

1934

1934

1934

23026

23026

KENYA

CO 533/441

NATIVE LAWLESSNESS IN NYANZA PROVINCE

Previous

3036/33

Subsequent

38019/35

See 23077/34

P. Q. FILE

R 297

4/3/37



1 Extract from East Africa of 11th January 1934
after speaking to Mr. Flood.

Stewart
15/1

by air mail
16/1/34

2 To Kemp, Conf (2) (1/1 - only) ans

15/1
15 Jan 1934

(10)

3 Extract from Times of 19th Feb. 1934

DESTROYED UNDER STATUTE

We mentioned this to Mr. Wade this morning. He seemed satisfied that the administration has the situation well in hand.

? Puffy

Stewart
21/2

Yes: he did say that this sort of disaster was a new effort. Stock thefts are the local ones.

J.E.G. Hand

11/2

(P.T.O.)

4. Gov...Conf.26.....28rd February, 1934.
Tra. report of the investigations which have
taken place in each of the cases mentioned in
"East Africa" and comments generally on the
present position.

The case of native unrest in the Lumbwa
district is by no means an isolated one at the
present moment in Kenya.

On 23/9/34 we learn that the Kikuyu in the
Kyambu Reserve are alarming neighbouring
settlers by storing bows and arrows, and there
has been an affray there recently in which a
European Police Officer was seriously wounded.
(See personal file of Mr. Coleman). There have
also been troubles in the Samburu country on
which we have had correspondence with Lady
Eleanor Cole and Sir Edward Gripp, though in
this case the Governor has assured us that they
cannot be said to constitute "a general state of
unrest".

In spite of the memorandum enclosed with
this despatch "the inaccuracies and misstatements"
in the article published in "East Africa" do not
seem to have been so very glaring after all.

I do not know how the Laibons would them-
selves justify their machinations. If their
object is merely to gain personal power and loot
by means of thefts, it is curious that they should
have petitioned in 1930 (vide para.4 of the
despatch) to be removed from the Lumbwa district
altogether.

Apparently the Laibons have been carrying
on their activity for some time and have now
thoroughly entrenched themselves in the respect
of the Lumbwa. They rule, however, more by fear
than by anything else, and the Lumbwa would
probably be only too glad to get rid of them and

thus also be rid of having to pay their tribute.

As they ^{we} specially ask for a report on this
matter -

? we should acknowledge receipt and note
that a further despatch may be expected.

Rudavis: 9-13

[Handwritten signature]

It is not profitable to consider whether we
should arrange for a document to be
published in E. Africa.

As proposed
[Handwritten signature]

This raises the interesting & very delicate question of:
how far is it the duty of Govt. to protect the property of people
who deliberately live among a native population who - as the
settlers will tell you - have little respect for property?

It is the duty of Govt. to protect life & property but
policies which are not civilized & where Govt. has to ~~act~~ be
economical - that duty can only be carried out 'reasonably'. It
is not possible to prevent burglaries and cattle thefts nor is
it always possible to secure convictions. If it were, Kenya would
be ahead of London. However that is a side issue.

The deep is very interesting as regards the Laibons. Those
who remember old days in S. Nigeria will be reminded possibly
of the Aros who ran a similar organization all over S.E.
Nigeria. They also used 'ju-ju' - the holy sign of Aro Chukwu -
and had a regular organized association which thrived the whole
country, not only one tribe but several.

As proposed
A.L.O. Hunt
10.1.

*The summary
attached
T.M.*

(This is a good article in today's Times)

Sir J. Gifford

There is a memorandum

recognition of these troubles,
they may have found more
White there; but they would have
the proof of a very general
feeling among the Whites against
their own leaders before these
people could be eliminated
altogether.

Lt. W. Davies / 10 Nov

W.D. 12.3.34

Yes, at all

12/3

5 To Kenya (Conf 2) (4 covered) 15 MAR 1934

6. Extract from 'East Africa' 22 Hct 34
'Lawlessness in Kenya'

? In view of the fact that
No. 1. promised a further
departure, then seems we
need to send No. 6 out
to Kenya as No. 1. was
sent over. P.W.B.?

W.D. 12.3.34

No doubt the Kenya front see 'East Africa'

W.D. 12.3.34

They do see it. Why Capt. Downer writes to 2 Africa - instead
of all 3 sending, instead of going to look I don't know. Probably he
has had a row with the local D.C.

- The cases are (1) Murder when the woman escaped 29 Jan
(2) Robbery of a woman (the Police did not report
to Mr. Paterson (why should they?) so he has
heard no more 3 Feb.
(3) Density on a woman 14 Feb.
(4) Telephone wire cut (any proof that it was
sabotage?) 15 Feb.
(5) Burglary of garage 'about a fortnight ago'
(6) Theft of ox 25 Feb.

Does he expect arrests to be made at once? Probably he does
& any 'old values' would go, guilty or not

Pat by

W.D. 12.3.34
12.3.34

4 Extract from Morning Post 24 Hct 34

8 Extract from Times 24 Hct 34

No. 7 + 8. As regards the 'big
eight' see paragraph 5 of
Nov.

? Pat by (Paterson) 16/3/34

W.D. 12.3.34
12.3.34

9 Governor Bygone 66 Conf. (M. Mail) — 3rd May 34.
Reports further lawlessness by the Lumbwa &
submits proposals for the removal & settlement of Laibons.
Encls. draft Bill together with copies of petitions by the
Lumbwa & requests approval of introduction into Leg Council
may be conveyed by tel.

(Mx)
The activities of the Laibons and their responsibility for the wave of crime in the Lumbwa District, reserve, and settled area, are summarised in the Governor's despatch of the 23rd of February. Since the date of that despatch investigations have been continued and as a result it has been possible to establish conclusively that the lawlessness among the Lumbwa tribe is largely due to the malignant influence exercised over them by the Laibons.

It is significant to note that since the arrest of certain leading Laibons, stock thefts have almost ceased, and many Lumbwa, realising that definite action is being taken against the Laibons, have freely handed over some hundreds of head of stolen stock and much other property.

The Governor is convinced that the only possible way of combating the Laibons is to remove them with their families to an area sufficiently distant from the Lumbwa. (The number of the Laibon Clan, including women and children, is approximately 700). The area proposed, which I have pencilled on the map herewith, is roughly 125 square miles, and the move will involve a trek of something like 80 - 100 miles across the South Kavirondo. The area has been ^{examined} ~~surveyed~~ and is considered to

5
to be suitable in every way. The local Headman and the two local Native Councils of the South Kavirondo District are unanimously in favour of the proposal. No objections may be anticipated from the Lumbwa, particularly in view of their petitions of 1930 for the removal of the Laibons. The Laibons themselves petitioned Government in 1930 that they should be removed from the South Lumbwa District but "not far removed". It would be obviously impracticable to move them to an area where communications with the Lumbwa would be easy.

The draft legislation to enable the Governor to effect the move is, as he says, a stern and drastic measure. The circumstances, however, demand such a measure.

Section 5 of the Bill restricts the movements of a Laibon to the boundaries of the ^{settlement} ~~new~~ area, unless he is in possession of a written pass granted by the Provincial Commissioner or some other officer authorised by him.

The penalties for leaving without permission are set out in Section 6. (i.e. imprisonment up to one year for the first offence and up to two and three years for the second and third offences.)

If the Bill becomes law, it is anticipated that extraordinary expenditure amounting to £8000 will be involved in 1934. No recurrent expenditure will be necessitated.

Subject to legal observations & approval of the introduction into the Legislative Council of the draft Bill may be given by telegraph as requested by the Governor.

A. J. ...
15/5/34

B. ...
15/5

...

I send this on because it is such a curious affair. It is obvious that the haitians have got to be removed, but I can't recall any similar case. The ones in Nigeria whom I mentioned above had got a very similar strange hold on the people but it would not have been possible to collect & deport them.

It appears that the haitians are aliens of Massai origin & have not been long among the haitians so there is no question of upsetting tribal arrangements.

The draft bill is all right, I think, it is drastic especially § 6, but some penalty is necessary.

Any legal objection?

V.L. Wood
16.5.

Though it is drastic, I cannot in the circumstances raise any objection to the principles of this Order, but there are two rather important matters of detail.

~~Under~~ cl. 9(a) an appeal must be lodged within 7 days after entry in the register but it is not apparent that the entry will be advertising or in any way brought to the ^{notice} of the person concerned.

It is not clear what power action the P.C. can take if he wants to act under cl 14 (b). It enables him to vary or revoke the application to any person of an order of removal & settlement, but what order is referred to? It provides that the haitians shall be removed & settled & no order is necessary for the purpose. The only "order" the P.C. will make is that under cl 21 but this does not seem to be the order referred to in cl 14 for its effect will be spent once the

Sir C. Bottomley

It is quite clear that the removal of the haitians to an area set apart for them is desirable on all grounds. The despatch & enclosure are exceedingly interesting to read.

? Approve introduction of the Bill by telephone & follow with a despatch putting the points mentioned by Mr Roberts away (which don't affect its main purpose)

V.L. Wood
17.5.34

Sir J. Griffiths

You will see (p. 2 of despatch) that this came before the S. P. then to Sir C. Bottomley.

The case is well-documented, and the testimony of the P.C. (brother of the late R.A.) is convincing. It is so closely in touch with the facts here that when he attacks the Gov. it is hard to be his "game warden".

Do you flood K. after?

17.5.34

V.L. Wood

17/5

I am sure this has got to be done - It will have an excellent effect all round.

P.L.K.

22/5/34

10 To Sec. Tel No 133 - 9 Aug 23/5/34

Leave of absence
17/5

11 To Kenya Conf — 4 JUN 1934

11/1

12 Extract from Headquarters N. Brigade N.A.R. ltr. Intelligence Summary for 1st Quarter of 1934

note the reference to the "unofficial" and unauthorized action of local defence force officers in calling upon members to "stand by" for an emergency

? No action necessary on this

Refer

C. J. Formanville
7/7/34

Put by
Direction
2/7
action

11/1

- 13. Extract from Daily Express 5 July 1934
'White wife's ordeal'
- 14. Extract from 'The Times' 4 July 1934
'The attack on settlers in Kenya'
- 13-14
A heathly crime. - We may expect
assassinations from the various
societies in this County of proximity
in the U.S.A. See the Department,
in the event of conviction,
Public Execution & Collective Fine
etc.

Put by
C. J. Formanville
12/7/34

DDP
11

I have no doubt we shall see more of this from all sorts of
quarters.

11/1
117

Another copy of 10/14 has been sent
with it, about public execution,
we must wait

11/1
117. action

11/1

15. Extract from The Times of 6 July 54

16. Kenya Office _____ 5 July 54

Trans. a letter from E. del. Boncher drawing attention to native businesses in Kenya & suggesting that action is not being taken due to protect white farmers.

~~Copy to be sent to the~~
~~the writer about the~~

Ask. & say that a copy of the letter is being sent to the former. Copy come to Mr G.

Ch. G. G. G.
9/7/54

Put by

B. G. G.
? also

17. Extract from Manchester Guardian 19 July 54.

(See No. 13 x 14)

In Sessini died in hospital on the 18th July.

? Put by Ch. G. G. G.
22/7/54

It is same

An extract from the East African Standard of 5 July 54 regarding a deputation to the Gov. in connection with the Sessini case is press cutting No 20211 on 20049/54 (16)

18. Col. Secretary 2nd (Com. Sec) _____ 6 Aug 54

Trans. 12 copies of a report of the Select Committee of May 54. added to consider report upon a Bill to provide for the removal & settlement of Lubans.

Shew to Library

? Put by James G. G. G.
6/9

B. G. G.
7/9 also

100

St. V. G. G.

19. Sir A. Wilson _____ 31 August 34 9

Names noted

Enclos. a letter from Mr. Kook in which he states his views on native unrest in Kenya, & states he has had other letters to the same effect.

20. To Sir A. Wilson _____ 19 August _____ 1st Sept 34.
Approved by Sir O. Bottomley. 8/9

Lord Plymouth.

1. The Selwyn Case. We have no official reports from the Governor, but have heard a good deal about the case from Dr. Selwyn (Dean of Winchester), Mrs. Selwyn's brother-in-law, who tells us that the trial is now fixed for September 24th at Eldoret.

2. There has undoubtedly been a certain amount of restlessness among several tribes during the last year or two, which may be ascribed to (a) the growing sophistication of the native, coupled with a certain amount of political agitation, (especially amongst the Kikuyu); (b) his economic difficulties - lessened opportunities for employment, reduced wages, lower prices for his produce and in some districts the effect of drought and locusts on his crops; (c) substantial reductions in the Police Force, effected last year, in the interests of economy, as a direct result of pressure from the settlers themselves.

3. The Governor has reassured us on more than one occasion that he has the situation well under control. Sir Joseph Byrne is by training a soldier and by temperament unlikely to let matters slide. It may perhaps be suggested that he and his advisers in Nairobi, with their fingers on all the threads, are in a position to take a more balanced view of the situation than is Sir Arnold Wilson's correspondent, who is evidently an isolated settler in an out-of-the-way district.

No. 1 on 3036/33
No. 1 on 23099/34
No. 15 on 23048/
34.

4. If Lord Plymouth so desires, the enclosures to Sir Arnold Wilson's letter could be sent out privately to the Governor for comment; but even if the name and address of the writer were suppressed,

it would probably not be difficult to identify him locally.

Arundel
9/9

The Selwyn case can be left out of account; we have got to leave it in the hands of the local legal authorities. Sir J. Moffat has seen Dea. Selwyn as regards the rest, the risk is letting off steam (I don't blame him - life is not easy in the out districts). Farmers will go on shipping wheat when the resources of the country are not easily available, but they do it at their own risk.

I see no use in pursuing this and if you are likely to have an opportunity of answering Sir A. Wilson only I think it would be the best course. He does not want the letter back.

W.C.S.

Sir C. Bottomley

Lord Plymouth discussed this with us and subsequently had a long talk with Mr. R. Cavendish, the Commissioner of Police in Kenya.

Mr. Cavendish admitted that the native attitude to the European was becoming less subservient, but attributed this to his growing sophistication rather than to any relaxation of policy by Government; it was an ~~inevitable~~ inevitable phase in native development, which he himself had witnessed in Nigeria. He decided the suggestion that there was any danger of general trouble with the native population - the Police (at all events in the settled areas) renew everything that was going on.

Lord Plymouth asked for a short reply to Sir Arnold Wilson, confined to generalities. Draft submitted.

Arundel
12/9

(Pp. shd. be registered later)

* Subservience is certain to go - and I don't think that with more settlers there is a feeling of friendliness, which is a great ~~matter~~.

W.C.S.
12.9.34

22. Extracts from The Daily Herald - The Times of 29 Sept 44.

DESTROYED UNDER STATUTE

Part by

C. P. ...
29. 9. 44

C. P. ...
1/10
atm

118

23. Governor Byrnes 135 Conf. 13 Sept 44.

1 authentic treated as 11 printed copies to library.

Trans. 2 authenticated & 12 printed copies of the Leisboms Removal Ordinance 1938 No 229 furnishes explanation of amendments to the Bill. States that information as to the area decided upon for the removal of the Leisboms will be sent in due course.

P.S. Leisboms Removal Ordinance

It seems unfortunate that only at this late stage have doubts been cast on the suitability of the settlement area. The amendment of Section 3 will enable the process to go ahead with the move as soon as the settlement area has been decided upon locally.

The two points in the Roberts Gray's minute of the 16th May are dealt with by the Attorney General.

Subject to legal objections signify non-disallowance & note the contents of the last sentence in the despatch.

C. P. ...
6/10/44

Dr. Clarence Buxton, now on leave, was the originator of this scheme. He has decided views - which are known to Govt - of the question of the area to be selected for a Leisboms park.

B. A. ...
B. W.

I am not quite happy about S.M. but do not think in need pursue the question.

C. P. ...
6/10

With regard to Section 11 somebody must give an order sometime, and in the case of savages and semi-savages it is advisable that the order should be given by somebody like the Provincial Commissioner, who knows about them. I saw somewhere that the projected move of the Leisboms was open to objection on the ground that the area to which they were being moved was unsuitable, so Kenya has very properly taken power to move them anywhere, although the original area remains in the Schedule. Signify non-disallowance.

J. E. W. Flood

18.10.44 at once

Noted
Lib
21/11/44

24 To Kenya 871 - 6/5

25 - Col. Sec. Kenya Conf - 3/10 (25 Annov)

23 Oct 1944

Library to note, etc.

26. Sir G. Fox

28 September 1954

States that he has a letter from a friend in Kenya suggesting that drastic steps be taken against the harambee as the result of the murder of the Prof. Dr. S. M. N. & that executions be carried out in public.

Sgt. would be glad to send the draft of a reply to Sir Clifford Fox, etc.

Ed. Lloyd
3/10/54

Mr. Flood 5/10
Sir C. D. 5/10
Mr. Lloyd 7/10

Draft reply herewith. As

regards public execution, please see the press flagged in XF 46,324/26 Kenya, which shows that they have not been allowed in Kenya since 1917 at any rate.

The practice of letting the condemned man's fellow-tribesman see him before & after execution is recommended by the Durbin Commission (para 189 of Summary, xxxvi); see also the Kenya Govt's comment on pp. 111 - 112 of Cmd. 4623.

Ed. Lloyd
4/10

This is really a pretty terrible letter. I am quite sure that the writer of it will not wish to be regarded as urging that persons accused and found guilty of murder should be deprived of the right of appeal to the competent courts or should be removed from

From the exercise of the prerogative of mercy should the competent authority, i.e. the Governor, decide to exercise it. As regards public executions, there is a good deal to be said in favour of public executions in the case of savage tribes, and it has been done in West Africa and there is still power to order it. But such power is more and more sparingly used and the general tendency is against exercising it. As Mr. Freeston points out, there have been no public executions in Kenya for getting on for 20 years.

I think the draft reply will do very well.

J. E. W. Ford
5-10

WES

[I doubt if there is as much force in the point at the end of Sir G. Fox's letter as there was to be. Long term time come back to this house - the other side.]

S. J. has replied the letter to Sir G. Fox. Mr. Freeston has agreed, if so desired.

E. H. Lloyd
8/10/34

11 Sir Hunter
11 R. M.

21 To Sir G. Fox — 26 encl. — 8 Oct. 34

25. Sir G. Fox — 11th October 34
Encls. No 24 & states that he is passing on information therein to his correspondent.

DESTROYED UNDER STATUTE

R. H. Hunter

24/10/34

- Parliamentary Question by Lord Sorens - No 8 on P.Q. file
- No 2 - - -
- Sir G. Fox - No 3 - - -
- No 4 - - -
- by Sir G. Fox - No 5 - - -

29. To Sir G. Fox — 26 — 1st Nov. 34

30. Governor Bygone Feb 24/34 — 6th Nov. 34
Furnishes information regarding native assaults on white women, murders etc & also as to the execution of natives convicted in the Semini case.

31. To W. D. Croft (R.O) — 2 Nov. 34

32. W. D. Croft — 3rd Nov. 34
Encls. copy of letter issued regarding public execution of two convicts in S. M., & suggests reply to P.Q.

See - P.Q. file

R. H. Hunter

R. H. Hunter
16/11/34

Library to
note (23), 90.

Mr. Speeton
Mr. Flood

Sir J. P. [unclear] 12.11
Sec of State

Sir C. [unclear]

33.

The Secretary of State thinks that it would be worth while in replying to the attached letter from Sir Alfred Knox, MP., to say that such reductions as have been made in the numbers of the Police Forces in Kenya were made on the proposal of the Unofficial Members in the Legislative Council; and that in spite of the fact that these reductions were proposed by the Unofficials, the Governor did not consent to them until he was satisfied by the Police authorities that the reductions could properly be made. Could the Secretary of State have a draft, please, for consideration?

E. H. Boyd

9.11.34.

Draft herewith. The Debate in Leg. Co. (flagged volume herewith) is illuminating; it would be pertinent to quote Comd. Country's remarks on p. 444 to Sir A. Knox's

J.P. [unclear]
10/11

446

pages ("C.B.") is also relevant.

you private letters from Kenya are apt to be one way. I have had some.

J.E.W. Flood 10.11

(It has never been 'safe' to draw a girl alone in India)

I have added a para. among the volume of debates. It is better to read the whole than to quote, and I do not think there is anything

in the rest of the debate which
could be used to assist us.

W.C.B.

22.11.34

J.M.
12/21

34 To Mr. Gen. Sir A. Knox - 23 Nov 34 — 15 Nov 34

35 Mr. Gen. Sir A. Knox — 14 Nov 34
Acks. No 34 & states that although he is glad to hear that
the police is being strengthened he considers that prompt &
completing punishment of criminals is required.

36 Extract from the Daily Express of 10 Nov 34.

DESTROYED UNDER STATUTE

37 City of Parliaments Nos 92 & 93 of 1934.
The Libbons Removal Ordinance, 1934.

Ms 37: ? This has not come
an answer & may be
2 Feb 67

Ms 36 & 37 ? Paddy
C. G. ...
24.11.34

S off. may be interested
in 37, which shows that
the move wht. by now have
taken place

W.C.B. 24.11

J.M.
26/21

~~Handwritten scribbles~~

Mr. Freeston

The Secretary of State saw No. 37 on this
file. Mr. Clarence Buxton, who had an interview last
week, told the Secretary of State that the arrange-
ments ~~are now in train~~ ^{had been made} for the movement of the first
groups of the Libbons to their new domicile. The
Secretary of State thinks it would be advisable to
let the M.P. who asked the question on this subject
recently (Sir Gifford Fox) have this information in a
private letter.

Ed Lloyd

27.11.34.

Draft letter

Admiral
27

38 To Sir G. Fox

27-11-34

39 Sir G. Fox — 29th November '34
DESTROYED UNDER STATUTE No 38 & implies hope that the removal of the libbons
will help to remove cause of unrest in the district.

Put by C. G. ...
27/11/34

Admiral
5/21

Handwritten initials

NO. *Patrol for the ...*

40. Governor Byrne 580 13 Nov 34

Trans. copy of shorthand notes of the trial of *Boregi* & another. State that the accused was convicted on a charge of murder of *A. Semini* & sentenced to death & that the results of their appeals will be communi-
cated in due course.

Subject to legal advice

? Put by

C. P. Ross with
17.12.34

C. P. Ross
17

41. Governor Byrne Feb 285 19 Dec 34

Ref. 40 states that appeals have been dismissed, sentences have been confirmed & executions will probably take place on 12 January.

The seven natives convicted of the murder of *A. Semini* are to be executed, their appeals having been dismissed. The executions will probably take place on the 12 January.

? Put by in Duncan to C. with No 40.

C. P. Ross with
17.12.34
I.P.O. 19
advised

Seen.
20/1/35 H. Duncan

(H. Duncan)

H2 To Kenya, 31

9 JAN 1935

~~Handwritten~~
~~to all~~

DM

If active (NY)
referred on
23/1/35 (P.O.)

C. O.

23310/34.

H27

Mr. Flood. 4-1/2

Mr.

Mr.

Mr. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shackburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DOWNING STREET,

9 January, 1934.

Para 3. -
See No 2 on
38195735

C. O.
R 5 - JAN.
D A H

Sir,

DRAFT.

KENYA.

NO. 31

GOV.

I have etc. to refer to the recent printed report on the prevalence of crime in settled and urban areas in relation to police strength, and to request that I may be furnished with statistics showing the number and nature of assaults committed by natives on Europeans for a period of recent years - say the last five.

2. You will realise from my telegram No. 261 of the 1st November that public interest in this country has been aroused in this regard, especially in respect of

FURTHER ACTION.

assaults on women and children and it
would be useful if separate figures could
be given of any such cases as well as of
all other assaults.

3 It ~~would~~^{will} be sufficient for my
purpose if this information is embodied in
a despatch forwarding the annual Police
Report and kept up to date from ^{year} time to
^{year}
time,

I have, etc.

(Sgd) W. LISTER.

Secretary of State,

18

When you were looking at the recent Kenya Report on crime in relation to Police Station, you pointed out that there was an indication in the Report of the number of cases of criminal assaults on white persons, and you asked whether we had these particulars.

They were obtained on the 6th of November by telegraph in connexion with the Alfred Knox's Question in the House. Please see (29) & (30) in File 23026/84 Kenya - flagged.

I think you said that you would wish the same such detailed classification of 'assaults' should be provided in any future reports, or perhaps preferably in the Government's covering despatches. If so, I will arrange with the E.A. Department to let the Kenya Government know of this.

Ed Lloyd.

31/11/35

Gen. & comparative
numbers in recent
years

ML

1/1/35

Ed Lloyd.

You will remember that I
mentioned this to you, before I sent
on the above minute to the S. of S.

RECEIVED

E 19 DEC 1934

C. C.

Telegram from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 19th December, 1934. Received 10-20 am 19th December

No. 285.

My despatch No. 580 Appeals dismissed.

?"after"omitted

NO 40 I have confirmed sentence(s) / having taken advice of Executive Council. Execution(s) will probably take place 12th January.

KENYA.

No. 580



1+0²⁰
GOVERNMENT HOUSE
NAIROBI
KENYA

RECEIVED

10 DEC 1934

C.O.

9 November, 1934.

Sir,

Rev 21354/2.
In conformity with the instructions conveyed in Mr. Thomas's despatch No. 762 of the 18th July, 1934, I have the honour to transmit a copy of the transcript of the shorthand notes taken at the trial of *Abet Wap Boregi* and six others in Supreme Court Criminal Case No. 123 of 1934. The accused were convicted on the 22nd September, 1934, on a charge of the murder of Alexander Semini on or about the 14th June, 1934, and sentenced to death. The seven accused have lodged appeals to the Court of Appeal for Eastern Africa, the results of which will be notified you in due course.

I have the honour to be,

Sir,

Your most obedient, humble servant,

R. B. 7
BRIGADIER-GENERAL,
GOVERNOR.

THE RIGHT HONOURABLE MAJOR
SIR PHILIP CUNLIFFE-LISTER, P.C., G.B.E., M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W. 1.

I N D E X

P. I. R. A		1
CHARGE TO THE ASSESSORS		2
OPENING ADDRESS FOR THE PROSECUTION		4
<u>EVIDENCE FOR THE PROSECUTION</u>		
RIDGEWAY, ROBERT	Examined	15
	Cross-Examined	25
	Examined	90
	(Recalled)	
FOX, MAURICE HENRY	Examined	28
	Cross-Examined	29
WETHERELL, MARMADUKE CORDEAUX	Examined	30
	Cross-Examined	34
	Re-Examined	35
HENSTED, HENRY	Examined	36
	Cross-Examined	41
GRIBBLE, GEORGE RICHARD	Examined	42
	Cross-Examined	45
SEMINI, STELLA	Examined	46
	Cross-Examined	57
SEMINI, JOHN	Examined	59
	Cross-Examined	60
STEWART, NEIL	Examined	60
	Cross-Examined	64
KIPEOSKE ARAP MANINO	Examined	65
	Cross-Examined	67
KIPRUTO ARAP KENAI	Examined	68
KIPROTICH ARAP KORIKI	Examined	71
	Cross-Examined	72
WANYWIKI ARAP MUMU	Examined	73
SULHEIMAN BIN MUSA	Examined	74
	Cross-Examined	75
	Re-Examined	75
KIPTIONY ARAP CHEPSINGANI	Examined	75
KIPRONI ARAP MISOI	Examined	85
	Cross-Examined	86
KIPLANGAT ARAP KITUA	Examined	87
MASON, ROBERT JOHN HARLEY	Examined	90
	Cross-Examined	94
	Re-Examined	98
MADWA ARAP MINAI	Examined	98
CHIMA ARAP CHESENIGO	Examined	99
	Cross-Examined	100

HART, CYRIL VINCENT THOMAS	Examined 100 Cross-Examined 103
STATEMENTS OF ACCUSED MADE TO THE ASSISTANT SUPERINTENDENT OF PRISON	107, 110 to 115
HODGE, STEPHEN OSWALD VERE	Examined 116
STATEMENTS OF ACCUSED MADE TO THE DISTRICT COMMISSIONER	121 to 128
STATEMENT OF ALEXANDER SEMINI MADE TO THE DISTRICT COMMISSIONER	129
NISBET, HENRY ALEXANDER	Examined 150
FENTON, CLARENCE GORGE	Examined 152
STATEMENTS OF ACCUSED IN LOWER COURT	152
ADDRESS ON BEHALF OF THE CROWN	154
ADDRESS ON BEHALF OF THE ACCUSED	147
SUMMING-UP AND ASSESSORS' OPINIONS	156
JUDGMENT	160
ALLOCUTUS	163
SENTENCE	164

IN HIS MAJESTY'S SUPREME COURT OF KENYA
SESSIONS HOLDEN AT MAKURU
THE 19th SEPTEMBER, 1954.

B E F O R E

HIS HONOUR MR JUSTICE WEBB
(And Assessors)

CRIMINAL CASE NO. 123 OF 1954

R E X

versus

1. LBW.1547229 KIBET ARAP BOREGI
2. LBW.1547306 KIPRUTO ARAP KOMOILONG
3. LBW.1545065 KIPLANGAT ARAP KOMOILONG
4. NKU.4415522 KIPLANGAT ARAP CHEPKONYI
5. LBW.1546491 KIPROACH ARAP MNGERICHI
6. LBW.1547309 KIPRONO SENI
7. NKU.4406811 KIPLANGAT ARAP CHERIO

Transcript of Shorthand Notes of Walter Lee, Official
Shorthand-writer to the Supreme Court of Kenya.

THE HON'BLE THE ATTORNEY GENERAL, MR W. HARRAGIN, (with him
MR T.D. WALLACE, CROWN COUNSEL) appeared for the
Prosecution.

MR IVOR LEAN appeared for all the Accused.

THE DISTRICT REGISTRAR (to Accused): Answer to your names.
(The Registrar read over the names of the Accused in the
above order).

P L E A

THE DISTRICT REGISTRAR: You the said Accused are charged
at the Sessions held at Makuru today on the Information by

the Attorney General on behalf of Our Lord the King with the following offence -

MURDER contrary to Section 186 of the Penal Code.

The particulars of the offence are that you seven Accused on or about the 14th day of June, 1954, in the Rift Valley Province murdered Alex Semini.

What answer do you make?

No. 1, KIBET ARAP BOREGI: I do not admit.

No. 2, KIBWOTO ARAP KOMOILONG: I did not kill.

No. 3, KIPLANGAT ARAP KOMOILONG: I will not admit, because I did not kill him straight away, there and then.

No. 4, KIPLANGAT ARAP CHEPKONYI: I did not kill.

No. 5, KIPROACH ARAP MNGERIGHI: We did not go there with the intention of killing him and I told the others to stop and prevent the others from killing him.

No. 6, KIPRONO SENI: We left the bwana quite all right when we were running away, when I left.

No. 7, KIPLANGAT ARAP CHERIO: We did not go there with the intention of killing anyone.

MR JUSTICE WEBB: I enter all these as pleas of NOT GUILTY.

THE ATTORNEY GENERAL: May it please Your Honour.

MR JUSTICE WEBB: Who appears for the Accused.

MR LEAN: I appear for the Accused.

MR JUSTICE WEBB: For all the Accused?

MR LEAN: Yes, Your Honour.

THE ATTORNEY GENERAL: May it please Your Honour. I appear for the Crown. Mr Wallace is with me.

CHARGE TO THE ASSESSORS

MR JUSTICE WEBB: Tell the Assessors that these seven men are

charged with the murder of Mr Semini.

LUMBWA INTERPRETER, KIMAI ARAP NGECHER, sworn.

ASSESSORS -

1. KIPGATE ARAP MOIGI
2. KIPIRIR ARAP CHEMWA
3. KIPBUNE ARAP CHEPTYEGON.

MR JUSTICE WEBB: Tell the Assessors these seven men are charged with the murder of Mr Semini and it is their duty to listen to the evidence that will be given and to advise me whether they think the charge is proved against the accused.

THE ATTORNEY GENERAL opened.

(See next page for speech).

THE ATTORNEY GENERAL -

May it please Your Honour and Members the Assessors.

The case which you are being asked to try today is probably the most serious that has ever occupied the attention of a Judge and Assessors in this Court, serious not only because an unfortunate human being has been done to death by a most cowardly attack on the defenseless in the dark of night in large numbers, but because it was the first occasion in the Colony in which we would appear to be emulating the example of countries which we read of, such as the United States, and starting a system of light-hearted gangsters.

The story itself is simple enough. On the 14th of June there lived in the Naivasha district a man and his wife by the name of Mr and Mrs Semini. They lived on an estate not a great distance from civilisation (and when I say civilisation I mean from other houses); they were actually living within two miles of their own brother who was on a neighbouring estate.

They were living in a partially built house. At one end of the house was the living-room, at the other end the bedroom, and they were connected by an open gallery running between these two rooms.

On the night in question, at about 8-50, Mr and Mrs Semini had just finished their dinner and were retiring from the living-room to the bedroom at the other end of the house. Mr Semini opened the door of the living-room for Mrs Semini to step out first, and she preceded her husband by a yard or two in the direction of the bedroom carrying the tea for early morning consumption. Behind her followed

her husband with a lighted lamp. You will hear that almost as soon as these two persons stepped out on to the passage way between the two rooms they saw dark figures immediately below on the ground, and at the same time almost two of these figures sprang on to the gallery.

Even at this stage the deceased, Mr Semini, does not seem to have realised that his life was in danger, for his only reaction at this sight was to say two very ordinary words, which interpreted mean, I understand, "What is the matter"? Mrs Semini will tell you that the reply was immediate, for at that second one of the dark figures sprang on Mr Semini and aimed a savage blow at him with his spear. It is going to be suggested by me that that spear got home in the cut, which the doctor will tell you about, across the chin; but it matters little for the case for the Crown whether in fact the blow got home or not.

The importance of that piece of evidence from the Crown's point of view, for reasons which I will go into at greater detail later, is that at the very outset these people, or one of them, had in mind one thing and one thing only which was to attack the first person who interfered with them in any way whatsoever. It is important because even before they could possibly, any of them, have been recognised they were prepared to lead a villainous attack against the owners of the house; and this becomes of the greatest importance if ~~xxxx~~ you hear a suggestion later on in the case that it was not the intention of these people when they went there not only to kill if they were cornered or possibly thought themselves caught, but to kill the first person who attempted to thwart their plans in any way whatsoever.

There is no suggestion that this blow was fatal

for the next thing that Mrs Semini will be able to tell you is that she heard a smashing of glass and the light went out, and the Crown will ask you to draw the reasonable inference that Mr Semini struck his assailant or assailants with the lamp which was in his hand at the time. You will then hear that Mr Semini was set upon with weapons of all descriptions, rapiers and spears and things of that description; he was set upon by three, four or five (and we suggest these accused in the dock today) while two or three of them attended to his unfortunate little wife.

This gang dragged the deceased down into his own garden and beat him until they imagined him to be dead. They then returned to the house to pursue their foul intent.

Unfortunately for the deceased, he was made of very stern stuff, for he arose once more and attempted to rush to the assistance of his wife. He attempted to snatch a stick from probably the last of his assailants as he departed towards the house. A fierce fight ensued; the crowd returned from the house; Mr Semini was overpowered, and the Crown suggest he was beaten to a pulp and left for dead. At any rate we know that the unfortunate man could take no further part in protecting his wife or his property until the accused had left his premises, he had been found by his wife, assisted into his car, and had driven himself to his brother's house which, as I told you, was about two miles away. There, everything that was humanly possible was done for him; he was taken immediately to a doctor, and you will hear from the doctor in due course the terrible state that he was in at that time. In fact, the unfortunate man had the assistance of two doctors that night, and the next day was rushed in to the Nairobi Hospital in order that he could

get the most up-to-date and skilful attention that Kenya could provide.

I mention these facts at some length lest there should be any suggestion as the case goes on that because the accused did not cut his head off on the spot or inflict a mortal wound at the house itself that therefore they could have had no intention of killing.

At the Nairobi Hospital the deceased fought for his life for five or six weeks, but in vain, and you will hear from the doctor that he died these long weeks afterwards as the direct result of the wounds inflicted upon him during the night that I have just described to you.

That is as far as the Crown story goes with regard to Mr Semini.

I will now tell you the further history of the gang during the time that the unfortunate deceased was lying on the ground in his garden. It really forms no part of this case of murder which I am presenting to you, but it is necessary for me to tell you what happened in order that you can understand the picture as a whole.

I have already told you that two of the gang were detailed to look after Mrs Semini. You will hear further that they rifled the bedroom, turning it upside down, in their search for money or valuables. Having failed to find the money for themselves you will hear that they forced Mrs Semini to disclose what few shillings she had in the house. You will hear how they disarmed Mrs Semini when she started to run to the assistance of her husband with a gun, and you will hear how they departed from the house taking with them everything that they believed to be of value and suitable to them.

You will then hear how during the following

weeks one by one the gang were picked up and arrested by the Police, after they had scattered to various parts of the country.

So far I have told you just the story of what happened on the night in question. I will now endeavour to explain to you why the Crown suggest that these are the seven men who formed the gang on that night.

The case for the Crown rests on three types of evidence. The first type is what is known as direct evidence of an eye-witness, and you will hear from Mrs Semini that she recognised Number One as being one of the party on that night, and that why she was able to recognise him alone out of the gang on that dark night is because he was an ex-employee of Mrs Semini and she know him. She recognised no others because she had never seen them before, and she is not going to pretend to you that she can recognize them now.

The next evidence that I shall lead is what is known as circumstantial evidence. I will call witnesses to prove that these seven men were together immediately before the incident, and I will call evidence to prove that those seven men were together immediately after the incident, and the suggestion of the Crown will be that they were with Kibet at the time of the incident, and having listened to what they have had to tell you today on their pleas of not guilty you can have little doubt that that suggestion of the Crown is correct. It is true that the first accused was non-committal in his reply, ~~Number~~ for he said "I don't admit". Number Two accused said, "I did not kill". No doubt, later in the case he will be able to explain himself or through his Counsel what he means by that. Number Three, however, makes this statement: "I will not admit because I did not kill him

straight away". Apparently he must have some subtle defence with regard to the time within which it is necessary to kill in order to be convicted of murder, but the importance of the statement from the Crown's point of view is his tacit admission that at any rate he was there because he knows that he did not kill him straight away.

Number Four accused repeats the words of the second, merely, "I did not kill".

And now we come to the three other important statements made by Numbers, Five, Six and Seven. Number Five tells us, "We did not go there with the intention of killing, and I told the others to stop". Which again is an absolute admission that he was on the spot on the night in question. Number Six makes the same admission when he says, "We left beans quite all right"; and Number Seven does a similar thing when he says, "We did not go there with the intention of killing anyone".

The question of intention we will go into later in the case, but I am merely pointing out that before even the Crown case was opened we have an admission from four of them that they were present on the night in question.

But the Crown does not rely entirely on these statements I can assure you. I have already told you that we will be able to prove that this gang was together before and immediately after the events took place, but the next link in the chain of circumstantial evidence in which these accused are being brought to trial is the fact that several of them (I will go into it individually in a moment) several of them were found in possession of articles stolen from Semini's house on that night. It will be for them to explain to the Court how they came by those articles if they were not there.

You will hear that picked up in the immediate vicinity of where the fight took place on Mr Semini's premises were articles which I will identify as belonging to one or two of the accused now before you. Snippets of evidence as I will give with regard to Kipruto, who is Number Two accused, will from the point of view of the Crown be irresistible. You will hear that on the night in question Kipruto was wearing an overcoat. That overcoat had five buttons. You will hear that on the spot, or in the immediate vicinity of the spot where the Crown allege the first struggle with Mr Semini took place, a button was found, and you will hear that when the accused Kipruto was arrested his overcoat had one button short and that the button found on the spot I have told you about matches the other buttons still on the overcoat.

Another damning piece of evidence with regard to Number Five, Kiproach, is that on the spot or in the immediate vicinity of the spot where the struggle is alleged to have taken place the handle of a gini was found. You will hear that this handle has certain peculiarities. You will see that handle for yourselves and be able to judge of its peculiarities. You will hear that when Kiproach was arrested he had a gini without a handle, and you will hear that that gini fits exactly into the handle found on the spot. You will hear that there was human blood on the handle.

There are other smaller but important details with regard to the circumstantial evidence which I will lead in due course. By themselves these small incidents might be explained away by an innocent man. You will hear that certain of the accused when arrested or when going to be arrested immediately ran away, and you will hear, I trust

last but by no means least in the Crown's case the statements which were made by those accused after the event to various people. There are two or more of such statements in respect of each of the accused. But first as a precaution and secondly in order to save time I will not open the details of those statements to you now, though I am confident that you will hear them in due course.

So much for the facts of the case for the Crown.

You will in due course hear the details of the law from His Honour if it becomes necessary, but for the purpose of my case it is only necessary for me to say this, that it is no part of the duty of the Crown to point out to you the exact person who delivered the fatal blow. If you are satisfied at the end of the case for the Crown, indeed I should say at the end of the whole case, that these seven people handed together on the night in question to go to the house of Mr Semini with unlawful intent and that they intended to resist any person who interrupted them, then the killing of one will be in law the killing of all. It is no part of the case for the Crown that the Crown should prove exactly what those seven men went to that house for, provided I satisfy you that they went there for an unlawful purpose.

It is impossible at this stage to know exactly what the defence is going to be. It is impossible for the Crown to say whether they went there with the deliberate intention of killing Mr Semini or whether they went there with the intention of burgling the house. Provided you are satisfied that they intended to resist to the utmost anyone who interfered with them in the course of that common purpose then it will be impossible for you to differentiate

between those seven men. (I refer, of course, Your Honour, to Section 22 of the Penal Code). Intention is not a thing which the Crown can give specific evidence about. It is impossible to look into the minds of people and say exactly what they are thinking about; it can only be implied from the overt acts of the persons concerned, and every man is taken to intend the natural and probable consequences of his own act. And I want you to bear that in mind as this trial proceeds, and to consider what could have been the intention of the man who sprang at Mr Semini with a spear aimed at, if not his head, the vicinity of his throat, and again consider the intent of those who rushed back to an already half-dead man in order to deliver, I suggest, the final blows.

It is not even necessary for the Crown to prove that the accused intended actually to kill Mr Semini, if you are satisfied that they intended to do him grievous bodily harm. (I refer, of course, to Section 189, Your Honour, and now I am referring to the definition of grievous harm in Section 5). By grievous harm I mean any harm which amounts to dangerous harm or seriously or permanently injures health. And harm means in the words of the Penal Code harm endangering life. And provided you are satisfied at the end of this case that these seven persons intended to do grievous bodily harm to Mr Semini on the night in question, that Mr Semini has in fact died as the result of the grievous bodily harm inflicted that night, then the submission of the Crown will be that there can be one verdict and one verdict only, namely that of murder against all the accused.

I will now, with Your Honour's permission, call the first witness.

ROBERT RIDGEWAY sworn:

(see over)

Examined by the Attorney General.

- 1.Q. Your name, sir? -- Robert Ridgeway, sir.
- 2.Q. You are Assistant Superintendent of Police, Naivasha? --
A. I am in charge of the Unit.
- 3.Q. Do you remember a certain night in June at about 11-15 anything happening? -- A. On the 14th June, at about 11-15 p.m. a Mr John Semini called at my house in Naivasha and in consequence of a report made by him I visited the farm of Dr Wetherell.
- 4 MR JUSTICE WEBB: Wetherell or Wetherally? -- A. Wetherell, Sir. And in consequence of further information received there I visited the farm of Alexander Semini. I arrived at the farm of Mr A. Semini about 1 a.m. A guard was placed on the house.
- 5 MR JUSTICE WEBB: Was there anyone at the house when you got there? -- A. No, Sir, I returned at day break the following morning, having waited at John Semini's house which was about a mile away.
- 6 THE ATTORNEY GENERAL: After you returned you examined the house by daylight? -- A. Yes, sir.
- 7.Q. Will you tell us the condition of the house? -- A. The house is partly built. There are two rooms complete, and the foundations of the other part which is not complete are about two feet high.
- 8.Q. How are these two rooms which you say are completely finished connected up? -- A. There is a verandah between the two rooms complete and the foundations not complete.
- 9 MR JUSTICE WEBB: Like the verandah out there? There is not a passage between the two rooms? -- A. There is a sketch, Sir.
- 10 THE ATTORNEY GENERAL: Did you make the sketch? -- A. I did not actually make the sketch.

1. Q. Was this verandah an open or a closed verandah? -- A. Open, sir.

THE ATTORNEY GENERAL: I will be able to clear that up for Your Honour when I call the witness who made the sketch.

MR JUSTICE WEBB: He can look at the sketch and say whether it is correct.

THE ATTORNEY GENERAL: You see that sketch. (Sketch, Exhibit 25, handed to witness). Just point out to His Honour the verandah you are referring to. (Witness indicates to His Honour).

2. Q. Now you said there were two rooms? -- A. The first, the larger of the two, I looked through the window and it appeared to be a living room. The door was locked. That room was in order - appeared to be in order.

3. Q. The other room? -- A. The other room was smaller than the living room. It was in a state of chaos.

4. Q. When you say chaos, just give me an idea of what you mean. -- A. The room was in general disorder; part of the furniture was on the verandah, smashed. There was a dressing table on the verandah outside the door of the bedroom and the bracket which holds the mirror was broken. One drawer was out and the other was partly out, and the room itself appeared to have been ransacked.

5. Q. Besides this chest of drawers and the broken bracket of the mirror was there anything else you saw on the verandah or on the grass near? -- A. On the grass in the foundations near the verandah I saw a petrol lamp. Might I refer to my book, sir?

6. Q. Did you make a note at the time of these articles you saw strewn about? -- A. I did, sir, in my official pocket book. On the grass, sir, about 50 feet from the foundations towards the place known as the garage I found an old felt hat.

7. Q. Let us finish with the ~~same~~ ^{lamp} first? -- A. I did not touch

it until the arrival of the finger-print expert from Nairobi. Eventually who took charge of that lamp? — A. I took charge of all the exhibits.

Is it here today? — A. This is the lamp, sir. (Exhibit 12).

MR JUSTICE WEBB: Was it in that condition without any glass? —

A. In that condition, Sir.

THE ATTORNEY GENERAL: Did you find any evidence that there had been any glass to the lamp? — A. A shade was lying near the lamp broken in thousands of pieces. It was not worth collecting.

What was the next thing you found? — A. On the grass between the house and the garage, about 50 feet from the foundations, I found a hat which I took charge of and which I now produce. That is the hat. (Exhibit 1).

MR JUSTICE WEBB: Was it torn as it is now? — A. In the same condition as it is now, Your Honour.

THE ATTORNEY GENERAL: The next thing you found? — A. In the foundations beside the verandah I found the butt end of a spear. That is it. (Exhibit 2).

THE ATTORNEY GENERAL: I will produce the spear, Your Honour.

What next did you find? — About a foot away from the butt end of the spear I found a piece of wood. This is the piece of wood. (Exhibit 5).

Did you do any experimenting with this piece of wood? —

A. I examined the piece of wood and the butt end of the spear and found that the piece of wood fitted the spear, Just show His Honour and the Assessors how that is done?

(The witness demonstrated.)

Would that piece of wood fit into any spear? — A. No, sir, it would not, unless of course the butt was made exactly the same as that.

MR JUSTICE WEBB: There is no conventional size of butt? —

A. No, Sir.

31.Q. THE ATTORNEY GENERAL: So much for the spear and the wood?

What next did you notice? -- A. I followed footprints from where I found the butt end of spear and the piece of wood to a place in the garden about 47 yards away.

32.Q. Looking at Exhibit 55A, if I showed you this plan could you point out the spot? (To His Honour). I do not know whether this is evidence, Your Honour, because the spot is marked on the map.

MR JUSTICE WHEAT: If he has seen the place and can read a map he is able to say that a mark, X, Y or Z, does indicate the place where he found the exhibit.

33.Q. THE ATTORNEY GENERAL: Where is the place you are talking about?

-- A. At the spot marked X, with a black E.

34.Q. What did you notice? -- A. I found a spot, earth and grass, stained with what appeared to me to be blood.

35.Q. What did you do then? -- A. I took up a certain amount of earth and grass and placed it in a box.

36.Q. Is that the box? (The learned Attorney General handed box to witness). Exhibit 15, Your Honour. -- A. This contains a sample of earth and grass which I found at that spot.

37.Q. And you know what happened to that sample? -- A. It has been in my possession ever since.

38.Q. And at the present time can you see anything by looking at it? You say there were blood stains? -- A. I can.

39.Q. At that time was it dry in this condition? -- A. It was not quite dry. It was still damp.

40.Q. You suggest that the stains we can see now are bloodstains -- A. I did, sir.

41.Q. It was not actually sent to the Analyst? -- A. I don't think so, sir.

42.Q. You just produce it for what it is worth? -- A. Yes, sir.

- 17-Q. And what was the next thing you found? — A. About nine inches, sir, from the stains which appeared to be blood I found a gimi handle which was broken in two. This is it. (Exhibit 4).
- 18-Q. Near the same place did you find anything else? — A. About one foot from the gimi handle I found a boot lace with a five cent piece attached. This is it. (Exhibit 5).
- 19-Q. JUSTICE WEBB: Just fastened as it is now? — A. Exactly as it is now, sir.
- 20-Q. THE ATTORNEY GENERAL: What did that indicate to you? What is that used for? — A. This is used by Natives to tie up the blanket over on the right or left shoulder.
- 21-Q. You suggest that that is what that type of thing is used for. You cannot say that that exact one was? — A. No, sir.
- 22-Q. From there where did you go? — A. I returned to the foundations of the house.
- 23-Q. How far away? — A. 47 yards, sir. And from there I followed footprints to a gate in the fence which is near the pig-stye. About 150 yards.
- 24-Q. Looking at that map, Exhibit 25A, tell His Honour where it was. (Witness indicates to His Honour).
- 25-Q. When you get to this gate you found what? — A. A brass button, a military brass button. This is the button. Exhibit 6.
- 26-Q. And did you find anything else? — A. At the same spot I found a rungu.
- 27-Q. Is that the rungu? (Exhibit 7 handed to witness). — A. Yes, sir. Just outside the gate I found the lower portion of a wardrobe.
- 28-Q. What did you do with it? Do you know where it came from? — A. I compared it with the top portion in the bedroom and found it fitted. The bedroom of Semini's house.

- 45.Q. And what was the next thing you found? -- A. About nine inches, sir, from the stains which appeared to be blood I found a sini handle which was broken in two. This is it. (Exhibit 4).
- 46.Q. Near the same place did you find anything else? -- A. About one foot from the sini handle I found a boot lace with a five cent piece attached. That is it. (Exhibit 5).
- 47.Q. MR JUSTICE WEBB: Just fastened as it is now? -- A. Exactly as it is now, Sir.
- 48.Q. THE ATTORNEY GENERAL: What did that indicate to you? What is that used for? -- A. This is used by Natives to tie up the blanket over on the right or left shoulder.
- 49.Q. You suggest that that is what that type of thing is used for. You cannot say that that exact one was? -- A. No, sir.
- 50.Q. From there where did you go? -- A. I returned to the foundations of the house.
- 51.Q. How far away? -- A. 47 yards, sir. And from there I followed footprints to a gate in the fence which is near the pig-styes. About 150 yards.
- 52.Q. Looking at that map, Exhibit 23A, tell His Honour where it was. (Witness indicates to His Honour).
- 53.Q. When you get to this gate you found what? -- A. A brass button, a military brass button. This is the button. Exhibit 6.
- 54.Q. And did you find anything else? -- A. At the same spot I found a rug.
- 55.Q. Is that the rug? (Exhibit 7 handed to witness). -- A. Yes, sir. Just outside the gate I found the lower portion of a wardrobe. & water tank? -- A. Yes, Sir.
- 56.Q. What did you do with it? Do you know where it came from? -- A. I compared it with the top portion in the bedroom and found it fitted. The bedroom of Saini's house.

- 55.Q. As you are back in the bedroom now, before you go on with the other exhibits, tell us some more about the bedroom. Did you notice anything on the bed? -- A. On the bed, nearest the door, I noticed what appeared to be blood stains on the mattress, sir.
- 56.Q. Did you notice anything on the ground? -- A. I noticed a rifle on the floor of the bedroom.
- 57.Q. Is that the rifle? (The learned Attorney General handed rifle, Exhibit 15, to witness). -- A. This is the rifle, sir.
- 58.Q. Was there anything else you noticed on the floor? -- A. I also noticed footprints on the floor of the bedroom.
- 59.Q. What type? -- A. Of barefoot.
- 60.Q. This plan. Do you know how it came into being? -- A. On the start of the investigations for this case I instructed my Assistant Inspector to follow me and make a plan.
- 61.Q. His name is Gribble? -- A. Yes, sir. He followed me to prepare a plan.
- 62.Q. Did you yourself point out the spot on this plan? -- A. I did, sir.
- 63.Q. MR JUSTICE WEBB: Was inspector Gribble on the spot with you? -- A. Yes, Sir.
- 64.Q. At the time that you found all these things? -- A. At the time, Sir. In fact, he left Naivasha with me on that night.
- 65.Q. THE ATTORNEY GENERAL: Do you remember a tank? -- A. I do, sir.
- 66.Q. Roughly where was it? -- A. It was situated at the end of the bedroom, sir.
- 67.Q. MR JUSTICE WEBB: A water tank? -- A. Yes, Sir.
- 68.Q. THE ATTORNEY GENERAL: And how would you get to the tank from the bedroom? -- A. You would come out of the bedroom door, turn right, come down some steps, turn right again,

and come down to the tank. (Witness indicated on map).

69.Q. Did you find anything near the tank? -- A. I found a brooch. This is it, Exhibit 8. I found it about 3 paces from the tank towards the steps of the verandah.

70.Q. Did you notice anything else about there; anything on the ground that attracted your attention? -- A. In the angle formed by the wall of the building and the tank I noticed signs of a struggle.

71.Q.MR JUSTICE WEBB: The back wall of the house and the tank? -- A. Yes, Sir. The outside bedroom wall, Sir. It is not really at the back of the house; it is at the side.

72.Q. It is the back wall of the house, when the house is finished? -- A. It will be, Sir.

73.Q.THE ATTORNEY GENERAL: Did you do anything else while you were there? Did you remove anything? -- A. I noticed in the wall a piece of wood with a screw in it which fits the vent hole of the building.

74.Q.MR JUSTICE WEBB: At what place? -- A. At that place, Sir.

75.Q.THE ATTORNEY GENERAL: Did you get it out? -- A. I personally took it out. It fits into the vent of the wall like that. (Demonstrating).

76.Q. You pulled it out? -- A. Yes, sir. That is it. (Exhibit No. 14).

77.Q.MR JUSTICE WEBB: This vent, how high was it up the wall? -- A. About 9 inches from the ground, Sir.

78.Q. Yes? -- A. On the piece of wood I noticed a scratch. That is it in the circle in pencil.

79.Q. Mr Ridgway, is this the scratch; this curved thing? --

A. Yes, Sir.

80.Q. What are these others? -- A. They were put on by someone else, Sir.

81.Q.THE ATTORNEY GENERAL: What did you do with that bit of wood?

A. I handed it over to the Superintendent, Criminal Investigation Department, the same day.

- 82.Q. And you subsequently received it back? -- A. I received it back from him.
- 83.Q. So much for the examination of the spot. The next week were you busy with this case? -- A. I was very busy, sir.
- 84.Q. Did you see any of the persons herein Court today during the next week? -- A. On the evening of the 18th I received accused No. 6 from the Labour Officer, Mr Nesbit. He was minus his kipande, Registration Certificate.
- 85.Q. MR JUSTICE WEBB: Do you mean he was handed over to you because he had no kipande? -- A. He was actually charged with being on a farm without the permission of the owner, and being out of the Lumbwa Reserve without a pass.
- 86.Q. THE ATTORNEY GENERAL: And you took him under arrest? --
A. Yes, sir.
- 87.Q. MR JUSTICE WEBB: By the kipande, do you mean the permit to be out of the Reserve? -- A. No, Sir. Registration Certificate.
- 88.Q. THE ATTORNEY GENERAL: On the 19th June where did you go to? --
A. On the 19th June I visited a spot at the foot of the Kinangop Escarpment.
- 89.Q. What did you find there?
- 90.Q. MR JUSTICE WEBB: Might I just know about how far from Semini's house? -- A. About six or seven miles, Sir.
- 91.Q. THE ATTORNEY GENERAL: Could you point out the spot on the Survey Map? -- A. Yes, sir. (Exhibit No. 24 put to witness who marks the place).
- 92.Q. Just point out to His Honour where Alexander Semini's farm is? -- A. It is marked, Alex Semini.
- 93.Q. At that spot which you have pointed out and which you have told us is 6 or 7 miles from Semini's farm, did you find

anything? — A. About 10 paces from the main road I found two pieces of rug.

94.Q.MR JUSTICE WEBB: What sort of road is it? — A. A motor road, Sir.

95.Q. From where to where? — A. From Naivasba to Kinangop Farm.

96.Q.THE ATTORNEY GENERAL: You found two pieces of blanket, Exhibit 10. And what else did you find? — A. A pair of white flannel trousers (Exhibit 10) a broken scent spray (Exhibit 11) and various odd papers and films. All the articles contained in this envelope were picked up at the one spot.

97.Q. You say you went to this spot in consequence of information received? — A. Yes.

98.Q. You also found a handbag, which is Exhibit 9? — A. Yes, sir, ~~that~~ is it. Exactly in that condition when I found it: closed.

99.Q. You also put in formally this Survey Map to which you have already referred? And are you acquainted with the farms? — Yes, the farms and roads of that district, sir.

100.Q. And does that reproduce accurately the situation of the farms to which you refer? (Exhibit 24, Your Honour), — A. It does, sir.

101.Q. On the 21st did you see anybody? — A. On the morning of the 21st June I received from Inspector Scott of the Police, Nakuru, accused No. 7.

102.Q. You took him into custody and charged him? — A. I charged him. I received from Inspector Scott at the same time two Registration Certificates.

103.Q. Where are they? — A. They are the two there. (Exhibit 25)

104.Q.MR JUSTICE WEBB: In whose name are they, Mr Ridgway? — A. The first one, Your Honour, is in the name of accused No. 6, Kiprose arap Seni, and the second one is in the name of Kiplangat arap Gharie.

- 105.Q.THE ATTORNEY GENERAL: On the 23rd June did you see Inspector Gribble? — A. On the 23rd June 1954 I received from Inspector Gribble these two coats and this piece of table cloth (Exhibit 16). I received a small piece of coloured material. This is the piece. (Exhibit 17).
- 106.Q. On the 25th June when did you see? — A. On the 25th June at 7 p.m. I received from P.C.Kiplangat, accused Kiplangat arap Ghephonyi, accused No. 4.
- 107.Q. And later that day? — A. About 12 midnight the same day I received from Inspector Gribble, accused No. 5.
- 108.Q. What is his name? — A. His name is Kiprotech arap Mugerchi.
- 109.Q.MR JUSTICE WHEB: This is the one? (Indicating Accused No. 5). — A. That is the one, Sir. Accused No. 5.
- 110.Q.THE ATTORNEY GENERAL: You received those two and took them into custody, and did you charge them?
- 111.Q.MR JUSTICE WHEB: Charge what with? — A. I charged them with attempted murder of Alex Semini.
- 112.Q.THE ATTORNEY GENERAL: At the same time did you receive anything else? — A. At the same time I received from Inspector Gribble one simi (Exhibit 18). That is the simi.
- 113.Q. And did you do any experimenting with the simi? — A. I did. The simi and the simi handle which I found at the scene of the crime fitted.
- 114.Q. Show that. (To His Honour): I would like Your Honour and the Assessors to look at these exhibits very carefully.
(Witness demonstrates).
- 115.Q. So much for the simi that you fit into the handle. On the 29th June did you receive any persons? — A. On the afternoon of the 29th June I received from Mr Neil Stewart, Superintendent, C.I.D. Accused Nos. 1, 2 and 3.
- 116.Q. And you did what with them? — I charged them with the

attempted murder of Alex Semini and took them into custody.

- 117.Q. Did you receive anything else? — A. At the same time I received a military greatcoat. (Exhibit 23).
- 118.Q. MR JUSTICE WEBB: You received it from Mr Neil Stewart? —
A. Yes, Sir. At the same time as the persons.
- 119.Q. THE ATTORNEY GENERAL: Did you notice anything about that greatcoat? — A. I noticed one button was missing. This button. (Indicating).
- 120.Q. You have already told us about Exhibit No. 6 which is a brass button which you found near the open gate of the Semini's house. Did you compare that exhibit with the other buttons on this greatcoat? — A. I did, sir.
- 121.Q. And what did you find? — A. That it was similar to the other six on the coat.
- 122.Q. The seventh was a strange button? — A. Yes, sir.
- 123.Q. MR JUSTICE WEBB: It really ought to have eight buttons? —
A. Yes, Your Honour.
- 124.Q. THE ATTORNEY GENERAL: One missing and one a stranger. And did you receive anything else at that time from Mr Stewart? — A. I received an electric torch, Exhibit 20. A pair of motor-tyre sandals, Exhibit 21.
- 125.Q. Any other thing did you receive from Mr Gribble? — A. On the 1st July 1934 I received from Inspector Gribble a Maltese coin (Exhibit 19). That is it.
- MR JUSTICE WEBB: It is not a Maltese coin at all. It is a Maria Theresa Dollar, a very common thing indeed.
- 126.Q. THE ATTORNEY GENERAL: So much for the exhibits. Do you remember doing anything on the 15th July at Nakuru Prison? — A. At 5 p.m. on the 15th July an identification parade was held by me. There were 25 inmates present at the parade including the seven accused. The object of the parade was explained to the persons present, and the witness Kipkeke

picked out accused No. 1, No. 6, No. 7, and No. 2.

- 127.Q. And he made a statement about them? — A. He did, sir.
- 128.Q. That was witness Kipkuka. Was there any other person there?
— A. Also the witness Kiprotich.
- 129.Q. And what did you see Kiprotich do? — A. He picked out
Nos. 6, 7, 1, 2, and 3.
- 130.Q. And he made a statement? — A. He also made a statement to
me.
- 131.Q. Will you just give us a little more information with regard
to this parade. Were the seven persons just put in one place
and all the others in another place or what? — A. The
accused were split up in the parade. They were not together.
- 132.Q. So that any person who desired to pick them out would have
to go along the whole line of the parade? — A. Exactly,
sir.
- 133.Q. MR JUSTICE WEBB: How were they all dressed? — A. All in
Prison blankets, Sir. All the same coloured blankets.
- 134.Q. Are they the blankets they have on now? — A. No, Sir,
they are blankets, Sir.
- 135.Q. And there were no other clothes showing? — A. You could
only see the blanket, Sir.
- 136.Q. THE ATTORNEY GENERAL: Have you certain Prison instructions with
regard to identification parades? — A. Yes. The Police
Standing Orders, sir.
- 137.Q. And were they carried out? — A. Strictly obeyed, sir.

CROSS-EXAMINED BY MR LEAH.

- 138.Q. MR LEAH: Now, Mr Ridgway, you say the lamp glass was badly
broken? — A. The shade of the lamp.
- 139.Q. And that was lying in the foundations of the house? — A. Yes.
- 140.Q. And the lamp was in the foundations? — A. Yes.
- 141.Q. Roughly how large were these pieces of glass? — A. I should
think the largest would be about the size of a shilling or

a little larger.

- 142.Q. These two Exhibits, Nos. 2 and 3, the spear butt and piece of wood. How were they placed - how was the butt end placed, stuck in the ground or lying on its side? -- A. Lying on its side, and also the piece of wood.
- 143.Q. Do you know what sort of wood that is? -- A. I do not know.
- 144.Q. It is pretty strong? -- A. No.
- 145.Q. I think it is, Mr Ridgeway. -- A. No.
- 146.Q. It is not the type of wood that a Lumbwa would put into his spear, his fighting, his maredadi spear? -- A. That is quite a different shape.
- 147.Q. Would you normally expect the handle of a sword to break? -- A. If the sword was used with any force, yes.
- 148.Q. But a sword is made to be used with a certain amount of force. After all, the ordinary Lumbwa does not use his sword for the one and only purpose of cutting up his enemies. He also cuts trees? -- A. No. A ^{not} ~~be~~ ^{is} ~~used~~ ^{used} for cutting down a tree.
- 149.Q. In fact, it is not a usual thing to find sims with their handles broken? -- A. It is not.
- 150.Q. I suggest to you that the reason the handle was broken was that the handle gates severe blow? -- A. No.
- 151.Q. MR JUSTICE WEBB: It would not suggest to you that the handle had received a severe blow? -- A. No, Sir.
- 152.Q. MR LEAH: You therefore consider that the handle was probably broken as the result of something hitting the sai simi here? -- A. I do.
- 153.Q. What reasons have you got? -- A. First of all this simi is not a very good type of simi. It would not be classed by the Lumbwa or any Natives as a good simi and therefore they would not trouble to put on a decent piece of wood on to a shungi simi. And you find in most sims the handle

is covered with skin which would reinforce the handle.

- 154.Q. Nevertheless that handle could just as easily be broken by that action as by that action? (Demonstrating). -- A. Possibly.
- 155.Q. Mr Ridgeway, what was the ground in the foundations of the house like? -- A. There was a certain amount of grass.
- 156.Q. Rubble? You know when a house is being built normally in the foundations you find a certain amount of odds and ends, broken stuff? -- A. It was not untidy.
- 157.Q. The concrete foundations were about 2 feet high? -- A. Yes.
- 158.Q. Were they encased in boards at all? -- A. No, the ordinary stone built up in cement.
- 159.Q. MR JUSTICE WEBB: It was not a concrete one then? -- A. No, Sir.
- 160.Q. Mr Lean suggested it was. -- A. No, Sir. Take it as a wall built about 2 feet high.
- 161.Q. MR LEAN: And there were no pieces of broken stone lying about? -- A. No, sir, it was very tidy indeed. This part of the house I may explain has been in that state for years, for some years. It has not been recently built.
- THE ATTORNEY GENERAL: No re-examination, Your Honour.
- 162.Q. MR JUSTICE WEBB: Did the button when it was found have any fragment of thread on it? -- A. No, Sir.
- 163.Q. And the coat? -- A. No, Sir, not when I received it.

His Honour read over his notes to the witness who signed same as correct and then withdrew.

THE COURT ADJOURNED UNTIL 2-15 p.m.

2-15 P.M.

MAURICE HENRY FOI sworn:

EXAMINED BY MR WALLACE

- 164-Q. MR WALLACE: Your name, Mr Fox? — A. Maurice Henry Fox.
- 165-Q. You are the Government Analyst? — A. Yes.
- 166-Q. Professional qualifications? — A. B.Sc., A.I.C.
- 167-Q. Do you remember last July receiving certain articles from the Superintendent, C.I.D.? — A. Yes.
- 168-Q. What date? — A. 17th and 25rd.
- 169-Q. On the 17th July what did you receive? — A. A piece of wood and a pair of sandals.
- 170-Q. The piece of wood first. Do you recognise that? (Exhibit No. 36 handed to witness). — A. Yes.
- 171-Q. I think there were certain scratches on that piece of wood. Were they there when you received it from the Superintendent? — A. Only one. The one enclosed in pencil.
- 172-Q. Do you know how the other scratches got there? — A. I put them there.
- 173-Q. With what? — A. With the sandals.
- 174-Q. With what part? — A. The end of this toe strap and the nail holding the toe strap.
- 175-Q. Can you say, Mr Fox, how the original mark was made, whether it was made with the toe strap or what? — A. It could have been made with the toe strap; not with the nail.
- 176-Q. With what portion? — A. The lower portion.
- 177-Q. MR JUSTICE WEBB: Can you distinguish on this piece of wood a scratch made by the strap and by the nail? — A. You will find that the one made by the nail is a very narrow one.
- 178-Q. MR WALLACE: Enclose the one made by the nail in blue, will you? (The witness marked the scratch).
- 179-Q. MR JUSTICE WEBB: The others are all by the strap? — A. Yes.
- 180-Q. MR WALLACE: You have already told His Honour that you received certain other articles on the 25rd. What were they?

— A. A mini handle and the butt of a spear.

181.Q. Would you recognize these articles again? (Exhibits 2, 4, and 18 handed to witness). — A. Yes, these are they.

182.Q. Did you examine those? — A. Yes.

183.Q. For what purpose? — A. For the presence of blood.

184.Q. What was the result of your examination? — A. I found blood to be present on the mini, the butt and on one portion of the handle.

185.Q. MR JUSTICE WEBB: Human blood? — A. Yes.

186.Q. MR WALLACE: Was the handle in two pieces? — A. Yes. I examined one for the presence of blood.

187.Q. Can you identify the piece? (Portion handed to witness). — A. That was the portion. It was positive for human blood.

188.Q. Did you examine the other piece at all? — A. Not for blood. In connection with another exhibit. I examined it with the mini. I found the handle belonged to the mini; the two pieces combined.

189.Q. You are quite certain it is the correct handle for the mini? — A. Yes.

CROSS-EXAMINED BY MR LEAN.

190.Q. MR LEAN: Is the test for human blood absolutely distinctive? — A. Yes.

191.Q. It cannot be mixed up with any other blood? — A. No.

THE ATTORNEY GENERAL: Your Honour has it that there was blood found on all three things mentioned?

MR JUSTICE WEBB: On the mini, the one piece of the handle, and the spear butt.

MR WALLACE: Your Honour has it that Mr Fox identifies the three things?

MR JUSTICE WEBB: Yes, I have.

His Honour read over his notes to the witness who signed same as correct and then withdrew.

MARMADUKE CORDEAUX WETHERELL sworn:Examined by Mr Wallace.

- 192.Q. Your full name, doctor? -- A. Marmaduke Cordeaux Wetherell.
- 193.Q. Your professional qualifications? -- A. M.R.C.S. (Eng.) L.R.C.P., M.D.
- 194.Q. You live on the Kinangop? -- A. I live on the Kinangop.
- 195.Q. Did you know the late Alexander Semini? -- A. Yes. He lived about four miles from me.
- 196.Q. Do you remember the night of the 14th June last? --
A. The night of the 14th June last about a quarter to ten Mrs Stella Semini and John Semini and his wife came on to my veranda.
- 197.Q. Mrs Stella Semini is the widow of the deceased? -- A. Yes. Mrs Stella Semini was very agitated and said that her husband was in the car outside. As the result of what she told me I went out to the car. I saw the late Alex Semini in the car.
- 198.Q. In what condition was he? -- A. His face was black with congealed blood.
- 199.Q. You took him in first did you before examining him? --
A. As I saw him in the car his face was black with congealed blood. I took him into the house and put him on a bed. His hair was matted with congealed blood. His clothes were covered with it. I could not feel his pulse. He was able to speak. He had a cut four inches long parallel to and an inch above his eyebrow down to the bone.
- 200.Q. Was he bleeding from that wound? -- A. No. He must have lost a lot of blood from this wound.
- 201.Q. What kind of instrument do you think that wound was caused by? -- A. A sharp cutting instrument.
- 202.Q. Would it have necessitated a severe blow? -- A. It depends

upon the sharpness of the instrument. It was a sharp instrument, I think.

- 203.Q. Was he suffering from any other injuries? -- A. He had a wound $1\frac{1}{2}$ inches long under his chin.
- 204.Q. MR JUSTICE WEBB: A cut wound? -- A. A cut wound. It was stopped by the bone of his chin.
- 205.Q. MR WALLACE: Point it out yourself, doctor.
(The witness indicated).
- 206.Q. MR JUSTICE WEBB: On the point of the chin? -- A. Yes.
- 207.Q. MR WALLACE: What type of instrument do you think that was caused by? -- A. I think it was caused by a sharp instrument but not so sharp as the wound across the forehead. The edges were contused.
- 208.Q. Could that wound have been caused by a spear? -- A. I should say by a bluntnish spear.
- 209.Q. Any other wounds? -- A. He had a wound on the back of his head.
- 210.Q. What type of wound? -- A. $1\frac{1}{2}$ inches long; a contused wound. Probably made by a blunt instrument or by falling on to a hard surface.
- 211.Q. Were they all the injuries he had about his head? -- A. Yes.
- 212.Q. Any other injuries in any other part of his body? -- A. Both elbows; he had about five wounds on the front part of his arms above and below each elbow and over the elbow joint.
- 213.Q. On both elbows? -- A. Yes.
- 214.Q. What type of wounds, doctor? -- A. Two or three of these wounds were made by a sharp stabbing instrument.
- 215.Q. Were they deep? -- A. They were, yes. They were 1 inch or $1\frac{1}{2}$ inches deep. Perhaps I should not say that because I did not probe them., They were definitely 1 inch deep.
- 216.Q. Any other injuries, doctor? -- A. He had a smaller series of wounds, five or six, over the front of each leg.

- 217.Q. Between the knee and the ankle? -- A. Below the knee. Over the right ankle he had two severe wounds; one an inch above the right ankle and the other three inches above the right ankle. Each wound was about 5 inches long.
- 218.Q. On the outer or inner side? -- A. On the outer side of the right ankle severing the tendons and exposing the bone.
- 219.Q. What type of instrument would you say those were caused by? -- A. A sharp cutting instrument.
- 220.Q. Would it have necessitated a severe blow to sever the tendons? -- A. Yes. I don't know. It depends upon the sharpness of the instrument. On the right side of his back he had a very painful wound over the right kidney region, made, I imagine, by a blunt instrument. A localized wound. It may have been the butt end of a spear, as opposed to the larger wound which would have been made by a rugan. His back was bruised where he had been struck with blunt instruments.
- 221.Q. MR JUSTICE WEBB: Generally bruised? -- A. Yes.
- 222.Q. MR WALLACE: After this long examination what conclusions did you come to with regard to his condition? -- A. He was suffering from severe shock.
- 223.Q. How severe? -- A. I imagined he was on the point of death, he was within reasonable distance of death; he was on the verge. He was able to speak, however.
- 224.Q. Did you treat him as a shock patient? -- A. Yes. I at once applied all the remedies I could think of for shock.
- 225.Q. What remedies did you apply? -- A. I raised the lower end of his body, wrapped his limbs in cotton wool, put hot water bottles round him, gave him a warm saline enema, gave him brandy and hot water at intervals. On the arrival of Dr. Houston we gave him strychnine.
- 226.Q. How as the result of this treatment did his condition

improve? -- A. As the result of this treatment his pulse became perceptible and the haemorrhage restarted.

227.Q. What did that indicate? -- A. That showed that his haemorrhage had ceased owing to the weakness of the circulation, owing to the feebleness of the circulation due to shock and loss of blood.

228.Q. Now, doctor, you examined him first at a quarter to ten. How old did you think were the injuries from which he was suffering? -- A. I gathered they were about an hour old.

229.Q. Did you sit up with him during the night? -- A. Yes.

230.Q. Did he appear to be in pain or was he quite comfortable? -- A. He had great pain from the wounds in the back. He could not lie down.

231.Q. Did he talk to you as to the cause of these wounds? -- A. He said he had been attacked by some Lumbwa and he told me a long story. He said at one period they sat on him and discussed whether they should cut off his ears or his hands.

232.Q. Did Alexander Semini know any Lumbwa? -- A. He told me in connection with making that statement he understood a little, such words as hands and ears, and he gathered that was what they said. He only gathered. He did not know it fluently. I should perhaps make it clear that he told me that he only knew a little Lumbwa and he knew the words for hands and ears and he definitely gathered that. He told me he used one Lumbwa to defend himself from the attacks of the others by grasping him with his arms and legs. (Witness demonstrates).

233.Q. Did he say what type of instruments they used? -- A. He said they had spears and knives and rungas. He used the word 'gini' for knife.

234.Q. The following morning, doctor, did you have a consultation

with Dr Hunted? — A. Yes.

235.Q. And what decision did you come to? — A. As an ambulance was available we thought it better to send him to Nairobi where he would get full medical treatment. The ambulance arrived about 11 o'clock.

236.Q. And you saw him despatched for Nairobi? — A. I saw him put into the ambulance.

Group-Examined by Mr Legg.

237.Q. Doctor, when you put Mr Semini into the ambulance was his health any better than the night before? — A. Yes, very much.

238.Q. He had definitely improved? — A. Yes.

239.Q. When Mr Semini was brought to you, you promptly washed and cleaned all those wounds? — A. Yes, as far as circumstances would permit.

240.Q. In any case you left them in as good a state as it was possible to do at the time? — A. I would not say that. We were treating shock; I was not treating wounds.

241.Q. But did you sponge the wounds and clean them? — A. I put plicric acid on the wounds and washed them with soap and water. Put sterilized dressings on.

242.Q. Would it be correct to say that the wounds on the right side of the body were if anything more severe than on the left? — A. Yes, the wound on the leg. The wounds on the right side were worse than the left. Below the head, of course.

243.Q. The centased wound on the right side of the back. Was that in your opinion caused by an instrument being hit that way or could it have been caused by that sort of stroke?

(Demonstrating). — A. I should have thought by the first.

244.Q. More of a jab type? — A. I should imagine so. I did not examine. It is only my opinion. It was a bad bruising.

245.Q. Doctor, you have told us there was a wound over the chin

made by a moderately sharp instrument? — A. I thought so. Wounds made across the skin over bone are very difficult to say how far the bone or the instrument is responsible.

246.Q. Could a bluntness piece of metal like the edge of a tin with that sharpness (Learned Counsel indicates cigarette tin), could that have caused the wound? — A. Yes.

247.Q. Were the wounds, the cut wounds made by this very sharp instrument, would you infer from the sight of them that they were probably made from more or less the same type of instrument? — A. Yes, definitely.

248.Q. You have just said that you and Dr Hemsted in your consultation the following morning decided that as there ~~was~~ was an ambulance available it would be preferable to send him into Nairobi where full medical facilities were available or words to that meaning? — A. Yes, quite.

249.Q. Did you at that time have a very grave doubt as to Mr Semisi pulling through? — A. I thought he would pull through.

250.Q. MR JUSTICE WEBB: That is in the morning? — A. The following morning. I was not asked the question at the time.

251.Q. What do you mean? — A. As to whether he would pull through or not. We discussed whether he had a better chance in going to Nairobi and had I been asked I should have said I thought he would pull through.

Re-Examined by the Attorney General.

252.Q. THE ATTORNEY GENERAL: Although you were of the opinion that he would pull through, doctor, what would you say as to his general state of health? Was he still in a very critical state of health? — A. Yes, he definitely was.

253.Q. He was in a very critical state of health but you say if you had been asked you thought he would pull through provided he got this excellent attention.

A. Of course, I was ignorant of the degree of septicity of the weapons by which the wounds had been inflicted. It was impossible to say at that stage how deeply the wounds had been infected. There was no evidence at that time.

254.Q. You yourself have already told us you were only able to treat him for shock? -- A. I cleaned up his wounds as far as possible; not to my own satisfaction as far as thoroughness. We had not the opportunity. We could not treat shock and wounds together.

255.Q. If he was in such a critical state of health you could not? -- A. No, I could not.

256.Q. And by 11-50 the next day you could not treat them either? -- A. That was the object of sending him in to Nairobi. There was no other object. He wanted nursing and a theatre.

257.Q. You told my learned friend when speaking of this wound on the shin that it could have been caused by a piece of sharp metal. I think the metal suggested was tin. Could you tell me if that same wound could have been caused by a spear being (Learned Attorney General indicates motion)? -- A. Yes, definitely yes.

258.Q. Did you see anything in that wound to suggest a cut with a cigarette tin, say by falling on a cigarette tin very hard? Was it rounded in the shape of a tin? -- A. No.

His Honour read over his notes to the witness.

WITNESS: There is one point, Sir. The wounds at the elbows were made by stabbing rather than cutting instruments.

The witness withdrew.

HENRY HEMSTED sworn;

Examined by the Attorney General.

259.Q. THE ATTORNEY GENERAL: Your name is Henry Hemsted, sir? --

A. Henry Hemsted.

- 260.Q. You are N.R.G.S. and L.R.G.P. London? -- A. Yes.
- 261.Q. Do you live at Naivasha? -- A. Yes.
- 262.Q. How far away from Dr Wetherell do you live? -- A. About 18 miles.
- 263.Q. Do you remember on the 14th June receiving certain information? -- A. Yes.
- 264.Q. And in consequence of that where did you go to? -- A. I went to Dr Wetherell's house and arrived there about midnight.
- 265.Q. When you got there, doctor, whom did you see inside? -- A. I saw Mr Alexander Semini.
- 266.Q. Generally speaking, in what state was he? -- A. He was lying in bed and his face was covered with blood. There were bloodstained bandages on his head, arms and legs.
- 267.Q. In other words, he had already been attended to by Doctor Wetherell? -- A. Efficiently attended to by somebody.
- 268.Q. Whilst you were there did anyone else come there? -- A. To the house?
- 269.Q. Yes? -- A. I saw several police officers there.
- 270.Q. Was the D.C. there? -- A. Mr Hodge, yes, he was there.
- 271.Q. Did you hear anything take place between Mr Hodge and Mr Semini? -- A. I heard Mr Semini make a statement to Mr Hodge which I afterwards witnessed.
- 272.Q. Is that the document? (Document handed to witness). -- A. That is my signature, sir, and I saw Mr Hodge write the document. (Exhibit E.)
- 273.Q. At the time that that statement was given by Mr Semini what would you say with regard to his mental state? -- A. Mr Semini's mind was perfectly clear.
- 274.Q. Were you satisfied that he knew exactly what he was saying and what was being written down? -- A. I was perfectly satisfied, sir.
- 275.Q. At the same time, quite apart from his mentality, what was

his general physical condition? — A. He was suffering from extreme shock and collapse.

276.Q. After that, doctor, - we have heard all the other details from Dr Wetherell - did you ever see any of the accused? —

A. I have seen all the accused.

277.Q. On the same day or different days? — A. On subsequent days.

278.Q. MR JUSTICE WEBB: You mean subsequent to the day on which you saw Mr Semini? — A. The various natives I did not see altogether but I saw them on dates subsequent to the 14th June.

279.Q. THE ATTORNEY GENERAL: For instance - you say you saw them all - when did you see Accused No. 1? Did you make some notes at the time, doctor? — A. I made some notes at the time. I ^{numbered} ~~marked~~ them in the order in which I saw them. Afterwards the numbers were altered by the police and I altered mine accordingly.

280.Q. MR JUSTICE WEBB: Did you take their names? — A. I took the names, Sir.

281.Q. THE ATTORNEY GENERAL: Look at your notes with regard to Kibet arap Boregi? — A. I saw him at 7-40 p.m. on the 29th June.

282.Q. Did you notice anything about him? — A. Yes.

283.Q. What did you notice? — A. He was strongly built; 5 ft. 11½ ins. in height.

284.Q. Did anything attract your attention particularly? — A. He had certain marks and wounds. He had a fairly recent scar with some dried blood upon the lobe of the right ear. He had a fairly recent abrasion close to the navel. Small abrasions on the right and left wrists.

285.Q. What age did you come to the conclusion these wounds were? — A. They were fairly recent; only a few days old.

I should like to say I think they were caused by the chafing of the handcuffs, those particular wounds.

286.Q. Apart from the chafing of the handcuffs, the other wounds were of what age? -- A. They were of varying age. I cannot answer in one word. There were some jagged scratches near the right hip bone; some scratches on the right thigh. There was a wound $2\frac{1}{2}$ inches long on the right shin. There were some abrasions on the back of the left leg.

287.Q. These were all the injuries you saw? -- A. There were two other abrasions on the right buttock, sir.

288.Q. Could any of the injuries you saw have been caused by that nail assuming they were in the proximity of the nail? -- A. That might have caused the injuries in the neighbourhood of the right hip. I should like to add that it might have caused some of the other injuries.

289.Q. Did you notice anything further about Accused No. 1? -- A. He had certain tribal marks upon him which were old affairs dating back some years.

290.Q. MR JUSTICE WEBB: Some of the injuries were a few days old? Does that apply also to the scratches on the hip and thigh? -- A. I have none but those injuries. No. 1, 4, 5, 6, 7, 8, and 9 appeared to be

291.Q. I have no knowledge what those numbers are. What I have got down is - "Fairly recent scar with dried blood on lobe of right ear; fairly recent abrasion near navel. Small abrasions on wrists, probably caused by handcuffs. All these a few days old". -- A. I did not intend to say that, Sir.

292.Q. What do you wish to say? -- A. I say that the wounds and marks were on varying dates. They had not all been inflicted at the same time. The scratches near the right hip, Sir, I should estimate to be from one to two weeks old or slightly

mere. The same applies to the rather severe wound on the right shin. The same applies to the abrasions on the buttock and the left ~~ankle~~ calf.

284.Q. THE ATTORNEY GENERAL: That is all you can tell us about No. 1?

— A. Yes.

285.Q. There is only one other I wish to ask you about, that is on our list No. 4, whose name is Kiplangat arap Chepkonye.

You saw him in the prison? — A. I saw him at my office.

286.Q. Was he suffering from anything? — A. I saw him at 10 a.m. on the 26th June.

287.Q. Did you notice anything about his face? — A. Nothing about his face, sir. Kiplangat Chepkonye.

288.Q. I am talking about No. 4. What did you notice? — A. He had a scar several months old on the shoulder. Very large flat feet. He had a scratch half an inch long and possibly 10 days old in the middle of his back. I made a note at the time - this is the only mark which appears to be of recent origin.

289.Q. Did you notice anything about the face of any of them? -- A. I noticed a certain mark on one of the prisoners. It is difficult to remember all these marks etc. (Witness refers to his notes). On the one we have down No. 6 I found an abrasion on the ear. The case of Kiproach arap Mngerechi, I have numbered as Number 5, I noticed a black bruise or burn on the left upper lip.

290.Q. Could you look at these men in the dock and tell me which you are referring to apart from their names. Would there be any mark left for you to see? (Witness goes to dock and inspects prisoners). — A. This one, No. 5, had also a recent scar on the right knee not quite healed, and I also see a similar mark which makes me infer this is the man

- who had the black bruise or burn in his possession.

- 291.Q. MR JUSTICE WEBB: What date did you examine him? -- A. I examined him at 11 a.m. on the 26th and I got his name as Kipronch arap Ngerechi.
- 292.Q. THE ATTORNEY GENERAL: To pursue this further you found on this man whom you have pointed out this mark on his lip and you have also said that it might have been a burn. Could that burn have been caused by a lighted lamp striking him in the face? -- A. If the lamp were hot, yes.
- 293.Q. MR JUSTICE WEBB: What part of the lamp? -- A. I should assume the burner part.
- 294.Q. Of this lamp or any lamp at all? -- A. I assume, Sir, this is a petrol lamp and if so the top would get very hot and hot metal of that description might have caused the injury referred to.
- 295.Q. THE ATTORNEY GENERAL: You say this lamp (Exhibit 18) might have caused the injury if the top of this lamp had come in contact with his lip? -- A. Yes.
- 296.Q. Did you come to any conclusion as to how old that wound on the lip was? -- A. It would be difficult to say positively by the age. I would say it was not quite recent. That is as far as I can go.

Cross-Examined by Mr Lean.

- 297.Q. MR LEAN: The wounds, scratches and abrasions that you have described on No. 1; would not similar wounds be quite likely to occur supposing a man had tripped up and fallen over? -- A. I think some of the wounds might easily have been so caused.
- 298.Q. And when you say that screw could have caused that one in his hip you do not mean to imply that you think that screw was in fact the cause of those wounds? -- A. Not necessarily.

THE ATTORNEY GENERAL: No re-examination, Your Honour.

His Honour read over his notes
to the witness.

299. Q. MR JUSTICE WEBB: When Mr Semini made this statement to Mr Hodge was it read over to him do you remember as I have read over your evidence to you now? -- A. I have a recollection that it was read over to him and that he made his mark.

THE WITNESS WETHERELL

GEORGE RICHARD GRIBBLE sworn:

EXAMINED BY MR WALLACE.

300. Q. MR WALLACE: George Richard Gribble, is that right? -- A. Yes, sir.
301. Q. I think you are Assistant Inspector, Naivasha? -- A. Yes.
302. Q. Do you remember the night of the 14th June? -- A. Yes, sir.
303. Q. As the result of information received did you accompany Superintendent Ridgeway? -- A. Yes, I did.
304. Q. / Where did you go? --
First to Dr Wetherell's farm and then to the farm of Mr Alex. Semini?
305. Q. About what time did you arrive at Dr Wetherell's? -- A. Just before midnight, sir.
306. Q. When you arrived at the house of the deceased was there anybody there? -- A. Yes.
307. Q. Who was there? -- A. Dr Wetherell.
308. Q. At the house of the deceased? -- A. There was no-one at the house of the deceased.
309. Q. Did you examine the house that night? -- A. It was too dark.
310. Q. The following morning? -- A. Yes. I followed Superintendent Ridgeway round examining the whole of the grounds.
311. Q. Did you make a sketch to scale of the house and grounds? --

A. I did, sir.

512.Q. Two distinct sketches? -- A. Yes, one of the house and one of the grounds.

513.Q. Is that the sketch of the house? -- A. Yes, that is the sketch of the house made by me. (Exhibit 25). This is the sketch of the grounds made by me. (Exhibit 25A).

514.Q. You followed the Superintendent round in his investigations? -- A. Yes.

515.Q. Did you see certain things which he picked up? -- A. Yes. I plotted their position on the sketches and numbered them.

516.Q. You see that key on Exhibit 25? -- A. Yes.

517.Q. If you read that key in conjunction with Exhibit 25 and 25A is it correct? You made the key? -- A. Yes, it is correct. I made it and signed it. It refers to the numbers shown by the points on the two maps.

518.Q. During the next two or three weeks were you engaged on investigations in this case? -- A. I was, sir.

519.Q. Tell His Honour exactly what you found on the various occasions? Are those notes which you took actually at the time? -- A. Yes, sir, they were made in my book at the time. On the 19th June at 10 a.m. I was present with Mr Ridgway and saw him find a lady's handbag on the farm of Mr Dobbin. There were also other small articles in the same place. On the 25th June at 8-15 a.m. led by accused No. 6 I went to the farm of Mr Storey, and on that farm at a place pointed out by the accused No. 6 I found two coats, three pieces of white material - table cloth, I think.

520.Q. Are those they? (Exhibit 16 put to witness). -- A. Yes, those are they.

521.Q. Did you find anything else? -- A. In the same place I also found a piece of cloth. That is the piece of cloth. (Exhibit 17).

- 522.Q. Did you hand both Exhibit 16 and 17 to Superintendent Ridgeway? -- A. I did, immediately on my return to the Police Station.
- 523.Q. Do you know the 5th Accused? -- A. I do, sir. His name is Arap Ngerechi.
- 524.Q. Did you arrest him? -- A. I arrested Accused No. 5 on the 26th June at about 9-30 p.m. on the farm of Mr Ray in the Naivasha District.
- 525.Q. MR JUSTICE WEBB: Does the accused live there? -- A. No, Sir. I arrested him on the farm
- 526.Q. MR WALLACE: Whereabouts on the farm? -- A. In the hut of an employe Arap Misoi. When I arrested him, sir, he was in possession of a Native sword, a simi.
- 527.Q. MR JUSTICE WEBB: Was it in his hand or round his neck or what? -- A. It was not attached to him; it was in the hut.
- 528.Q. MR WALLACE: How do you know it belonged to him? -- A. Because there was only one other occupant at the time and he handed it to me as the property of the accused. I knew him to be in possession of a knife; I happened to know because he had been seen in the morning. It was produced to me by another occupant of the hut who disclaimed ownership of it.
- 529.Q. MR JUSTICE WEBB: The other occupant, I suppose, is this Arap Misoi? -- A. That is right, Sir.
- 530.Q. MR WALLACE: Did the accused deny ownership of the simi when it was handed to you by the other occupant? -- A. No, sir.
- 531.Q. Are you quite satisfied that it was the property of the accused? -- A. I am quite satisfied.
- 532.Q. MR JUSTICE WEBB: But what satisfied you? -- A. Unfortunately I cannot give the evidence.
- 533.Q. This is the simi? -- A. Yes, Sir.

334.Q. MR WALLACE: Was it in that condition? -- A. Yes, sir.
It had no handle to it.

335.Q. You handed the simi to the Superintendent? -- A. At midnight the same night.

336.Q. Any further investigations have you brought to this case? --
A. On the 30th June at 9 a.m. I was led by Kibet arap Rangl, the first accused and Kipruony arap Kamoi long the second accused to Mr Dobbin's farm and in the vicinity of where the handbag was found I found a coin.

337.Q. What sort of a coin? -- A. It is a silver coin with the Queen's head on one side.

338.Q. Do you recognise it? (Exhibit 19 handed to witness). --
A. Yes, this is it.

339.Q. Did you also hand that over to the Superintendent? -- A.
I did, sir.

Cross-Examined by Mr Lean.

340.Q. MR LEAN: You did think that that (Exhibit 19) was a Maltese coin? -- A. I have been told it is a Maltese coin.

341.Q. I suggest the reason you thought it was a Maltese coin is because Mr Semini was a Maltese himself? -- A. As a matter of fact it is not so. It had been suggested to me that it was a Maltese coin. There is nothing at all to indicate it to me - not to my intelligence.

342.Q. In fact it has obviously been made into a brooch? -- A. Yes.

343.Q. When you found that sword, the simi, inside arap Misoi's hut you say arap Misoi presented you with the ~~xxx~~ sword and said "It is not mine".? -- A. He did not say "It is not mine".

344.A.Q. If he denied ownership of it

344.Q. MR JUSTICE WEBB: What he said before was he disclaimed ownership of it? -- A. I asked the question generally "Does this belong to anybody?" and he was one of those who said No. I would not swear that that sword belongs to

- Q. Q. needed No. 8. You needed to had the...
- 545.Q. MR LEAN: You would not... A. No, please do not do.
- THE ATTORNEY GENERAL: No questions, Your Honour.
- Q. Q. His Honour read over his notes...
A. To were an correct and then withdrew.
- Q. Q. Having decided to... did you proceed...
THE COURT ADJOURNED UNTIL 10 A.M.
your intent ON 20th SEPTEMBER 1954.
- through the temporary verandah and I went through
first from the living-room. I got...
things for morning tea. My husband followed behind...
the petrol STELLA SEMINI sworn!
- Q. Q. Should you...
Examined by the Attorney General.
- 546.Q. THE ATTORNEY GENERAL: Your name, Mrs Semini, is stella
Semini? -- A. Stella Semini, yes.
- 547.Q. And on the 14th June this year where were you living? --
A. On the Kinangop, Malvasha, on the Kinangop.
- 548.Q. You were living with whom? -- A. With my husband.
- 549.Q. Whose name was Alex Semini? -- A. Yes.
- 550.Q. How long had you been married? -- A. Five years.
- 551.Q. And during that time had you been living in the same place?
-- A. We had been there on that farm just one year.
- 552.Q. What were you farming there? -- A. Stock farming.
- 553.Q. How many boys did you employ on this farm? -- A. We had
at the time just eight boys. -- A. I don't think.
- 554.Q. Now did these boys live from the house in which you
were living with your husband? -- A. I think their houses
foundations are very high. They were under the founda-
were about 4 mile away from our house.
- 555.Q. This house of yours, was it a new house? -- A. It was an
uncompleted house; it was just in the process of being built.
- 556.Q. Do you remember the night of the 14th June? -- A. I
roughly. -- A. I think about the height of this table.
summarily it very clearly.
(Indicating Counselor's table):

who had the black bruise or burn in his possession.

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to the witness.

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- 331.Q. Are you quite satisfied that it was the property of the accused? -- A. I am quite satisfied.
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- 333.Q. This is the simi? -- A. Yes, Sir.

- 554.Q. MR WALLACE: Was it in that condition? -- A. Yes, sir. It had no handle to it.
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- 556.Q. Any further investigations have you brought to this case? -- A. On the 30th June at 9 a.m. I was led by Kibet arap Rangl, the first accused and Kiprubay arap Komoilong the second accused to Mr Dobbin's farm and in the vicinity of where the handbag was found I found a coin.
- 557.Q. What sort of a coin? -- A. It is a silver coin with the Queen's head on one side.
- 558.Q. Do you recognise it? (Exhibit 19 handed to witness). -- A. Yes, this is it.
- 559.Q. Did you also hand that over to the Superintendent? -- A. I did, sir.

Cross-Examined by Mr Lean.

- 540.Q. MR LEAN: You did think that that (Exhibit 19) was a Maltese coin? -- A. I have been told it is a Maltese coin.
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- 542.Q. In fact it has obviously been made into a brooch? -- A. Yes.
- 543.Q. When you found that sword, the simi, inside arap Misoi's hut you say arap Misoi presented you with the ~~hat~~ sword and said "It is not mine".? -- A. He did not say "It is not mine".
- 544.Q. MR JUSTICE WEBB: What he said before was he disclaimed ownership of it? -- A. I asked the question generally "Does this belong to anybody?" and he was one of those who said No. I would not swear that that sword belongs to

accused No. 5.

43.Q. MR LEAH: You would not?

THE ATTORNEY GENERAL: No questions, please.

His Honour read over his notes
to the witness who signed same
as correct and then withdrew.

THE COURT ADJOURNED UNTIL 10 A.M.
ON 20th SEPTEMBER 1984.

20th SEPTEMBER 1984.

STELLA SEMINI sworn:

Examined by the Attorney General.

- 44.Q. THE ATTORNEY GENERAL: Your name, Mrs Semini, is Stella Semini? -- A. Stella Semini, yes.
- 45.Q. And on the 14th June this year where were you living? -- A. On the Kinangop; Naivasha, on the Kinangop.
- 46.Q. You were living with whom? -- A. With my husband.
- 47.Q. Whose name was Alex Semini? -- A. Yes.
- 48.Q. How long had you been married? -- A. Five years.
- 49.Q. And during that time had you been living in the same place? -- A. We had been there on that farm just one year.
- 50.Q. What were you farming there? -- A. Stock farming.
- 51.Q. How many boys did you employ on this farm? -- A. We had at the time just eight boys.
- 52.Q. How far did these boys live from the house in which you were living with your husband? -- A. I think their houses were about $\frac{1}{2}$ mile away from our house.
- 53.Q. This house of yours; was it a new house? -- A. It was an unfinished house; it was just in the process of being built.
- 54.Q. Do you remember the night of the 14th June? -- A. I remember it very clearly.

- 257.Q. What time did you proceed to bed that night? -- A. I think it was round about 8 o'clock when we decided to go to bed.
- 258.Q. When you decided to go to bed in which room were you? -- A. We were in the sitting-room, my husband and I.
- 259.Q. Having decided to go to bed how did you proceed to carry out your intention? -- A. To go to our bedroom we had to pass through the temporary verandah and I went through the door first from the living-room. I was carrying a tray with things for morning tea. My husband followed behind with the petrol lamp.
- 260.Q. Would you recognise that petrol lamp if you saw it again? -- (Exhibit 12 handed to witness). -- A. Yes, that is it.
- 261.Q. At the time that your husband was carrying that lamp was it in that condition? -- A. It had a white glass shade.
- 262.Q. If you could tell us, Mrs Semini, as accurately as you possibly can exactly what happened from that stage onwards. What was the first thing you noticed? -- A. I had only gone about two steps from the door when I saw a boy spring in front of me from the foundations of the house in front. I don't think he got on to the verandah. He had a spear in his hand.
- 263.Q. Before you go any further: you mentioned that he did not spring right on to the verandah. -- A. I don't think this particular boy reached the verandah. He just sprang from the foundations. He came towards my husband, but the foundations are very high. He came from under the foundations to get on to the verandah. He did not exactly reach the verandah.
- 264.Q. How much higher is the verandah from the foundations, roughly? -- A. I think about the height of this table. (Indicating Counsel's table).

- 365.Q. What was the first thing that attracted your attention? --
 A. He attacked my husband with the spear in his hand from the foundations. My husband had just turned his back to proceed along the verandah; had turned to lock the sitting-room door, and as he turned to go towards the bedroom he instantly saw the boy.
- 366.Q. Was anything said by either the boy as he sprang towards your husband or by your husband at that moment? -- A. The only words my husband used were, "Shauri gani, boy?"
- 367.Q. MR JUSTICE WEBB: That means, "What is the matter"? -- A. What is the trouble, boy? What is the shauri?.
- 368.Q. THE ATTORNEY GENERAL: Did the boy reply? -- A. I did not hear him.
- 369.Q. What did the boy do? -- A. Instantly a second boy sprang from the back of the house also with a spear and he slashed at my husband and my husband said
- 370.Q. Never mind what your husband said. -- A. It was in a second. A second boy sprang on to the verandah and slashed at my husband.
- 371.Q. And think you said he sprang from the back of the house? -- A. They came from the back and sprang on to the verandah from the top of the foundations.
- 372.Q. You say he slashed at your husband. With what? -- A. I think it was with a spear or panga. I think it was a spear.
- 373.Q. And you say he slashed your husband's face? -- A. He just hit at my husband; he hit at my husband.
- 374.Q. At the top part of his body? -- A. Yes, at the top part.
- 375.Q. So now we have two boys attacking your husband? -- A. Yes.
- 376.Q. What was the next thing that happened? -- A. There was a shout from either of the boys and other boys seemed to come from all directions. Quite a number of boys sprang from all directions from the back of the house on to the

verandah and to my husband. I don't think they came on because my husband was off the verandah with the two boys then; on to the foundations.

- 577.Q. And you also said these new boys who were arriving all attacked your husband? -- A. Except one who held me.
- 578.Q. Did you recognise what type of boys these boys were? -- A. I knew they were Lumbwa because we had always employed Lumbwa.
- 579.Q. I would just like to clear up a small point. You will remember that your husband was carrying a lamp with him before he was attacked. Can you tell us anything about the lamp? -- A. During the struggle apparently with the two boys, the first two boys, I heard the globe of the lamp smash.
- 580.Q. What happened to the things you were carrying? -- A. I don't remember what happened to the tray I was carrying. I just don't remember what happened to the tray.
- 581.Q. You told us that the boys you took to be Lumbwa appeared from everywhere. Did you form any opinion as to the number? -- A. I have no idea as to the number. In the darkness there appeared to be a numerous number of them.
- 582.Q. You told us that one of these boys held you? -- A. Yes.
- 583.Q. Could you identify him? -- A. No, I could not.
- 584.Q. How long did he continue to hold on to you? The picture is this: there is your husband fighting with these hordes who have now arrived, and there are you being held by one boy on the verandah itself. -- A. Probably about five minutes; I was held against the wall.
- 585.Q. Was there any reason for your being held? What were you doing? -- A. I was calling for my husband and trying to get away to find my husband because I heard a call from him.
- 586.Q. And then what happened? -- A. Then I heard the boys shout

again and the boy holding me left me entirely alone and must have gone to join the other boys.

587.Q. Did he go in the direction from where the shout came? --

A. I do not know; I don't remember.

588.Q. When you were let go what did you do? -- A. I then went

into the bedroom; there was no light; I found my keys and opened a drawer where we had a few rounds of ammunition and I found the gun in the corner of the bedroom.

589.Q. Would you recognise that gun again? -- A. That is the gun.

(Exhibit 15).

590.Q. Having got the gun and the ammunition, what did you do next?

-- A. I got the gun and the ammunition. I came out of the room with the intention of either trying to fire it into the air or find my husband. I got as far as the bedroom door when a boy (I think it was Kibet, an old boy of ours) wrenched it from my hand.

591.Q. A boy you thought was Kibet. Do you see him in Court today?

-- A. I do, sir. It is Number One boy.

592.Q. What made you think it was Kibet? -- A. I first

recognised his voice.

593.Q. Kibet you said you had known before? -- A. He had worked

for us probably for two years.

594.Q. And the thing you noticed was his voice? -- A. I recognise

his voice.

595.Q. Now when you say you recognised his voice at what stage of

the proceedings that night did you recognise his voice: when he took the rifle or before or after? -- A. It was afterwards that I definitely recognised him. I thought I recognised him then by his voice and his peculiar step.

596.Q. And just to finish off this identification of Kibet. You

were saying that at that stage you thought you recognised him by his voice and step. Did you later definitely

recognise him? -- A. I did not later during the fighting. Quite later in the evening I recognised him; another instance; I definitely recognised him as Kibet, No. 1 accused.

- 397.Q. Let us get back to the story of the gun. You were proceeding with the gun and the ammunition from the bedroom and the person you thought was Kibet? -- A. Wrenched the gun from my hand, also the ammunition, and threw it out into the compound.
- 398.Q. Then, we do not want any details, intricate details of what happened exactly; after that what happened? Did you manage to get to your husband? -- A. I never saw my husband from the first moment he was attacked until the last of the attack.
- 399.Q. This boy, having thrown away the rifle and ammunition remained with you some minutes and then did he leave? Did you see where he went? -- A. I don't remember what happened to him.
- 400.Q. What was the next thing after that (leaving out the next incident). Did you return to the bedroom? -- A. I returned to the verandah.
- 401.Q. MR JUSTICE WEBB: From? -- A. The boy had taken me to the back of the house and I returned to the verandah from there.
- 402.Q. THE ATTORNEY GENERAL: When you got back on to the verandah what did you do? -- A. I cannot remember.
- 403.Q. Did you ever go back into the bedroom? -- A. I remember now. I got back on to the verandah and I was again held by one boy.
- 404.Q. Another boy? -- A. I did not recognise the boy.
- 405.Q. It was not the same boy? -- A. I was held by another boy and there seemed to be an enormous number of boys and they swarmed into the bedroom and ransacked the house. I was held on the verandah.

- 406.Q. When you say the house, do you mean the whole house? --
A. Into the bedroom. They smashed the furniture. One boy took the dressing table and smashed it to the ground. They smashed the dressing-table to pieces. They smashed the chest of drawers. They smashed everything; and some furniture they took out of the room. I was pulled and pushed in every direction while it was going on. I was starting to call for my husband and a boy came and held a spear over my heart and threatened if I did not stop shouting he would beat me with the spear and held the spear over my head.
- 408.Q. I take it you would not recognise that boy? -- A. No.
- 407.Q. At this time was there any light of any description? --
A. No light at all; it was a very dark night.
- 408.Q. Did you make any attempt to get any light? -- A. I was held the whole time. Then there was another call and they let me go. It came from the grounds.
- 409.Q. And when you say another call, would it be a call from your husband? -- A. From the natives. They all dashed away from the house, then, to where the call had come from leaving me entirely alone again.
- 410.Q. And finding yourself alone once more? -- A. I dashed into the bedroom to find a torch which I knew was on a small table near the beds.
- 411.Q. Would you know that torch again? (Exhibit No. 20a put to witness). -- A. Yes, I recognise that torch as mine.
- 412.Q. Having got the torch? -- A. I switched on the torch with the intention of finding my husband. I got to the bedroom door with the torch on and the boy Kibet (that is when I recognised him) wrenched the torch from me.
- 415.Q. Having wrenched the torch from you what happened then? --

A. Then he took me by the arm and pulled me back into the bedroom where he knew the dressing-table was kept and asked me to find him the money. He had worked for us so long and knew the house well. He asked me to give him the money.

414.Q. Were you able to give him any money? -- A. When we got to the corner where the dressing-table had been there was no dressing-table there and with the aid of the lamp, the torch, I found the dressing-table on the verandah. I found my two bags, one of which I knew contained money, and gave him the two bags. I opened the bag with the money and told him to take the money. I showed him the money.

415.Q. You have no idea how much? -- A. I think there was fifty shillings in notes and about twenty shillings in silver.

416.Q. What sort of a bag was it? -- A. A miniature portmanteau bag. (Exhibit No. 9 put to witness). That is it.

417.Q. After that I think you fainted, and you do not know. We don't want to know anything else. -- A. I found myself on the verandah when I came to.

418.Q. And when you found yourself on the verandah, what did you do next? -- A. I hesitated for a moment whether I should dash out and hide myself behind the trees and get to my brother-in-law's place, and then I decided I could not leave my husband and I went to the front of the house and the lawn where the boys said my husband was.

419.Q. When did they tell you your husband was at the front? -- A. In the early part of the evening. I asked one of the boys where my husband was and he said at the front of the lawn.

420.Q. Did you manage to get to the lawn? -- A. I had just got to the bottom of the stairs when a boy came to the front and dragged me back on to the verandah.

and I called for ... and I ...

- 421.Q. You did not recognize that boy? -- A. No. I was calling for my husband and he held a spear to my chest and told me he would kill me if I did not stop shouting. I was calling for my husband.
- 422.Q. Naturally. And this state of things continued for about ten minutes and after that did you again find yourself alone; after the incident with that boy? -- A. I came back on to the verandah alone again and then I think there was a big number of boys swarming round the furniture and the house again. This time I was nearly exhausted.
- 425.Q. What were they doing? -- A. They were collecting the clothes and things from the bedrooms and bringing them to the verandah. I started to tell them the police were coming. I don't think they were bringing the clothes then. It was when I called the police.
- 424.Q. MR JUSTICE WEBB: You just called the word "Police!" or told them the police were coming? -- A. I just called the word "Police!" I was half unconscious then. I just remember calling "Police, Police!"
- 426.Q. And at that time they were pulling all the stuff about? -- A. They definitely made a very big move when I called police. They stampeded all over the place; swarmed in and out of the room collecting bed clothes and things.
- 426.Q. After that did they clear out with what they could? -- A. They all seemed to have masses of stuff with them and they all went away leaving one boy behind, and that boy pulled me by the hand again and pulled me the whole length of the lawn, down the steps and across the lawn. I thought they were going to kill me, and I cried aloud to God to save me for my mother's sake.
- 427.Q. At that time did you hear any sound? -- A. He left me and I called for my husband and I heard him faintly answer.

- 428.Q. Having heard this answer I presume you went in that direction? -- A. I went just a few steps and found my husband lying on his back. I found him covered with blood; his hair was matted with blood, and he said: "I am finished; they have murdered me". I only saw the wounds on his face, and I said: "Oh no, they have not", and I helped him to his feet and got him back to the bedroom.
- 429.Q. Yes? -- A. We had to tread over furniture and things which were all blocked in the door and I got him to the bed and put him on the bed. He was half unconscious. I then got a light. The only light I could find was a candle. I could see how much blood he was losing, and I said I would run to my brother-in-law's house a mile away and get help. My husband (it seemed to give him fresh strength) he said "If you can manage to get me to the car I will drive the car and take you there".
- 430.Q. And to cut it short? -- A. I got him to the car.
- 431.Q. And somehow you managed to get the car along? -- A. He was driving the car. He drove it to my brother-in-law's. My husband repeatedly told me they had repeatedly threatened to murder him and wanted a knife to cut his fingers and his ears off, and he prayed aloud to God to take him quickly so he would not suffer further.
- 432.Q. When you say that, when did you understand him to be referring to? -- A. To the boys who were attacking him.
- 433.Q. You told us you got him to your brother's house? -- A. We took him to Dr. Withersall's free clinic.
- 434.Q. Have you any idea roughly as to the time you got to your brother-in-law's house? -- A. I think it was about 9 or 9-30. I have no idea really.
- 435.Q. I just want you to identify one or two things. Did you have a brush that night? -- A. Yes, I had a big sleep

- 428.Q. Having heard this answer I presume you went in that direction? -- A. I went just a few steps and found my husband lying on his back. I found him covered with blood; his hair was matted with blood, and he said: "I am finished; they have murdered me". I only saw the wounds on his face, and I said: "Oh no, they have not", and I helped him to his feet and got him back to the bedroom.
- 429.Q. Yes? -- A. We had to tread over furniture and things which were all blocked in the door and I got him to the bed and put him on the bed. He was half unconscious. I then got a light. The only light I could find was a candle. I could see how much blood he was losing, and I said I would run to my brother-in-law's house a mile away and get help. My husband (it seemed to give him fresh strength) he said "If you can manage to get me to the car I will drive the car and take you there".
- 430.Q. And to cut it short? -- A. I got him to the car.
- 431.Q. And somehow you managed to get the car along? -- A. He was driving the car. He drove it to my brother-in-law's. My husband repeatedly told me they had repeatedly threatened to murder him and wanted a knife to cut his fingers and his ears off, and he prayed aloud to God to take him quickly so he would not suffer further.
- 432.Q. When you say that, whom did you understand him to be referring to? -- A. To the boys who were attacking him.
- 433.Q. You told us you got him to your brother's house? -- A. We took him to Dr. Wetherell's from there.
- 434.Q. Have you any idea roughly as to the time you got to your brother-in-law's house? -- A. I think it was about 9 or 9-50. I have no idea really.
- 435.Q. I just want you to identify one or two things. Did you have a breach that night? -- A. Yes, I had a big clamp

A. That was my scent spray.

450.Q. And was it in the bedroom on the night in question? --

A. On the dressing-table.

451.Q. Did you notice on the night in question whether all the boys were in bare feet? -- A. I have no idea.

452.Q. You do not know whether any of them were wearing sandals? --

A. I think one boy must have been because I had my legs very badly scratched.

CROSS-EXAMINED BY MR LEAN.

453.Q. MR LEAN: Mrs Semini, do you recognise this sketch? (Exhibit 25 handed to witness). -- A. It is a plan of our house.

454.Q. That is the living-room (indicating)? -- A. Yes, and that is the bedroom (indicating).

455.Q. When the first Native jumped out of the foundations he presumably came from there? -- A. Yes, from the dining-room. Where the dining-room should be.

456.Q. Whereabouts on this sketch were you? -- A. I was just a few paces from this door here.

457.Q. You were both very close together here? -- A. Just a few paces from each other.

458.Q. When you talk about the back of the house, do you mean this part here? -- A. Where the kitchen is.

459.Q. Down the verandah there is there a rail? -- A. No, it is perfectly open.

460.Q. Mrs Semini, you say the second boy who came up to your house came from the back of the house. Do you mean actually the back as shown in the plan? -- A. From the back of the house.

461.Q. He must have come past you? -- A. I think they came from the kitchen. The second boy definitely jumped on to the foundations. He had to jump on to the foundations before he reached the verandah.

- 462.Q. Did he actually get on to the verandah? -- A. Yes, the second boy did.
- 463.Q. And he came past you towards your husband? -- A. Yes.
- 464.Q. When your husband started to grapple with his assailant he went over the edge of the verandah and you did not see him again? -- A. I could not see anything. It was such a dark night, I could not see anything at all.
- 465.Q. These foundations, were they fairly rough? -- A. They were properly finished, very smooth across the top.
- 466.Q. There was no rubble or stone inside? -- A. I think there were a few rough stones about.
- 467.Q. Supposing this table (Counsellors' table) was a verandah. I am where your husband was. A Native comes up. When your husband hit the Native with the lamp presumably he went from here, from the built part, towards the foundations fairly close to the edge. Supposing this is the verandah and my pencil here is the door of the sitting-room; the Native jumped up here; he did not come on to the verandah so presumably your husband stepped across the verandah and as far as you know hit him with the lamp? -- A. I think he defended himself with that when he had the first blow.
- 468.Q. I suppose you could not tell whether he dropped the lamp then or not; or do you think he probably threw it? --
A. He probably defended himself with the lamp, the only thing he had.
- 469.Q. So you think he probably kept his grasp the whole time? --
A. Yes.
- 470.Q. At that time of the year was the countryside fairly dry or muddy? -- A. Fairly dry.

His Honour read over his notes
to the Witness who signed same
as correct and then withdrew.

JOHN SEMINI sworn:

EXAMINED BY THE ATTORNEY GENERAL.

- 471.Q. THE ATTORNEY GENERAL: Your name is John Semini and you live at Kinangop? — A. Yes, sir.
- 472.Q. Are you the brother of the deceased Alex. Semini? — A. Yes, sir.
- 473.Q. Do you remember the night of the 14th June? — A. Yes, sir, I do.
- 474.Q. Did you see your brother that evening? — A. Yes, sir.
- 475.Q. At about what time? — A. At about 9 o'clock.
- 476.Q. What was his condition? — A. Very critical, sir. Blood all over his face, and cuts all over the body.
- 477.Q. How did he arrive at your house? — A. He managed to drive the car.
- 478.Q. Did he arrive in his car? — A. Yes, sir.
- 479.Q. And seeing him in this critical condition what did you do? — A. He asked me to help him inside the house and when I went to help him I could not touch him anywhere. His body ached everywhere. Eventually I managed to get him inside.
- 480.Q. What did you actually do with him? — A. I carried him inside my house and I let him on the floor as he said "Let me drop".
- 481.Q. And did you attend to him? — A. Yes, sir.
- 482.Q. You are not a doctor? — A. I attended to him as best I could.
- 483.Q. What did you do with him? — A. Then I called my boys to help me carry him back into my car and I took him to Dr Wetherell.
- 484.Q. Having deposited him with Dr Wetherell? — A. I proceeded to the Police and reported to Captain Ridgeway at Naivasha.

CROSS-EXAMINED BY MR LEAH.

- 486.Q. MR LEAH: What sized man was your brother? -- A. The same size as me.
- 486.Q. Fairly heavy? -- A. I think stone for stone. About 150 lbs; 10 stone 10 lbs.
- 487.Q. How was he dressed that night? -- A. He had no shoes on; he was in his socks and just farm clothes, a jersey, trousers, collars. He had left his shoes by the fireplace.
- 488.Q. Can you remember whether he had short sleeves? -- A. They were long sleeves.
- 489.Q. THE ATTORNEY GENERAL: No re-examination, Sir.

His Honour read over his notes to the witness who signed same as correct and then withdrew.

NEIL STEWART sworn:EXAMINED BY THE ATTORNEY GENERAL.

- 489.Q. THE ATTORNEY GENERAL: Your name is Neil Stewart and you are Superintendent in charge of the Criminal Investigation Department, Nairobi? -- A. I am.
- 490.Q. On the 15th June, in consequence of information you had received where did you proceed to? -- A. I went to Mr Semini's farm on the Kinangop.
- 491.Q. Mr Semini the deceased? -- A. Yes, Alexander Semini.
- 492.Q. Was anyone with you at this farm? -- A. Yes, Mr Ridgeway, the Assistant Superintendent of Police, Naivasha.
- 493.Q. What there did you take possession of certain things? -- A. I took possession of the lamp.
- 494.Q. We will go into details later? -- A. I took possession of various things.
- 495.Q. And what did you do with those things? -- A. I took them to Nairobi.
- 496.Q. Was anyone making notes of the things at the time? -- A.

Yes. Mr Ridgeway and Inspector Gribble.

- 497.Q. Concentrating on two or three of these exhibits. Look at that piece of wood, Exhibit 14. Did you find that? --
 A. This was taken out of the vent hole of the deceased's house by Mr Ridgeway and handed to me. I made a pencil mark round a mark and initialled it. I then kept it in my custody and eventually handed it to the Government Analyst Mr Fox. At a later date I received it from Mr Fox and handed it back to Mr Ridgeway.
- 498.Q. Look at this handbag, Exhibit 9. Do you know that? --
 A. I do. On the 20th June, I think, I received this from Mr Ridgeway. I handed it back to Mr Ridgeway on the 30th July.
- 499.Q. Having kept it in my possession all the time? -- A. Yes. And examined it.
- 500.Q. On the 27th June where did you visit? -- A. Kericho.
- 501.Q. Is that what is called the Lumbwa Reserve? -- A. It is part of the Lumbwa Reserve. I went further than Kericho; I went to Chemagil.
- 502.Q. Whilst there did you visit anyone's home? -- A. I visited the home of accused No. 5.
- 503.Q. MR JUSTICE WEBB: When you say home, do you mean hut? --
 A. Hut, Sir.
- 504.Q. How did you know his hut? -- A. I made enquiries, Sir, and I had detectives.
- 505.Q. THE ATTORNEY GENERAL: And when you got there was he there? --
 A. He was present, sir.
- 506.Q. And what did you do? -- A. I apprehended him.
- 507.Q. While in that district, the next day did you see anyone else? --
 A. I saw the first and second accused the following morning.
- 508.Q. How did you come across those two? -- A. The previous

night we had sent out scouts to look for them and as a result they were arrested by the tribal authorities and brought to me.

509.Q. What was accused No. 1 wearing when you saw him? — A. He was wearing a shuka similar to the one he is wearing now and he had in his possession a greatcoat.

510.Q. MR JUSTICE WEBB: In his possession? — A. Actually he had the shuka and the greatcoat had been taken from him by the tribal authorities.

MR JUSTICE WEBB: Then it was not in his possession.

511.Q. THE ATTORNEY GENERAL: How did the greatcoat come on the scene? — A. It was with the tribal retainer; he was carrying the greatcoat.

512.Q. At that time was he under arrest? — A. He was not under arrest then.

513.Q. Was anything said in his presence? — A. I took possession of that coat from the tribal retainer and Accused No. 2 remarked, "Don't take that coat, it is mine; I bought it".

MR LEAN: I do submit that is inadmissible. Mr Stewart is a policeman.

THE ATTORNEY GENERAL: I do not wish to press it, Your Honour. I can get it another way.

514.Q. THE ATTORNEY GENERAL: At any rate, after you had made your investigations, did you arrest him? — A. I arrested him then, sir.

515.Q. Did you take possession of that greatcoat? — A. I did.

516.Q. Did you notice anything wrong with the coat? — A. I noticed one button was missing from it.

517.Q. Look at that button, Exhibit 6. Did you compare it? — A. This is exactly similar to five others on the coat.

518.Q. MR JUSTICE WEBB: Five? — A. Six others, Sir. I am sorry.

519.Q. THE ATTORNEY GENERAL: You have told us you arrested No. 2

accused? — A. I arrested No. 1 accused also.

520.Q. Where was No. 1 when you arrested him? — A. He was with No. 2 at Chemagil.

521.Q. Where does he live? — A. About 80 miles beyond on Mr Shaw's farm, and I went from there with him.

522.Q. Did you go with No. 1? — A. Yes.

523.Q. To the place where he was supposed to live on Mr Shaw's farm? — A. Yes.

524.Q. MR JUSTICE WEBB: Did he tell you where he lived? — A. I had a detective with me who knew him personally. He also told me.

525.Q. THE ATTORNEY GENERAL: And having got there? — A. I told him I wished to search his house. Before entering the hut he produced a torch from out of the grass. This is the torch. (Exhibit 20).

526.Q. For the information of the Court you had better give us more details as to where you got the torch?— A. From here to the Bench in regard to his house. The grass was growing up around the house. This is an isolated hut. He then went into the hut and handed me a pair of sandals. They are these. (Exhibit 21). I then searched the hut.

527.Q. And found anything of any further interest in this case? — A. Nothing more.

528.Q. And where did you return to after searching? — A. Back to Kericho and Naivasha.

529.Q. And when you got to Naivasha, what did you do? — A. I handed the three accused to Ridgway and also the greatcoat and torch. I took the shoes, the sandals, with me, and I handed them to the Government Analyst.

530.Q. And did you in due course receive them back? — A. I received them back and handed them back to Mr Ridgway.

531.Q. On the 21st July did you receive any further exhibits? — A. Yes.

532.Q. What did you receive? — A. I received a spear butt. (Exhibit 2). I received a simi handle. (Exhibit 4) and a simi (Exhibit 18). These I handed over personally to Mr Fox, the Government Analyst.

533.Q. Did you yourself receive them back from the Government Analyst? — A. I received them back and handed them back again to Mr Ridgway. On the 29th I got them back and on the following day handed them back to Mr Ridgway.

GROSSLY EXAMINED BY MR LEAN.

534.Q. MR LEAN: Mr Stewart, were those various men that you arrested the sole occupants of the hut in which you arrested them or saw them? — A. Number 3 accused to the best of my knowledge lived with No. 2 accused and No. 1 accused.

535.Q. But presumably there were other people living in the same manyatta or kraal? — A. As No. 2 and 3, yes. The family. There were three huts there.

536.Q. No. 1 you say lives in a solitary hut? — A. I believe it is his hut and his father lives 50 yards away.

537.Q. He lives by himself? — A. To the best of my knowledge. The hut was empty and there was no woman.

538.Q. It is unusual for a young man of his age to have a hut to himself? — A. I think they mostly have huts to themselves.

539.Q. These things that you handed to the Government Analyst. When you handed him this block of wood with the screw in it did you tell him what you thought had caused the scratch in question? — A. No. I told him this mark had been found on there and could he tell me the origin of the mark and I gave him the shoe and asked if he could make a comparison at the same time.

540.Q. Did he have any knowledge as far as you could tell that it was connected with the Semini affair? — A. He knew. I

asked him actually if the nail caused the mark.

- 541.Q. MR. JUSTICE WEBB: What nail? — A. On the sandal.
- 542.Q. MR. LEAH: Is that, from the very start he had the connection of the shoes and the mark? — A. Definitely. We are supposed to give him as much information as we can about any exhibit sent to him.
- 543.Q. These shoes are of very common type? — A. They are used a lot by natives.
- 544.Q. And again when you handed the various exhibits, such as sini handle and sini to the Government Analyst, he again had a very good idea what they were? — A. He had a definite request to look for certain things.
- 545.Q. And he knew it was connected again with the Semini case? — A. Yes.

His Honour read over his notes to the witness who signed same as correct and then withdrew.

KIPKOSKE ARAP MANIHO affirmed:

EXAMINED BY MR WALLACE.

- 546.Q. MR WALLACE: What bwana do you work for? — A. Mr Storey.
- 547.Q. At Naivasha? — A. Yes.
- 548.Q. Do you remember the night of the Semini shauri? — A. I don't know.
- 549.Q. I am not suggesting you were there, but do you know the night it happened? — A. I remember one night four of the seven accused came to my place, arrived at my house.
- 550.Q. Which four? Can you identify them? — A. The first two and the last two. Accused No. 1, 2, 6, and 7.
- 551.Q. How long did they stay with you? — A. They stayed the night with me and in the morning I left them in my hut while I went to milk the cattle.
- 552.Q. Do you know where they went? — A. They informed me that they were going to Kinangop to look for work.

- 553.Q. Did you hear about the Semini shauri at all? -- A. I heard it from the bwana of the police.
- 554.Q. Was this the day these people arrived and stayed the night or was it before or after the attack on Mr Semini? -- A. It was before. I heard from the Police Officer after.
- 555.Q. Have you ever seen that before? (Hat, Exhibit 1, handed to witness) -- A. I saw it on accused No. 1's head.
- 556.Q. That might be stayed with you? -- A. Yes.
- 557.Q. Have you ever seen that coat before? (Exhibit 22) -- A. The second accused was wearing this coat.
- 558.Q. On that night too? -- A. Yes.
- 559.Q. Some days afterwards did you receive a visit again? -- A. They returned a few days afterwards from Kinangop. I heard them knocking at the door about 9 o'clock that night.
- 560.Q. Were you in bed? -- A. I was asleep when they knocked. The first knock I did not reply to. The next knock I went to open the door thinking it was some police.
- 561.Q. Who was there? -- A. Accused No. 1 and 2.
- 562.Q. Only two? -- A. And the last two also.
- 563.Q. MR JUSTICE WEBB: Is that the same who had been there before? -- A. There were five the second time. The first three accused and the last two, Nos. 1, 2, 5, 6, and 7.
- 564.Q. MR WALLACE: Was this before or after the attack on Mr Semini's place? -- A. I had not heard of the Semini attack when they again came. I first heard it from the bwana of the police.
- 565.Q. How soon afterwards did you hear from the bwana of the police? -- A. I did not count. I think they came to my place on a Saturday.
- 567.Q. You don't hear the police? -- A. The police came afterwards.
- 568.Q. How long afterwards? -- A. I don't know how long afterwards I cannot tell.

- 569.Q. When these five people came to visit you you say that No. 1 accused was wearing a hat. Was he wearing it when he came back? -- A. I did not see the hat on the second visit.
- 570.Q. On the first occasion you say that accused No. 2 was wearing that coat. Was he wearing it on the second occasion? -- A. Yes, he was wearing the coat on the second visit.
- 571.Q. You told us that the police told you about the Semini shauri? -- A. I was told by the Police Officer after I had been arrested and taken to Naivasha.
- 572.Q. Did you find out what day it was? -- A. No, I was not told.
- 573.Q. How long did these people stay with you on the second occasion? -- A. They did not remain there for an hour. They stayed for a short time and they left.
- 574.Q. Where did they go? -- A. They said they were going towards Naivasha and then on to Nakura.
- 575.Q. You say you heard about the attack from the Superintendent? -- A. After I was arrested by the Superintendent of Police I was sent to Naivasha. I found another man also arrested, arap Cheabi, and it was he first of all who told me about Bwana Semini.
- 576.Q. And that attack was after the first visit? Is that right? You have told us that?
- MR JUSTICE WEBB: No, I don't think so. Before he heard about it.
- 577.Q. Did he tell you when the attack took place, on what day? -- A. He only told me some people have attacked a bwana.
- 578.Q. Did he tell you when; on what day? -- A. I was not told how long the attack had taken place, how long before.
- CROSS-EXAMINED BY MR LEAN.
- 579.Q. Have you ever seen a coat like that before? (Exhibit 22) -- A. No, I only saw a coat like this on these two occasions.

- 580.Q. Do you mean to say that you have never seen a coat like that before? -- A. I have seen a coat previously like this one.
- 581.Q. And the buttons on the coat? They are very common? -- A. I did not take particular notice of the buttons.
- 582.Q. But these soldier's buttons are very common on all clothes out here? -- A. I don't know anything about the buttons.
- 583.Q. Do you have soldier buttons on your own coat? -- A. Not the same.
- 584.Q. I know they are not the same. Brass buttons like that are very common? -- A. I don't know.

THE ATTORNEY GENERAL: If it please Your Honour. There is just one question I would like to ask the witness before he leaves the box. It does not strictly arise out of cross-examination and therefore I must ask the permission of the Court.

- 585.Q. Were you arrested after you had seen these five men for the last time or were you released? We want to know whether the arrest fits in with the two visits. -- A. I was arrested after the second visit.
- 586.Q. How long after the second visit were you arrested?-- A. I don't know whether four or five days afterwards.

The Judge's Notes were read over to the witness and found correct, and the witness put his left thumb print thereon and then retired.

KIPRUTO ARAP KEMAI affirmed:

EXAMINED BY MR WALLACE.

- 587.Q. MR WALLACE: What bwana do you work for? -- A. I work for Bwana Ray.
- 588.Q. At Naivasha? -- A. Yes.
- 589.Q. What work do you do? -- A. Cattle herd.
- 590.Q. Is there anyone else living in the house with you? -- A. Arap Misoi.

- 591.Q. What iswap Nisei's first name? -- A. I don't remember his first name. Nisei is his father.
- 592.Q. Do you remember the day of the Semini shauri? -- A. No.
- 593.Q. Do you remember hearing that Bwana Semini had been attacked? -- A. I heard about it when the Inspector came to fetch us from our place.
- 594.Q. Did you see Bwana Ridgeway? -- A. Yes, at Bwana Semini's place.
- 595.Q. How long after the shauri was that? -- A. It is a long time ago now.
- 596.Q. Was it one day or two days or three days after the attack? -- I could not tell how long the attack had taken place before I saw the bwana at the farm.
- 597.Q. Do you remember some people coming to visit you about that time? -- A. Yes.
- 598.Q. Who were they? -- A. All the accused but the second. Accused No. 1, 3, 4, 5, 6, and 7. Six altogether.
- 599.Q. Was that visit before or after you were talking to Bwana Ridgeway? -- A. The visit was before.
- 600.Q. How long before? -- A. They visited me on Wednesday, and on the following Friday the bwana of the police came to call me.
- 601.Q. And did the Bwana Police tell you when the shauri took place? A. No, he did not tell me.
- 602.Q. Do you know whether it was before or after they visited you? -- A. They visited me before the bwana was attacked.
- 603.Q. And if they visited you on a Wednesday and you were talking to the Superintendent on the Friday the attack must have taken place on the Thursday? A. Yes.
- MR IRAN: I must object, Your Honour.
- 604.Q. MR WALLACE: At what time did they visit you? -- A. 6 p.m.
- 605.Q. How long did they stay? -- A. They fed at the place and

at 7 o'clock they said they wanted to go home.

- 606.Q. Did they say where they were going? -- A. They said they wanted to go to Lumbwa. We asked them: "Where do you want to go at this time of night?" and they said it was better to walk at that time of night.
- 607.Q. Have you ever seen that hat before? -- A. I saw it in possession of Superintendent Ridgeway and I told him to whom it belonged. It belongs to the first accused.
- 608.Q. Was he wearing it the night he visited you? -- A. Yes.
- 609.Q. When did you see that again? -- A. I did not see it again.
- 610.Q. Did you know No. 1 accused before you saw him that day? -- I knew him before that because we had worked together.
- 611.Q. Have you ever seen that simi (Exhibit 18) before? -- A. No.
- 612.Q. Were any of the six people who visited you that night carrying any weapons? -- A. The sixth accused had a spear.
- 613.Q. What sort of a spear? -- A. A small short spear.
- 614.Q. Had you ever seen him before? Did you know him? -- A. Yes, I knew him. We had worked together. He was a tote.
- 615.Q. Did you know any of the others? -- A. I also knew No. 5 accused. He works for Bwana Ray.
- 616.Q. MR JUSTICE WEBB: He works for Bwana Ray? -- A. He used to work for Bwana Ray. I think he was recently discharged at the time they passed through my place.
- 617.Q. MR WALLACE: You say that you knew Accused No. 1 - you had worked with him. Who employed you? -- A. Bwana Semini.
- 618.Q. Bwana Alex. Semini or John? -- A. The deceased.
- 619.Q. Did he ever wear that hat when he was working there? --
A. Yes.
- 620.Q. So you know it very well? -- A. Yes.
- 621.Q. MR JUSTICE WEBB: How long did you work for Bwana Semini? --
A. Me, or the accused?
He belonged to
- 622.Q. You say both you and he worked together. How long did you

work together? -- A. For twenty days only.

625.Q. Is it a long time ago? -- A. I think it was some time this year. We were both arrested and sentenced to prison. We were still working for Buana Semini when we were arrested.

MR LEAN: No cross-examination, Your Honour.

The Judge's Notes were read over to the witness and found correct and the witness put his left thumb print thereon and then retired.

KIPROTICH ARAP KORIRI

affirmed;

EXAMINED BY THE ATTORNEY GENERAL.

624.Q. THE ATTORNEY GENERAL: Is your name Kiprotich arap Koriri and do you work for Mr Knight? -- A. Yes.

625.Q. What as? -- A. Herd boy.

626.Q. Do you remember the day of the Semini shauri? -- A. Yes.

627.Q. What were you doing on the morning of that day? -- A. I was herding cattle.

628.Q. Whilst herding cattle did you see anybody? -- A. I saw Kibet.

629.Q. Who is Kibet? -- A. The first accused.

630.Q. Was anybody with him? -- A. He walked away from the others leaving the others some distance away.

631.Q. How many of the others? -- A. I did not go near but I think there were about six he left.

632.Q. What tribe did they belong to? -- A. I did not go close to them.

633.Q. But could you tell from where you were what tribe they belonged to? -- A. They were in the small trees; not very tall trees.

634.Q. MR JUSTICE WEBB: Can you tell us whether you know what tribe they belonged to? -- A. I could tell what tribe they were. They were Lumbwa.

- 655.Q. THE ATTORNEY GENERAL: Do you remember some time after that going to Nakuru Prison? — A. Yes.
- 656.Q. What happened when you got there? — A. Five people were taken out.
- 657.Q. Who took them out? — A. I picked them out.
- 658.Q. From where? — A. From many others. I don't know how many.
- 659.Q. Are those five people in Court today? — A. Yes.
- 640.Q. Where are they? Point them out. (The witness goes to the Desk) — A. Numbers 6 and 7, and 1, 2 and 5.
- 641.Q. You say you picked them out from a great number as being what people? — A. As being the people I had seen with the first accused.

CROSS-EXAMINED BY MR LEAN.

- 642.Q. MR LEAN: How many men did you actually see in the bush? Seven or five? — A. I think there were about five in the bush.
- 643.Q. MR JUSTICE WEBB: And one who came near? — A. Yes.
- 644.Q. MR LEAN: That is six now? — A. Yes.
- 645.Q. But you could not recognise them in the bush? — A. No.
- 646.Q. What do you mean when you say you can recognise these five people here as people who were in the bush? — A. Yes.
- 647.Q. MR JUSTICE WEBB: If you could not recognise them in the bush how could you recognise them in Nakuru? — A. I saw their faces in the bush and I saw them better after Kibet had walked away and they followed Kibet.
- 648.Q. MR LEAN: Can you tell us exactly how many there were? — A. I did not see properly.
- 649.Q. Were there more than the ones you have picked out? — A. There were not only five.
- 650.Q. In fact you don't remember very much about it? — A. Yes, because I did not go near them.

THE ATTORNEY GENERAL: No Re-examination, Your Honour.

651.Q. MR JUSTICE WEBB: When you saw them in the prison, how were they dressed? — A. They were in Government clothes blankets.

The Judge's Notes were read over to the witness and found correct and the witness put his left thumb print thereon and then withdrew,

THE COURT ADJOURNED UNTIL 2-15 P.M.

AT 2-15 P.M.

WANYWEIKE ARAP MUMU affirmed:

EXAMINED BY MR WALLACE.

- 652.Q. MR WALLACE: Do you live on Bwana Wetherell's shamba? —
A. Yes.
- 653.Q. You have a hut there? — A. I am in the Kikuyu Reserve; I have left the Bwana's farm.
- 654.Q. Do you remember the day of the Semini shauri? — A. Yes.
- 655.Q. Were you living on Dr Wetherell's farm at that time? —
A. Yes.
- 656.Q. From where you were living then how long would it take you to walk to Bwana Semini's farm? — A. An hour and a half.
- 657.Q. From where you were living to Bwana Semini's house? — A. Slow walking an hour; fast running walk, half an hour.
- 658.Q. Was your boma far from the road? — A. Near.
- 659.Q. Did you see any people pass your boma on the night of the Semini shauri? — A. Yes, along the road.
- 660.Q. How many people? — A. Seven.
- 661.Q. Which direction were they going? — A. They were going towards Bwana Semini's farm or Naivasha direction.
- 662.Q. Can you give us any idea what time it was? — A. Seven o'clock in the evening.
- 663.Q. Have you any idea what tribe these people were? — A. They were Lumbwa.

- 664.Q. Had you ever seen any of them before? -- A. A week before this I saw some coming to our place and enquiring whether there was any Lumbwa hut there and they said "No; this is my mother's hut; there are no Lumbwa here".
- 665.Q. MR JUSTICE WEBB: Were they the same people? -- A. No. You could not see whether they were the same people because it was dark.
- 666.Q. Did you know any of the seven people who passed? -- A. I did not know.
- 667.Q. Did you ever see them again? -- A. No.

MR LEAN: No cross-examination, Your Honour.

The Judge's Notes were read over to the witness and found correct and the witness put his left thumb mark thereon and then withdrew.

SULEMAN BIN MUSA affirmed:

EXAMINED BY THE ATTORNEY GENERAL.

- 668.Q. THE ATTORNEY GENERAL: Your name is Sulaman and you are a Police Constable stationed where? -- A. Stationed at Naiyasha.
- 669.Q. Do you know No. 1 accused? -- A. Yes, I know him.
- 670.Q. Quite well? -- A. Yes.
- 671.Q. I am referring to before this Semini incident. Do you know what he used to wear on his head? -- A. A hat.
- 672.Q. Have you had an opportunity of looking at that hat? -- A. Yes. I have had a good look.
- 673.Q. And are you prepared to swear that you can indentify that hat if you see it? -- A. Yes.
- 674.Q. Look at that hat? (Exhibit 1 handed to witness) -- A. Yes, that is the hat.
- 675.Q. That you say is the hat of No.1 accused? -- A. Yes.
- 676.Q. You have no doubt about it at all? -- A. No doubt.

CROSS-EXAMINED BY MR LEAN.

- 677.Q. MR LEAN: Do you remember all the clothes each prisoner that you capture wears? — A. If I happen to arrest anyone I must take particular notice of the things he is wearing.
- 678.Q. Look at that hat. Do you mean to say that hat is in the same condition it was a year ago? — A. It was better.
- 679.Q. The hat is changed? — A. But in what manner? I saw it properly.
- 680.Q. MR JUSTICE WEBB: If it was better than it is now? -- A. Yes, but the colour has not changed.
- 681.Q. MR LEAN: But you can find hundreds of hats in the Bazaar of that colour? -- A. You cannot mistake the things we have seen with the things we have not seen.

RE-EXAMINED BY THE ATTORNEY GENERAL.

- 682.Q. THE ATTORNEY GENERAL: My learned friend has referred to other prisoners you arrest whether you examine them carefully. Is it a fact that you do examine them carefully when you arrest them? — A. Yes, sir, I must.
- 683.Q. And is that the reason why you are able to swear definitely to that hat? — A. Yes.

MR JUSTICE LEAN: It has never appeared that he did arrest this man.

THE ATTORNEY GENERAL: I had no intention of bringing it out, Your Honour. My learned friend put it to him as a question whether he would know other prisoners he arrests, and I am just enlarging on that.

The Judge's Notes were read over to the witness who signed same as correct and then withdrew.

KIPTONY ARAP CHEPSINGANI

affirmed;

EXAMINED BY MR WALLACE.

- 884.Q. MR WALLACE: Do you know an askari called Kiplangat? -- A. I know him now; not previously.

- 685.Q. Did he ever visit your hut? — A. Yes, at 7 o'clock in the morning he came one day.
- 686.Q. Was he alone? — A. He was with another askari.
- 687.Q. Was anyone staying with you on that occasion? — A. I was staying with Arap Kingerchi and Kimasi.
- 688.Q. Could you point out these people? Do you know them? —
(Witness points out Accused No. 4 and No. 5)
- 689.Q. Were they staying with you in your hut or were you staying with them in their hut? — A. They were staying in my hut.
- 690.Q. Had they been staying with you for long at that time? —
A. They remained with me for six days and they were arrested on the 7th by the askari.
- 691.Q. When they first came to you was it before or after the Semini shauri do you know? — A. When they came to my hut they told me about Bwana Semini's house being broken into.
- 692.Q. Did they mention the name of Semini? — A. They mentioned another name in Lumbwa. They did not actually say Bwana Semini. He has another name; a Lumbwa name.
- 693.Q. MR JUSTICE WEBB: What did they say? — A. They called him 'Kapkabul'.
- 694.Q. MR WALLACE: To whom did you understand them to refer? —
A. I could not tell what they meant.
- 695.Q. When did you find out that they were referring to Bwana Semini? — A. From the askaris.
- 696.Q. During the six days that they were staying with you before the askaris arrived did they tell you anything about this shauri? — A. They only said that people had broken into Kapkabul's house, but they did not actually say it was them.
- 697.Q. Had either of them any weapons with them when they arrived to stay with you? — A. They had two spears.
- 698.Q. Had one person got two spears or had each got one? — A.

A. Each one had a spear.

699.Q. Would you recognise either of those spears? -- A. Yes, I could.

700.Q. What does it look like?

MR JUSTICE WEBB: Is there an exhibit of a spear?

MR WALLACE: No, Your Honour.

MR JUSTICE WEBB: Then what in the world is the good of asking about it?

MR WALLACE: I thought his description might describe a simi.

701.Q. MR WALLACE: Had either of them a simi?

MR LEAN: It does seem rather leading, Your Honour.

MR JUSTICE WEBB: It does a bit.

WITNESS: One had a simi.

702.Q. Which one? -- A. The fifth accused had a simi.

703.Q. Would you recognise that simi? -- A. Yes.

704.Q. Do you recognise that? (Exhibit 18 handed to witness) -- A. That is the one.

705.Q. That simi has no handle? -- A. It had no handle.

706.Q. Had it a handle when accused No. 5 came to stay with you? -- A. No, it had no handle.

707.Q. When the askaris came what did they do? -- A. As soon as the askaris entered the hut they asked the fifth accused: "Is it you who broke the bwana's house?"

INTERPRETER: The witness says he has not finished his story.

MR JUSTICE WEBB: Well go on.

WITNESS: I will also tell you why I have been sent to prison.

708.Q. MR WALLACE: Did the askaris arrest either or both of them? -- A. The askaris arrested one.

709.Q. Which one? -- No. 4, Kimasi. The second one ran away.

710.Q. Did you see the second one again? -- A. He ran away and came back about 8 o'clock in the morning.

711.Q. When he came back did he tell you anything? -- A. He said

he was together with the others in the housebreaking.

MR LEAN: Your Honour, I do submit that this is not admissible against the others.

MR JUSTICE WEBB: Is it not?

MR LEAN: If Your Honour will look at Section 50 of the Indian Evidence Act, I do submit this is not a confession under the section, this is an admission. The section does not deal with an admission, Your Honour.

MR JUSTICE WEBB: What do you take to be the distinction?

MR LEAN: In the Evidence Act (the Court copy which I have heard) it definitely states, A confession must include the whole crime, an admission is purely and simply an admission of a fact as opposed to saying "I did not kill". All he said was, "I broke into the house". He makes no mention of killing whatever. The definition I have here is, "A confession is an admission made at any time by any person charged with a crime stating he committed that crime".

MR JUSTICE WEBB: And was not this an admission that he committed the crime with which he was then charged? He said, "Is it you who broke into the bwana's house"?

MR LEAN: I think the story was that the accused had now come back to the hut and he said: "I broke into the house of the bwana". At that time he certainly was not charged with murder because he had not been apprehended. My submission is that this admission can be used against No. 5 himself but not against No. 4 or any other of the accused.

MR JUSTICE WEBB: What you say is that it is an admission admissible against himself but not against a confession admissible against the other accused?

MR LEAN: If I might quote a case, Your Honour; Queen Express versus Jagrup (1905) Indian Law Reports 646, page 196. "A confession cannot be construed as a mere inculpatory statement falling

short of a full admission of guilt".

THE ATTORNEY GENERAL: May it please Your Honour, the first point that I would make is that we have not heard exactly what we are arguing about. We have heard the first sentence, and from that my learned friend deduces it is an admission and not a confession. I am quite prepared to argue on either question, but it might quite easily occur that it is a complete confession and not an admission.

MR JUSTICE WEBB: I thought it was the whole thing. "I broke into the house".

THE ATTORNEY GENERAL: I have reason to think that there may be something more. Might I suggest that before we argue at all we should find out? Failing that, I would submit that it is a complete confession of what they were then being charged with.

MR JUSTICE WEBB: I think we had better have the whole statement first and see what it is.

WITNESS: On his return he said: "It is I who broke the house - I cannot hide it". He said "Now I cannot hide it because my companion has been arrested. I cannot hide". Then I said: "If you have been implicated in this matter why did you not let me know before?" I told him: "Your companion has now been arrested; let us follow the askari". I told him the askari had threatened to put me into trouble if I allowed him to remain here. He kept quiet so I left him to do my work.

712.Q. MR JUSTICE WEBB: Is that all he said: "It is I who broke into the house; I cannot hide it"? -- A. "It is we who broke the house".

715.Q. THE ATTORNEY GENERAL: When did you understand him to refer to whom he said "we"? -- A. It was the party of Kibet and Boragi.

14.Q. What party is that? Who is Kibet arap Boragi? — A. Accused No. 1.

15.Q. Did he tell you any more about what happened when he broke in? — A. He did not because I was annoyed with him.

16.Q. I may as well finish off the witness. You say you left him in the house when you went off to herd the cattle? When you came back was he there? — A. No, I did not find him on my return.

17.Q. Was the sine there? — A. No; he had taken everything belonging to him.

THE ATTORNEY GENERAL: I submit, Your Honour, that Section 50 to which Your Honour has already been referred is clear on the point. Section 50 reads as follows: "When more persons than one are being tried jointly for the same offence and a confession made by one of such persons affecting himself....." The first point I make in regard to that is this, that when the word confession is used it does not mean necessarily as my learned friend suggests that it is a plea of guilty, that if a man is charged with murder, in the statement called a confession which he makes that he might excuse himself and reduce it to manslaughter; that does not make it any less a confession when it is put in a murder case which the Crown bring against him.

The words "confession" and "admission" are synonymous all through the Evidence Act. Take, for example, Section 24 when it is discussing irrelevant confessions under the word "Principle"; the following sentence occurs which is illuminating: "The ground upon which confessions like other admissions are received, is the presumption that no person will voluntarily make a statement which is against his interests unless it be true. But the force of the confession depends upon its voluntary character. So that you find

there that confessions and admissions are treated as one and the same.

THE JUSTICE WEBB: Surely the answer to that, Mr Attorney, is this, that every confession is an admission, but not every admission a confession.

THE ATTORNEY GENERAL: I quite agree, Your Honour, but the guiding principle would be the same for both. I submit that this can and can only be a confession by the person who is making the statement, that he had committed the crime for which the police had apprehended him, namely that of housebreaking. It does not say that it must be a confession of the exact charge of which the accused is charged later on. It may well be that a man is charged with murder and makes a confession of larceny or assault and battery, but it does not make it any less a confession. Under the Procedure Code, for example, Your Honour is entitled to bring in a verdict on any charge where a lesser offence is committed. Therefore let us say that a man (this is just an example) that a man is charged with wounding with intent to do grievous bodily harm; Your Honour would be perfectly entitled to bring in a verdict of common assault. Let us apply that principle to this. If the man in making his statement had said: "Yes, I hit him but did not mean to hit him so hard", my learned friend would jump up and say, "That is an admission but not a confession". In fact that is a confession but a confession of a lesser offence.

In this case my submission is that this is a confession. "I confess to having broken into this house and burgled it on the night in question". Today he is being charged with not only breaking into the house and stealing from the house because there was no breaking (the door was open) but in fact going one further and killing the occupant; and I submit that on the wording of Section 30 Your Honour would be perfectly entitled to

receive it as a confession, and once it is received as a confession I do not think my learned friend would argue that it could not be used against all. The whole point for decision is whether this is a confession or an admission.

MR JUSTICE WEBB: The Indian Cases seem to go rather far. On page 294: "Before a statement can be taken into consideration against a fellow prisoner it must amount to a "confession" on the part of the maker with respect to the offence with which all are charged".

MR LEAN: I do not know whether Your Honour's book is titled up in the same way as this, but there is a chapter here headed "Admissions".

MR JUSTICE WEBB: What is the book? -- A.

MR LEAN: It is the Court Evidence Act, of a late edition. I should not imagine that a definition has changed much.

MR JUSTICE WEBB: Admission defined, page 228. This is the 8th Edition. "An admission is a statement, oral or documentary, which suggests by inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned".

THE ATTORNEY GENERAL: I do not know whether Your Honour would be able to trace this in your book. It is dealing with Section 50, and it reads in my book as follows: "To render the statement of one person jointly tried with another for the same offence liable to consideration against that other, it is necessary that it should amount to a distinct confession of the offence charged. In one case it appears to have been held that the word "confession" is limited to confessions of actual guilt, but it would seem that this is not so, and that the term will include statements which amount either to a direct admission of constructive guilt

For statements short of such admission, but from which the inference of constructive guilt follows".

MR LEAN: If Your Honour will, pardon me, I think the Honourable the Attorney General's interpretation of that section rather helps my point than his.

THE ATTORNEY GENERAL: I did not interpret it at all; I merely read it.

MR LEAN: Just take the same reading, the same paragraph. Surely you cannot say because I may happen to have had a motor-car accident, if I admit I had a motor accident in 1930, that that would be the same thing as if I killed a man in 1932? It seems to me that the two points are just about as far apart. I do submit that the only crime for which these men have been charged, apart from rape, is attempted murder and subsequently murder.

MR JUSTICE WEBB: In my opinion the statement is admissible within Section 33 against all the accused. The principle appears to be that a statement is admissible provided that it inculcates the person making it substantially to the same extent as it inculcates his co-accused, but that it is inadmissible against them if it purports to be exculpatory of himself. Here the statement admits the complicity of the maker in the offence with which he was then charged. It is true that this accused and his co-accused are now charged with murder, but at the time when the statement was made no charge of murder could have been preferred against them.

MR LEAN: No cross-examination, Your Honour.

The Judge's Notes were read over to the witness and the witness put his left hand upon them and said: "I affirm."

MR JUSTICE WEBB: RIPONI ARAP NILOI affirmed:

DECLARED BY THE ATTORNEY GENERAL.

(see over)

718.Q. THE ATTORNEY GENERAL: Do you work for Mr Ray? -- A. Yes.

719.Q. Who lives in your hut? -- A. Arap Chemwa.

720.Q. Do you know anyone called Kipruto? -- A. Yes.

721.Q. Where does he live? -- A. At Kinangop.

722.Q. In whose hut? -- A. In my hut.

723.Q. Who is this Kipruto? -- A. Kipruto arap Chemogo.

THE ATTORNEY GENERAL: He has already given evidence, Your Honour.

724.Q. What work do you do? -- A. Cattle herd.

725.Q. Do you remember the day before the Semini shauri? --
A. I heard about it.

726.Q. Do you remember the day before the Semini shauri? --
A. I heard about it two days after.

727.Q. Do you remember the day before the Semini shauri took place?
-- A. Yes.

728.Q. Where were you that day? -- A. I was herding.

729.Q. Did you see anyone that day? -- A. I did not.

730.Q. You did not see anyone that day at all? -- A. I did not.

731.Q. Did anyone come to your hut that day? -- A. On what day?

MR JUSTICE WEBB: Ask him what he knows about the case.

THE ATTORNEY GENERAL: As Your Honour pleases.

WITNESS: I remember one day six people came to my hut.

732.Q. THE ATTORNEY GENERAL: Who were those six people? Do you
see any of them in Court? -- A. Yes, they are here.

733.Q. Point them out to His Honour.

(The witness points out accused No.1,3,4,5,6, and 7)

734.Q. They came to your hut. When did they arrive? When did
they leave? -- A. They went away the same day. It was
a Wednesday.

735.Q. Was that before or after the Semini shauri? -- A. Before.

736.Q. How long before? -- A. I heard about the attack two
days afterwards.

737.Q. MR JUSTICE WEBB: Two days after these people came? --
A. Yes. There was only a day between.

- 752.Q. THE ATTORNEY GENERAL: Do you remember an askari coming to your hut after that? -- A. Yes; with a police officer.
- 753.Q. Was there anybody at your hut when they came? -- A. Yes.
- 740.Q. Who was there? -- A. Arap Mngerechi was there; accused No. 5.
- 741.Q. What time had he arrived? -- A. About 8 p.m.
- 742.Q. When he arrived had he anything with him? -- A. Yes.
- 745.Q. What was it? -- A. Simi.
- 744.Q. Would you recognise it if you saw it again? -- A. Yes.
- 745.Q. Was there anything peculiar about the simi that you noticed?
A. It had no handle.
- 746.Q. Look at that simi. (Exhibit 18 handed to witness). --
A. This is the one.
- 747.Q. This is before or after the Semini shauri? Let us get that clear. -- A. I had heard about Semini's house being broken into. It was after I had heard.
- 748.Q. When he arrived did he say anything to you? -- A. He asked me to shave his hair because his friend, his companion, who had been walking about with him had been arrested.
- 749.Q. Could you explain to the Court why it was necessary for him to have his hair shaved because his friend had been arrested? -- A. Because he thought he might be arrested for breaking into Bwana's house.
- 750.Q. Did he tell you that? -- A. Yes.
- 751.Q. And what was the object of having his hair cut because he thought he might be arrested for breaking into bwana's house? -- A. He thought the Government might pull his hair, might torture him, after his arrest.
- 752.Q. Did the askaris come to your house? -- A. Yes.
- 753.Q. Did they find the fifth accused there? -- A. Yes.
- 754.Q. Had you cut his hair by that time? -- A. The askari came

quickly.

- 755.Q. And his appearance today proves that his fears were unfounded. When he said he wanted his hair cut did he say anything else? -- A. No, because the askari arrived immediately.
- 756.Q. Do you mean to tell us that as he walked in he said, "I want my hair cut", and that is all the conversation he had with you; "that they might pull it out by force or whatever it was"? -- A. Yes, and I said, "Come, and I shave you during the night-time".
- 757.Q. When he said "my companion" (am I entitled to ask it, Sir?) whom did you understand him to mean by that? -- A. He said Kimasei.
- 758.Q. Who is Kimasei? -- A. The fourth accused.
- 759.Q. MR JUSTICE WEBB: How do you know he is Kimasei? -- A. That is his name. "The man who has been arrested is Kimasei".
- 760.Q. THE ATTORNEY GENERAL: And you told us that Kimasei is the fourth accused? -- A. Yes.
- 761.Q. MR JUSTICE WEBB: His name is not Kimasei. Did you know this man Kimasei before? -- A. No, I did not know him.
- 762.Q. I cannot understand how you know that is Kimasei? -- A. I only heard Kimasei mentioned and I had not seen Kimasei before that day..
- 763.Q. But why do you say that is the person? -- A. He told me that the name of his companion who was walking about with him was Kimasei.
- 764.Q. THE ATTORNEY GENERAL: Did you know his companion? -- A. I only knew himself, the fifth accused.
- 765.Q. Did he say anything further as to why his companion, whoever that might be, had been arrested? -- A. He did not tell me the reason why he had been arrested.

CROSS-EXAMINED BY MR LEAN.

(see over)

766.Q. MR LEAN: Did the accused No. 5 actually say he had been to Bwana Semini's house? -- A. He did not tell me that he had been to Bwana Semini's place.

The Judge's Notes were read over to the witness who put his left thumb mark thereon and then withdrew.

K I P L A N G A T A R A P K I T U A affirmed:

EXAMINED BY MR WALLACE.

- 767.Q. MR WALLACE: You are a police askari? -- A. Yes.
- 768.Q. Stationed at Naivasha? -- A. Yes.
- 769.Q. Were you sent by the Superintendent to investigate the Semini case? -- A. Yes.
- 770.Q. When did you go? -- I went on a Monday, the 25th of June.
- 771.Q. Where did you go? -- A. I went to a place on Bwana Ray's farm.
- 772.Q. Whose place? -- A. Herd boy's place.
- 773.Q. Do you know his name? -- A. One is a brother of Arap Beret.
- 774.Q. And who is that? -- A. The first accused.
- 775.Q. Did anyone else live there? -- A. Arap Chepsinge.
- 776.Q. Do you know Arap Chepsinge's other name? -- A. No.
(Prosecution witness No. 14 comes into Court, Kiptioni arap Chepsingere).
- WITNESS: That is the man.
- 777.Q. What time did you get to the house? -- A. 6 o'clock in the morning.
- 778.Q. Did you go alone? -- A. I went with another askari.
- 779.Q. Were the brother of accused No. 1 and that man alone in the house or were others there? -- A. Kimasei and Arap Mngerechi were also there.
- 780.Q. Who is Kimasei? -- A. The fourth accused.
- 781.Q. And who is the other? -- The fifth accused.
- 782.Q. Were you in uniform? -- A. No I was in civilians.

- 783.Q. What happened when you arrived there? -- A. We found Arap Chepsingani in the doorway?
- 784.Q. Halafu? (What then) -- A. The other askari asked Arap Chepsingani to get out of the doorway. He refused and the askari pushed him aside a bit and the askari passed.
- 785.Q. Halafu? -- A. The other askari caught Kimasei, No. 4.
- 786.Q. Halafu? -- A. Mngerechi got hold of a panga and wanted to cut the askari with it.
- 787.Q. Who is arap Mngerechi? -- A. No. 5 accused.
- 788.Q. Halafu? -- A. Mngerechi saw me coming through the doorway. He aimed a blow at me but the panga fell on the door and as he wanted to rush out I held him. We struggled and came out of the hut. I held him by the wrist and leg but I had no handcuffs.
- 789.Q. Did he get away? -- A. He cried out for help from Arap Chepsingani. Arap Chepsingani came and get hold of me by the left wrist and nearly threw me down. The accused got a chance and ran away.
- 790.Q. What did the other askari do with No. 4? -- A. The brother of the first accused helped the askari to arrest the 4th accused.
- 791.Q. Did you arrest him? -- A. Yes.
- 792.Q. Did you bring him into Naivasha? -- A. Yes.
- 793.Q. Have you ever seen that before? (Simi, Exhibit 18 banded to witness) -- A. It was on the ground in the hut where the struggle took place.
- 794.Q. You and the other askari went back to Naivasha? Did you go out again that night? -- A. Yes.
- 795.Q. Alone? -- A. With the fourth accused, Inspector Gribble and another askari. We went to Bwana Ray's.
- 796.Q. Where did you go to on Bwana Ray's farm? -- A. First of all we went to Bwana Ray's farm. Mr Gribble went inside;

we had left an askari to get information and he came and gave us certain information.

797.Q. Where did you go to then? --,A. We went to Arap Chemwa's house and Arap Misoi.

798.Q. And on arrival at Arap Misoi's house what did you do? --
A. We found No. 5 accused warming himself inside. I arrested him and handcuffed him. We brought him back to Naivasha.

799.Q. Did you see that simi (Exhibit 18) again that night? --
A. Yes.

800.Q. Where did you see it? -- A. Outside near the door of Arap Misoi's hut.

801.Q. That is the hut where you arrested No. 5? -- A. Yes.

MR LEAN: No Cross-examination, Your Honour.

The Judge's Notes were read over to the witness who put his left thumb mark thereon and then withdrew.

THE COURT ADJOURNED TO 21st SEPTEMBER 1954.

21st SEPTEMBER 1954. 9-30 a.m.

THE ATTORNEY GENERAL: With Your Honour's permission may I recall
 Captain Ridgeway.

ROBERT RIDGEWAY on former oath:

802.Q. THE ATTORNEY GENERAL: You remember the witness Kipkoske? —

A. I do.

803.Q. He made a statement he was arrested by the police on some date. Can you tell us by reference to a note made at the time on what date he was arrested or taken into charge? —

A. On the 19th June 1954 at 2 p.m. My note book reads as follows: "I went to Storey's farm and brought in Kipkoske for interrogation".

804.Q. MR JUSTICE WEBB: The 19th June I think would be Tuesday? —

A. It was a Tuesday, Your Honour.

805.Q. He was not actually arrested; he was brought in for interrogation? -- A. For interrogation, Sir.

The Judge's Notes were handed to the witness who read and signed same as correct and then withdrew.

ROBERT JOHN HARLEY MASON

SWORN:

EXAMINED BY THE ATTORNEY GENERAL.

806.Q. THE ATTORNEY GENERAL: Your name is Robert John Harley Mason? —

A. Yes.

807.Q. And you are the Medical Officer in charge of the European Hospital at Nairobi? — A. Yes.

808.Q. Do you remember Alexander Semini? — A. I do.

809.Q. Was he admitted to your hospital? — A. He was admitted to my hospital at about 5-50 p.m. on the 15th June.

810.Q. What was his general condition on admission? — A. He was in great pain and suffering from a certain amount of shock and haemorrhage.

811.Q. Was there anything to indicate to you why he was suffering

from shock? -- A. He had a large number of injuries.

812.Q. Did you examine him? -- A. I examined him on arrival.

813.Q. And without going into great detail could you tell us roughly what he was suffering from? -- A. He was suffering from injuries practically all over the body, and I must detail some of them. He had the following injuries to his head: a horizontal cut on the forehead over the right eye about 4 ins. long; he had a bruise over the left temple about 4 ins. across; he had a superficial injury on the back of his head about 2½ ins. long.

814.Q. MR JUSTICE WEBB: Do you mean a bruise? -- A. Not much more than an abrasion; it was a cut. He had a superficial cut on the chin about an inch long. His back was covered all over with bruises and abrasions. He had one particularly large and painful bruise in the region of the left kidney. On his right arm he had a vertical cut over the bone of the elbow about an inch long. There was a puncture wound near the external condyle of the elbow of the right arm. On the left arm there was a bruise over the back of the elbow with a puncture wound. On the right leg there were three horizontal incised wounds; two of them cut through the muscles.

815.Q. Whereabouts on the leg were these? -- A. They were on the lower outer part of the leg a few inches above the ankle. Two of them cut through the muscles and injured both bones, the tibia and femur. The third one was only skin deep. Still on the right leg there were two small puncture wounds over the front and upper part of the tibia. On the left leg there were two small injuries on the front of the shin, and two abrasions.

816.Q. Having examined all these wounds did you come to any conclusion as to the type of instruments that would have

been used in inflicting them? -- A. Yes, some of them were inflicted with sharp instruments and some with blunt and some with pointed instruments.

- 817.Q. Could an instrument like that spear butt (Exhibit 2) have inflicted any of them? -- A. That could have inflicted some of the wounds.
- 818.Q. Could that have inflicted any of them? (Siai Exhibit 18 handed to witness). -- A. That could have inflicted some of the wounds.
- 819.Q. Could that ranga (Exhibit 7) have inflicted any? -- A. That could have inflicted some of the injuries.
- 820.Q. And apart from these three things I have shown you would you say that a spear or spears could have inflicted some of the wounds? -- A. Yes.
- 821.Q. When he arrived, doctor, what did his pulse and temperature indicate? -- A. I took his pulse and temperature. On arrival he was quite conscious, weak, and in great pain. Temperature 100.6, and his pulse 124.
- 822.Q. What did that indicate to you as to his general condition? -- A. It indicated to me that his general condition had been lowered as the result of numerous injuries.
- 823.Q. What is the normal pulse, doctor? -- A. 72.
- 824.Q. Would it be exaggerating if I said he was in a very dangerous state of health? -- A. On arrival at the hospital I would not describe his condition as immediately dangerous. His condition became serious on the 19th June and from then onwards caused increasing anxiety.
- 825.Q. As a matter of interest, doctor, what was his temperature on the 19th? -- A. His temperature on the 19th was 106.8 in the morning and 106 in the evening.
- 826.Q. On his arrival was there any evidence that he had received any attention? -- A. Yes, his wounds were all dressed

on his arrival.

827.Q. When you say dressed I should like you to go a little further? — A. They had been dressed with skill.

828.Q. And did you form any opinion as to what his state of health would have been had he not been attended to? — A. His state of health on arrival at the European Hospital Nairobi must inevitably have been worse had he not been well attended to before leaving Naivasha.

829.Q. Having seen the wounds can you say whether there was any likelihood that he would have died immediately on receiving those wounds or soon after? — A. I think there was a grave risk from haemorrhage if they had not been attended to.

830.Q. MR JUSTICE WEBB: Only from haemorrhage? — A. Immediate risk from haemorrhage.

831.Q. Shock? — A. The risk from sepsis would probably have been increased.

832.Q. How about shock? — A. There must have been considerable risk from shock.

833.Q. THE ATTORNEY GENERAL: I suppose he was attended to in hospital? — A. He received all the attention that we thought was called for.

834.Q. And did his condition improve? — A. His condition gradually became weaker. There were a few temporary improvements, but speaking generally his condition generally became worse.

835.Q. And eventually what happened? — A. He eventually died on the 18th of July.

836.Q. And what would you say the cause of death was? — A. The cause of death was, in technical language, staphylococcal pyaemia due to multiple injuries, which might be interpreted as blood poisoning due to multiple injuries.

- 837.Q. Actually did you think it necessary to hold a Post Mortem?
-- A. Because death was so obvious I did not think it necessary to do a Post Mortem.
- 838.Q. Speaking generally about this unfortunate man, what would you say was his age and his general condition apart from the injuries? -- A. He was a muscular individual, appeared to be normally strong and healthy and in appearance was between the ages of 40 and 45.
- 839.Q. During the time that he was in hospital was he conscious?
-- A. He was conscious practically all the time until near the end.
- 840.Q. And was he able to talk to you coherently? -- A. Yes, practically all the time.
- 841.Q. Just one other small point. How old did you judge the injuries to be when you saw them? -- A. I judged them to be somewhere between 12 hours and 36 hours old, between that minimum and maximum period.
- 842.Q. He remained, I take it, under your care all the time? -- A. He remained in my care all the time although other doctors were called in for consultation and operative treatment.

CROSS-EXAMINED BY MR LEAN.

- 843.Q. MR LEAN: Doctor, you have said that those various weapons produced in Court could have inflicted the wounds in question. Do you mean by that that they were likely to have caused the wounds in question? -- A. They are likely instruments, yes.
- 844.Q. But it is not outside the bounds of probability and possibility that other sharp cutting objects could have caused those wounds? -- A. No, it is not outside possibility.
- 845.Q. The cut over his forehead; that I believe was caused by

an extremely sharp cutting edge? -- A. In my opinion it was caused by a sharp instrument.

846.Q. You would not say it was a particularly sharp instrument?

-- A. Not necessarily.

847.Q. The bruise wound on his back in the region of the left kidney, that was a bruise more than a hole? -- A. It was a bruise and swelling.

848.Q. Could you say that the wounds might have been caused by falling from the fairly considerable height for a man, say four or five or three or four feet on sharp jagged substance? -- A. Some of the wounds may have been caused in that way, but they could not all have been caused in that way.

849.Q. I suppose you are particularly referring to the puncture wounds? -- A. Yes, the puncture wounds and the cuts on the right leg.

850.Q. If he had fallen on to something really sharp would not the effect have been the same? -- A. So far as puncture wounds are concerned if he fell on a sharp pointed thing the effect would be pretty much the same. With regard to the cuts on the right leg I do not think these could have been caused by a fall of three or four feet. Additionally some of the wounds were on his back and some on his face and on the front of the shins and these could not all have been caused by a fall of that nature.

851.Q. I suppose these cuts on the leg could have been caused by a person lying down at the time and say kicking with his legs, struggling hard, and these legs getting cut by some sharp objects? -- A. No. They could not have been caused in that way in my opinion as two of the cuts made quite deep injuries into the bone.

852.Q. Blood poisoning I suppose does not necessarily need a cut

or anything like that to bring it on? -- A. There must be some source of infection which is almost invariably a puncture of the skin or an abrasion of the skin.

853.Q. Would you say that the blood poisoning in Mr Alex Semini's case originated from any one cut or at the time of his death was he full of poisoning from them all? -- A. I would not say it originated from one particular injury.

854.Q. Could the poison be carried from some outside source, say dust, or flies settling on the wounds or anything like that? -- A. Poisoning can be conveyed in that way.

855.Q. Is it possible in such circumstances to say that this poison originated say by a fly carrying infection to a wound or to dirt say off a thing like that sial (Exhibit 18) -- A. It is not possible to say that poison was not carried by a fly, but those injuries occurred at night-time when there were not many flies about and in my own opinion there is not the slightest doubt that the poison was conveyed by the instruments or dirt getting into the wounds at the time of the injuries.

Re-Examined by the Attorney General.

856.Q. THE ATTORNEY GENERAL: Do you think, doctor, that there is the slightest possibility of the innumerable wounds which you saw on the deceased being acquired by falling off or throwing himself off a wall five feet high into the foundations in which there would be rubble? -- A. I have not the slightest doubt that all these wounds could not have been caused in that way.

His Honour read over his notes to the witness who signed same as being correct and then withdrew,

M A B W A ARAP M I H A I affirmed:

EXAMINED BY THE ATTORNEY GENERAL

857.Q. THE ATTORNEY GENERAL: In June of this year were you employed

- by the District Commissioner here? -- A. Yes.
- 865.Q. You are a Lumbwa? -- A. Yes.
- 866.Q. Can you speak Kiwahili? -- A. Yes.
- 867.Q. Do you remember the 21st July? -- A. Yes.
- 868.Q. Did you go anywhere that day? -- A. I went before Mr Hodge; to his office.
- 869.Q. MR JUSTICE WEBB: The District Commissioner? -- A. Yes.
- 870.Q. THE ATTORNEY GENERAL: When you got there did you see anyone there? -- A. I went to interpret the statements of three Lumbwas.
- 871.Q. MR JUSTICE WEBB: The question was, Was there anybody there when you got to the office? -- A. Three Lumbwas.
- 872.Q. THE ATTORNEY GENERAL: Can you point out the three Lumbwas to us now? -- A. The first, second and third accused.
- 873.Q. You say you went there to interpret three statements. Did you interpret them? -- A. I did, correctly.
- 874.Q. From what language to what language? -- A. From Lumbwa into Swahili.
- 875.Q. MR JUSTICE WEBB: Do you mean a statement made by each one of the ^{three} accused? -- A. Yes, Sir.
- 876.Q. THE ATTORNEY GENERAL: Did you interpret those statements correctly? -- A. Yes, sir.
- 877.Q. Were you sworn to interpret? -- A. Yes, sir, I was.
- 878.Q. On another occasion do you remember going to the prison? -- A. Yes, I remember.
- 879.Q. When you went to the prison whom did you see there? -- A. I found all the seven accused there.
- 880.Q. How many times altogether did you go to the prison? -- A. Twice.
- 881.Q. On the first occasion were they all there? -- A. Yes.
- 882.Q. And on the second occasion were they all there? -- A. Yes.
- 883.Q. On the first occasion besides the prisoners who was there?

874. Q. An European, was he there? — A. Yes, the Superintendent of the prison, Mr Hart, was there.
875. Q. On the first occasion did you do any interpreting? — A. Yes, I went to interpret those people's statements.
876. Q. This was the first occasion? — A. Yes.
877. Q. And on that first occasion did anybody make a statement which you interpreted? — A. The first accused.
878. Q. He made a statement to you in what language? — A. In Lushwa and I interpreted it into Swahili.
879. Q. And did you interpret everything that the Superintendent of the Prison told you to interpret back to them? — A. Yes, properly.
880. Q. And on the first occasion did only No. 1 make a statement? — A. Yes.
881. Q. And when he made that statement what did you see Mr Hart doing? Or rather when you interpreted the statement? — A. He was writing it down.
882. Q. Was it read back to the accused, Mr Attorney? — A. Yes, I interpreted it back to the accused.
883. Q. THE ATTORNEY GENERAL: On the second occasion that you went to the prison you have already told us all the prisoners were there. Was Mr Hart there? — A. Yes, he was.
884. Q. On the second occasion what happened? — A. I went to interpret the statements of those other three, and on the following Monday I went to finish the statements of the other three.
885. Q. MR JUSTICE WHEB: Did you go three times? — A. No, twice.
886. Q. You say the first time you went to the prison the first accused made a statement? — A. Four persons.
887. Q. Is it true that the first accused made a statement? — A. After he had finished his statement another man made a statement and then another, and so on.

- 887.Q. THE ATTORNEY GENERAL: How many people made statements the first day? -- A. On the first day, four.
- 888.Q. MR JUSTICE WEBB: Was that a Saturday? -- A. Yes.
- 889.Q. Which four gave statements on the Saturday? -- A. The first four accused.
- 890.Q. THE ATTORNEY GENERAL: Were they all written down? -- A. Yes, and it was read over.
- 891.Q. MR JUSTICE WEBB: And interpreted by you? -- A. Yes.
- 892.Q. THE ATTORNEY GENERAL: You have already said, but I want it again. Did you interpret everything that Mr Hart told you to interpret to them? -- A. Yes.
- 893.Q. That is the first day. What happened on the second occasion? -- A. I went to complete the statements of the three remaining accused.
- 894.Q. MR JUSTICE WEBB: Was that on Monday? -- A. Yes.
- 895.Q. THE ATTORNEY GENERAL: When you got there did the three remaining accused make statements? -- A. Yes, each one gave his own statement.
- 896.Q. Did you see Mr Hart write these statements down? -- A. Yes.
- 897.Q. Did you translate back these statements after he had finished writing? -- A. I did.
- 898.Q. And did you accurately interpret all the statements made on that date? -- A. Yes.

MR LEAN: No cross-examination, Your Honour.

The Judge's Notes were read over to the witness who signed same as correct and then withdrew.

THE ATTORNEY GENERAL:

CHAMA ANAP CHEBERIGO affirmed:

EXAMINED BY THE ATTORNEY GENERAL.

- 899.Q. THE ATTORNEY GENERAL: Your name is Chama Anap Cheberigo. Do you know accused Nos. 8 and 7? -- A. Yes, the last two accused.
- 900.Q. Do you know the District Commissioner? -- A. Yes.

Mr Hodge is the D.C.

- 901.Q. Do you remember doing anything for Mr Hodge at any time with regard to these two accused? -- A. Yes.
- 902.Q. What did you do? -- A. I went to interpret their statements and then back to them for Mr Hodge.
- 903.Q. You were speaking in what language? -- From Lumbwa to Swahili for Mr Hodge.
- 904.Q. Did you interpret the statements faithfully and truthfully? A. Yes.
- 905.Q. He wrote Did you see what Mr Hodge did when you made the statements? -- A. Yes, he wrote it down.
- 906.Q. And after he had written it down was it translated back? -- A. Yes, I interpreted back into Lumbwa to them.
- 907.Q. And did you interpret everything that Mr Hodge told you to say faithfully and accurately? -- A. Yes.

CROSS-EXAMINED BY MR LEAN.

- 908.Q. MR LEAN: Was a policeman in the room? -- A. No.
- 909.Q. MR JUSTICE WEBB: Was there an askari or anyone else. It does not matter whether it was a police officer? -- A. There were only four of us including Mr Hodge.

The Judge's Notes were read over to the witness who put his left thumb mark thereon and then withdrew.

CYRIL VINCENT THOMAS HART

sworn:

EXAMINED BY THE ATTORNEY GENERAL.

- 910.Q. THE ATTORNEY GENERAL: Your name is Cyril Vincent Thomas and you are the Assistant Superintendent of the Prison at Nakuru? -- A. Yes, sir.
- 911.Q. Do you know the accused No. 1? -- A. Yes, sir.
- 912.Q. Have you ever done anything for him? -- A. Yes, sir.
- 913.Q. Can you remember? -- A. I took a statement from him on Saturday morning, the 21st July.

- 914.Q. Where was that statement taken? -- A. In my office.
- 915.Q. Was he by himself or with others? -- A. An askari, prison warden, interpreter and myself.
- 916.Q. And those were all? -- A. Yes, sir.
- 917.Q. How did he come to be there? -- On the day of the identification parade on the 18th July, after the parade had finished and the police had gone, the Corporal of my Guard then reported that this man wished to make a statement.
- 918.Q. MR JUSTICE WEBB: All the accused? -- A. Yes, Sir.
- 919.Q. THE ATTORNEY GENERAL: And in consequence of that report? -- A. I rang up the Superintendent of the Prison, the District Commissioner, and informed him of what had happened.
- 920.Q. And in consequence of what he told you? -- A. I rang him up and asked him who would take the statements. It devolved on me to take the statements.
- 921.Q. And you arranged to take the statements? -- A. Yes, sir.
- 922.Q. And you have already told us that No. 1 came to your office to do so?
- 923.Q. MR JUSTICE WEBB: It was on the 18th they said they wanted to make statements and the statements were not taken until the 21st July? -- A. I was awaiting orders from the Superintendent.
- 924.Q. THE ATTORNEY GENERAL: On the 21st July No. 1 came to your office to make a statement? -- A. Yes, sir.
- 925.Q. Before he made that statement did you tell him anything? -- A. No, sir.
- 926.Q. You told him nothing? -- A. No, sir.
- 927.Q. Could you tell the Court whether the statement was voluntary or not? -- A. An absolutely voluntary statement, the following Monday, the 22nd of July.

- 928.Q. When he came in did you say anything to him? What exactly happened? -- A. I told him I heard he wanted to make a statement and I would like him to make it short and sweet.
- 929.Q. Did you hold out any promise to him? -- A. None whatsoever, sir.
- 930.Q. Did you threaten him in any way? -- A. No, sir.
- 931.Q. And who was doing the interpreting? -- A. The witness before me, sir.
- 932.Q. Could you recognise him? -- A. Yes, sir.

(Mabua arap Musai enters Court).

That is the man.

- 933.Q. Then did he proceed to make a statement? -- A. Yes, sir.
- 934.Q. And interpreted to you in what language? -- A. It was spoken by the man in Lumbwa and to me in Kiswahili, and I translated into English.
- 935.Q. You know Kiswahili? -- A. Yes, sir.
- 936.Q. When he had finished making his statement what did you do? -- A. I read it over through the medium of the interpreter back to the man.
- 937.Q. And did the man put his thumb print to it? -- A. The man adhered his thumb print to the statement as being correct.
- 938.Q. And then did you sign your name underneath? -- A. Yes.
- 939.Q. Is that the statement? (Exhibit G-1 handed to witness) -- A. That is it, sir.

THE ATTORNEY GENERAL: Would Your Honour like it read now?

MR JUSTICE WEBB: Perhaps Mr Lean may have something to say.

The ATTORNEY GENERAL: I will put it in formally, Sir.

- 940.Q. On that day did you take any further statements? -- A. No, sir.
- 941.Q. Did you ever take any further statements? -- A. Yes; on the following Monday, the 25th of July.

- 942.Q. And from whom did you take statements? — A. Accused Nos. 2, 3, 4, 5, 6, and 7, sir.
- 943.Q. Was there an interpreter there? — A. Through the medium of the same interpreter, sir.
- 944.Q. Will you explain to us how they came to be with you? — A. Each man came separately from the cell to the office under prison escort.
- 945.Q. And were the statements voluntary? — A. Absolutely voluntary with all of them.
- 946.Q. Did you hold out any inducement, promise or threat to them? — A. No, sir.
- 947.Q. Was each statement taken down by you? — A. Yes, sir.
- 948.Q. Was it checked back to the accused? — A. Yes, sir, through the interpreter.
- 949.Q. Did they affix their thumb prints? — A. Yes, sir.
- 950.Q. Each and all of them? — A. Yes, sir.
- 951.Q. And are those the statements that you took down that day? (Exhibits C2, C.3, C.4, C.5, C.6, and C.7 handed to witness) — These are the statements I took down on the 25rd July.

CROSS-EXAMINED BY MR LEAN.

- 952.Q. MR LEAN: Mr Hart, who brought those prisoners to you? — A. On admission to prison do you mean, sir? The police brought them from Naivasha on the 50th June.
- 953.Q. MR JUSTICE WEBB: The whole lot of them? — A. Yes, Sir.
- 954.Q. MR LEAN: And the police are in charge of them now? — A. As remand prisoners, sir. Outside the prison house.
- 955.Q. MR JUSTICE WEBB: You mean at this moment.
- MR LEAN: They are under police guard outside Your Honour's Court.
- WITNESS: They are under Prison guard as soon as they leave here, Sir.
- 956.Q. MR JUSTICE WEBB: But actually here in Court they are under police guard? — A. Police guard, Sir.

957.Q. MR LEAN: In fact during the whole time they are in custody you hold them really for the police? -- A. Outside the prison do you mean, sir?

958.Q. And inside the prison up to the time they are convicted? -- A. Inside the prison they are in my custody.

959.Q. Then during the time that they are in the prison down below these prisoners are in no way connected with the police? -- A. No, sir.

960.Q. Technically are the police and prisons separate units? -- A. Absolutely separate in Kenya Colony.

961.Q. You have said the Corporal came to you and reported that Accused No. 1 wished to make a statement? -- A. The whole of the accused, sir.

962.Q. Had you seen your Corporal that morning talking to the men at all? -- A. No, sir. It was immediately after the identification parade, when the men had been put back into their cells and they seemed to be rather highly strung.

963.Q. MR JUSTICE WEBB: Were they all in one cell? -- A. Four in one cell and three in another.

964.Q. MR LEAN: Your office in the prison, Mr Hart, is within a very few yards of the prisoners' cells? -- A. I agree, sir.

965.Q. There is a small ante-room outside the cells? -- A. Guardroom.

966.Q. Do you remember saying anything to your Corporal suggesting that in your opinion it would be a good thing if the accused did make a confession? -- A. No.

967.Q. You did not hear your Corporal tell these accused that it would be better for them if they did make a statement? -- A. No, sir.

968.Q. Do you think these natives had any idea in their head

that if they made a statement matters might be made easier for them? -- A. That I could not say, sir.

THE ATTORNEY GENERAL: No re-examination, Your Honour.

969.Q. MR JUSTICE WEBB: You know, Mr Hart, I suppose that it is usual to warn an accused person? There is the usual Police warning? -- A. I am a Prison Officer not a Police Officer, Sir.

970.Q. I asked you if you knew that? -- A. No, Sir. I did tell the people who appeared before me one by one to tell the truth and I did not swear them on oath.

971.Q. I am talking about the warning; I think it is laid down by law. A policeman usually says, "You are not bound to say anything but if you do say it it will be taken down in writing and may be used in evidence". You did not give them any warning; you told them to tell the truth and you would take it down? -- A. Yes, Your Honour.

His Honour read over his notes to the witness who signed same as correct and then withdrew.

THE ATTORNEY GENERAL: I do not know whether you are will hear arguments now, Your Honour, on those statements.

MR JUSTICE WEBB: I do not know whether there is going to be any argument.

MR LEAN: The only argument that I would like to raise is that under Section 26 of the Evidence Act where prisoners are in the custody of the police no statement shall be admitted unless it is made in the presence of a Magistrate. Your Honour I do admit that the police bringing the prisoners to the prison, the prisoners realised - they had it in their minds the whole time - that the police, so to speak, were their enemies; and the prisoners are in fact at the moment in the power of the police and during the whole time they are in prison they really are in the

custody of the police indirectly, and therefore Section 26 must apply.

MR JUSTICE WEBB: Mr Lean, I do not think that in this Colony where the two Services are separate I can hold that a Prison Officer is a Police Officer.

MR LEAN: Your Honour, I really think they are in the custody of the police.

MR JUSTICE WEBB: The Warrant is addressed not to the Police but to the Prison. The statement may be put in.

MR WALLACE: This is the statement of the first accused, Your Honour, made to the Assistant Superintendent of the Prison at Nakuru on the 21st of July 1954.

MR JUSTICE WEBB: You have read this, Mr Wallace? It is a confession

MR WALLACE: Yes, of being there. They all try to implicate an eighth man in these confessions.

MR JUSTICE WEBB: I am thinking of that other point. A confession if it implicates yourself is evidence against all the others; but if he says, "I was there but I did not do anything", it may be evidence against him but not against the others.

MR WALLACE: I quite agree, Your Honour. Each of them have made practically the same statement so it makes no difference.

Learned Crown Counsel reads the statement of the First Accused made to the Assistant Superintendent of Prison, Nakuru, on 21st July 1954.

(See next page).

"On or about the 12th June 1934 I went to the farm of Mr Ray in company with Kiplangat arap Komuilong, Kiplangat a. Chepkoye, Kipoech arap Mgerechi, Kiprono arap Sinei, and Kiplangat arap Cherio, where we found Kipruto arap Chomobo working on this farm. We made arrangements to break into Mr. Semeni's house, but Kipruto arap Chomobo told us that it would be a better plan if we went to some other farm to sleep, this was agreed to and we went to another farm near Naivasha the name of which I do not know, however we all slept there. On the following morning Kipruto arap Komuilong joined us and he agreed to go with us to break into Mr. Semeni's house, owing to rain we all stayed one more night at this farm and left the following day at about 5 p.m. for Mr. Semeni's farm where by previous arrangements we met Kipruto arap Chomobo near the pig sty about 7.30 P.M. Kipruto arap Chomobo said "I know this place well as I used to work here, but I do not want to enter the house, you go inside and I will stay on watch out here", I agreed to this so went inside the house with Kipruto Komuilong. We got the keys from Mrs. Semeni, but on opening the cash box it was found to be empty, we however got some money from Mrs. Semeni which she took out of a purse, we then left the house and we all collected some little distance from the house and divided the money between us which amounted to 4/- each. Kipruto arap Chomobo said the "The Serekali would be bound to come in search of us and thought it the best plan for us all to hand over our money to him for safe keeping, he said that he would find work on another farm and would let us know later when we could come for our money, so I, and Kipruto arap Komuilong, handed over our 4/- to Kipruto arap Chomobo but the other men did not. We all returned to Lumbwa where we were arrested.

any statement which appears to be reasonably to amount to an admission of guilt of the crime of ... of the person making such a statement will be ... against his co-accused in so far as such ...

MR LEAN: If Your Honour will excuse me, I do not think it can possibly be said there is anything in that statement which incriminates No. 1 with regard to a charge of murder, and I do ask Your Honour to rule that the section of the Evidence Act cannot apply as against the other accused.

MR JUSTICE WEBB: I will have to consider that point in my Judgment. It is no good giving rulings now as to that, because how can I say what is evidence against him before I hear all the statements. I think the principle is clear that if a man incriminates himself his statement is evidence against his companions. If he does not I must endeavour to pay no attention to it.

THE ATTORNEY GENERAL: This may be the last opportunity I shall have of addressing Your Honour on the subject. As it has been raised I should like to refer Your Honour to the Evidence Act. Under "Admissions" on page 211 (mine is the 7th Edition) - there is a whole chapter dealing with "Admissions" Your Honour. At the bottom of page 211 it says this: "^{confession} An admission is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed the crime. Therefore not only a statement which amounts to a direct acknowledgment of guilt are confessions but also inculpatory statements which although they fall short of actual admissions of guilt yet suggest an inference of guilt". That, from my point of view, is a very important point.

MR JUSTICE WEBB: I can only say this, that I propose to hold that any statement which appears to me reasonably to amount to an admission of guilt of the crime of murder on the part of the person making that statement will be evidence against his co-accused in-so-far as they are mentioned in it.

But statement from which one cannot reasonably infer an admission of murder will not be evidence against the co-accused. I shall have to endeavour to apply that principle when these statements are read. They must be read because they are evidence against the people who made them. To take that statement which has just been read, my impression is that that is not inconsistent with the fact of this unfortunate man having been murdered by some other party. He merely talks of getting money and going away.

MR WALLACE: I will now read the statements of the other accused, Your Honour, which were made to Mr Hart, Assistant Superintendent of Police at Makuru Prison.

(Mr Wallace then read the statements C.2, C.3, C.4, C.5, C.6, and C.7).

(See following pages)

"I left the farm of Bwana Kikoni at about 10. a.m. (the date I do not remember) and went over to the farm of Mr. Knight where I found six other men whose names are as follows:- Kibet Arap Rongi, Kipkech arap Ngerечи, Kiplangat arap Cheri, Kiprono arap Sinei, Kiplangat arap Komilong, these men told me that they had arranged with Kipruto arap Chomobo to break into Mr. Semini's house and asked me to join them I agreed to do so. We left Mr. Knight's farm one night about 5 p.m. and arrived at Mr. Semini's farm about 7.30 p.m. where we met Kipruto arap Chomobo near the pig sty. Kipruto Chomobo said the cook has gone the way is clear so we will go now. We got near the house and Kipruto Chomobo said he would keep watch while we got hold of the Bwana. I saw Kiprono arap Sinei seize the Memshaib and Kibet arap Rongi go into the house. When we divided the money I got 4/- but Kipruto arap Chomobo said that "The Sakerali would come after us, and thought it the best plan for us all to hand our money to him, I handed Shgs. 4/- over to him, as also did Kibet arap Rongi, and Kiplangat arap Komilong. I afterwards returned to Mr. Knight's farm where I slept, I afterwards went to Kericho where I was arrested by an Askari Kanga and taken before the District Commissioner I was afterwards brought to Naivasha.

"In June 1954 I went to the farm of Mr. Kay with Aibet arap Rongi, Kipkoeh arap Mngerechi, Kiprono arap Sinei, Kiplangat arap Cherio and Kiplangat arap Chepkayo, where we met Kipruto arap Chomobo who arranged with us to break into Mr. Semani's house, he said that we should find some other place to sleep so we went to Mr. Knight's farm, but returned about two days later to Mr. Semani's farm, at about 7 p.m. where we met Kipruto arap Chomobo near the pig sty. Kipruto Chomobo said "The cook has gone and there is no one about we had better go nearer the house, we did so, he then said, I will watch out here, he also said that we were to get hold of the Bwana, but that we were not to hit him. I saw Aibet arap Rongi, Kipruto arap Komuilong, and Kiprono arap Sinei enter the house. I do not know what happened inside as I was on watch outside.

We afterwards divided the money, I got Shs.4/- with which I bought food.

"During the month of May 1984. I was released from Naivasha Prison and went to the farm of Mr. Ray to find work, but did not get any, I remained on this farm for about three weeks without the permission of the Bwana. Four other men came to find work the name of one is Kibet arap Rongi, the others I do not know, some of them got work, so we all agreed to return to Lumbwa, but Kipruto arap Chomobo said that there is one European here who is a bad one, he refused to give me my pay when I was released from Prison, so he suggested that we broke into the house, we all agreed. Kipruto Chomobo suggested that we all went to another place to sleep so we went to Mr. Knight's farm near Naivasha, arriving there about 7.30 p.m., we left again the next day about 5 p.m. and went to Mr. Senini's farm where we met Kipruto arap Chomobo by arrangement, near the pig sty. Kipruto Chomobo said "You are late why did you not come earlier the cook has finished work and has gone. We all went near to the house and Kipruto Chomobo said I don't want to go into the house and Kipruto Chomobo said I don't want to go into the house as the Bwana knows me, I will stay out hereon watch you go and get hold of the Bwana, I saw two men enter the house Kibet arap Rongi was one, the other I could not recognise. I was sentry outside the house and so not know what happened inside. After the affair we divided the money. I got Shs. 1/- as my share which I spent on food. the Bwana said no.

We then separated five men said they would return to Lumbwa, but I and Kipruto arap Chomobo went into the forest to sleep, in the morning we were arrested by Police and taken to Naivasha, lost when I was arrested by Police at the Ray farm, sent to Naivasha.

"I worked for Mr. Ray for about 10 months during 1933, and was discharged in June 1934, but stayed on the farm for three days with the permission of the Bwana. A few days later Kibet arap Rongi, Kiplangat arap Cherio, Kipruto arap Koumilong and Kiplangat arap Seneni came to the farm in search of work but did not get it. They all stayed on the farm for one night and the following morning we all left and went to the farm of Mr. Knight, these arrangements were made at the suggestion of Kipruto arap Chomobo as he had arranged to break into the house of Mr. Semini and had asked us to join him, we agreed to do so. We arrived at Mr. Knight's farm at about 9 p.m. and slept there we left the following day at about 4 p.m. to go to Mr. Semini's farm which had been previously arranged by Kipruto arap Chomobo. We arrived at Mr. Semini's farm at about 7 p.m. and met Kipruto arap Chomobo near the pig sty, he sent three of us forward to see if the coast was clear, we saw no one about so called the others to join us which they did near the garage. We saw Mr. Semipi come out of the house and walk towards his sleeping room. Kipruto Chomobo said I am unable to go into the house as the Bwana knows me, so I will stay on sentry out here. I saw Kibet arap Rongi and Kiprono arap Sinei go into the house. I do not know what happened inside as I was struggling with the Bwana outside.

When the affair was over we all ran away as we thought the Bwana might follow us with a gun.

We divided the money between us, I got 2/50 as my share, which was lost when I was arrested by Police at Mr. Ray's farm and taken to Naivasha.

"In June 1934 I went to the farm of Mr. Ray with Kibet arap Rongi, Kiprone arap Sinei, to find work, but we did not get any, we slept on Mr. Ray's farm for one day without permission of the Bwana, we then left and went to Mr. Knight's farm where we arrived about 7 p.m. we fed and slept there and the following morning Kiplangat arap Komailong joined us, we were seven in number as Kipkoesh arap Mngerechi and Kiplangat arap Chepkoye had joined us. We left Mr. Knight's farm at about 7.50 p.m. where we met Kiprute Chomobo near the pig sty. We went near the house and Kiprute Chomobo said "I will keep watch out here you go and seize the Bwana. I did not see anyone enter the house.

When the money was divided I got 1/50 with which I purchased food.

STEPHEN OSWALD VERE HODGE

sworn:

EXAMINED BY THE ATTORNEY GENERAL.

- 972.Q. THE ATTORNEY GENERAL: Your name is Stephen Oswald Vere Hodge and you are the District Commissioner, Nakuru? --
A. I am.
- 973.Q. Do you remember the 30th June? -- A. I do.
- 974.Q. On that day what did you do particularly connected with this case? -- A. I took confessions from accused Nos. 1, 2, and 3.
- 975.Q. Will you tell us under what circumstances you came to take these confessions? -- A. I was informed that these three accused wished to make confessions to me and they were brought to my office at about 12-30 p.m.
- 976.Q. Inside your office when these confessions were taken who was present? -- A. Myself, and one Lumbwa acting as interpreter.
- 977.Q. Do you happen to remember his name? -- A. Mabwa arap Minal.
- 978.Q. MR JUSTICE WEBB: Do you mean that you and Mabwa and the three accused were present together? -- A. Yes, Sir. May I alter that. Each accused was brought in separately.
- 979.Q. THE ATTORNEY GENERAL: Who came in first? -- A. I think No. 1. I cannot be sure.
- 980.Q. Was your procedure the same with all of them? -- A. Yes.
- 981.Q. And what was that? -- A. I asked them if they wished to make a statement and when they replied in the affirmative I then informed them that I could hold out no hope whatever if they made such statement and that they should make no statement because of any threat that had been made to them. I further cautioned them that any statement they made would be taken down in writing and could be used

in evidence against them, on the

- 982.Q. And having warned them in this way did they make a statement? -- A. They did.
- 983.Q. Did you write it down? -- A. I did.
- 984.Q. And did they in each case put their right thumb mark? -- A. They did.
- 985.Q. And are those the statements? (Exhibits D.1, D.2, and D.3 put to witness) -- A. They are.
- 986.Q. And after that did you see anybody else in regard to these statements? Did you take any further statements from anybody else? -- A. Not after that.
- 987.Q. Before that? -- A. Yes, on the 21st June.
- 988.Q. On the 21st June you saw whom? -- A. Accused Nos. 6 and 7.
- 989.Q. Where did you see them? -- A. At Naivasha, in the D.G.'s office.
- 990.Q. Had you an interpreter? -- A. I had, A Lambua.
- 991.Q. Do you remember his name? -- A. No, I am afraid not.
- 992.Q. Would you recognize him? -- A. Yes. (Chuma arap Cheerige enters Court). That is the man.
- 993.Q. You say you saw these two people there. Were they brought there? -- A. They were.
- 994.Q. And when they were brought in? -- A. I spoke to each separately as he was brought in.
- 995.Q. They came in separately? -- A. Yes.
- 996.Q. MR JUSTICE WILKINS: Who brought in who was with them? -- A. They were brought in by a police sergeant.
- 997.Q. And what happened to him? -- A. He was ordered to leave the office.
- 998.Q. After you had ordered the police sergeant to leave the office did you speak to them in turn as they came in? -- A. Yes.
- 999.Q. And what did you say? -- A. I asked them if they wished

to make a statement and on their replying that they did I informed them that I could hold out no hope to them if they made a statement. I told them that they should not make a statement on account of any threat that had been made to them.

- 1000.Q. They still persisted in making a statement? -- A. I cautioned them that anything they might say would be taken down in writing and might be used against them.
- 1001.Q. They proceeded to make a statement through the interpreter? -- A. They did.
- 1002.Q. At the end of each statement did you have it re-interpreted? -- A. I did.
- 1003.Q. MR JUSTICE WEBB: Did you do the same on the 30th June? -- A. I did, Sir.
- 1004.Q. THE ATTORNEY GENERAL: And did they put their thumb marks? A. They did.
- 1005.Q. Are these the statements? (Exhibits D.4 and D.5 put to witness) -- A. They are.
- 1006.Q. I notice in those statements that reference is made to various things called exhibits on the side? -- A. Yes.
- 1007.Q. Could you explain to the Court how that happened? -- A. When the two accused were brought in a number of articles were brought in with them and laid on the table. Presuming that the accused wished to make statements about them I asked them whether they wished to make any statement about those articles.
- 1008.Q. And as they referred to the articles you made the reference which His Honour will see on the side? -- A. Yes, sir.
- 1009.Q. Are you satisfied that all the statements to which you have referred in the box today were given absolutely voluntarily? -- A. I am.
- 1010.Q. And there was no question of cross-examination while they

were giving them? — A. None whatsoever.

1011.Q. In fact you have told us the only question you asked them was with regard to these particular articles? — A. It was.

1012.Q. MR JUSTICE WEBB: And that was merely, "What do you want to say about these"? — A. That is all, Your Honour.

1013.Q. THE ATTORNEY GENERAL: Do you remember midnight on the 14th-15th June? — A. I do.

1014.Q. Where did you go? — A. To the house of Dr Wetherell at Naivasha.

MR JUSTICE WEBB: Mr Attorney, are you going to identify these exhibits? His marking is different.

THE ATTORNEY GENERAL: I beg your pardon, Your Honour.

1015.Q. With regard to the exhibits. Take Exhibit D.4. You will see references on the side. You identify what these are? Of course, they have different numbers here. — A. I think I can, sir. The hat (Exhibit 1) is Exhibit A on the confession. B is the spear butt (Exhibit 2). C is a small piece of wood (Exhibit 3). D is the sial handle (Exhibit 4). E is the 5 cent piece with the leather strap (Exhibit 5). F a button (Exhibit 6). G is that stick (Exhibit 7).

1016.Q. Ranga would you call it? — A. I should call it a stick, sir.

1017.Q. And in Exhibit D.5 are there not new references there, or are they the same? — A. It refers to the same articles.

1018.Q. You were saying you went to Dr Wetherell's house on the 14th-15th June at midnight. Whom did you see there? — A. I saw Alex Semini in bed.

1019.Q. Was anybody in the room with him? — A. Dr Wetherell and Dr Hounted.

1020.Q. Did Mr Semini appear to be in good health? — A. No,

he was not in good health.

- 1021.Q. He was in fact? -- A. Lying wounded.
- 1022.Q. Was he conscious? -- A. Yes.
- 1023.Q. Was he coherent? -- A. Yes.
- 1024.Q. What did he do? -- A. He made a statement to me.
- 1025.Q. With regard to? -- A. To the assault on himself.
- 1026.Q. What language did he make the statement in? -- A. English.
- 1027.Q. Did you write it down? -- A. I did.
- 1028.Q. And you witnessed it? -- A. I witnessed it.
- 1029.Q. As also did the doctors? -- A. Yes.
- 1030.Q. Is that it? (Exhibit B handed to witness) -- A. It is.
- 1031.Q. And did Mr Semini make his mark? -- A. He did.
- 1032.Q. And that is his mark? -- A. That is it.
- 1033.Q. Presumably he made his mark as he was incapable of writing at the time? -- A. Yes, sir.

THE ATTORNEY GENERAL: I suggest we formally read that after the cross-examination, Your Honour.

MR LEAN: No cross-examination.

His Honour read over his notes to the witness who signed same as correct and then withdrew.

(Mr Wallace then read the statements Exhibits D.1, D.2 and D.3, after which the Court adjourned until 2-15 p.m.)

See following pages for statements.

We then went to the ~~Exhibit~~ D. 1.

it up a long way off. I took my share

I wish to make a statement. About one month ago I left the Lumba Reserve for Nalvasha. I went with 2 men arap Bei and arap Kario. When we got to Nalvasha seven of us collected together. These were A. Bei A. Sinei Kipruto A. Kamilong Kiplangat A. Kamilong A. Mngerechi Kumasai and myself. We agreed to go and steal from Bwana Semini. We agreed that we did not wish to kill Mr. Semini but that some of us would seize him and some seize Mrs. Semini and then rob them. We set off and got to Semini's house at about 8 p.m. First Mr. Semini came out to make water he had no lamp. He did this and returned to the sitting room. A little later he came out with a lamp and Mrs. Semini came out also. Thereupon arap Bei and arap Mngerechi who had agreed to seize Mr. Semini fell upon him seized him. Arap Sinei jumped upon Mrs. Semini and seized her. I ran into the bedroom with Kipruto A. Kamilong and we took a box and broke it open. We broke open several boxes. Arap Sinei called out "Have you got the money". We replied "We had not yet got it". Then arap Sinei brought Mrs. Semini into the bedroom. She looked for a box but we had destroyed the boxes. She went and picked up a green looking bag and gave it to me. Arap Sinei took out everything that was in the bag, money and papers and put them into my shuka which I held out. Kipruto arap Kamilong then took a box out to break it up.

Arap Sinei went and raped Mrs. Semini while we were in the room looking for the money. When he had done this he brought her back to the room and I then took her out and just off the verandah I raped her. No one else raped her except A. Sinei and myself. When I had done this we all ran away first taking Mrs. Semini to the bottom of the garden to show her her husband. We left her there. I saw Mr. Semini lying on the ground but I did not know at the time that he had been beaten as we had agreed not to beat him. A. Bei beat Mr. Semini and I spoke crossly to him because we had done this when we had agreed only to seize him.

We then took away the stuff we had stolen and divided it up a long way off. I took my share and left for the Lumbwa Reserve. I got Shs. 4/-. The other stuff we mostly left on the bush. Kumasai and Arap Mngerechi went off together and five of us slept at Naivasha in the bush. The next evening we got off and Arap Sinci and Arap Bei went to Ndabibi Estate and we three, the 2 Arap Kamilonga and myself went to the Lumbwa Reserve. I got to the Reserve last Monday (June 25th) and I was arrested. On the night of June 27th (Wed). I want the Government to send me to some war.

ing the boxes for money and etc. I had a snake with the money. I tried to find a snake because of the snake. I went out to look for a snake. I told at that time...

Exhibit D 2

I wish to make a statement. I was discharged from Keringet Estate Molo at the end of 1955 and I went to Naivasha and met six other Lumbwa. The leader of the party was Kibet arap Rongi who said that he had once worked for a European and it would be a good thing to steal from him. We got to the house at 8 p.m. Arap Bei and Arap Mngarochi seized the European and Kibet and myself entered the house. Arap Sinei seized the Memshib. My younger brother Kiplangat a Komailong kept watch by the path lest the boys came along. Kimasai helped seize the Swana. We looked in the house among the boxes for money and arap Sinei called out "Have you got the money" we replied "Not yet". Arap Sinei then took Mrs. Semini into the bedroom and said "If you do not give us the money we will kill you". Mrs. Semini took out the money and spilt it on the floor. We could not pick it up as it was dark. Kibet put the remainder in his shuke with the help of an electric torch which he picked up. Kibet tried to find the money which had fallen, but could not do so because of the paper and boxes strewn about the floor. I took a box out to look for money in it. I myself did not see the Memshib raped but both Arap Sinei and Kibet after we had left the house told me that they had raped her. I have nothing more to say.

AT 2 15 PM

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MR WALLACE

READS EXHIBITS
EXHIBIT D 3

I wish to make a statement. I came from Cheange in the Kericho District. I left the Lumbwa Reserves last month and went to Naivasha. There I joined a gang of which Kibet arap Barer (alias Arap Rongi) was the leader. We agreed to go and break into the house of a European. Two men were ordered to seize the Swans and some to seize his wife. My job was merely to keep a look out. I heard the European call out and I heard a fight. I heard the European call out "Leave me, or leave me I have no money" I got Shs. 4/- as my share of the robbery. I took no part in the matter except keeping watch. The first night at Buana Maiyir at Nakuru, we left there and slept at Arula Estate Naivasha we slept the third night at Buana Kakono we left there and slept at Buana Ray's on the Kingari. We were there for 4 days we slept in the bush and got food from his Lumbwa 5 of them gave us food. Their names were arap Chemo, arap Chewa, another arap Chemo, arap Kiasi the other one's name I do not know. On about the fifth day I, Kibet arap Barer, arap Omolo, Kiblangat arap Cherio, Kiasel arap I, the last named we found on Mr. Ray's farm. We left Mr. Ray's farm at about 10 o'clock we went to the shamba of the Buana we assaulted we got to the house and kept watch by the door of the room he would come out of. When the Buana came out 2 of us seized him and 2 of us seized the mensahib. Kiblangat arap Cherio and Kibet arap Barer seized the Buana. Arap Omolo and Kiasel seized the mensahib. Kiasel was the one who raped the mensahib first and then Kibet arap Barer raped her. Arap Omolo made the mensahib go round the house and find money. When we left we passed by the door of the garage all 5 of us. We slept in the Leleshwa bush on the farm of Buana Kakono. We divided up the money the following morning. Kiasel then went off in the direction of Mr. Ray's farm. The 4 of us who remained came to the quaranteen of Buana Kakono. We there saw a Lumbwa herd and asked him for food. He said he had finished his. Kiblangat arap Cherio and I went to Buana Jack's farm at

We then took away the stuff we had stolen and divided it up a long way off. I took my share and left for the Lumbwa Reserve. I got Shs. 4/-. The other stuff we mostly left on the bush. Kusagel and Arap Mngerechi went off together and five of us slept at Naivasha in the bush. The next evening we set off and arap. Sinei and Arap Bel went to Ndabibi Estate and we three, the 2 arap Kamileags and myself went to the Lumbwa Reserve I got to the Reserve last monday (June 25th) and I was arrested. On the night of June 27th (Wed). I want the Government to send me to some war.

I wish to make a statement. I was discharged from Aseringet state Molo at the end of 1888 and I went to Naivasha and met six other Lumbwa. The leader of the party was Kibet arap Rongi who said that he had once worked for a European and it would be a good thing to steal from him. We got to the house at 8. p. m. Arap Bei and Arap Mngerschi seized the European and Kibet and myself entered the house. Arap Sinei seized the Messahib. My younger brother Iplangat & Komilong kept watch by the path lest the boys came along. Kimasai helped seize the Swana. We looked in the house among the boxes for money and arap Sinei called out "Have you got the money" we replied "Not yet". Arap Sinei then took Mrs. Semini into the bedroom and said "If you do not give us the money we will kill you". Mrs. Semini took out the money and spilt it on the floor. We could not pick it up as it was dark. Kibet put the remainder in his shuke with the help of an electric torch which he picked up. Kibet tried to find the money which had fallen, but could not do so because of the paper and boxes strewn about the floor. I took a box out to look for money in it. I myself did not see the Messahib raped but both Arap Sinei and Kibet after we had left the house told me that they had raped her. I have nothing more to say.

AT 2 15 PM

M. W. ...

I wish to make a statement. I came from Chemagel in the Kericho District and went to Njoro. I came with Sawe arap Korit and arap Kimuta. The later had not got a Reg: Cert: The other 2 went to work for Bwana Reece and I went to work for Bwana Konongo at Njoro. I worked for 4 months and fell sick. I was ill for 3 weeks and then went to the Nakuru Native hospital. When I left Hospital I returned to the farm at Njoro and found there 3 Lumbwa Kibet arap Barere, Kiblangat arap Cherio and arap Komolo. We all 4 came to the Naivasha District. I had been signed off when I went to Hospital. We slept the first night at Bwana Maiyir at Nakuru, we left there and slept at Marula Estate Naivasha we slept the third night at Bwana Kakono we left there and slept at Bwana Ray's on the Kinangop. We were there for 4 days we slept in the bush and got food from his Lumbwa 5 of them gave us food. Their names were arap Chemobo arap Chemwa, another arap Chemoba, arap Misoi the other one's name I do not know. On about the fifth day, I, Kibet arap Barere, arap Komolo, Kiblangat arap Cherio, Kimasei arap ?, the last named we found on Mr. Ray's farm. We left Mr. Ray's farm at about 6 p.m. I went to the shamba of the Bwana we assaulted we got to the house and kept watch by the door of the room he would come out of. When the Bwana came out 2 of us seized him and 2 of us seized the Memsahib. Kiblangat arap Cherio and Kibet arap Barere seized the Bwana. Arap Komolo and Kimasei seized the Memsahib. Kimasei was the one who raped the Memsahib first and then Kibet arap Barere raped her. Arap Komolo made the Memsahib go round the house and find money. When we left we passed by the door of the garage all five of us. We slept in the Leleshwa bush on the farm of Bwana Kakono. We divided up the money the following morning. Kimasei then went off in the direction of Mr. Ray's farm. The 4 of us who remained came to the Quaranteen of Bwana Kakono. We there saw a Lumbwa herd and asked him for food. He said he had finished his. Kiblangat arap Cherio and I went to Bwana Jack's farm at

Ndabibi. Kibet and arap Komolo went off along the road towards Gilgil. They said they would go and wait for us at Molo if we did not find them there they said they would meet us at Chemagel. Kiblangat escaped from the car and I was brought to Naivasha. The spear butt is mine. I was carrying a spear I lost it. The stick belongs to arap Komolo who stole it from me of Mr. Ray's Lumbwa herds. The hat belongs to arap Komolo. One bit of wood belongs to my spear butt. The 5 cent piece with leather strap belongs to Kiblangat arap Cheriro. The split wooden sine handle belongs to Kibet arap Kabarere. The button is off the K.L.R. overcoat that arap Komolo was wearing. When we came to Mr. Ray's farm we found 2 Lumbwa without work they had nothing to do with this matter. Arap Gatam knows all about this he was working for the Bwana we assaulted. In the morning when we divided up the money we gave 4/- to Kimasei to give to arap Gatam as he knew all about the matter. We each took 4/10.

did not take the stick.

5 cent piece on the ...

split handle I do not know.

Exhibit D 7

I want to make an absolutely full statement and hide nothing from the time I left home. I came from the Kericho District and slept at Keringet. There were three of us. Myself Kibet arap Barere and Arap Kerio who has since got work up at Mr. Ray's farm at Njora. We next slept at Bwana Toogood's farm at Nakuru. We then slept at Marula Estate Naivasha, we then went to Kongoni farm. Previously, Kibet had left us near Gilgil and gone back towards Nakuru. I and arap Kerio went from Kongoni farm to Mr. Ray's farm on the Kinangop. Arap Kerio got work there. I found arap Komolo, whom I had previously met at Marula, up at Mr. Ray's farm. We stopped on Mr. Ray's farm 2 days and then Kibet arap Barerei turned up. We then made a plan to rob Bwana Semini. By this time our gang had increased to 5. We all met at Bwana Ray's. There was myself, Kibet, arap Komolo arap Sinei and Kimasai. We went off to Bwana Semini's farm getting there at about 8 p.m. We sat down and when the Bwana came on to the verandah to go to his bedroom some of us seized him. Arap sinei and arap Komolo seized the Bwana. Kibet and Kimasai went inside the house to look for money. They found nothing so we left the Bwana and ran away. I went off with arap Sinei and slept in the bush on Magunga. I was the person who held the Bwana on the ground. I do not know who seized the memsahib. The next morning arap Sinei and I went to Kongoni farm. That evening we were arrested. We were put in a motor car and I jumped out. I spent 2 days in the bush. The third day I was arrested at Nakuru. I now want to say that Kibet and Kimasai were the 2 who seized the memsahib. I did not see them rape her. I heard them say they had done so.

The hat was worn by Kimasai but Kibet said it was his.
 The Button came off a Kakhi Coat worn by arap Komolo.
 I do not know the stick.
 The 5 cent piece on the strap is mine.
 The split handle I do not know.

(Exhibit F.)

We had decided to go to the west from

in veranda. I was loading with lamp. I saw a piece of wood and butt of spear belong to Arap Sinei. It was his spear but Arap Komolo was carrying it. I have nothing more I want to say. I got 1/50 only we divided the money that night on the farm of Bwana Baigo.

MR WALLACE: I now propose to read the dying declaration.

MR JUSTICE WEBB: The statement, you mean?

MR WALLACE: The statement, Sir.

Mr wallace read the Statement of Alexander Senini, Exhibit E.

got hold of a... the lumber... elaborating... One was saying to hit... cutting grass. I fell... (See next page)... leaving two behind. One... round. The other was... I... let me go, saying I would give them anything they wanted. Began to think I was getting my wind again... able to overpower the natives. I grabbed... I nearly broke away from them but one... hitting me with a... split ear with something in it... I split his ear open. I got his... is kipandi and he called for help. They came again in big numbers... understand they to say knife. One who had... cross my forehead. By this time I was exhausted and took... eventually they came the whole lot of them on to me... could understand them but I do not know what language they spoke. They decided to let me go. I heard my wife crying and I went to-

(Exhibit E.)

We had decided to go to bed went from one door to another on verandah. I was leading with lamp. I saw first 2 Natives coming running up and thinking they were coming to ask me about stock asked them what they wanted. I realised they were armed with sticks and were coming for me. I hit leader with lamp and closed with them and finished up in unfinished foundation of house close to dining room. I was getting better of him but he called to others to help. I saw them coming so broke away from him I tried to run away but about 4 or 6 attacked me and they overpowered me. I got hold of one and pulled him over to protect my head he spoke in the Lumbwa language which I slightly understand and they started belabouring me on legs and then on arms to make me let go of the man. One was trying to hit me on the head with a runga as if he was cutting grass. I fell to the ground and eventually he hit me on temple and I felt I was going unconscious. They went away leaving two behind. One sitting on my back, my face was on the ground. The other was hitting me on the body with a runga. I then saw he had a sharpened out panga like a sime. I asked them to let me go, saying I would give them anything they wanted. I began to think I was getting my wind again and I thought I might be able to overpower the natives. I grabbed hold of one's stick and I nearly broke away from them but one that was standing started hitting me with a runga all over my body and legs. One had a split ear with something in it which I grabbed and pulled and I think I split his ear open. I got his kipandi, I realised it was his kipandi and he called for help. They came again in big numbers on me and I could hear them say "Kisu Kisu" I think in Swahili. I understand them to say knife. One who had a sime cut me right across my forehead. By this time I was exhausted and took my punishment. Eventually they came the whole lot of them on to me again hitting me with rungas saying, I think, "hit him on the legs". I could understand them but I do not know what language they spoke. They decided to let me go. I heard my wife crying and I went to-

A. I looked at them and they were

45-Q. Did you give the book to them?

46-Q. Where did you put the book? — A. I put it in my
wards here. They went away. I could not recognise any of
of my coat.
assailants.

47-Q. Outside on inside? — A. I pulled myself together and went to my brother.

48-Q. These passes were on them? — A. Yes. My assailants were wearing Shukas I do not know what else
they were wearing I had no time to see. I do not think I

49-Q. Could recognise them? — A. The one I chucked into the foundations
might be bruised. This happened about 3.30 p.m. They were
probably there about 1 hour.

to not see a guard, and he said

50-Q. About what time did HERBERT ALEXANDER DENISETT swear?

3-45 p.m. EXAMINED BY MR WALLACE.

1054-Q. MR WALLACE: You are Labour Officer, Nakuru? — A. I am.

1055-Q. Were you engaged in checking up Lumber Labour about the
middle of the year? — A. I was.

1056-Q. In the course of your duties where did you go? — I went
to Kinangop farm.

1057-Q. Do you know any of these seven accused here? — A. I know
you, 3 and 7.

1058-Q. When did you see them before? — A. On Kinangop farm.

1059-Q. MR JUSTICE WHEAT: When you say you knew them, do you mean
you knew them before that? — A. No, Your Honour.

1060-Q. MR WALLACE: How did they come under your notice? — A.
The manager of Kinangop farm told me

1061-Q. No, you must not say that. In consequence of what he told
you did you question them? — A. I did.

1062-Q. And were you satisfied with their answers? — A. I was
satisfied and handed No. 6 over to the askari on duty at

1063-Q. And what did you do? — A. I arrested them for being
out of the Lumber Reserve without passes.

1064-Q. When you arrested them, did you do anything else? —
I signed them as correct and then arrested.

- A. I looked at their kipandis, registration certificates.
- 1045.Q. Did you give them back to them? -- A. I kept them.
- 1046.Q. Where did you put them? -- A. In the right hand pocket of my coat.
- 1047.Q. Outside or inside? -- A. Outside.
- 1048.Q. Those names were on those two kipandis? -- A. Number 6 was Kiproso arap Senei and Number 7 Kiplangat arap Cherio.
- 1049.Q. Having arrested them for being out of the Reserve without pass what did you do? -- A. I put them in the back of my box body car together with another Native, an Mkamba, to act as a guard, and he sat between the two of them.
- 1050.Q. About what time did you leave Kinangop farm? -- A. About 6-45 p.m.
- 1051.Q. Where was your destination? -- A. Naivasha.
- 1052.Q. Mr Nisbet, on your way to Naivasha what happened? -- A. The accused No. 7 picked my pocket and got away with the two Registration Certificates.
- 1053.Q. What speed were you going at the time? -- A. About 50 miles an hour.
- 1054.Q. And when you say he got away, what do you mean? -- A. He jumped out of the car.
- 1055.Q. What did you do then? -- A. I stopped the car and found that the guard was hanging on to No. 6 who was also trying to get out. I turned the car round expecting to find No. 7 injured on the road but he was not there.
- 1056.Q. What did you do then? -- A. I went back to Kinangop Farm and with the help of the manager organized a search with about 60 boys. We did not find him. I went back to Naivasha and handed No. 6 over to the askari on duty at the Police Station at Naivasha at about 9-15 p.m.
- MR LEAN: No cross-examination, Your Honour.

His Honour read over his notes to the witness who signed same as correct and then withdrew.

prison about that man. I have no other statement to make".

This is the statement of accused No. 2 made to the Magistrate in the lower Court: "When I went to the bwana's house I had no intention of killing him. Now we heard the bwana is dead. If we had meant to kill we should have done it at once. When I left the farm of Mr Storey I found six others on the farm of Mr Knight. I do not wish to say any more now".

The statement of the third accused, Sir: "I want arap Chirwa (that is Kiprate) to be charged also. I have nothing else to say now".

The statement of the fourth accused: "When we went to bwana's house we went to steal money not to kill him. We were 8, not 7".

The statement of the fifth accused: "We went to bwana's house to steal, not to kill. I first seized bwana and I asked the others not to assault him. I made this statement before to Police. When we left we thought the bwana was all right. When I saw the other dragging the mensahib I asked why they were doing so. As we were going the other told me they had raped the lady. When I was struggling with bwana I got injuries in the legs."

This is the statement made by the sixth accused, Your Honour: "When we went we did not mean to kill the bwana. We went to steal only. We were eight, not seven."

The statement of the seventh accused: "When I went I went to steal, not kill. I was struggling with bwana near the stores. Although bwana is dead, even still I do deny what I did. When we left we thought he was all right. If we had wanted to kill we would have killed at once".

MR JUSTICE WHEB: Mr Lean?

MR LEAN: I do not propose to call any evidence, Sir.

MR JUSTICE WEBB: Do you accused wish to make any statement?
rather think I am bound to ask them.

(To Interpreter): Will you tell the first accused he has now the right if he wishes to make a statement without an oath or to give evidence on oath. Which does he wish to do.

(The accused remained silent).

MR LEAN: Your Honour, I don't know whether it is because I advised them not to say anything at all. Apparently he will not speak at all.

MR JUSTICE WEBB (to Accused No. 1): Do you not wish to say anything?

ACCUSED NO. 1: Nothing to say.

MR JUSTICE WEBB: Number 2, do you wish to make a statement?

ACCUSED NO. 2: I have nothing to say.

MR JUSTICE WEBB: Number 3?

ACCUSED NO. 3: Nothing.

MR JUSTICE WEBB: Number 4?

ACCUSED NO. 4: No.

MR JUSTICE WEBB: Number 5?

ACCUSED NO. 5: I have nothing.

MR JUSTICE WEBB: Number 6?

ACCUSED NO. 6: No.

MR JUSTICE WEBB: Number 7?

ACCUSED NO. 7: I have nothing to say.

MR JUSTICE WEBB: Mr Attorney, does the law give you the last word?

THE ATTORNEY GENERAL: Section 156, Your Honour; but I am quite prepared to waive it in this particular case if my friend would prefer it.

THE ATTORNEY GENERAL ADDRESSES ON BEHALF OF THE CROWN.

THE ATTORNEY GENERAL:

May it please Your Honour;

members the assessors,

The duty of proving every case that comes before the Court in this country is on the Crown, and this case is no exception to that rule, though, I am quite prepared to admit at the outset that the case has been extremely simplified by the attitude of the accused who from ignorance or innocence have supplied the Crown with all the necessary evidence, I submit, for their conviction. When I say ignorance I say it advisedly for it is perfectly clear from every statement made by the accused that they appear to believe that, provided they satisfy the Court that their original intention was only to steal, they are entitled to an acquittal on this charge.

If you have listened carefully to the statements given to Mr Hart and to Mr Hodge you must have seen running through every statement that extreme interest to impress the Court with the fact that they went to steal and not to kill. In fact, their only complaint seems to have been from start to finish that there are only seven in the dock instead of eight.

I therefore propose to deal with that aspect of the case first.

Even admitting what they suggest is true for the purposes of argument, the law in my view is abundantly clear that they are still guilty of the crime of which they are charged today. If I may be permitted to paraphrase Section 22 of the Penal Code (with which I know Your Honour is well acquainted) I will urge that where two or more persons form a common intention to prosecute an unlawful purpose (in this case on their own showing and on their own confessions, leaving out the point of view of

the prosecution for the moment, the unlawful purpose was to steal in the house of Mr Semini) and while prosecuting this purpose of stealing an offence is committed of such a nature that its commission was the probable consequence of the prosecution of such purpose which was to steal - that new offence being murder - then each of them is deemed to have committed that offence. Can you imagine a more probable consequence of going to a man's house at the dead of night to steal than that that man will defend his house and property, particularly when you go at a time when you know he will not be asleep. And if you are to pursue your purpose of stealing there is only one possible way, once the man is aware of your presence, and that is by killing him in order that you may carry out your foul purpose of stealing.

The first duty of the Crown in a case of murder is to prove that someone is in fact dead. I feel sure that you are satisfied from the evidence of Doctor Harley Mason that Mr Semini is now dead. And the next duty of the Crown is to satisfy you that he died as the result of something done to him by the persons in the dock. I think you will have little difficulty in coming to the conclusion that Mr Semini died as the result of the innumerable injuries he received on the night in question. It only falls to the Crown now to satisfy you that these multiple injuries were caused by all those people acting in concert. It is no part of the duty of the Crown to tell you how each blow was delivered. It matters not at all whether one or two were holding Mrs Semini in one part of the house, another one keeping watch outside to see that they were

not interrupted, others ransacking the bedroom and stealing all there was to steal, while the remainder were beating the owner of the house to death only seven yards away from the verandah; provided that you are satisfied that they were all working together for one common purpose.

Now, of course, the first thing that the Crown has to do in proving this case against the accused is to prove that the accused were there on the night in question. Quite apart from the evidence of the Crown, which I will repeat to you in a moment, you have the confession of each and all of them that they were present there and taking some part. And once these confessions are admitted and believed by you I feel that it is almost a matter of form that I should recapitulate the other evidence against them.

Here you have seven men admitting that they went to a certain house to steal, the owner of the house is beaten to death admittedly in the presence or in the vicinity of these robbers; and even if the evidence went no further I would ask you to convict on that and that alone. But in this case the evidence of the Crown goes much further. Most fortunately for the Crown amongst this band of burglars was one old employee of Mr Semini, and Mrs Semini with the aid of her torch was fortunate enough to be able to see and recognise this man in the middle of the melee, probably because he was paying special attention to the unfortunate woman. But we do not rely only on this very definite identification by Mrs Semini, for when this man was arrested days later (I am, of course, referring to Kibet, No. 1 accused) he pointed out to the police the spot where he had hidden Mrs Semini's torch,

the very torch that the unfortunate woman had been using on the night in question in order to try and take assistance to her husband. And it does not end there. In the immediate vicinity of the spot where Mr Semini was struggling with his assailants was found that hat. It is not a very distinguished hat, but it is very distinctive. That hat has been identified as the hat of Kibet, the first accused. Evidence has been led that before the incident he had been wearing that hat; after the incident he was never seen with it, nor was he arrested with it. Without the statements which Kibet made to the District Commissioner and to Mr Hart the case for the Crown would have been unanswerable; but he was good enough on being arrested to make the two statements to which I have referred, and has admitted frankly that he was there on the night in question. In an stretching and stressing this point particularly because having established that No. 1 was present on the night in question I ask you to consider the first small item of corroborative evidence that I have against the others that they were seen in company with Kibet both before and after the incident.

It will be necessary for me now to take each one in turn and point out to you the manner in which the Crown is suggesting that he is identified with the murder on the 14th June.

You have heard that No. 2 (his name is Kipruto) was seen with Kibet and that he was wearing an overcoat. You have had that overcoat produced to you in Court; there it is, and on that overcoat now you will find that there is a button missing, and you have heard that at the scene of the crime in the immediate vicinity of where Mr Semini

was struggling for his life a button is found similar to five other buttons on the overcoat which No. 2 was wearing. But, if that was not enough, he settled the case against himself when after arrest he led the police to the spot where certain of the articles stolen from Mr Scaini's house on that night were hidden. I refer, of course, to the Maltese coin, which I believe is not a Maltese coin at all but has been described as such. This can lead to one conclusion and to one conclusion only, namely, that he was one of the body of men that burgled on that night. And what does he say to Mr Hart when weeks later he has been arrested? He never suggests for a moment he was not taking part in this great enterprise; he tells you exactly how it was done - who was to keep watch, who was to hold the banana; and when he says the words "While we caught hold of the banana" he, at any rate, admits that he was one of those who dealt with the unfortunate Mr Scaini that night as the result of which treatment he died a few weeks later. And he then tells you that his share of the spoil was Four shillings. Can there be any reasonable doubt in the minds of reasonable people that he was one of those who actually took part in the killing of the deceased in this case?

It is no defence to say, "I did not think that we would kill him", or that "I did not intend to kill him", or that "We did not intend to kill him". The fact remains they have killed him while prosecuting their unlawful purpose.

I now pass to the third accused, Kiplangat arap Komoloug. He happens to be a brother of No. 2, and was seen with what I will call the Kibet gang before and after the incident. You have heard that he was out of

his reserve immediately before the incident or at the time of the incident, and shortly after when the police were looking for him back he was again in his reserve. He also has made a statement. Whether he imagines this statement will acquit him of murder or not I do not know, but his defence in this statement would appear to be, "I do not know what happened; I was on watch outside". He tells you - he told Mr Hodge rather - that he joined the gang of Kibet ^{which} was the leader. "We agreed to go and break into the house of an European. My job was merely to keep a look-out", a task which is quite as important so far as the commission of the crime is concerned as that of the man who used the sima or the spear or the runga or all of them.

I now come to No. 4. You will remember that this was the man who appeared to be working hand in glove with No. 5, Kipreach. They were found together in the same hut when the police went to arrest them. He, too, was seen with the Kibet gang. He was the man you will remember who resisted arrest and got away. (I am sorry, that is incorrect). It was his brother who resisted arrest and got away while he was held. That is No. 5. He, too, made a statement to Mr Hart, in which he definitely says that "He left the next day about 5 p.m. and went to Mr Semini's farm". He, too, claims the honourable task of being sentry outside, but he admits that when dividing the spoils afterwards he got four shillings, and he explains that he parted company with the gang and he and No. 5 disappeared into another part of the Colony, which fact is corroborated by P.C. Kiplangat. Nor does he even deny implication in this crime in the lower Court when he

Frankly states "We went to bwana's house to steal money, not to kill".

I now come to No. 3, Kiproach, whom I have already said appears to have been working in company with No. 4. He, too, was seen with the gang until after the burglary, when he made away with No. 4. Unfortunately for him, he took away with him his sime and on the scene of the fight was found the handle of a sime. The handle of that sime which was found fits the sime which was found with him perfectly. The sime he was carrying after the murder had no handle. On the handle and on the sime were found human blood stains by the Analyst. He, too, made a confession to Mr Hart and among other things he tells us, "I don't know what happened inside as I was struggling with bwana outside". You have heard from the doctors the condition of the bwana when that struggle was over. At least there is this to be said to his credit that he did not pretend that he was keeping guard outside also; and I suggest to you that why he has been so magnanimous is because he was found with injuries on him. He even tells us in his statement in the lower Court - he says at the beginning: "I first seized the bwana", taking on himself the credit of being the first man, and he finishes his statement by saying: "When I was struggling with bwana I got injuries in the legs". He was the man, you will remember, that I suggested had been struck by the lamp on the lip, which corroborates his statement that he was the first to attack the bwana, as necessarily the first man would be the man who received the full force of the lamp which Mr Sowini was carrying at that moment. He was the man, I have already told you,

who ran away as soon as the police arrived, and you have heard the story from the gentleman whose but he was sharing about what he said when he got back. And there is the further point with regard to this man that I would like to stress, and that is that the handle of that knife was picked up near the pool of blood in the garden where the prosecution suggest the main beating of Mr Semini took place.

MR JUSTICE WEBB: It was never proved that there was blood on the ground.

THE ATTORNEY GENERAL: It was never definitely proved, but it was scraped up and brought here and produced in Court. Although there was no definite proof of it I suggest Your Honour and the Assessors can look at it and come to the conclusion whether the suggestion of the Crown is correct or not. You will remember that the witness, in giving evidence about this, said that the grass was stained with what we allege was blood; the blood was not yet dry on it, and in his opinion, for what it was worth, it was blood. And having regard to all the facts that have been proved beyond doubt in this case I suggest it is a very reasonable presumption of the Crown to ask you to make that that was in fact the blood of Mr Semini. And it is also a very interesting fact that the handle which was picked up on the spot and which has been produced to you has been proved by the Analyst to have human blood. The point is perhaps small and not worth remembering, but it is also interesting to note that in the immediate vicinity of that handle was found a bootlace with a coin, with which I intend to identify another accused.

I have already read to you the statement which

he made after arrest.

I now come to No. 6, Kipruco. He also the Crown has proved, I suggest, was one of the Kibet gang. He was the one whom, you will remember, with No. 7 was arrested by Mr Nesbit, when No. 7 made that spectacular escape from the back of the car while he himself struggled with the other man at the back. I wonder why they were so anxious even to risk their lives by springing from a speeding motor-car rather than be arrested for not having their kipandis in order. However, having failed to escape he appears to have repented somewhat for he found him later conducting Inspector Gribble to the spot where some of the stolen property from Mr Semini's house was hidden. You will remember those two coats that Mrs Semini was able to identify definitely as those of her husband. Not satisfied with giving that piece of damning evidence against himself he made a full statement to the D.C. and to Mr Hart. You will remember that on the scene of the murder there was found a spear, the butt end of a spear, and the broken bit of wood which the prosecution allege fits into that butt end of that spear. You heard from the Analyst that the butt end of that spear had human blood on it. In his statement to Mr Hodge he claims that butt end and bit of wood as his own. He also gives details of the attack on that fatal night. He tells you that "When the buana came out two of us seized him and two of us seized the newsahib". He also tells us in his statement made to Mr Hart that "Three of us rushed and seized the buana". He says: "I and Kibet went into the house", and he seized - using his own words - "I seized the newsahib". He then gives all details as

to how the house was burgled and rifled on this night. And in the lower Court he follows that up with a short statement in which he says: "When we went we did not mean to kill the bwana". He goes on: "We only went to steal".

I now come to the last, Kiplangat. He also was one of the Kibet gang and when arrested he was in company with No. 6, who, I am sure, you are satisfied was there on the night in question. He was the one you will remember who sprang from the car when arrested by Mr Nesbit having first recovered the Certificates from Mr Nesbit's pocket. If we required any further evidence of these men's wonderful nerve on the night in question I am sure that would stand me in good stead.

He made a statement to Mr Hodge when he was eventually caught in which he tells you quite frankly, "I was the person who held the bwana on the ground"; and well might he make that admission for the 5 cent piece tied on by the bootlace he admits to be his, and that was found in the vicinity of what we allege was the blood pool of Mr Semini. In his statement in the lower Court he amplifies this slightly by saying: "I was struggling with the bwana near the stones". And in those words I see what I believe to be the one hope of the defence and a very weak one at that, and that is that this unfortunate man who seemed to have been wounded with every conceivable type of weapon, except a gun I presume, killed himself by rolling on the stones.

You have heard what the doctor had to say to that suggestion, or perhaps I should say in fairness to my learned friend, a similar suggestion. You will remember that he told you that those serious wounds on that man,

on the leg particularly, must have been inflicted with some sharp cutting instrument.

So much for the itemized evidence with regard to the seven accused.

I will now address myself to the general aspects of the case. The intention of a human being can only be judged by his actions. It is impossible to see into a man's mind in order to discover what he intends to do.

Now what were the actions of these people on the night in question? If I have convinced you that they were there - if you are not satisfied that they were not there of course the verdict must be not guilty - they all admit that they went there to steal. At the beginning of my address I said that would be sufficient for me to prove my case. But we only have their word that they went there to steal. What was the first action that Mrs Semini saw that night and that Mr Semini saw? If you are a gang of thieves who merely mean to steal surely when you discover that the owner and his wife are just retiring to bed in the light of their own lamp while you remain in absolute darkness outside, you decide to go another night when they are not so much on the alert, or you wait until you think they have gone to sleep.

But what in fact happened? Immediately the unfortunate man locked the door behind him he was attacked with a spear. I suggest to you that that spear was aimed at a mortal spot - at the throat. You have heard what Mrs Semini said about the direction that it was aimed. I suggest to you that that first spear that was aimed at Mr Semini actually cut him on the spine where the doctor

found a suit. What intention could that man have had when he aimed the spear at Mr Semini's throat? I suggest to you that he had one intention and one intention only, and that was to kill. Can you have any doubt that that was a pre-arranged attack? Every man in the gang was told off for his particular job, and I suggest to you that the intention of that gang was to kill Mr Semini on the spot, but that he put up such a magnificent fight that he stayed them off, possibly hurting them very severely. The fight continues right down into the garden. Mr Semini himself in his statement told you how he managed to stay off death by holding one of them as a shield against the other aggressors, and if you consider the places where Mr Semini was wounded most that will corroborate his statement, and will also account for the fact that he was not killed outright when they had him down in the garden.

I do suggest to you that on the first occasion they left him for dead, while the majority of them went back to the house to continue their burglary. But Mr Semini was not dead; he struggled once more to his feet and endeavoured to snatch a spear or a stick (I forget which it was) from the last of his assailants as he was departing, the only result being that the band returned and he was once more beaten to the earth and I suggest again left for dead.

Those are the main facts of the case.

You have got to be satisfied beyond all reasonable doubt that those are the seven men who committed the attack on that night. The evidence is none the worse because a great deal of it has come out

of the mouths of the defence themselves. In fact, the presumption would be that it was even better.

My final submission to you is this: if you are satisfied that those seven people were there on the night in question (and you have it from their own lips quite apart from the rest of the evidence that they were) and if you are satisfied that some, at any rate, of them inflicted the wounds from which Mr Semini died, I say that it will be impossible for you to differentiate between the guilt of any of them.

I suggest that the Crown has proved beyond all possible doubt that those seven men were acting together in concert as a gang, and whether it be the duty of one to remain outside and keep watch, and the other to hold the moushib, that the guilt of murder is on them all equally, and the submission of the Crown is that there can be one verdict and one verdict only against all seven, that of wilful murder.

THE COURT ADJOURNED UNTIL 10 a.m. ON
THE 22nd SEPTEMBER, 1954.

22nd September, 1954.

10 a.m.

MR LEAH ADDRESSES ON BEHALF OF THE ACCUSED.

Your Honour and the Assessors -

The crime that these Natives are charged with is, with the exception of treason, the most serious known to man. Throughout the history of criminal law the definition of murder has been getting more and more in favour of the accused. This is principally the result

of the withdrawal of the death penalty for a felony. In England now it is essential to show to the Courts either an intent to kill or an intent to cause grievous harm. And this is so all over the civilized world. It is for me to show that this intent was not in the minds of the accused. Under English law, which somewhat resembles the law here, it is somewhat doubtful whether if the collective intention is to do one wrong and another results, whether all are guilty of the actual wrong committed. However, this has to a large extent been simplified by the Penal Code. Section 22 of the Penal Code lays down the law on that point definitely. Under that section, in order to make all liable for a different crime from that intended, it is necessary to show that the crime that was actually committed was a probable result of the crime intended. In other words, unless you can say that death was the probable result of the crime intended, these men cannot be convicted collectively of murder. I do not mean by this that if you can definitely say this man killed or directly caused the death of Mr Semini that he should not abide by his acts, but unless there was a collective intent to commit a crime the probable result of which would be death they cannot all be convicted.

Now, as the Honourable the Attorney General has said, it is very hard to tell the intent of a man's mind, and the only way you can try to tell that intent is to look at the facts as they are given to us. The persons who would be most likely to know what actually happened is Mr Semini. Mr Semini made a statement before he died. Now Mr Semini says he was attacked by people with ranga.

He only makes one mention of any attack with a sime, and that I will deal with later.

With regard to the further evidence, it has been proved that various members of the gang were seen together before the attack. Now, all the accused are young men, not the sort of men you would expect to have great discretion over the affairs they contemplated. No evidence has been produced by the prosecution to show that any witness heard any suggestion of such an attack. If these young men had arranged to attack Mr Semini with such violence it is likely that they would not have mentioned it to somebody; is it not likely that they would have been inclined to boast of what they were going to do, and lastly is it not likely that some of them would have got frightened? And do you not think that it would be probable that some of the gang would attempt to leave the gang?

You must remember that everybody realises that to commit murder carries with it a death penalty. It has been suggested by the prosecution that the intention is shown by the behaviour of the accused at Mr Semini's house. I submit that the Crown is wrong there. The Crown says that the weapons carried by the accused included a spear, a sime, and a very heavy runga, any one of which weapons could have caused death instantaneously. Mrs Semini states that she saw a man rush past her with a spear towards her husband. However, this is directly opposed to Mr Semini's statement. Even if he did go past her carrying a spear to thrust at Mr Semini, is it likely that he would aim at such a small place as the throat? The assailant would be far more inclined to

aim at his chest which is a large area and to which a mortal blow could be easily inflicted. Again, every one of the accused's own statements or confessions; it has been told us that the accused saw Mr Semini come out by himself to start with; presumably for the reason for which he came out he would go some distance from the house. What would have been easier than to kill him then and there and then they would only have had one defenceless woman to contend with? Everyone knows that it is easier to deal with people one at a time than collectively. The accused themselves make statements which are in striking conformity with the evidence. They all say that they went there with the one intention of stealing. They all state: "If we had wished to kill we could have killed at once". And that is obvious.

Again, the Crown has alleged that when Mr Semini finished with the first struggle he was left for dead. This I aver cannot be so. Mr Semini in his own statement says two men were left with him. You do not leave two men to guard a dead body.

There is no doubt about it, there was a carefully worked out plan. Members of the gang were to seize Mr Semini and Mrs Semini; the reason for that was that they did not want either party to interfere with them. It must be remembered that the natives of Mr Semini only lived three-quarters of a mile away. All that was necessary and all that was intended was to hold Mr and Mrs Semini to prevent them fetching the boys. You cannot say that there was a joint intention to beat and kill Mr Semini.

You have all heard what Mr Ridgway said about this handle and this sine. You have all heard him say that this handle is made of poor wood and likely to break.

You all heard him say that that handle could be broken by a blow like that. (Learned Counsel demonstrates). I also submit to you that that handle would be more likely to break by a force hitting it that, way. (Learned Counsel demonstrates).

Now you have heard Dr Wetherell state that Mr Semini had a bad bruise in the back caused by a small hard object, not a thing like a rungu. He said that he thought a spear butt like that was likely to cause it. Now you all see that spear butt and it is sharpened or flattened rather like a spear itself. A blow with the force that Dr Wetherell said must have been used would probably have gone through his clothes and made a hole in his back. There was no such hole there. I submit to you that that wound was more likely caused by a blow with the butt of that size. Again it could not have been caused by the point for obvious reasons.

It has also been said that the house was not properly finished. Mrs Semini has said that the foundations of the unfinished part of the house had a certain amount of rubble or stones lying there. And again the foundations of the house were raised slightly. The doctors say that it is within the realms of possibility that such objects could have caused many bruises.

A sword like that (learned Counsel produces the same) is made for hard use. It is not expected that the handle will break when using the blade. The handle was probably broken in using it in a manner in which it was not made to be used. If that is the case, the only place the accused could have held the sword is close to the butt, otherwise he would have cut his hand. And you cannot give

a very severe blow by holding it close to the butt.

Mr Ridgeway said that the woodwork of this spear is of very poor quality. I suggest to you that the way that wood got broken was probably by somebody putting his foot on it.

You have also got to take into consideration the fact that Mr Semini first hit his assailant with that lamp. Now a lamp like that has a glass globe which comes out like that (demonstrating). Again, the witnesses for the prosecution have told us that there was broken glass lying in the foundations. Mr Ridgeway has told us that there were pieces of glass there the size of a shilling, some a little larger.

Now Dr Wetherell, who was the first doctor to see Mr Semini and therefore probably had the best opportunity of ascertaining how these wounds came about, was definite that many of the cuts could only have been caused by very sharp instruments. That size cannot be said to be very sharp. We have not seen the blade of the spear, but the normal Native spear is not very sharp. The metal is too soft. One of the sharpest cutting things in the world is broken glass, and if Mr Semini fell or jumped off the verandah to the foundations where that broken glass was, the result is obvious, especially when you remember that he was probably rolling about in those foundations.

Again Dr Wetherell states most of the wounds were on the right hand side. Does not this suggest to you that he probably fell on that side rather than the other? If all these wounds were the result of beating would they not have been more evenly distributed? Again, Dr Wetherell

told us that Mr Semini stated that he heard the words, "Cut off his hands" or "Cut off his feet or ears", - I have forgotten. He qualifies that by saying that that was what Mr Semini had ~~may~~ simply gathered, though he could not be certain. Dr Wetherell further states that Mr Semini admitted, and Mr Semini in his own statement admits, that he does not know much Lumbwa. Mr Semini says that he heard them using the words which sounded like "kim, kim". These are Swahili words. If Lumbwa were talking to each other, would they be likely to use Swahili words? At that stage, I submit to you, Mr Semini was in such a feeble state of mind he did not know what was happening. He states a man cut him across the forehead with this ~~size~~, or something like it. I suggest to you that any man who had lost his temper, is excited, goes to cut another with this across the forehead; it is not just a plain cut, the bone is probably broken.

Mrs Semini tells us how a man rushed past her with a spear and thrust at her husband's neck. Evidence has been given of a wound over the chin. The prosecution aver that that wound probably came from the spear thrust. Dr Wetherell says that he does not think that such a wound was caused by a sharp instrument, though he admittedly says it could have been. However a thing that seemed to him to be of the same sharpness as the instrument that cut his chin was a cigarette tin. And there I suggest (learned Counsel indicates top of lamp) is something that could have caused it.

After two doctors had treated Mr Semini at Naivasha Dr Wetherell gave the Court as his opinion that Mr Semini had a very good chance of recovery.

Now it has been further said by Dr Mason that Mr Semini died from a form of blood poisoning, in his opinion, caused by these wounds, but he told the Court that it would not be possible definitely to swear that these wounds were in fact the source of infection, although it was probable. He states that it is feasible and it is probable that the infection could have been carried by other means. Now Dr Wetherell and Dr Hemsted have both told us that they treated those wounds, put antiseptic on them. Now does it not seem that infection might have come later? Again, might not infection have come from wounds or outside sources, say a splinter of wood or something like that quite big enough to carry infection, which they did not know about?

If you feel that those possibilities are strong enough to take death away from the natural and probable consequences of the act, these men have committed no crime. If you feel that death was the result of the injuries caused by Mr Semini's fall or dive from the verandah into the foundations with his assailant, then you must not convict the accused of causing death with wilful intent.

Throughout this case and before it happened there is no doubt that people were all filled with one idea, and that was that these accused had definitely committed the crime of murder. No better example of this is shown than by that coin which was produced in Court and was said to be a Maltese coin. It was a strange coin; Mr Semini was a Maltese; it was promptly connected up and said to be a Maltese coin. Though in fact it did belong to the Semini family it shows the attitude of mind that people were in. Now if you start with the definite idea

that those men were guilty, the facts fall into place very nicely. However, it is a principle of British law and justice that a man is not guilty until he is found so by a Court of competent jurisdiction. I do not start as you should with the assumption of the charge. I submit to you there are facts strong enough to disprove the Crown's allegation; at any rate, facts strong enough to disprove that death was the probable and natural consequence of the acts done.

Now if that is your view you have only one course to adopt, and that is to acquit all. If, however, you hold that death probably resulted from the injuries sustained during Mrs Semisi's fall or roll on the ground amongst that broken glass, these men, I submit to you, could only be guilty of the crime of manslaughter. There is a precedent for such a verdict. It was decided in the case of the King against Keith in 1862 that in such circumstances the crime is only of manslaughter. Also in another case, the King versus Macdonald, decided in 1844. It was held there that where death does not ensue directly from the wound but rather from the after-treatment of the sufferer (in this case I make no allegation against the doctors but state that other things might have got in in the meanwhile in the shape of poison) then the charge of murder cannot be supported.

The law out here states that where death results in the attempt to commit a felony it is murder. As I have explained to you already that law must be qualified by putting in the words "felony likely to result in death". In a case called The King against Lumley in 1911 it was held that where a person wished to procure an abortion

that unless means were used a person could not be intrinsically likely to be dangerous to life. The offence could only be that of manslaughter.

I would ask you to bear in mind the section of the Penal Code, Number 22, the reading of which is as follows: "When two or more persons form a common purpose to prosecute an unlawful purpose in conjunction with one another and in the prosecution of such purpose an offence is committed of such a nature that its commission was the probable consequence of the prosecution of such purpose each of them is deemed to have committed that offence."

I do submit to you that the common purpose here was theft; that murder could not possibly be said to have been a probable consequence, and that if you could point out one person and say he did the act you must acquit them all.

SUMMING UP AND ASSESSORS' OPINIONS

MR JUSTICE WKBBL. Gentlemen, I will not detain you very long.

I am going to ask you five questions. The first question is ~~this~~ this: Did these accused people go to the house of Mr Semini in order to steal?

I am not going to take up your time going through all the evidence about that because you had the best of all evidence in that all the accused admit that they did. You heard the other evidence against some of them; objects belonging to them which were found on the scene, but it seems to me unnecessary to trouble you with that because, as I say, the accused admitted to Mr Hodge and to Mr Hart and to the Magistrate that they had gone there to steal.

Well, now I will ask the Second Assessor a few

questions? Did they go to steal?

ASSESSOR NO. 1: I will only say this. If I had been

together and if there is a large party of people

one falls, all of them are liable.

MR JUSTICE WEBB: That is not answering my question.

ASSESSOR NO. 1: If they went there to steal, why did they

steal? Why did they kill the woman?

MR JUSTICE WEBB: The Second Assessor?

ASSESSOR NO. 2: They did not go to steal.

MR JUSTICE WEBB: They did not?

ASSESSOR NO. 2: They did not go to steal.

MR JUSTICE WEBB: Any more?

ASSESSOR NO. 2: They went to do a bad thing and the whole

is not pleased with it. Since I was born I have never

heard people going to steal and then killing a woman

and raping her.

MR JUSTICE WEBB: We are not concerned with that at present.

ASSESSOR NO. 5: They went there to kill, and if they had gone

there to the bwana they should not have caught hold of the

woman. All the Lubwa young men at home are angry with

these people on account of what they have done because

they have blocked the way for the others.

MR JUSTICE WEBB: I am going to ask you several questions and you
can answer them one by one. The second question I ask you

is: Did they intend to attack anyone who resisted them?

The evidence is that first of all they went to the

house when they knew that Mr Semini and his wife were there

because there was a light, and as soon as Mr Semini appeared

two of them jumped at him and when those two found that they

were unable to overpower him they called for help and others

came. If you believe that, is it not obvious that they

did intend to attack anyone who resisted? Now, do you think you could answer that question?

ASSESSOR NO. 1: They made up their minds when they left their Reserve that they would kill, they would attack anyone who resisted them.

ASSESSOR NO. 2: If they had found anyone standing in their way they would have killed and then gone past.

ASSESSOR NO. 3: If the enemies come through this door and find the people here will they not kill?

MR JUSTICE WEBB: The next question is: Did they beat Mr Semini?

ASSESSOR NO. 1: They killed him; he did not die on account of sickness.

ASSESSOR NO. 2: They beat him. If he had died of sickness why did he not die before these people attacked him?

ASSESSOR NO. 3: They killed him; and the weapons they used are before the Court.

MR JUSTICE WEBB: I was going to ask if he died of that beating, but you have already said he did.

Now the last question I want to ask is: In your opinion are they guilty of murder? That is partly a question of law. Now the law is this, that if a number of people go out intending to commit a crime and it is likely that that crime will cause the death of somebody, each and every one of those people is guilty of murder, whether the person is killed by one of them or by two of them or by all of them. Now you have agreed that these people did go out in order to steal and that they had made up their minds that if anyone tried to stop them they would attack them, and we know that they had a spear and a sine and a rungu, and we know that when Mr Semini came out they did not just catch hold of him and hold him (there were seven of them and they could have done so) they did not

merely catch hold of him but they beat him, cut him, and the result of that beating was that he died.

Now their Advocate suggests that because he did not die at once but later from blood poisoning it is not murder. The law is that if I wound one of your gentlemen and if the wound becomes poisoned and bad and makes you sick and you die I have committed murder just as much as if you died at the very moment, unless I have some excuse for striking the blow.

Now with that explanation are you able to answer the question: Do you consider that these accused are guilty of murder or not?

ASSESSOR NO. 1: I cannot reply to that question because I went to the war. When we used to go to the war three people of the party might kill the enemies and on our return the people at home would be glad to hear about the murderers, those who had killed the enemies. But they would not be pleased with those who had not done the killing. If I can differentiate that so and so is the person who struck Mr Semini with the spear or rungu or sime then I can say they are guilty. Then I say they are guilty and they can be hanged, but the rest ought to be let go. I am surprised if they are all going to be killed because some of them did not catch hold of the bwana.

ASSESSOR NO. 2: If a party goes to war and some kill, the relatives of the brave people who have done the killing would be glad with them but not with those who did not kill anyone. Now the Government have come into this country and they have stopped people going to fight against the other tribes. But if one of these people confess "I struck Mr Semini" and the others also state the same, even if there are five or six or any number they can be found guilty.

you to ...
Dave ...

10. ...
kill the ...
appeared ...
he ...
you ...
attack ...
know who killed ...
MBH: Thank you, no trouble...

J. G. B. G. M. -

...
...
the 14th June to steal ...
for they have all admitted ...
S.O. Mr. Hodge ...
to consider ...
... to which ...

Accused No. 1 was identified ...
what, identified as being his, was found on the scene, and
he, together with accused no. 2, led Mr Gribbin on the 30th
of June to a place where a silver collar part of the stolen
property, was found. Accused No. 1 when arrested on the
28th of June, produced an electric torch, also taken from
the house.

Accused No. 2 was seen a few days before the crime, and
on the night of the crime or very shortly after it, wearing
a military overcoat. A military coat was found at the place
where he was arrested, with one button missing, and a
similar button was found on the scene.

Accused No. 5 when arrested was in possession of a sime
without a handle. The handle of that sime was found on the

scene and upon the ground were found a quantity of human blood.

Upon the ground was found the upper portion of a piece of wood forming portion of the wall of the building. There were traces of human blood, and it is considered that the accused to be jointly accused of a.

Accused No. 2 admits the ownership of a small piece of wood with a five-cent piece attached to it, which was also found on the scene.

In the course of the robbery Mr Semini was assaulted and received numerous injuries. He died on the 10th of July from blood-poisoning, and the medical evidence leaves no doubt in my mind that his death was due to the injuries he received on that night. Indeed, it is equally clear from the evidence of Mr Wetherell that he would have succumbed to his injuries on that night had it not been for the skilled attention he received.

But the accused say that as they only went to rob and did not intend to kill Mr Semini, they are not responsible for his death. In my opinion, that is not the law.

Article 22 of the Penal Code provides that when two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another and in the prosecution of such purpose an offence is committed of such a nature that its commission was the probable consequence of the prosecution of that purpose, each of them is deemed to have committed the offence. And Article 189(b) provides that a person who knows that the act that he does will probably cause the death of or harm to some person even though he wishes not to do him that harm or death is considered to intend his death.

In my opinion it is clear from the facts the accused

intended to assault and overpower Mr Semini. There was never any attempt merely to hold him, but his statement and the evidence of Mrs Semini show that he was at once attacked with dangerous or deadly weapons, and that the attack was resumed and repeated when it appeared that he had not been completely disabled by the first attack. In these circumstances it is immaterial in law whether the accused believed or not that he was still alive when they finally left, or whether they thought that he was not very seriously injured. They must have known that they had inflicted on him grievous and dangerous injuries, and it makes no matter whether they were indifferent as to the result of these injuries, or even wished that they should not result in his death.

Two of the accused, Numbers 3 and 4, suggest that they were keeping watch and took no part in the assault. Even if this be so, I am of opinion that it makes no difference to their legal responsibility. The common intention of the whole gang was to assault and rob and they were armed with weapons which included a spear, a sime and a heavy club, all weapons intrinsically likely to cause death. Death was therefore a probable consequence of the crime which the accused intended to commit. Each and every member of the gang is therefore responsible if death in fact resulted from the assault.

But I do not believe that these two did not take part in the assaults on Mr Semini. He describes how he was first attacked by one who called others to help him, and he was then attacked by four or six who beat him and overpowered him. Then two were left to guard him, and when he endeavoured to escape from them there was another call for help and "they came again in big numbers". This is borne out by Mrs Semini's evidence. She says: "There was a shout from

one of the boys and then boys came from every direction and attacked my husband". Then she was held on the verandah by one boy until there was another shout and he left her and went to join the others. Then a number of boys swarmed into the bedroom and ransacked it until there came another call from outside. Then they all dashed away leaving her alone. Again after a little while they came back, collected their loot and finally departed.

In my opinion all the accused are equally guilty in law. So far as concerns the precise part played by each accused as revealed by their statements, I have, in the circumstances of this case, regarded each statement as evidence only against the maker of it.

I find all the accused guilty of murder contrary to Section 186 of the Penal Code.

A L L O C U T U S

DISTRICT REGISTRAR: I have now to ask the accused if they have anything to say why sentence should not be passed on them according to law.

ACCUSED NO. 1: I want to begin my statement and tell you everything I did.

JUSTICE WEBB: We have heard that. Have you anything to say why sentence should not be passed?

ACCUSED NO. 1: I want to tell you what I did on arrival at bwana's house. Do you want me to tell you what I did on entering bwana's house?

JUSTICE WEBB: No.

ACCUSED NO. 1: I have nothing to say.

ACCUSED NO. 2: I have nothing to say.

ACCUSED NO. 3: I was a sentry.

ACCUSED NO. 4: I did not see the bwana even. I was a sentry.

ACCUSED NO. 5: When I got there first bwana began by striking me with

23026/34

188

C. O.

Mr. Freeston. 27

Mr.

Mr. Boyd

Mr. Parkinson

Sir G. Tomlinson

Sir C. Bottomley

Sir J. Shuckburgh

Parli. U.S. of S.

Party U.S. of S.

Secretary of State

DOWNING STREET.

November, 1954.

For the Secretary of State's signature.

DRAFT.

Dear Sir,

SIR GIFFORD FOX. By 11/11/54

3 on 12/1/54

You will remember that in

answering your question in the House

on the 7th of November I said that

it was the Kenya Government's

intention to remove the Laibons

and their families to a district

remote from their tribal area. You

may be interested to know that,

according to news which I have just

received, the move is now being

actually carried out.

Ym

(Sgd) P CUNLIFFE-LISTER.

FURTHER ACTION.

PROCLAMATION No. 92

37 189

COLONY AND PROTECTORATE OF KENYA.



THE LAIBONS REMOVAL ORDINANCE, 1934.

PROCLAMATION

A. DE V. WADE.



BY Armigel de Vins Wade, Esquire, Officer of the Most Excellent Order of the British Empire, Governor's Deputy of the Colony and Protectorate of Kenya.

IN EXERCISE of the powers conferred upon me by section 3 of the Laibons Removal Ordinance, 1934, I do hereby declare the area set out in the Schedule hereto to be a settlement area for the purposes of the aforesaid Ordinance.

GOD SAVE THE KING.

Given under my hand and the Public Seal of the Colony at Nairobi this 25th day of September, 1934.

By Command of the Governor's Deputy.

JUXON BARTON,

for Acting Colonial Secretary.

SCHEDULE.

Commencing at a cairn on the headland approximately one-and-a-third miles south of Ukongo Point on the eastern shore of Lake Victoria;

thence easterly by a straight line to the trigonometrical station Usengere;

thence still easterly by a straight line to the trigonometrical station Mirari;

thence southerly by a straight line to survey point 5250 on the summit of Kiangongo Hill;

PROVISION 1596

190

351

13. SOUTH STREET,
W.I.

14th November 1934

Dear Cunliffe Lister,

Many thanks for your letter
of the 13th November regarding Kenya.

No 34

I am glad to hear that the police in Kenya
is being strengthened. I do not, however, think
that this is the first requisite. It seems to me
that what is required is prompt and exemplary pun-
ishment when the criminals have been sentenced.
Women and children on isolated farms among swarms
of natives require more careful protection than
would be the case in a settled community, all of
one colour.

Yours sincerely,

Rt. Hon. Sir P. Cunliffe Lister,
G.B.E., M.C., M.P.
Colonial Office, S.W.I.

C. 2

Mr.

Mr.

Mr.

Mr. Parkinson

Mr. Tomlinson

Sir C. Bottomey

Sir J. Shackburgh

Berns. U.S. of S

Part. U.S. of S

Secretary of State

For the Secretary of State's signature

15 November 1964.

Dear Sir

I have your letter of the

DRAFT.

8th of November.

first of all I should

explain that there were certain

reductions in the strength of the Police

Force in Kenya in 1962. These

reductions were strongly supported by

the Unofficial Members on the Local

Advisory Expenditure Committee and

They were approved by the Governor with the

concurrence of the Chief of Police.

The efficiency of the

Police, to which high tribute has been

paid by members of the Legislative

Council is evidenced by the fact that

MAJOR GENERAL
SIR ALFRED KNOX, KCB., CMG., MP.

made in the recommendation
of the Expenditure Advisory Committee,
in which the unopposed had
agreed representation with the
officials, and were

FURTHER ACTION.

in

of murder & assault by natives against Europeans,
in every case, with one exception, the
offenders were apprehended and brought to
trial.

Government has been consider-
ing very carefully the adequacy of the
present Force. If you have read a
recent debate in the Legislative Council
you will be aware that Government has
increased the number of Assistant
Inspectors and ~~has~~ strengthened the
Criminal Investigation Department, and
the Commissioner of Police has been

*instructed to prepare a report showing
the prevalence of crime and to what
extent, if any, the incidence has been
affected by the recent restrictions on
the Police Force.*

As I have already said in
the House of Commons, I do not think it
would be proper for me to comment on

C. O.

Mr.

Mr.

Mr.

Mr. Parkinson.

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permi. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

192
judicial sentences, but I may observe
that in the serious case to which
attention was drawn in the House, the
seven natives concerned were
sentenced to death and the trial was
concluded within three months of the
crime being committed.

You will forgive my saying
that
that the suggestion ~~of~~ the Kenya
settlers may resort to lynch law is
one which no one who knows them would
make.

P. Cunliffe-Lister

(Sgd.) P. CUNLIFFE-LISTER.

FURTHER ACTION.

1. I have your letter
2. Their ⁱⁿ reduction of the Police Act in 1933

this followed a meeting which was strongly supported by the supporters of the last November to the Exp. Cts. & was approved by the Council of Police with the concurrence of the Chief of Police.

3. The efficiency of the Police, to the high degree has been put by members of the City Co. is evidenced by the fact that every case etc one ^{or more} officers apprehended & led to trial (follow words of my answer).

6. You will forgive my saying that the
reputation that the Ranger soldiers may
want to have had is the which
is one who have done it with me

83
190
W.1.

13. SOUTH STREET.

8th November 1934

GROSVENOR 1990

Dear Cunliffe-Lister,

I do not think from your replies in the House yesterday that the Governor of Kenya has given you an idea of the feelings among settlers there.

The following is an extract from a letter I received a week or two ago from a lady formerly resident in my constituency:

Answered - 13 Nov 34

"It is most uncomfortable living here, as we have no protection at all and can do nothing unless the native actually hits one, or the like, and even then one has to stand up and be tried and prove actual provocation if one defends oneself, which, when dealing with people who have no real understanding of what an oath in court or elsewhere means, makes it almost impossible. If the Government imagine that they have a contented white population here they are either living in

"a fool's paradise or deliberately ignoring the real state of affairs.

Both my husband and I are very very loyal to the king BUT we realise that if we are to stay in Kenya, our only hope is a union with South Africa, away entirely from the control of the British Government. I have heard this opinion from many settlers, and it is one which is steadily gaining ground, even with people like my husband who at one time would have been horrified if such a suggestion had been put to him.

For people in a Crown Colony to be under the British is to commit political suicide, and without any just cause: after all the British Govt. invited settlers here, and now it is not safe to leave a woman or a small girl alone on a farm or even in a town.

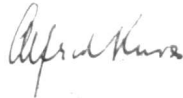
The politicians of England forget that if they drive the white people of Kenya to a state of desperation, that they have a way out, and that is

"via South Africa, and it is more than probable that South Africa will cut away entirely from the British and form a United States of South Africa, we should be under a Dutch Government but it would be a white one: at present we are ruled by men who will stand up for any people who are black, brown or foreign - in fact, anything but English, and for their own people they have no time."

There is another possibility that settlers, driven to desperation, may resort to lynch law.

To my mind, what is required is exemplary sentences which at present are not given.

Yours sincerely,



Rt. Hon. Sir P. Cunliffe-Lister,
M.C., M.P.
Colonial Office,
Downing Street, S.W.1.

198



India Office
Whitehall

R

Dear Sir

Reference is made to the letter of the
 21st November 1947, in which you informed me that you
 had been asked to advise on the proposed
 extension of the Indian Income Tax Act, 1922, to
 the territories of the States. It is noted that the
 Government are desirous of extending the
 provisions of the Act to the States with effect
 from the 1st January 1948. It is suggested that
 the Government should consider the possibility of
 extending the provisions of the Act to the States
 with effect from the 1st January 1948. It is
 suggested that the Government should consider the
 possibility of extending the provisions of the Act
 to the States with effect from the 1st January
 1948. It is suggested that the Government
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 from the 1st January 1948. It is suggested
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 possibility of extending the provisions of the
 Act to the States with effect from the 1st
 January 1948. It is suggested that the
 Government should consider the possibility of
 extending the provisions of the Act to the
 States with effect from the 1st January 1948.

all /
Most

Yours faithfully

E.B. Foye, Esq.

P. & J.

November, 1934.

Sir,

1302

With reference to your letter dated the 16th October regarding public executions in India, I am directed by the Secretary of State for India to state that the execution of a person sentenced to death in India takes place, in almost every case, within the walls of the prison in which he is confined. The only provinces in which the power to order a public execution still exists are Bombay and the Punjab.

1303

In August last, it was decided by the Government of Bombay that the execution of two notorious dacoits in the Larkana district of Sind should take place in public. Conditions in this district are primitive and cannot be judged by the standards that would be applied to other parts of India; murders are frequent, and the crimes of the dacoits had terrorised the general population. The Government of Bombay decided that in order to restore respect for the law and to reassure the local inhabitants, it was necessary to take the drastic and unusual step of ordering a public execution.

The Secretary of State has considered the report furnished by the Government of Bombay and has come to the conclusion that the decision of the Government of Bombay in this case was justified by the exceptional circumstances and that in the interests of the maintenance of law and order, the power to order a public execution cannot at present be withdrawn. He is satisfied that there is no prospect of such executions being ordered in these parts of India which are more abreast of the times, and that in the provinces where the power to order a public execution still exists, the exercise of that power can safely and should be left to the discretion of the local

Governments.
The Secy. C. Hillier Esq.,
1 Warrel's Lane,
London.

I am, Sir,
Your obedient servant,

(Sgd.) R. BEEL

31

H
R

The Hon. Mr. Secretary

Dear Croft,

Sir Philip Cunliffe-Lister has asked me to say that he would be glad if the India Office would let him know as soon as possible what reply they would give him to make to the last part of Sir Clifford Fox's Question No. 161 on the Order Paper of the 11th of October:-

"..... and whether, in this connection, his attention has been called to the existing practice in India and, in particular, to the public execution on 6th August at Shahdadpore of two dacoits who had previously terrorized the Larkar district of Sind".

Yours sincerely,

(Sd.) E. B. Boyd.

P.S. The Secretary of State said that he would like to know whether "public executions" are in fact tolerated in India. (He is strongly opposed to them in East Africa).

E. B. E.

W. D. Croft, Esq., C.I.E.

C. O.

23026/34

202

Mr. Frenton 1/11/34
Mr.
Mr.
Mr. Parkinson
Sir G. Tomlinson
Sir C. Bottamley
Sir J. Shuckburgh
Permit. U.S. of S.
Party. U.S. of S.
Secretary of State.

Kenya

Answered by No 30

Copied & sent
4/11 9-11-34

29

C. O.
R 1 NOV
D 1

H.C.

No 281

Following information

required for questions in
Parliament Nov. 7th (a)

How many cases of attempted
criminal assault on white
women by natives in Kenya
have been reported in last
twelve months (b) whether
such crimes are on the
increase (c) number of
cases in which white

persons have been victims
of (1) murder (2) criminal
assault (3) common assault
respectively by natives
during 1934 and
number of such cases

DRAFT. Tel.
Important
for Naush

noted
5/11

FURTHER ACTION.

respectively
(by ~~category~~) where criminals have
escaped detection or apprehension

(d) date of execution of seven
natives convicted in SEMINI
case. As regards last named
please state whether recommendation
36 of Bule Report was or
will be adopted

SRCER

C. O.

27/103

Mr. Freeston. 4/10

Mr. ~~Hard~~ 5-10

Mr. Parkinson.

Sir G. Tomlinson.

Mr. C. Bottomley. 5-10

Mr. J. Shuckburgh.

Parly. U.S. of S.

Parly. U.S. of S.

Secretary of State.

pto. for the Secretary of State's Signature.

DOWNING STREET.

6 October, 1934.

DRAFT.

SIR GIFFORD FOL, B.E., M.P.

Dear Sir,

You wrote to me on the 28th of
September about the Semini case in
Kenya, quoting a correspondent who
urged that the culprits should be
executed in public.

I have no knowledge of this case
other than what I have derived from
the Press. If the newspapers are
correct, seven Lumbwa have been
sentenced to death. I do not know
whether they have exercised their
right of appeal to the Court of Appeal
in East Africa. But in any case,
capital sentences require confirmation
by the Governor, in whom is vested
the

FURTHER ACTION.

the Royal prerogative of
mercy; and you will recognize
the impossibility of my
interfering with his discretion.

As regards the executions,
public executions have not been
tolerated in East Africa for many
years, and I cannot conceive that
any Secretary of State would
sanction a revival of the practice.

There is precedent, however, for
allowing the elders of the tribe
to see the condemned man before
and after execution, so as to
remove any doubt in their minds
that sentence has been duly
carried out. Whether this
arrangement will be adopted in
the present case is again a
matter which I must leave to
Sir Joseph Byrne, in whose
good sense and discretion I
have every confidence.

Y^{rs} ~~~~~

204
26
28th September 1934

Dear Sir Philip,

I have recently received a long letter from a friend of mine in Kenya in which the hope is expressed that very drastic steps will be taken as a result of the recent murder of Mr. Semini, to impress upon the Lumbwa tribe the serious nature of the crime committed, and the determination of our Administration to stamp out such atrocities.

I have seen in the Press that at the trial seven natives of the tribe have been condemned to death, but I presume it is still far from certain whether the sentence may not be commuted in some way. My correspondent suggests that it would be very advantageous if a public execution could be carried out with a great deal of ceremony, so that the tribe would continue to talk about it for a long time to come. He puts forward this suggestion on the ground that the present private hanging in prison of criminals does not impress the natives, who often believe that despite the announcement of the execution their friends are still alive somewhere or other.

Yours sincerely
Sifford Fox

The Rt. Hon. Sir Philip Cunliffe-Lister, M. P.,
The Colonial Office,
Downing Street, S. W. 1.

Confidential

C. O.

- Mr. ^{22/10} ~~Richard~~
- Mr. ^{22/10} ~~Denning~~
- Mrs.
- Mr. Parkinson
- Mr. C. Tomlinson
- Sir C. Bolsomley
- Sir J. Shuckburgh
- Permt. U.S. of S
- Parly. U.S. of S
- Secretary of State

[Handwritten initials]

C. D.
R 22 OCT
D

The U.S. of S. for the Colonies

presents his compliments to

the Colonial Secretary, Kenya

and is directed to inform

him that the reference in

the Secretary of State's

despatch N° 871 of the 23rd of

October, is to the Governor's

confidential despatch N° 135

of the 13th of September

for Conson

DRAFT 3/2

(Dep. Secy. Gen. Secret refer)

FURTHER ACTION:

(23)

DS.

23 Oct. 1930

[Handwritten initials]

KENYA.

No. 135



GOVERNMENT HOUSE
NAIROBI.
KENYA

RECEIVED
24 SEP 1954
C. O. REGISTRY

September 2, 1954

CONFIDENTIAL.

Hand (25)

Sir,

Na II

I have the honour to refer to your Confidential despatch of the 24th July, 1954, and to transmit herewith two authenticated and twelve unauthenticated copies of an Ordinance entitled "The Polling Removal Ordinance, 1954," which duly passed its third reading in the Legislative Council on the 1st August, 1954, to which I attached in this despatch a copy of the Ordinance of August, 1954, together with a copy of the Bill introduced by the Attorney General.

2. The question of the amendments to the Ordinance suggested in paragraphs 5 and 6 of your despatch under reference, is still under consideration by the Attorney General.

In view of the fact that amendments have been cast on the Ordinance, it is not possible to define in the Schedule to the Ordinance, as amended, any other area or areas to be included.

THE RIGHT HONOURABLE,
MAJOR SIR PHILIP CULLIVANE-LISTER, P.C., G.M.B., F.C., F.R.S.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.

23

KENYA.

No. 135.



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

RECEIVED
- 4 OCT 1954
C. O. REG 13

September, 1954.

CONFIDENTIAL.

Answered (25)

Sir,

Not

I have the honour to refer to your Confidential despatch of the 4th June, 1954, and to transmit herewith two authenticated and twelve printed copies of an Ordinance entitled "The Land Settlement Ordinance, 1954," which duly passed its third Reading in the Legislative Council on the 1st August, 1954, and to which I assented in His Majesty's name on the 27th August, 1954, together with a copy of the Legal Report by the Attorney General.

2. The question of the amendments to the Bill suggested in paragraphs 9 and 3 of your despatch under reference, is dealt with in the Legal Report by the Attorney General.

In view of the fact that doubts have been cast on the suitability of the settlement area as defined in the Schedules to the Ordinance, Section 3 was amended in order to allow for the proclaiming of any other area as a settlement area.


THE RIGHT HONOURABLE,
MAJOR SIR PHILIP CUNLIFFE-LISTER, P.C., F.G.B.E., M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.

I will inform you in due course as to the area definitely decided upon for the removal of the Laibons.

I have the honour to be,

Sir,

Your most obedient, humble servant,


BRIGADIER-GENERAL,
GOVERNOR.

LEGAL REPORT

THE LAIBONS REMOVAL BILL, 1934

This Bill gives the necessary powers to the Provincial Commissioner, Nyanza Province, to remove to a specified or proclaimed area the hereditary witchdoctors known as Laibons.

The Secretary of State in a recent Despatch referred to sections 9(2)/14(b) of the Bill and made certain comments thereon.

As regards section 9(2) it is proposed, in accordance with the suggestion of the Secretary of State, to deal with the matter by rule. Section 14(b) has not as yet been altered in view of the following explanation of its intention which, it is thought, may sufficiently answer the criticism of the Secretary of State as to render its amendment unnecessary. This section was designed to cover any of the orders which the Provincial Commissioner might have to issue for carrying out the purposes of section 4. No order is expressly referred to in section 4 since it was expected that the Provincial Commissioner would act under the general power conferred by section 11. When the Bill was drafted it was considered that so long as a person continued to be restricted to a settlement area the original order authorizing such restriction could not be said to be spent. Since, however, it was desired, in fairness to such persons, to give some wide power to the Provincial Commissioner to enable him to deal with cases of hardship which might arise from time to time, section 14(b) was inserted to make the necessary provision therefor.

A copy of the Bill showing in red ink where the present Bill deviates from the one so far as the Secretary of State is enclosed.

In my opinion, His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

Nairobi,
2nd August, 1934.

W. D. Bailey
ATTORNEY GENERAL



Colony and Protectorate of Kenya.

IN THE TWENTY-FIFTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE V.

JOSEPH ALOYSIUS BYRNE, G.C.M.G., K.B.E., C.B.,
Governor

Assented to in His Majesty
name this 27th day of August
1934

J. BYRNE.

Governor

AN ORDINANCE TO PROVIDE FOR THE
REMOVAL AND SETTLEMENT OF LAIBONS

ORDINANCE No. XXXII of 1934

An Ordinance to Provide for the Removal and Settlement of Laibons.

WHEREAS there are now living among the Lumbwa Tribe in the Nyanza Province considerable numbers of Laibons, a people alien alike to the Province and to its inhabitants

AND WHEREAS the Lumbwa tribe has petitioned the Government of Kenya that the said Laibons be removed from among them :

AND WHEREAS it is deemed necessary for the preservation of peace and order and in the interests of good government that the said Laibons should be removed to and settled in some selected area :

AND WHEREAS an area suitable for such purpose has now been selected :

AND WHEREAS it is expedient to make provision for the removal to and settlement in such area of the said Laibons :

BE IT THEREFORE ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as the Laibons Removal Ordinance, 1934, and shall come into operation upon such date as the Governor shall by proclamation appoint.

Short title and commencement.

2. In this Ordinance, unless the context otherwise requires :—

Interpretation.

"Laibon" means an orkoyot ;

"orkoyot" means an adult male member of the Tabu clan resident in the South Lumbwa District ;

"settlement area" means the area referred to in section 3 of this Ordinance ;

"removal" means the removal to the settlement area and the compulsory settlement therein referred to in section 4 of this Ordinance ;

"Provincial Commissioner" means the Provincial Commissioner, Nyanza Province, or any other officer duly authorized to act in such appointment.

3. There shall be set apart for the use of the Laibons a settlement area as defined in the Schedules to this Ordinance or such other area as the Governor may by proclamation declare to be a settlement area.

4. Upon the coming into operation of this Ordinance the Provincial Commissioner shall cause all adult male Laibons in the Nyanza Province, together with all the members of their families, to be removed to and compulsorily settled in the settlement area.

5. Every Laibon and every member of such Laibon's family so removed to and settled in the settlement area shall thereafter be restricted in his movement to the boundaries of such area and shall be and is hereby prohibited from moving out of such area at any time unless he is in possession of a written pass granted to him in that behalf by a Provincial Commissioner, or some officer authorized by him, in accordance with the provisions of section 14 of this Ordinance.

6. If any person removed and settled under the provisions of section 4 of this Ordinance leaves the settlement area without the written permission of the Provincial Commissioner or of some officer authorized by him (the burden of proving the possession of such permission being on the person charged) such person may be arrested without warrant and shall be guilty of an offence and shall be liable—

- (a) on a first conviction, to imprisonment for a period not exceeding one year;
 - (b) on a second conviction, to imprisonment for a period not exceeding two years;
 - (c) on any subsequent conviction, to imprisonment for a period not exceeding three years,
- or to a fine not exceeding fifty pounds or to both such imprisonment and fine.

7. The Provincial Commissioner, before issuing directions for the removal of Laibons, shall cause registers of all Laibons and their families to be prepared by the District Commissioners or such other persons as he may appoint and shall for that purpose cause notices to be published calling upon all Laibons—

- (a) to appear at times and places therein specified before the persons appointed by him in that behalf;

Establishment of a Laibon settlement area.

Power of Provincial Commissioner to remove Laibons.

Laibons to be restricted to settlement area.

Offences, penalties.

Registers

- (b) to give to such persons such information as may be necessary to enable the registers to be prepared; and
- (c) to allow their finger impressions to be recorded for the purposes of this Ordinance.

8. (1) The registers when completed shall be retained in the custody of the Provincial Commissioner or of an officer authorized by him.

Custody of registers

(2) Save in the case of a successful appeal under section 9 of this Ordinance no addition to, or alteration or removal of any entry in the registers shall be made except by the direction in writing of the Provincial Commissioner.

Alterations

9. (1) Any person who, on the ground that he is not a Laibon, is aggrieved by any entry relating to him or his family, made or proposed to be made in a register may appeal to the Provincial Commissioner against such entry.

Appeals

(2) Every such appeal shall be lodged within a period of seven days next after the date of the making of such entry in the register.

(3) No further action shall be taken for the purpose of effecting the removal of any person so appealing until a decision has been reached upon his appeal.

(4) On any such appeal the burden of proving that the person so appealing is not a Laibon shall be on that person.

(5) On any such appeal the Provincial Commissioner may hear such witnesses and call for such documents as he thinks fit and may, if it is deemed necessary, take evidence on oath.

10. For the purposes of carrying out the removal of the Laibons and their families it shall be lawful for the Provincial Commissioner—

Power of Provincial Commissioner relating to removal

- (a) to establish concentration camps and to collect and detain the Laibons and their families therein;
- (b) to organize the compulsory movement of the Laibons and their families, flocks and herds to the settlement area;
- (c) to arrange for the guarding of the Laibons and their families in concentration camps, on the move, or at temporary halting places, and for the taking of due precautions to prevent their escape.

(d) to issue, generally for the foregoing, and for all the purposes of this Ordinance, such directions as he may deem necessary.

Provincial Commissioner's order to be sufficient authority.

11. An order in writing of the Provincial Commissioner relating to any matter necessary for the carrying into effect of any of the purposes of this Ordinance shall be sufficient authority to the person to whom it is directed or delivered for execution to receive and detain the person or persons therein described and to remove him or them in custody to the place named in the order.

Persons removed to be deemed to be in custody.

12. All persons ordered under the provisions of this Ordinance to be detained in any camp or other place or to be moved from one place in the Colony to another shall be deemed during such detention or removal to be in lawful custody, and the law for the time being in force in the Colony relating to persons in custody shall apply to all such persons.

Power of Provincial Commissioner to issue directions.

13. The Provincial Commissioner, if he considers it expedient, may from time to time issue under his hand, in respect of all or certain specified Laiçons in the settlement area, all or any of the following directions:

- (a) a direction that they report themselves as he may require at fixed intervals of time;
- (b) a direction that they shall notify their place of residence within such area and any change of and any absence or intended absence from such place of residence;
- (c) a direction that the carrying of any arms (as defined by the Native Arms Ordinance) by them be restricted or prohibited;
- (d) a direction that they be restricted in their movements to any specified locality in such area or be settled in any specified place of residence in such area;
- (e) a direction that the holding by them of public meetings of any kind be restricted or prohibited.

Cap 187.

Power of Provincial Commissioner to grant passes and to revoke orders for removal.

14. Notwithstanding the restriction and prohibition in section 6 of this Ordinance the Provincial Commissioner may in his discretion—

- (a) grant passes to persons in the settlement area, giving permission to leave the area; such passes shall be

signed by the Provincial Commissioner or by officers authorized by him, and shall be in such form and valid for such periods and subject to such conditions as he shall think fit; and

- (b) by writing under his hand vary or revoke in its application to any person or persons in the settlement area any order of removal and settlement made by virtue of the provisions of this Ordinance.

15. It shall be lawful for the Provincial Commissioner to take all such measures and to issue all such directions as he shall deem necessary for the permanent settlement of the Laiçons and their families in the settlement area.

Measures relating to settlement of Laiçons.

16. Save as provided in section 9 of this Ordinance, no appeal shall lie against any removal or compulsory settlement made in accordance with section 4 of this Ordinance.

No appeal from removal save as in section 9.

17. No prosecution, suit or other legal proceedings shall lie against any person for anything done or in good faith intended to be done under this Ordinance, and no compensation shall be payable to any person for any act done in good faith under the provisions of this Ordinance.

Protection for persons acting under the Ordinance.

18. The Governor in Council may make Rules for the carrying out of the purposes of this Ordinance and may in such Rules prescribe penalties for breaches thereof.

Rules.

19. Any person who without lawful excuse, the burden of proving which shall lie upon him—

Penalties.

- (a) fails to appear in compliance with any notice issued under section 7 of this Ordinance; or
- (b) intentionally withholds or omits to furnish any information required under that section; or
- (c) when required to furnish information under that section, furnishes as true any information which he knows or has reason to believe to be false; or
- (d) refuses to allow his finger impressions to be taken by any person in accordance with section 7; or
- (e) fails to obey any order or direction given, in accordance with the provisions of section 10 or section 13 of this Ordinance, by the Provincial Commissioner or by any officer authorized by him; or

(f) in any way obstructs or interferes with any officer or any person duly authorized to exercise any right or power or to execute any duty under this Ordinance,

may be arrested without warrant, and shall be guilty of an offence and shall be liable on conviction to imprisonment for a period not exceeding six months or to a fine not exceeding fifteen pounds or to both such imprisonment and fine.

Saving

20. The provisions of this Ordinance shall be in addition to and not in derogation of the provisions of the Native Lands Trust Ordinance, 1930, and any Ordinance amending the same.

FIRST SCHEDULE

Commencing at a cairn on the shore of Lake Victoria at Mungari Bay:

thence in an easterly direction by a line of cairns to the summit of Bukini Hill;

thence along the ridge in a north-easterly direction by a line of cairns to point 5,380 feet;

thence down the stream bed immediately south of that point in a south-easterly direction to a cairn on the track passing through point 3,920 feet;

thence by a line of cairns following that track to a cairn on the right bank of the Lambwe River;

thence by a line of cairns following the right bank of that river to a cairn at the head of the Lambwe Valley;

thence in a south-westerly direction by a line of cairns to a cairn on the lake shore at Ukudu point;

thence by the lake shore to the point of commencement.

SECOND SCHEDULE

The islands of Mbaiyu, Mka, Kius, Seyusi and Mageta.

Passed in the Legislative Council the first day of August, in the year of Our Lord one thousand nine hundred and thirty-four.

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council and is presented for authentication and assent as a true and correct copy of the said Bill.

J. F. G. TROUGHTON

Acting Clerk of the Legislative Council.

COPY
OF

THE LAIBON'S REMOVAL BILL, 1934,
SHOWING WHERE THE PRESENT
BILL DEVIATES FROM THE
ONE SENT TO THE
SECRETARY OF STATE IN
KENYA CONFIDENTIAL
DESPATCH NO. 563

No 9

COLONY AND PROTECTORATE OF KENYA



A BILL TO PROVIDE FOR THE REMOVAL AND
SETTLEMENT OF LAIBONS

A Bill to Provide for the Removal and Settlement of Laibons.

WHEREAS there are now living among the Lumbwa Tribe in the Nyanza Province considerable numbers of Laibons, a people alien alike to the Province and to its inhabitants:

AND WHEREAS the Lumbwa tribe has petitioned the Government of Kenya that the said Laibons be removed from among them:

AND WHEREAS it is deemed necessary for the preservation of peace and order and in the interests of good government that the said Laibons should be so removed to and settled in some selected area:

AND WHEREAS an area suitable for such purpose has now been selected:

AND WHEREAS it is expedient to make provision for the removal to and settlement in such area of the said Laibons:

BE IT THEREFORE ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Laibons Removal Ordinance, 1934, and shall come into operation upon such date as the Governor shall by proclamation appoint.

2. In this Ordinance, unless the context otherwise requires:—

"Laibon" means an ^{or a person} adult male member of the Tribe; and

"settlement area" means the area referred to in section 3 of this Ordinance;

"removal" means the removal to the settlement area and the compulsory settlement therein referred to in section 4 of this Ordinance;

"Wakoyi" means an adult male member of the Sabai clan resident in the South Lumbwa District.

Short title and commencement

Interpretation

"Provincial Commissioner" means the Provincial Commissioner, Nyanza Province, or any other officer duly authorized to act in such appointment.

3. There shall be set apart for the use of the Laibons a settlement area as defined in the First and Second Schedules to this Ordinance *or such other area as the Governor may by Proclamation declare to be a settlement area.*

4. Upon the coming into operation of this Ordinance the Provincial Commissioner shall cause all adult male Laibons in the Nyanza Province, together with all the members of their families, to be removed to and compulsorily settled in the settlement area.

5. Every Laibon and every member of such Laibon's family so removed to and settled in the settlement area shall thereafter be restricted in his movement to the boundaries of such area and shall be and is hereby prohibited from moving out of such area at any time unless he is in possession of a written pass granted to him in that behalf by a Provincial Commissioner, or some officer authorized by him, in accordance with the provisions of section 14 of this Ordinance.

6. If any person removed and settled under the provisions of section 4 of this Ordinance leaves the settlement area without the written permission of the Provincial Commissioner or of some officer authorized by him (the burden of proving the possession of such permission being on the person charged) such person may be arrested without warrant and shall be guilty of an offence and shall be liable—

- (a) on a first conviction, to imprisonment for a period not exceeding one year;
 - (b) on a second conviction, to imprisonment for a period not exceeding two years;
 - (c) on any subsequent conviction, to imprisonment for a period not exceeding three years,
- or to a fine not exceeding fifty pounds or to both such imprisonment and fine.

7. The Provincial Commissioner, before issuing directions for the removal of Laibons, shall cause registers of all Laibons and their families in his Province to be prepared and shall for that purpose cause notices to be published calling upon all such persons

- (a) to appear at times and places therein specified before him ~~the~~ persons appointed by him in that behalf;

Establishment of a Laibon settlement area.

Power of Provincial Commissioner to remove Laibons.

Laibons to be restricted to settlement area.

Offences: penalties.

Registers.

(b) to give to him or to such persons such information as may be necessary to enable the registers to be prepared; and

(c) to allow their finger impressions to be recorded for the purposes of this Ordinance.

8. (1) The registers when completed shall be retained in the custody of the Provincial Commissioner or of an officer authorized by him Custody of registers

(2) Save in the case of a successful appeal under section 9 of this Ordinance no addition to, or alteration or removal of any entry in the registers shall be made except by the direction in writing of the Provincial Commissioner. Alterations.

9. (1) Any person who, on the ground that he is not a Laibon, is aggrieved by any entry relating to him or his family made or proposed to be made in a register may appeal to the Provincial Commissioner against such entry. Appeals

(2) Every such appeal shall be lodged within a period of seven days next after the date of the making of such entry in the register.

(3) No further action shall be taken for the purpose of effecting the removal of any person so appealing until a decision has been reached upon his appeal.

(4) On any such appeal the burden of proving that the person so appealing is not a Laibon shall lie on that person.

(5) On any such appeal the Provincial Commissioner may hear such witnesses and call for such documents as he thinks fit and may, if it is deemed necessary, take evidence on oath.

10. For the purposes of carrying out the removal of the Laibons and their families it shall be lawful for the Provincial Commissioner— Power of Provincial Commissioner relating to removal

- (a) to establish concentration camps and to collect and detain the Laibons and their families therein;
- (b) to organize the compulsory movement of the Laibons and their families, flocks and herds to the settlement area;
- (c) to arrange for the guarding of the Laibons and their families in concentration camps, on the move, or at temporary halting places, and for the taking of due precautions to prevent their escape;

by the District Commissioner or such other persons as he may appoint.

(d) to issue, generally for the foregoing, and for all the purposes of this Ordinance, such directions as he may deem necessary.

Provincial Commissioner's order to be sufficient authority

11. An order in writing of the Provincial Commissioner relating to any matter necessary for the carrying into effect of any of the purposes of this Ordinance shall be sufficient authority to the person to whom it is directed or delivered for execution to receive and detain the person or persons therein described and to remove him or them in custody to the place named in the order.

Persons removed to be deemed to be in custody.

12. All persons ordered under the provisions of this Ordinance to be detained in any camp or other place or to be moved from one place in the Colony to another shall be deemed during such detention or removal to be in lawful custody, and the law for the time being in force in the Colony relating to persons in custody shall apply to all such persons.

Power of Provincial Commissioner to issue directions.

13. The Provincial Commissioner if he considers it expedient, may from time to time issue under his hand, in respect of all or certain specified Laibons in the settlement area, all or any of the following directions:—

- (a) a direction that they report themselves as he may require at fixed intervals of time;
- (b) a direction that they shall notify their place of residence within each area and any change of and any absence or intended absence from such place of residence;
- (c) a direction that the carrying of any arms (as defined by the Native Arms Ordinance) by them be restricted or prohibited;
- (d) a direction that they be restricted in their movements to any specified locality in such area or be settled in any specified place of residence in such area;
- (e) a direction that the holding by them of public meetings of any kind be restricted or prohibited.

Cap. 137.

Power of Provincial Commissioner to grant passes and to revoke orders for removal/

14. Notwithstanding the restriction and prohibition in section 6 of this Ordinance the Provincial Commissioner may in his discretion—

- (a) grant passes to persons in the settlement area, giving permission to leave the area; such passes shall be

signed by the Provincial Commissioner or by officers authorized by him, and shall be in such form and valid for such periods and subject to such conditions as he shall think fit; and

- (b) by writing under his hand vary or revoke in its application to any person or persons in the settlement area any order of removal and settlement made by virtue of the provisions of this Ordinance.

15. It shall be lawful for the Provincial Commissioner to take all such measures and to issue all such directions as he shall deem necessary for the permanent settlement of the Laibons and their families in the settlement area.

Measures relating to settlement of Laibons.

16. Save as provided in section 9 of this Ordinance, no appeal shall lie against any removal or compulsory settlement made in accordance with section 4 of this Ordinance.

No appeal from removal save as in section 9.

17. No prosecution, suit or other legal proceedings shall lie against any person for anything done or in good faith intended to be done under this Ordinance, and no compensation shall be payable to any person for any act done in good faith under the provisions of this Ordinance.

Protection for persons acting under the Ordinance.

18. The Governor in Council may make Rules for the carrying out of the purposes of this Ordinance and may in such Rules prescribe penalties for breaches thereof.

19. Any person who without lawful excuse, the burden of proving which shall lie upon him—

- (a) fails to appear in compliance with any notice issued under section 7 of this Ordinance; or
- (b) intentionally withholds or omits to furnish any information required under that section; or
- (c) when required to furnish information under that section, furnishes as true any information which he knows or has reason to believe to be false; or
- (d) refuses to allow his finger impressions to be taken by any person in accordance with section 7; or
- (e) fails to obey any order or direction given, in accordance with the provisions of section 10 or section 13 of this Ordinance, by the Provincial Commissioner or by any officer authorized by him; or

Penalties.

(f) in any way obstructs or interferes with any officer or any person duly authorized to exercise any right or power or to execute any duty under this Ordinance.

may be arrested without warrant, and shall be guilty of an offence and shall be liable on conviction to imprisonment for a period not exceeding six months or to a fine not exceeding fifteen pounds or to both such imprisonment and fine.

Saving

20. The provisions of this Ordinance shall be in addition to and not in derogation of the provisions of the Native Lands Trust Ordinance, 1930, and any Ordinance amending the same.

FIRST SCHEDULE

Commencing at a cairn on the shore of Lake Victoria at Mungeri Bay:

thence in an easterly direction by a line of cairns to the summit of Bokini Hill;

thence along the ridge in a north-easterly direction by a line of cairns to point 6,360 feet;

thence down the stream bed immediately south of that point in a south-easterly direction to a cairn on the track passing through point 3,920 feet;

thence by a line of cairns following that track to a cairn on the right bank of the Lambwe River;

thence by a line of cairns following the right bank of that river to a cairn at the head of the Lambwe Valley;

thence in a south-westerly direction by a line of cairns to a cairn on the lake shore at Uindu point;

thence by the lake shore to the point of commencement.

SECOND SCHEDULE

The islands of Mbalyu, Mkal, Kius, Seyusi and Magets.

OBJECTS AND REASONS.

This Bill gives the necessary powers to the Provincial Commissioner, Nyanza Province, to remove to a specified area the hereditary witchdoctors known as Laibons.

2. Government is satisfied that the presence of the Laibons among the Lumbwa people has been directly responsible for the recent unrest and crime in the Nyansa Province. It is imperative, therefore, in the interests of law and order, that these people should be removed, more particularly as the Lumbwa have themselves petitioned Government to take this step.

3. If this Bill becomes law, it is anticipated that Extraordinary Expenditure amounting to £500 will be involved in 1934. No Recurrent Expenditure will be necessitated.

C.O.

Mr. ~~Keen~~ 12/9

Mr.

Mr.

Mr. Parkinson

Sir G. Tomlinson

✓ Sir C. Bottomley, 12.9.

Sir J. Shuckburgh

Permt. U.S. of S

✓ Parly. U.S. of S

Secretary of State.

722
Lt

In line Plymouth's system

DRAFT.

Of-Gen. Sir Arnold Wilson
K.C.I.E. C.S.I. C.B.E. D.S.O.

Dear Sir Arnold Wilson,

On ^{my} ~~returning~~ return to London
I read through the papers
enclosed in your letter of
August 31st; I note that
you do not wish them
returned.

Your comment
in Kenya expresses a
point of view with which
we are familiar. You
will not expect me to
transcribe his statements a
suggestion in detail; I
am satisfied that they are

FURTHER ACTION.

in many respects exaggerated, and
his fears for the future are not
shared by those of wide experience.

Yours sincerely

Sw Amos Wilson M.P

MUCH HADHAM 21

31.8.34

WYNCHES
MUCH HADHAM
HERTFORDSHIRE

223 19

Dear Plymouth,

The enclosed is from an old friend who
worked under me - for some years during the war - as
a well-balanced administrative officer. He is now
a farmer in Kenya - & he gives his views on current
events in this dossier - views which I fancy are those
of most of his compatriots. I have had other letters,
all to the same effect. I am afraid that trouble is
brewing. I do not want the enclosures back

Yours sincerely,

Amos Wilson

20th August, 1934.

224

Dear A.T

Cooperation Conflict.

I attach a typescript of my view of things out here. It has taken me the best part of a month to worry it out in my mind and is, I think, a fair picture of the state of affairs.

It was typed from the rough over a week ago. The Weekly East African Standard has just arrived cuttings of which I enclose. The remarks of the Member for Rift Valley (200 miles from here) coincide. My own conclusions are from my own observation hereabouts and I am not in touch with any of the papers that he.

There is another complication, the Selwyn case which has been reported in the English papers - if the Kinankop (Salvasha) has not? They lived near here and are slight acquaintances.

The background is as follows - He is a brother of the present Deputy of Westminster and a cousin of the Huxleys. He was regular army and out here was generally considered "mad". He was partly paralysed and his brain worked very erratically. From what I hear, on his last visit to England, - broken like the rest of us - he was permitted by his brother to commute part of his Army Pension and was perhaps helped financially by his brother, on one condition, that his wife ran the farm. Therein lies the first difficulty. The African has an in-born contempt for womankind and there are very few Englishwomen who can overcome this disability and run a farm successfully (at the present stage of African development)

The Suk have been getting out of hand - like most tribes under the present Byrne Administration - The Selwyns farm is on the border and the Suk, formerly stock people subsisting entirely on a milk diet have come into the labour market since 1926 and have acquired a taste for maize meal (posho) which they are slowly being induced by Government to cultivate - customs do not change in a day.

Maize and other thefts from farms have increased considerably recently. The Selwyns have "run in" natives to the D. C. in Kitala, and obtained no satisfaction. (Personally, like most people, I have worked on the principle that it is a useless waste of time and money taking in a case to the D.C. (35 miles round trip) for several years past unless it was particularly serious, as even if a conviction was obtained the punishment meted out has no effect as a deterrent (and appeals to Government get one a bad name with labour - which is always a ticklish problem).

As Government Control decreases so do we have to take the law into our own hands to maintain a reasonable semblance of order on a farm.

The Suk have probably made the best of what they considered to be a weak point in the settled area and although most people in that area (W. end of Transvaia - bounding the Suk Reserve) have had a series of thefts in May and June and July, the Selwyns have probably been the chief sufferers.

I imagine that was the position up to the day of the discovery of the new thefts. Mrs. Selwyn took action to make the Native realise what line she would take in the future - and then sent word to the D.C. Kitala for the Police to remove the natives. Quite illogical! One can imagine the exasperation accompanied perhaps by a loss of temper, encouraged by natives employed on the farm who had also lost property and who carried out the flogging. The method and extent of the latter has given us all something of a shock.

The accepted method is for the Settler to enquire into cases which arise almost daily on every farm and give the native the option of either taking the case to the D.C. or accept the settlers handling of the affair.

The police marched the natives in to Kitala on Saturday but did not send them to Hospital until Monday. Later one died from septicemia and the D. C. (Isard) (72 Sqds in Mesopot) charged both the Selwyns and some natives with manslaughter, bail being allowed. Some days later Nairobi prefers a charge of Murder - Mrs. Selwyn who had had several heart attacks (I believe she had to go

which is paralleled by the noble Arab of Ethel M. Dell and Hull James ^{Fisher}.

Personally I get on very well with the native but realise he has got to be held down, as contact with white civilization has upset all his old values and in this transition stage he is like a ship without a rudder and has got to be controlled to save him from himself.

At this moment we are helpless and cannot control our surroundings and have to sit by and watch an ineffective government blundering along and as I have already pointed out it means trouble for ourselves.

It is rumoured that two Kikuyu who went to England to appear before some Commission or other, and were sent over to Russia by the Labour party, which if true is pretty hard on them who are already suffering from an awakening ^{independence} and loss of balance.

We are not even trusted to have J.P.'s with very limited powers as recommended in the Fealitham Report, if we had such cases as the Belgians would not occur. You have many of the type our here who would respond to the trust and be in touch with the farmers in his area, and moreover (would be in a position to represent to local Authority, who ignores the individual, any increase of lawlessness in his area, and at the same time keep an eye on a Farmer whose acute difficulties result in his losing a sense of proportion.

How one would like to get some of our home critics to stay on a farm for a month and get contact with the problems of which they have such assurance in finding solutions.

Your Wedgewood Benns ^{and Jackson and Hobbey}, Boden Buxtons, Manns etc. provided they come with open minds of which perhaps they are incapable. It is a practice which might even be applied to Administrative Officers and Governmentors. Officialdom is handicapped by its position - a lawful orders are carried out by the native staffs with a "click of the heels" as one might say - with the Farmer it is a matter of man to man - I have been in both positions out here and I know the difference I having to feel our way we get to know the native better.

I am afraid this is a very meandering letter, if you would come and see for yourself - or send some of our critics (they would have to pay all their expenses. We are more than broke, nearly £2000 on the land bank and farms not even paying their way, let alone interest) You could arrive at your own conclusions. We can, of course, house and feed our guests.

I hope my letter of a month ago arrived safely.

Lucidity of expression is not one of my strong points.

With reference to the Legislative Council reports: Increasing the Police force won't rectify a faulty Policy which I take it is the method by which the Government is attempting to save its face in the eyes of the Public.

I personally think they have crowned their three years of ineffectual handling of the Lumbwa problem by a still greater blunder of removing ALL the witch doctors, thereby, as it appears to me, wiping out the "priesthood" (and the Attorney General is trying to fix the responsibility on to our agitation when E.W. Hamstead (a settler representing native interests) demurs at backing such and extensive uprooting of the witch doctors.

The Lumbwa being Hamitic will not take readily to Missionary enterprise.

I hope you are flourishing.
Yours sincerely
L. S. S. S.

Item 1. Natives are always on the move to and from employment or out from the Reserves visiting their friends. They seek food and shelter amongst the natives employed on ones own farm. This may mean short rations for the employees and consequent falling off in work output, and the visitors leave on a thieving expedition on this or neighbouring farms.

The Native lines are usually some way from the main house, so noise, malarial infection etc. so personal supervision is difficult, and arrivals have to be reported. This the native will never do unless he is made to by threat of punishment (cutting a day or two's work off his 30 day ticket) to the inmates of the hut concerned. Even so many "strays" get food and shelter unreported.

Item 2. A week ago all the fruit was removed from a two acre orchard. They do not produce any culprits so it is a cut all round of three days in the attempt to keep such thieving in check, as no strays can come to the farm and it is the same of the employees.

Item 3. Six months ago continued thefts from the veg. was so bad that a night still went on in spite of every native on the farm being warned that there would be a cut all round. Finally a six day cut was made which resulted in the Suk Gang giving away a Kavironda Gang of mine who had been paid off.

Item 4. A month ago, the cow boma biki (who is the local Mrs. Camp) reports she saw a light in the maize crib at 10 p.m. when she was on her way back from a neighbouring farm. Thought it was the 'Bwana' out shooting with a spot light! Some Suk removing maize. I put a trip wire to explode a charge (into a leg) over the door-way next day - result the thieving gang cut the crib wire netting at the back of the crib and got the maize that way. The trap which was perhaps in daylight by some of the natives on the farm who may be in with the gang!

Item 5. Last November when maize crops were just ripening - night herod (for wild pig) report thieving going on showing footprints after rain. The thieves come from the direction on a neighbouring farm along a road. I arranged to have this road watched after dark and the culprits come and are followed into the maize, one is arrested cutting off the cobs having already collected half a bag. The other culprit escapes. Send the case to the D.C. or rather the police in Kitale who prepare it, witnesses (four) return after two days and are again absent a further two days for the hearing. Result the native is sentenced to one month - not that that will worry him - I lose 16 days work. Is it worth it????

Item 6. There is a persistent rumour that an A.D.C. and later a D.C. were chased out of a native reserve (Magoli near Archdeacon Owens H.Q. at Masseno) but no information that any action has ever been taken to recover prestige.

Incidentally I always hold that Kakamega was made possible by the very patient handling of the Miner-Settler rather than the ineffectual control of Government.

My wife walking on a narrow track near our camp in the Reserve was barged off by an overdressed native, when called to order he stated "I am a Mission boy, we are all alike black and white" (One of Archdeacon Owen's little pets perhaps?)

Item 7. To return to the Farm. Last year, Time 9 p.m. (sunset being six p.m.) just about to turn in. Hells own row coming from the cow boma 100 yards from the house. Go out with a lamp to investigate. Find two natives threatening the boma staff with spears. They draw off a little as I approach but still continue their shouting.

Are they mad or drunk? and are they out to draw blood? They refuse to listen to anything I have to say but continue their shouting, moving about in the darkness.

Short of putting a round of S.S.G. in their direction (I shall probably be jailed for murder) I do not see any method of halting the yelling continues at intervals and I return to the house to watch the native to watch their movements

178

The two Spearmen move down to the gardener's hut and then on the inmates who are behind closed doors, and also the native I have mentioned to follow them. He keeps his distance, returns and reports

This goes on for a couple of hours and the weather reports they have come over to the ox herds but (500 yds away) and yelling has ceased. I go over with a rifle and spotlight, find them inside hutting and the fire and rope them up

They come from the Cherangani Native Reserve where they have been getting out of hand recently (1933) owing to a weak Admin. that perhaps carrying out Nairobi instruction to the letter. He would probably be better employed in work for which he is more fitted. His mother goes with him everywhere. His native name is "the calf that has never been weaned" Under such control ~~one~~ one blame the native for wanting to return to his former habits. A. C. Hoey, a farmer who lives on this Native Boundary is now in England and could I think enlarge on this

Item 8. Recently I came across two stray Suk on the farm - they say they want work thereby explaining their presence, they do not belong to the particular sections of the tribe which is largely employed. They come from the other side of the Marich Pass 60-70 miles away, but are from the section to the North of the TransKoria which presumably have been responsible for most of the recent thefts. They are probably wandering round looking for maize or something else worth stealing. They both dodge the first days work, not coming back after a shower of rain at 10 a.m. with the other natives. Two days later they say they want to go and are signed off.

Item 9. A few months ago ~~but~~ three Suk employees were brought up by the maize herds, a native of a different tribe (who is employed to keep off monkeys) for stealing maize. They acknowledged the theft and were given the option of going into the D. C. or a beating. They preferred the ~~beating~~ the latter and I administered eight strokes apiece quite illegal of course, but there is no ill feeling in the matter as all three are still employed here (Incidentally they have all stayed more than their three months which is the average period in employment of the Suk who come out to get wages to pay their hut tax. Some Suk-like natives of every other tribe - will eventually live entirely in the settled areas and perhaps never return to their own tribes thereby becoming entirely detribalised.

These feelings are definitely not anti-native but natives are of course do produce racial feelings.

One of the outstanding differences between white and black is that of culture. We by the accumulated ballast of tradition, a developed conscience and an intelligence which tells us that it does not pay to infringe the law, are law abiding citizens.

The natives however, on whom is imposed European laws, frequently entirely alien to the customs of their forefathers, cannot be expected to conform to these laws unless they are made to understand that such laws are to be obeyed. This refers particularly to the Hamitic tribes whom the Government show such marked inability to control.

If the two score blood-sploring murders had been committed by Abyssinians from over the border, or if they had taken place during the period of a few weeks hundreds of miles away from roads communications there might be some excuse, but not law-abiding natives to be murdered in a gradually increasing number over a period of eighteen months only goes to show the hopeless laissez faire policy of the Government.

Lumowa raids have taken such the same course and in spite of repeated warnings by the elected members we were told early in June that no special measures were considered necessary" and although we all white and black are heavily taxed to support the administration, they could not hold down the Lumowa until such time as the Labons were removed.

Strange, is it not? that after forty years the Labons have been permitted to challenge Government authority.

Has it ever dawned on those in authority that we are often in a better position to know the trend of native opinion in certain areas than Government Officials surrounded by a Zareba of satellites (all stamped BKKALL) most of us run our farms on a basis of mutual respect as between master and employee and by gaining the confidence of the "old hands" have access to their inner thoughts and are thereby in touch with undercurrents of native "habari".

Throughout the Colony there are men who have held positions of responsibility and if the Crown in excess of the average administrative officer, yet it is the warnings and advice of these very people on matters of finance and native lawlessness which the Government persistently ignores.

We exert control over native employees on the farms by personality and handling, but having no authority cannot hold in check insolent natives coming in from the reserves whose minds are filled with the idea that Government control ceases outside the home.

Nearly all of our native trouble comes from the reserves and its surely a sign of the times that even the Suk, probably one of the most docile and easily managed of the Hamitic tribes in Africa, are infected by the growing lawlessness of the past three years. Raids have been increasing by leaps and bounds, for every ten that a native may be arrested, and for every five arrests one native may be convicted to a short term of imprisonment.

Is it beyond the comprehension of those in authority that on the return to the Reserve of every successful raiding party, five more gangs will be roaming the settled area. As native lawlessness increases so also does the burden on the white employer (who is already carrying a load of financial troubles) and he is slowly and surely driven to a point of exasperation at the lack of Government control of the native.

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REPORT
OF
THE SELECT COMMITTEE OF LEGISLATIVE COUNCIL
APPOINTED TO CONSIDER AND REPORT UPON A
BILL TO PROVIDE FOR THE REMOVAL AND
SETTLEMENT OF LAIBONS.

Your Excellency,

We, the Members of the Select Committee of Legislative Council appointed to consider and report upon the provisions of the above Bill, have the honour to recommend that the Bill be amended in the following respects:-

1. That Clause 2 be amended -
 - (a) by the deletion of the definition of "Laibon" and the substitution thereof of the following -

"Laibon" means an orkoyot;
 - and (b) by the insertion of the following definition -

"Orkoyot" means an adult male member of the Talai clan resident in the South Lumbwa District.
2. That Clause 3 be deleted and the following substituted therefor -
 - "3. There shall be set apart for the use of the Laibons a settlement area ^{as} defined in the Schedule to this Ordinance or such other area as the Governor may by proclamation declare to be a settlement area."
3. That Clause 7 be deleted and the following substituted therefor -

97. The Provincial Commissioner, before issuing directions for the removal of Laibons, shall cause registers of all Laibons and their families to be prepared by the District Commissioners or such other persons as he may appoint and shall for that purpose cause notices to be published calling upon all Laibons -

- (a) to appear at times and places therein specified before the persons appointed by him in that behalf;
- (b) to give to such persons such information as may be necessary to enable the registers to be prepared; and
- (c) to allow their finger impressions to be recorded for the purposes of this Ordinance."

We have the honour to be,
Your Excellency's most obedient servants

Sd. W. HARRAGIN	(CHAIRMAN)
Sd. S. H. LA FONTAINE	(MEMBER)
Sd. H. R. MONTGOMERY	(MEMBER)
Sd. CONWAY HARVEY	(MEMBER)
Sd. R. W. HEMSTED	(MEMBER)

Nairobi,

30th July, 1954.

SETTLER ATTACKED BY TRIBESMEN

Fatal Fight in Kenya

Nairobi, July 18.

A British-Maltese settler is dead and his English wife, who comes from Purley, Surrey, is prostrate as a result of the injuries inflicted upon them by a gang of Lumbwa tribesmen who attacked them on their lonely farm on the night of June 16.

Mr. Semini, the farmer, who was stabbed in several places by spears, died in hospital this morning. His condition had grown steadily worse during the past week owing to the spread of blood-poisoning caused by the natives' dirty weapons and earth which got into his wounds during his struggle on the ground with his assailants.

The condition of Mrs. Semini, who was criminally assaulted by the tribesmen, is giving rise to anxiety. The entire gang who attacked the British couple are believed to have been arrested. They are liable to the death penalty. Settlers, who have been made uneasy by the outrage, are pressing for a public execution of the miscreants in the Lumbwa country in the belief that such a demonstration would deter others from such outrages.

Mr. Semini was set upon by the natives while he was crossing his veranda on his way to bed. His wife rushed out to help him and the assailants' lantern was shattered in the struggle, which continued in the dark. The intruders ransacked the house. When the gang departed Mr. Semini was able, despite his wounds, to revive his wife, who had fainted, and drive her to his brother's house, about a mile distant.—Reuter.

239

16

RECEIVED
C. O. REGG

THE communications herewith enclosed, which has been received at the

Foreign Office, but which appears to concern the *Dominions Office*

is transmitted with the compliments of the Under-Secretary of State for Foreign Affairs.

Foreign Office,

5th July

1934



CLIFTON HOTEL
ALL MODERN COMFORTS
LE ZOUTE-SUR-MER
TEL. 028

July 4th

240

D

Dear Sir

Last week I received
a letter from an outlying
farm in Senegal stating there
was great unrest among
the young natives, but un-
fortunately it cost the govern-
ment quite a little money to
send troops out to protect
white women & fight the
natives. The danger

Must be growing as I see
there has been an attack
on a white man & his wife.
As it is obvious conditions were
realized as being dangerously
unstable factor, out there, why
was nothing done to protect them.
Must wait for a massacre
before something is done, or desert
the outlying farms & so play into
the hands of the natives, & expose
our own weakness.

Yours truly
S. H. Boucher

1934 6-7-34

WITCH DOCTORS OF KENYA

ORGANIZATION FOR CRIME

PROPOSED SEGREGATION

FROM OUR CORRESPONDENT

NAIROBI, JULY 5

The Kenya Government are seeking powers by special legislation to counter the activities and influence of the witch doctors known as *laibons* in the Lumbwa reserve. The draft Bill proposes the complete removal of the *laibons*, with their families, from the reserve to a new area 70 miles away on the shores of Lake Victoria adjoining Kisii.

The *laibons* were originally members of the Talai clan of the Masai ejected from the Masai country, who settled among the Lumbwa, with whom they intermarried for 50 years. Beginning as medicine men they rapidly extended their reputation for the knowledge of magic and sorcery and acquired power of life and death over the credulous Lumbwa. Latterly they have obstructed administration by claiming immunity from punishment. They have also organized a wide criminal organization principally connected with cattle stealing, the proceeds of which are shared. Their powers are stated to be hereditary, descending to all male issue.

About 700 men, women, and children are affected, with large herds of stock. The selected reserve is unoccupied and includes high country like the Lumbwa reserve, and has ample grazing. Removal will be compulsory and movement outside the prescribed area will be punishable by imprisonment. A complete register of *laibons* and their dependents is being prepared, and all are being gathered and guarded in concentration camps before removal. The Government are acting in the interests of law and order and the future progress of the Lumbwa, who since 1930 have petitioned for the removal of the *laibons*. It is hoped that in the course of years the *laibons* will be gradually absorbed in the adjacent tribes and that their children will become normal industrious Africans.

THE ATTACK ON SETTLERS IN KENYA

SEVEN LUMBWA ARRESTED

FROM OUR CORRESPONDENT

NAIROBI, July 3.

In view of the uneasiness caused among settlers by the attack on Mr. and Mrs. Semini, a Maltese farmer and his wife, by natives on June 15, a public meeting at Naivasha yesterday appointed a deputation to make representations to Sir Joseph Byrne, the Governor, about public security in sparsely populated areas. The police have arrested seven men who are believed to have been the gang of Lumbwa responsible for the attack. Mr. Semini is still in hospital, and it is now established that Mrs. Semini, who is an Englishwoman from Purley, Surrey was criminally assaulted. For this offence the law provides the death penalty.

At the public meeting speeches were made inviting the Government to consider how best the punishment of the guilty men, in case of conviction, could most effectively be made known to the natives, and it was suggested that there should be a public execution in the Lumbwa Reserve. Another suggestion was that headmen should be sent for to witness the execution at the prison. It was further proposed that in future all Lumbwa labourers should be recruited direct through the District Commissioner from the Lumbwa Reserve, and that a pass system should be instituted.

The Governor is to be asked to impose a tribal fine on the Lumbwa or raise money in some other way for the purpose of compensating Mr. and Mrs. Semini, who are said to have been made destitute by the attack.

The effective work of the police in making an early arrest of the gang has calmed public opinion.

WHITE WIFE'S ORDEAL

ATTACKED BY GANG OF NATIVES

"Daily Express" Correspondent,
NAIROBI (Kenya),
Monday.

A SLIGHT, pretty English girl, Mrs. Semini, who hails from Purley, Surrey, is gradually recovering here from a terrible ordeal.

On June 15 a gang of seven Lumbwa natives raided her lonely farmhouse, and nearly murdered

her husband, who is still in a critical condition in hospital.

The natives assaulted Mrs. Semini, and since the law provides for the death penalty for this offence the colony expects this sentence if the men—now under arrest—are convicted.

Some people call for a public execution in the Lumbwa native reserve as a deterrent and a warning to the lawless tribe.

A meeting of elders in the Nalvaka district, where the Seminis lived, today approached a deputation to interview the Governor, Sir J. A. Bynn, and seek assurance that ample steps will be taken to protect outlying farms from the menace of native gangs.

Extract from Headquarters N. Uganda M. H. A.
Quarterly Intelligence Summary for the
1st quarter 1964. Based on information
up to 15 April 1964. (Uganda 2471/10000)

744

the KIJAJE and WYONG TRIBES...
February as a result of reports that...
of the adjacent KIBONYI DISTRICT were...
that war had broken out...
fired six mortar arrows...
preparation...
of various secret...
be antagonistic to...
and were thought to be...
effecting their expansion...
feeling of unrest...
economic depression...
the increasing numbers of aircraft...
The situation was complicated...
unauthorised action...
calling upon members...
be prepared to move...

These...
were very carefully...
KIAMBU and the Police...
raced by Administrative...
not...
It was found, however, that...
to some small extent...
means of...
adjacent...
safest...
manufacture of arms...
Commissioner, KIAMBU...
Tribunal may be trusted...
infringements. The situation is...

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244

*Extract from Headquarters N. Buganda N. H. 6
Quarterly Intelligence Summary for the
1st quarter 1964. Based on information
up to 15 Feb. 64. (Origin 22716/24 NAB)*

6. Some alarm occurred among the European residents of the KIJABE and KEDONG VALLEY areas during the early part of February as a result of reports that the native population of the adjacent KIKUYU RESERVE were arming. It was alleged that war arrows with metal tips, as distinct from the wooden tipped game hunting arrows, and short spears were being prepared in large quantities and that natives carried arms of various descriptions in the Reserve. They were said to be antagonistic to immigrant races, particularly Europeans, and were thought to be arming with the ultimate object of effecting their expulsion. It was also stated that the feeling of unrest was due to the belief that the present economic depression and the continued drought resulted from the increasing numbers of aircraft flying over the Colony. The situation was complicated by the misguided and unauthorised action of local Defence Force Officers in calling upon members to "stand by" for an emergency and to be prepared to move on the receipt of further instructions.

These assertions which had been made in all seriousness were very carefully examined by the District Commissioner, KIAMBU, and the Police. Visits to the area referred to were made by Administrative and Police Officers which disclosed nothing to support any suggestion of disaffection or unrest. It was found, however, that native arms were being manufactured to some small extent, the purpose of which was said to be a means of protection against marauding Lumbwa squatters on adjacent farms, and to resist the attacks of robbers said to infest the Reserve. Orders forbidding the carrying and manufacture of arms have been promulgated by the District Commissioner, KIAMBU, and it is thought that the Native Tribunal may be trusted to deal adequately with any infringements. The situation is now quiet and public alarm

9/10/34 11/15

Mr. Crossmith. 30/5/34.
Mr. Roberts-Lacey 31/5
Mr. Weston 1/6/34

Mr. Forbinson.

Mr. Tomlinson.

Mr C. Bottomley.

Mr J. Shuckburgh.

Parly. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Downing Street.

May, 1934.

DRAFT.

KENYA.
CONFIDENTIAL.
GOVERNOR.

Sir,

I have etc. to refer to my confidential telegram No. 133 of the

23rd May in which I approved the introduction into the Legislative Council of the Bill to provide for the removal and settlement of Laibons,

and to invite your observations on the following ~~important~~ matters of detail, which are not without importance.

2. Under Clause 9(a) of the Bill an appeal by any person on the ground that he is not a Laibon, must be

lodged within seven days after entry of the person's name in the Register

of Laibons. But it is not apparent that the entry will be advertised or

in any way brought to the notice of the person concerned.

You will see that the steps taken by means of Rules under the Order are intended to see that this is done.

FURTHER ACTION.

3. It is not clear what action the Provincial Commissioner can take if he sees fit to invoke the powers conferred upon him by Clause 14(b). *under that clause* Provincial Commissioner may at his discretion vary or revoke the application of an order of removal and settlement, but it is not clear what order is referred to. Clause 4 provides that the Laibons shall be removed and compulsorily settled in the settlement area and no order is necessary for the purpose. It would appear that the only "order" which the Provincial Commissioner will make is that referred to in Clause 11, but this would not seem to be the order referred to in Clause 14, since the effect of an order made under Clause 11 will be spent once the person therein described is *has* settled in the area set apart for Laibons.

I have, etc.

(Sgd.) P. OUNLIFFE-LISTER

G.O.

Mr. *Evans* 24/7/34
Mr. *Wright* 25/7/34
Mr.
Mr. *Parsons*
Mr. *Tomlinson*
Mr. *Wright*
Mr. *J. Stoddart*
Post. U.S. of S.
Post. U.S. of S.
Secretary of State

DRAFT

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FURTHER ACTION

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disposition

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Codes + list

8.30 pm
23.5.34

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Confidential

O.D.
R 24 MAY
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You confidential
Laibons No 66
I approve the
introduction of the
Bill for removal
and settlement of
Laibons
follows

AIR MAIL

KENYA
No. 66



9 2/27
GOVERNMENT HOUSE
NAIROBI

KENYA

CONFIDENTIAL

Sir,

Nos

Not

I have the honour to refer to Lord P...
despatch Confidential (2) of 12th March, 1934, on the
subject of Lawlessness among the Maasai, and to
paragraph 7 of my Confidential despatch of 16th
February 1934, in which I assured you that I would
address you further as to the methods to be used in
combating the criminal activities for which the Laibons
(or Orkoik) are known to be responsible.

Not

In paragraph 6 of my Confidential despatch
No. 26 of 23rd February, I detailed the immediate
results of the investigation of the activities of
the Laibons, and since that date a leading Laibon has
been convicted of being in possession of stolen cattle
and a stolen fur coat, and it has been made clear that
he has for many years past been responsible for whole-
sale stock thefts and robberies in the Kotto and
Kiumu-Londiani districts. Another leading Laibon has
confessed to being in possession of 5 stolen firearms
and 50 rounds of ammunition, which have been recovered,
and 2 Lumbwa have confessed to the theft, explaining
that they were sent by the Laibon to steal the arms.
Two firearms and 31 rounds of ammunition, which were
stolen at the instigation of a Laibon, by 2 Lumbwa have
been recovered; 250 rounds of stolen ammunition, mostly
rifle ammunition, have been recovered from the same.

and (10)

cc ...

THE RIGHT HONOURABLE
MAJOR SIR PHILIP JULLIFFE-LISTER, P.C. M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S. W. 1.

box belonging to the chief Laibon. About 150 Lumbwa have confessed to old cattle and other thefts, and have produced numbers of stolen stock, and much European-owned property such as ploughs, clothing, etc. In many cases the culprits have stated that they merely acted on the orders of the Laibons.

On the night of February 14th, a gang of about 20 Lumbwa, armed with at least one fire-arm, carried out a daring raid on an Indian shop in the Kipsongi Trading Centre in the Lumbwa Reserve. The Nyanza Sections of the Kenya Defence Force were in camp only a few miles away. The gang "held up" the whole trade centre for about an hour and a half, while some of them broke into the shop, and after breaking open the safe, stole about Shs. 3700/-. They also made off with trade goods to the value of Shs. 2300/-, while a further Shs. 1000/- were stolen from a drawer. During the theft the Lumbwa fired at least 5 or 6 rifle shots, while the three Indians in the shop fired up to 100 rounds of revolver and shot-gun ammunition. No casualties were suffered, and it would appear that the gang fired merely to intimidate. The telephone wires to this and another shop were cut by the Lumbwa at the commencement of the raid. After enquiry, a Lumbwa has confessed and the names of the rest of the gang are now known, and everything possible is being done to bring the offenders to justice. The man who confessed states that a Laibon instigated the robbery, and the District Commissioner is convinced that this is the truth.

In March a Masai was murdered by the Lumbwa in the Masai Reserve and in the opinion of the District Commissioner this murder was committed on the instructions of the agents of the chief Laibon.

119

3. So far, 21 firearms and about 500 rounds of ammunition have been recovered from the Laibons, and it is significant that since the arrest of the leading Laibons, stock thefts have almost ceased, and many Lumbwa, realising that definite action is being taken against the Laibons, have freely handed over some hundreds of head of stolen stock and much other property.

You will recall that during your recent visit to the Colony you discussed this question both with me and with the Provincial Commissioner, Nyanza.

4. As to the methods to be adopted in combating these criminal activities of the Laibons, I am now convinced that the only possible way is to remove them from their present area to some suitable place which is far enough away to have the effect of putting a stop to their malignant influence over the Lumbwa, and which will not prevent them from living in tribal fashion.

With this in view, the Provincial Commissioner, Nyanza, together with the District Commissioners, South Kavirondo and Kericho, and Dr. Trim, Medical Officer, have inspected a valley on the West side of the Lambwe Valley at the foot of the Swassi Hills, in the South Kavirondo District, which they consider to be entirely suitable.

A complete scheme for the removal of the whole Laibon population with the minimum of hardship or disturbance to themselves has been prepared by the Provincial Commissioner in consultation with the officers concerned and will be given the necessary effect on the receipt of your approval.

Water, fuel, building material, grazing and good agricultural land are available, and there are no other ...

150

other inhabitants. There is no sleeping sickness in the area, and no more malaria than is found all over the Province. The Laibons would first be established in a camp in the vicinity of an area suitable for cultivation on a communal basis, but doubtless they would gradually locate themselves on the higher slopes of the Gwasssi Hills, where conditions would be similar to those in their own country. It is also considered that this valley is at a sufficient distance from the Lumbwa to put an end to the Laibons' influence over them.

The proposition has been placed before the Gwasssi Headman, and also before the two Local Native Councils of the South Kavirondo District, who were unanimously in favour of the proposal.

The number of this clan of Laibons (including men, women and children), is approximately 700.

In furtherance of these proposals, since there is no legislation in force under which this could be done, I submit a draft Bill to provide for the removal and settlement of Laibons, and would ask that since the matter is one of urgency, I may be informed by telegraph as to whether you approve of its introduction into Legislative Council.

5. In the second paragraph of the preamble to the Bill mention is made of petitions to this Government by the Lumbwa Tribe that the Laibons be removed from among them, and I attach for your information copies of three petitions made by the tribe, together with a number of affidavits sworn by headmen and heads of sections of the tribe showing the malignant influence which the Laibons have over the Lumbwa.

I also enclose an affidavit by Mr. Orchardson of Karabwet Estate, who has lived for nearly 20 years

amongst ...

amongst the Lumbwa.

6. I enclose copy of a memorandum by Mr. C. H. Dobbs, - late Provincial Commissioner, - giving a consecutive history of the Lumbwa Laibons and their activities for the past 20 years, which, if read in conjunction with Mr. Stocks's memorandum - which I also enclose - will give some idea of the powers the Laibons hold and the trouble they have caused for many years.

In the latter memorandum the Lumbwa tribe are referred to as the Kipsigis which is their tribal name.

It must, however, be borne in mind that the situation today is very much graver than in 1930 when the memoranda were written.

In 1930 the Laibons also petitioned this Government in the following terms:-

"We, the undermentioned senior members of the Laibon Clan at present residing in the South Lumbwa District, who place our thumb marks hereto, do hereby speak on behalf of our Clan knowing that our words are those also of our people who are absent from Kericho today.

"2. We declare that it would be no longer possible for us to live in peace amongst the Lumbwa because many of them are now our enemies and for this reason there will always exist a state of uncertainty and bad feeling with regard to ourselves in the Lumbwa country.

"3. We therefore pray Government to remove the whole of our Clan from the South Lumbwa district but ask that we should not be far removed."

After careful and exhaustive examination, however, ...

amongst the Lumbwa.

6. I enclose copy of a memorandum by Mr. C. H. Dobbs, - late Provincial Commissioner, - giving a consecutive history of the Lumbwa Laibons and their activities for the past 20 years, which, if read in conjunction with Mr. Stooke's memorandum - which I also enclose - will give some idea of the powers the Laibons hold and the trouble they have caused for many years.

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"3. We therefore pray Government to remove the whole of our Clan from the South Lumbwa district but ask that we should not be far removed."

After careful and exhaustive examination,

however, ...

however, this Government found that there were no legal means available for removing the Laibons from the district and was unable to do anything in the matter.

Since then every means of dealing effectively with this criminal clan under the existing laws has been exhaustively tried; these efforts, however, have been defeated by the fact that the failure in 1930 to remove the Laibons from the district enormously increased their prestige and stimulated the criminal activities of the tribe.

I am fully aware that the bill, which I transmit for your approval, is a stern and drastic measure; but after long and anxious deliberation, I have decided, for the reasons stated, that it is the only one capable of meeting a situation of unprecedented gravity.

7. With the full concurrence of my advisers, I have no hesitation in saying that the result of failure now, at the second attempt, to remove the Laibons from the District, will be that the situation may get out of control, and I trust that you will approve of the introduction into Legislative Council of the draft bill at an early date.

8. I regret that owing to the urgency of the question, it has not yet been possible to prepare the Schedule to the bill, but the following rough description will enable you to locate the proposed settlement area on the map "Africa, Sheet South A 38" :-

"Commencing at a point on Lungari way Easterly to the point marked 6380 feet; thence down the stream bed immediately South of that point in a South Easterly direction to the track between the words "River" and "Lambwe"

and along that track to its point of intersection with the Lambwe river; thence following the course of the Lambwe river upstream in a South Westerly direction to the head of the Lambwe Valley, thence in the same direction to Okudu Point; thence along the Lake shore to the point of commencement and including the islands of Abaiye, M'li, Seyusi and Mgeta."

I have the honour to be,

Sir,

Your most obedient, humble servant,



BRIGADIER-GENERAL.

G O V E R N O R

A BILL TO PROVIDE FOR THE REMOVAL AND SETTLEMENT OF LAIBONS.

WHEREAS there are now living among the Lumbwa Tribe in the Nyanza Province considerable numbers of Laibons, a people alien ^{alike} to the Province and to its inhabitants:

AND WHEREAS the Lumbwa tribe has petitioned the Government of Kenya that the said Laibons be removed from among them:

AND WHEREAS it is deemed necessary for the preservation of peace and order and in the interests of good Government that the said Laibons should be so removed to and settled in some selected area:

AND WHEREAS an area suitable for such purpose has now been selected:

AND WHEREAS it is expedient to make provision for the removal to and settlement in such area of the said Laibons:

BE IT THEREFORE ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:-

Short title.
Date of coming into operation.

1. This Ordinance may be cited as the Laibons Removal Ordinance, 1954, and shall come into operation upon such date as the Governor shall by proclamation appoint.

Interpretation.

2. In this Ordinance, unless the context otherwise requires:-

"Laibon" means an adult male member of the Talai clan;

"Settlement area" means the area referred to in section 5 of this Ordinance;

"Removal" means the removal to the settlement area and the compulsory settlement therein referred to in

section 4 of this Ordinance;

"Provincial Commissioner" means the Provincial Commissioner, Nyassa Province, or any other officer duly authorised to act in such appointment.

Establishment of a Laibon settlement area.

3. There shall be set apart for the use of the Laibons a settlement area with boundaries as defined in the Schedule to this Ordinance.

Power of Provincial Commissioner to remove Laibons.

4. Upon the coming into operation of this Ordinance the Provincial Commissioner shall cause all adult male Laibons in the Nyassa Province, together with all the members of their families, to be removed to and compulsorily settled in the settlement area.

Laibons to be restricted to settlement area.

5. Every Laibon and every member of such Laibon's family so removed to and settled in the settlement area shall thereafter be restricted in his movements to the boundaries of such area and shall be and is hereby prohibited from moving out of such area at any time unless he is in possession of a written pass granted to him in that behalf by a Provincial Commissioner, or some officer authorised by him, in accordance with the provisions of section 14 of this Ordinance.

Offences; penalties.

6. If any person removed and settled under the provisions of section 4 of this Ordinance leaves the settlement area without the written permission of the Provincial Commissioner or of some officer authorised by him (the burden of proving the possession of such permission being on the person charged) such person may be arrested without warrant and shall be guilty of an offence and shall be liable -

- (a) on a first conviction, to imprisonment for a period not exceeding one year;
- (b) on a second conviction, to imprisonment for a

period not exceeding two years;

- (c) on any subsequent conviction, to imprisonment for a period not exceeding three years,

or to a fine not exceeding fifty pounds or to both such imprisonment and fine.

Registers.

7. The Provincial Commissioner, before issuing directions for the removal of Laibons, shall cause registers of all Laibons and their families to be prepared and shall for that purpose cause notices to be published calling upon all such persons -

- (a) to appear at times and places therein specified before him or a person appointed by him in that behalf;
- (b) to give to him or to such person such information as may be necessary to enable the registers to be prepared; and
- (c) to allow their finger impressions to be recorded for the purposes of this Ordinance.

Custody of registers.

8. (1) The registers when completed shall be retained in the custody of the Provincial Commissioner or of an officer authorised by him.

Alterations.

(2) Save in the case of a successful appeal under section 9 of this Ordinance no addition to, or alteration or removal of any entry in the registers shall be made except by the direction in writing of the Provincial Commissioner.

Appeals.

9. (1) Any person who, on the ground that he is not a Laibon, is aggrieved by any entry relating to him or his family made or proposed to be made in a register may appeal to the Provincial Commissioner against such entry.

(2) Every such appeal shall be lodged within a period of seven days next after the date of the making of such entry in the register.

(3) No further action shall be taken for the purpose of effecting the removal of any person so appealing until a decision has been reached upon his appeal.

(4) On any such appeal the burden of proving that the person so appealing is not a Laibon shall lie on that person.

(5) On any such appeal the Provincial Commissioner may hear such witnesses and call for such documents as he thinks fit and may, if it is deemed necessary, take evidence on oath.

Power of
Provincial
Commissioner
relating to
removal.

10. For the purposes of carrying out the removal of the Laibons and their families it shall be lawful for the Provincial Commissioner -

- (a) To establish concentration camps and to collect and detain the Laibons and their families therein;
- (b) To organise the compulsory movement of the Laibons and their families, flocks and herds to the settlement areas;
- (c) To arrange for the guarding of the Laibons and their families in concentration camps, on the move, or at temporary halting places, and for the taking of due precautions to prevent their escape;
- (d) To issue, generally for the foregoing, and for all the purposes of this Ordinance such directions as he may deem necessary.

Provincial
Commissioner's
order to be

11. An order in writing of the Provincial Commissioner relating to any matter necessary for the carrying into

effect of any of the purposes of this Ordinance shall be sufficient authority to the person to whom it is directed or delivered for execution to receive and detain the person or persons therein described and to remove him or them in custody to the place named in the order.

Persons removed to be deemed to be in custody.

12. All persons ordered under the provisions of this Ordinance to be detained in any camp or other place or to be moved from one place in the Colony to another shall be deemed during such detention or removal to be in lawful custody, and the law for the time being in force in the Colony relating to persons in custody shall apply to all such persons.

Power of Provincial Commissioner to issue directions.

13. The Provincial Commissioner if he considers it expedient, may from time to time issue under his hand, in respect of all or certain specified Leibons in the settlement area, all or any of the following directions:-

- (a) a direction that they report themselves as he may require at fixed intervals of time;
- (b) a direction that they shall notify their place of residence within such area and any change of and any absence or intended absence from such place of residence;
- (c) a direction that the carrying of any arms (as defined by the Native Arms Ordinance, Chapter 157 of the Revised Edition of the Laws) by them be restricted or prohibited;
- (d) a direction that they be restricted in their movements to any specified locality in such area or be settled in any specified place of residence in such area;
- (e) a direction that the holding by them of public meetings of any kind be restricted or prohibited.

Power of Provincial Commissioner to grant passes and to revoke orders for removal.

14. Notwithstanding the restriction and prohibition in section 5 of this Ordinance the Provincial Commissioner may in his discretion -

- (a) grant passes to persons in the settlement area, giving permission to leave the area; such passes shall be signed by the Provincial Commissioner or by officers authorised by him, and shall be in such form and valid for such periods and subject to such conditions as he shall think fit; and
- (b) by writing under his hand vary or revoke in its application to any person or persons in the settlement area any order of removal and settlement made by virtue of the provisions of this Ordinance.

Measures relating to settlement of Laibons.

15. It shall be lawful for the Provincial Commissioner to take all such measures and to issue all such directions as he shall deem necessary for the permanent settlement of the Laibons and their families in the settlement area.

No appeal from removal save as in Section 9.

16. Save as provided in section 9 of this Ordinance, no appeal shall lie against any removal or compulsory settlement made in accordance with section 4 of this Ordinance.

Protection for persons acting under the Ordinance.

17. No prosecution, suit or other legal proceedings shall lie against any person for anything done or in good faith intended to be done under this Ordinance, and no compensation shall be payable to any person for any act done in good faith under the provisions of this Ordinance.

Rules.

18. The Governor in Council may make rules for the carrying out of the purposes of this Ordinance and may in such rules prescribe penalties for breaches thereof.

Penalties.

19. Any person who without lawful excuse, the burden of proving which shall lie upon him -

- (a) fails to appear in compliance with any notice issued under section 7 of this Ordinance; or
- (b) intentionally withholds or omits to furnish any information required under that section; or
- (c) when required to furnish information under that section, furnishes as true any information which he knows or has reason to believe to be false; or
- (d) refuses to allow his finger impressions to be taken by any person in accordance with section 7; or
- (e) fails to obey any order or direction given, in accordance with the provisions of section 14 or section 15 of this Ordinance, by the Provincial Commissioner or by any officer authorised by him; or
- (f) in any way obstructs or interferes with any officer or any person duly authorised to exercise any right or power or to execute any duty under this Ordinance,

may be arrested without warrant, and shall be guilty of an offence and shall be liable on conviction to imprisonment for a period not exceeding six months or to a fine not exceeding fifteen pounds or to both such imprisonment and fine.

Saving.

20. The provisions of this Ordinance shall be in addition to and not in derogation of the provisions of the Native Lands Trust Ordinance, 1950, and any Ordinance amending the same.

No. 9 of 1950.

SUBJECTS AND REASONS.

This Bill gives the necessary powers to the Provincial Commissioner, Nyansa Province, to remove to a specified area the hereditary witchdoctors known as Laibons.

2. Government is satisfied that the presence of the Laibons among the Lumbwa people has been directly responsible for the recent unrest and crime in the Nyansa Province. It is imperative, therefore, in the interests of law and order, that these people should be removed, more particularly as the Lumbwa have themselves petitioned Government to take this step.

3. It is the intention of the Government to provide for the removal of the Laibons from the Lumbwa area and to provide for the removal of the Laibons from the Lumbwa area and to provide for the removal of the Laibons from the Lumbwa area.

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1. PETITION FOR REPEAL
AND LEADING ELLERS OF BRIGANT,
SOUTH LUMBA DISTRICT

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We, the Kiptainek and leading elders of the
Buret Native Reserve who place our thumb-marks
hereto, ask Government to remove the whole of the
Laiwon clan from the S. Lumbwa district because
they cause much trouble and unrest by their witch-
craft and other evil ways:-

Thumb-marks of 110 Lumbwa natives.

Voluntarily signed by the Petitioners in my
presence this 19th day of December, 1929, at
Cheragel, S. Lumbwa district, the Petition
having first been duly explained to them in the
Lumbwa language.

(sgd) Douglas Brumage.

II Class Magistrate.

COPY

266

3. PETITION FROM MIPTALBHAI
AND LEADING SIDERS OF SOCIETY

SOUTH LULENA DISTRICT

We, the Kiptainek and leading Siguera of the
Sotik Native Reserve, who place our thumb-marks
hereto, ask Government to remove the whole of the
Lalbon clan from the S. Lumbwa District, because
they are bad people who cause much unrest and
law-breaking by means of their witchcraft and
other evil ways.

Chemagel,

S. Lumbwa District.

14th January, 1930.

Thumb marks of 84 Lumbwa natives.

Voluntarily signed by the Petitioners in my
presence this 14th January, 1930, at Chemagel,
S. Lumbwa District, the Petition having first
been duly explained to them in the Lumbwa language.

(sgd.) Douglas Brumage.

II Class Magistrate.

AFFIDAVIT.

I, TIRONGI ARAP TAPURE, Chief Loc. 5.
hereby make oath and state that the Lumbwa
Clan in South Lumbwa:-

- (1) Incite people to stock thefts from our
neighbouring tribes and to offences against
property - resulting in the frequent dis-
turbances and murders on our borders.
- (2) Live on what they can make from the people
by putting them in fear of drought, famine,
sickness and death.
- (3) Hindering the work of the Native authority
by setting themselves against this authority;
this is easy owing to the fear they inspire.
- (4) Dislike progress, are aliens and not of our
tribe and should be deported in a body if
Government want peace in the District.

Sworn before me at Kericho this 14
day of December 1929.

The above deposition having been read over and
explained by me to the person making it, was stated
by him to be a full and true statement.

(sgd) Philip H. Villeal. D.C.
Magistrate.

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INDIA

COPY.

AFFIDAVIT.

I, Ezekiel arap Roronya, of Location No. 10, Buret Native Reserve, hereby make oath and state as follows:-

(1) The Laibon clan that is living among us Kipsigis are foreigners. They came to us from the Nandi, who drove them out of their country, about 50 years ago. Originally they came from the Basal.

(2) The whole of this clan are evil-doers, and they have caused and are still causing us much trouble in this district. They tempt our young men to steal in order to enrich themselves and they are the cause of much other wrong.

(3) Unless every member of this clan is removed from us, we shall always have unrest and much stealing in the district.

(4) I hereby ask Government to remove the whole of this clan from this district in the best interests of our people.

(sgd) Ezekiel arap Roronya.

Sworn before me at Chemagel this 19th day of December 1939.

The above deposition having been read over and explained by me to the person making it, was stated by him to be his full and true statement.

(sgd) Douglas Grunage.
II Class Magistrate.

COPY.AFFIDAVIT.

I, Kimuta arap Feino, Headman of Location No. 11, Buret Native Reserve, do hereby make oath and state as follows:-

(1) Before the Laibon clan settled in this district all was peaceful among our people, but ever since they arrived here from the Nandi country there has been trouble.

(2) They teach our people to steal and do other bad acts. We shall never have peace so long as they continue to live in our country.

(3) I and the Elders of my Location ask Government to remove the whole of that clan from the South Lumbwa district.

(4) Thumb mark of
Kimuta arap Feino.

Sworn before me at Chemagel this 19th day of December 1929.

The above deposition having been read over and explained by me to the person making it, was stated by him to be his full and true statement.

(sgd) Douglas Brumage.

II Class Magistrate.

COPY.

AFFIDAVIT.

I, Maratim arap boywa, Senr. Kintalyat of Location No. 11, Gurat Reserve, do hereby make oath and state as follows:-

(1) I do not wish any of the Lalben clan to remain in our country, because they are evil people and have caused us much trouble.

(2) All of them should go, even their children who are like snake's eggs.

(3) humb mark of
Maratim arap boywa.

(4)

Sworn before me at Ghemagel, this 19th day of December 1929.

The above deposition having been read over and explained by me to the person making it, was stated by him to be his full and true statement.

(sgd) Douglas Prunage.
Magistrate.

STANDARD
PRINTING

AFFIDAVIT.

I, Cherengeti arap Cheryot, do hereby take oath and state that I am the official Headman of Locations 2 and 4 in South Lumbwa District, which post I have held for three years, prior to which I was for many years a Sub-Headman in Location 1.

I have known the Laibon clan for many years, during which time they have been responsible for much trouble.

The Laibon continually oppose the Government and incite people to disobey the Headman's orders.

For many years they have been responsible for the majority of stock thefts in this district. They incite people to stock thefts and many murders and disturbances have resulted.

The people live in fear of the Laibon who thus have considerable power which they use against native authority and the Government.

There will never be peace and good order in this district so long as the Laibon are permitted to remain.

(sgd) Chief arap Cheryot.

Loc. 2, 4.

Sworn before me at Kericho this 23rd day of December 1929. The above deposition having been read over and explained by me to the person making it, was stated by him to be a full and true statement.

(sgd) B. Perciford Steaks.

Magistrate.

COPY.AFFIDAVIT.

I, Philip arap Borghuchut, do hereby make oath and state that I am the Official Headman of Location 1, South Lambwe Reserve, which post I have held for the last fifteen years.

A large number of the Laibon clan live under my jurisdiction. They have always given trouble. They oppose lawful orders issued by me as Official Headman. They do all that they can to prevent me from arresting criminals and tracing crimes. They help the stock thieves and instigate people to steal stock. The Kipsigis live in fear of the Laibon on account of the supernatural powers which the Laibon are supposed to possess. On account of this it is almost impossible to get anyone to give evidence against a Laibon and consequently they are never convicted. The Laibon are of Masai origin and came to this district from Mandi. So long as the Laibon are allowed to remain in the Reserve, it will be impossible for Chiefs and Headman to maintain proper order and put down crime. They never do any work but extort property from the people by putting them in fear of witchcraft.

(sgd) Philip Borghuchut.

Sworn before me at Kericho this 23rd day of December 1929. The above deposition having been read over and explained by me to the person making it, was stated by him to be a full and true statement.

(sgd) G. Beresford Stooks.

Magistrate.

COPY:

AFFIDAVIT.

I, Kiprotich arap Kalia, do hereby swear oath and state that I am Sub-headman of Location 19, Lumwa Reserve. I have held this post for four years and I have lived in Location 19 since I was a child.

I have known of the Laibon all my life. Formerly there were only a few, but now the boys have grown up and there are many Laibon.

The trade of the Laibon is to extort money from the people by putting them in fear of witchcraft. They also help the young men to steal cattle and other property.

The Laibon oppose the Government and as all the people are afraid of the Laibon they cause a lot of trouble. It is for this reason that Chiefs and Headmen find it very difficult to make people obey lawful orders.

The Laibon are against progress and if they are allowed to remain in the Lumwa Reserve it will be a bad thing. We shall have more difficulties with stock thefts and the people will never become prosperous.

(sgd) Kiprotich arap Kalia.

Sworn before me at Kericho this 30th day of December 1929. The above deposition having been read over and explained by me to the person making it, was stated by him to be a full and true statement.

(sgd) G. Beresford Stocke.

Magistrate.

AFFIDAVIT.

I, Kipkoti Wap Baige, do hereby make oath and state that I am Kiptayat of Torit Forest in Location C, South Lumbwa Reserve, and a member of the Nelson Native Tribunal.

I remember the days when the fathers of the present Laibon were in the Lumbwa country, before the Government came here. I was then a boy. In the days of the wars with the Masai and other tribes the Laibon used to take a toll on the cattle brought back by the warriors although the Laibon themselves did not fight. From those days up to the present the Masai have been frightened of the Laibon because of their witchcraft. Before the Government came we used to follow the Laibon and demand what they told us. When the Government came, the Laibon would not help us with the Government and they have always opposed the native authority established by the Government.

About three years ago the Laibon began to take up stock thieving and organised crime such as the breaking open of Indian shops. Previously they had only done very little of this. It is within the last three years that they have increased their activities in this direction.

There will never be peace in our country so long as the Laibon clan are living here.

Sworn before me at Itibef, Location 2, Lumbwa Reserve, this 15th day of January 1930. The above deposition having been read over and explained by me to the person making it, was stated by him to be a full and true statement.

(sgd) G. Beresford Stooke.

Magistrate.

APPENDIX.

I, [Name], here, before me, being duly sworn, depose that I am an inhabitant of location 1, [Location], [State].

I have known the Laibos for twenty years. They have always cheated the people. They tell the people that if they want their goods to be safe they must give the Laibos presents. When they visit the country, again the people must give the Laibos presents.

The Laibos never help the local authorities. They refuse to do any communal work. They help thieves and criminals. They help to hide and dispose of stolen stock. They are very frightened of the Laibos and are very violent against them.

I think the Laibos should be removed. If they stay we shall never be able to stop stock thieving. If they are removed the country will be quiet.

Thumb print.

I certify that the above deposition was read before me at Maricho this 21st day of January, 1960, and that when read over the stated deponent there was no true recollection of the facts.

(Signature) [Name], [Title].

[Signature]

179
COPY.

AFFIDAVIT.

I, Kipkerich arap Koeh, hereby make oath and state that I am an Elder of Location 1, Lumbwa Reserve.

The Laibon are bad people. They cheat the Kipsigis and take property from them. If a Laibon sees a handsome girl, he takes her for his wife and if anybody objects the Laibon does not listen. The people are frightened of the Laibon.

The Laibon instigate the Kipsigis to steal stock. It was the Laibon who were responsible for the theft of Masai stock at Jamji last year.

The Laibon refuse to help the tribal authorities. They oppose the tribal authority set up by Government.

The Laibon ought to be removed completely, and then we shall have peace in our country.

Thumb mark.

Sworn before me at Kericho this twenty first day of January 1960. The above deposition having been read over and explained by me to the person making it, was stated by him to be a full and true statement.

(sgd) G. Heresford-Stooke.

Magistrate.

I, Ian Quiller Orchardson, of Karabwet Estate, South Lumbwa district, do hereby make oath and state as follows with regard to the clan or family of "witch-doctors", usually known to Europeans as "Laibons", that are settled in the South Lumbwa district, and I do so believing that I express the views of the majority of the Kipsigis (Lumbwa) :-

1. My qualification for expressing an opinion is that I have lived nearly 30 years amongst the Kipsigis speaking the language and on terms of ever increasing intimacy and mutual confidence. Also I have dealt with this subject in a book upon the Kipsigis which is hoped will soon be published by the Institute of African Languages and Customs.

2. Of the so called Laibons I have so far had knowledge for they do not live in part of the Kipsigis Reserve with which I am familiar. It is important to realize that a very large section of the people know little of their own bear little of their doings, that is the people who live in the "Ginat" country (i.e. bush or former bush country) where sheep and goats preponderate over cattle.

3. These Laibons are a small clan of foreign origin derived from one Eichomber called Arap Koylogen (and probably two of his brothers) who was expelled from Nandi in the eighties or last century. His family originated in Masai where they were Laibons (the Masai term) or ruling witch-doctors according to the custom of that tribe. At the time when many of the family were put to death in Masai one escaped to Nandi (or perhaps first to Kego) where he gained power until put to death when his son fleeing to Kipsigis again gained power.

4. Until the arrival of this man, Arap Koylogen, there was no such thing as a "Laibon" amongst the Kipsigis, witch-doctors had no power and were not part of the government of the country. Thus very shortly one sees that this clan of

Laibons is :

1. of foreign origin and has previously caused trouble,
 2. their power is a recent development foreign to the old system of government,
 3. and that for these reasons their presence is resented.
5. They have however been so greatly feared that until recently few have dared to express their hatred. Since the deportation of Arap Boylegen however the people of the eastern side of the Reserve have lost much of their fear of expressing their hatred of the present sons and grandsons of this man - though the fear of their occult power is still very strong.
6. It is the fear of this clan of "Laibons" which is largely accountable for the difficulty of stopping stock theft of the encouragement of which these "witch-doctors" become rich. No one dares betray a stock thief for fear of the occult power of these men.
7. Now stock theft is by far the most difficult thing the Administration has to deal with. Amongst the Kippis and its inability to stop it, keeps it in a perpetual state of irritation against the people and the introduction of such methods as collective punishment has naturally caused the reciprocation of the feeling, for the punishment of the innocent for the guilty does not tend to make a people more law-abiding - more especially when they must so suffer because their fear of the occult powers of the Laibons is greater even than that of punishment by Government whether guilty or innocent.
8. This fear deterring people from betraying or even speaking a word against the Laibons has tended in the past to make Government believe that the Laibons have the willing support of the people. On the contrary, it may be

stated very ...

stated very definitely that they are hated as well as feared (and because they are feared) by the great majority of people, who would welcome their death or failing that their deportation.

9. I have frequently heard it stated that if there were no European Government these "Laitons" would have been sentenced to death long ago, for this is the normal penalty for "proved" witch-craft". (In fact one member of that family actually was put to death even since the establishment of European Administration).

10. In my opinion the removal of the Laitons would do more than any other one thing to put a stop to stock theft and would soon render un-erfluous the Police now in the Reserve, a burden only recently imposed upon the people almost entirely on account of the activities of these witch-doctors. And when stock theft is reduced to inconsiderable proportions one of the causes of friction between the Administration and the people as a whole will be removed and make possible co-operation in improvement in more useful directions.

11. For the removal of this clan of "Laitons" to be effective, they should be put in such a place (1) that it can have no evil influence in its new surroundings (2) that communication especially by messenger cannot readily be made with Kipsigis. Though I have none but hearsay knowledge of that country I would suggest tentatively the North Western corner of Kenya.

(sgd) Ian G. Ordeardson.

Sworn before me this 17th day of March, 1930, at Kericho.

(sgd) Douglas Sprague.

II Class Magistrate.

I, Ian Quiller Orchardson, of Elvas Street, South Lumbwa district, do hereby make oath and state as follows with regard to the clan or family of "witch-doctors", usually known to Europeans as "Laibons", that are settled in the South Lumbwa district, and I do so believing that I express the views of the majority of the Kipsigis (Lumbwa) :-

1. My qualification for expressing an opinion is that I have lived nearly 20 years amongst the Kipsigis speaking the language and on terms of ever increasing intimacy and mutual confidence. Also I have dealt with this subject in a book upon the Kipsigis which is hoped will soon be published by the Institute of African Languages and Customs.
2. Of the so called Laibons I have no first hand knowledge for they do not live in part of the Kipsigis reserve with which I am familiar. It is important to realize that a very large section of the people know little or nothing of their little of their doings, that is the people who live in the "Secret" country (i.e. bush or former bush country) where sheep and goats preponderate over cattle.
3. These Laibons are a small clan of foreign origin derived from one Kichomber called Arap Koylogon (and probably two of his brothers) who was expelled from Nandi in the eighties of last century. His family originated in Nandi where they were Laibons, (the Masai term) or ruling witch-doctors according to the custom of that tribe. At the time when many of the family were put to death in Masai, one escaped to Nandi (or perhaps first to Kege) where he gained power until put to death when his son fleeing to Kipsigis again gained power.
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Laibons is :-

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 2. their power is a recent development foreign to the old system of government,
 3. and that for these reasons their presence is resented.
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8. This fear deterring people from betraying or even speaking a word against the Laibons has tendered in the past to make Government believe that the Laibons have the willing support of the people. On the contrary, it may be

stated very ...

stated very definitely that they are hated as well as feared (and because they are feared) by the great majority of people, who would welcome their death or failing that their deportation.

9. I have frequently heard it stated that if there were no European Government these "Lalibons" would have been sentenced to death long ago, for this is the normal penalty for proved witchcraft. (In fact one member of that family actually fell to death even since the establishment of the European Administration.)

10. In my opinion the removal of the Lalibons would do more than any other one thing to put a stop to stock theft and would soon render superfluous the police now in the reserve, a burden only recently imposed upon the people almost entirely on account of the activities of these witch-doctors. And when stock theft is reduced to inconsiderable proportions one of the causes of friction between the Administration and the people as a whole will be removed and make possible co-operation in improvement in more useful directions.

11. For the removal of this clan of "Lalibons" to be effective, they should be put in such a place (1) that it can have no evil influence in its new surroundings (2) that communication especially by messenger cannot readily be made with Kipsigis. Though I have none but hearsay knowledge of that country I would suggest tentatively the North Eastern corner of Kenya.

(sgd) Ian C. Orchardson.

Sworn before me this 17th day of March, 1930, at Kericho.

(sgd) Douglas Bruce.

II Class Magistrate.

MEMORANDUM ON THE LUBWA LAIBONS.

In June, 1911, I took over Maricho District and found Kipchember arap Kalleki, the principal Laibon, in receipt of Rupees 50 a month as Chief of Kiptarra Location and holding a sort of paramount position over all the other headmen in the Reserve.

2. This man and the position of the Laibons in general are referred to on several occasions in HOLLIS' book on the Nandi. The references are on pages XVIII and XXII of the Introduction and 49 and 50 of the book itself. A picture of the Laibon himself is found on the plate facing page 50.

3. The relevant quotations from HOLLIS are as follows:

"As the Orkoiyets come of a Masai family, and their office is precisely equivalent to that of the Masai Laibons, it is probable that the whole system was introduced a few generations ago, and that the Kiruogik, or representatives of the people, are an older institution. The fourth Orkoiyot was killed by the Nandi in 1890, but ultimately this act of rebellion strengthened the position of his successors, for it was held to be the cause of all the disasters which fell on the tribe".

and again

"Another series of religious - or at least superstitious - beliefs is connected with the Orkoiyets, or principal medicine men, who are Masai by race and have introduced most of the ideas and practices connected with the Masai Laibons, but with some variations of their own. They are said never to pray to Asis but only to the spirits of their ancestors, and to receive miraculous powers from sacred snakes. They divine and predict the future, exactly like the Masai Laibons, and are credited with the same powers of producing rain, children, and success in war. They do not accompany the warriors, but are believed to have the power of detaching their heads and sending them with the expedition to see what is being done".

4. The following further account is given on pages 49 and 50 of Hollis' book:-

"The Medicine Men. The Orkoiyot, or principal medicine man holds precisely the same position as the Masai Ol-oihoni, that is to say, he is supreme chief of the whole race. He is a diviner, and foretells the future by such methods as casting stones, inspecting entrails, interpreting dreams, and prophesying under the influence of intoxicants. He is also skilled in the interpretation of omens and in the averting of ill-luck, when foretelling the future by casting stones (pamparek), he uses a box called ketet, or a piece of bamboo stalk called abivet, and he throws the stones on to a fur kurook; when making amulets or medicine (pusaruk or kerrona), he uses an ox-horn and puts the ingredients into the hollowed ends.

The Nandi believe implicitly in the powers of their Orkoiyot. They look to him for instruction when they commence planting their crops, he obtains rain for them, either direct or through the rain-makers; in times of drought, he makes women and cattle fruitful, and no war-party can expect to meet with success unless he has approved of the expedition. On these occasions his official sanction is given when he hands a club, on which has been smeared a concoction called setanik, to one of the leading men. Before an attack is made each warrior touches his forehead and breast with the setanik, and the club is carried in front of the party.

"The position of Orkoiyot is a hereditary one. The medicine men are descended from the Segela Nandi, and belong to the Talai clan, whose totem is a lion. The following genealogical table will show that the position is not an ancient one, and it seems probable that it has been borrowed from the Masai, just as the Lumbwa seem to have borrowed it from the Nandi in recent years. It will be observed that Ar-ap-Kipsegun and Kopokoi are both termed second Nandi Orkoiyot; there was apparently a dual administration until the former was ousted.

Kipsegun ...

Pipeogun
1st Nandi Orkoiyot

Kopokani
2nd Nandi Orkoiyot

A-...-Pipeogun
2nd Nandi Orkoiyot

Shanku
3rd Nandi Orkoiyot

Kimnyole
4th Nandi Orkoiyot,
killed by the Nandi
in 1890.

Kipchomber
(or An-ap-Koilake)
1st and present
Nandi Orkoiyot.

Koitalel
(or Samweil)
5th Nandi Orkoiyot
killed by our
forces 1905.

Kileles
(or Tamason)
6th and present
Nandi Orkoiyot.

see Note 1 after
the word "him".

see Note 2 after
the word "smoke".

"The person of the Orkoiyot is usually regarded as absolutely sacred. Nobody may approach him with weapons in his hand or speak in his presence unless first addressed, and it is most important that nobody should touch his head, otherwise it is feared that his powers of divination, etc., will depart from him. The fourth Orkoiyot was, however, clubbed to death by his own people. This was done as he was held to be responsible for several public calamities. First of all came famine; this was followed by sickness; and then a raid, which the Orkoiyot had sanctioned against the Kavirondo, was so disastrous that out of 300 warriors who set out but two returned alive. Before he was put to death Kimnyole is said to have prophesied that white people would come who would wage war with the Nandi, kill their sons, seize their cattle, and drive them out of their homes, and that they would bring with them a strange being like a serpent that would crawl along the ground, shriek, and puff smoke. He advised all those who could do so to go and live in the heavens, as the earth would no longer be a proper place to live in. All the misfortunes which have since befallen the Nandi are attributed to their having murdered their Orkoiyot."

Note 1. It is commonly believed that the Orkoiyot can detach his head from his body, and that he is able during a fight to send it to the scene of hostilities to watch his troops.

Note 2. The engines of the Uganda Railway.

5. From these quotations it will be clearly seen that the Laibons are an alien importation into Lumbwa. I have been definitely informed that when Arab Koileki arrived in Lumbwa from Nandi he was a poor man without any property whatever. When I took over in June, 1911, he was the richest man in the district with a huge village containing his numerous wives and children. This property he acquired by playing on the credulity of the people and I am quite convinced by obtaining a percentage of the stock stolen by the Lumbwa.

6. The following quotation from a private letter dated 20th January, 1910, from Mr. Partington (District Commissioner, Kericho, in 1909, 1910 and 1911) to Mr. Ainsworth is interesting:-

"after his father's death at the hands of the Nandi, Arab Koileki as the eldest son became the principal Laibon of the whole district. The Nandi Laibon was always a much smaller man. The Nandi used to go to Arab Koileki for anything important and often tried to induce Arab Koileki to return there.

"The Nandi or rather many of them believe that Arab Koileki bewitched their young Moran so that they should steal and the Government should take an expedition against them. This was done by him in order that he might be revered on them for the death of his father. Since the expedition the Laibon has had nothing to do with the Nandi though they still send him presents and recognize him as the head Laibon of their country."

7. The letter is written in connexion with a petition sent on 31st December, 1909, by 14 Nandi Political prisoners in Mombasa Prison to Arab Koileki addressed as "Chief of the Wanandi" begging him to ask the Government to have them released.

8. About the time I arrived the Police carried out a drive in Tinderet which was even in those days supposed to be the home of thieves and stolen stock.

Captain Long Innes of the Police was in charge and in addition to the Native Police had two bands of spearmen one from Handi and one from Lumbwa with him to help to round up stock.

9. One day he learnt that for certain reasons it would be inadvisable to employ the Lumbwa spearmen in the next day's operations, so very early in the morning while the Lumbwa were still asleep he went off with the Police and the Handi warriors and rounded up a large mob of cattle among which were found sixty belonging to the Lumbwa Laibon and a number of others belonging to various sub-chiefs in the Lumbwa Reserve and some to the Government Interpreter at Kericho.

10. In connexion with this Mr. Ainsworth the Provincial Commissioner, Kisumu, wrote to the Secretary to the Administration (letter No. 109/1909 of 25th September, 1911):-

"I am calling upon the District Commissioner, Kericho, for a report on the general conduct of the Laibon, whose conduct has been unsatisfactory for some time. It is, of course, possible that our action in connexion with Minderet may result in the old man behaving himself better in the future."

11. In reply to this letter I wrote as follows (Confidential No. 732/208/1 of 2nd October, 1911):-

"My personal knowledge of Arab-hoileki, the Lumbwa Laibon, dates only from the middle of June last. Before that I had frequently heard from Kavirondo of Kisumu and South Kavirondo Districts, that it was useless reporting cattle thefts to him as he would not assist in any way. As regards this the District Commissioner, Kisumu, would probably be able to give more information."

"I summoned the Laibon into a big "Baraza" of Chiefs on Coronation Day June 22nd giving him plenty of time to arrive. Every other Chief and Headman in the District was present and the Laibon only arrived the day after, June 23rd saying he had mistaken the date. I understand that he has acted thus before.

"It is notorious that he is a confirmed drunkard. When I camped at his place on August 5th he was under the influence of drink. As he generally attends barazas and

travels with about a couple of hundred followers his example is bound to have a very bad effect the natives being only too prone to drink as it is.

"As I mentioned in my recommendations for Collective Punishment on the occasion when four Lumbwa raided a Kavirondo village at night in June one Lumbwa was caught by the Kavirondo though the names of the remaining three being known to the Laibon, you he did not arrest them at once. In fact it was only when he had some in hand and I ordered him to do so that he brought them in. As I stated, I believe he was waiting to see how much the Government knew before doing anything.

"40 of his cattle were taken in Tinderet in August being herded by a Lumbwa named Arap-Kogut. The same man was also herding 22 head of cattle of a woman Atat Tithalla. Among these 22 were 2 bearing Mr. Watts' brand and one of Mr. Watts' brand. Mr. Watts' brand was absolutely unique and on both his cows and they had never gone into the trouble of milking it. Arap-Kogut still has a cow named Rogita had brought them some time ago. The woman stated that Rogita had told her that he had exchanged some of her milk for two cows. As that he had not seen the cow. I had the Laibon in here on Tuesday last and questioned him about the affair. He stated that he had given his cattle to Arap-Kogut to herd in Arap-Terato's location and had no idea that they were in Tinderet. He asked how he on his own could be expected to know if any of his cows were out of the Reserve. I pointed to the large herd of spearmen he had brought us and told him that I considered that they kept him informed of everything that was going on. The net result is that three head of cattle either stolen or misappropriated have been found being herded with the Laibon's cattle. If the Laibon knew he certainly deserves a long sentence of jail. At the least he is guilty of criminal entry.

"I am absolutely convinced that the Laibon is of no use to the Government. In fact, I believe, he is a distinct drag on our efforts at bringing about a better state of affairs in this district. The events of the last few months have brought 4 or 5 of the young ambitious headmen into prominence and it is on these that I believe we will have to rely in the future and not on the drink-begged relic of a past order of things. A salary of £400/- per annum to A. Kollak is so much good money thrown away. Repatriation will be worse than useless unless he can be removed to a considerable distance from this district or ward. The natives would still regard him as Laibon and I believe his influence embittered by his punishment would only lead to sedition. There are only two courses open.

A. To make him come and live at the station and allow him to retain his salary and laibonship. This I consider inadvisable. He is too old and too drunkard to turn over a new leaf.

B. To deport him to some other district where he can have no influence on the Nandi or Lumbwa. This latter I consider the best course to pursue. I believe that his removal will tend to dissipate any idea that the Government are afraid of him. It will allow the younger and more energetic chiefs to undertake responsibility without any fear of what the laibon may do to them. I believe that the natives of his district and Nandi have a lurking fear of his influence and when it is shown that he is a mere man and a bad one at that and that the Government are not afraid to treat him as such a considerable number of disclosures will come to light which are at present suppressed through fear.

12. It will be noted that at that time stolen stock had been found with this man's cattle which had been seized in Kiseret.

13. Mr. Ainsworth replied as follows and sent a copy of my letter quoted above and his reply to the Secretariat on October 5th, 1911:

"I have had under my consideration for some time the subject matter of your despatch noted above.

"What you say in your letter only confirms my opinion of the laibon's character.

"I understood you to say the other day that the laibon had offered to come and live at Kericho or had suggested that he should do so.

"I think from every point of view that you should endeavour to get the laibon to come and live at Kericho where you can watch his conduct and where possible and necessary contact him. It may be that under such conditions you may be able to make him of use to the Government, at any rate I wish you to try. Please inform the laibon that the Government wishes him to come to Kericho and point out to him the advantages likely to accrue to him and to the Lumbwa if he follows out this wish.

"Please report further on the position later."

14. In the end of June 1911, I apparently wrote to the Provincial Commissioner, Kisumu, (I cannot find a copy of the letter) complaining that the laibon had failed to appear when summoned and Mr. Ainsworth

replied ...

replied as follows :-

"What you report in this case is what has happened on practically every occasion I have endeavoured to meet the Laibon. There has invariably been a failure to attend when summoned and as invariably some excuse of either illness or mistaken date".

From this it will be seen that at that time the Laibon was inclined to demonstrate to his followers his independence of Government.

15. I went on leave early in 1912 and Mr. E. Montgomery took over the district in my absence. In September of that year a box containing Rs. 2,000/- was stolen from his tent at night while he was collecting but tax in Kariakoo. The thief a Lumbwa named Aroa Since who lived close to Kericho was arrested and approximately Rs. 600/- recovered. This had been buried in the bush about 15 miles from Kericho. He was then sent out with Captain Wolsely, then Assistant Superintendent of Police at Dumbwa to try and recover the balance. While crossing a bridge he suddenly jumped into the river handcuffed as he was and escaped and completely disappeared. Everything that could be done was done to discover his whereabouts but without success.

16. I returned from leave towards the end of 1912 and took over the district again from Mr. Montgomery. I had a good deal of trouble early in 1913 with the Laibon and stock thieving became very serious. As a result I summoned the Laibon into Kericho in February. He was expressly told he must remain in Kericho but instead went home without permission and held a feast in his hut in Kipterri his excuse being that his son had fever. At that time a certain number of thieves were caught and most of them belonged to the Laibon's

Laibon's location (Kipterri) and a large number of the cattle recovered were found there.

17. In the beginning of August, 1913, I got a mysterious letter from the District Commissioner, Nandi, (Captain Basil Monckton), asking me whether I would object to his sending a couple of Nandi to Kericho district in any and arrest someone whom he wanted to get very badly. He told me no further details and asked me not to breathe a word of this to anyone. I wrote and told him he might and on the night of August 10th Arap Sincee the man who stole the Rs. 2,000/- and escaped from the Police nearly a year before was arrested within a mile of the Kericho office by the emissaries of the District Commissioner, Nandi, and next day was sentenced to 7 years' R.I. by me. The men who arrested him told me that they had gone to his mother's hut in a location called Goita and had hidden in the bush and at about 9 p.m. the man came out of the bush and went into the house and they arrested him there. Arap Sincee informed me during the case that after his escape he had lived with the wanderers till 10 days before his capture when he came back to his mother's house. This cannot have been true as it was obvious that the District Commissioner, Nandi, when he wrote to me knew where the man was. I naturally thought it a very extraordinary thing that the goings and comings of a man inside the Kericho township should be known in Nandi and not known to me and I wrote to the District Commissioner for more information and he replied as follows:-

"I am very glad my people have been successful in arresting Tarranda alias Arap Sincee. It may be of interest to you to know his movements from the

time...

time he made his escape from the hands of A.C.P. Wolsley Bourne and his Police off the itare bridge. the prisoner made straight for the Lumbwa Laibon's house and lived there for approximately one month, under his protection. After this he joined the Manyatta Morans living close to the office and remained with them for about four months. These people as well as the office staff shielded him. The prisoner has been seen by my people more than once walking about not far from the office. After this the prisoner built himself a house at Goita and has been living there unmolested until arrested.

"The Lumbwa Laibon gave strict injunctions that the man was to be protected and shielded, and in return for this, I am informed, he received the whole of the greater portion of the stolen money which the prisoner dug up after he effected his escape. Under the circumstances it was imperative that the greatest secrecy should prevail. The man in question was shielded by everybody."

18. About that time I received constant reports that the Laibon was responsible for all the stock thefts that went on and received a commission on all stock stolen. Further I had received information from the District Commissioner, Kisumu, that it had been reported to him that the Laibon had sent out word that the natives not only of Lumbwa but elsewhere were to send him presents of stock so that he could make medicine and drive the Europeans out. I investigated this and found out that he was actually receiving tribute not only from the Lumbwa but the Kisii and Mandi as well though for what purpose I could not discover.

At this time I advocated the deportation of the Laibon pointing out that if he continued to live in the district it would have a very serious effect on the Government prestige.

19. Mr. H.H.Horne, then Acting Provincial Commissioner, Kisumu, instructed me to get all the absolute proof

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I could get against him and expressed the opinion that my interpreters and tribal retainers must be in league with the Laibon. I pointed out to him that the Laibon and Nandi all regarded the Laibon with extreme dread and quoted a private letter from the Laibon to me in which he stated as follows: "Your old Laibon has such power that people's lives would be in danger if they gave evidence against him and I should not care to ask my people to do it. No Laibon is safe evidence."

20. In June of this year two Indians, brothers, Jilil Din and Maam Din owners of stores in a trading centre in the Reserve suddenly at a moment's notice closed their shops and departed to India. The reason for this precipitancy was not apparent and baffled us completely until after the arrest of Arap since it was discovered that one of these Indians had married an accomplished Lumbwa woman who was sister of Arap since and that on his escape he had been harboured at this shop for some time. About that time one of the Indians had had a quarrel with the local natives and was afraid this fact might be charged against him, so decided to depart. This was additional proof that Arap since had been living in the Lumbwa Reserve since his escape.

21. After Arap since's arrest I spent a considerable time in obtaining evidence and affidavits and to show in what fear the Laibon was held I will quote a few:-
 Arap, Mitchell Headman of Location 3 swore as follows:-

"Arap since brought news to my location from the Laibon that we had to pay him cattle and sheep and goats. He said our cattle and vimbis would die otherwise. I also heard it said that he said the Europeans would go away. We are all in fear of the Laibon and do what he tells us. Buiet has also been told to pay up stock to him. We see the elders dying and the cattle dying".

On being asked if he would be willing to repeat the statement before the Laibon he answered in the negative most decidedly and said that he would certainly do if he did so.

Wap Ererochut a mission youth and now headman of Location 1, Kipterrit, informed me at that time that the Laibon had some years before built a big boma and given orders that it was to be filled with cattle and sheep. This was not done and he then informed them that it was owing to their not having done so that the Government was imposing Collective fines on them. He went on to tell me that the Laibon had killed his (Apat) son, Joobut father because he abused the Laibon's people for stealing cattle and the Laibon looked at him and he died. He had also killed many chiefs and headmen. Wap Ererochut gave me the names of six of these.

SP. I obtained a number of further affidavits at that time from Mr. Hetchkiss of the Lumbwa Industrial Mission and several natives who had been educated at the Mission all tending to show that the Laibons were exacting tribute from the natives through threats of punishment and were in league with the stock thief. These were sent in with a covering letter dated 17th September, 1913, to the Acting Provincial Commissioner, Kisumu, (a copy of the letter is probably on the Secretariat file as I find a letter from the Chief Secretary No. 7011 of 16th October referring to the matter). In this letter I stated as follows:-

"I believe the people generally would be immensely relieved if the Laibons were removed. At present they are trying to serve two masters with indifferent success".

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23. Subsequently a confidential despatch No. 165 of 19th November was sent to the Secretary of State and permission was obtained for their deportation and this was carried out in January 1914.

24. On the 22nd January I wrote to the Acting Provincial Commissioner as follows:-

"The general feeling among the natives here appears to be one of relief and satisfaction at the removal of the Laibons and I have been informed that several already are taking steps to try and recover stock taken from them by the Laibons".

25. On the 29th January, 1914, I wrote to the District Commissioner, Nandi, reporting that there seemed to be an inclination among the Laibons' sons and relatives to return to Nandi which was really where they belonged.

26. In February, 1914, I received information in corroboration of the general belief that the Laibons were in league with the stock thieves. I reported this to the Provincial Commissioner in the following letter dated 12th February:-

"It will probably be within your recollection that in December 1912 eight head of cattle were stolen from the Quarantine Camp at Fort Ternan. They were traced into the Reserve and the tracks were lost in Arap Sheboi's country. A collective fine was subsequently imposed on this location and paid. On Monday last one of the thieves who belongs to what was the Laibon's location was arrested and brought before me and told me the story of the theft. It appears that the theft was carried out at the instigation of one of the Laibon's sons Masura or Keturat arap Kipchomber who received two head as his share of the loot. A Nandi was also implicated in the theft and went to Nandi with some of the cattle."

27. On February 26th, 1914, I reported to the Provincial Commissioner that I had visited Kipkerri which was the location of the deported Laibon Arap Kileki and that at a large gathering of elders general satisfaction was

expressed ...

expressed at the Laibon's removal and that many natives were trying to recover the cattle which the Laibon had exacted. I also reported that there was a remarkable absence of the reticence which used to mark the people of this location and that they made no secret of the fact that the Laibon Arap Kolloki and his sons Lutret and Kiboin were at the bottom of most, if not all of the stock thieving that went on. Kenduwa the Laibon's eldest son was at that time living in Nandi.

28. After the removal of these three Laibons I found the natives generally very much more amenable than they had been and there was a marked decrease in stock thieving and arrests of stock thieves became more frequent.

29. That a considerable number of natives were anxious to have the Laibon brought back is shown by the following excerpt from my Annual Report for 1914 - 15 under April:-

"During this month there was a fortnight without rain and a number of locusts appeared. This resulted in a certain amount of excitement among the natives, women particularly, who demonstrated against one of the Mission headmen who had assisted in getting rid of the Laibons. Certain persons were punished in connexion with this affair".

30. On this occasion when the rain showed signs of falling a large number of women came into the Station and made a demonstration demanding the return of the Laibon whose departure they said had led to the cessation of the rain. They were dispersed with some difficulty but not before they had pulled the roof of the house of a Mission native named Arap Ngetich who had given evidence against the Laibons. This all

shows what an opinion the natives generally have in regard to the powers of the Laibons. It was most unfortunate that in the year of the Laibons' deportation not only did locusts appear, but a drought was threatened and a strange sort of sickness went through the Reserve.

31. During the year 1914, a cow, my private property, which I kept in Kericho Station for providing milk died suddenly and mysteriously and a mule, also my private property, died in a similar sudden and mysterious manner. I had sent it on the day before in advance with a syce to wait for me half way to Lumbwa Station, intending to ride the first half of the way which was down-hill on a bicycle and use the mule to take me up the hill on the second half of the journey. When I was riding down the road I found the syce waiting beside the dead body of my mule which he said had died on the road the evening before. No doubt these two deaths were due to natural causes but I have little doubt that the natives put them down to the credit of the Laibons whom I had been instrumental in getting deported.

32. Nothing of very great moment happened for some years while the war was on but in the Annual Report for 1918-19 under the month January 1919 I find the following entry:-

"Mr. Lane, Provincial Commissioner, visited Kericho and had a baraza of the Lumbwa locations. Natives brought up the matter of Laibons and lack of rain."

From this it was clear that they still retained their belief in the occult power of these people.

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 ... Acting Commissioner, ...
 ... one of the ...
 ... allowed to return ...

"I ...
 ... trouble within the few months ...
 ... to ...
 ... During the ...
 ... announced to himself ...
 ... if only ...
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 considerable following."

34. ...
 ... 1919, 1920 ...
 ... considerable anxiety by his ...
 ... letter on
 ... from Mr. ...
 ... his ...
 ... one of ...
 ... which his ...
 ... of sharing ...

35. In July, 1921, ...
 ... had given evidence against the ...
 ... statement before ...
 ... had been sending his emissaries ...
 ... that these emissaries were being ...
 ... by the ...
 ... been increasing since his father's ...
 ... great influence after the 1915 ...
 ... He further stated that during the ...
 ... women had collected with pangas with a view to destroying

his house because he was known to be against the Laibon.

36. During the year Mr. Juxon Barton then Assistant District Commissioner in Kericho district and stationed in Sotik recommended that Kenduiwa should be watched. He made the suggestion that the whole Laibon family about 100 strong should be removed to the L'Osiegella Masai whence they had come. He pointed out that the institution of Laibon wasn't 50 years old in Lumbwa and not 200 years old in Nandi and that they were all aliens. He stated that it was no use reporting once and twice but that a clean sweep should be made and they should all be removed to their place of origin. He proposed to put up a Memorandum on the subject but unfortunately was transferred before he could do this.

37. During the years 1919 and 1920 there was a native named Arap Busia who acted as detective for me in the Lumbwa Reserve. He had been my cook and on his discharge took on this job. He used to come to my tent at night when I was on tour and bring me secret information about stock thieves and various goings on. In 1920 he gave me information that led to the capture of a stock thief for whom I had been vainly searching for 5 years. When arrested and tried it transpired that this man had been herding Kenduiwa's stock in Buret for about a year. Kenduiwa of course pleaded complete ignorance of the fact that he was a wanted man and there was no way of proving his knowledge. I could not convict Kenduiwa but I got the warrant of execution for the fine under the stock and Produce Theft Ordinance endorsed against Kenduiwa's property and attached a lot of his stock to pay the fine. A few months after this Arap Busia the detective who had

brought ...

brought this affair to light died suddenly & that I am eating bad meat but of course the natives all said "See what happens to anyone who goes against the Laibons".

38. Much as we wished to get rid of the Laibons' family in 1922, as well as we knew that they were working against Government, and blackmailing the natives, we could get no direct evidence on which to act.

39. During 1922 a member of the Laibons' family called Asap Lage fell under suspicion of acting in a rather prejudicial to peace and good order in the Reserve. There is little doubt that he obtained money from various people by putting them in fear. Mr. Tate then Provincial Commissioner, Nyanza, held an enquiry in August 1922 but came to the conclusion that the evidence did not justify the charge of endangering peace and good order and suggested that cheating would be a more suitable charge and he was subsequently convicted and sentenced to R.I.

40. In November 1923 Captain Ward then District Commissioner, Kericho, informed the Senior Commissioner that he had received a deputation from the headman of Location 7 and his elders asking that certain natives of Laibon extraction should be sent back to Nandi.

41. On 6th February, 1924, Captain Ward, District Commissioner, Kericho, wired to Provincial Commissioner, Nyanza:

"May all Laibons be returned to Nandi. Definite proof of assistance in stock theft".

The Acting Provincial Commissioner, Nyanza, Mr. Kenyon-Slaney replied that he could not give sanction for all Laibons to be returned to Nandi till he had further information as to their numbers, etc., and more evidence

against them. He pointed out that the... of of their... be prosecuted. ... thing if they could be got rid of... Commissioner to put up a full report.

42. Captain Ward furnished a certain... information including a letter... name... of the report... removed. A statement... 134... given or how in each location the... representative or agent (Mast... store (object) in which his... before being taken to... have yet been put into... recovered, it was... from the... must not... natives were also... representative of the... Captain Ward expressed the opinion that these people were not only... of thefts and harbourers of offenders against justice.

43. Mr. Kemsted then Provincial... in reply said that he... Commissioner's desire to get rid of them but expressed the opinion that he didn't think the problem could be solved by the... expedient of moving them to... Reserve whence they would be able still to keep... with the... He further stated that... of ...

of a criminal nature was necessary and surprised that the District Commissioner, Nandi, would not welcome them. Captain Ward replied that it was very difficult to get evidence against them as up to a few years previously the natives would not even mention the Laibons' names.

44. The legality of removing persons of Nandi extraction from Lumbwa to Nandi was put to the Attorney General in 1924 and in reply he stated that the place of such a person's birth did not matter. If he was the member of a tribe occupying unalienated Crown land outside the area reserved for the members of his tribe he could be removed to the area to which he really belonged. The District Commissioner, Nandi, however objected to the Lumbwa Laibons being sent to his district. At that time apparently the question of removing the whole of the rai or Laibon clan from Nandi was under consideration. This suggestion however did not materialise and the matter was allowed to drop. The District Commissioner, Kericho, being informed in the end of 1924 that he could not rid his District of these people to the detriment of Nandi.

45. The question lay dormant apparently till early in 1928 when the South Lumbwa Local Native Council discussed the matter at a meeting held on the 6th of January in that year. The minutes of the meeting record that the Council wished the Chairman to write to the Provincial Commissioner and urge him to make arrangements for returning these troublers of the peace to their ancestral home in the Nandi Reserve.

46. The District Commissioner was informed in connexion with the Minutes that their real ancestral homewas

Masai and that a good case would have to be put up for what was in effect deportation.

47. In February, 1928, the C.I.D. reported to the Chief Native Commissioner that information had been received that large numbers of Lumbwa had been called back to their Reserve apparently by the Laibon and that trouble was brewing and that the head Laibon deported in 1914 had prophesied that there would be war when there was a bad drought and an earthquake. (I.e. the earthquake occurred in January 1928.)

48. I visited the District in February 1928 and formed the opinion that no actual trouble was to be feared, though numbers of Lumbwa were returning on account of certain circumcision ceremonies.

49. Early in March 1928 the District Commissioner wrote that it had been reported to him that the deported Laibon at Nyeri had instigated numbers of Lumbwa to return to their Reserve giving out that he himself would be back in a few months and that the Europeans would shortly be leaving the country. The earthquake, locusts and drought were cited as portents of coming events. Large sums of money were also alleged being collected and sent to Nyeri for the Laibon. It was also suggested that this Laibon was in communication with the Kikuyu.

50. Nothing definite could be brought up against the deported Laibon Arap Soisio or the Laibon ~~in~~ in South Lumbwa at the time but there is little doubt that their activities increased and were largely responsible for the outbreak of stock thieving which took place in 1929 and eventually led to the trouble in the Lumbwa District.

(sgd) C. M. Dobbs.
PROVINCIAL COMMISSIONER, NYANZA.

THE LABOUR OF MIGHT.

1. INTRODUCTION.

For over twenty years the Kipsigis have suffered both oppression and repression, the former at the hands of the Labour and the latter at the hands of the Government. This, of course, is the point of view of the Kipsigis - a point of view the appreciation of which is essential if one is to have any chance of dealing successfully with the Labour problem.

2. In other words, the Kipsigis regard themselves as beset with two sources of misfortune of which the Labour are to them the more formidable. They know, of course, that there is antagonism between the Government and the Labour, but with the passing years they have watched the latter become more and more powerful and the Government appears to them to have done nothing to curtail this growth. Naturally they have come to regard the Labour as being the more influential.

3. Then, too, the Labour are so much more imposing. Rain and drought, famine and pestilence are summoned and dispersed at will by the Labour. Can the Government do that? No. The Government shoves its responsibility by attributing such fortune and misfortune to the working of an unseen and unapproachable Deity of whose existence proof has not as yet been vouchsafed to the Elders of the tribe. A small minority of enlightened Kipsigis realize that the Labour are imposters, but when they attempt to argue with their thicker headed brethren, they are met with the reply "Ah, you have been listening to the Europeans. You have lost your reason completely!"

4. The Laibon thus continue to utilise the elements as a money-making proposition. If there drought, the Laibon say it is because it has not been made worth their while to bring rain. The Kipsigis remedy this error, usually on the instalment system. When rain comes, the Laibon say that unless they receive some material consideration, they will stop it again. And so on ad infinitum. Given a certain degree of credulity on the part of the Kipsigis and of plausibility on the part of the Laibon, the system is infallible. In parenthesis one may remark that the same sort of thing goes on today in London and New York - plausible company promoters and credulous investors, for instance. The frailties of human nature are not subject to any colour bar.

5. Then, again, take the difference in methods of retribution meted out by the Laibon and the Government respectively to those who offend them. Over a year ago three young men quarrelled with a laibon named Kipkemil arap Tonui. Now all three are dead. The last died of influenza a few days ago, but in spite of the fact that it is over a year since the quarrel took place, his death is commonly attributed to the machinations of the Laibon. African negroes in general are peculiarly reluctant to admit disease as a cause of death. In 1924 a certain Headman in Belgut cuffed a youth for impertinence. Early in 1929 this youth died of malaria. The relatives searched back through the ages for some explanation and finally lighted upon this incident. The Elders of the location supported their contention and ordered the unfortunate ...

3.

fortunate Headman to pay 5 head of cattle as blood money. This, which had nothing to do with witchcraft, shows how native psychology plays into the hands of the Laibon, or alternatively how the Laibon play upon the native psychology.

6. What happens when a Kipsigis offends the Government? The Magistrate opens a case file and calls witnesses. Some of them tell the truth and others tell the most atrocious lies. Sometimes the Magistrate believes the lies - or is sufficiently shaken by them to give the accused the benefit of a doubt which ought not to exist, and the accused is amazed to find himself free. Sometimes the Magistrate discerns the truth of the matter, but in many cases - the more important ones - the accused still has a chance that the Supreme Court will feel a doubt and give him the benefit of it. Thus the odds are even that nothing will happen to him at all. The worst that can happen (except now and then in murder cases) is a term of imprisonment during which he is well looked after and in which the only real hardship felt is the absence of women and beer. Compare this with death or other adversity consequent upon crossing the path of a Laibon!

7. Is it therefore to be wondered at that there still are Official Chiefs and Headmen in Belgut who have far more respect for the Laibon than they have for Government and who are only loyal to Government in so far as such loyalty does not necessitate treading on the toes of a Laibon? A distinct majority of the Elders of the Belgut Native Tribunal is similarly affected. A Kipsigis who tried to sue a Laibon in the Native Court would be asking for trouble.

4.

8. Although almost all the Laibon live in Belgut, their influence extends to the Amala. Chief Kiblangat of Botik was told to build a produce road. The people of his location communicated with the Belgut Laibon who, for a consideration, let it be known that they disapproved of the road. Shortly afterwards it so happened that Chief Kiblangat resigned. A Mission boy, immune to witchcraft, was put in his stead and not only made the people complete the road but also had the audacity to seize a mob of cattle which was about to be sent to the Laibon with an urgent request that immediate action be taken. Unfortunately the mission boy allowed his zeal to overcome discretion with the result that his enemies were provided with a weapon wherewith to attack him. Mr. I. . . Orchardson, whose anti-Government views were well known to some natives was thereupon enlisted as an unconscious tool of the Laibon and by his unconstitutional methods of interference gave the Laibon cause a considerable fillip. The Mission boy was deposed and his successor is a man who very possibly will follow the old policy of obeying the Government within the limits laid down by the Laibon.

9. This introductory section may seem unduly lengthy, but, from an inspection of existing official records, it seems that the point of view of the Kipsigis has never been properly recorded with the result that there has been a lack of understanding in high quarters resulting in such remarks as - "If the various Chiefs were forced to exert their powers, the Laibon would rapidly become a nonentity except as a witchdoctor".

What I am endeavouring to show is that in the eyes of the Kipsigis the power of the Government although admittedly a

power ...

power to be reckoned with, is inferior to the power of the Laibon.

To sum up, the Kipsigis, like both the Laibon and the Government, the Laibon are not the chosen leaders of the people. They have imposed themselves on them, and the people would be glad to be rid of them. They dare not take any steps themselves in the matter nor dare they give any evidence which would assist the Government.

On the other hand if the Government shows itself capable of dealing firmly and adequately, its prestige will be immensely enhanced in the eyes of the Kipsigis.

II. Early History.

10. All the Laibon are said to be descended from a Masai Gishu Masai named Kobokoi who became Chief Medicine man of the Nandi. 'Laibon' is from the Masai 'oi-loibon' whereas the Kipsigis - Nandi name for a witchdoctor is 'orkoyot'.

11. The first arrivals in this Reserve were three brothers Chombeir arap Kelleke, Tonut arap Boisick (or Moysio) and Kinsigt arap reroget.

The trouble which these people gave has already been recorded, and in 1914 they were deported, the first to Keru, the second to Nyeri and the third to Fort Hall.

12. Their sons, however, remained behind to carry on the good work. but it must be remembered that in those days it was extremely difficult to obtain any information concerning the Laibon and their activities. Even to-day it is far from easy.

13. In 1914, three sons of Chombeir: Kenduiwa arap Chombeir, Kiboin arap Sitone and Ngatura arap Chombeir were known to be stock thieves.

14. The three deportees had another brother named Kibore who, so far as I can ascertain, remained in Nandi, but whose sons came over to Lumbwa to join their cousins. When the sons of Kibe arap Sonit, who was a first cousin of Chombeir and Kibore, etc., hearing that Lumbwa was a land of milk and honey and easy meat, also came over.

15. Thus, whereas in 1910, there were less than ten members of the Laibon clan in this district, there are now well over a hundred, including children, and the situation is correspondingly more complicated.

III. The Laibon Clan.

16. There is a tendency to call any witchdoctor or medicine man a Laibon, but it is incorrect. The Laibon are definitely members of one clan, and all trace their descent from the original Laibon Kobokoi. In addition to the Laibon there are numerous 'orkoyik' some of whom restrict themselves to the practice of medicine and simple divination and some of whom deal in witchcraft.

These 'orkoyik' however are of pure Lumbwa descent and the Kipsigis do not regard them with the same awe with which they favour the Laibon. Here and there one comes across a man who claims to be a Laibon but who on investigation - is found to be merely an ambitious 'orkoyot'. The difference between a Laibon and an 'orkoyot' is that - if an 'orkoyot' is suspected of bringing disaster, the people turn on him and rend him. But they dare not turn on a Laibon. A Laibon was once killed by a Mandi just before the Mandi trouble - and the subsequent misfortunes which befell the tribe were ascribed to this cause. (Vide Hollis - 'The Mandi').

IV. The Laibon Organisation.

17. Had the Laibon been content to restrict their methods of money making to that described in 1, 4 above, we might not have heard so much about them. It is ^a curious fact that when a man begins to make money he very often develops a thirst which is insatiable, and even though he may succeed in collecting far more than he can ever hope to spend, he still goes on feverishly amassing more. This is what seems to have happened to the Laibon. Also, the coming of age of a new generation has probably resulted in competition.

IV. The Laibon Organisation (continued).

18. However, the fact remains that nowadays the Laibon's most fruitful source of income is stolen cattle.

19. Selgut is divided into three districts, for each of which a Head Laibon assumes responsibility.

These three are Kiboin arap Sitone, Leslian arap Sore and Saoli arap Mibe, of whom Kiboin arap Sitone is looked upon as the Chief.

Each of these is responsible for an efficient organisation of agents and receivers of stolen property, not merely in the Reserve, but extending to farms in the Kisumu-Londiani district, the Nandi Reserve, and the Central Kavirondo Reserves.

20. A stock thief who wishes to avoid detection and fear of capture is well advised to make use of this organisation. The method is as follows. A stolen herd is usually broken up at once into ones, twos or threes, each of which are despatched along previously arranged routes from agent to agent. They are moved, as a rule, only at night and hidden in the bush during the day time. Thus a theft occurs in the Kisii or Central Kavirondo Reserve on the 23rd of a month. By the 25th or 26th the stolen cattle are distributed amongst various farms from Songhor to Fort Ternan, and a few may be on their way to the Nandi Reserve. Similarly, a theft occurs on a farm at Keru, and a few days later two or three head will be in the Mau Forest, another one or two on Manga, and others are being sold as meat in a Kavirondo market.

21. While stockthieving is admittedly a recreation of the Kipsigis as a tribe, there is also a working agreement

between ...

between what may be termed professional Kipsigis, Mandi and Luo stock thieves. Almost every Kipsigis is an amateur stock thief but as a rule amateurs are outside this organisation.

22. With a normal establishment of Administration and Police it is quite impossible to cope with these organised stock thefts. It takes them all their time to keep pace with the amateurs.

23. Another trick of the professionals is to exchange stolen cattle. For instance, a Luo thief will collect some stock in Kano, take them to Kapserok or Kablelach and there exchange, beast for beast, with Lumbwa thieves who have an assortment of cattle from another part of the country.

24. This is all backed up by the Laibon. For some time they have had a resident agent named Arap Son on the border at Kapserok, Loc. 1. They have another at Simbi, near the border in Loc. 5 and another at Kablelach in Loc. 2. In 1929 Arap Son was caught handling stolen cattle, and convicted by the Subordinate Court, but unfortunately there was a loop hole of doubt and the Attorney General did not feel justified in supporting the conviction, with the result that it was quashed by the Supreme Court.

25. The resident agents on the border ostensibly herd the Laibons' stock, but in reality they also facilitate the disposal of stolen stock. In the past tracks have definitely been followed to their bomas, but the Laibon can always produce witnesses to swear that the stolen cattle have been in their possession for years, and they also threaten any person who dares to give information against them.

26. For their services in this connection the Laibon take remuneration in the shape of a proportion of the proceeds.

V. CONCLUSION.

27. In any social upheaval or disorder, even in civilised countries, it is usually the case that the enthusiasts who work purely and simply for their cause are in the minority while the remainder support the cause merely for what they hope to get out of it. I submit that one can safely base one's study of the Lumbwa 'unrest' on this hypothesis - with the difference that there is not even a single Laibon who is actuated by a desire to serve the best interests of the Lumbwa tribe.

28. The Laibon are purely and simply out for their own ends. They are, as it were, an incubus on the backs of the Kipsigis. It would be most unfair to the tribe to interpret such events as the burning of headmen's huts, etc., as evidence of hostility on their part towards the Government.

The Laibon are against the Government because the latter does not favour their methods of getting rich and were they to live peaceably and lawfully they would be no richer than the ordinary Kipsigis peasants.

29. The effect of the Laibon on the Kipsigis may be summed up as follows:-

- (a) The wield over a majority of the pagan Kipsigis an influence which in no way operates in the best interests of the tribe.
- (b) They stimulate crime - particularly stock-thieving, a recreation for whose practice the Kipsigis need but little encouragement at the best of times.

Conclusion (continued).

30. From what one hears from Administrative Officers who have in the past been stationed in this district, it seems that for twenty years or more the Kipsigis have been a difficult tribe to handle.

While it would undoubtedly be an exaggeration to state that the removal of the Lalton would result in an immediate docility, there can be no question that they provide a very real obstacle to administration and to the progress of the tribe.

31. So long as they are allowed to remain here trouble will brew. They should be removed to a place sufficiently distant to break the threads of their influence, and Administrative Officers in the future will be well advised to see that these threads are not renewed.

(sgd) G. Beresford Stooke.

Assistant District Commissioner.

Witchcraft as Aid to Crime

THE "MIGHT" OF WITCHA

BARRETT, APRIL 22

WITCHA, APRIL 22

OF THE LONDON, 1910

WITCHA, APRIL 22

WITCHA, APRIL 22

WITCHA, APRIL 22

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WITCHA, APRIL 22

Police. That is most unfair. The Colonial Secretary must be aware that no Police Force, however large or efficient, can deal with Native criminals in country districts (this does not refer to towns), if administrative officials do not keep the Natives in the Reserves in order.

Further, frequently when cases are brought to the subordinate courts the sentences given are altogether inadequate to the crimes. For instance, a burglary or theft for which a European would get several years, involves for a Native a sentence of only a few months. It is to be borne in mind that these self-same administrative officers act in a dual capacity: they are also the magistrates in the subordinate courts. If he is weak as an administrator, *ipso-facto* he is weak as a magistrate.

Administrative officers who are of stronger fibre, and in their capacity as magistrates give more adequate sentences, frequently have their judgments reduced or squashed by the Supreme Court. Surely, Sir, an administrative officer who is in constant contact with the Natives, and more or less understands a Native's mentality, is in a far better position to know what sentence to give than a Supreme Court Judge, perhaps straight out from England, or, if he has been in the Colony for some time, has only come into contact with his Native house servants. I intend no reflection on the Supreme Court Judges' legal knowledge or integrity, but merely upon their knowledge of Native customs and mentality.

Take a concrete case. In 1928 or 1929 two Lumbwa decided to rob another Native of his goats and sheep. The Native to be robbed was a Sukuma employed by Captain Hardland Frank, a coffee planter whose estate is close to mine. One night the two robbers approached the but and stock kraal of the Sukuma. One stood outside with his spear, while the other broke into the kraal: whilst taking the sheep and goats he was attacked by the owner of the stock. The robber got the worst of the fight and ran away, calling on his friend for assistance. The Sukuma followed him up with a *panga* (a lethal weapon), attempting to capture him. The friend came to the assistance of the escaping and now wounded robber, drove his spear through the Sukuma, killing him on the spot, and then ran away, leaving the spear in the dead man's body (I saw this). The Police, with the assistance of Captain Hardland Frank, within a few days arrested both the wounded robber and his friend, the murderer. They were both tried at Kisumu, by the then Chief Justice. The wounded robber was discharged as the prosecution had charged him under a wrong section of the Penal Code. The murderer, an old jail bird, was condemned to death. He appealed to the Court of Appeal for Eastern Africa. As his relatives and friends here refused to put up any money for the appeal, the Government supplied him with a barrister, free of charge. The Appeal Court upheld the appeal on technical grounds and released the murderer. I believe the technical point was (I am open to correction): "The murdered man had every right to defend his property, but he had no right to pursue the robber with intent to capture him, whilst he, the murdered man, had a lethal weapon in his hand." What happened? The murderer turned up here one day, much to the surprise of everyone. This gave the Natives a very wrong idea of justice, as naturally they could not understand the technical point.

The Governor recently announced that a Samburu *laibon*, whose influence was held by the Supreme Court to be hampering the Administration in the collection of evidence in murder cases, had been deported to Kwale, in the Coast Province. At last Government appears to be awakening to the fact that the *laibons* exercise an evil influence. The deportation of this particular *laibon*—there are scores of them—will no doubt do some good. But why send him to a place like Kwale, whence he can still keep in touch with his friends and issue orders, no doubt with added vindictiveness? Several *laibons* from this district have recently been sent to jail, presumably at Kisumu, where they can easily get all the news from incoming prisoners, and send out orders by outgoing prisoners. If one *laibon* is deported or sent to prison, many more can take his place. The Lumbwa District must have several hundred. A potential *laibon*, endowed with brains, becomes a prominent *laibon* in the course of time. He waxes rich on the payments made to him, chiefly by criminals who go to him for charms, etc. He buys a wife with the proceeds, and then more wives, and his children by these wives are all potential *laibons*. So the genus *laibon* is not likely to die out. To be effective deportation would have to be to an island off the coast, or some such similar out-of-the-way place. The flogging of *laibons* in public (*i.e.*, in front of the Natives in their own district) might have some good effect and lessen their influence. I can see no objection to such judicial flogging of Native criminals. Judicial flogging of Europeans is not unknown in England and the Dominions.

Sotik,

Yours faithfully,

23026/our Kenya

377 5
march 1931

C. O.

- Mr. Nicholls
- Mr. Venning
- Mr.
- Mr. Parkinson
- Mr. Tomlinson
- Sir C. Bottomley
- Sir J. Strachburgh
- Parly. U.S. of S.
- Parly. U.S. of S.
- Secretary of State

Answered by No 9
 4/3/31
 J. S. Y.

C 15
 R 4 MAR
 D 6

I have the honor to

receipt of your despatch

(4)

Confidential 2326 of the 23rd of February, on the subject of

lawlessness among the

Lumbwa, &

I note that I may

expect a further despatch in

this regard in the near

future

I have etc.

(Signed) PLYMOUTH

Secretary of State

DRAFT.

Kenya.

Confidential (3)

Governor

OTHER ACTION.

1

KENYA CULTS

LIGHT ON RECENT RIOTS

A PHASE OF RELIGIOUS MANIA

From Our Own Correspondent

NAIROBI

On January 21 ten members of the Kavirondo tribe in the Victoria Nyanza district of Kenya were killed in village rioting. The opposing party were adherents of one of the Church Missionary Society's stations in Kavirondo and members of a small sect, whose leader, a religious fanatic, claimed to be able to raise the dead. This native was supported by another, once a deacon of the mission church. Both were killed. The fact that on one side were Jaluo and on the other Bantu—two sections of the Kavirondo who have long waged tribal feuds—was an additional incitement to murder, and land disputes, so often a cause of friction in Africa, added further fuel to the fire which consumed two villages.

Kavirondo is notorious among the native reserves of Kenya for sects and cults. There is something in the nature of the Kavirondo people which seems to make them peculiarly sensitive to religious frenzy, and although they are generally a very cheerful tribe, they are easily unbalanced. The work and influence of Christian missions of many denominations are more extensive among the Kavirondo than in



any other reserve in the Colony. Probably the most troublesome, though not the largest, sect in the Kavirondo country is the Society of Nyamumbo (known as the "Mumbos"), whose activities are recorded as long ago as 1914, and who came into greater prominence in 1929 and the following years. They indulge in phallic worship, a cult common among primitive peoples of the East, but they also have a slight anti-European bias, one of their contentions being that the white man will one day disappear from the district. Several members of the sect have been deported from time to time because, in the view of the Government, their teachings were destructive of tribal morality and discipline.

SECRET CEREMONIES

The ceremonies of the sect are secretly performed, but a little reliable information regarding them is available. They were once observed by an Administrative Officer who reported that the headquarters of the society consisted of a clean-swept enclosure capable of holding about 200 people and surrounded by a well-built dry stone wall. In the centre stood a symmetrical white hut without a door. In the hut was a phallic post stained with the blood of goats and sheep slaughtered during sacrificial ceremonies. According to the tribal elders, this is the old religion of the Kavirondo, if they had any at all.

Another sect known to the Government started in 1922 and is still in being. It is believed to have about 5,000 members, and is known as the "Nonyia." They are peaceful and law-abiding and claim that they teach obedience to authority. Their main beliefs favour polygamy and circumcision. The members are principally

that the white man will one day disappear from the district. Several members of the sect have been deported from time to time because, in the view of the Government, their teachings were destructive of tribal morality and discipline.

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Another sect known to the Government started in 1922 and is still in being. It is believed to have about 5,000 members, and is known as the "Nomiya." They are peaceful and law-abiding and claim that they teach obedience to authority. Their main beliefs favour polygamy and circumcision. The members are principally Jalu, who as a tribe do not practise the circumcision rite. Although small in numbers the sect is well organized, and possesses its own meeting places and schools. It is not recognized by the Government, of course, but no attempt is made to interfere with it so long as it does not offend against the law.

Like the deacon who helped to create the riot, the founder of the Nomiya was the product of a Christian mission. Johanna Owala was originally a Roman Catholic convert, then attended a Church of Scotland mission, and later became an adherent of the Church Missionary Society. The sect claims to be Christian, and among its prohibitions is the consumption of alcohol.

Extreme religious cults are not common among the Kikuyu. The "Watu wa Muungu" (People of God), who figured in a recent conflict with the police, when three natives were killed, is a strange development. It is probable that the sect had its origin in the serious dispute with the missions which occurred a few years ago after an attempt on the part of the Church authorities to prohibit the Kikuyu tribal ceremony of female circumcision among mission adherents. The "Watu wa Muungu" exhibit typical manifestations of religious frenzy. Their bodies become rigid, and they tremble under the influence of strong emotion. They gather on the summits of hills, where they raise their arms and appeal to the Deity. They imitate animal noises, such as the sounds made by lions and leopards, which is not very difficult, and they go about among the people calling on them to pray to God.

POISONED ARROWS

The worst feature of the situation in the Kijabe district (where the conflict between the Kikuyu and the mission authorities during the circumcision controversy was most serious) was the discovery that large quantities of spears and war arrows with poisoned iron heads were being manufactured. Curious rumours, spread among the natives, were attributed to the agents of the Watu wa Muungu. These included a revival of the old and popular suggestion that the white men's aeroplanes brought the drought and locusts, and a further report that the white men would soon be at war again in East Africa.

An important point is that, though the younger generations of Kikuyu had no experience of the last campaign, they were well aware that thousands of natives faced many hardships as porters, and, presumably, they feared a repetition of the conditions. The reports were also a reminder that the African is beginning to read European newspapers and to study overseas cables, even if unintelligently.

The three Kikuyu who were killed in the Ndarugu forest affray with the police were members of the sect, and were not, in fact, the criminals the police were seeking. So far as is known they had no criminal records, but they deliberately attacked the police with bows and arrows. An interesting description was given by evidence by a Baganda native sub-inspector who encountered the three men at Kijabe previously. He found them seated at a table outside an Indian store. They all had bows and arrows, drew short swords (made in Birmingham) when the policeman approached, and threatened to kill him. When he tried to calm them they replied that they were "God's people" out to preach the Gospel. They asked for five minutes in which to pray, and then, they said, they would talk. The inspector said he was himself a

under the Land Acts of 1923 to 1933 for the resumption of holdings, for the compulsory acquisition of land for playing-fields, sports fields, &c., and for the acquisition of sporting rights in certain cases.

OFFICERS TRAINING CORPS

REPORT ON THE NOVEMBER EXAMINATIONS

The report on the examination for certificates "A" and "B" held in November last for cadets of the Officers Training Corps, with copies of the papers set, is published by the Stationery Office (3s. net). The following table is given comparing the number of candidates with those of November, 1932.

Examination	Division	Nov. 1933	Nov. 1932	Increase
		Percentage of passes	Percentage of passes	
Certificate "A"	—	Percent	Percent	
	Practical	81.4	87.2	157
	Written	55.2	57.1	42
	Practical	88.8	88.2	11
Certificate "B"	—	Percent	Percent	
	Practical	91.4	91.1	1
Written	87.0	71.8	87	
Numbers taking written examinations	Cert. "A"	4,706	4,154	
	Cert. "B"	455	351	
	Total	5,161	4,505	656

General Sir Archibald Montgomery-Massingberd, Chief of the Imperial General Staff, writes—

"It is with great satisfaction that I note there is an increase of 222, or 43 per cent, in the total number of successful candidates presented by the Senior Division for Certificates 'A' and 'B' in this examination, as compared with the corresponding examination last year.

The decrease in the percentage of passes in Certificate 'A,' Written, in the Junior Division, is disappointing.

On the whole I regard the results as fairly satisfactory, but consider that there should be a further increase in the percentage of successful candidates from the Junior Division now that normal training has been resumed."

INDIAN EARTHQUAKE FUNDS

The following additional subscriptions have been received at the Mansion House for the Lord Mayor's Indian Earthquake Fund:—

Members and firms of the Stock Exchange, £3,561 4s.; United Grand Lodge of England, £262 10s.; Louis Dreyfus and Co. and Sir Robert Hadfield, £100 each; Samuel Montague and Co., Pierce Leslie and Co., and "M.D.H.A.," £50 each; Robert Brooks and Co. and Ellerman Lines, Limited, £26 5s. each; Incorporated Oil Seed Association, £25; St. Leonard's School Chapel, St. Andrews, £19 18s. 5d.; Bethany School, Goudhurst (second donation), £19 2s.; the Coopers Company, Johnsen and Jorgensen Flint Glass, Limited, Stevenson and Howell, Laurie Hammond, Sir David McCowan, and J. H. Yavasseur and Co., £10 10s. each; Uppingham School Chapel, £10 19s. 1d.; G. N. Watney, Mrs. A. B. Cristall, and Workshop College Chapel, £10; All Saints, Uplands, and Holy Trinity, Slad, £9 10s. 6d.; Cheltenham College, £7 16s. 1d.; and the Hon. Company of Master Mariners, £5 5s.

Before the Lord Mayor's Fund for relief of sufferers from the Indian earthquake was started the British Red Crescent Society sent a donation of Rs. 2,000 (£150) to the Viceroy for the relief of Moslem sufferers. A further donation of Rs. 700 (£52 18s. 4d.) for the same purpose has now been remitted to the Viceroy by the society.

GROUP MOVEMENT CAMPAIGNS

The Bishop of Oxford commissioned in the Cathedral Church of Christ at Oxford last evening members of the Group Movement who are to spend the vacation some in a campaign in Canada and some in a campaign in the East End of London.

The reading of the report on the examination of the Officers Training Corps. This meeting was held at the Officers Training Corps. The representative of the national organization will be provided with the necessary facilities for the children.

SENIOR UNIFORM

The new uniform for the Officers Training Corps. The new uniform for the Officers Training Corps. The new uniform for the Officers Training Corps.

BUSINESS

The new uniform for the Officers Training Corps. The new uniform for the Officers Training Corps. The new uniform for the Officers Training Corps.

INDIAN EARTHQUAKE FUNDS

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AIR MAIL

KENYA

No. 26

CONFIDENTIAL.



GOVERNMENT HOUSE
NAIROBI
KENYA

319

RECEIVED
- 5 MAR 1934
C. O. REGY

23rd February 1934.

Sir,

I have the honour to refer to your despatch Confidential (2) of 13th January 1934, on the subject of lawlessness among the Lumbwa, and to attach a report of the investigations which have taken place in each of the cases cited in "East Africa". For the sake of clarity the cases mentioned on page 349 of the newspaper have been numbered consecutively 1 - 56.

2. It will be seen that there are many inaccuracies and misstatements in Mr. Dooner's article. He states that in 36 cases the action taken by the police was "Nil"; whereas action was taken in each case reported, though the results were not always satisfactory; 6 cases, however, were not taken up as the property in each case was unidentifiable.

3. It must, however, be admitted that the situation in the Lumbwa Reserve is far from satisfactory. The Lumbwa have been responsible for much serious crime both in their own and in other districts for some time past. It has been made quite clear during the last few months that this highly unsatisfactory state of affairs has been brought about by the machinations of the Laibons or Orkelik - a clan of hereditary witchdoctors.

4. In May of 1930, the Laibons submitted a petition to be removed from the Lumbwa district, but it was clear that wholesale deportations were not possible

under ...

THE RIGHT HONOURABLE

MAJOR SIR PHILIP CUNLIFFE-LISTER, P.C. G.B.E. M.C. M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S. W. 1.

under the existing law. No methods for controlling the activities of the Laibons could be found and since then there has been a wave of crime in the Reserve which it has been found impossible to control, though it is known that the Laibons are responsible.

Their previous immunity from punishment which resulted from the secrecy and cunning of their organisation has conferred a prestige upon the Laibons which has enormously increased the difficulties of administration.

5. In regard to their organisation it has been discovered that the whole of the Lumbwa District, Reserve and Settled Area, has been divided up into parishes which are controlled by eight of the Laibons. Each Laibon has an agent who acts for him in his dealings with the people of his parish. All the Lumbwa, excepting a very few who do not fear the Laibons living in one of these areas pay tribute yearly to the particular Laibon concerned. The tribute is paid in grain, in money and in stock, and is collected by the Laibon's agents who reside in the area. The usual custom is for every woman to contribute a basket-full of grain which is sold by the agents, who take the proceeds to the Laibon. The agents also take gifts from the people to the Laibon when rain, etc. are wanted by them. Other duties of the agents are to keep the people constantly reminded of the supernatural powers of the particular Laibon and all other Laibons and to supervise the activities of thieves living in the area, so as to ensure that a proper share of their loot is paid over to the Laibon. The Laibons' agents and thieves are Lumbwa and they are under their complete control. It is estimated that about 80% of the Lumbwa who commit crimes belong to this organisation. The thieves are kept supplied with "medicine" by the Laibons, or more usually, by the agents.