

1923

151

KENYA

CO  
39981

Mr. J. P. ...  
Mr. ...  
397

DATE

6th July 1923

RE  
TO

CIRCULATION  
Mr. ...  
Mr. ...  
Asst. U.S. of S.  
17/7/23

SUBJECT

Bankruptcy Law

Send memorial from professional business men in Nairobi praying for amendment in new Bill in course of preparation.

Previous Paper  
500  
14-147

MINUTES

Mr. Hubert Butterfield

- (1) Any other business?
- (2) Do you think we ought to be in the office in charge?

(1) I am not acquainted with Indian law which appears to be a - but the magistrate did not think an offence was disclosed & I have no reason to suppose that was not quite correct.

(2) No I don't think so.

H.B. 16/5

We must send some reply to the memorial - the less we say, the better? Do you

Subsequent Paper  
M.B. 22/10/23

think we all: the  
 dip - saw that the  
 memorialists are inf.  
 that their memorials  
 has been received -  
 that Sgt. understood  
 that a comprehensive  
 bill following the  
 English law on  
 bankruptcy is already  
 in preparation by  
 the Col. of. & that  
 if accepted by the  
 Cong. C. provisions  
 included in the bill  
 will afford adequate  
 security to professional  
 business men who  
 safeguard their  
 own interests by  
 withholding credit  
 to persons who are  
 unknown to them  
 or whose financial  
 stability is open  
 to doubt - & as  
 to the case of wh.  
 committee are desired

by that Sgt. understands  
 that the magnitude 151  
 and not think that an  
 office was disclosed  
 or that the statements  
 made were sufficient  
 to ground a prosecution.

- accd

- 11.8.23

Yes I think that will do admirably.

HLB

17/8

? or required.

accd

17.8.23

at once.

to J.R.

17/8/23

KENYA

No. 397.

Confidential.



39981

REC  
PL 10 AUG 23

152  
GOVERNMENT HOUSE,  
NAIROBI,  
KENYA

6th July, 1923.

My Lord Duke,

I have the honour to transmit for Your Grace's information 2 copies of a memorial addressed to Your Grace by various professional and business men of Nairobi on the subject of the Bankruptcy Law at present in force in this Colony and its operation in the case of a Mr. E. Broughton Adderley.

2. The criticisms of the action of the Resident Magistrates in declining to issue a warrant of arrest against Mr. Broughton Adderley on a charge of cheating are, I consider, disposed of by the statements of the Magistrates copies of which are attached.

3. It has <sup>already</sup> been reported to Your Grace in Sir Robert Cayndon's despatch No. 233 of February 22nd last that a comprehensive Bill following English Law on Bankruptcy is in course of preparation by the Attorney General. The draft of this Bill is modelled on the Bankruptcy Act 1914, Section 15 (13) (14) (15) of which relates to offences of obtaining goods - through fraud - without payment within 6 months of Bankruptcy proceedings. This provision, if accepted in Legislative Council, will afford adequate security to professional and business men who safeguard their own interests by withholding credit to persons who are unknown to them or whose financial stability is open to doubt.

I have the honour to be,

My Lord Duke.

Your Grace's most devoted and  
most obedient servant.

*J. S. S. ...*  
GOVERNOR'S DEPUTY.

IS GRACE

THE DUKE OF DEVONSHIRE, K.G., P.C., G.C.M.G., G.C.V.O.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET - LONDON, S. W.

To the Right Honourable  
The Secretary of State for the Colonies,  
London, England.

Through *H. E. The Governor*  
(per the Hon. Colonial Secretary, Nairobi, Kenya Colony)

ENCLOSURE  
In Despatch No. *722/110*

Sir,

We, the undersigned, professional & business men of the town of Nairobi, Kenya Colony, knowing that representations have been made to your Department from time to time, praying for an improvement to be made in the existing Laws, both Civil and Criminal, of this Colony, desire to bring to your notice the case of one Edward Broughton Adderley, a young able bodied man of good education, who, by reason of the said laws, was enabled to obtain relief from his Creditors by the application of the Insolvency Act, despite strenuous and united opposition, without - in our opinion - just cause. Immediately following his adjudication, although warned at the time that he was not entitled to leave the jurisdiction of the Court, this young man did attempt so to leave, and on being restrained, indulged in an Evening's extravagance (realising the money for same by selling surplus Clothing, in respect of which the Court subsequently refused to take action) and the following morning, gave himself up to the Police as a Vagrant. He has since been deported.

Before the deportation, complaints were made to the Police by certain of us who considered we had been cheated. The Police referred us to the Magistrate (Resident) who however declined to issue a warrant. Subsequently the matter was placed in the hands of Messrs. Day, Figgis & Ross, Solicitors and advocates, of this town, and one of the firm, Mr. Figgis, took the matter up with the Police and the Attorney General, pressing for a Criminal Prosecution. The Police thereafter made close enquiries into the case, and as a result of same, we were informed that it had been decided to prosecute, and with this object in view, a statement was taken from Mr. Pearson, a taxi owner of this town, and another from an ex-driver of his, who had been connected with the case.

The Magistrate to whom the first complaints had been made, had in the meantime been transferred, and consequently the Police made application to another Magistrate at the Court of Nairobi for a warrant of arrest, but to our surprise, this second Magistrate refused to issue a warrant, and this notwithstanding the fact that in the said Pearson's case was connected with, and almost identical to, another case in which the said Edward Broughton Adderley was actually charged on the first Magistrate's warrant with cheating, which charge he subsequently allowed to be withdrawn upon payment of the sum involved being guaranteed by a friend.

In the debtor's Petition of Insolvency, he stated he had no property whatever, and that his assets were nil. Our contention is that under such circumstances, the debtor's acceptance of credit was fraudulent, and further that in certain instances, he deliberately misled Creditors into the belief that he had none of his own coming

him from home (England) within a month. (See Statement No.1 Mackintosh) The Debtor's explanation of this, given at the Insolvency Proceedings, is to the effect that he had written to his Father asking for money, and no reason to suppose that his request would not meet with success. We cannot dispute the first part of the explanation, but we contend that the Debtor had no justification to expect a successful result, as it is well known that the Father made an allowance to his Son and his Sons' wife, but the said allowance was paid to the wife, and ceased on her departure to England some weeks earlier, proving that the Father did not trust his Son with money, and the inference is that he was not therefore likely to respond to the Son's request.

In another Creditor's case, (see statement No.2. Whiteaway) when the Debtor was told that certain goods he had chosen had to be paid for before they could be taken away, he airily replied, "I am staying with Lord D. . . . and will send you down a cheque by return." On this statement he was allowed to take the goods, but the cheque never matured, it can be proved that at that time he had had no banking account for 6 months.

In the case of the New Stanley Hotel, the Debtor was approached three days after the commencement of his visit as to his ability to pay, as he was drinking a good deal and standing drinks to many others, and he replied that he was not signing for more than he could pay. (See statement No.3-Waterman) Notwithstanding this assurance, the Hotel account has never been settled.

At the Insolvency Proceedings, the Debtor stated he had a discretionary interest under a Will, and when examined by our Counsel, advised that on reaching England, he would try to raise money on this Will to settle with his Creditors here, but declined to cable home in an endeavour to raise money on this Will for the purpose of settling his debts before his departure. He also declined to try to get work, stating that his only experience was farming, that he had tried and failed to get a job in that line, and that he could not do a clerical or any other sort of job, and would not try.

Notwithstanding all the foregoing, the Debtor was duly declared an Insolvent, but at the same time the Judge warned him that he was not entitled to leave the jurisdiction of the Court. Nevertheless, the Debtor did try so to leave the very next day following his adjudication, his intended destination being the Seychelle Islands. He was prevented from leaving at the Railway Station.

As regards the application of the Criminal Law, the case was before the Magistrates included the above, and in the second instance, under statements by Pearson, Taxi owner, and his man "Morel". Copies of these statements are attached -see Nos. 4 & 5 - which speak for themselves, but the Magistrates declined to act.

We of course realise that so far as this young man is concerned, as he has already been deported nothing more can be done, we bring this case to your notice, praying that an early alteration of the law may be made in the laws, both civil and criminal, governing this country, to prevent the continued victimisation of the Professional and Press men Charac. As things stand at present, any plausible man of address can for a time obtain credit from all and sundry, and when pressed for payment, file a Petition and gain the protection of the Insolvency Order adjudicating him bankrupt. (Very few Petitions being filed). Thereafter, although Insolvents are not entitled to leave

jurisdiction of the Court, the Authorities do nothing to prevent  
 so leaving, unless called upon to do so by the Creditors, which  
 that nine out of ten Insolvents can get away quite easily if so  
 lined, as obviously it is impossible for Creditors to Put in weeks  
 months, watching Railway Stations etc. Further, as by this ruling  
 without work, Property or assets, obtaining credit on the strength  
 having asked his Father for money, is entitled to the protection of  
 of adjudication in the event of his Father refusing same. there  
 unlimited scope for people in the future, who, whether through their  
 fault or not, find themselves without work, property or assets,  
 exactly as the statement that Father (or some other one) has been  
 ted to for funds with reasonable hopes of success, is merely a state-  
 which may or may not be true, and is not required to be proved

As regards the Criminal Law, it would appear from the refusal  
 the two Magistrates to issue a warrant of arrest, that a man is  
 luded to hire a Taxi, assure the Driver that he has the money in his  
 et, promise to pay at the end of the trip, which promise he can  
 plate, or not put into effect, with impunity. Obviously here is  
 need for reform?

We should be grateful for your comments on this case, and for  
 assurance that the Laws, and the application thereof, will be  
 ed so as to give protection to the Professional and Business men  
 the Country.

We are, Sir,  
 Your obedient Servants,  
 A. W. Burdett F.R.C.S.

21, March 22nd., 1923.

HOUSE  
 BOX 23  
 N. A. S. S. S. S.  
*R. M. Genge*

The statements with her  
 ere to are not verbatim  
 of the original  
 tached to the Court  
 ces, but each contains  
 he essentials of its  
 iginal.

*[Handwritten signature]*

S. JACOBS (Eldoret), Ltd.

*G. C. O. S.*  
 Manager

*Palmer & McArthur*  
 J. Skelton, L.D.S.

WHITEWAY, LADLAW & Co., Ltd.

*W. Williams*  
 Manager.  
*J. Pearson*

NEW STANLEY HOTEL  
*J. D. D. D.* Manager.

MACKINNON BROS.

*J. Blackburn*  
 Manager

*E. H. A. O. S.*  
*W. J. A. O. S.*  
 F. R. C. S. S.

STATEMENT BY MR. MACKINTOSH, TAILOR, NAIROBI, B.E.A.

On August 15th, 1922, Mr. E. R. Broughton Adderley came into my shop and ordered a suit, giving his address as care of Lord Delamere. On August 16th, Mr. Broughton Adderley came again to my shop, looked at some patterns, chose one which he liked, and then said he would like to have a suit of the chosen material, but was not then in a position to pay for same. In reply to this I stated that I am a Cash Tailor, and could not afford to give credit, but later I asked him when he would pay if I obliged him with the suits, to which he replied, "in September when my money comes". I then asked him whether he meant the beginning, middle or end of September, to which he replied "At the end, as my money will arrive in the middle of the month". On this very definite statement and promise, I agreed to let him have the suits, and delivered same to him at the New Stanley Hotel on August 28th, 1922. I agree that I was influenced in Mr. Broughton Adderley's favour by the fact that his address was given as care of Lord Delamere, and that he claimed to be a friend of that gentleman, but I would not have let him have the Clothing in advance of payment on those facts alone. I let him have the Clothing on his distinct and definite statement and promise, in which I trusted because of the before mentioned facts. I have never received the money due, and I consider that Mr. Broughton Adderley cheated me, as at the Insolvency Proceedings he admitted that he had no money to come, but hoped that some would be given him by the date mentioned.

*C. E. Mackintosh*

STATEMENT BY MR. A. L. BELLAMY, MANAGER, MESSRS. WHITEAWAY,  
LAIDLAW & CO., LTD.

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On August 23rd, 1922, Mr. E.R. Broughton Adderley came into our Premises and chose certain goods which he required, which he asked me to book up to him. I declined to do this, whereupon he stated that he was staying with Lord Delamere, and would send me down a cheque by return. Upon this statement I allowed him to take the goods, but the cheque has never been received.

WHITEAWAY, LAIDLAW &amp; CO., LTD.

*A. L. Bellamy*  
Manager



STATEMENT BY MR. A. E. WATERMAN, MANAGER,NEW STANLEY HOTEL.

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On the morning of August 21st, Mr. E. R. Broughton-Alderley arrived at this Hotel, and was given accommodation in the usual way of business, as I had no reason to doubt his ability to pay for his ordinary requirements, the few previous accounts he had had with us having been settled when due.

Notwithstanding the foregoing, I knew that Mr. Broughton-Alderley was not a rich man, and therefore, when on the night of August 23rd I found that during the day he had signed chits amounting to Shs. 66.00, I decided to stop further credit. With this object in view I saw Broughton-Alderley early the following morning, August 24th, but when I mentioned the matter to him, he replied, "That is quite alright, Mr. Waterman, I am not signing for more than I can afford to pay." He made no mention to me of expecting money at that time, and I took his statement to mean that he was actually in possession of the money, and therefore allowed him further credit. That same day his chits only amounted to Shs. 27.80, which I thought not unreasonable, but when on the night of August 25th, I found that during that day he had signed chits amounting to Shs. 134.90, I decided then and there to stop further chits. Consequently on the morning of Saturday, August 26th, I sent him his account with a request for payment, and informed him that he would not be allowed to sign any further chits. Payment was not forthcoming, but later in the morning he attempted to obtain drinks on chits, but same was refused and the chits returned to him.

For the next two or three days Mr. Broughton-Alderley avoided me, but on the following Tuesday evening, I heard that he was not well, and was having dinner in his room. I therefore went to him and asked him what about payment of his account, to which he replied that he was expecting money by the next mail, and would pay then. Pointing out that the next mail was due about Sept. 3rd or 4th, I left him.

The following morning, Wednesday, August 30th, I met him and he then informed me that he had to go into the Kenya Nursing Home at once for an operation. He left the same day.

Payment of his account has not been received, and he filed a Petition of Insolvency on Oct. 7th.

During the hearing of the Petition, on Nov. 4th, the Debtor stated he had no Property and no Assets whatever, and that when he made promises of payment, he did so because he had written to his father asking for money, and had no reason to suppose his request would not be granted as his father had paid his debts before.

In these circumstances, I contend that Mr. Broughton-Alderley deliberately cheated me. He led me to believe that he had money to pay, which apparently he had not, and further I allege that he was not honestly justified in the belief, which he claimed that his father would pay, as on his own showing his father did not trust him with money, but made an allowance to his wife, which was placed to her credit monthly, at the National Bank of South Africa Ltd. Nairobi.

November 22nd., 1922.

A. G. Katanen

*Original*STATEMENT BY MR. J. PEARSON, TAXI CAB OWNER, NAIROBI.

On the morning of August 21st, 1922, I was at the Railway Station, Nairobi, and saw Mr. E. Broughton Aderley arrive by the train from up-Country. On my return home later in the morning, I informed my wife that Mr. Aderley was in town and that if he rang up (telephoned) for a Car, he was not to be supplied. (My reason for this action was due to the fact that Mr. Aderley already owed me money which I had been unable to collect.) I also instructed my Driver on the Cab rank that if Mr. Aderley should want to hire him, he was to get the money first.

J. Pearson

STATEMENT BY MR. E. MOREL, ENGINE FIREMAN,UGANDA RAILWAY, NAIROBI.

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Until the middle of September this year, I was employed by J. P. Pearson as Chaffeur, and drove one of his taxis.

In the afternoon of August 27th, I was on the rank opposite New Stanley Hotel, when Mr. Broughton Aderley came over to me and he wanted me to drive him to Claremont Forest Hotel. I replied that I had instructions from my Employer that I was not to accept any engagement from him unless he paid cash, to which he replied, "That is right, I have money in my pocket and will pay". On this statement I accepted the engagement, and drove Mr. Broughton Aderley with his party to Claremont, arriving about 3 o'clock. Some little time later Aderley came and told me that he and his party would be staying dinner, and that if I preferred, I could go back to Nairobi then, and return for them later in the evening. I pointed out that if I did this it would mean charging him for two trips, and he then asked me the charge for waiting, which I told him was five chips (ten shillings) an hour. He then told me to wait, and agreed to pay me at this time.

About 11.30 p.m. the party re-entered the car and we left, on arriving near the Muthaiga Club, Mr. Aderley directed me to take them for a trip along the Fort Hall Road. We proceeded as far as the Ruaraka and then returned to the New Stanley Hotel. On alighting from the car, Mr. Aderley said, "come tomorrow morning for your money", to which I replied "When I started with you, you told me you would pay me cash down, and I want the cash now". He replied "I can't pay you now, but I promise you I will give it to you tomorrow morning". The following morning, I went to get the money, and Mr. Aderley was in his bedroom, the New Stanley Hotel boy went to his room and told him I wanted to see him. He sent a reply that he would be down in five minutes. I waited two hours and then went up to his room myself, and he told me then he would give me a letter to Major Grogan who would pay. A few minutes later he gave me the letter, which I took to Major Grogan at Muthaiga, but he declined to pay, and Aderley said that if Mr. Aderley came to his house, the boys had instructions to kick him out.

I reported the matter to my Employer, and so far as I know money has never been paid.

*E. Morel*  
*J. P. Pearson*

RESIDENT MAGISTRATE'S COURT,  
P.O. BOX 80, 140.  
MOMBASA,  
26th May 1923.

To  
The Honourable,  
The Chief Secretary,  
N A I U R I.

Through  
His Honour,  
The Acting Chief Justice.

Sir,  
RE BANKRUPTCY AND CRIMINAL LAW OF KENYA.

With reference to the Secretariat letter No. 2525/1/4 of 22nd May 1923 enclosing a copy of a memorial addressed to the Secretary of State by various professional and business men of Nairobi on the subject of the Criminal and Bankruptcy Law and their operation in the case of E. Broughton Atterley I have the honour to return the memorial herewith with the following remarks:-

- (1) The Proceedings in Bankruptcy were before the Supreme Court and I had nothing to do with them.
- (2) Numerous criminal complaints were made to me against Mr. E. Broughton Atterley at different times. In one of these, the complaint of the Forest Hotel, a warrant was issued and it appeared to me from the information that a case of cheating was disclosed. This case was withdrawn by the Government.
- (3) Subsequently, I was used by Messrs. Mackintosh, Cameron and Pearson. They informed me that Broughton Atterley was about to leave Nairobi that day on route for the Seychelle Islands and they desired criminal process to prevent him going so.
- (4) Having heard their statements, I was of opinion that there was no proof of a criminal offence having been committed which would entitle me to issue a criminal warrant.
- (5) I had before me the Involuntary File of the previous day. In that, I observed that the learned Judge in Bankruptcy had warned the Involuntary that he was not to be arrested.

the jurisdiction of the Supreme Court. I, therefore, advised the several complainants to lay the matter before the Judge in Bankruptcy. This was done, I believe, and Broughton Atterley was prevented from leaving Nairobi.

(7) The following day, Broughton Atterley was brought before me in custody. He had given himself up to the police as a vagrant; and after inquiry and examination I found him to be a vagrant and committed him as such to a House of Detention.

(8) While Broughton Atterley was in the House of Detention in Nairobi, I had an interview with the Acting Commissioner of Police who informed me, I believe, (I am relying entirely on my memory) that The Honourable Attorney General favoured a criminal prosecution. I then intimated my readiness to take sworn informations and further statements from the Complainants with a view to re-considering the question as to whether I should issue criminal warrants or not. No further complaints were laid before me before my transfer to Mombasa.

(9) On the whole matter, I have to state that I exercised my judicial discretion on the complaints made to me and came to the conclusion that these complaints did not disclose any crime entitling me to issue a criminal warrant against Broughton Atterley.

I have the honour to be,

Sir,

Your obedient servant,

*W. D. G. G.*

RESIDENT MAGISTRATE,  
MOMBASA.

To His Honour  
The Chief Justice,

With reference to His Excellency's request that the contents of the Magistrate's concerned in the refusal to issue a warrant against E. Broughton Adderley be furnished, I have the honour to attach hereto, a copy of the ruling I gave to the Commissioner of Police.

The original statements put before me on the application for a Warrant, are now I understand in the Office of the Attorney General. The facts disclosed in those statements were not in my opinion sufficient to ground a prosecution.

Sd/- B. A. Crean

25. 5. 23

Resident Magistrate's Court  
Nairobi.

The Commissioner of Police,  
Nairobi.

The statements made do not appear to me constitute cheating on the part of Broughton Adderley, and if the said Gentleman had any available assets I have no doubt the complainants would not have attempted to have recourse to the criminal side of the Court but would have instituted civil suits and recovered their debts in the ordinary course.

Take for instance the Hotel keeper, the law provides a protection for him in the way of a lien on the guests luggage. If he allows the guest to run up a bill in excess of the value of his luggage I consider he has not displayed the vigilance necessary for the successful running of a hotel.

In the case of the tailor; if a man can be arrested on the facts stated by this complainant I am bound to say that I think the Criminal Courts would be extremely busy.

These complainants had the remedy in their own hands when dealing with B. Adderley; there was nothing to prevent them refusing credit, and the means of protecting themselves were always available to them.

On the statements in this file I consider there is no likelihood of a conviction for cheating consequently the application for the issue of a warrant is refused.

Sd/- B. A. Green  
Resident Magistrate.



No. 39981/23 Kenya

C. D.  
R. 21 AUG.  
D. 22

22 August 1923.

DRAFT.

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CAF  
MINUTE.

- Mr. Brew
- Mr. Harrison
- Mr.
- Sir C. Davis.
- Sir G. Grindle.
- Sir H. Read.
- Sir J. Masterton Smith.
- Mr. Ormsby-Gore.
- Duke of Devonshire.

I have to ack. the recd. of  
 your draft despatch 40397 of the  
 6<sup>th</sup> of July, forwarding a  
 memorial from professional  
 and business men in Nairobi  
 praying for an amendment in  
 the Bankruptcy Law of the  
 Colony. <sup>(64) 11/11/23</sup> I request that you  
 will cause the memorial to  
 be informed that their  
 memorial has been recd.  
 that I understand that a

comprehensive Bill following  
the English law on bankruptcy  
is already in preparation  
by the Colony's Attorney General  
and that, if accepted by the  
Legislative Council, provisions  
included in the Bill will afford  
adequate security to professional  
& business men who safeguard  
their own interests by withholding  
credit to persons who are unknown  
to them or whose financial  
stability is open to doubt.

Further,  
A point referred to the  
case of Mr. E. Broughton  
Adderley

*The memorandum was in  
informal*

*Added by hand should be*

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*added that I understand*

*that the Magistrates  
concerned*

*I did not think that an*

*offence was disclosed*

*or that the statements*

*were sufficient to*

*found a prosecution*

*JR*

(WIGGON) DEVONSHIRE

**DRAFT.**

**MINUTE.**

Mr.

Mr.

Mr.

Mr. Davis

Mr. G. Grindle

Sir H. Road

Sir J. Masterion Smith

Mr. Ormsby-Gove

Duke of Devonshire