply that a woman has granted every favour to a man, and that therefore words that cannot be construed as implying that the woman has gone to every length are yet actionable if they imply that she has been guilty of a far less degree.

Nairobi, 21st February 1913.

Sir,

Mr. Homi N. Mody has consulted me with reference to your conduct. He informs me that for some time past you have been in habit of intercepting correspondence addressed to him at the National Bank of India Ltd. and of purloining<sup>letters</sup>/therefrom, and that you have gone as far as to produce one of these letters in a Court of Law and endeavoured to use same against him.

My client instructs me to inform you that unless you call at this office within one week from this date and hand up to me all letters purloined by you and sign a written apology to my client, and an understanding not to repeat the offence, and pay my costs, he will institute a prosecution against you for the larceny of his letters.

Yours faithfully,

( Sd. ) B. G. Allen.

Pirojsha B. Messman (?)

National Bank of India Ltd.

Nairobi.

C O P Y.

A. J. Barry,

Advocate & Solicitor.

P. O. Box 38,

Mackinnon's Building,

Nairobi, 28th February 1913.

B. G. Allen Esqr.,

Solicitor,

Nairobi.

406

Dear Sir,

H. N. Mody with P. B. Messman.

My client, Mr. Messman, has handed me your letter of the 21st instant, written on behalf of Mr. Homi N. Modi, accusing him of intercepting and purloining correspondence addressed to your client at the National Bank of India, and of producing one of these letters in Court.

It is true that a letter written by to Mr. Mody by his wife was produced in Court and put to him in the course of cross-examination for the purpose of attacking his credibility as a witness. Notwithstanding the fact that a statement contained in that letter was at variance with the evidence given by your client, and so had the desired effect, my client, nevertheless, tenders an apology for making use of so confidential a communication. At the same time he denies the allegations contained in your letter and states that no other letters belonging to your client have come into his possession. With regard to this particular letter he has already explained in the open Court the circumstances under which he became possessed of it.

Yours faithfully,

(Signed) A. J. Barry.

There was no reply to above letter from Mr. Allen.

He fixes the date by having written a letter to his wife and having bought a tin of biscuits. Neither very remarkable actions by which to fix a date some months back.

However in my opinion it matters little whether the words were true or not because no proof of special damage has been adduced and without such proof I am of the opinion that the words are not actionable. The Plaintiff has stated that Messrs. has behaved to her as he would to his sisters and brothers. An embrace and a kiss or even many than one are permissible to one's brother. The words complained of do not impute unchastity to the Plaintiff when used by themselves and there is no allegation that anything else was said. That being so they are not actionable. There will be judgment for the Defendant with costs.

(Signed) J. W. Barth.

II. III. 13.

I certify that this is a true copy of the original.

(Sd) W. S. Wright.

Registrar

High Court, Mombasa.

It is quite evident that one side or the other is lying to the events of that particular afternoon, and I am inclined to think that the Plaintiff's case appeals less to my credulity than the Defendant's. The Plaintiff's alibi is so very carefully worked out by her witnesses who, and she herself base their recollection on the fact that the 26th July is the day before the anniversary of the Plaintiff's father's death that one's suspicions are aroused.

Makasa further bases his statement on the fact that he every afternoon teaches the Plaintiff's children at 4.30. I view Makasa sudden inability to understand English when his cross examination started with some suspicion.

It is evident that if he has tea at Khambatta's at 4-30 and takes 5 - 10 minutes over it he cannot begin his lessons at the Plaintiff's house every day at 4-30.

Mehta's evidence which goes to prove an alibi for Messman is quite incredible. He is a Bank Cashier and his duties as such ceases when his cash <sup>is</sup> balanced. The Bank closes at 3 p. m. and yet Mehta would have the Court believe he stayed till after 6 p. m. on the 26th July for the sole purpose of reading a document which does not in the least concern him, which is of a highly confidential nature and which it seems strange should be in hands of anybody but the Manager and a confidential clerk. It is necessary to introduce this document which contained the Manager's opinion of tradespeople, merchants and others, in order to prove the fact that Messman did not leave the Bank till after 6 p. m. and therefore could not have been kissing the Plaintiff at 4-30. The Plaintiff it should be noted lives immediately behind the Bank and Messman lodges with her.

Khambatta's evidence is introduced to corroborate the Plaintiff's which it effectively does if believed Daruvalla, another of Plaintiff's lodgers, remembers the 26th July and going home to tea at 4-30 and finding only the children there.

JUDGMENT :-

The Plaintiff is seeking to recover damages from the Defendant on account of an alleged slander uttered by him on 5th August 1912 in the presence of her husband and two lodgers Messman and Makasa.

The Defendant has admitted saying "Messman kisses and embraces your wife". The words complained of in the plaint are "Messman has kissed and hugged your wife from behind". The Plaintiff has however, apparently accepted the Defendant's version of the proper translation of the actual words used as on the strength of the Defendant's pleas she has argued that the truth of the words complained of has been pleaded and no effort has been made to prove that her version of the English of the words used is the correct one.

The whole matter has formed the subject of criminal proceedings in which Messman as complainant succeeded in getting the Defendant convicted of an offence under Section 500 Indian Penal Code and sentenced to a fine of R'15 or seven days simple imprisonment.

The Magistrate in his judgment found that the words complained of were true.

The relations between the parties were admittedly strained over the question of the Plaintiff's kitchen chimney which the Defendant had blocked up because it smoked into the upper part of the house where he lived.

The Defendant has attempted to prove the truth of his statement by giving evidence himself and calling several other witnesses to testify that on the 26th July 1912 between 4-30 : 5 p. m. the Plaintiff who lives ~~at~~ on the floor below was seen being kissed and embraced by Messman in that part of her bedroom allotted to the children.

All the witnesses for the defence who gave evidence on this point saw the proceedings through a hole in the floor.

The Plaintiff has endeavoured to shew that the case for the defence is impossible because on that afternoon she was at



DARUVALLA NARIMAN FRAMJI Parsee sworn :-

I work at Childs, Parr & Joseph

I live with Mr. & Mrs. Kharas

I remember 26th July last year.

At 4-30 I got home from the office

I had tea at Kharas

Only three children were in the house.

Kharas came after me.

I then wrote to my wife because mail closed next day.

I remember the day because Kharas had quarrelled with Virji who had just come down and given a blow on the lattice work.

I heard commencement of quarrel on 26th July

Virji challenged Kharas

Kharas did not go out

I asked Kharas not to go out.

I and Mr. & Mrs. Kharas were present

X X X :-

There was a constant quarrel about the kitchen chimney

I fixed the time because I purchased a tin of biscuits and next day Mrs. Kharas got up earlier because of ceremony.

NO RE EX :-

Read over correct.

(Sd) J. W. Barth

Plaintiff's case

Barry Sum up for Plaintiff

Opportunity to apologise.

Figgis for Defence

Messman keeps private letter

Not examined about Mehta

Mehta's evidence duty over at 3-30

Adjourn for Judgment.

(Sgd) J. W. Barth.

Uncertified copy.

KHAMBATTA S/O. COWASJI JAMSHEDJI Parsee sworn 1-

Merchant, Government Road, Nairobi.

401

I know the parties in case.

I remember 26th July because Mrs. Kharas came to my place at about 3 p. m. to visit us

She stayed till 6 p. m.

She said "Tomorrow is my father's monthly ceremony day so I came to see you today."

Makasa had tea at my place he came in that day at 2 4-30.

He some times comes at 4-15 or 4-45

I was in Office.

Mrs. Kharas must have been inside

On August 5th I went to Kharas' house at 2 or 2-30.

I don't recollect the time exactly

I was sent for. I went by myself

Dinshaw, Messman, Daruvalla and Mr. & Mrs. Kharas were there.

5 minutes after Mrs. Aderji came down.

Virji was asked to repeat the words he said nothing

I had a conversation with Virji on the stairs

He said he was quite right

X X X :-

I am an evil to Virji. He owed me some money

Mrs. Kharas was at my place at 3.5 p. m.

I was in office till 6 p. m. She did not leave before then

At 8 I went out.

I was in room at 3 taking tea with my wife.

Tea is generally going at 3 p. m.

Makasa can take his tea when he comes from the office

He does not leave as late as 5-15 p. m.

I am friendly with every one.

I have no quarrel with Virji.

RE EX :-

People coming in the front way have to pass through the shop.

Read over correct.

( 2d ) J.W.Barth.

BY COURT :-

I can't say on that day at what time I balanced my cash.

When I have balanced my cash my duty is done.

The Bank x closes at 3 p. m.

( Sd. ) J. W. Barth

Read over and correct.

MEHTA DINSHAW RUTTONJEE Parsi sworn :-

Cashier, National Bank, Nairobi.

390

I remember going to Kharas' house in August.

Daruvalla fetched me.

Khambatta was there

Messman, Mr. & Mrs. Kharas and Mrs. Adarji Mehta were there.

Nothing was said.

Virji was upstairs

He was asked to repeat the words, he refused

I could not hear what he said

I think he replied from upstairs

26th July was previous to mail day.

Messman handed me file of Opinion List at about 5 p.m.

He came over to my table

I continued my work

Messman went back to his desk. I saw him there at 6 or after.

Then I left the Bank. Messman was still there.

I cannot say if Modi was there

Both Messman and Modi are clerks at Bank

They were not on friendly terms since 6th or 7th August.

X XH:-

It is not part of my duty to read the list

It was merely curiosity that led me to read the list

I think it was signed by Playfair

I did not ask Messman to bring over the list

He brought it over of his own accord

It is amusing reading

I know the list is for private information of the Directors

I did not read it to assist Playfair

Messman brought it to me and said it was to be posted next day

We are not thick friends

I handed over the ~~list~~ list and went away.

Messman did not approach me for any evidence after the criminal case

Messman did not shew me any paper to sign.

NO RE EX :-

X XN :-

393

Witness suddenly falls to understand English.

The heads of the community have not tried to settle this matter.

I drink tea every afternoon at Khambatta's 4-30

Other people are using the room in which I give lessons

I never drop an afternoon teaching except Sunday.

Mr. & Mrs. Kharas complained to me on 26th of beating the trolley <sup>work</sup>  
No questions were asked to me in the criminal case about this.

3 or 4 days after the judgment Mrs. Kharas asked me if I

remembered I saw her on 26th July at Khambatta's house.

That would not have struck me unless I had been asked.

RE EX :-

I was not asked anything about 26th July in Magistrate's Court.

Read over correct.

(Sd.) J. W. Barth

MAKASA S/O GOOVERJI Parsi sworn :-

307

Assistant at Treasury for 10 years

I live with Mr. & Mrs. Kharas 15th May 1912 to now

Messman also lives with them

I teach the children after office hours

I teach them in the first room

I hold my class after 4-30 every afternoon for more than an hour

4.30 - 5-30 or 6.

I held my class ever afternoon in July

I mess with Khambatta

On 27th July I dined with Kharas.

I saw Mrs. Kharas at Khambatta's house on 26th July at 4-30. I was taking my tea.

My tea took 5 - 10 minutes then I went on to Kharas' to take my class.

I was present downstairs on 5th August

I heard the words complained of used.

Messman and I and Mr. & Mrs. Kharas were present.

It was at 4. 30.

I heard words at 5-15

I was having my class in same room

Mrs. Adaraji Mehta came to visit Mrs. Virji

She was then upstairs.

Khambatta and ~~Mess~~ Dinsha Mehta came after.

Messman asked Virji to repeat his words. He refused.

I am not deaf.

Mr. & Mrs. Kharas complained on 26th July that Virji came down at 9-30 p.m. and hit the lattice.

I came back in the evening to sleep

I have never seen Messman hugging or kissing Kharas

I have known Messman about a year.

I have ~~never~~ never suspected Messman of any improper conduct.

Words would cause Mrs. Kharas and her family much harm.

It has caused harm to them in the eyes of their friends.

There has been a split in the community.

We complained to landlord's agent

He said he could ~~do anything~~ not do anything because he was  
thick friend of Virji.

He gave us all notice to quit.

RE EX :-

Pundia and Simoes and Lobo went to Wright's Office to give  
proofs of their evidence.

Pundia refused to come without a summons

Simoes would not come without a summons

These men came to Wright's office on Saturday last

Read over correct

(Sd) J. W. Barth

I can't say if it were underneath the hole

On 26th July in afternoon I was in Bank

I go at 8-30 a. m.

26th July was closing of English mail.

I worked till after 7 p. m.

I left Bank for dinner noon.- 12-40 or 45

I had my meals in the house

I did not leave Bank for tea which was brought into the Office.

Hours are always longer on mail days.

Ex 2. Post Office list of mails produced.

Mail Opinion List was sent by that mail because heavy mail.

I didn't notice Modi there at 7 p. m.

He does not sit close to me

Modi had a conversation with me on the 7th August

He did not say my conduct was bad

X XN :-

I have taken considerable interest trying to set up evidence.

I asked the clerks to give evidence of what they knew

I asked Simoes to give evidence and Pundia and Lobo.

I wanted their signature to make sure of the evidence they would give.

Simoes could not remember.

Kharas are not friends of Modi's since 1911

The Opinion List is the only thing ~~which~~ that makes me remember

I type it. It was signed that afternoon by the Manager.

Other things were for signature on the following morning.

List was signed at 3. 30 p. m. I had to do other things

I numbered and dated list after 4 p. m.

51 pages in list. 3 copies.

I didn't know this when criminal case was on.

I am not a particular friend of Mrs. Kharas

I don't call being like a brother being a particular friend

There was a letter from Virji to Mrs. Kharas mother before 5th Aug.

That was not the cause of the quarrel

Not a word of truth in letter about my conduct.

I first knew about that letter after 5th August

We used to see people looking through cracks.



MESSMAN FERROZSHAH BYRAMJI Parsee sworn :-

Bank Clerk, Nairobi

I was present on 5th August with Mr. & Mrs. Kharas and Mr. Makasa

I was present

No truth in allegation

I have on no occasion misbehaved myself

I have lived with Plaintiff since July 1910

I was with Virji two months

No complaint has been made to me at any time

Up to 15th July I was a friend of Virji's

He called me upstairs at 5 p. m.

Mr. & Mrs. Virji and Miss Framji were present

They said Mr. & Mrs. Kharas were quarrelling with them for nothing  
asked me to intervene.

I told Virji he had blocked up the kitchen chimney

I refused to take his part against Kharas

He said I was partial

After the words complained of were spoken I fetched Khambatts &  
Virji said whatever he had spoken was true he had half dozen  
Mehta

witnesses to prove it. I was on friendly terms with Modi.

On the 6th August he met me in the Bank.

Modi wanted to settle the matter by Virji apologising

Friendship ceased on 8th August

Middle of November working late in the Bank

Boy brought Exhibit 1 saying it was lying near cash counter

I opened it it was folded without a cover.

I found matter referring to my case against Virji and kept it..

When I lived upstairs there were no holes in the floor

When I first went to Kharas no holes

One hole in room where I lived

Other holes were made afterwards in Kharas' room

There was a hole in dining room

~~xxxx~~ The holes were made from above. Ceiling is high

I saw splinters hanging on ceiling

I picked up some splinters in dining room.

X XN :-

After judgment was given I consulted a Parsee Calendar and found out that I went to Khambatta's on that date. It didn't occur to me while case was going on Khambatta said nothing to me about it. I visit the Khambatta's about every month or six weeks. I ~~saw~~ did not say anything about the stick to the Town Magistrate because I fixed subsequently "Burjor come out" were not used on 5th August. Mrs. Mehta was not telling the truth because she is a strong friend of Mrs. Virji. She was not present on 26th July. I didn't mention them because I was not asked before Magistrate. I did not tell any one about it. Messman behaved to me as he would to his sister and brothers when Defendant brought an action against my husband, Modi became an enemy. I know he paid R100 to my husband on account of that action. He is an enemy because he was going to give evidence against us.

RE EX :-

I was not asked anything about 26th July before Town Magistrate.

Read over correct.

( Sd. ) J. W. Barth.

SHARAS SHIRENBAI D/O RUSTOMJI TALATI Married woman parsee sworn-

I am Plaintiff in this case

I deny that Virji saw me being hugged and kissed by Messman between 4 - 4.50 p. m.

I was not there. I was at Khambatta's house where I had gone at 3 p. m. with my child

I left there at about 6. 30 p. m.

I remember the date because 27th was anniversary of my father's death. Mrs. Khambatta is a friend of mine

I told her I did come because next day was the anniversary of my father's death.

When I get back dispute about the kitchen was carried on. Husband was there defendand and his wife were upstairs.

Virji came down with a stick and challenged my husband, and hit the trellis work

Daruvalla came in after.

He asked my husband not to go out

I have four children

Messman has lived with us 2½ years

My husband has never had cause to suspect me

Messman lived with Virji for two months

We used to be on good terms with Virji

Friction arose on account of a boy

There was friction about a kitchen

The trouble started in March 1912

Modi is not a friend, he is an enemy

We have not spoken for 1½ years

I know the holes in the roof were made by defendand

We have been in the house for 1½ years. Left last September

Holes were not in roof when we went there

Hole in Messman's room was widened

Two holes were made in our room

When we went no holes

When I told the boy to sweep the ceiling I noticed them.

I first noticed them after 15th July

They listened to conversation between my husband and me and other

They were sitting on the floor i.e. Mrs. Kharas & Messman

NO RE EX :-

Read over correct.

(Sd) J. W. Barth.

391

MARIAMU D/O THOMAS Christian sworn :-

Kamba Ayah to Mrs. Virji

I remember giving evidence before Magistrate

I know Mrs. Kharas and Messman

I remember seeing a bwana kissing Mrs. Kharas

I have seen them together before. Twice

X KN :-

I was up stairs washing clothes

They were downstairs on verandah by the door

It was 9 a. m.

It is easy to see from the verandah upstairs to the verandah  
downstairs

There is a flight of steps down

The door is near the bottom of the steps

Neither had anything in their hands

I did not see Virji come out and look

Miss Framji was with me, when I saw this.

I don't know if she told Virji

The other occasion was on the another day before this day

The first was in July

The second was in August

When Miss Framji was with me was in July

after  
The other occasion was/a few days after.

I don't remember the second time which month it was.

I have not been told which date it was

I did not tell my master or mistress about the second occurrence

I saw them on the second occasion sitting close together and  
talking like husband and wife.

Read over correct.

(Sd) J.W.Barth

VIRJI KETH JEHangIR Married woman Parsee sworn :-

I know Messman and Kharas

We live upstairs and they live downstairs

I have noticed things peculiar in the relation of Mrs. Kharas and  
Messman

On 26th July Miss Framji & my ayah saw something in the morning

Miss Framji reported to me

I saw something myself in the afternoon

Miss Framji asked Virji to see that, afterwards I saw

I saw Mrs. Kharas sitting near a fire place

Messman was sitting beside. I saw Mrs. Kharas leaning on Messman's  
elbow and Messman kissing her.

We did not care to see before any peculiarities in their relations

X XN:-

I had not looked through the holes before.

I had noticed them.

The room below can be seen easily through the holes by bending  
down.

One can't see without bending down.

I had my eyes close to the hole

Can't see whole room

Can see nearly half

The bed was not in that half of the room

There are other holes

I did not look through them

I have been unto that room on several occasions

Modi was there upstairs

We were not all together

Miss Framji had first look, she came and told us.

She told Virji, he told me.

She went into another room

There is only one slit in the bedroom

I said three or four in the whole house

I was not present in that room when Modi came

Virji pointed out the hole

I saw Modi come to the house.

In Town Magistrate's Court I answered the questions put to me.

MODI

389

HOMI NUSSARWANJI Parsee sworn :-

Clerk National Bank of India

I know parties

I was friendly with all the parties

I got a letter ~~from~~ on 26th July from Virji asking me to go and see him.

I went 4.30 - 5 p. m.

I saw Messman sitting with Mrs. Kharas

They were sitting near a stove embraced

He was sitting on a small stool no one else except Virji was with me.

I did not see Miss Franji

I saw Mrs. Virji she was there

It did not surprise me that Virji should send for me

I did not expect it

I had not looked through before

Virji did not tell me for what purpose he sent for me except to look through the slit

Virji did not look in my presence

I did not tell him what I saw

I had no conversation with him or Mrs. Virji

I don't know for what purpose I was called

I was on friendly terms with Messman and Kharas.

I had no opportunity of speaking to Kharas.

I said nothing to Messman - No opportunity

Both working in the Bank

A photo was taken in early part of July.

EX. 1. The letter produced is from my wife Exhibit 1. 1st  
November 1912

I fell out with Messman after I gave evidence.

RE EX :-

I have lost about six letters since the criminal case.

Read over correct.

(Sd) J. W. Barth.

MYRA FRAMJI Parsee sworn unmarried.

I remember the occurrence about which I gave evidence before in Town Magistrate's Court.

I was in Virji's house

I was there on a visit

On 26th July at 9 AM a.m. I was coming out of bath room

I saw Mrs. Kharas and Messman down below.

I saw Messman kissing Mrs. Kharas

They were in verandah

I saw them again between 4 and 4-30 p. m. on the same day.

I saw both sitting and Messman kissed her. They were in the bedroom

I did not tell any one. No one else was there.

Half of the room can be seen through the hole.

X XN :-

The bed cannot be seen

I cannot remember where they were sitting

They were sitting

I dont remember what furniture was in the part of the room I did see.

It is easy to see through the hole

One can see without putting one's eye to the hole

I bent down and saw

I had not seen the hole often before, I had seen it before.

I had looked through it before to confirm my doubt.

I had no doubts before that morning

I told Virji what I saw in the morning

I told him to come and look

He came. I cannot say what he saw.

I did not see any kissing after Virji came

I saw Messman ~~first~~ kissing first then I spoke to Virji and Virji went.

I did not go with Virji. He did not tell me what he saw.

I did not ask.

RE EX :-

It was the evening that Virji went

Read over correct.

( Sd ) J. W. Barth.

It is the children's bedroom.

There are two slits over that room.

I saw a splinter in the Court below.

Kharas asked me several times to tell the landlord to close the  
holes

I had told the landlord.

After 26th I have not tried to see through the holes.

Miss Framji looked first. Then I, then my wife, then Modi.

I did it out of friendship for Kharas

Kharas would not have believed me alone.

Modi was a good friend of Kharas

I did not ask Modi to tell Kharas and I did not suggest it

Khambatta and others were fetched by Messman and Kharas.

Messman and Mrs. Kharas were kissing in children's part of bedroom

There are two holes over Kharas' bedroom.

One cannot see the whole room.

Cannot see Mrs. Kharas' ~~bedroom~~ bed

Front door was closed other door was closed.

Back verandah opens into back court yard

Any one could see into back verandah

I only told my wife the elbow incident she did not see it

NO RE EX :-

Messman used to live in my house I did not suspect him,  
had no complaints.

Read over correct

(Sd.) J. W. Barth



I asked Kharas to stop Messman abusing me and said if he came out I would tell him privately something about Messman.

He said speak out from where you are.

I said he is not a good man to keep in a family house, I have seen Messman kissing and embracing your wife.

They went and told Khambatta, Dinshaw Mehta & Daruvalla & Makasa.

I called Khambatta upstairs he did not come.

I called Mody from the Bank.

There was a row going on

I did not repeat the words to Khambatta

Messman asked ~~him~~ me to repeat these words, I refused.

I was excited when I used the words.

I knew they were true

I saw on 26th July in the morning on going on back verandah Messman and Mrs. Kharas together.

Mrs. Kharas was frying eggs.

I saw Messman touching Mrs. Kharas with his elbow.

I suspected Messman.

I told my wife.

About 4-30 - 5 p.m. I saw Messman and Mrs. Kharas sitting together near a fire place.

I saw Messman touching her breast and kissing her.

Miss Framji and my wife saw it.

I wrote a note to Modi.

He came at once and he saw it.

I saw it through a slit in the floor.

Others have seen ~~it~~ on other occasions.

I thought I would tell Kharas privately.

I instructed Figgis to write, Exhibit A.

X. XI :-

Facts were disclosed in criminal proceedings.

The ~~x~~ holes were not made by me.

The boards were split.

I can't say if the split is above or below.

In the District Registry of the High Court at Nairobi.

Civil Case No. 42 of 1912.

305

Shirinbai Rurjorji Kharas.....Plaintiff

versus

Jehangir Pestonji Virji.....Defendant

Nairobi, 19-2-1913.

Barry for Plaintiff, Wright with him

Figgis for Defendant.

Pleadings read.

Issues :-

- (1) What is the meaning of the words used.
- (2) Are they defamatory
- (3) Are they true
- (4) What damage if any ~~has~~ has Plaintiff suffered.

(Sd) J. W. Barth

Barry Onus on Defendant truth pleaded

Rule Onus is on Defendant.

( Id. ) J.W.B.

VIRJI JEHangIR PESTONJI sworn Parsee -

Clerk to Attorney General.

I live in Duke Street behind National Bank.

Plaintiff her husband and 3 <sup>a</sup> borders & her children live below me.

Among the borders is Messman.

We were all on good terms.

A dispute took place with Jiwanji the landlord about the fireplace

Mr. Kharas was concerned in the dispute.

There was a nuisance about the fire place.

The smoke came up to my part of the house.

That was about July.

I came home about 4. 30 p.m. on 5th August.

Messman started abusing me.

He was downstairs.

He was casting imputations on my ancestors.

Mr. & Mrs. Kharas were there too.

9th and 10th exceptions to S. 499 I.P.C. i.e. by shewing that they were spoken in good faith for the protection of the interests of some person ~~xxxxxxx~~ or for the public good or as a caution intended for the good of the person to whom they were conveyed. It is not enough to shew that the words were true they must also be spoken in good faith which is defined by the I.P.C. to mean with due care and attention. ( 52 I.P.C. )

Looking at the circumstances under which the words were spoken i.e. during the course of quarrel, shouted from upper floor to a man downstairs in the full hearing of the other persons both in the upper and lower floors it seems to me impossible to say that they were spoken in good faith either for the protection or the interests of or as a caution to Mr. Kharas. And more particularly so seeing that accused had been aware of what he was stating for some 11 days past and had taken no steps to inform Kharas. I find accused guilty S. 500 I.P.C.

This is an action which in the interest of all parties would have been better not brought. Complainant although he succeeds legally, has failed in the object for which he brought it, while the accused and his witnesses stand convicted of not very honourable conduct of spying through the floor into their neighbour's house. The gravity of the offence is much lessened by my finding that the words were true and I think the ends of the parties will be met by imposing a fine of ₹15 or seven days simple imprisonment.

( Sd ) E. R. Logan.

28th September 1912.

## JUDGMENT:-

After hearing evidence in this case, there is no room for doubt as to what took place on August 5th.

Accused when he came back from his work on the afternoon he had a quarrel with Messman who he says abused him and the quarrel continued between accused who was upstairs and Kharas who was downstairs. Accused then called to Kharas to come outside as he had something to say to him. Kharas replied "say on whatever you have to say" and accused then used the words complained of "Messman kisses and embraces his wife". Accused was still upstairs where Mrs. Adarji Mehta also was and Messman and Mr. & Mrs. Kharas and Makasa a clerk in Treasury were all downstairs and heard what was said.

Accused both immediately and afterwards and ever since has maintained that what he said was true and that he was prepared to prove it, and he has called evidence to prove that on July 26th Messman and Mrs. Kharas were seen kissing each other in Mrs. Kharas' bedroom. They were seen through a crack in the floor of accused room which is immediately above the Kharas's room ~~XXXXXXXXXXXX~~ Accused himself and his wife and Mehra F. Anji testify to this and at the same time they fetched another person Mr. Mody a clerk in the National Bank of India to come and witness what was going on and he also testified to seeing the same thing. It is admitted by the prosecution that there is an opening in the ceiling through which one can see in the bedroom below. Mr. Mody is an independent witness occupying a position of some trust and he says he is still a friend of Messman's and certainly judging from the photograph of the ~~Bank~~ Bank Staff which has been put in, he was on friendly terms with Messman as recently as July 1st. long after friction arose between accused and Mr. & Mrs. Kharas, and in view of his evidence I must come to the conclusion that what the accused said was true.

The words in themselves are undoubtedly defamatory and ~~used~~ can only escape liability by being shown to be true within the

KETI JEHANGIR VIRJI duly sworn :-

Wife of accused. 26th July when accused came from office I told him what I had guessed in morning was correct. On information from Mehra my husband first looked through slit and then I did. I saw Messman and Mrs. Kharas sitting near fire place. Mrs. Kharas head was on Mr. Messman's shoulder and Messman was kissing her. 5th August I was upstairs in room with accused. Mrs. Adarji came in. Messman from downstairs suddenly began to abuse my husband about some old quarrel. After quarrelling accused called Kharas "Come up I want to say something to you". Kharas said "say on what you have to say", then accused said "Messman is not a good man to keep in a family house he kisses and embraces your wife." I did not notice anything before 26th July.

X XD :-

I know the incident happened before August 5th. Miss Framji was upstairs on 26th July. I heard what Messman said on 5th August. I only heard the abusive language. Mrs. Adarji came in just as Messman was abusing accused.

I quarrelled with Mrs. Kharas six months before about a boy and about fire. We were friends before. Messman lived upstairs with us for two months. He did not try to kiss me.

R. O. C.

(Ed) E. R. Logan.

HOMI NUSSERWANJI MODY duly sworn states :-

Clerk National Bank of India Ltd. Nairobi. 26th July I was called by Virji accused to his house. He told me to look through a slit in the ceiling. I looked and saw Mrs. Kharas sitting with Messman both embracing. I could see distinctly. I was present also on 5th August when Khambatta was there. I heard accused call Khambatta. Accused told Khambatta "Whatever I have spoken to Mr. Kharas is quite correct". I am friend of both accused and complainant, and knew nothing about the matter before.

X XD :-

I am still friend of Messman, if I had an opportunity I would have spoken to Messman about it. We both work in the National Bank.

Sometimes we are kept late at Bank on Mail days. We have plenty of clerks now. I left Office about 6 p. m. on 26th July.

I can swear Messman left before me. I went to Virji's house that day I am not sure of the day he called me. It was about 4-30 I went to accused's house and then I returned to office. I had never told anyone about it since. Mr. & Mrs. Kharas's room is just below accused's. Accused was half way downstairs and Khambatta downstairs when Virji said it was true. None was with Khambatta. People were talking downstairs. I was upstairs when accused spoke the words. I heard nothing else. Mrs. Adarji was not there. I remember case of P. Naorji & Kharas. It was settled out of Court. Naorji is friend of mine and Virji. I was a witness.

I spoke to Messman on 6th August. I am a friend of Mr. Kharas. I had no opportunity to speak to him.

RE EX :-

EX. A. is a photo taken about July 1st, Messman has got his arm on my shoulder.

R. O. C.

(Id) E. R. L.

MARIAMBU BINTI THOMAS duly sworn states :-

I was with last witness on 26th July at 8 a. m. saw wife of Mr. Kharas and Messman kissing each other. I have seen them together after this two or three days after.

X XD :-

Second time I saw them I was coming downstairs at 5 p. m. they were sitting in same chair as a man and his wife in the dining room no one else was there. Outer door in the street wide open, they were sitting down holding their arms together.

R. O. C.

( Id ) E. R. L.

MEHRA FRAMJI duly sworn states :-

July 26th 9 ~~am~~ a.m. I came out of bath room upstairs and saw Messman and Mrs. Kharas were downstairs on back verandah and I was on top verandah. Any one passing on top verandah could see there without intending to do so. The ayah was with me. I informed Mrs. Virji. Messman came home earlier than office hours that day and and I heard him talking in a low tone to Mrs. Kharas. I was suspicious and looked through ~~some~~ crevice in OUR bedroom into their bedroom and saw Messman sitting by Mrs. Kharas. I saw Messman kissing and embracing her this was 4-0 / 4-30 p.m. Then I shewed ~~ix~~ this to accused.

X XD :-

I am old frind of Virji's. I don't know there was friction about the boy and smoke. Mrs. Virji did not tell me. I have stayed with Virji's 12 days in July. I was there on the 15th July. I was not aware of any illfeeling between Virji's and Kharas. I have not mentioned the matter to any one else.

By Court :-

I was in Mrs. Virji's bedroom when I heard Messman and Mrs. Kharas talking in a low tone. The door of Mrs. Virji's bedroom was opened, I heard a slight noise of talking and so I looked. The noise came up ~~ix~~ through the floor.

R. O. C.

(Id) E. R. L.



Accused charged page 9A and charge read over to him.  
Plea. Not guilty (Id) E.R.I.

373

Q. What ~~ya~~ have you to say ?

A. On 5th August 4.0- 4.30 p.m. I came from my office. I wanted to appoint an Arbitrator in a case filed in T.M's Court, and Mr. Messman came about that time from his office and was standing in the bedroom of Mrs. Kharas and started abusing me. I was upstairs. After ~~or~~ 6 minutes Mr. Kharas came he was downstairs and I was still upstairs. I said to him "This man has nothing to do with this matter and he is a subtenant of yours stop him abusing me". I asked Kharas to come outside " I wish to talk to you privately in a friendly way. Kharas said "You can speak out from where you are". I said "Mr. Messman is not a good man to keep in a family house. I saw him kissing and embracing Mrs. Kharas. Then Messman and Kharas both abused me, and went to call Khambatta and Dinshaw. I only heard Mr. & Mrs. Kharas and Messman speaking downstairs. Messman challenged me to repeat the words. I said I will speak in private. After a short time I called Modi from outside. Mrs. Adarji was then in the room, she went downstairs. On 26th July I was going to the Office in the morning and saw Messman at the back verandah sitting close to Mrs. Kharas. She was making eggs for breakfast. I saw Messman touching her with his elbow and I suspected him, and I told Mrs. Virji and went to Office. Same day 4-0 to 4-30 on my return Mrs. Virji told me something and Miss Franji said come I will show you what is happening now, and I went into my room and looked through crevice in floor and saw Messman kiss Mrs. Kharas once and with his hands on her breasts. I at once told Mrs. Virji to go and see it and she saw it. I sent for Mody and he came and saw it. I ~~now~~ only saw Messman kissing and embracing her once.

( Sd. ) J. P. Virji.

I certify that the above examination in my presence and hearing and contains a full ~~report~~ and true record of the statement made by accused.

( Sd. ) E. R. Logan.

GULBAI ALARJI MEHTA duly sworn states I am ~~friend~~ friend of Mrs. Virji, and of Mr. & Mrs. Kharas. August 5th p.m. I was upstairs in the accused room and heard accused used words about Mrs. Kharas and Messman. When I came downstairs either Messman or Mrs. Kharas asked me if I had heard words used by accused. They did not repeat the words to me. I heard accused say "Burjor come out I want to say something to you". Burjor in reply said "Speak on whatever you have to say". The accused said Messman kisses and embraces your wife.

X XD :-

Before the words wer spoken when I was going upstairs I heard noise of quarrelling between accused and Kharas. This quarrelling ~~was~~ went on after I went upstairs. Accused spoke the words from his room. Kharas was downstairs. I did not hear what Kharas said except "Speak on".

R. O. C.

(Id) E. R. L.

BURJORJEE PHEROJSHAW KHARAS duly sworn states I am husband of last witness. August 5th I was downstairs in my house with Messman, Makasa and Mrs. Kharas, and heard accused used the words complained of. Accused was upstairs. Afterwards Mrs. Mehta came in and lat/er Khambatta and D. Mehta. Mrs. Mehta said she had heard the words and accused said in presence of Khambatta that the words were true. I have known Messman since 1909, and he has lived with me since 1910. I have never seen anything improper in his relation with my wife. There was a dispute between my wife and accused's wife about a boy and secondly about a hole being blocked up in our kitchen.

K XD :-

Before that we were on friendly terms, ~~with~~ the words complained of were not spoken before Mr. Khambatta. Accused may have complained to Jiwanji about me. Landlord gave me notice to leave but did not give reason. Something was said about the fireplace in the notice. 5th August I was not abusing anyone. Accused did not ask me to come out and talk to him. Before friction about a boy we were good friends. Accused used these words to disrepute me in public.

RE EXD :-

Jiwanji's manager here is friend of accused.

BURJORJEE PHEROJSHAW KHARAS duly sworn states I am husband of last witness. August 5th I was downstairs in my house with Messman, Makasa and Mrs. Kharas, and heard accused used the words complained of. Accused was upstairs. Afterwards Mrs. Mehta came in and later Khambatta and D. Mehta. Mrs. Mehta said she had heard the words and accused said in presence of Khambatta that the words were true. I have known Messman since 1909, and he has lived with me since 1910. I have never seen anything improper in his relation with my wife. There was a dispute between my wife and accused's wife about a boy and secondly about a hole being blocked up in our kitchen.

X X D :-

Before that we were on friendly terms, ~~with~~ the words complained of were not spoken before Mr. Khambatta. Accused may have complained to Jivanji about me. Landlord gave me notice to leave but did not give reason. Something was said about the fireplace in the notice. 5th August I was not abusing anyone. Accused did not ask me to come out and talk to him. Before friction about a boy we were good friends. Accused used these words to disrepute me in public.

RE EXD :-

Jivanji's manager here is friend of accused.

R. O. C.

( Id. ) E.R.L.

SHIRINBAI BURJORJI KHARAS, duly sworn states wife of Mr. Kharas and was living with him near National Bank of India. Messman and Makasa were with us there on 5th August. I and my husband and Mr. Messman and Makasa were downstairs together that afternoon. Accused was upstairs and said "Burjor, Mr. Messman has kissed and hugged your wife from behind I have seen this with my own eyes and I have got six witnesses to prove it". Burjor is my husband and was present downstairs. Mrs. Adarji Mehta was upstairs and called when she came down. She was asked if these words had been spoken and she said yes and she was willing to say in Court what she had heard. Before she left Messman fetched to Kharbatta and D. Mehta, and Virji told Kharbatta what he had said was true and he would prove it.

X-EX X KD:-

Messman has lived with us last two years. Our relations have been proper. Messman comes from his work at about 4-30 p.m. I and accused were good friends. I have not been annoyed at hearing to leave my house. There was ill feeling with the accused about part of the house blocked up owing to smoke. Messman does come into our common room during absence of my husband when he has something to ask or some business to do. He has never stayed a considerable time in absence of my husband. Messman has never embraced or kissed me. Accused used the words in our hearing to annoy us. We quarrelled with him first about a native boy, and secondly about blocking up of kitchen. The quarrel continued after we had notice to leave.

RE EXD :-

The hole blocked up was in my kitchen and was blocked up by the accused. We removed the plank. Messman had right to come into common room at any time.

R. O. C.

( ID. ) E. R. L.

KOOVERJI BURJORJI MAKASA duly sworn :-

Clerk Treasury over 10 years. Live at Kharas's and sleep there. I teach their children in the afternoon. Messman also lives there. 5th August afternoon I was there accused very loudly said "Burjor Messman has kissed and embraced your wife which I have seen with my own eyes". I was in the hall downstairs there are three rooms the hall, dining room and 1 bedroom and 1 dressing room. Mr. & Mrs. Kharas and Messman were with me when I heard these words. After this Mrs. Adarji came from upstairs and Messman asked her what she had heard and she repeated the words I have stated, saying she had heard them. After some time Messman called Khambatta and Dinsha Mehta. Then Messman challenged accused three times to say again what he had said.. Accused called out "Khambatta come up but Khambatta did not go up so after a time accused and Mody came down a few steps and conversed. I heard accused say "I have six witnesses to prove what I have said." I have know Messman and Mrs. Kharas a long time. I have seen nothing improper between them. I consider the words complained of are very shameful to Messman, people would think badly of him. I am friendly with accused and his wife.

X XN :-

I cannot say accused is a bad man. He has always been a good friend to the Kharas' and Messman. I don't know if Kharas went out of the room before the words were uttered. I swear Kharas was in the room with me when the words were spoken nothing is up to the words. I could not hear what accused was talking to. I only sleep at the house and teach there. Messman behaved in a gentlemanly way to Mrs. Kharas.

R. O. C.

( Sd ) E. R. L.

at back of our house. I and Kharas lived downstairs. I know accused had objected to the fire place at the bottom of the staircase owing to smoke from it. We went on using the fire place then accused told ~~Mr~~ Jivanji the landlord. Jivanji gave Kharas notice to quit. Accused asked me to intervene on the 15th July and I said it was not Kharas' fault. One cannot see into the top rooms from down below. I never hugged and kissed Mrs. Kharas. I was not paying attentions to Mrs. Kharas when Mr. Kharas was not there. Accused was upstairs before I came from the Bank. The words were uttered after half hour after 5-15 p. m. I came about 4-50 p. m. I did not hear Kharas speak to the accused. Kharas was there downstairs when I came from Bank, and I did not then go up. The words complained of were all of the condition which we could hear downstairs. I got Khambatta in order to challenge the accused to repeat the words in his presence. There is an opening in the ceiling through which one can see into room below about 4 crevices. 2 big ones have been there for four or five months. Accused wrote a letter to mother of Mrs. Kharas  
which I saw. I say on my oath that I have always acted properly to Mrs. Kharas. The crevices were between the planks they were made from the topside. A chip about one foot long fell down and I have seen some small splinters hanging down. Downstairs there are two rooms, mine and the Kharas'. There are ~~two~~ two holes over Kharas' room one just over Mrs. Kharas' bedstead. Mr. & Mrs. Kharas each have a separate bed and one hole is over my bedroom, there is also a hole in the dining room, the fire place is on opposite ~~side~~ side of court yard by kitchen.

P. G. C.

(Id.) E. R. L.

20th September 1912

Accused present.

Barry for Plaintiff

Figgis for accused

Phirozsha Byramji Messman duly sworn states :-

Clerk to the National Bank of India since June 1907.

5th August 1912 p. m. in house of Kharas where I am a paying guest. Accused was upstairs in the same house. About 5 p. m. Mrs. Adaraji M. Mehta called on accused family upstairs. I was downstairs with Mr. Kharas and Mrs. Kharas and Koooverji Makasa a clerk in Treasury was with me. We heard accused saying a loud voice from upstairs "Burjor, Messman has kissed and hugged your wife from behind" I have seen it with my eyes and I have got half a dozen witnesses to prove that. "Burjor" is Mr. Kharas name. Accused spoke in Gujarati then I went to Cowasji Khambatta a Parsee and asked him to come and hear the words repeated. C. Khambatta and Dinshaw Mehta came about 5 p. m. I repeated the words uttered by the accused in presence of Khambatta and D. Mehta I spoke loudly so that accused could hear upstairs. Accused only said "send Khambatta upstairs", Khambatta did not go upstairs. Afterwards accused and Mr. Mody came downstairs and stopped half way down and Khambatta went to them. Accused said what I have said is true I have got witnesses to prove that, and I don't mind if I have to spend ₹1000. Before Khambatta came Mrs. Mehta came down to my room to see Mrs. Kharas. Mr. Kharas and Mr. Makasa Koooverji and myself and Mr. Daruvalla were there. Soon after Khambatta and Mr. Mehta came. Mrs. Mehta said to Mrs. Kharas that the accused had used the words and if she was subpoenaed she would have to admit it. (Note Mrs. Mehta has been summoned to give evidence). I demanded an apology from accused through Barry. Figgis replied. Copy of Barry's letter.

X X D:-

Up to 15th July I was friendly with the accused. Accused was also an old friend of Mr. & Mrs. Kharas. There is a large balcony



Extracts from a letter written by J. P. Virji to the mother of Mrs. Kharas at Mombasa, undated, the cover of same bears the post mark Nairobi 3rd August and Mombasa 8th August 1912.

371

ORIGINAL

N.O. 1.

x x x  
Whenever anybody comes to my house your daughter spits on them this is the work of mean fellows.

If we want to haraas them we can do so easily because we live UPSTAIRS it is not creditable for one to be low with a base fellow.

x x x  
Your son-in-law has got the habit of telling falsehoods, but one day in the Court he will be nicely put to disgrace.

x x x  
If you wish to give justice, obtain following information from your daughter and son-in-law :-

Was not Mehra spitted on ? (This is the witness of the Defenadnt MISS MEHRA FRAMJI).

x x x  
Messman, to whom your daughter and son-in-law had given written notice to leave the house, owing to some quarrel about money matters has up till now been sticking in the house. He is very effeminate (fond of always being with ladies) and people laugh at him. He is chasing (shadowing) your daughter like a cock. You had better take care of your own family.

x

x

x

MEMO. of enclosures forwarded to His Majesty's Principal Secretary of States for the Colonies by the petitioner P. B. Messman with his petition dated 21st March 1914, submitted through His Excellency the Governor of the Protectorate.

370

1. Extracts from letter written by Mr. J. P. Virji to mother of Mrs. Kharas.
2. Proceedings & judgment in Town Magistrate Court, Criminal Case No. 1232 of 1912, P. B. Messman versus J. P. Virji.
3. Proceedings & judgment in Civil Case No. 42 of 1912, Mrs. Kharas versus J. P. Virji.
4. Letter from Mr. Allen, Solicitor, and Mr. Barry Solicitor's reply thereto, re letter of Mr. H. Mody's wife.
5. Copy of Civil Appeal No. 5 of 1913 Judgment.
6. Copy extract from "Indian Voice" comments on the Town Magistrate's Court Criminal Case, Messman versus Virji.
7. List of witnesses summoned by the Plaintiff in Civil Case No. 33 of 1913, Messman versus Virji.

1. Was the learned Magistrate justified in believing Mr. Mody the witness of the accused in the Criminal case, when it was proved in that Court that Mr. Mody was a witness against Mr. Kharas in a previous case. Can such a witness be called a reliable witness ?
2. Was the judgment in the High Court Civil Case No. 43 of 1912 in accordance with the recorded evidence before that Court ?
3. Did the Appeal Court in Civil Case No. 5 of 1913 discussed the ground of Appeal lodged by the Plaintiff and delivered their Judgment accordingly ?
4. Had the Presiding Chief Judge in the High Court Civil Case No. 33 of 1913 power to reject the Plaint, when he had already presided over and given his Judgment in Civil Appeal No. 6 of 1913 ?

I beg most humbly to request your honour to kindly consider the points and to give Justice to an innocent poor subject of His Majesty the King-Emperor, and I appeal your honour in the name of the Fair Impartial British Justice to consider this case of grave injustice, and to order a retrial in thematter.

Apologising for the great trouble I have given you in this matter against my will, but being forced to do so, and ever praying for your honour's long life and prosperity,

I beg to remain,

Sir,

Your Honour's most obedient, humble and loyal Server,

*M. B. Wessman*

Clerk,  
National Bank of India Limited.

The above humble petition in triplicate is submitted to His Excellency the Governor of the East Africa Protectorate for favour of transmission to His Majesty's Principal Secretary of States for the Colonies for favourable consideration, in accordance with the instructions contained in the letter from the Chief Secretary to the Government No. S.7663 dated 12th March 1914.

Although the law permits the petitioner to file an Appeal against the learned Chief Judge's rule to reject the plaint without hearing any argument from the Plaintiff against it, the Plaintiff did not think it advisable to appeal on this point and ruin himself by further heavy expenses, owing to the attitude shown by the Appeal Court in deciding the Appeal No. 5 Mrs. Kharas versus J.P. Virji.

The learned Magistrate in the Criminal Case has stated that, "Although the Plaintiff succeeds <sup>legally</sup> in convicting the accused, yet he fails in the object for which he brought the case in the Court". Now I respectfully beg to lay before your honour the point that in face of the Magistrate's such remarks, am I not entitled to appeal to the law to clear this imputation and save myself from the disgrace of the public by proving in the law courts, that the words uttered by the Defendant are not true, and am I not entitled to be heard by the law Court of the Protectorate? Are the Law Courts of this Protectorate not bound to give Justice to the BRITISH SUBJECT by hearing patiently their grievances? Is not the law framed for the protection of the innocent poor? I have great faith in the British Justice, and it was further strengthened by my visit to London during the Coronation period. The Houses of Parliament, and the Law Courts there had made a deep impression, and the proceedings which I witnessed there impressed my mind that the ~~British~~ Greater Britain held the supreme rank amongst the great European Powers on account of its most noble method of giving EQUAL JUSTICE TO THE POOR AND THE RICH IMPARTIALLY. I believe in this opinion and still expect to get justice through your honour's hands.

Without further trespassing upon your honour's most precious time, the petitioner begs to place before your honour the following points for favourable consideration, and if your honour thinks that the petitioner has suffered injustice in that case to kindly investigate the matter and to order a rehearing of the petitioner's case before one of His Majesty's Judges of the Protectorate, for which act of benevolence, the petitioner will ever remain under your honour's deep gratitude.

As the learned Chief Judge had already presided over the Appeal Court and had delivered judgment in Civil Case No. 5 of 1913, Mrs. Kharas versus J.P. Virji, the petitioner wrote to the Chief Judge on 14th October 1913, requesting him to transfer the hearing of my case in the Court of such other Judge who had taken no part in the previous hearing. As the petitioner did not get any reply to his letter, he wrote on the 20th October stating that as he had not received any reply to his letter of 14th October, the petitioner had no alternative but to proceed with his case in ~~the~~ Court of the Chief Judge.

On the morning of 23rd October 1913, the case came up for hearing, and while the petitioner was out to answer nature the case was called up, and the learned Chief Judge REJECTED THE PLAINT WITH COSTS. The next morning I applied to the Chief Judge in Chambers to restore the case and I wanted to explain to the Chief Judge that I was quite prepared to prove that the words spoken by the Defendant were not true, as well as the words were actionable, but regret to say the Judge refused to hear me and again dismissed my Application with the costs of both parties. Not wishing to come under the contempt of the Court, I left the Judge's chamber in utter dismay. The petitioner believes that the learned Judge's attitude in Chamber not to hear a single word of the petitioner was not in accordance with the usual procedure.

I beg to enclose herewith list of the witnesses whom I had summoned to give ~~witness~~ evidence in this case for your honour's information. Through their evidence I was not only prepared to prove that the words uttered by the Defendant were false and malicious, but such mean words had done considerable damage to the reputation of the Plaintiffs in above cases and their family, in the eyes of their community, their friends and the public. Also those words were ACTIONABLE. The learned Chief Judge's attitude in this case gave a severe blow to all my hopes to prove my innocence in the Law Courts, as well as the innocence of a respectable family, who has lived in the country for over 20 years, and whose reputation is put to disgrace by the Law Courts unjust decisions arrived <sup>at</sup> in the above cases.

I beg to enclose herewith copy of the Appeal Court's Judgment, Civil Case No. 5 of 1913 Mrs. Kharas versus J.P. Virji (Enclo. 5).

The Appeal Court did not go into the question before them, whether the lower Court's judgment was in accordance with the evidence before it, or was against the weight of evidence. The Appeal Court decided that the words complained of did not impute unchastity and therefore the Appeal was dismissed with cost. Whether the words uttered by the Defendant were true or not, the learned Appeal Court said that "the learned Judge was by no means satisfied with the evidence before him on the issue "Are the words true?". The Appeal Court on this point refrained from expressing their opinion, which was the only point raised by the Plaintiff in that case, and it is to be regretted that the Appeal Court evaded to consider that point, and argued on the irrelevant point whether any damage was done to the Plaintiff. Even in discussing this ~~xx~~ on that point they did not arrive at the correct conclusion. Do the Appeal Court mean to say that a person can speak damaging words about reputation of married people, and put them in disgrace of the public, and in spite of that if they unfortunately ask the Law's protection, the Law Courts can further injure their reputation by confirming and approving ~~xxis~~ such action as that of the Defendant, at the expense of the injured persons. Whether the Plaintiff's reputation is damaged or not, I beg to enclose herewith copy of ~~leaderage~~ from a local Weekly Paper called "INDIAN VOICE" for your honour's information, and beg to leave this point to your honour to decide whether the reputation of the Plaintiff ~~xxx~~ is damaged or not. ( Enclo. 6 ). The petitioner believes that great injustice has been done to innocent people by the decisions in the above cases by the Protectorate Law Courts.

Civil Case No. 33 of 1913.  
P. B. Messman versus J. P. Virji.

---

I beg to lay before your honour my grievances as to the most arbitrary methods used by the Court in this case.

The above case was fixed for hearing in Nairobi on the 23rd October 1913 before His Honour the Chief Judge.

that the people upstairs had deliberately made holes on the flooring to peep what was going on downstairs, and on more than one occasion the upstairs people were asked to tell the landlord to have the holes filled in, but what the landlord can do when the people upstairs particularly wanted to have the hole open, not only that but day by day they were widened. I leave your honour to decide about the respectability of the parties in this case. The petitioner regrets to see that the learned Judge did not think for a moment that it was next to impossibility when the people downstairs were fully aware that there were holes in the flooring and that the people upstairs were their enemies, in spite of that they would even think of doing such things as alleged by the Defendant's party, it is against the common sense to believe so.

In spite of the Defendant and his wife's open evidence that Mr. Virji told to Kharas that "Messman kiss is not a good man to keep in a family house, he kisses and embraces your wife." yet the learned judge's attempt to sum up that "Messman behaved with Mrs. Kharas as one would do to his sister", I emphatically deny that the Defendant's object in telling Kharas was to this effect, and the Defendant spoke to Mr. Kharas in that sense. Even from what I have seen in Europe, I daresay that conduct such as described by the defendant is <sup>NOT</sup> admissible between brothers and sisters amongst civilised society, then how can such conduct be admissible amongst Indians who are too remote from such social freedom. It is a well known fact that amongst Indians even a aged father cannot kiss his grown up daughters, nor a brother his sister, and even a husband cannot dare to kiss his wife in public. The Judge's remarks on this point are against the social habits of the Indians, and such worthless remarks instead of doing any good to the innocent plaintiffs in their cause to demand justice, have done further damage to their reputation amongst their relations, the community and the public.

The Plaintiff in the above case having received open injustice, at a further sacrifice of money in order to save her honour, she filed an Appeal against the above Judgment on the ground that "the Judgment given in the above case was against the weight of Evidence."

It is true that Mr. Mehta's duties as Cashier are over as soon as the cash is balanced, but after the cash is balanced he has to do other duties and he has to keep other accounts of the Bank, which statement can ~~be~~ easily be verified by ~~independent~~ independent enquiries from any private sources. If the learned Judge believed that the Cashier cannot be in the Bank at 6:00'clock, then it is very natural that his Assistant also cannot be in the Bank till six o'clock, and if it is so, then the evidence of ~~witnesses~~ witnesses Mr. Mody can under no circumstances be TRUE and the case of the Defendant should very naturally fall, but in this matter the learned Judge has thought best not to express his opinion.

The learned Judge would not believe the evidence of Mr. Makasa an old gentleman, of ~~about~~ about 60 years age, stating that he cannot teach Kharas children every day at 4-30 p. m. Mr. Makasa has said in his evidence that sometimes he used to be a little late or early, and still there was no necessity for the Judge to disbelieve him on this point.

The strange point in the case is that 4-30 to 5 p. m. is the general time when Mr. Kharas, Mr. Makasa, and Mr. Daruvalla used to return from their work, and it is absurd to believe for a moment that such an occurrence should have occasioned at such a time.

The learned Judge states that one party or the other was speaking lies as to the occurrence of 26th July 1919, but then he believes that the Plaintiff's party was lying. In this connection, I beg your honour to kindly give most serious consideration whether the learned judge was justified in disbelieving witnesses of the most unimpeachable respectability of the Plaintiff's party. I leave this point to your honour to decide, specially in view of the fact that the Defendant was bent upon ruining the respectability and honour of the Kharas family, which can be easily noticed from the letter which the Defendant wrote to the mother of Mrs. Kharas to the effect that "If we wish to harass them (Kharas) we can do so easily because we live upstairs". This sentence in itself means that Mr. Virji had beforehand framed the plot to ruin Kharas family by bringing them in disgrace of the public, before he uttered the ~~mean~~ words on the 5th August. All the people downstairs/new thoroughly well



The learned judge in summing up the evidence has taken no notice of Mr. Khambatta's evidence, and that of Mr. Naravalla. The Judge could not believe the evidence of the Bank Cashier, because His Honour thought that the Cashier could not have been in the Bank so late as 6 p. m. and that he should be away from the Bank at about 3-30 p. m. To disbelieve evidence of the Cashier on this point is, I regret to say is to mislead justice. The Cashier never stated in his evidence that he goes home at 3-30 p.m. Even the Bank Officers do not leave the Bank in the afternoon before 4-30 than it is impossible to believe for a moment that the Bank Cashier can go home before the Officers. On a slack day when there is no work in the office, the Cashier can go home not before five o'clock and sometimes on busy days he has to sit in the Bank up to say seven o'clock.

Well, if his honour do not believe the Cashier on this point, then what about his Assistant Mr. Mody, who stated in his evidence in the Town Magistrate's Court that on Mail Days we have to work late ~~hours~~ hours, and that the witness Mr. Mody left the Bank on 26th July 1912 after six o'clock. The learned Judge did not make this point clear whether he believed the evidence of Mr. Mody on this point. Well, if the learned Judge did not believe evidence of the Cashier on this point, then did the Judge believe Mr. Mody on that point? The learned judge did not clear that point, not only that but he refrained from expressing any opinion about Mr. Mody, <sup>on</sup> whose evidence the Magistrate framed the judgment, because Mr. Mody was working in the Bank under the Bank Cashier. I am very sorry to compare the Town Magistrate's opinion for an Assitant to the Cashier, and the learned Judge's opinion for the Bank Cashier. I am at a loss to understand what enquiry led the learned Judge to believe that the Bank Cashier goes home at 3-30.p. m. On this point the petitioner prays your honour to make proper investigations, as this is the point which led the learned Judge misbelieve the evidence of the Cashier.

Instead of commenting seriously on the other matters relating to the Bank, it would have been much better if the learned Judge would have devoted some minutes to comment upon the evidence of witnesses Mr. Mody and that of Messman.

Now, I beg to place before your honour the names of several witnesses of the Defendant, and the witnesses of the Plaintiff in the above case with their standing etc.

Witnesses of the Defendant :-

1. Defendant's wife.
2. The Defendant's Kamba Ayah Girl.
3. Miss Mehra Framji who admits being in Mr. Virji's house for fourteen days during July 1912, and about whom Mr. Virji had written to mother of Mrs. Kharas, that Mrs. Kharas had spitted on this witness ( Encl. 1 )
4. Mr. Homi Modi, whose most suspicious cross examination it is strange to say does not appear at all on the proceedings of the case, but fortunately to bluff the petitioner this witness sent a notice to Messman. Copy of this notice and its reply is submitted herewith, which will throw some light as to the stability and credibility of this witness Working in National Bank as an Assistant to the Cashier. ( Encl. 4 )

The above are the Defendant's witnesses about whose respectability the Magistrate has passed the remark in the Judgment that "The accused and all his witnesses stand convicted of not very honourable conduct in spying through the floor into their neighbour's premises." The learned Judge believes the above witnesses. Now turning to the witnesses for the Plaintiff :-

1. Mr. Cowasji Jarshedji Khambatta, General Merchant, Government Road, Nairobi, late Ag. Paymaster, 3rd King's African Rifles, Government Pensioner, Hony. Secretary & Treasurer of the Nairobi Parsi Anjuman.
2. Mr. Dinshaw Ruttonji Mehta, Cashier, National Bank of India Ltd. Nairobi Branch, since 1904.
3. Mr. Kooverji Burjorji Makasa, Clerk in the Treasury for the last 12 years.
4. Mr. Nariman Framji Daruvalla, Cashier & Book-Keeper to Messrs Childs, Parr & Joseph, Nairobi.
5. Phirozesha Behramji Messman, Senior Clerk, National Bank of India Ltd. Nairobi, since 1907.

for two weeks during July 1912 found some irregularity in the morning of the 26th July 1912 in relation to the petitioner's conduct towards Mrs. Kharas, and the same morning Mr. Virji also independant of Miss Mehra Farmji, saw something irregular. Not only that but on the very same evening the Detective Miss Mehra Framji made a further discovery, and informed Mr. Virji of what was going on, and ~~it~~ it was Mr. Virji who then shewed the alleged occurrence to his wife Mrs. Virji. What a confession by a virgin girl that although Mrs. Virji was in the house she had the bravery to report the matter to Mr. Virji first. What a bashful virgin. The Town Magistrate Court's proceedings is enclosed ( Encl. 2 )

Civil Case No. 42 of 1912. In the District Registry of the High Court at Nairobi, Mrs. Kharas Vs. Virji.

---

The above case came up for hearing before His Honour Judge Barth, who was for some time a Crown Advocate at Mombasa and under whom Mr. Virji as his clerk had worked for about two years, and at present Mr. Virji is the Head Clerk of Mr. Barth, who is now holding the position of the Honourable The Attorney General. I beg to enclose herewith copy of proceedings in above Case (Encl:3)

The learned judge dismissed the action with cost and confirmed that what the Defendant had spoken was true. In summing up the case, the learned Judge says that "the Magistrate in his judgment found that the words complained of were true" but at the same time the learned Judge forgets to make the matter clear that no ALIBI was proved in the Town Magistrate's Court, nor any of the Plaintiff's witnesses were asked in the Town Magistrate's Court as to the alleged occurrence of the 26th July 1912.

In summing up the case the learned Judge says that the Defendant has attempted to prove the truth of his statement by giving evidence himself, and several other witnesses, and thus puts his summing up regarding to the Defendant at an end, and then starts with commenting on the witnesses of the Plaintiff, one by one with the exception of the evidence of the Petitioner, who was in the witness box for fully one hour, but the petitioner is surprised to see that the learned Judge did not find any thing to comment upon the evidence of Messman.

Mr. Virji having refused to withdraw the mean words uttered by him, the petitioner was obliged to take criminal proceedings against him. The Magistrate found the accused guilty and convicted him <sup>to</sup> seven days simple imprisonment or fine of Rs 15, but he said that the witness of the accused viz. Mr. Mody ~~is~~ who is still a friend of Messman, and who occupies a position of some trust in the Bank, in view of Mr. Mody's evidence he must come to the conclusion that what the accused spoke was true. The Magistrate however did not think it necessary to consider whether Mr. Mody was an enemy of Kharas family, and whether he was a witness against Mr. Kharas in a previous case. This fact seems to be avoided to mention in the judgment, because the Magistrate was unable to disbelieve same.

The Magistrate said that upto 1st July Messman was in friendly terms with Mody, but Messman has openly said in the Court that he was friendly with Mr. Virji upto 15th July 1912. It is painful to see that the Magistrate even believed the story of Mr. Mody, that although he was working in the Bank with Messman still he had no opportunity to speak to Messman about what he had seen, although he had the very next morning of the occurrence i. e. on the 6th August had opportunity to say to Messman not to take any action regarding the words uttered by Mr. Virji the previous evening, and that he would try to get an apology from the accused, and he confirmed this statement in the presence of the other persons. Well, if Mr. Mody had actually seen the alleged occurrence, there was no reason for him to play the duplicity, and to deceive Messman that he would settle the matter. The production of the Bank Staff photo would have made contrary impression on the Court, that although Mr. Mody pretends to be called Messman's friend, and yet he had no opportunity to warn him for so long a time, was nothing but an attempt to deceive the Court. It is regrettable that evidence of such a witness as Mr. Mody had made a false impression on the Town Magistrate's Court.

The strange thing in the proceedings is that although Mr. Virji used to live upstairs for two years, and yet up to 26th July 1912 he did not suspect anything wrong downstairs, but an outside girl viz. Miss Mehra Framji who was living with Virji's

Your humble petitioner submits his grievances in as brief a form as possible on the points of grievances for which he claims justice at your honour's hands.

Since July 1910 the Petitioner was living with Mr. & Mrs. Kharas (the Plaintiff in Civil Case No. 42 of 1912 Encl. 3) in a house, the upper storey of which was occupied by the Defendant of the above cases.

In the beginning of July 1912 there arose a dispute between these two neighbours regarding blocking of a kitchen chimney. The petitioner did not put his nose in this trifling affair. On the afternoon of the 15th July Mr. Virji came down and requested me the petitioner to come upstairs as he had to say something. Mr. Virji asked me to intervene in this affair. I said I could not do so, as it was owing to his arbitrary action in blocking up the kitchen chimney which I had seen open for two years, and therefore I could not say anything to Mr. Kharas. Mr. Virji said as I was living with the Kharas family I was partial to them, to which I resented.

When Mr. Virji saw that he had failed in his object, he wrote a most wicked letter to the mother of Mrs. Kharas at Bombay ( Encl. 3 ) in which he put certain allegations of a most cowardly nature proving himself of what stuff he belonged to, against the petitioner, and Mrs. Kharas. This letter was written by Mr. Virji only fifteen days after my interview with him.

Seizing an opportunity on the 5th August 1912 when in the afternoon Mr. & Mrs. Kharas, Mr. Makasa an old gentleman, and myself were in the house downstairs, Mrs. Adarji Mehta, the wife of the Protectorate Treasury Cashier, under whom Mr. Kharas was working as Assist. Cashier, happened to come to see the Virji family. A little after Mr. Virji in the presence of Mrs. Mehta shouted from his room upstairs in the full hearing of the people downstairs the words complained of, to disgrace the Kharas family and the petitioner in the eyes of our community and our friends and the public in general.

Not resorting to take law in hands, the petitioner sent a letter to Mr. Virji asking him to apologise for his conduct and to withdraw the cowardly words used by him.

Nairobi, 21st March 1914.

Original  
Incl. 10/1/14  
303

To,

His Majesty's Principal Secretary  
of States for the Colonies,  
London.

Sir,

In the Town Magistrate's Court at Nairobi  
Criminal Case No. 1232 of 1912.  
P. B. Messman, Clerk National Bank of India Ltd. Plaintiff  
versus  
J. P. Virji, Head Clerk, Attorney General's Office,  
Nairobi, ~~Defendant~~ Accused.  
A N D  
High Court Civil Case No. 33 of 1913  
P. B. Messman versus J. P. Virji.

Humble petition of P. B. Messman, the Plaintiff in above  
cases.

The petitioner begs your honour's permission to submit  
this petition with a hope that the grievances of the most grave  
nature will receive your consideration, and after due investigation  
I trust to get justice at your honour's hands which unfortunately  
so far I have failed to receive in the Protectorate Law Courts.

Your humble petitioner is indeed very sorry to give your  
honour so much trouble, and is fully aware of the fact that your  
honour's time is too precious to attend to such a trivial matter,  
but considering the fact that the honour of a most respectable  
family, and also that of the Petitioner is at stake, the petitioner  
sincerely hopes to receive justice from your honour's hand by  
giving an opportunity to the Petitioner by your honour ordering  
thorough investigation into the whole affair, and on finding  
the petitioner's grievances just, to order the case to be retried  
in the Protectorate Law Courts. For which act of benevolence  
those who have suffered injustice, will ever remain under your  
honour's deep gratitude, and will pray for the Fair British Rule  
till the end of their life.

The petitioner was compelled to take this extraordinary  
course of approaching your honour owing to His Excellency the  
Governor having declined to investigate the matter or to order  
a new trial to prove my innocence in the Law Courts.

EAST AFRICA PROTECTORATEGOVERNMENT HOUSE,  
NAIROBI,  
BRITISH EAST AFRICA.CONFIDENTIAL No. 61

25th March 1914.

Sir,

In accordance with paragraph 215 of the Colonial Office Regulations I have the honour to transmit in duplicate copies of a petition addressed to you by one P.B. Messman a disappointed litigant in the Courts of the Protectorate.

2. On January 10th this individual addressed to me a petition in which he stated his grievances at considerable length. The petition was however couched in such unseemly language and contained such outrageous attacks on the probity of the local Judiciary that I caused the attached reply to be made to the petition.

To Mr P.B. Messman  
17.1.14

3. He then addressed a further petition to me to which I caused a reply to be sent on March 6th. Copies of this correspondence are also attached.

From Mr Messman  
& encl: 2.2.14

To Mr Messman  
6.3.14

4. I have no comments to make on the petition now addressed to you.

I have the honour to be,  
Sir,  
Your humble, obedient servant,

*Alauay Bejied*

GOVERNOR.

THE RIGHT HONOURABLE

LEWIS HARCOURT, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON. S.W.

decided that as no proof of special damage  
was adduced the work was not actionable  
Judgment for Verdi with costs.

Mr. Khan appealed unsuccesfully

I think we should? aches not tell Sir  
Edmond Freeman that the Lord has  
received his Petition but sees no  
reason for questioning the judgments  
of the Dist. Courts

1722 20 4/14

The only point in wh. petitioner seems  
at all likely to have a reasonable  
grievance is with regard to the  
dismissal of his own action  
against King. But he admits  
that he had a right of appeal  
of which he has not availed  
himself, & I don't think we  
need take this up.

[See p. 4  
of petition]

? reply that ss cannot  
interfere with decisions  
of Courts

CB 24/4/14

as proposed by Mr. Thompson?

B. J. R.

24/12/14

1000 (for 25.4.14)