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**Political No. 66 of 1874, Forwarding for Consideration Copies of
Correspondence Relating to Certain Questions which have Arisen Regarding
the Jurisdiction of the Political Agent at Zanzibar in Dealing with Breaches of
the Slave Laws**

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About this record

This item consists of copies of a Political Despatch from the Government of India Foreign Department to the Secretary of State for India, dated 2 April 1874 and received via Brindisi on 27 April 1874, forwarding, for consideration, copies of correspondence relating to certain questions which have arisen regarding the jurisdiction of the Political Agent at Zanzibar in dealing with breaches of the slave laws.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[333r] (1/56)

333

No. 66 of 1874.

GOVERNMENT OF INDIA,
FOREIGN DEPARTMENT,
POLITICAL.

To
THE MOST HON'BLE
THE MARQUIS OF SALISBURY,
Her Majesty's Secretary of State for India.

FORT WILLIAM, *the 2nd April 1874.*

MY LORD MARQUIS,

WE have the honor to forward, for the consideration of Her Majesty's Government, a copy of the correspondence noted in the enclosed Abstract of Contents, relative to certain questions which have arisen regarding the jurisdiction of the Political Agent and Consul-General at Zanzibar in dealing with breaches of the slave laws.

2. The main features of the case and our orders thereon will be found fully set forth in the letter to the Bombay Government, No. 771P.,* dated 1st instant. We have endeavoured to improve the present condition of things by delegating power and jurisdiction to the Political Agent and to the High Court of Bombay. We fear, however, that these measures will not be really effective, and if offences against the slave laws are to be efficiently dealt with, we would urge that no time be lost in giving effect to those measures of Imperial legislation which we suggested in our despatch No. 58, dated 16th June 1873.

* No. 11 of Abstract.

We have the honor to be,

MY LORD MARQUIS,

Your Lordship's most obedient, humble Servants,

(Signed) NORTHBROOK.
" NAPIER OF MAGDALA.
" *R. Temple*
" B. H. ELLIS.
" H. W. NORMAN.
" A. HOBHOUSE.
" E. C. BAYLEY.

Exd.—J. D. G.

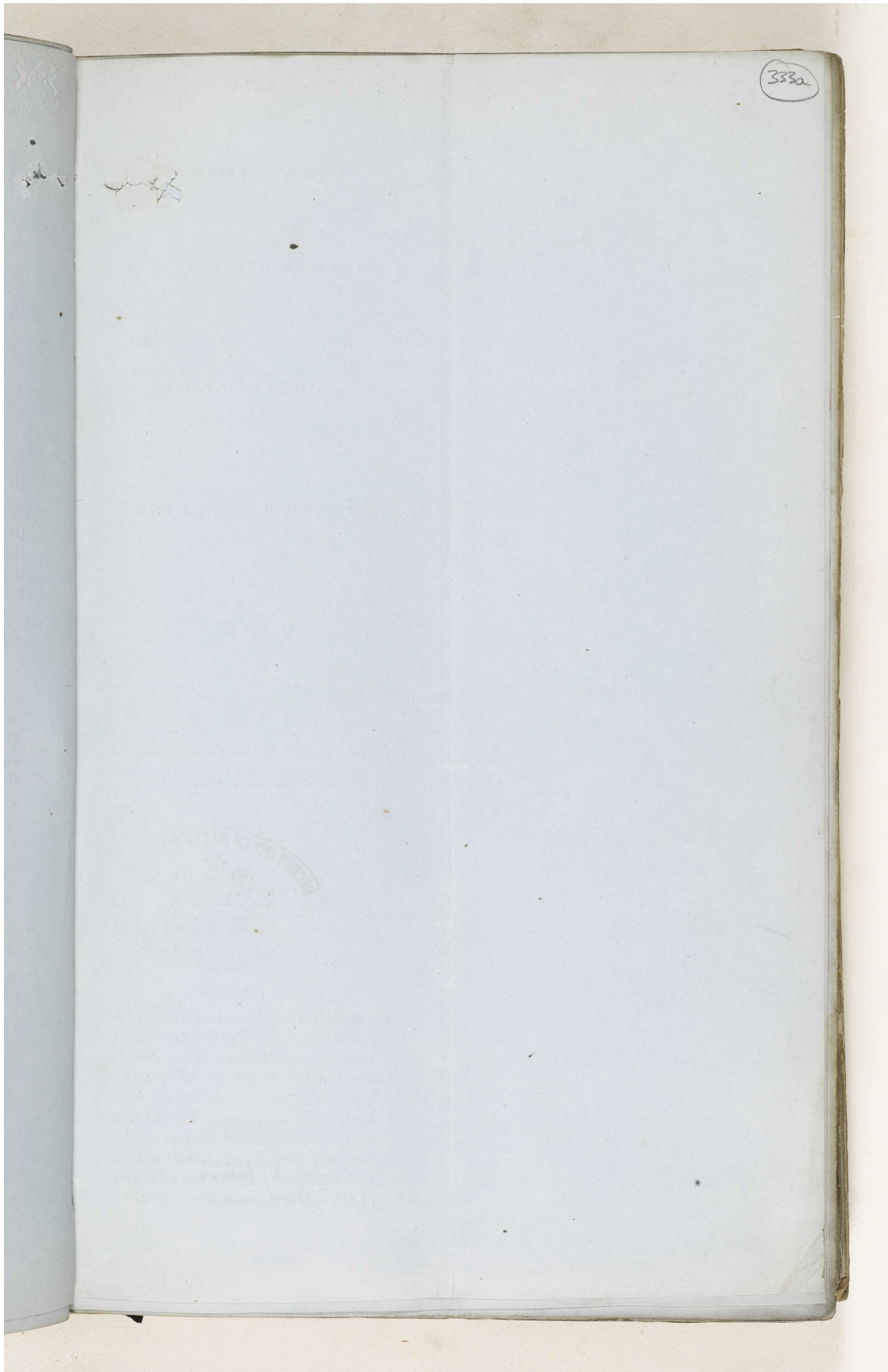
Majesty's
No. 65,

DEPARTMENT

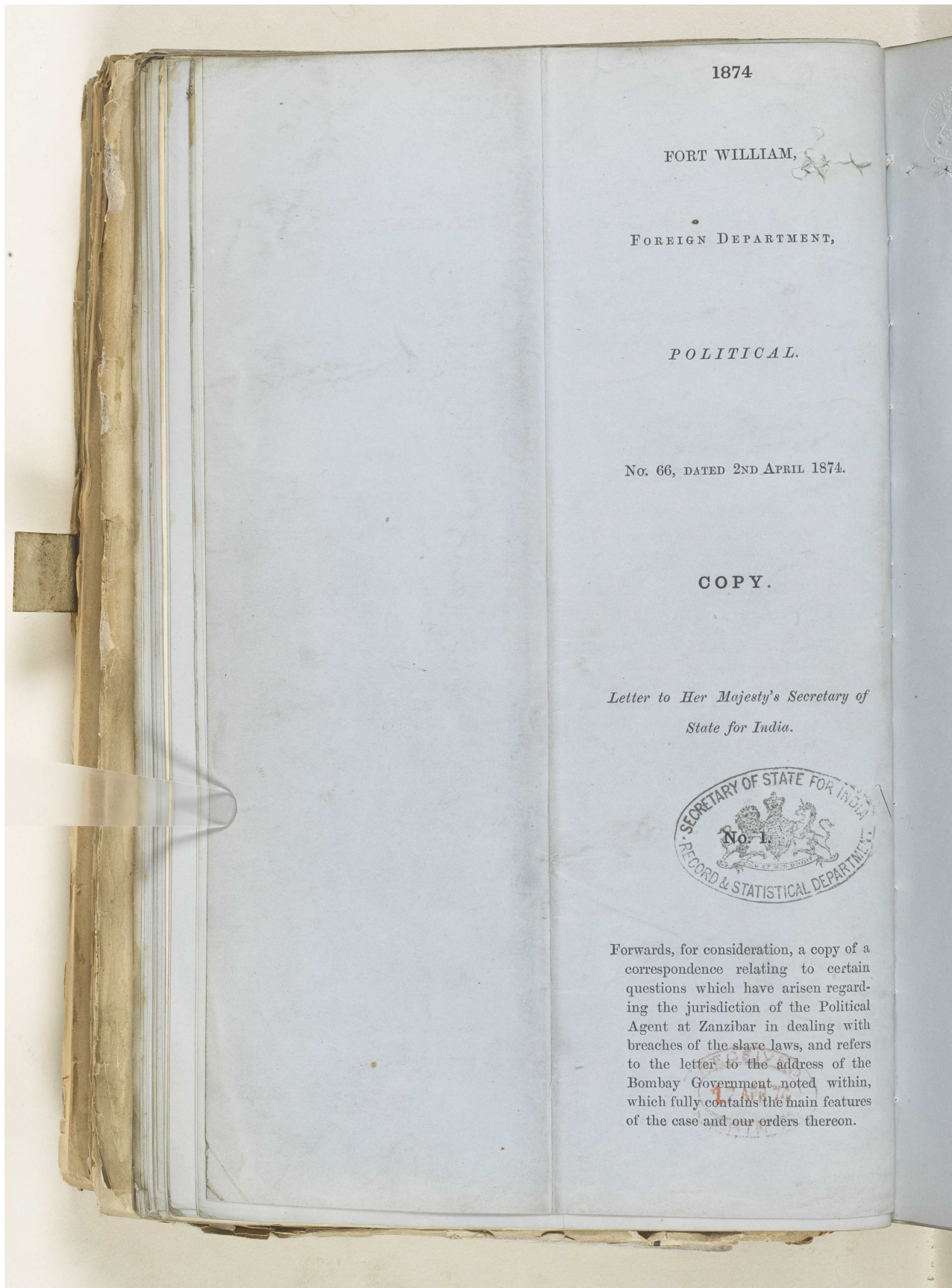
**Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[333v] (2/56)**



Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[333ar] (3/56)



Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[333av] (4/56)



Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[334r] (5/56)

334

*Abstract of the Contents of a Despatch to Her Majesty's Secretary of State
for India, No. 66, dated 2nd April 1874.*

No. 1.—To Her Majesty's Secretary of State for India, No. 66, dated 2nd April 1874. Forwards copies of the undermentioned papers:—

No. 2. Abstract of Contents.

No. 3.—From the Political Agent at Zanzibar. Reports committal of one Kanjee Lalljee to the High Court, Bombay, for trial on a charge of slave dealing. Notices the importance of providing a steamer for the use of the Political Agent.

17th September 1873, No. 63.

No. 4.—From the Political Agent at Zanzibar. With reference to the above, reports certain cases of slave holding in order to show the difference in the various classes of cases. Remarks that no accusations have as yet been brought against registered Indians under British protection, and that the cases already brought to notice are those of domestic slavery.

19th September 1873, No. 65.

No. 5.—From the Political Agent at Zanzibar. In continuation of the above, submits copy of papers relative to the trial of Hadji Omar on charges of slave dealing, &c., and communicates observations on the subject.

4th October 1873, No. 70.

No. 6.—From the Secretary to the Government of Bombay. Forwards, with remarks, copy of papers connected with the case of Kanjee Lalljee.

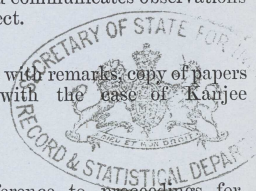
8th November 1873, No. 6872.

No. 7.—From the Secretary to the Government of Bombay. With reference to proceedings forwarded with preceding letter, transmits, with remarks, copy of a letter from the Acting Public Prosecutor reporting that the case of Regina versus Kanjee Lalljee was heard on the 22nd November last, and that the prisoner was discharged.

8th December 1873, No. 7339.

No. 8.—From the Secretary to the Government of Bombay. With reference to Dr. Kirk's No. 70, dated 4th October last, states that considering the action of the High Court of Bombay in the case of Kanjee Lalljee, it seems equitable that the punishment awarded in the case of Hadji Omar should be remitted.

8th December 1873, No. 7342.



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Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[334v] (6/56)

(2)

No. 9.—From the Political Agent
at Zanzibar.

13th January 1874, No. 8.

Acknowledges receipt through the
Bombay Government of a copy of Mr.
Justice Gibb's remarks on the case of
Kanjee Lalljee, and comments on the
same.

No. 10.—Notification.

1st April 1874, No. 770P.

Delegating to the Political Agent at
Zanzibar for the time being the powers
of a Deputy Commissioner under Section
36 of the Criminal Procedure Code.

No. 11.—To the Secretary to the
Government of Bombay.

1st April 1874, No. 771P.

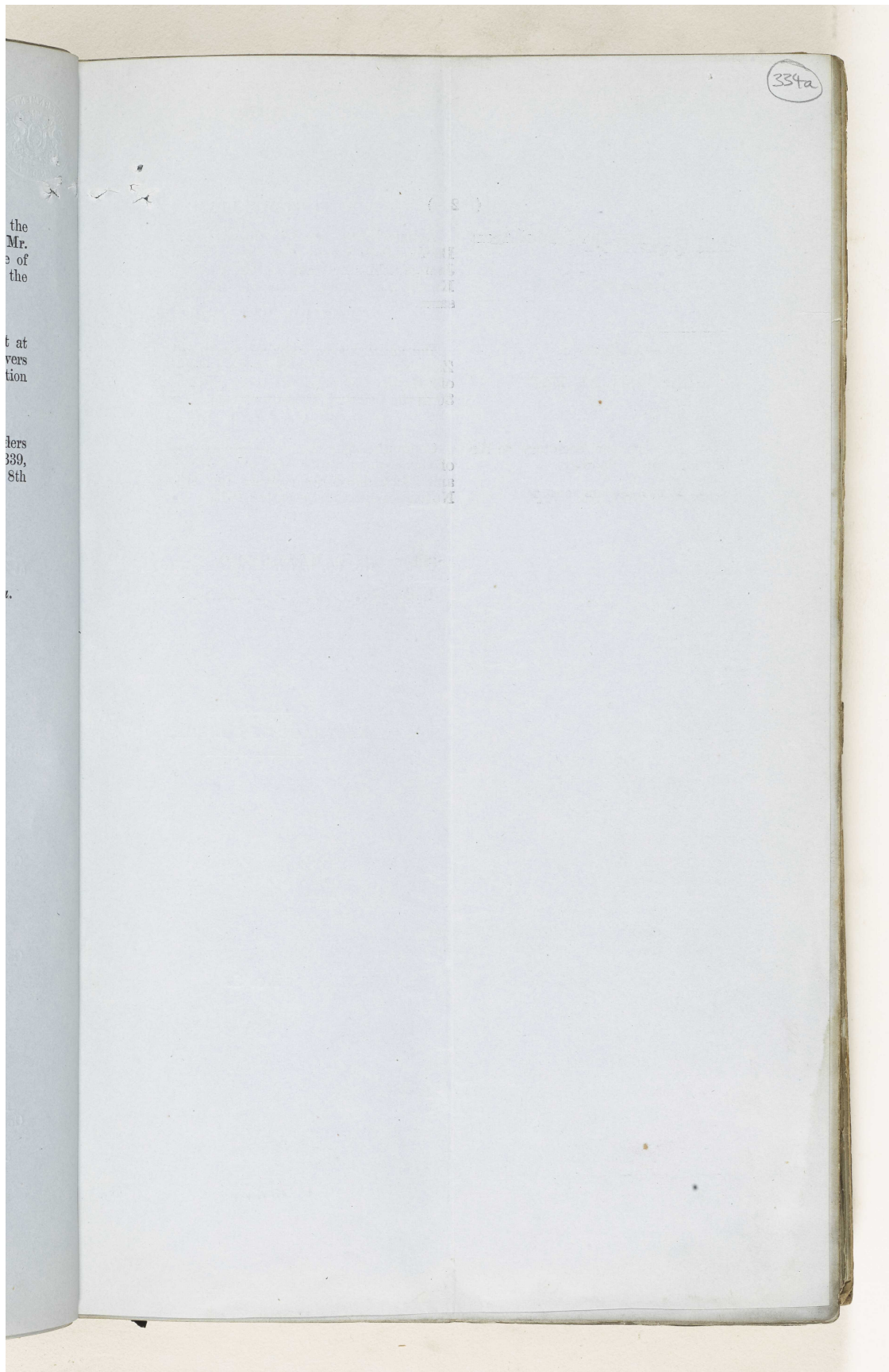
Communicating the views and orders
of Government on his Nos. 6872, 7339,
and 7342, dated respectively the 8th
November and 8th December 1873.

(Sd.) P. D. HENDERSON,

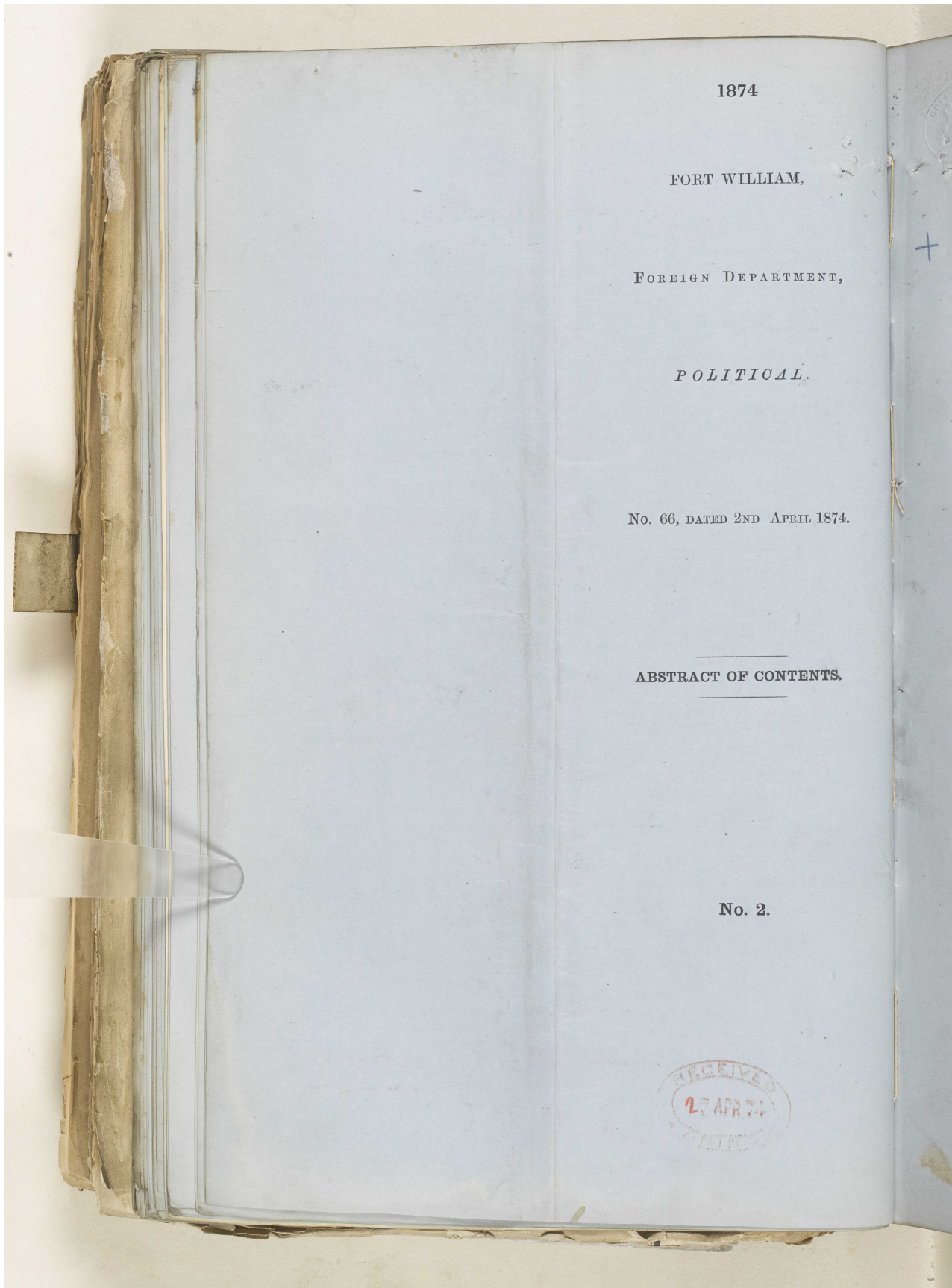
Under-Secy. to the Govt. of India.

Exd.—T. Y.

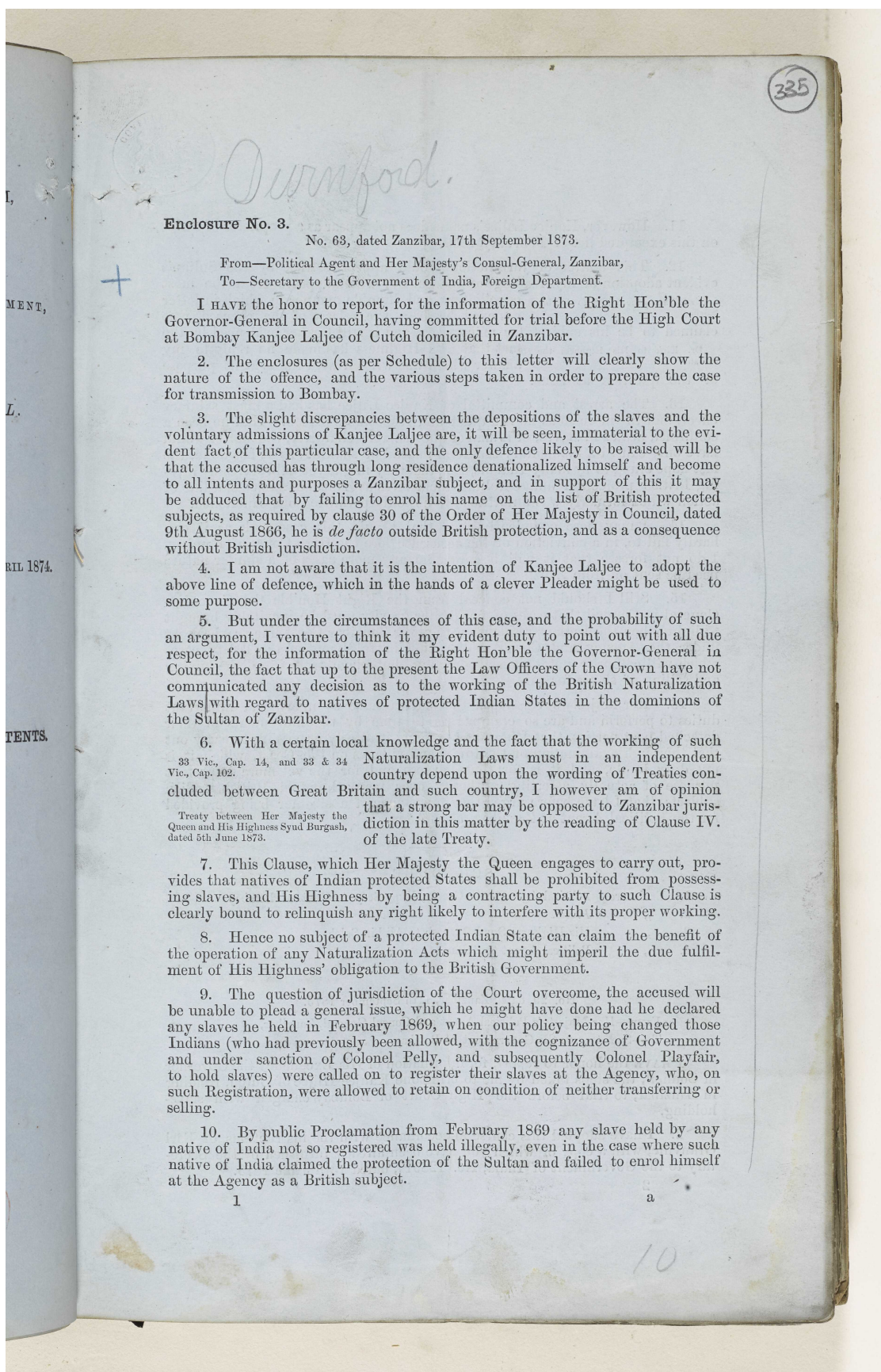
Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[334ar] (7/56)



Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[334av] (8/56)



Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[335r] (9/56)



Enclosure No. 3.

No. 63, dated Zanzibar, 17th September 1873.

From—Political Agent and Her Majesty's Consul-General, Zanzibar,
To—Secretary to the Government of India, Foreign Department.

I HAVE the honor to report, for the information of the Right Hon'ble the Governor-General in Council, having committed for trial before the High Court at Bombay Kanjee Laljee of Cutch domiciled in Zanzibar.

2. The enclosures (as per Schedule) to this letter will clearly show the nature of the offence, and the various steps taken in order to prepare the case for transmission to Bombay.

3. The slight discrepancies between the depositions of the slaves and the voluntary admissions of Kanjee Laljee are, it will be seen, immaterial to the evident fact of this particular case, and the only defence likely to be raised will be that the accused has through long residence denationalized himself and become to all intents and purposes a Zanzibar subject, and in support of this it may be adduced that by failing to enrol his name on the list of British protected subjects, as required by clause 30 of the Order of Her Majesty in Council, dated 9th August 1866, he is *de facto* outside British protection, and as a consequence without British jurisdiction.

4. I am not aware that it is the intention of Kanjee Laljee to adopt the above line of defence, which in the hands of a clever Pleader might be used to some purpose.

5. But under the circumstances of this case, and the probability of such an argument, I venture to think it my evident duty to point out with all due respect, for the information of the Right Hon'ble the Governor-General in Council, the fact that up to the present the Law Officers of the Crown have not communicated any decision as to the working of the British Naturalization Laws with regard to natives of protected Indian States in the dominions of the Sultan of Zanzibar.

6. With a certain local knowledge and the fact that the working of such
33 Vic., Cap. 14, and 33 & 34
Vic., Cap. 102. Naturalization Laws must in an independent
country depend upon the wording of Treaties con-
cluded between Great Britain and such country, I however am of opinion
that a strong bar may be opposed to Zanzibar juris-
diction in this matter by the reading of Clause IV.
of the late Treaty.

Treaty between Her Majesty the
Queen and His Highness Syud Burgash,
dated 5th June 1873.

7. This Clause, which Her Majesty the Queen engages to carry out, provides that natives of Indian protected States shall be prohibited from possessing slaves, and His Highness by being a contracting party to such Clause is clearly bound to relinquish any right likely to interfere with its proper working.

8. Hence no subject of a protected Indian State can claim the benefit of the operation of any Naturalization Acts which might imperil the due fulfilment of His Highness' obligation to the British Government.

9. The question of jurisdiction of the Court overcome, the accused will be unable to plead a general issue, which he might have done had he declared any slaves he held in February 1869, when our policy being changed those Indians (who had previously been allowed, with the cognizance of Government and under sanction of Colonel Pelly, and subsequently Colonel Playfair, to hold slaves) were called on to register their slaves at the Agency, who, on such Registration, were allowed to retain on condition of neither transferring or selling.

10. By public Proclamation from February 1869 any slave held by any native of India not so registered was held illegally, even in the case where such native of India claimed the protection of the Sultan and failed to enrol himself at the Agency as a British subject.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[335v] (10/56)

11. However, Kanjee Laljee's name does not appear as a proprietor of slaves on this exempted list of February 1869.

12. This matter of jurisdiction would appear settled by the Sultan's evident adoption of my reading of Clause IV, which appears from the most conciliatory and humble manner in which in letter annexed he begs the release of the accused who claimed to be his subject for many years, and is still further evidenced by the fact that His Highness has made no reply to my answer which was written with the evident purpose

Dr. Kirk to His Highness the Sultan.
of the question at issue.

13. The arrest and committal of Kanjee Laljee has had a most salutary effect, and the more so as he is a quiet and respectable person. Had he been a confirmed dealer in slaves, or a man of questionable character, the matter would have only caused a momentary sensation instead of shaking, as it has done, the last hope clung to by many Indians, *viz.*, that they might yet hold slaves by leaving British protection and enrolling themselves as Zanzibar subjects, a line of action which formerly was unfortunately not only permitted but sanctioned.

14. I may here confidently state that should this case end, as it can hardly fail to, in a conviction of the accused before the High Court of Bombay, I do not foresee that it will be probable any more cases of a similar nature need be sent on from Zanzibar.

15. Still I should not conceal from the Right Hon'ble the Governor-General in Council that cases of far greater gravity must be inevitably brought to light when the Indians resident on the long Zanzibar Coast line are brought under the Agency and Consular discipline in fulfilment of the Treaty, cases which will comprise not only slave-holding, but slave trafficking, the buying and selling of slaves for gain.

16. Her Majesty's vessels on the station have so many and important duties to perform and are so cramped as to time by the movements of their detached boat parties, that I have as yet found it utterly impossible to carry out that thorough examination of the towns and villages on the Coast, which it is my duty to do, and it is for that purpose and for the yet more important purpose of actually asserting authority over many hundred British Indian subjects, that I have before urged the importance of a steamer being provided for the Political Agent at Zanzibar, as at Aden.

SCHEDULE.

1. Enclosure. Political Agent to C. GONNE, Esq., Secy. to Govt. of Bombay.
2. " *Precis.*
3. " His Highness Syud Burgash to Ali bin Saleh.
4. " Political Agent to Sultan.

No. 29, dated Zanzibar, 11th September 1873.

From—Her Majesty's Political Agent and Consul-General, Zanzibar,
To—Secretary to the Government of Bombay.

I HAVE the honor to report, for information of His Excellency the Governor in Council, the steps taken by me to bring one Kanjee Laljee of Cutch, residing in Zanzibar, to trial before the High Court of Bombay charged with slave-holding.

2. I have adopted this course in accordance with the instructions of Earl Granville, with a copy of which you have been already furnished by the Secretary to the Government of India, No. 1289P., dated 13th June 1873.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[336r] (11/56)

336

3. I herewith transmit under flying seal, for information of Government and to be forwarded without delay to the various departments to which they are respectively addressed, all the documents having reference to this case, which is the first of a criminal nature that has been transferred from Zanzibar to the jurisdiction of the High Court.

4. On the conclusion of this case in the High Court I would urge the expediency, in the event of a sentence of conviction being obtained, that the fullest publicity may be given thereto in the local, especially the Native newspapers, which are regularly received by the Native community in Zanzibar, and I would further beg to be furnished with any observations regarding the mode in which this present case has been forwarded for trial to enable me in future to remedy any defects of procedure and any technical flaws that might in a more difficult case defeat the ends of justice.

5. I particularly urge the necessity of being furnished with clear instructions in what way local evidence here taken should be transmitted so as to be admissible in the High Court, where the witness himself cannot be produced. This I do in consequence of it having been found necessary in prosecuting indictments for offences committed under 5 George IV., Cap. 113, to pass the Acts 6 and 7 Vic., Cap. 98.

SCHEDULE.

Queen vs. Kanjee Laljee.

Transmitted under flying seal to Chief Secretary to Government, Bombay, Political Dept.

I.

To be given to the Registrar to High Court of Bombay or other competent officer in the Original Criminal Jurisdiction of that Court:—

- A. Affidavit of accuser.
- B. Warrant of arrest of accused.
- C. Certificate of execution of warrant.
- D. Minute of Court on receipt of prisoner.
- E. Affidavit of officer executing warrant.
- F. Deposition of Zabuni.
- G. „ Ouledi.
- H. „ Majoni.
- I. „ Zafarani.
- J. „ Amao.
- K. Voluntary statement of accused.
- L. The charge.
- M. Certificate that accused is not in exempted list.
- N. Copy of warrant of detention on boardship.

II.

- A. A. To Government Pleader.

III.

- A. A. A. Warrant to Chief Commissioner of Police to place accused in Bombay Jail.

Note.—For Précis of above documents and case see Précis annexed.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[336v] (12/56)

Précis of Proceedings in Her Britannic Majesty's Agency and Consular Court, and detailed Memorandum of documents forwarded under flying seal to Secretary to Government of Bombay concerning the case of the Queen *versus* Kanjee Laljee sent forward for trial before the High Court of Bombay.

A.

Affidavit of Accuser.

On the 8th September 1873 Kambo, a Negro, affirmed before Dr. Kirk that he was held as a slave by one Kanjee, an Indian, of the Khoja sect, residing at Bambi, Island of Zanzibar; that he took refuge at the Consulate in consequence of ill usage. Hitherto he had been forcibly prevented from complaining, now he claimed his release and protection. Kanjee held five other slaves.

* * * * *

B.

Warrant of arrest of accused.

In consequence of above evidence Dr. Kirk issued on 8th September a warrant to Songoro (a peon of the Court) to arrest the said Kanjee Laljee (second name of accused is found to be Laljee) "on a charge of having illegally purchased and held slaves."

* * * * *

C.

Certificate of execution of Warrant.

The warrant was executed on 9th September.

* * * * *

D.

Minute of Court on receipt of Prisoner.

Behaving with contempt before the Court. Kanjee Laljee was on the same day committed to prison to be produced on the 10th instant.

* * * * *

E.

Affidavit of Officer executing Warrant.

Songoro (before mentioned) gave evidence before the Court on the 10th instant that he on the 8th proceeded to the plantation of Bambi in the Island of Zanzibar guided by Kambo. Kanjee had left for town. Kanjee's house was built of stone, and he had some property. A woman was there, who, as wife of the accused, endeavoured to stop five slaves found on the premises from of their own free will accompanying him (Songoro) on his return, although the neighbours asserted she had only married Kanjee within the last few days, and that these slaves had been held by Kanjee for some time. Songoro, on reaching town, arrested Kanjee and now produced him, together with the accused Kando and the five other slaves.

* * * * *

F.

Deposition of Zabuni.

Zabuni, native of Kamanga, affirms—"I am a slave of Kanjee. I have been his slave for three years. He bid himself for one in the Zanzibar Slave Market. I had just then been brought as a raw slave from Kilwa and appeared for the first time for sale in the Slave Market. I was sent at once to the plantation at Bambi, where I had to work the land and carry loads to Zanzibar. Kanjee had six slaves. Halima (his late wife), a half caste Indian, had two of her own apart from Kanjee's; they are at Mayaba."

* * * * *

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[337r] (13/56)

337

Heeb.

G.

Deposition of Ouledi.

Ouledi, from Nyassa, states—"He was bought by Kanjee and his brother in the slave market at the same time as Zabuni."

* * * * *

H.

Deposition of Majoni.

Majoni, from Nyassa, states—"Came with several others to the Shamba (plantation) of Kanjee about three years ago; I was bought in the slave market."

* * * * *

I.

Deposition of Zafarani.

Zafarani, woman, from Nyassa, states—"Kanjee himself bid for her in the market two years ago."

* * * * *

J.

Deposition of Amao.

Amao, woman, from M'Gindo, "was bought in the slave market six years ago; is slave of Kanjee; when the others came I was in the town; now I work on the plantation."

* * * * *

K.

Voluntary statement of accused.

Made after being duly warned that he is not bound to reply to any question, and that what he states may be used against him. "My father is dead; my mother lives in town; I in the country; I am 30 years of age; my former wife, Halima, died five months ago. Half of the estate belonged to her for her life; at her death I inherited the whole. I bought two of these six slaves in the market at Zanzibar, four by private sale through agency, but with my money. I confess I have committed a mistake in purchasing and holding slaves against the order of the English Government. I did not mean to sell any of them. I kept them as my children. I arrived in Zanzibar when I was two years of age. I accompanied my father. I was born at Kaira in Cutch."

* * * * *

L.

The charge.

Consists of seven counts after preamble—

1st.—That he (Kanjee Laljee) on or about the 8th and 9th days of September 1873 at Zanzibar did detain against his will as a slave a Negro, named Kambo, whom he had himself previously purchased, and that he has thereby committed an offence punishable under Section 370 of the Indian Penal Code and within the cognizance of the High Court of Bombay.

2nd.—A similar charge with regard to Zabuni.

3rd.—" " " Ouledi.

4th.—" " " Majoni.

5th.—" " " Zafarani.

6th.—" " " Amao.

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b

12

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[337v] (14/56)

7th.—That having in each of the above individual cases removed, bought, trafficked, and dealt in slaves, he has thereby committed the offence of habitually removing, buying, trafficking, and dealing in slaves punishable under Section 371 of the Indian Penal Code and within the cognizance of the High Court of Bombay.

* * * * *

M.

Certificate that accused is not in the exempted List.

Certifies that accused is not on the list of February 1869, under which, by Bombay Government, Indians were permitted to register and hold slaves then in their possession on condition of their not being re-sold.

* * * * *

N.

Copy of Warrant.

Warrant of detention of accused during voyage from Zanzibar to Bombay.

* * * * *

A. A.

Letter to Government Pleader at Bombay.

Informs Government Pleader of committal for trial of accused.

* * * * *

A. A. A.

Warrant to Chief Commissioner of Police to place accused in Bombay Jail.

Warrant to Chief Commissioner of Police to confine accused in Bombay Gaol.

Note.—Where not otherwise specified all the documents are dated 10th September 1873, and they are countersigned by me as Justice of the Peace under the High Court of Bombay.

(Sd.) JOHN KIRK,

H. M.'s Polt. Agent & Consul-Genl., Zanzibar.

Enclosure 3.

Translation of a letter from HIS HIGHNESS SYUD BURGASH to ALI BIN SALEH, Zanzibar, 12th September 1873.

AND then please inform the Political Agent that Burgash would not trouble him concerning the Indian, but his mother and all the Hindis come crying to me and say that he bought the slaves now many years ago. Ask the Agent please to be good enough to release him, for he is sorry for what he has done and let him free the slaves. Let him do this if possible, but let it be just as he pleases, for I would not solicit him on this matter.

Enclosure 4.

Translation of a letter from Political Agent and Consul-General, Zanzibar, to HIS HIGHNESS SYUD BURGASH, dated 11th September 1873.

ALI BIN SALEH has conveyed to me that it would please Your Highness were I to release the Indian Kanjee Laljee (committed for trial before the High Court of Bombay for illegally holding slaves) in consideration that he is penitent and that it is now some time since he purchased the slaves.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[338r] (15/56)

338

Your Highness will be good enough to bear in mind that, whilst by the terms of the late Treaty concluded for the suppression of the slave trade, it is obligatory on Your Highness to use your utmost endeavours to prevent Arabs and all others from carrying slaves from place to place, so is it equally the duty of Her Majesty the Queen to see that Natives of India residing here do not hold slaves, and I have received the most stringent orders to see that this is carried into effect, in order that no one may say that we look differently on the Indians under our rule and on the Arabs over whom we claim no authority.

Your Highness will know, in their own country Indians are not permitted to hold slaves, and if they buy slaves here it is simply to make money out of them, and this is quite different from the Arabs who have always possessed domestic slaves in their families.

But my orders from the Government are so stringent that to accede to Your Highness' request in this case is utterly impossible.

X stop

Enclosure No. 4.

No. 65, dated Zanzibar, 19th September 1873.

From—Her Majesty's Political Agent and Consul-General, Zanzibar,
To—Secretary to the Government of India, Foreign Department.

WITH reference to the subject of my letter No. 63 of 17th September 1873, and with the view of bringing the difference in the various classes of cases before the Right Hon'ble the Viceroy and Governor-General in Council, I have the honor to report that one Jumma bin Jafer, an Indian, was charged in the Court with illegal slave-holding.

2. On investigation it appeared that the seven Africans on his plantation held certificates of freedom drawn up in an irregular manner. All were, however, anxious to remain with their masters, deposing that they were virtually free, happy, and contented. I therefore furnished each individual with properly attested papers of freedom, which were delivered into their own hands at Her Britannic Majesty's Agency, Jumma bin Jafer giving the usual present of one dollar at the same time to each of them, in keeping with a Zanzibar custom.

3. A third case is now under examination of a more important nature. A charge brought against a Memnon of Sind, comprising a refusal to attend the summons of this Court and a resumption into slavery of slaves freed by the Agency. On this I shall report by the next steamer.

4. I would bring before the notice of the Right Hon'ble the Viceroy and Governor-General in Council the fact that as yet no complaint has been lodged against any Indian registered as under British protection. The cases hitherto brought forward are against Indians who have never claimed our protection and who, until the signing of the late Treaty, occupied an anomalous position.

5. All of the three cases, I should further observe, are cases of domestic slavery.

Enclosure No. 5.

No. 70, dated Zanzibar, 4th October 1873.

From—Her Majesty's Political Agent and Consul-General, Zanzibar,
To—Secretary to the Government of India, Foreign Department.

IN my letter No. 65 of 19th September 1873, I had the honor to refer to the case of a Memnon of Sind then under examination before the Consular Court.

2. I did not feel justified in transferring this case to the High Court of Bombay, as with written statements of evidence alone a conviction could scarcely have been insured, and the expenses and difficulties in forwarding native witnesses would have been considerable.

13

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[338v] (16/56)

3. I therefore tried the case before the Consular Court at Zanzibar, and have the honor to annex, for the information of the Right Hon'ble the Viceroy and Governor-General in Council, copies of the charges, remarks by the Court, and the finding and sentence, which will fully explain the course of procedure followed.

Copy of charges.
Copy of remarks by the Court.
Copy of finding and sentence.

4. I am glad to report that this trial has had a considerable effect upon the Indian population and convinced them that although type cases are sent for trial before the High Court of Bombay, yet the Consular Court is capable of adjudging on slave holding cases and able to enforce a ready obedience to its orders.

5. Following so rapidly on the despatch of Kanjee Laljee to Bombay, the practical result in the island has been a rush on the part of Indians to this office to register all Africans about their households regarding whose status any doubt might arise.

6. I have already registered free papers to thirty-eight individuals since 12th September last, and fresh applicants arrive almost daily. In nearly every case these people are virtually free and on appearing before me elect to remain with their former owners.

7. When Hadji Omar's case is made known at Mombassa and on the coast, I apprehend an almost equal anxiety will prevail on the part of the Indians there to free all slaves still in their possession, and I still await an opportunity of visiting the various ports in order to follow up the steps taken and enforce that authority over the numerous British Indian subjects resident on 1,000 miles of coast, so much needed for the advancement and security of legitimate trade, from the establishment of which alone can a permanent and healthy cure of all slave trade be looked to in the future.

QUEEN *versus* HADJI OMAR.

THE CHARGES.

In the British Consular Court at Zanzibar.

I, JOHN KIRK, ESQUIRE, Her Majesty's Political Agent and Consul-General, Zanzibar, declare that there is hereby made against Hadji Omar the charges:—

1st.—That he, on or about the sixth day of April at Mombassa did detain against his will as a slave a negro named Juma, together with two others, females, and that he has thereby committed an offence punishable under Section 370 of the Indian Penal Code and within the cognizance of this Court and under the 16th Clause of Her Majesty's Order in Council, dated 9th August 1866.

2nd.—That being legally bound to attend in person and without delay before the British Consular Court at Zanzibar, to answer to the above charge, being in person duly summoned at Mombassa by John Kirk, Her Majesty's Consul, so to do, he did in contempt of the lawful authority of Her Majesty's Consul intentionally omit to attend at that place, where he was bound to attend, and he has thereby committed an offence punishable under Section 174 of the Indian Penal Code and within the cognizance of this Court.

3rd.—That he, after the 7th of April 1873, did abduct two females formerly his slaves and did subject them thereafter to slavery, and that he has thereby committed an offence punishable under Section 367 of the Indian Penal Code, and within the cognizance of the Court.

ZANZIBAR, }
The 18th September 1873. }

(Sd.) JOHN KIRK,
H. M.'s Poltl. Agent and Consul-General.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[339r] (17/56)

339

QUEEN *versus* HADJI OMAR.

Remarks by the Court.

HADJI OMAR admits to the first charge by his own voluntary statement, but pleads that he is guilty of no offence and therefore not amenable to British Law for three reasons:—

1st.—As being a subject of Sind before that country became British territory. His father left Sind for Cutch and Hadji Omar was born in Cutch.

2nd.—As being domiciled in the dominions of the Sultan of Zanzibar on the African coast, where he has resided for ten consecutive years and placed himself under the Sultan's jurisdiction.

3rd.—That on first reaching the Zanzibar dominions he found natives of India, who enrolled themselves as under Zanzibar protection permitted by the English Government to hold slaves in the same way as the Arabs.

To the Second Charge he pleads being prevented by sickness from obeying the Consular summons.

To the Third Charge he pleads that he resumed the slaves openly with the assent of the Arab local authorities and the knowledge of the individual in whose charge they had been given by Her Majesty's Consul for transmission to Zanzibar, and that whilst so resuming them he nevertheless held them at the disposal of any legal authority and pending what further orders might arrive.

The principal point of this defence is comprised in the pleadings preferred by Hadji Omar against the first charge. These by raising the question of jurisdiction, at the same time make it necessary for the Court before giving judgment to review the very opposite policies which have at different times under orders from Government within the last fifteen years been adopted by the British Agency at Zanzibar, and which account for the perplexity as to the actual positions of Indians holding slaves.

With regard to his nationality and the jurisdiction of the Court, Hadji Omar pleads that he is a subject of Sind, but admits being born in Cutch, where his father and mother were for the time being. He is now advanced in years, and it is probable his father left Sind before that province became British territory. If regarded as a Cutchee from the accident of his birth-place he would fall under the various orders affecting immigrants to Zanzibar.

Hadji Omar evidently reached Zanzibar after Colonel Rigby's departure, for at the close of that Agent's tenure of office no Indian, whether Cutchee, Sindi, born in Hindostan or Africa, of pure or mixed blood, was permitted to hold slaves, all slaves formerly so held, who had been discovered, were freed by a summary process against which their owners had no appeal.

It is probable then that Hadji Omar settled at Mombassa about the time when, with the sanction of the Bombay Government, Colonel Pelly introduced a registration of all Indians claiming British protection, it being at the same time formally given out that all who failed to register were to be considered as outside our protection and under Arab jurisdiction, and subsequently in Colonel Playfair's time it seems to have been formally acknowledged that being under such jurisdiction, they were like Arabs, free to hold slaves.

Before very long the results of such a system as this last proved so subversive of the national policy with regard to the main spring which regulates all relations with Zanzibar, namely, the suppression of the slave trade that an attempt was made to draw the line between protection and jurisdiction by pronouncing those Indians who remained under Arab protection still to be within British jurisdiction if found transgressing laws as regards slavery.

This attempt was not approved of by the Government of Bombay, which however took steps to attain a similar object ending in the issuing of a proclamation by the Rao of Cutch to his subjects residing in foreign countries. This placed them in all matters under British jurisdiction, but was specially addressed to those resident on

Government of Bombay Resolution, No. 830
of 1868.

Government of Bombay Resolution, No. 1256
of 1868.

Dated 24th April 1869.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[339v] (18/56)

the East Coast of Africa with regard to their liability to the operation, of all English laws affecting the holding of slaves.

It was not without objection on the part of Syud Majeed, the then ruling Sultan, who regarded it as an infringement of his independent right, that this proclamation was issued in Zanzibar, its operation however became considerably modified by a subsequent order of the Government of India, whereby the Agent was instructed "not to express opinion as to purely domestic or household slavery when practised in Zanzibar by Cutchees or others," a former order having already ruled that the number of domestic slaves an Indian might hold was not matter for enquiry.

Government of Bombay Resolution, No. 2487,
dated 4th August 1869.

Government of Bombay Resolution, No. 146
of 1869.

Government of Bombay Resolution, No. 1058
dated 31st March 1869.

The question of nationality
33 Vic., Cap. 14.
33-34 Vic., Cap. 102.
Foreign Office Circular, dated 30th December
1870.

Foreign Office Circular, dated 22nd April 1871.
Letter from Dr. Kirk to Bombay Political
Department, No. 87, dated 28th September 1871.

Letter dated 24th March 1871, from Dr.
Kirk to Foreign Office.

Letter from Dr. Kirk to Bombay Political
Department, No. 90, dated 29th October 1872.

From Bombay to Dr. Kirk Political Depart-
ment, No. 874, dated 10th February 1873.

Sultan's assent frees from the operation of previous Acts, whether of the British Parliament or of India, the involved question of nationality and jurisdiction.

It is nevertheless quite evident that from time to time slave holding Indians resident on the East African Coast, must have held anomalous and varying positions with respect to actual culpability, these cannot be lost sight of in a Court of Justice when called upon to give judgment in cases of the present nature, and the Court in consequence find that Hadji Omar by purchasing the two female slaves, Mamina and Rahema, at a date prior to the publication in Zanzibar of the proclamation of the Rao of Cutch, dated 24th April 1869, committed no offence within the cognizance of a British Court of Justice, but in purchasing Juma and so adding to the number of slaves in his possession, the Court find that he, Hadji Omar, has committed a crime and is amenable to the law.

It further appears to the Court that the reasons assigned by Hadji Omar for not appearing before the Consular Court at Zanzibar previous to his arrest are insufficient.

Although undoubtedly in bad health, it appears he was sufficiently strong to go in person for the purpose of receiving his slaves from Mombassa to the house of the Custom's Agent beyond the town.

Neither can the explanation urged by Hadji Omar in extenuation of the 3rd charge be in any way accepted by the Court. The fact remains that at a date subsequent to the 5th June, from which date all questions as to the right of Indians to hold slaves are swept aside by the treaty, he, Hadji Omar, did resume into slavery and hold as slaves the two women, Mamina and Rahema, who had been placed in the safe custody of a responsible person by Her Majesty's Consul for the purpose of being forwarded to Zanzibar, and in due course freed.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[340r] (19/56)

340

References to marginal quotations of "Remarks by the Court" in case of Queen *versus* Hadji Omar, being enclosure No. 2 in letter No. 70.

Resolution by Government of Bombay, No. 830 of 1868, dated 28th March 1868.

With reference to letter from Political Agent, Zanzibar, stating "that many *bona fide* British subjects, natives of India, in His Highness' service, have slaves, which it is his duty to put a stop to," and calling attention "that the Sultan includes in his pretensions to jurisdiction over the subjects of British protected States of India who may have placed themselves under his protection, all *bona fide* British subjects who may have forfeited British protection or entered his service, and that these, as well as Cutchees under his protection, have, according to His Highness' reasoning, acquired the right to possess slaves in his dominions," says—

"The Political Agent should be informed that British subjects residing in Zanzibar cannot exempt themselves from British law by taking service with the Sultan."

Government of Bombay Resolution, No. 1256 of 1868, forwards copy of despatch from Secretary to Government of India, in which, after stating the position of Cutchees, demands legal consideration, is remarked, "this might well be deferred till the questions of fact have been taken up, and it has been decided whether the Cutchees are engaged in *slave-dealing* or not. If they are merely *slave-holders*, then there would seem to be no sufficient warrant for interfering with them."

Proclamation by the Rao Kutch, 24th April 1869, explained in body of Remarks.

Government of Bombay Resolution No. 2487 of 4th August 1869, forwards for information No. 960 from Secretary to Government of India, which "suggests an intimation being made to the Political Agent that while using all legitimate influence in the discouragement of the slave trade he should avoid, as much as possible, the expression of opinions as to *purely domestic or household slavery* when practised in Zanzibar by Cutchees or others."

Government of Bombay Resolution No. 146 of 1869, forwards No. 1544 of 31st December 1868, from Secretary to Government of India, stating "that it is not necessary to interfere with any existing arrangements by which domestic slaves are now actually possessed by Cutchees at Zanzibar for household purposes, but that the purchase of any slaves in future, whether intended for domestic purposes or for purposes of traffic, should be strictly prohibited."

Government of Bombay Resolution No. 1058 of 31st March 1869. "The Political Agent's proceedings in calling for a list of slaves possessed by each Cutchee, with a view to determining whether they are held as domestic slaves or for the purposes of slave traffic, seem to be in pursuance of the orders of the Government of India, but the order limiting the number of domestic slaves which each Cutchee is permitted to retain goes beyond those orders."

33 Vic., Cap. 14.

33-34 Vic., Cap. 102.

Foreign Office Circular, December 30th, 1870.

" " April 22nd, 1871.

} Refer to Act cited and direct publication of same in Zanzibar.

Dr. Kirk to Foreign Office, dated 24th March 1871, Dr. Kirk to Bombay Political Department, No. 87 of 28th September 1871, and Dr. Kirk to same, No. 90 of 29th October 1872, all touch upon the difficulties which will be created by the publication of the Naturalization Acts and request that instructions may be furnished to the Political Agent.

Bombay Political Department, No. 874, dated 10th February 1873, in answer to Dr. Kirk's letters No. 87, of 28th September 1871, and No. 90 of 29th October 1872, forwards Resolution as follows:—"The Acting Political Agent

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[340v] (20/56)

should be directed to draw the attention of Sir Bartle Frere to the subject of his letters and informed that he will shortly receive instructions from Government.

“ The Government Solicitor should be requested to obtain and submit to Government the opinion of the Hon’ble the Advocate-General as to the applicability of the Naturalization Act to the subjects of the protected State of Cutch now residing in Zanzibar. The main questions for consideration appear to be, whether Parliament could in a matter of this sort legislate for the subjects of a protected State, and whether, if so, such subjects would be included in the term British subjects as used in the Act.

Queen versus Hadji Omar.

FINDING AND SENTENCE.

First charge.—The Court finds that Hadji Omar is *guilty* of the offence specified in the first charge, in so far only as regards the purchase of the slave Juma, and is thereby punishable under Section 370 of the Indian Penal Code: but in so far as relates to the purchase of the two female slaves, the Court find the said Hadji Omar not guilty.

Second charge.—And upon the second charge, the Court find Hadji Omar guilty, in that being legally bound to attend before the British Court in Zanzibar, he intentionally failed so to attend and thereby has committed an offence punishable under Section 174 of the Indian Penal Code.

Third charge.—And upon the third charge, the Court find Hadji Omar guilty, in that he resumed into slavery the two women placed under protection by order of Her Majesty’s Consul, and thereby has committed an offence punishable under Section 370 of the Indian Penal Code.

THE Court orders under the provisions of the above-mentioned Sections of the Indian Penal Code and also under the Act V., George IV., C. 113, and also under the provisions of the order of Her Majesty in Council for the Regulation of Consular jurisdiction in the dominions of the Sultan of Zanzibar, 9th August 1866, that the said Hadji Omar be fined in the sum of two hundred dollars (200\$) to be paid into the Indian Treasury, after deduction of all costs in the cause, and further that he, the said Hadji Omar, be imprisoned for a term of (6 months) of six calendar months at Zanzibar.

(Sd.) JOHN KIRK,

H. M.’s Poltl. Agent and
Consul-Genl., Zanzibar.

ZANZIBAR,
The 4th October 1873. }

Enclosure No. 6.

No. 6872, dated Bombay Castle, 8th November 1873.

From—Secretary to the Government of Bombay,

To—Secretary to the Government of India, Foreign Department.

I AM directed to submit, for the orders of the Government of India, the enclosed copy of a letter from the Political Agent and Consul-General, Zanzibar, No. 29, dated the 11th September last, regarding one Kanjee Laljee, a Cutch subject, resident in Zanzibar, who has been committed for trial before the High Court of Bombay charged with slave-dealing. Copy of an opinion in the case by the Hon’ble the Advocate-General, No. 67, dated the 18th ultimo, and of a letter from this Office No. 6647 of the 30th idem, written in reply, also accompany. Mr. Scoble’s further opinion when received will be forwarded to the Government of India.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[341r] (21/56)

341

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2. I am also directed to forward, for submission to the Government of India, copy of an opinion* by the Hon'ble the Advocate-General and of its connected papers relating to the law in respect to slavery.

* No. 65, dated 18th October 1873.

3. As regards the case of Kanjee Lalljee, I am to state that if it be found inexpedient to bring it before the High Court, it is for consideration whether the accused, with the depositions, should not be made over to the Rao of Cutch for trial.

4. I am to add that the accused has not yet arrived in Bombay, and the papers transmitted by Dr. Kirk do not state when his arrival may be expected.

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No. 4303, dated Bombay Castle, 8th July 1873.

From—Secretary to the Government of Bombay,
To—Government Solicitor, Bombay.

I AM directed to forward to you the annexed extract, paragraph 5, from a letter from the Secretary to the Government of India in the Foreign Department, No. 1289P., dated the 13th ultimo, respecting the participation of British subjects in the East African slave-trade, and to request that you will be so good as to advise Government with regard thereto.

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2. Copy of a Resolution and of a proclamation by His Excellency the Governor-General in Council on the subject is enclosed for your information.

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No. 773, dated Bombay, 22nd July 1873.

From—Acting Solicitor to Government of Bombay,
To—Secretary to the Government of Bombay.

WITH reference to your No. 4303 of 1873, under date the 8th instant, I have the honor to inform you that I am of opinion that the main difficulty to be encountered in prosecutions before the High Court of Bombay for offences against the slave-trade is with regard to the evidence, as for instance, the power given to Her Majesty's Consul at Zanzibar to deport the accused person to Bombay for trial would not, I think, empower such Consul at the same time to forward against their will the witnesses in the case who might or might not be British subjects, and who, unless in the service of the Crown, would not care to come such a distance for such a purpose.

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This difficulty is no new one and arose in England under the Slave Act previous to the 6th and 7th Vic., Cap. 98, the 4th Clause of which latter Act recites as follows:—

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“And whereas the provisions heretofore made for the hearing and determining in England of offences committed against the Acts for the abolition of the slave-trade in places out of this United Kingdom have been found ineffectual by reason of the difficulty of proving in this kingdom matters and things done elsewhere,” and provides for the taking of evidence abroad and the transmission thereof to the Court of Queen's Bench.

The fact of this provision being made shows that under the pre-existing law evidence in a criminal case could *not* be taken under Commission, and that it is only when special provision is made that evidence can in such manner be taken and used in criminal cases.

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To turn to Legislative enactments in India, my attention has been directed to Sections 9 and 10 of the Foreign Jurisdiction and Extradition Act, 1872, but grave doubts occur to me on the language of the 10th Clause, which provides that copies of depositions made or exhibits produced before the Political

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[341v] (22/56)

Agent or Judicial Officer in the State in which an offence is alleged to have been committed shall be received as evidence by the Court holding such enquiry or trial in any case in which such Court might issue a *Commission* for taking evidence as to the matters to which such depositions or exhibits relate. I do not think that these words contemplate the issue by such Court of a *Commission* in any but a criminal case, and I do not think that the High Court has any power to issue a *Commission* to take evidence in a criminal case.

If I am right in my opinion, it will be most difficult in the present state of the law to convict any person sent from Zanzibar to the High Court of Bombay for trial for offences against the laws against slavery, unless sufficient evidence is available from servants of Her Majesty, and great care should be taken before sending a man to take his trial on such charges that evidence sufficient to fairly warrant expectation of conviction will be forthcoming in Bombay.

Even if the provisions of Section 10 are applicable, very great care will have to be taken about the depositions, and the greatest latitude allowed to the accused person or his legal advisers, if any, to cross-examine the witnesses, otherwise the offender, if defended by Counsel, would make such use of any imperfections appearing on the depositions as would probably lead the Jury to refuse a conviction.

If possible, I think it would be well to submit the depositions in any such case to Government with a view to the opinion of the Law Officers being taken before the offender is sent to Bombay for trial, for when the offender is removed from the place where the witnesses are examined, no further or additional depositions taken in his absence would, I think, be admissible against him.

If any prosecutions are likely to be instituted, it would be well to consider how far the provisions of Section 4 of 6 and 7 Vic., Cap. 98, should be adopted in this country with the High Courts substituted for the Court of Queen's Bench.

I may further remark that it is by no means easy to anticipate the difficulties which may arise on the trial of an offence under these Acts, and which can only be correctly encountered when the experience of one or two cases has placed matters connected therewith in a practical light.

No. 29, dated Zanzibar, 11th September 1873.

From—Political Agent and Consul-General, Zanzibar,
To—Secretary to the Government of Bombay.

I HAVE the honor to report, for information of His Excellency the Governor in Council, the steps taken by me to bring one Kanjee Laljee of Cutch, resident in Zanzibar, to trial before the High Court of Bombay, charged with slave-dealing.

2. I have adopted this course in accordance with the instructions of Earl Registrar, High Court; Public Pleader; Granville, with copy of which you have been Chief Commissioner of Police. already furnished by the Secretary to the Government of India, No. 1289P., dated 13th June 1873.

3. I herewith transmit under flying seal, for information of Government, and to be forwarded without delay to the various departments to which they are respectively addressed, all the documents having reference to this case, which is the first of a criminal nature that has been transferred from Zanzibar to the jurisdiction of the High Court.

4. On the conclusion of this case in the High Court I would urge the expediency, in the event of a sentence of conviction being obtained, that the fullest publicity may be given thereto in the local, especially the native, newspapers, which are regularly received by the native community in Zanzibar,

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[342r] (23/56)

342

and I would further beg to be furnished with any observations regarding the mode in which this present case has been forwarded for trial, to enable me in future to remedy any defects of procedure and any technical flaws that might in a more difficult case defeat the ends of justice.

5. I particularly urge the necessity of being furnished with clear instructions in what way local evidence here taken should be transmitted so as to be admissible in the High Court where the witness himself cannot be produced. This I do in consequence of it having been found necessary in prosecuting indictments for offences committed under 5 George IV., Cap. 113, to pass the Acts 6 and 7 Vic., Cap. 98.

No. 67, dated Bombay, 18th October 1873.

Opinion of the Advocate-General, Bombay.

WITH reference to the case of Kanjee Laljee, who has been committed for trial before the High Court of Bombay, charged with slave-dealing by the Political Agent and Consul-General at Zanzibar, I would suggest that steps should be immediately taken to secure the attendance before the High Court of the witnesses upon whose evidence the prisoner was committed.

The Order in Council of 4th November 1867, under which Dr. Kirk has presumably acted, provides that the High Court "at the Sessions to be holden next after such committal shall proceed to hear and determine the charge;" and as the next Sessions of the High Court will commence on the 20th November, it may be a question whether the witnesses can be brought up in time. If they cannot, the prisoner will be entitled to his discharge, as no evidence will be forthcoming against him, and the High Court has apparently no power to postpone the hearing of the case to a future Sessions. The depositions taken by Dr. Kirk cannot, in my opinion, be received in evidence under the present state of the law in India.

I am not aware if any copy of the Order in Council of 4th November 1867 exists in Bombay. My knowledge of it is derived from the Resolution of the Government of India, No. 1288 (Foreign Department), of 13th June 1873, in which some of its provisions are cited. If there is no copy of it here, it would be desirable to procure a copy, either contained in the *London Gazette*, or purporting to be printed by the Queen's Printer, for use at the trial under Section 78 of the Indian Evidence Act.

I notice that Kanjee Laljee is described as "of Cutch." If this be so, it will be a question whether he is either a "British subject" within the meaning of the Order in Council, or a "Native Indian subject of Her Majesty" within the meaning of Act XI. of 1872. If he is a subject of His Highness the Rao of Cutch, I do not see how he can be made amenable to British jurisdiction for an offence against British law committed out of British territory.

No. 6647, dated Bombay Castle, 30th October 1873.

From—Secretary to the Government of Bombay,

To—Hon'ble the Advocate-General, Bombay.

WITH reference to your opinion dated 18th instant, in the case of Kanjee Laljee, I am directed to enquire whether the question of the admissibility as evidence before the High Court of the depositions taken at Zanzibar is not affected by Section 330 of the new Code of Criminal Procedure as read in connection with Act XI. of 1872, Section 10.

2. I am also directed to furnish you with copy of a proclamation by the Rao of Cutch in evidence of his having delegated the jurisdiction over his subjects resident at Zanzibar to the British Government in regard to slave-dealing

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[342v] (24/56)

cases, and to enquire whether you consider that the High Court would have jurisdiction to try the case in the event of its appearing that Kanjee Laljee is a subject of the protected State of Cutch.

No. 65, dated Bombay, 18th October 1873.

From—Advocate-General, Bombay,
To—Secretary to the Government of Bombay.

I HAVE the honor to acknowledge the receipt of your letter No. 5073 of 1873 (Political Department) on which you request my opinion upon certain suggestions made by the Acting Solicitor to Government in his letter No. 773 of 1873, with regard to the means of bringing to justice British subjects concerned in the East African slave-trade.

I quite concur with Mr. Peile in the opinion that legislation is necessary. The Political Agent at Zanzibar has been appointed a Justice of the Peace under Act XI. of 1872, and in that capacity may commit for trial before the High Court of Bombay any British subject charged with an offence under Sections 367, 370, and 371 of the Indian Penal Code. But how is he to secure the attendance of the witnesses at the trial? Section 4 of 6 and 7 Vic., Cap. 98, only legalizes the use of depositions taken in slave-trading cases before the Court of Queen's Bench in England, and Section 10 of Act XI. of 1872 only provides that copies of depositions shall be received as evidence by the Court holding the trial "in cases in which such Court might issue a Commission for taking evidence as to the matters to which such depositions relate." As the High Court has no power to issue Commissions to take evidence in criminal cases, it follows that the witnesses must personally attend to give their evidence at the trial, and although such of the witnesses before the Political Agent as were British subjects might be bound over to attend at the trial, their attendance could scarcely be secured unless their travelling expenses were paid and compensation allowed them for their loss of time. Over witnesses who were not British subjects, the Political Agent would have no authority. A trial before the High Court of Bombay under the existing law would, therefore, be always expensive, and frequently futile.

A remedy may be found, as suggested by Mr. Peile, in extending the provisions of Section 4 of 6 and 7 Vic., Cap. 98, to trials had before High Courts in India. The Order in Council of 4th November 1867, which gives power to the Consul to commit offenders for trial before the High Court of Bombay, directs that the said Court shall proceed to hear and determine the charge in the same manner as if the crime had been committed within the territory of Bombay. An Act of the Government of India would therefore be required to alter the practice of the High Court in cases committed for trial under the order in Council.

I return the papers forwarded with your letter.

Enclosure No. 7.

No. 7339, dated Bombay Castle, 8th December 1873.

From—Secretary to the Government of Bombay,
To—Secretary to the Government of India, Foreign Department.

WITH reference to the proceedings forwarded with the letter from this Office, No. 6872, dated the 8th ultimo, I am directed to transmit herewith, for the information of the Government of India, copy of a letter from the Acting Public Prosecutor, No. 89, dated the 25th idem, reporting that the case of Regina *vs.* Kanjee Laljee, the slave case from Zanzibar, came on for hearing before the High Court of Bombay on the 22nd November, and that the prisoner was discharged.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[343r] (25/56)

343

2. In transmitting this letter I am desired to state that the result of the arraignment of Kanjee Laljee at the bar of the High Court of Bombay indicates, among other things, the expediency of the speedy extension of the Code of Criminal Procedure to the Presidency towns.

No. 89, dated Bombay, 25th November 1873.

From—Acting Public Prosecutor,

To—Secretary to the Government of Bombay, Political Department.

I HAVE the honor to report that the case of Regina versus Kanjee Laljee, the slave case from Zanzibar, came on before the High Court on Saturday the 22nd instant, and the prisoner was discharged.

2. Mr. Justice Gibbs, before whom the case came for trial, remarked that no witnesses had been sent up, and that none were under orders to appear no recognizances having been received; that on the charge the prisoner appeared to be a native of Cutch, and therefore not a British subject; that the proceedings did not show that the depositions were taken in the prisoner's presence, or that he had any opportunity of cross-examining the witnesses, and that the depositions were not sufficient to sustain the charges made against the prisoner which last objection could be surmounted by framing additional charges as the depositions showed that prisoner purchased slaves.

3. The learned Judge further remarked that this course would be useless as the Court had no jurisdiction, the prisoner in the first place not being a British subject and there being no Treaty with Cutch, much less any order of Her Majesty in Council which under such a Treaty might confer jurisdiction on this Court to try subjects of the Rao of Cutch for offences committed in foreign parts.

4. That the Proclamation of the Rao dated 16th December 1872 in no way affects the question as His Highness the Rao could give no jurisdiction to the Court.

5. Mr. Justice Gibbs therefore directed that an entry be made on the charge under Section 8 of Act XIII. of 1865 to the effect that it is clearly unsustainable which entry would have the effect of a *nolle prosequi*, and that the prisoner be discharged.

6. Mr. Justice Gibbs then referred to the manner in which the Consul-General at Zanzibar had been led into error and stated that the order in Council of the 9th August is issued under the provisions of 6 and 7 Cap. 98 and only applies to British subjects that the power to issue Commissions to take evidence in case of offences against the slave trade is confined to the Court of Queen's Bench in England.

7. That the High Court of Judicature at Bombay on its Original Side can under that Act take evidence under a Commission issued by the Court of Queen's Bench at Westminster, but has no power to issue a commission to Zanzibar, much less to use depositions taken by the Political Agent there as evidence against a prisoner.

8. That the only other law which may have misled that officer is Section 330 of the new Criminal Procedure Code and Act XI. of 1872, Section 10. But that the latter section only applies to British subjects which the prisoner in the present case on the face of the Political Agent's proceedings was not, while the 330th Section of the Code of Criminal Procedure only applies to the District Courts and to the High Court on its Appellate Side, but not to such Court in its Ordinary Original Criminal Jurisdiction.

9. I have thought it well to set out these remarks as pronounced as it is evident that some further legislation will be required to enable the High Court in Bombay to deal satisfactorily with cases of slavery.

10. I return the telegram from the Political Secretary, Agra.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[343v] (26/56)

Enclosure No. 8.

No. 7342, dated Bombay Castle, 8th December 1873.

From—Secretary to the Government of Bombay,

To—Secretary to the Government of India, Foreign Department.

REFERRING to the letter from the Political Agent and Consul-General, Zanzibar, to your address, No. 70, dated the 4th October last, forwarding proceedings connected with the case of one Hadjee Omar, charged with slave-dealing, &c., I am directed by His Excellency the Governor in Council to state that considering the action* of the High Court of Bombay in the case of Kanjee Laljee, it seems equitable that the punishment awarded in the case of Hadjee Omar should be remitted.

* *Vide* Bombay Government letter of this date, No. 7339.

Enclosure No. 9.

No. 8, dated Zanzibar, 13th January 1874.

From—Her Majesty's Acting Political Agent and Consul-General, Zanzibar,

To—Secretary to the Government of India, Foreign Department,

I HAVE received through the Government of Bombay a copy of Mr. Justice Gibbs' remarks on the slave case "*Regina versus Kanjee Laljee*," which came on for trial before the High Court of Bombay on the 22nd November 1873.

2. From these remarks it appears that the High Court had no jurisdiction, the prisoner being a native of Cutch, and not a British subject, and there being no Treaty with Cutch, much less any Order in Council, which confers the right to try subjects of Cutch for offences committed in foreign parts. That the Proclamation of the Rao of Cutch dated 16th December 1872 in no way affects the question as he could give no jurisdiction to the said Court; and lastly that these proceedings have rendered it evident that some further legislation will be required to enable the High Court at Bombay to deal satisfactorily with cases of slavery.

3. I would respectfully observe that the remarks made by Mr. Justice Gibbs with reference to the jurisdiction of the High Court at Bombay appear to me to be equally applicable to the Court of the Political Agent and Consul-General at Zanzibar.

4. The jurisdiction of this Court on matters of slave-dealing is defined, (1) by Her Majesty's Order in Council of the 9th August 1866; and (2) by the Notification of the Government of India (Political), No. 1288, dated 13th June 1873, which confers the powers of a Justice of the Peace on the Political Agent to enable him to deal with cases arising under the Foreign Jurisdiction and Extradition Act of 1872.

5. Under the Order in Council the Consul-General has jurisdiction over all British subjects in Zanzibar in cases connected with slave-holding or slave-dealing; and also (Section 35) over all persons enjoying Her Majesty's protection in the dominions of the Sultan of Zanzibar. The manner in which this protection is to be claimed and granted is laid down in Section 30.

6. Under the Notification of the 13th June 1873, the jurisdiction of the Political Agent is limited to British subjects alone.

7. The fourth Article of the Treaty concluded with the Sultan of Zanzibar on the 5th of June 1873, without extending the jurisdiction, widens the obligations of the Political Agent, as the representative of Government, very considerably. In this Article Her Majesty "engages that natives of Indian States under British protection shall be prohibited from possessing slaves, and from acquiring any fresh slaves" from the date of the Treaty.

8. It is difficult from the wording of this Article to gather whether the qualification "under British protection" refers to the "Natives of the Indian

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[344r] (27/56)

344

States" or to the "Indian States" themselves. We find the term "British protected States in India" in the 30th Section of the Order in Council of the 9th August 1866, and Doctor Kirk also employs a similar expression in the 2nd paragraph of his letter to the Bombay Government, No. 90-343, dated 29th October 1872. On reference to the Arabic version of the Treaty, I find, however, that the former is the sense recorded therein.

9. It is obvious that if the wider acceptance of the term be taken, there exists at present no machinery by which the provisions of the Article can be enforced, unless the "Native of the British protected State" has voluntarily enrolled himself as a *protege* of the Consulate under Section 30 of the Order in Council. On the other hand, if we narrow the interpretation of the Article, and only include such *proteges* within its provisions, it will virtually become inoperative, as only a small, and that the most respectable, portion of the Indian traders of this Coast and Island have claimed the privilege of British protection.

10. Dr. Kirk was fully alive to the evils which would have resulted from the scope of our engagements being thus contracted, and in his late tour through the northern possessions of the Sultan of Zanzibar, he manumitted every slave he found in possession of a native of India, whether such native was enrolled as a British *protege* or not; and under Dr. Kirk's directions, Captain Elton is now pursuing the same line of policy through the southern territories of His Highness.

11. But this Article will become a dead letter, if the persons who have been freed can be resumed into slavery by their former masters without fear of punishment.

12. It appears to me that the difficulty is one which presses for immediate settlement, and in support of this view I may mention that I have heard from private sources it is the intention of the accused Kanjee Laljee to return to Zanzibar, when he will probably lose no time in making his fellow countrymen acquainted with the terms of the decision which has been publicly delivered by Mr. Justice Gibbs in the High Court of Bombay.

13. I would therefore urge upon the consideration of His Excellency the Governor-General in Council the expediency of adopting such measures as may remedy the existing state of things. The Proclamation issued by His Highness the Rao of Cutch on the 16th of December 1872 is clearly not sufficient; inasmuch as if its terms are not binding upon the High Court of Bombay, neither can they be binding upon the Consular Court of Zanzibar, although, as a matter of expediency, it may be necessary to give effect to them. I would suggest with great deference that fresh Treaties be concluded with the Rao of Cutch and with the Rulers of the maritime States of Kattywar, by which those Princes would engage to place under the jurisdiction of the British Representative at Zanzibar the whole of their subjects residing within the dominions of His Highness the Sultan, the British Government on its part assuming the responsibility of protection and promising to give effect to the Treaty in the usual way. The concurrence of the Sultan of Zanzibar would of course be necessary, as the existing Treaty concluded on the 31st May 1839 with His late Highness Syud Saeed confers no extra-territorial jurisdiction over other than *bona fide* British subjects. The issue of a further order in Council founded on, and giving effect to, the proposed Treaties, would I think solve every difficulty.

14. It is not of course within my province to discuss the measures which would be requisite to enlarge the jurisdiction of the High Court of Bombay in such cases.

Enclosure No. 10.

No. 770P., dated Fort William, 1st April 1874.

NOTIFICATION—By the Government of India, Foreign Department.

WHEREAS the Governor-General in Council has within the dominions of His Highness the Sultan of Zanzibar jurisdiction to try and punish British

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[344v] (28/56)

subjects, and the subjects of Princes and States in India in alliance with Her Majesty for offences of the descriptions referred to in Sections 357, 370 and 371 of the Indian Penal Code, and for abetting the commission of the same, and whereas the said Governor-General in Council has power to delegate the said jurisdiction, and it is expedient to delegate the same in part to a British officer at Zanzibar,

The Governor-General in Council accordingly is pleased hereby to delegate to the Political Agent at Zanzibar for the time being for the trial of persons of the said classes committing or abetting the commission of offences of the said descriptions the powers of a Deputy Commissioner under Section 36 of the Criminal Procedure Code and to ordain that every sentence passed in the exercise of such powers shall be valid without any such confirmation being required as is prescribed in certain cases by the said Section 36. Any person aggrieved by any order passed by the Political Agent in the exercise of the powers hereby conferred on him may forward an appeal in writing to the Governor-General in Council within six months from the date of such order.

The Governor-General in Council reserves to himself in all cases tried under this Notification and coming before him whether on appeal or otherwise the fullest powers conferred upon any Court of appeal, superintendence, or revision by the Criminal Procedure Code.

Enclosure No. 11.

No. 771P., dated Fort William, 1st April 1874.

From—Secretary to the Government of India, Foreign Department,
To—Secretary to the Government of Bombay.

I AM instructed to convey to you the views and orders of His Excellency the Governor-General in Council on your letters noted in the margin relative to the Zanzibar slave trade.

No. 6872, dated 8th November 1873.	
„ 7339, dated 8th December 1873.	
„ 7342, „ „ „ „	

2. The two practical questions appear to be, *first*, whether Hadji Omar's fine shall be remitted; and, *secondly*, whether an endeavour should be made to strengthen the hands of the Political Agent and Consul at Zanzibar, and the High Court at Bombay in dealing with cases that may arise out of the recent arrangements made at Zanzibar for the suppression of the slave trade.

3. In his letter of 22nd July 1873, Mr. Peile very justly observes that it is by no means easy to anticipate the difficulties which may arise in these cases and that they can only be correctly encountered when the experience of one or two cases has placed matters in a practical light. For this purpose it would be most desirable to know the grounds on which the Court disposed of the case of Kanjee Laljee. I am therefore to request that the full text of Mr. Justice Gibb's judgment in the case of Reg. *versus* Kanjee Laljee may be procured and submitted to the Government of India.

4. Judging from the correspondence before him it appears to His Excellency in Council that the question before the High Court of Bombay was whether a subject of the Rao of Cutch resident in Zanzibar and committing a crime there could be transmitted by the British Consul to Bombay and there tried by the High Court. The case for the Crown is as follows:—By arrangements between the British Government and that of Zanzibar, the Crown has jurisdiction over Cutchees residing there. Partly under the provisions of an Act of Parliament, and partly by its prerogative, the Crown has made an order establishing Courts for the trial of such persons. Under that order the British Consul may try them himself or may in certain cases transmit them to Bombay for trial by the High Court. This state of things has the approval of the Sovereign of Cutch, but that approval is immaterial in any but a political sense when the accused is caught in Zanzibar and his offence has been com-

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[345r] (29/56)

345

mitted in Zanzibar. Under the authority given by the Sovereign of Zanzibar to the Crown, and by the Crown to the Consul, the Consul transmits to the Bombay High Court a Cutchee accused of an offence in Zanzibar.

5. Such being the relations between the Crown and Zanzibar, His Excellency in Council is unable, in the absence of the text of the judgment of the High Court of Bombay, to form a precise opinion as to the grounds on which Kanjee Laljee was discharged. It is not improbable, however, that as Kanjee Laljee was not registered as a protected person in the books of the Consulate, it may have been held that the order of Her Majesty in Council, dated 9th August 1866, did not apply to him.

6. If this be the true reason, His Excellency in Council is of opinion that a proper representation of the case to the Court might have issued in a different result. Under the arrangements made both with Zanzibar and with Cutch, the subjects of the Rao of Cutch in Zanzibar are entitled to British protection and are amenable to British justice. The order in Council is no part of those arrangements; it is a purely British document, and must be construed, whenever doubtful, with reference to the objects aimed at by the Crown. His Excellency in Council cannot doubt that as regards repression of crime it was intended to be exhaustive and would be so construed by a Court of Justice. Its principal object would be defeated if a number of persons over whom the British Government had acquired jurisdiction were left free to violate the slavery laws merely by omitting to register themselves. It does not so deal with British subjects. They are bound to register, and if they do not, they may or may not, at the Consul's option, lose an advantage, but are not to escape any responsibility. It cannot be supposed that people like the Cutchees were intended to be placed on a different footing. For this purpose His Excellency in Council considers that the expression "enjoying Her Majesty's protection" includes all those who *as between Government and Zanzibar* are entitled to enjoy that protection, notwithstanding some of them may *as between themselves and Government* not be in a position to insist on our interference in their favor. As to any one of them the Consul may, in the opinion of His Excellency in Council interfere if he chooses.

7. Under these circumstances, His Excellency in Council is of opinion that no remission should be made of Hadji Omar's fine, at any rate so long as it is uncertain whether the reasons for which the High Court discharged Kanjee Laljee apply to the Consul's action, or only to its own.

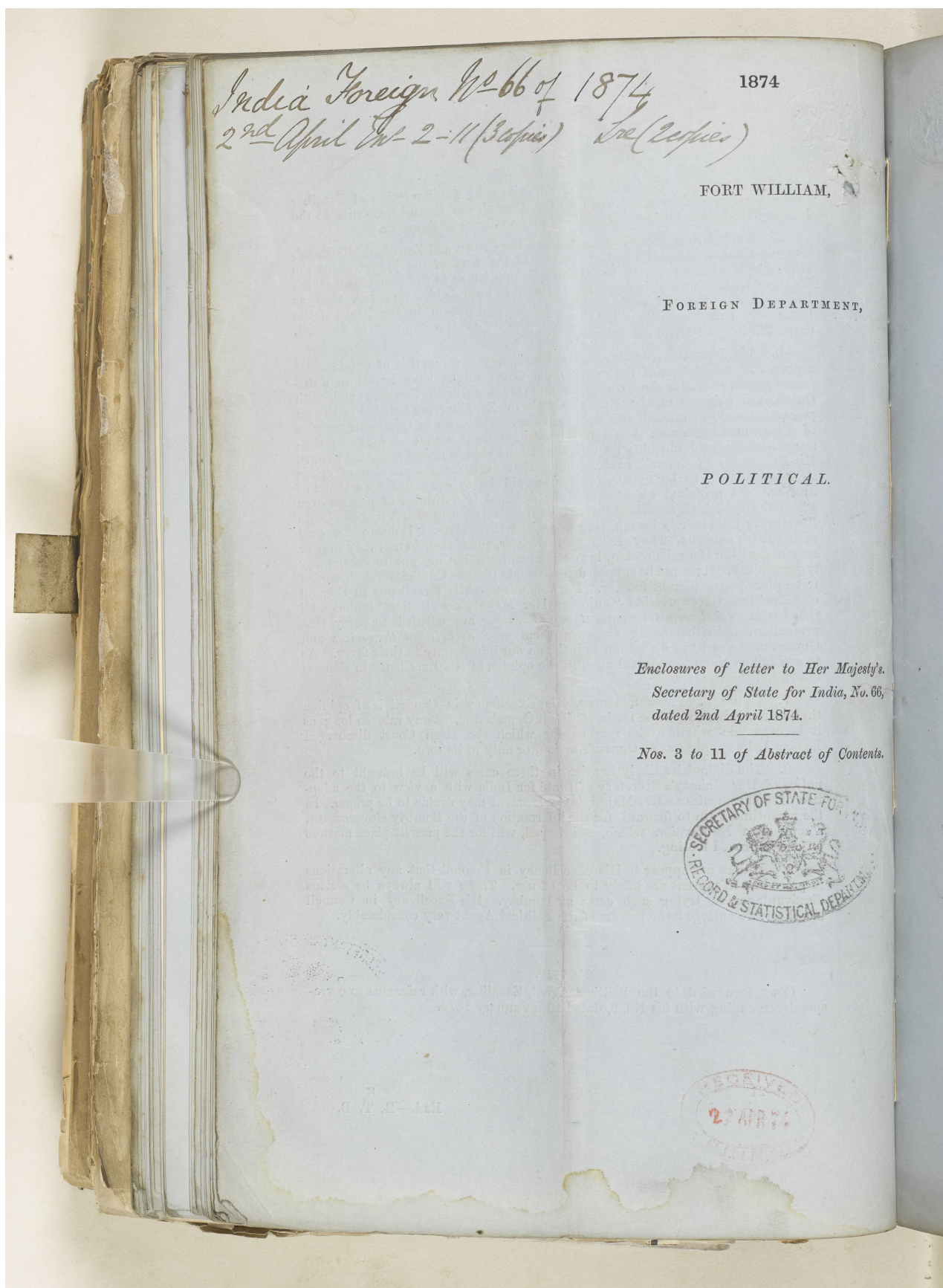
8. The difficulties likely to arise in these cases will be brought to the notice of Her Majesty's Secretary of State for India with a view to the adoption of such remedies as Her Majesty's Government may decide to be proper. In the meantime I am to forward, for the information of the Bombay Government, a copy of a Notification which, it is hoped, will for the present place matters on one improved footing.

9. It does not appear to His Excellency in Council that any alterations in procedure at present are likely to be of use. There will always be serious disadvantages in trying such cases at Bombay. His Excellency in Council has therefore enlarged the powers of the Political Agent very considerably.

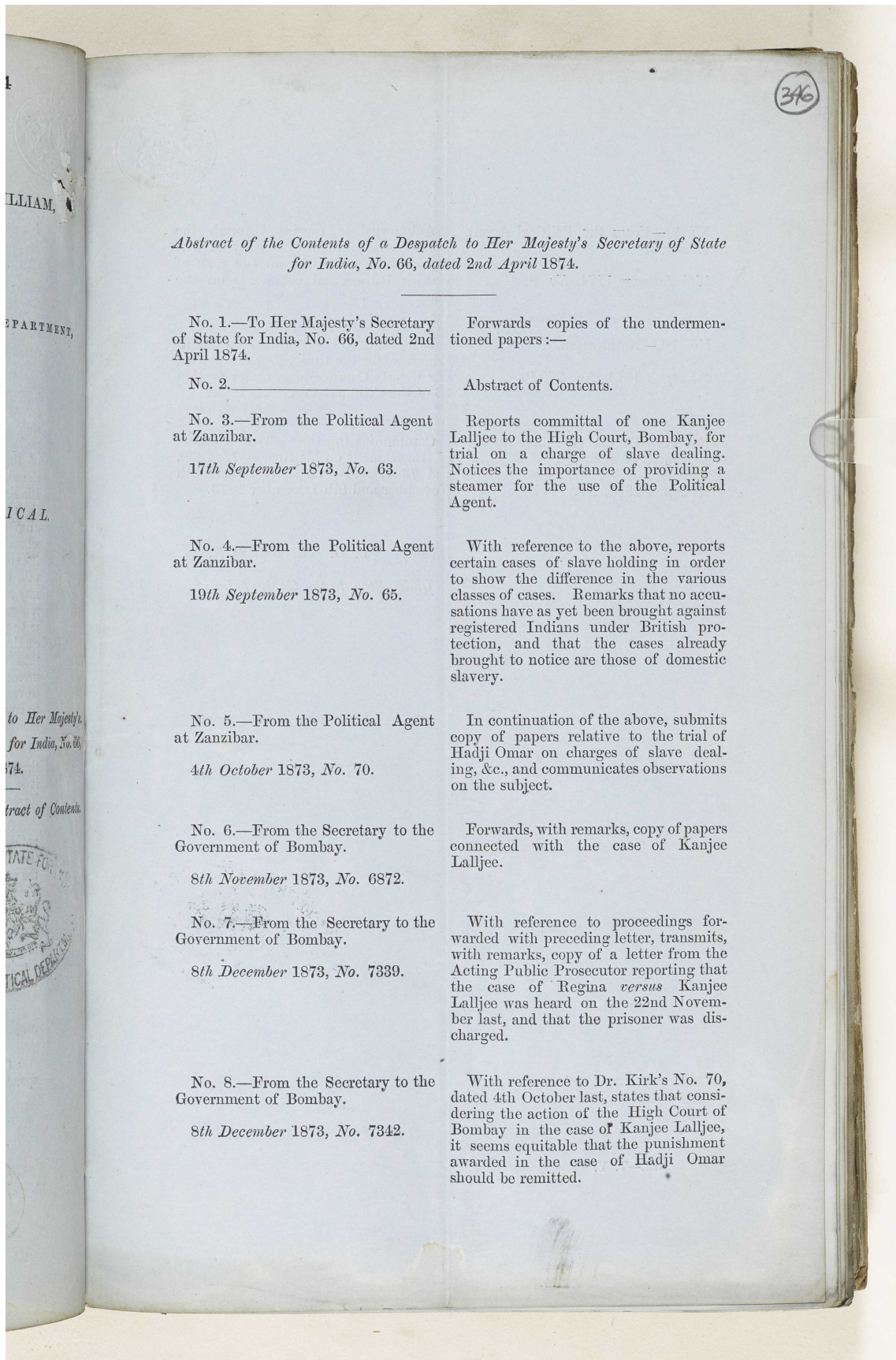
No. 772P.

COPY forwarded to the Political Agent, Zanzibar, with reference to correspondence ending with his No. 8, dated 13th January 1874.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[345v] (30/56)



Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[346r] (31/56)



Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[346v] (32/56)

(2)

No. 9.—From the Political Agent
at Zanzibar.

13th January 1874, No. 8.

Acknowledges receipt through the
Bombay Government of a copy of Mr.
Justice Gibb's remarks on the case of
Kanjee Lalljee, and comments on the
same.

No. 10.—Notification.

1st April 1874, No. 770P.

Delegating to the Political Agent at
Zanzibar for the time being the powers
of a Deputy Commissioner under Section
36 of the Criminal Procedure Code.

No. 11.—To the Secretary to the
Government of Bombay.

1st April 1874, No. 771P.

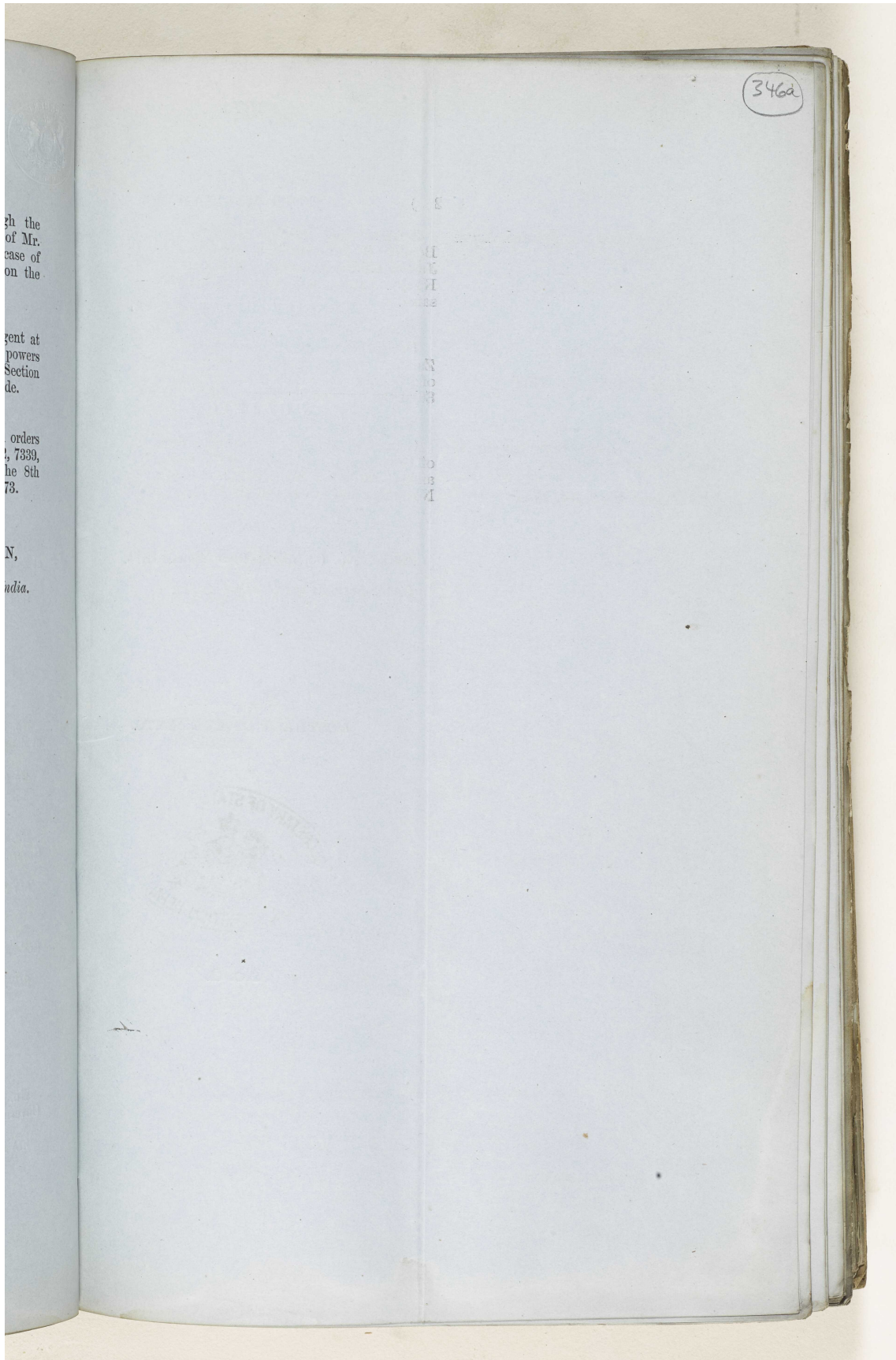
Communicating the views and orders
of Government on his Nos. 6872, 7339,
and 7342, dated respectively the 8th
November and 8th December 1873.

(Sd.) P. D. HENDERSON,

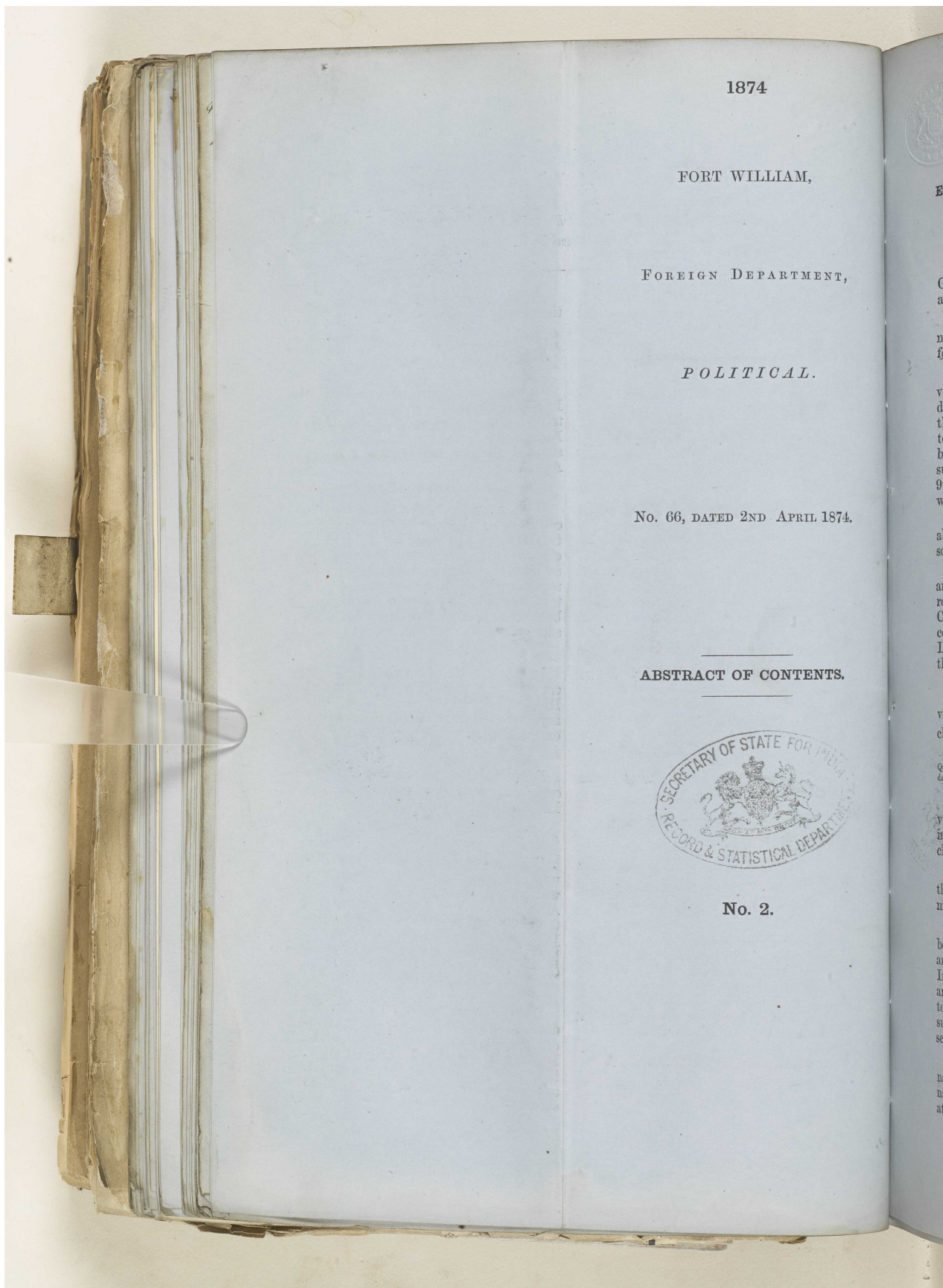
Under-Secy. to the Govt. of India.

Exd.—T. Y.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[346ar] (33/56)



Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[346av] (34/56)



Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[347r] (35/56)

347

Enclosure No. 3.

No. 63, dated Zanzibar, 17th September 1873.

From—Political Agent and Her Majesty's Consul-General, Zanzibar,
To—Secretary to the Government of India, Foreign Department.

I HAVE the honor to report, for the information of the Right Hon'ble the Governor-General in Council, having committed for trial before the High Court at Bombay Kanjee Laljee of Cutch domiciled in Zanzibar.

2. The enclosures (as per Schedule) to this letter will clearly show the nature of the offence, and the various steps taken in order to prepare the case for transmission to Bombay.

3. The slight discrepancies between the depositions of the slaves and the voluntary admissions of Kanjee Laljee are, it will be seen, immaterial to the evident fact of this particular case, and the only defence likely to be raised will be that the accused has through long residence denationalized himself and become to all intents and purposes a Zanzibar subject, and in support of this it may be adduced that by failing to enrol his name on the list of British protected subjects, as required by clause 30 of the Order of Her Majesty in Council, dated 9th August 1866, he is *de facto* outside British protection, and as a consequence without British jurisdiction.

4. I am not aware that it is the intention of Kanjee Laljee to adopt the above line of defence, which in the hands of a clever Pleader might be used to some purpose.

5. But under the circumstances of this case, and the probability of such an argument, I venture to think it my evident duty to point out with all due respect, for the information of the Right Hon'ble the Governor-General in Council, the fact that up to the present the Law Officers of the Crown have not communicated any decision as to the working of the British Naturalization Laws with regard to natives of protected Indian States in the dominions of the Sultan of Zanzibar.

6. With a certain local knowledge and the fact that the working of such Naturalization Laws must in an independent country depend upon the wording of Treaties concluded between Great Britain and such country, I however am of opinion that a strong bar may be opposed to Zanzibar jurisdiction in this matter by the reading of Clause IV. of the late Treaty.

33 Vic., Cap. 14, and 33 & 34
Vic., Cap. 102.
Treaty between Her Majesty the
Queen and His Highness Syud Burgash,
dated 5th June 1873.

7. This Clause, which Her Majesty the Queen engages to carry out, provides that natives of Indian protected States shall be prohibited from possessing slaves, and His Highness by being a contracting party to such Clause is clearly bound to relinquish any right likely to interfere with its proper working.

8. Hence no subject of a protected Indian State can claim the benefit of the operation of any Naturalization Acts which might imperil the due fulfilment of His Highness' obligation to the British Government.

9. The question of jurisdiction of the Court overcome, the accused will be unable to plead a general issue, which he might have done had he declared any slaves he held in February 1869, when our policy being changed those Indians (who had previously been allowed, with the cognizance of Government and under sanction of Colonel Pelly, and subsequently Colonel Playfair, to hold slaves) were called on to register their slaves at the Agency, who, on such Registration, were allowed to retain on condition of neither transferring or selling.

10. By public Proclamation from February 1869 any slave held by any native of India not so registered was held illegally, even in the case where such native of India claimed the protection of the Sultan and failed to enrol himself at the Agency as a British subject.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[347v] (36/56)

11. However, Kanjee Laljee's name does not appear as a proprietor of slaves on this exempted list of February 1869.

12. This matter of jurisdiction would appear settled by the Sultan's evident adoption of my reading of Clause IV, which appears from the most conciliatory and humble manner in which in letter annexed he begs the release of the accused who claimed to be his subject for many years, and is still further evidenced by the fact that His Highness has made no reply to my answer which was written with the evident purpose of the question at issue.

13. The arrest and committal of Kanjee Laljee has had a most salutary effect, and the more so as he is a quiet and respectable person. Had he been a confirmed dealer in slaves, or a man of questionable character, the matter would have only caused a momentary sensation instead of shaking, as it has done, the last hope clung to by many Indians, *viz.*, that they might yet hold slaves by leaving British protection and enrolling themselves as Zanzibar subjects, a line of action which formerly was unfortunately not only permitted but sanctioned.

14. I may here confidently state that should this case end, as it can hardly fail to, in a conviction of the accused before the High Court of Bombay, I do not foresee that it will be probable any more cases of a similar nature need be sent on from Zanzibar.

15. Still I should not conceal from the Right Hon'ble the Governor-General in Council that cases of far greater gravity must be inevitably brought to light when the Indians resident on the long Zanzibar Coast line are brought under the Agency and Consular discipline in fulfilment of the Treaty, cases which will comprise not only slave-holding, but slave trafficking, the buying and selling of slaves for gain.

16. Her Majesty's vessels on the station have so many and important duties to perform and are so cramped as to time by the movements of their detached boat parties, that I have as yet found it utterly impossible to carry out that thorough examination of the towns and villages on the Coast, which it is my duty to do, and it is for that purpose and for the yet more important purpose of actually asserting authority over many hundred British Indian subjects, that I have before urged the importance of a steamer being provided for the Political Agent at Zanzibar, as at Aden.

SCHEDULE.

1. Enlosure. Political Agent to C. GONNE, Esq., Secy. to Govt. of Bombay.
2. „ „ *Precis.*
3. „ „ His Highness Syud Burgash to Ali bin Saleh.
4. „ „ Political Agent to Sultan.

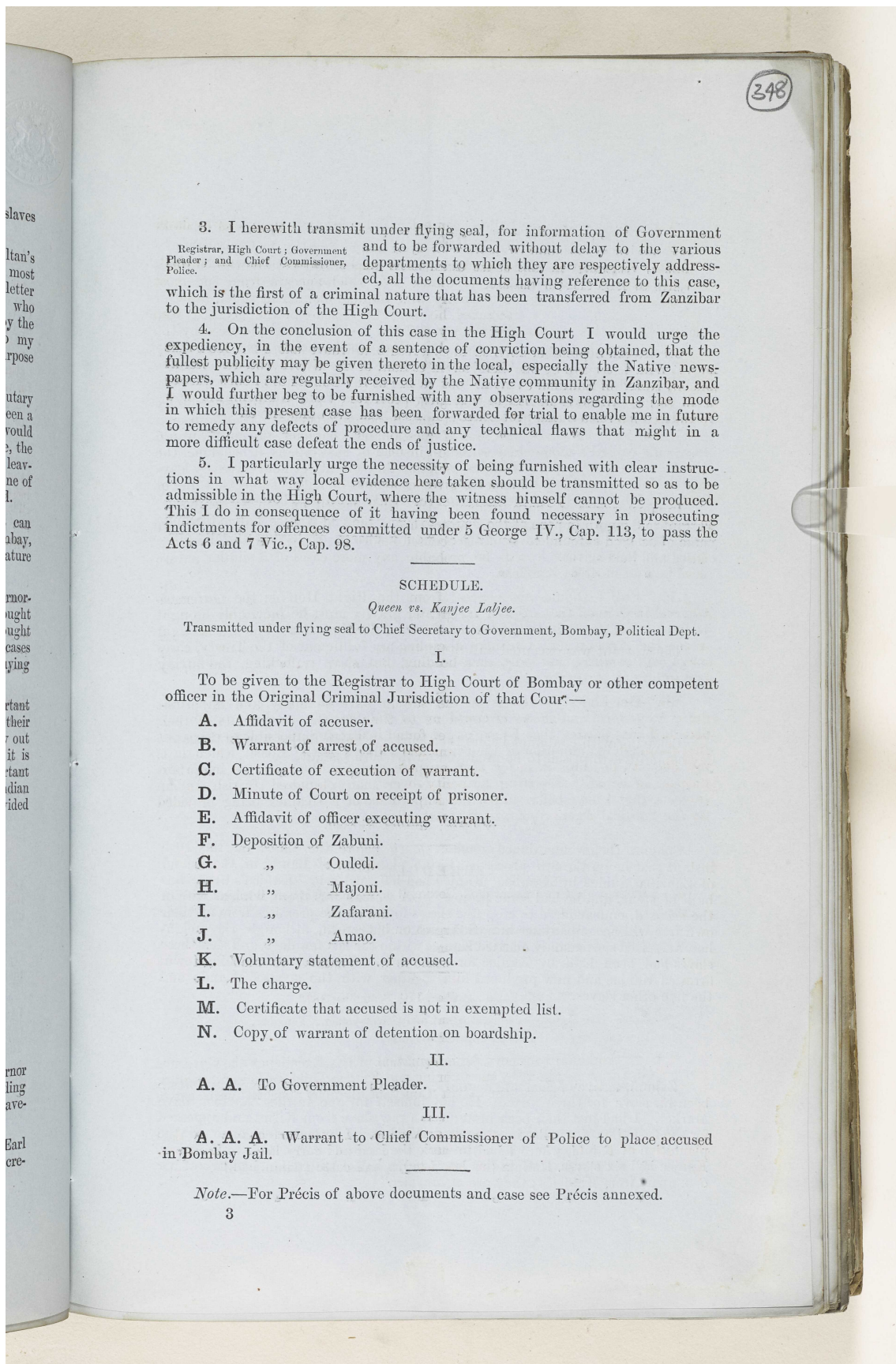
No. 29, dated Zanzibar, 11th September 1873.

From—Her Majesty's Political Agent and Consul-General, Zanzibar,
To—Secretary to the Government of Bombay.

I HAVE the honor to report, for information of His Excellency the Governor in Council, the steps taken by me to bring one Kanjee Laljee of Cutch, residing in Zanzibar, to trial before the High Court of Bombay charged with slave-holding.

2. I have adopted this course in accordance with the instructions of Earl Granville, with a copy of which you have been already furnished by the Secretary to the Government of India, No. 1289P., dated 13th June 1873.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[348r] (37/56)



3. I herewith transmit under flying seal, for information of Government and to be forwarded without delay to the various departments to which they are respectively addressed, all the documents having reference to this case, which is the first of a criminal nature that has been transferred from Zanzibar to the jurisdiction of the High Court.

4. On the conclusion of this case in the High Court I would urge the expediency, in the event of a sentence of conviction being obtained, that the fullest publicity may be given thereto in the local, especially the Native newspapers, which are regularly received by the Native community in Zanzibar, and I would further beg to be furnished with any observations regarding the mode in which this present case has been forwarded for trial to enable me in future to remedy any defects of procedure and any technical flaws that might in a more difficult case defeat the ends of justice.

5. I particularly urge the necessity of being furnished with clear instructions in what way local evidence here taken should be transmitted so as to be admissible in the High Court, where the witness himself cannot be produced. This I do in consequence of it having been found necessary in prosecuting indictments for offences committed under 5 George IV., Cap. 113, to pass the Acts 6 and 7 Vic., Cap. 98.

SCHEDULE.

Queen vs. Kanjee Laljee.

Transmitted under flying seal to Chief Secretary to Government, Bombay, Political Dept.

I.

To be given to the Registrar to High Court of Bombay or other competent officer in the Original Criminal Jurisdiction of that Court.—

- A. Affidavit of accuser.
- B. Warrant of arrest of accused.
- C. Certificate of execution of warrant.
- D. Minute of Court on receipt of prisoner.
- E. Affidavit of officer executing warrant.
- F. Deposition of Zabuni.
- G. „ Ouledi.
- H. „ Majoni.
- I. „ Zafarani.
- J. „ Amao.
- K. Voluntary statement of accused.
- L. The charge.
- M. Certificate that accused is not in exempted list.
- N. Copy of warrant of detention on boardship.

II.

- A. A. To Government Pleader.

III.

- A. A. A. Warrant to Chief Commissioner of Police to place accused in Bombay Jail.

Note.—For Précis of above documents and case see Précis annexed.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[348v] (38/56)

Précis of Proceedings in Her Britannic Majesty's Agency and Consular Court, and detailed Memorandum of documents forwarded under flying seal to Secretary to Government of Bombay concerning the case of the Queen *versus* Kanjee Laljee sent forward for trial before the High Court of Bombay.

A.

Affidavit of Accuser.

On the 8th September 1873 Kambo, a Negro, affirmed before Dr. Kirk that he was held as a slave by one Kanjee, an Indian, of the Khoja sect, residing at Bambi, Island of Zanzibar; that he took refuge at the Consulate in consequence of ill usage. Hitherto he had been forcibly prevented from complaining, now he claimed his release and protection. Kanjee held five other slaves.

B.

Warrant of arrest of accused.

In consequence of above evidence Dr. Kirk issued on 8th September a warrant to Songoro (a peon of the Court) to arrest the said Kanjee Laljee (second name of accused is found to be Laljee) "on a charge of having illegally purchased and held slaves."

C.

Certificate of execution of Warrant.

The warrant was executed on 9th September.

D.

Minute of Court on receipt of Prisoner.

Behaving with contempt before the Court. Kanjee Laljee was on the same day committed to prison to be produced on the 10th instant.

E.

Affidavit of Officer executing Warrant.

Songoro (before mentioned) gave evidence before the Court on the 10th instant that he on the 8th proceeded to the plantation of Bambi in the Island of Zanzibar guided by Kambo. Kanjee had left for town. Kanjee's house was built of stone, and he had some property. A woman was there, who, as wife of the accused, endeavoured to stop five slaves found on the premises from of their own free will accompanying him (Songoro) on his return, although the neighbours asserted she had only married Kanjee within the last few days, and that these slaves had been held by Kanjee for some time. Songoro, on reaching town, arrested Kanjee and now produced him, together with the accused Kando and the five other slaves.

F.

Deposition of Zabuni.

Zabuni, native of Kamanga, affirms—"I am a slave of Kanjee. I have been his slave for three years. He bid himself for one in the Zanzibar Slave Market. I had just then been brought as a raw slave from Kilwa and appeared for the first time for sale in the Slave Market. I was sent at once to the plantation at Bambi, where I had to work the land and carry loads to Zanzibar. Kanjee had six slaves. Halima (his late wife), a half caste Indian, had two of her own apart from Kanjee's; they are at Mayaba."

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[349r] (39/56)

34

G.

Deposition of Ouledi.

Ouledi, from Nyassa, states—"He was bought by Kanjee and his brother in the slave market at the same time as Zabuni."

* * * * *

H.

Deposition of Majoni.

Majoni, from Nyassa, states—"Came with several others to the Shamba (plantation) of Kanjee about three years ago; I was bought in the slave market."

* * * * *

I.

Deposition of Zafarani.

Zafarani, woman, from Nyassa, states—"Kanjee himself bid for her in the market two years ago."

* * * * *

J.

Deposition of Amao.

Amao, woman, from M'Gindo, "was bought in the slave market six years ago; is slave of Kanjee; when the others came I was in the town; now I work on the plantation."

* * * * *

K.

Voluntary statement of accused.

Made after being duly warned that he is not bound to reply to any question, and that what he states may be used against him. "My father is dead; my mother lives in town; I in the country; I am 30 years of age; my former wife, Halima, died five months ago. Half of the estate belonged to her for her life; at her death I inherited the whole. I bought two of these six slaves in the market at Zanzibar, four by private sale through agency, but with my money. I confess I have committed a mistake in purchasing and holding slaves against the order of the English Government. I did not mean to sell any of them. I kept them as my children. I arrived in Zanzibar when I was two years of age. I accompanied my father. I was born at Kaira in Cutch."

* * * * *

L.

The charge.

Consists of seven counts after preamble—

1st.—That he (Kanjee Laljee) on or about the 8th and 9th days of September 1873 at Zanzibar did detain against his will as a slave a Negro, named Kambo, whom he had himself previously purchased, and that he has thereby committed an offence punishable under Section 370 of the Indian Penal Code and within the cognizance of the High Court of Bombay.

2nd.—A similar charge with regard to Zabuni.

3rd.— " " Ouledi.

4th.— " " Majoni.

5th.— " " Zafarani.

6th.— " " Amao.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[349v] (40/56)

7th.—That having in each of the above individual cases removed, bought, trafficked, and dealt in slaves, he has thereby committed the offence of habitually removing, buying, trafficking, and dealing in slaves punishable under Section 371 of the Indian Penal Code and within the cognizance of the High Court of Bombay.

* * * * *

M.

Certificate that accused is not in the exempted List.

Certifies that accused is not on the list of February 1869, under which, by Bombay Government, Indians were permitted to register and hold slaves then in their possession on condition of their not being re-sold.

* * * * *

N.

Copy of Warrant.

Warrant of detention of accused during voyage from Zanzibar to Bombay.

* * * * *

A. A.

Letter to Government Pleader at Bombay.

Informs Government Pleader of committal for trial of accused.

* * * * *

A. A. A.

Warrant to Chief Commissioner of Police to place accused in Bombay Jail.

Warrant to Chief Commissioner of Police to confine accused in Bombay Gaol.

Note.—Where not otherwise specified all the documents are dated 10th September 1873, and they are countersigned by me as Justice of the Peace under the High Court of Bombay.

(Sd.) JOHN KIRK,

H. M.'s Poltl. Agent & Consul-Genl., Zanzibar.

Enclosure 3.

Translation of a letter from HIS HIGHNESS SYUD BURGASH to ALI BIN SALEH, Zanzibar, 12th September 1873.

AND then please inform the Political Agent that Burgash would not trouble him concerning the Indian, but his mother and all the Hindis come crying to me and say that he bought the slaves now many years ago. Ask the Agent please to be good enough to release him, for he is sorry for what he has done and let him free the slaves. Let him do this if possible, but let it be just as he pleases, for I would not solicit him on this matter.

Enclosure 4.

Translation of a letter from Political Agent and Consul-General, Zanzibar, to HIS HIGHNESS SYUD BURGASH, dated 11th September 1873.

ALI BIN SALEH has conveyed to me that it would please Your Highness were I to release the Indian Kanjee Laljee (committed for trial before the High Court of Bombay for illegally holding slaves) in consideration that he is penitent and that it is now some time since he purchased the slaves.

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Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[350r] (41/56)

250

Your Highness will be good enough to bear in mind that, whilst by the terms of the late Treaty concluded for the suppression of the slave trade, it is obligatory on Your Highness to use your utmost endeavours to prevent Arabs and all others from carrying slaves from place to place, so is it equally the duty of Her Majesty the Queen to see that Natives of India residing here do not hold slaves, and I have received the most stringent orders to see that this is carried into effect, in order that no one may say that we look differently on the Indians under our rule and on the Arabs over whom we claim no authority.

Your Highness will know, in their own country Indians are not permitted to hold slaves, and if they buy slaves here it is simply to make money out of them, and this is quite different from the Arabs who have always possessed domestic slaves in their families.

But my orders from the Government are so stringent that to accede to Your Highness' request in this case is utterly impossible.

Enclosure No. 4.

No. 65, dated Zanzibar, 19th September 1873.

From—Her Majesty's Political Agent and Consul-General, Zanzibar,

To—Secretary to the Government of India, Foreign Department.

WITH reference to the subject of my letter No. 63 of 17th September 1873, and with the view of bringing the difference in the various classes of cases before the Right Hon'ble the Viceroy and Governor-General in Council, I have the honor to report that one Jumma bin Jafer, an Indian, was charged in the Court with illegal slave-holding.

2. On investigation it appeared that the seven Africans on his plantation held certificates of freedom drawn up in an irregular manner. All were, however, anxious to remain with their masters, deposing that they were virtually free, happy, and contented. I therefore furnished each individual with properly attested papers of freedom, which were delivered into their own hands at Her Britannic Majesty's Agency, Jumma bin Jafer giving the usual present of one dollar at the same time to each of them, in keeping with a Zanzibar custom.

3. A third case is now under examination of a more important nature. A charge brought against a Memnon of Sind, comprising a refusal to attend the summons of this Court and a resumption into slavery of slaves freed by the Agency. On this I shall report by the next steamer.

4. I would bring before the notice of the Right Hon'ble the Viceroy and Governor-General in Council the fact that as yet no complaint has been lodged against any Indian registered as under British protection. The cases hitherto brought forward are against Indians who have never claimed our protection and who, until the signing of the late Treaty, occupied an anomalous position.

5. All of the three cases, I should further observe, are cases of domestic slavery.

Enclosure No. 5.

No. 70, dated Zanzibar, 4th October 1873.

From—Her Majesty's Political Agent and Consul-General, Zanzibar,

To—Secretary to the Government of India, Foreign Department.

IN my letter No. 65 of 19th September 1873, I had the honor to refer to the case of a Memnon of Sind then under examination before the Consular Court.

2. I did not feel justified in transferring this case to the High Court of Bombay, as with written statements of evidence alone a conviction could scarcely have been insured, and the expenses and difficulties in forwarding native witnesses would have been considerable.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[350v] (42/56)

3. I therefore tried the case before the Consular Court at Zanzibar, and have the honor to annex, for the information of the Right Hon'ble the Viceroy and Governor-General in Council, copies of the charges, remarks by the Court, and the finding and sentence, which will fully explain the course of procedure followed.

Copy of charges.
Copy of remarks by the Court.
Copy of finding and sentence.

4. I am glad to report that this trial has had a considerable effect upon the Indian population and convinced them that although type cases are sent for trial before the High Court of Bombay, yet the Consular Court is capable of adjudging on slave holding cases and able to enforce a ready obedience to its orders.

5. Following so rapidly on the despatch of Kanjee Laljee to Bombay, the practical result in the island has been a rush on the part of Indians to this office to register all Africans about their households regarding whose status any doubt might arise.

6. I have already registered free papers to thirty-eight individuals since 12th September last, and fresh applicants arrive almost daily. In nearly every case these people are virtually free and on appearing before me elect to remain with their former owners.

7. When Hadji Omar's case is made known at Mombassa and on the coast, I apprehend an almost equal anxiety will prevail on the part of the Indians there to free all slaves still in their possession, and I still await an opportunity of visiting the various ports in order to follow up the steps taken and enforce that authority over the numerous British Indian subjects resident on 1,000 miles of coast, so much needed for the advancement and security of legitimate trade, from the establishment of which alone can a permanent and healthy cure of all slave trade be looked to in the future.

QUEEN *versus* HADJI OMAR.

THE CHARGES.

In the British Consular Court at Zanzibar.

I, JOHN KIRK, ESQUIRE, Her Majesty's Political Agent and Consul-General, Zanzibar, declare that there is hereby made against Hadji Omar the charges:—

1st.—That he, on or about the sixth day of April at Mombassa did detain against his will as a slave a negro named Juma, together with two others, females, and that he has thereby committed an offence punishable under Section 370 of the Indian Penal Code and within the cognizance of this Court and under the 16th Clause of Her Majesty's Order in Council, dated 9th August 1866.

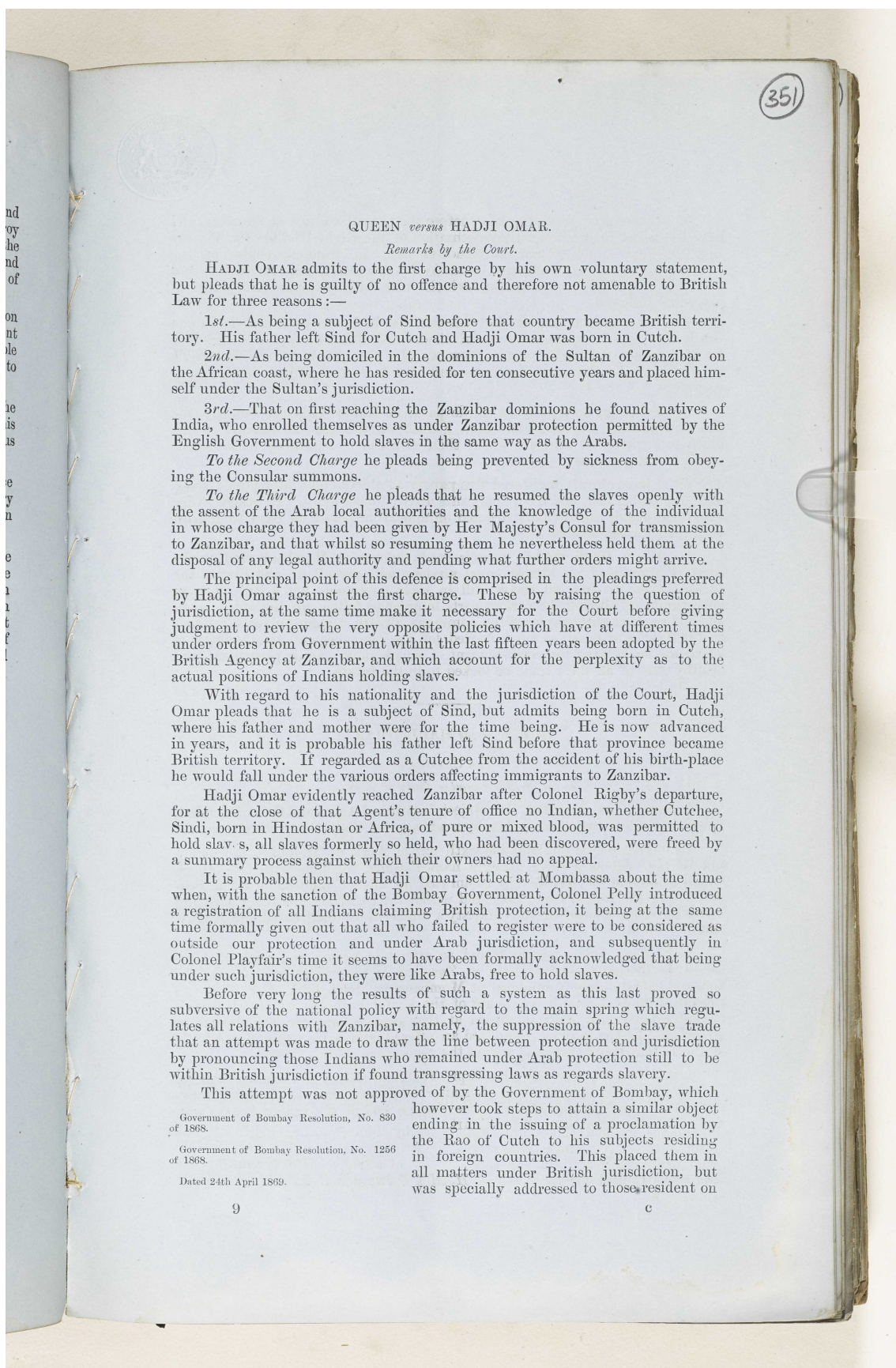
2nd.—That being legally bound to attend in person and without delay before the British Consular Court at Zanzibar, to answer to the above charge, being in person duly summoned at Mombassa by John Kirk, Her Majesty's Consul, so to do, he did in contempt of the lawful authority of Her Majesty's Consul intentionally omit to attend at that place, where he was bound to attend, and he has thereby committed an offence punishable under Section 174 of the Indian Penal Code and within the cognizance of this Court.

3rd.—That he, after the 7th of April 1873, did abduct two females formerly his slaves and did subject them thereafter to slavery, and that he has thereby committed an offence punishable under Section 367 of the Indian Penal Code, and within the cognizance of the Court.

ZANZIBAR, }
The 18th September 1873. }

(Sd.) JOHN KIRK,
H. M.'s Polt. Agent and Consul-General.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[351r] (43/56)



QUEEN *versus* HADJI OMAR.

Remarks by the Court.

HADJI OMAR admits to the first charge by his own voluntary statement, but pleads that he is guilty of no offence and therefore not amenable to British Law for three reasons:—

1st.—As being a subject of Sind before that country became British territory. His father left Sind for Cutch and Hadji Omar was born in Cutch.

2nd.—As being domiciled in the dominions of the Sultan of Zanzibar on the African coast, where he has resided for ten consecutive years and placed himself under the Sultan's jurisdiction.

3rd.—That on first reaching the Zanzibar dominions he found natives of India, who enrolled themselves as under Zanzibar protection permitted by the English Government to hold slaves in the same way as the Arabs.

To the Second Charge he pleads being prevented by sickness from obeying the Consular summons.

To the Third Charge he pleads that he resumed the slaves openly with the assent of the Arab local authorities and the knowledge of the individual in whose charge they had been given by Her Majesty's Consul for transmission to Zanzibar, and that whilst so resuming them he nevertheless held them at the disposal of any legal authority and pending what further orders might arrive.

The principal point of this defence is comprised in the pleadings preferred by Hadji Omar against the first charge. These by raising the question of jurisdiction, at the same time make it necessary for the Court before giving judgment to review the very opposite policies which have at different times under orders from Government within the last fifteen years been adopted by the British Agency at Zanzibar, and which account for the perplexity as to the actual positions of Indians holding slaves.

With regard to his nationality and the jurisdiction of the Court, Hadji Omar pleads that he is a subject of Sind, but admits being born in Cutch, where his father and mother were for the time being. He is now advanced in years, and it is probable his father left Sind before that province became British territory. If regarded as a Cutchee from the accident of his birth-place he would fall under the various orders affecting immigrants to Zanzibar.

Hadji Omar evidently reached Zanzibar after Colonel Rigby's departure, for at the close of that Agent's tenure of office no Indian, whether Cutchee, Sindi, born in Hindostan or Africa, of pure or mixed blood, was permitted to hold slaves, all slaves formerly so held, who had been discovered, were freed by a summary process against which their owners had no appeal.

It is probable then that Hadji Omar settled at Mombassa about the time when, with the sanction of the Bombay Government, Colonel Pelly introduced a registration of all Indians claiming British protection, it being at the same time formally given out that all who failed to register were to be considered as outside our protection and under Arab jurisdiction, and subsequently in Colonel Playfair's time it seems to have been formally acknowledged that being under such jurisdiction, they were like Arabs, free to hold slaves.

Before very long the results of such a system as this last proved so subversive of the national policy with regard to the main spring which regulates all relations with Zanzibar, namely, the suppression of the slave trade that an attempt was made to draw the line between protection and jurisdiction by pronouncing those Indians who remained under Arab protection still to be within British jurisdiction if found transgressing laws as regards slavery.

This attempt was not approved of by the Government of Bombay, which however took steps to attain a similar object ending in the issuing of a proclamation by the Rao of Cutch to his subjects residing in foreign countries. This placed them in all matters under British jurisdiction, but was specially addressed to those resident on

Government of Bombay Resolution, No. 830
of 1868.

Government of Bombay Resolution, No. 1256
of 1868.

Dated 24th April 1869.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[351v] (44/56)

the East Coast of Africa with regard to their liability to the operation, of all English laws affecting the holding of slaves.

It was not without objection on the part of Syud Majeed, the then ruling Sultan, who regarded it as an infringement of his independent right, that this proclamation was issued in Zanzibar, its operation however became considerably modified by a subsequent order of the Government of India, whereby the Agent was instructed "not to express opinion

Government of Bombay Resolution, No. 2487, dated 4th August 1869.

Government of Bombay Resolution, No. 146 of 1869.

Government of Bombay Resolution, No. 1058 dated 31st March 1869.

The question of nationality

33 Vic., Cap. 14.

33-34 Vic., Cap. 102.

Foreign Office Circular, dated 30th December 1870.

Foreign Office Circular, dated 22nd April 1871.

Letter from Dr. Kirk to Bombay Political Department, No. 87, dated 28th September 1871.

Letter dated 24th March 1871, from Dr. Kirk to Foreign Office.

Letter from Dr. Kirk to Bombay Political Department, No. 90, dated 29th October 1872.

From Bombay to Dr. Kirk Political Department, No. 874, dated 10th February 1873.

Sultan's assent frees from the operation of previous Acts, whether of the British Parliament or of India, the involved question of nationality and jurisdiction.

It is nevertheless quite evident that from time to time slave holding Indians resident on the East African Coast, must have held anomalous and varying positions with respect to actual culpability, these cannot be lost sight of in a Court of Justice when called upon to give judgment in cases of the present nature, and the Court in consequence find that Hadji Omar by purchasing the two female slaves, Mamina and Rahema, at a date prior to the publication in Zanzibar of the proclamation of the Rao of Cutch, dated 24th April 1869, committed no offence within the cognizance of a British Court of Justice, but in purchasing Juma and so adding to the number of slaves in his possession, the Court find that he, Hadji Omar, has committed a crime and is amenable to the law.

It further appears to the Court that the reasons assigned by Hadji Omar for not appearing before the Consular Court at Zanzibar previous to his arrest are insufficient.

Although undoubtedly in bad health, it appears he was sufficiently strong to go in person for the purpose of receiving his slaves from Mombassa to the house of the Custom's Agent beyond the town.

Neither can the explanation urged by Hadji Omar in extenuation of the 3rd charge be in any way accepted by the Court. The fact remains that at a date subsequent to the 5th June, from which date all questions as to the right of Indians to hold slaves are swept aside by the treaty, he, Hadji Omar, did resume into slavery and hold as slaves the two women, Mamina and Rahema, who had been placed in the safe custody of a responsible person by Her Majesty's Consul for the purpose of being forwarded to Zanzibar, and in due course freed.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[352r] (45/56)

352

References to marginal quotations of "Remarks by the Court" in case of Queen *versus* Hadji Omar, being enclosure No. 2 in letter No. 70.

Resolution by Government of Bombay, No. 830 of 1868, dated 25th March 1868.

WITH reference to letter from Political Agent, Zanzibar, stating "that many *bona fide* British subjects, natives of India, in His Highness' service, have slaves, which it is his duty to put a stop to," and calling attention "that the Sultan includes in his pretensions to jurisdiction over the subjects of British protected States of India who may have placed themselves under his protection, all *bona fide* British subjects who may have forfeited British protection or entered his service, and that these, as well as Cutchees under his protection, have, according to His Highness' reasoning, acquired the right to possess slaves in his dominions," says—

"The Political Agent should be informed that British subjects residing in Zanzibar cannot exempt themselves from British law by taking service with the Sultan."

Government of Bombay Resolution, No. 1256 of 1868, forwards copy of despatch from Secretary to Government of India, in which, after stating the position of Cutchees, demands legal consideration, is remarked, "this might well be deferred till the questions of fact have been taken up, and it has been decided whether the Cutchees are engaged in *slave-dealing* or not. If they are merely *slave-holders*, then there would seem to be no sufficient warrant for interfering with them."

Proclamation by the Rao Kutch, 24th April 1869, explained in body of Remarks.

Government of Bombay Resolution No. 2487 of 4th August 1869, forwards for information No. 960 from Secretary to Government of India, which "suggests an intimation being made to the Political Agent that while using all legitimate influence in the discouragement of the slave trade he should avoid, as much as possible, the expression of opinions as to *purely domestic or household slavery* when practised in Zanzibar by Cutchees or others."

Government of Bombay Resolution No. 146 of 1869, forwards No. 1544 of 31st December 1868, from Secretary to Government of India, stating "that it is not necessary to interfere with any existing arrangements by which domestic slaves are now actually possessed by Cutchees at Zanzibar for household purposes, but that the purchase of any slaves in future, whether intended for domestic purposes or for purposes of traffic, should be strictly prohibited."

Government of Bombay Resolution No. 1058 of 31st March 1869. "The Political Agent's proceedings in calling for a list of slaves possessed by each Cutchee, with a view to determining whether they are held as domestic slaves or for the purposes of slave traffic, seem to be in pursuance of the orders of the Government of India, but the order limiting the number of domestic slaves which each Kutchee is permitted to retain goes beyond those orders."

33 Vic., Cap. 14.

33-34 Vic., Cap. 102.

Foreign Office Circular, December 30th, 1870.

" " April 22nd, 1871.

} Refer to Act cited and direct publication of same in Zanzibar.

Dr. Kirk to Foreign Office, dated 24th March 1871, Dr. Kirk to Bombay Political Department, No. 87 of 28th September 1871, and Dr. Kirk to same, No. 90 of 29th October 1872, all touch upon the difficulties which will be created by the publication of the Naturalization Acts and request that instructions may be furnished to the Political Agent.

Bombay Political Department, No. 874, dated 10th February 1873, in answer to Dr. Kirk's letters No. 87, of 28th September 1871, and No. 90 of 29th October 1872, forwards Resolution as follows:—"The Acting Political Agent

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[352v] (46/56)

should be directed to draw the attention of Sir Bartle Frere to the subject of his letters and informed that he will shortly receive instructions from Government.

“ The Government Solicitor should be requested to obtain and submit to Government the opinion of the Hon'ble the Advocate-General as to the applicability of the Naturalization Act to the subjects of the protected State of Cutch now residing in Zanzibar. The main questions for consideration appear to be, whether Parliament could in a matter of this sort legislate for the subjects of a protected State, and whether, if so, such subjects would be included in the term British subjects as used in the Act.

Queen versus Hadji Omar.

FINDING AND SENTENCE.

First charge.—The Court finds that Hadji Omar is *guilty* of the offence specified in the first charge, in so far only as regards the purchase of the slave Juma, and is thereby punishable under Section 370 of the Indian Penal Code: but in so far as relates to the purchase of the two female slaves, the Court find the said Hadji Omar not guilty.

Second charge.—And upon the second charge, the Court find Hadji Omar guilty, in that being legally bound to attend before the British Court in Zanzibar, he intentionally failed so to attend and thereby has committed an offence punishable under Section 174 of the Indian Penal Code.

Third charge.—And upon the third charge, the Court find Hadji Omar guilty, in that he resumed into slavery the two women placed under protection by order of Her Majesty's Consul, and thereby has committed an offence punishable under Section 370 of the Indian Penal Code.

THE Court orders under the provisions of the above-mentioned Sections of the Indian Penal Code and also under the Act V., George IV., C. 113, and also under the provisions of the order of Her Majesty in Council for the Regulation of Consular jurisdiction in the dominions of the Sultan of Zanzibar, 9th August 1866, that the said Hadji Omar be fined in the sum of two hundred dollars (200\$) to be paid into the Indian Treasury, after deduction of all costs in the cause, and further that he, the said Hadji Omar, be imprisoned for a term of (6 months) of six calendar months at Zanzibar.

(Sd.) JOHN KIRK,

H. M.'s Poltl. Agent and

Consul-Genl., Zanzibar.

ZANZIBAR,
The 4th October 1873. }

Enclosure No. 6.

No. 6872, dated Bombay Castle, 8th November 1873.

From—Secretary to the Government of Bombay,

To—Secretary to the Government of India, Foreign Department.

I AM directed to submit, for the orders of the Government of India, the enclosed copy of a letter from the Political Agent and Consul-General, Zanzibar, No. 29, dated the 11th September last, regarding one Kanjee Laljee, a Cutch subject, resident in Zanzibar, who has been committed for trial before the High Court of Bombay charged with slave-dealing. Copy of an opinion in the case by the Hon'ble the Advocate-General, No. 67, dated the 18th ultimo, and of a letter from this Office No. 6647 of the 30th idem, written in reply, also accompany. Mr. Scoble's further opinion when received will be forwarded to the Government of India.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[353r] (47/56)

353

2. I am also directed to forward, for submission to the Government of India, copy of an opinion* by the Hon'ble the Advocate-General and of its connected papers relating to the law in respect to slavery.

3. As regards the case of Kanjee Lalljee, I am to state that if it be found inexpedient to bring it before the High Court, it is for consideration whether the accused, with the depositions, should not be made over to the Rao of Cutch for trial.

4. I am to add that the accused has not yet arrived in Bombay, and the papers transmitted by Dr. Kirk do not state when his arrival may be expected.

No. 4303, dated Bombay Castle, 8th July 1873.

From—Secretary to the Government of Bombay,
To—Government Solicitor, Bombay.

I AM directed to forward to you the annexed extract, paragraph 5, from a letter from the Secretary to the Government of India in the Foreign Department, No. 1289P., dated the 13th ultimo, respecting the participation of British subjects in the East African slave-trade, and to request that you will be so good as to advise Government with regard thereto.

2. Copy of a Resolution and of a proclamation by His Excellency the Governor-General in Council on the subject is enclosed for your information.

No. 773, dated Bombay, 22nd July 1873.

From—Acting Solicitor to Government of Bombay,
To—Secretary to the Government of Bombay.

WITH reference to your No. 4303 of 1873, under date the 8th instant, I have the honor to inform you that I am of opinion that the main difficulty to be encountered in prosecutions before the High Court of Bombay for offences against the slave-trade is with regard to the evidence, as for instance, the power given to Her Majesty's Consul at Zanzibar to deport the accused person to Bombay for trial would not, I think, empower such Consul at the same time to forward against their will the witnesses in the case who might or might not be British subjects, and who, unless in the service of the Crown, would not care to come such a distance for such a purpose.

This difficulty is no new one and arose in England under the Slave Act previous to the 6th and 7th Vic., Cap. 98, the 4th Clause of which latter Act recites as follows:—

“And whereas the provisions heretofore made for the hearing and determining in England of offences committed against the Acts for the abolition of the slave-trade in places out of this United Kingdom have been found ineffectual by reason of the difficulty of proving in this kingdom matters and things done elsewhere,” and provides for the taking of evidence abroad and the transmission thereof to the Court of Queen's Bench.

The fact of this provision being made shows that under the pre-existing law evidence in a criminal case could *not* be taken under Commission, and that it is only when special provision is made that evidence can in such manner be taken and used in criminal cases.

To turn to Legislative enactments in India, my attention has been directed to Sections 9 and 10 of the Foreign Jurisdiction and Extradition Act, 1872, but grave doubts occur to me on the language of the 10th Clause, which provides that copies of depositions made or exhibits produced before the Political

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[353v] (48/56)

Agent or Judicial Officer in the State in which an offence is alleged to have been committed shall be received as evidence by the Court holding such enquiry or trial *in any case* in which such Court might issue a *Commission* for taking evidence as to the matters to which such depositions or exhibits relate. I do not think that these words contemplate the issue by such Court of a Commission in any but a criminal case, and I do not think that the High Court has any power to issue a Commission to take evidence in a criminal case.

If I am right in my opinion, it will be most difficult in the present state of the law to convict any person sent from Zanzibar to the High Court of Bombay for trial for offences against the laws against slavery, unless sufficient evidence is available from servants of Her Majesty, and great care should be taken before sending a man to take his trial on such charges that evidence sufficient to fairly warrant expectation of conviction will be forthcoming in Bombay.

Even if the provisions of Section 10 are applicable, very great care will have to be taken about the depositions, and the greatest latitude allowed to the accused person or his legal advisers, if any, to cross-examine the witnesses, otherwise the offender, if defended by Counsel, would make such use of any imperfections appearing on the depositions as would probably lead the Jury to refuse a conviction.

If possible, I think it would be well to submit the depositions in any such case to Government with a view to the opinion of the Law Officers being taken before the offender is sent to Bombay for trial, for when the offender is removed from the place where the witnesses are examined, no further or additional depositions taken in his absence would, I think, be admissible against him.

If any prosecutions are likely to be instituted, it would be well to consider how far the provisions of Section 4 of 6 and 7 Vic., Cap. 98, should be adopted in this country with the High Courts substituted for the Court of Queen's Bench.

I may further remark that it is by no means easy to anticipate the difficulties which may arise on the trial of an offence under these Acts, and which can only be correctly encountered when the experience of one or two cases has placed matters connected therewith in a practical light.

No. 29, dated Zanzibar, 11th September 1873.

From—Political Agent and Consul-General, Zanzibar,
To—Secretary to the Government of Bombay.

I HAVE the honor to report, for information of His Excellency the Governor in Council, the steps taken by me to bring one Kanjee Laljee of Cutch, resident in Zanzibar, to trial before the High Court of Bombay, charged with slave-dealing.

2. I have adopted this course in accordance with the instructions of Earl Registrar, High Court; Public Pleader; Granville, with copy of which you have been Chief Commissioner of Police. already furnished by the Secretary to the Government of India, No. 1289P., dated 13th June 1873.

3. I herewith transmit under flying seal, for information of Government, and to be forwarded without delay to the various departments to which they are respectively addressed, all the documents having reference to this case, which is the first of a criminal nature that has been transferred from Zanzibar to the jurisdiction of the High Court.

4. On the conclusion of this case in the High Court I would urge the expediency, in the event of a sentence of conviction being obtained, that the fullest publicity may be given thereto in the local, especially the native, newspapers, which are regularly received by the native community in Zanzibar,

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[354r] (49/56)

354

and I would further beg to be furnished with any observations regarding the mode in which this present case has been forwarded for trial, to enable me in future to remedy any defects of procedure and any technical flaws that might in a more difficult case defeat the ends of justice.

5. I particularly urge the necessity of being furnished with clear instructions in what way local evidence here taken should be transmitted so as to be admissible in the High Court where the witness himself cannot be produced. This I do in consequence of it having been found necessary in prosecuting indictments for offences committed under 5 George IV., Cap. 113, to pass the Acts 6 and 7 Vic., Cap. 98.

No. 67, dated Bombay, 18th October 1873.

Opinion of the Advocate-General, Bombay.

WITH reference to the case of Kanjee Laljee, who has been committed for trial before the High Court of Bombay, charged with slave-dealing by the Political Agent and Consul-General at Zanzibar, I would suggest that steps should be immediately taken to secure the attendance before the High Court of the witnesses upon whose evidence the prisoner was committed.

The Order in Council of 4th November 1867, under which Dr. Kirk has presumably acted, provides that the High Court "at the Sessions to be holden next after such committal shall proceed to hear and determine the charge;" and as the next Sessions of the High Court will commence on the 20th November, it may be a question whether the witnesses can be brought up in time. If they cannot, the prisoner will be entitled to his discharge, as no evidence will be forthcoming against him, and the High Court has apparently no power to postpone the hearing of the case to a future Sessions. The depositions taken by Dr. Kirk cannot, in my opinion, be received in evidence under the present state of the law in India.

I am not aware if any copy of the Order in Council of 4th November 1867 exists in Bombay. My knowledge of it is derived from the Resolution of the Government of India, No. 1288 (Foreign Department), of 13th June 1873, in which some of its provisions are cited. If there is no copy of it here, it would be desirable to procure a copy, either contained in the *London Gazette*, or purporting to be printed by the Queen's Printer, for use at the trial under Section 78 of the Indian Evidence Act.

I notice that Kanjee Laljee is described as "of Cutch." If this be so, it will be a question whether he is either a "British subject" within the meaning of the Order in Council, or a "Native Indian subject of Her Majesty" within the meaning of Act XI. of 1872. If he is a subject of His Highness the Rao of Cutch, I do not see how he can be made amenable to British jurisdiction for an offence against British law committed out of British territory.

No. 6647, dated Bombay Castle, 30th October 1873.

From—Secretary to the Government of Bombay,

To—Hon'ble the Advocate-General, Bombay.

WITH reference to your opinion dated 18th instant, in the case of Kanjee Laljee, I am directed to enquire whether the question of the admissibility as evidence before the High Court of the depositions taken at Zanzibar is not affected by Section 330 of the new Code of Criminal Procedure as read in connection with Act XI. of 1872, Section 10.

2. I am also directed to furnish you with copy of a proclamation by the Rao of Cutch in evidence of his having delegated the jurisdiction over his subjects resident at Zanzibar to the British Government in regard to slave-dealing

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[354v] (50/56)

cases, and to enquire whether you consider that the High Court would have jurisdiction to try the case in the event of its appearing that Kanjee Laljee is a subject of the protected State of Cutch.

No. 65, dated Bombay, 18th October 1873.

From—Advocate-General, Bombay,
To—Secretary to the Government of Bombay.

I HAVE the honor to acknowledge the receipt of your letter No. 5073 of 1873 (Political Department) on which you request my opinion upon certain suggestions made by the Acting Solicitor to Government in his letter No. 773 of 1873, with regard to the means of bringing to justice British subjects concerned in the East African slave-trade.

I quite concur with Mr. Peile in the opinion that legislation is necessary. The Political Agent at Zanzibar has been appointed a Justice of the Peace under Act XI. of 1872, and in that capacity may commit for trial before the High Court of Bombay any British subject charged with an offence under Sections 367, 370, and 371 of the Indian Penal Code. But how is he to secure the attendance of the witnesses at the trial? Section 4 of 6 and 7 Vic., Cap. 98, only legalizes the use of depositions taken in slave-trading cases before the Court of Queen's Bench in England, and Section 10 of Act XI. of 1872 only provides that copies of depositions shall be received as evidence by the Court holding the trial "in cases in which such Court might issue a Commission for taking evidence as to the matters to which such depositions relate." As the High Court has no power to issue Commissions to take evidence in criminal cases, it follows that the witnesses must personally attend to give their evidence at the trial, and although such of the witnesses before the Political Agent as were British subjects might be bound over to attend at the trial, their attendance could scarcely be secured unless their travelling expenses were paid and compensation allowed them for their loss of time. Over witnesses who were not British subjects, the Political Agent would have no authority. A trial before the High Court of Bombay under the existing law would, therefore, be always expensive, and frequently futile.

A remedy may be found, as suggested by Mr. Peile, in extending the provisions of Section 4 of 6 and 7 Vic., Cap. 98, to trials had before High Courts in India. The Order in Council of 4th November 1867, which gives power to the Consul to commit offenders for trial before the High Court of Bombay, directs that the said Court shall proceed to hear and determine the charge in the same manner as if the crime had been committed within the territory of Bombay. An Act of the Government of India would therefore be required to alter the practice of the High Court in cases committed for trial under the order in Council.

I return the papers forwarded with your letter.

Enclosure No. 7.

No. 7339, dated Bombay Castle, 8th December 1873.

From—Secretary to the Government of Bombay,
To—Secretary to the Government of India, Foreign Department.

WITH reference to the proceedings forwarded with the letter from this Office, No. 6872, dated the 8th ultimo, I am directed to transmit herewith, for the information of the Government of India, copy of a letter from the Acting Public Prosecutor, No. 89, dated the 25th idem, reporting that the case of Regina vs. Kanjee Laljee, the slave case from Zanzibar, came on for hearing before the High Court of Bombay on the 22nd November, and that the prisoner was discharged.

16

Exd.—J. T. F.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[355r] (51/56)

2. In transmitting this letter I am desired to state that the result of the arraignment of Kanjee Laljee at the bar of the High Court of Bombay indicates, among other things, the expediency of the speedy extension of the Code of Criminal Procedure to the Presidency towns.

No. 89, dated Bombay, 25th November 1873.

From—Acting Public Prosecutor,

To—Secretary to the Government of Bombay, Political Department.

I HAVE the honor to report that the case of Regina *versus* Kanjee Laljee, the slave case from Zanzibar, came on before the High Court on Saturday the 22nd instant, and the prisoner was discharged.

2. Mr. Justice Gibbs, before whom the case came for trial, remarked that no witnesses had been sent up, and that none were under orders to appear no recognizances having been received; that on the charge the prisoner appeared to be a native of Cutch, and therefore not a British subject; that the proceedings did not show that the depositions were taken in the prisoner's presence, or that he had any opportunity of cross-examining the witnesses, and that the depositions were not sufficient to sustain the charges made against the prisoner which last objection could be surmounted by framing additional charges as the depositions showed that prisoner purchased slaves.

3. The learned Judge further remarked that this course would be useless as the Court had no jurisdiction, the prisoner in the first place not being a British subject and there being no Treaty with Cutch, much less any order of Her Majesty in Council which under such a Treaty might confer jurisdiction on this Court to try subjects of the Rao of Cutch for offences committed in foreign parts.

4. That the Proclamation of the Rao dated 16th December 1872 in no way affects the question as His Highness the Rao could give no jurisdiction to the Court.

5. Mr. Justice Gibbs therefore directed that an entry be made on the charge under Section 8 of Act XIII. of 1865 to the effect that it is clearly unsustainable which entry would have the effect of a *nolle prosequi*, and that the prisoner be discharged.

6. Mr. Justice Gibbs then referred to the manner in which the Consul-General at Zanzibar had been led into error and stated that the order in Council of the 9th August is issued under the provisions of 6 and 7 Cap. 98 and only applies to British subjects that the power to issue Commissions to take evidence in case of offences against the slave trade is confined to the Court of Queen's Bench in England.

7. That the High Court of Judicature at Bombay on its Original Side can under that Act take evidence under a Commission issued by the Court of Queen's Bench at Westminster, but has no power to issue a commission to Zanzibar, much less to use depositions taken by the Political Agent there as evidence against a prisoner.

8. That the only other law which may have misled that officer is Section 330 of the new Criminal Procedure Code and Act XI. of 1872, Section 10. But that the latter section only applies to British subjects which the prisoner in the present case on the face of the Political Agent's proceedings was not, while the 330th Section of the Code of Criminal Procedure only applies to the District Courts and to the High Court on its Appellate Side, but not to such Court in its Ordinary Original Criminal Jurisdiction.

9. I have thought it well to set out these remarks as pronounced as it is evident that some further legislation will be required to enable the High Court in Bombay to deal satisfactorily with cases of slavery.

10. I return the telegram from the Political Secretary, Agra.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[355v] (52/56)

Enclosure No. 8.

No. 7342, dated Bombay Castle, 8th December 1873.

From—Secretary to the Government of Bombay,
To—Secretary to the Government of India, Foreign Department.

REFERRING to the letter from the Political Agent and Consul-General, Zanzibar, to your address, No. 70, dated the 4th October last, forwarding proceedings connected with the case of one Hadjee Omar, charged with slave-dealing, &c., I am directed by His Excellency the Governor in Council to state that considering the action* of the High Court of Bombay in the case of Kanjee Laljee, it seems equitable that the punishment awarded in the case of Hadjee Omar should be remitted.

* Vide Bombay Government letter of this date, No. 7339.

Enclosure No. 9.

No. 8, dated Zanzibar, 13th January 1874.

From—Her Majesty's Acting Political Agent and Consul-General, Zanzibar,
To—Secretary to the Government of India, Foreign Department,

I HAVE received through the Government of Bombay a copy of Mr. Justice Gibbs' remarks on the slave case "*Regina versus Kanjee Laljee*," which came on for trial before the High Court of Bombay on the 22nd November 1873.

2. From these remarks it appears that the High Court had no jurisdiction, the prisoner being a native of Cutch, and not a British subject, and there being no Treaty with Cutch, much less any Order in Council, which confers the right to try subjects of Cutch for offences committed in foreign parts. That the Proclamation of the Rao of Cutch dated 16th December 1872 in no way affects the question as he could give no jurisdiction to the said Court; and lastly that these proceedings have rendered it evident that some further legislation will be required to enable the High Court at Bombay to deal satisfactorily with cases of slavery.

3. I would respectfully observe that the remarks made by Mr. Justice Gibbs with reference to the jurisdiction of the High Court at Bombay appear to me to be equally applicable to the Court of the Political Agent and Consul-General at Zanzibar.

4. The jurisdiction of this Court on matters of slave-dealing is defined, (1) by Her Majesty's Order in Council of the 9th August 1866; and (2) by the Notification of the Government of India (Political), No. 1288, dated 13th June 1873, which confers the powers of a Justice of the Peace on the Political Agent to enable him to deal with cases arising under the Foreign Jurisdiction and Extradition Act of 1872.

5. Under the Order in Council the Consul-General has jurisdiction over all British subjects in Zanzibar in cases connected with slave-holding or slave-dealing; and also (Section 35) over all persons enjoying Her Majesty's protection in the dominions of the Sultan of Zanzibar. The manner in which this protection is to be claimed and granted is laid down in Section 30.

6. Under the Notification of the 13th June 1873, the jurisdiction of the Political Agent is limited to British subjects alone.

7. The fourth Article of the Treaty concluded with the Sultan of Zanzibar on the 5th of June 1873, without extending the jurisdiction, widens the obligations of the Political Agent, as the representative of Government, very considerably. In this Article Her Majesty "engages that natives of Indian States under British protection shall be prohibited from possessing slaves and from acquiring any fresh slaves" from the date of the Treaty.

8. It is difficult from the wording of this Article to gather whether the qualification "under British protection" refers to the "Natives of the Indian

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[356r] (53/56)

356

States" or to the "Indian States" themselves. We find the term "British protected States in India" in the 30th Section of the Order in Council of the 9th August 1866, and Doctor Kirk also employs a similar expression in the 2nd paragraph of his letter to the Bombay Government, No. 90-343, dated 29th October 1872. On reference to the Arabic version of the Treaty, I find, however, that the former is the sense recorded therein.

9. It is obvious that if the wider acceptation of the term be taken, there exists at present no machinery by which the provisions of the Article can be enforced, unless the "Native of the British protected State" has voluntarily enrolled himself as a *protege* of the Consulate under Section 30 of the Order in Council. On the other hand, if we narrow the interpretation of the Article, and only include such *proteges* within its provisions, it will virtually become inoperative, as only a small, and that the most respectable, portion of the Indian traders of this Coast and Island have claimed the privilege of British protection.

10. Dr. Kirk was fully alive to the evils which would have resulted from the scope of our engagements being thus contracted, and in his late tour through the northern possessions of the Sultan of Zanzibar, he manumitted every slave he found in possession of a native of India, whether such native was enrolled as a British *protege* or not; and under Dr. Kirk's directions, Captain Elton is now pursuing the same line of policy through the southern territories of His Highness.

11. But this Article will become a dead letter, if the persons who have been freed can be resumed into slavery by their former masters without fear of punishment.

12. It appears to me that the difficulty is one which presses for immediate settlement, and in support of this view I may mention that I have heard from private sources it is the intention of the accused Kanjee Laljee to return to Zanzibar, when he will probably lose no time in making his fellow countrymen acquainted with the terms of the decision which has been publicly delivered by Mr. Justice Gibbs in the High Court of Bombay.

13. I would therefore urge upon the consideration of His Excellency the Governor-General in Council the expediency of adopting such measures as may remedy the existing state of things. The Proclamation issued by His Highness the Rao of Cutch on the 16th of December 1872 is clearly not sufficient; inasmuch as if its terms are not binding upon the High Court of Bombay, neither can they be binding upon the Consular Court of Zanzibar, although, as a matter of expediency, it may be necessary to give effect to them. I would suggest with great deference that fresh Treaties be concluded with the Rao of Cutch and with the Rulers of the maritime States of Kattywar, by which those Princes would engage to place under the jurisdiction of the British Representative at Zanzibar the whole of their subjects residing within the dominions of His Highness the Sultan, the British Government on its part assuming the responsibility of protection and promising to give effect to the Treaty in the usual way. The concurrence of the Sultan of Zanzibar would of course be necessary, as the existing Treaty concluded on the 31st May 1839 with His Highness Sand Soud confers no extra-territorial jurisdiction over other

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[356v] (54/56)

subjects, and the subjects of Princes and States in India in alliance with Her Majesty for offences of the descriptions referred to in Sections 357, 370 and 371 of the Indian Penal Code, and for abetting the commission of the same, and whereas the said Governor-General in Council has power to delegate the said jurisdiction, and it is expedient to delegate the same in part to a British officer at Zanzibar,

The Governor-General in Council accordingly is pleased hereby to delegate to the Political Agent at Zanzibar for the time being for the trial of persons of the said classes committing or abetting the commission of offences of the said descriptions the powers of a Deputy Commissioner under Section 36 of the Criminal Procedure Code and to ordain that every sentence passed in the exercise of such powers shall be valid without any such confirmation being required as is prescribed in certain cases by the said Section 36. Any person aggrieved by any order passed by the Political Agent in the exercise of the powers hereby conferred on him may forward an appeal in writing to the Governor-General in Council within six months from the date of such order.

The Governor-General in Council reserves to himself in all cases tried under this Notification and coming before him whether on appeal or otherwise the fullest powers conferred upon any Court of appeal, superintendence, or revision by the Criminal Procedure Code.

Enclosure No. 11.

No. 771P., dated Fort William, 1st April 1874.

From—Secretary to the Government of India, Foreign Department,
To—Secretary to the Government of Bombay.

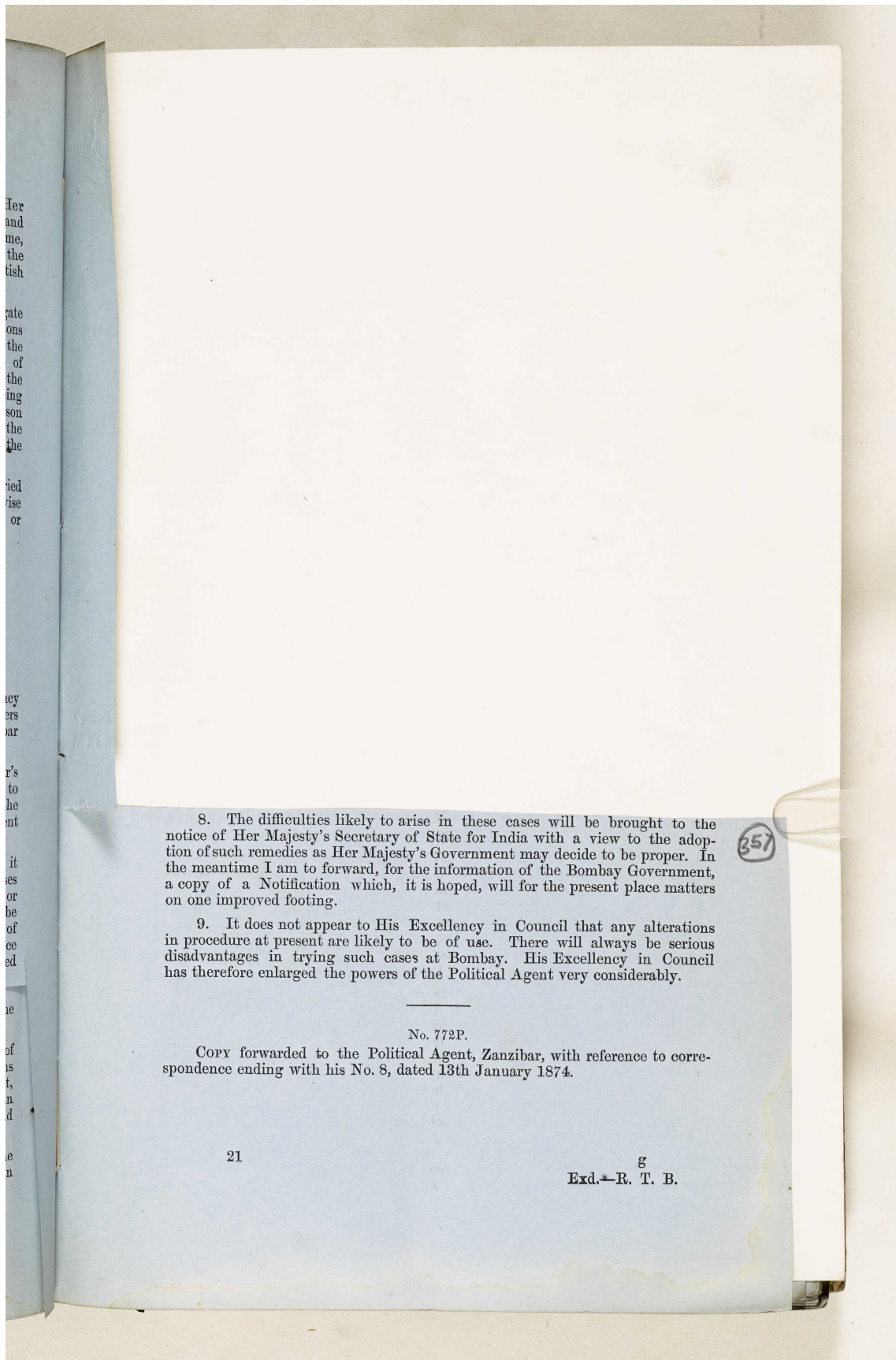
I AM instructed to convey to you the views and orders of His Excellency the Governor-General in Council on your letters noted in the margin relative to the Zanzibar slave trade.

No. 6872, dated 8th November 1873.
" 7399, dated 8th December 1873.
" 7342, " " " " "

2. The two practical questions appear to be, *first*, whether Hadji Omar's fine shall be remitted; and, *secondly*, whether an endeavour should be made to strengthen the hands of the Political Agent and Consul at Zanzibar, and the High Court at Bombay in dealing with cases that may arise out of the recent arrangements made at Zanzibar for the suppression of the slave trade.

3. In his letter of 22nd July 1873, Mr. Peile very justly observes that it is by no means easy to anticipate the difficulties which may arise in these cases and that they can only be correctly encountered when the experience of one or two cases has placed matters in a practical light. For this purpose it would be most desirable to know the grounds on which the Court disposed of the case of Kanjee Laljee. I am therefore to request that the full text of Mr. Justice Gibb's judgment in the case of Reg. *versus* Kanjee Laljee may be procured and submitted to the Government of India.

Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[357r] (55/56)



Political No. 66 of 1874, Forwarding for Consideration Copies of Correspondence
Relating to Certain Questions which have Arisen Regarding the Jurisdiction of
the Political Agent at Zanzibar in Dealing with Breaches of the Slave Laws
[357v] (56/56)

