

1951

No. 17207

SUBJECT

C0533/412

Enclosures. (Appendix C.
D.)

Previous

Subsequent

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

[REDACTED]
 [REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

20.12.28
9.15 a.m.

1. 4

Mr. O. Bentley, Kitale to my Office, with one Busiku S/o Wandete, a Bagishu employee of his, who had stated that the evidence given by him in the lower and Supreme Courts at Kitale, in a murder case, was all lies, that he had told lies because he had been frightened by the Police. A statement was to be taken from him by a Magistrate at Kitale, on verbal instructions given to Mr. Bentley by the Court of appeal.

I had arranged with Mr. Bentley for the native to be brought in on Monday 24th.

Sd. A. Finch.
Asst. Supdt. of Police.

-do-
2.30 a.m.

I accompany Mr. Bentley and the native to Mr. Crompton, R.C.'s Office; a statement is taken from the native by Mr. Crompton, in the presence of Mr. Bentley. I was not allowed to be present.

See copy of statement, sheet 5,677.

Sd. A. Finch.
A. S. P.

11 a.m.

As the copy of statement given to Mr. Crompton, has not arrived and as I wish to start my inquiry, I take a further statement from native. (See overleaf).

Sd. A. Finch.
A. S. P.

20.12.28.
11.10 a.m.

Busiku S/o Wandete, Bagishu native, working for Mr. O. Bentley, Kitale, as a tractor driver states:-

I remember a dead body being found on my Master's farm. I saw the dead body; I don't remember the date or the month. I can't say how many months it was age.

I saw two European Police and one askari come to the farm, they came on the day body was found. The body was found on a Saturday.

On the Wednesday following, an askari named Wakuma, who was wearing plain clothes, and another askari who was wearing uniform; I do not know, came to the farm. They arrested me and put handcuffs on my wrists; I said there is no need to put handcuffs; I went run away, they then took the handcuffs off. I came with the askaris, along with Masaba, Kitoshe Matana Abvenge (a woman) to Kitale.

On our arrival at Kitale, at 4 p.m., I and Masaba were taken to the Police lines by Wakuma, where we were taken to the stables and were told we could sleep there. We were not put under any restraint and no askari slept with us; we were told by Wakuma that we could come and go as we liked.

At 8 a.m. the following morning Wakuma came to us, gave us packages and told us to go and get grass; we cut grass at the lines, we stayed at the lines from Monday to Friday.

On Monday we went to the Police Station, I was told by Wakuma that I should go to the Police Station and get a statement taken from me by the Police. I went to the Police Station and was told by the Police that I should go to the Police Station and get a statement taken from me by the Police. I was told by Wakuma that I should go to the Police Station and get a statement taken from me by the Police. (describing this interview as being Asst. Insp.)

1. Dale & 1/C. Omara,
later, A.I. Dale & E.P.C.
Sandella.

18.4.28
1/C. Wakuma

1/C. now Cpl. Omara

Accused 3&4 in police
case.

Witness, sheet 21 in
Police file.

20.12.28
9.15 a.m.

Mr. O. Bentley, Kitale to my Office, with one Masabiku S/o Wandote, a Bagishu employee of his, who had stated that the evidence given by him in the lower and Supreme Courts at Kitale, in a murder case, was all lies, that he had told lies because he had been frightened by the Police. A statement was to be taken from him by a Magistrate at Kitale, on verbal instructions given to Mr. Bentley by the Court of appeal.

I had arranged with Mr. Bentley for the native to be brought in on Monday 24th.

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-do-
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I accompany Mr. Bentley and the native to Mr. Crompton, R.Q.'s. Office; a statement is taken from the native by Mr. Crompton, in the presence of Mr. Bentley. I was not allowed to be present.

See copy of statement, sheet 5,677.

Sd.A. Finch.
A.S.P.

11 a.m.

As the copy of statement given to Mr. Crompton, has not arrived and as I wish to start my inquiry, I take a further statement from native. (See overleaf)

Sd.A. Finch.
A.S.P.

20.12.28.
11.10 a.m.

Buaku S/o Wandote, Bagishu native, working for Mr. O. Bentley, Kitale, as a tractor driver states:-

I remember a dead body being found on my Master's farm. I saw the dead body; I don't remember the date or the month. I can't say how many months it was ago.

I saw two European Police and one askari come to the farm, they came on the day body was found. The body was found on a Saturday.

On the Wednesday following, an askari named Wakuma, who was wearing plain clothes, and another askari who was wearing uniform; whose name I do not know, came to the farm. They arrested me and put handcuffs on my wrists; I said there is no need to put handcuffs; I went run away, they then took the handcuffs off. I came with the askaris, along with Masaba, Kitoshe Matana, Abwenge (a woman) to Kitale.

On our arrival at Kitale, at 4 p.m., I and Masaba were taken to the Police lines by Wakuma, where we were taken to the stables and were told we could sleep there. We were not put under any restraint and no askari slept with us; we were told by Wakuma that we could come and go as we liked.

At 8 a.m. the following morning Wakuma came to us, gave us pangas and told us to go and cut grass; we cut grass at the lines, we stayed at the lines from 8.30 a.m. to 1.30 p.m.

On Monday at about 10.30 a.m. Wakuma came to me and told me that I was wanted at the Police Station by the Magistrate; he was wanted at the Police Station; we were accompanied by me to the Police Station on our arrival at the Police Station we were told by the Magistrate (describes this European as being Askari)

A.I. Dale & 1/C. Omara
later, A.I. Dale & E.P.C
Sandells.

18.4.28
1/C. Wakuma.

1/C. now Cpl. Omara

Accused 3&4 in police case.

Witness, sheet 21 in Police file.

Wakuma came to me at the A.R.G.'s Court this morning, that he could not do any more that morning, but would start on it at 3 p.m. We then went back to the lines alone; at 2 p.m. Wakuma came and fetched us from the lines to the Police Station.

According to Police file statement taken the same day, brought in sheet 19.

At 12 noon Wakuma came to the lines and spoke to me and Masaba, and he took me some distance away from Masaba and said "the people up at the Police Station say they killed the man along with you". I replied I did not see. Wakuma said "don't refuse to say, your brothers say it". I said again I did not see it, if I had I should have told the European who came to the farm. Wakuma said if you don't say it and if you hide anything my Master will imprison you.

When I got to the Police Station I was taken before a European (Asst. Insp. Dale) and Wakuma said to him pointing to me, "this man saw it". The European said, you think of what you are saying, say it, say it, if you don't say it and if you hide anything I will put you in Jail for a year. I still refused but Wakuma said "you saw it", I kept quiet. Wakuma again said, don't refuse; I then, not knowing anything about Police or Court, made the statement in the Case File (55/28) sheet 19.

I was not threatened by the Police. I said what I said because I was afraid of Wakuma and his saying, I should be put in Jail. I did not see the man killed; my statement to the Police, with the exception that I did make tembe, is all lies.

Masaba was not near me and Wakuma, when Wakuma spoke to me at any time at the lines. When I was at the Police Station, in the Office, Masaba stood just outside. Of the two European Police who came to the farm on the day body was discovered, one was the European I saw at the A.R.G.'s Court this morning, and the other was tall, white faced and wore two stars on his shoulder; the tall European came again on the following, a Sunday.

S. P. Ridgway?

I do not know the tribe of the man who accompanied Wakuma to the farm, but I should know him again if I saw him.

Every day whilst at the lines Wakuma came to me and told me to say I had seen the accused kill the Nanda.

The story which I told in the Court was told to me by Wakuma, who said I must say it in the Court, otherwise I should go to Jail.

R.O. & G.

Taken by me.

Sd. A. Finch.
A.S.P.

Statement taken in the presence of Mr. O. Bentley.

Sd. A. Finch.
A.S.P.

At the time of hearing of case in the Court, the European who came to the farm on the day body was discovered, one was the European I saw at the A.R.G.'s Court this morning, and the other was tall, white faced and wore two stars on his shoulder; the tall European came again on the following, a Sunday.

same evidence as in the lower Court.

Sd. A. Finch.
A. S. P.

The action, for a MBgishu, appears exceedingly intelligent.

This statement, the Police (Sheet 19 C.F. 65/28) as to the killing of the Nandi is of a very brief nature, but in both the lower and Supreme Courts he enlarged upon this and gave a full description of all the blows struck and which presumably killed him.

It would appear that he was not frightened by the Police as he alleges, into doing this.

Sd. A. Finch
A. S. P.

I allowed Mr. Bentley's farm on further inquiries.

Sd. A. Finch
A. S. P.

(See P. 40/30a/126, 28)

Design 8/2e Marlow daily af 11-

The above native was asked by me if he desired to make a Voluntary statement about a murder which occurred on Mr. Bentley's farm in April last and stated that he did desire to do so.

On that day the labourers on the farm found the body of a Nandi buried in the mud of the stream. This was about 8 months ago. The Headman Mahoued reported to Mr. Thurburn who lives near. Two European Police and one native Policeman came to investigate. The body was taken out and cleaned and then all the people on the farm were called to identify the corpse. We were told by the Police to keep the body in a hut until Sunday. On Monday the body was buried and the Police arrested two Bugishu labourers Mafabi and Okube. At the same time one askari, who as I do not know but whom I could recognize, took the child of Okube, a girl of about 6 years of age, to an empty hut and I heard this askari frightening the child who eventually said that her father Okube had killed the Nandi. Two days later I was called in to Kitale to give evidence. I was kept six days in Kitale and slept in the Police lines. One day an askari called Wakuma Masawa said to me "You and other killed the man" I denied it and then he said "why do you deny it when the others have already admitted killing the man?" After two days as he kept on talking to me like this I got frightened and told him something. He then took me to the Police Bwana who said "if you dont speak the truth I will imprison you for a year". I was frightened and told the Police that I had seen the Nandi murdered by certain people. This was untrue and I said it because I was frightened. I gave the same same evidence in Court for the same reason. When I made the statement to the Police Bwana the askari Wakuma was present. I told the Bwana the same thing I had told the askari. The latter had frightened me. The evidence in the Court and in the Judge's Court was the same. Murder committed by the four men, Mafabi, Okube, Kitale and Matanda was untrue.

I did not see any murder committed. I gave false evidence because I was afraid of the askari Wakuma had told me that if I did not give this evidence I should be put in prison. I made the same statement I have made today to my employe Mr. Bentley before going to the Judge's Court. I did not tell the Judge the truth because I was afraid of the askari Wakuma. I would make the statement I have made here today to the Judge himself. It is the truth.

When Mr. Bentley asked me first about the matter I denied that I saw the murder because he said to me "if you really saw the murder say so but if you did not it is a very bad thing to tell lies." He is my employer and I am not afraid of him.

Read over and found correct.

Sd. D.R. Grompton.

R.C.

28.12.28.

Kitale.

Supreme Court
Crim. Case No. 61/28.

Certified true copy of the original

Sd. D.R. Grompton.

Resident Magistrate Commissioner
Kitale 28./12/28.

20.12.28
4.40 p.m.

U.G.U. 0386245 Masaba S/e Warpo M'Gishu, working for Mr. C. Bentley as a labourer, states:-

I remember the day that a dead body of a Nandi native was found on my Master's farm; I was sick on that day, and Kitegh told me.

Two European Police and two native Police came to the farm to investigate the matter. I was asked by an askari named Wakuma if I had seen anyone killing the Nandi and I said I had not. The body was found on a Saturday.

On the following Tuesday, Wakuma and another askari came to the farm and took me, Buseku, Matanda, Kitegh and Abwange (a woman to Kitale; handcuffs were put on Matanda and Kitegh only. No attempt was made to put handcuffs on to anyone else. They did put handcuffs on Buseku but took them off again. On the way to Kitale P.C. Wakuma hit me on the chest and back because I said I know nothing about the killing of the Nandi; he also struck the woman on her buttocks because she would not say she had seen her husband Wasemba (accused No. 1 in Police Case Okabe S/e Ubere) help to kill the Nandi.

When we got to Kitale we were taken before a European Police Officer, at the Police Station. Later I, Buseku and Abwange were taken to the askari's lines. That night Abwange slept with Wakuma's wife and I and Buseku slept in the myce's hut. We stayed in the lines for 8 days altogether where we worked at cutting down brush.

On the Friday Buseku and I were taken to the Police Station by Wakuma where we saw a European officer. Buseku went in to the European Office & later the woman Abwange went in; I did not hear what they said but they went in and were taken to the European officer to say what they knew about the killing of the Nandi. He told me that he had asked the woman Abwange if she had seen anyone who was alleged to have been killed; he said "if you don't speak the truth you will be punished by the Government".

C. Omara, C. George
C. C. Manat

C. Omara
ed. 3 & 4 in case
file.
Buseku Shedi
case 71/28

San Abwange.
is in my opinion
only confession
Confession

I did not see any murder committed. I gave false evidence because I was afraid of the askari Wakuma had told me that if I did not give this evidence I should be put in prison. I made the same statement I have made today to my employee Mr. Bentley before going to the Judge's Court. I did not tell the Judge the truth because I was afraid of the askari Wakuma. I would make the statement I have made here today to the Judge himself. It is the truth.

When Mr. Bentley asked me first about the matter I denied that I saw the murder because he said to me "if you really saw the murder say so but if you did not it is a very bad thing to tell lies." He is my employer and I am not afraid of him.

Read over and found correct.

Sd. D.R. Grampton.

R.C.

28.12.28.

Kitale.

Supreme Court
Crim. Case No. 61/28.

Certified true copy of the original

Sd. D.R. Grampton.

Resident Magistrate, Commissioner
Kitale 28., /28.

G.O. 0386245 Masaba s/o Warpo M'Gishu, working for Mr. O. Bentley as a labourer, states:-

I remember the day that a dead body of a Nandi native was found on my Master's farm; I was sick on that day, and Kiteah told me.

Two European Police and two native Police came to the farm to investigate the matter. I was asked by an askari named Wakuma if I had seen any one killing the Nandi and I said I had not. The body was found on a Saturday.

On the following Tuesday, Wakuma and another askari came to the farm and took me, Buseku, Matanda, Kiteah and Abwango (a woman to Kitale; handcuffs were put on Matanda and Kiteah only. No attempt was made to put handcuffs on to anyone else. They did not handcuff me but took them off again. On the way to Kitale P.C. Wakuma hit me on the chest and back because I said I know nothing about the killing of the Nandi; he also struck the woman on her buttocks because she would not say she had seen her husband Wasemba (accused No. 1 in Police Case Masaba s/o Uhere) help to kill the Nandi.

When we got to Kitale we were taken before a European Police Officer, at the Police Station. Later I, Buseku and Abwango were taken to the askari lines. That night Abwango slept with Wakuma's wife and I and Buseku slept in the ayee's hut. We stayed in the lines for 8 days altogether where we worked at cutting down trees.

On the Friday Buseku and I were taken to the Police Station by Wakuma where we saw a European officer. Buseku went in to the European Office & later the woman Abwango went in; I did not hear what they said. When I went in and was asked by the European officer to say what I knew of the killing of the Nandi, I said I knew nothing about the matter. On the night of the killing, he was alleged to have been killed; he said "if you don't speak the truth you will be punished by the Government."

20.12.28
1.40 p.m.

G.O. Masaba, s/o George
s/o Mafat

G.O. Masaba
s/o Mafat
file
case

an Abwango.
s in my opinion.
only
Confession

find no statement
of this native in
Police file.

I said if I did not see anything I could not
well say I did; I said I did not see anything and
Watunda come into my hut at about 9 p.m.

Once at the Police Lines Wakuma said to me,
"if you did see the Nandi being killed you must
say so or you will be imprisoned". I remember
one day Wakuma took Buseku some distance away
and spoke with him; I did not hear what was said.
He did not strike him. I did not at any time hear
Wakuma tell Bageshu that if he did not tell what
he knew he would be imprisoned, as each time he
spoke to him, he took him some distance away.

Tracker Takwani

I was on the farm the day Mafabi (accused 2)
was taken to Kitale, he was beaten badly by a
Nandi Police detective. He, the detective, came
to the farm with another Police askari, in
uniform. I do not know either of their names.
They also beat Okube after he was arrested on the
farm.

Press Sheet in
this file

Whilst at the Police Lines Busiku called me
over one day and said "I am going to say I saw
the four accused kill the Nandi and I want you
to say the same". I said no! I shan't say this
as I did not see anything. I remember being at
the Supreme Court with other witnesses when the
European Officer came out and spoke to the
woman Abwange; he said, in Swahili, "you must
speak the truth if you saw things, if you don't
you will be punished". It was then interpreted
by an askari in M'g'eshu to the woman. I was near
and heard this, I was not told it by anybody.

St. Insp. Dale

R. O. & G.

Taken by me in the presence of
Mr. Bentley.

Sd. A. Finch.
A.S.P.

No statement was taken from this native,
in the Police File.

He was called as a witness in the Lower Court
but maintained that he saw nothing of the murder
and was threatened as a hostile witness. If his
statement is true, Buseku endeavoured to induce
him to give false evidence.

Sd. A. Finch.
A.S.P.

20.12.28
3.30 p.m.

Mohamed bin Malik, Sudanese, employed by
Mr. Bentley as a Nyampara, states:-

I was at the farm when the two first accused
were arrested. I saw the wife of accused No. 1
struck by an askari in uniform; she was struck
because she began to cry on her husband being
arrested. She fell to the ground, her name was
Abwange (later a witness Sheet 21 G.F. 55/28) a
native detective was also present.

G. George

Tracker Takwani

A. I. Dale

I was present at the Supreme Court with other
witnesses when the Police Officer came out and
spoke to the woman, in Swahili he said, "if you
don't say the truth in the Court of R. O.
and G. you will be punished". It was then interpreted
by an askari in M'g'eshu to the woman. I was near
and heard this, I was not told it by anybody.

R. O. & G.

Taken by me in the presence of Mr. Bentley.

Sd. A. Finch.
A.S.P.

find no statement
on this native in
Police File

I said if I did not see anything I cannot
well say I did; I said I did not see Nandi and
Watunda come into my hut at about 7 p.m.

Once at the Police Lines Wakuma said to me,
"if you did see the Nandi being killed you must
say so or you will be imprisoned". I remember
one day Wakuma took Buseku some distance away
and spoke with him; I did not hear what was said.
He did not strike him. I did not at any time hear
Wakuma tell Bugesha that if he did not tell what
he knew he would be imprisoned, as each time he
spoke to him, he took him some distance away.

Tracker Takwani

I was on the farm the day Mafabi (accused 2)
was taken to Kitale, he was beaten badly by a
Nandi Police detective. He, the detective, came
to the farm with another Police askari, in
uniform. I do not know either of their names.
They also beat Okube after he was arrested on the
farm.

Witness sheet 2a
this file

Whilst at the Police Lines Busiku called me
over one day and said "I am going to say I saw
the four accused kill the Nandi and I want you
to say the same". I said no I shan't say this
as I did not see anything. I remember being at
the Supreme Court with other witnesses when the
European Officer came out and spoke to the
woman Abwange; he said, in Swahili, "you must
speak the truth if you saw things, if you don't
you will be punished". It was then interpreted
by an askari in M'G'G'shu to the woman. I was near
and heard this, I was not told it by anybody.

Witness sheet

R.O. & G.

Taken by me in the presence of
Mr. Bentley.

Sd. A. Finch.
A.S.P.

No statement was taken from this native,
in the Police File.

He was called as a witness in the Lower Court
but maintained that he saw nothing of the murder
and was threatened as a hostile witness. If his
statement is true, Buseku endeavoured to induce
him to give false evidence.

Sd. A. Finch.
A.S.P.

20.12.28.
5.30 p.m.

Mohamed bin Malik, Sudanese, employed by
Mr. Bentley as a Nyampara, states:-

I was at the farm when the two first accused
were arrested. I saw the wife of accused No. 1
struck by an askari in uniform; she was struck
because she began to cry on her husband being
arrested. She fell to the ground, her name was
Abwange (later a witness sheet K1 S.F. 55/28) a
native detective was also present.

P. G. George

I was present at the Supreme Court with other
witnesses when the Police Officer came out and
spoke to the woman, in Kisumu he said, "if you
don't say the truth you will be punished".
I was near and heard this, I was not told it by anybody.
I was near and heard this, I was not told it by anybody.
I was near and heard this, I was not told it by anybody.

Tracker Takwani

A. I. Dale

R.O. & G.

Taken by me in the presence of Mr. Bentley.

Sd. A. Finch.
A.S.P.

The witness appeared to be suffering from a bad memory. It was only after some lengthy questioning and the intervention of Mr. Bentley that he remembered the latter part of his statement (underlined).

Sd. A. Finch.
A.S.P.

29/12/48
P u

The Police Officers who took part in the investigation of case were:-

Asst. Supdt. R.T. Ridgway, Asst. Inapt. Dale, E.P.C. Landells. 1/Const. (now Cpl.) Omara, 3/Const. George (since dismissed), 1/Const. Wakuma (plain clothes), Tracker Takwani, 1/Const. Manai.

Sd. A. Finch.
A.S.P.

21/1/49

File sent to Commissioner of Police, (K.T.18/5/28)

Sd. A. Finch.
A.S.P.

21/1/49

File returned from Commissioner.

Sd. A. Finch.
A.S.P.

27/1/49
5.3.49

I proceed Mr. Bentley's farm on further inquiries. Mr. Bentley away from home.

Sd. A. Finch.
A.S.P.

29/1/49
5.45

Mohamed bin Malik, Soudanese, working for Mr. Bentley as a Nyampara, further states:- (See sheet 11 for previous statement).

George.

When the askari struck the woman he was on the lawn in front of my Master's house, with his two prisoners. He asked me for rope with which to tie up his prisoners. I gave him the rope and the prisoners' hands were tied together. When he had done this the woman started to cry and shout. The askari asked her to keep quiet but she would not. He then slapped her face but she would not stop, & he then struck her on the back of the head with a small stick he was carrying.

When the askaris arrived with their prisoners they told me they had received information that they had killed the Mandi; I asked them who had given them the information and they replied this child, pointing a small girl about 6 years of age whom they had with them. The child was the daughter of one of the accused named Vasamba (Okebe accused No.1).

The child was not crying but appeared to be afraid. She went along with the two askaris to Kitale.

U. Omara
C. Wakuma

A day or so later two other askaris came; they were not the men who took the two prisoners & child. I heard from a boy that they had arrested two more men. I went to the labourers' lines and saw them. I did not see anyone else; the askaris also had some other labourers, with them whom they said were witnesses. When the first two askaris brought the two prisoners and the child to my Master's house, one of them (dressed in a blanket) asked me to question her; I asked her some questions in Swahili but she did not understand. I then asked a boy named Tupa, Mandi, to interpret for me; he agreed to do so when I put the following questions to her:-

Tracker Takwani

The witness appeared to be suffering from a bad memory. It was only after some lengthy questioning and the intervention of Mr. Bentley that he remembered the latter part of his statement (underlined).

Sd. A. Finch.
A.S.P.

The Police Officers who took part in the investigation of case were:-

Asst. Suptd. R.T. Ridgway, Asst. Inspct. Dale, R.P.C. Landells, 1/Const. (now Cpl.) Omara, 3/Const. George (since dismissed), 1/Const. Wakuma (plain clothes), Tracker Takwani 1/Const. Manai.

Sd. A. Finch.
A.S.P.

File sent to Commissioner of Police, (K.T.18/5/28)

Sd. A. Finch.
A.S.P.

File returned from Commissioner.

Sd. A. Finch.
A.S.P.

I proceed to Mr. Bentley's on further in trial. Mr. Bentley away from home.

Sd. A. Finch.
A.S.P.

Mohamed bin Malik, Siidansse, working for Mr. Bentley as a Nyampara, further states:- (See sheet 11 for previous statement).

When the askari struck the woman he was on the lawn in front of my Master's house, with his two prisoners. He asked me for rope with which to tie up his prisoners. I gave him the rope and the prisoners' hands were tied together. When he had done this the woman started to cry and shout. The askari asked her to keep quiet but she would not. He then slapped her face but she would not stop, & he then struck her on the back of the hand with a small stick he was carrying.

When the askaris arrived with their prisoners they told me they had received information that they had killed the Mandi; I asked them who had given them the information and they replied this child, pointing a small girl about 6 years of age whom they had with them. The child was the daughter of one of the accused named Wasemba (Gkebe accused No.1).

The child was not crying but appeared to be afraid. She went along with the two askaris to Kitale.

A day or so later two other askaris came; they were not the men who took the two prisoners & child. I heard from a boy that they had arrested two more men. I went to the labouring lines and saw them.

I did not see anyone else; the askaris also had some other prisoners, with them whom they said were witnesses. When the first two askaris brought the two prisoners and the child to my Master's house; one of them (dressed in a blanket) asked me to question them. I asked her some questions in Swahili but she did not understand. I then asked a boy named Tupa, asked no interest for me; he agreed to do so when I put the following questions to her:-

29/12/08

31.12.28

7.1.29

George

1/8. Omara and
1/3. Wakuma

Tracker Takwani

(1) Did the Nandi come to your father's house?
She replied yes.

(2) Did your father give him food? She
replied yes.

(3) Did your father tell him to go? She
replied yes.

(4) Did your father take a stick and follow
him? She replied yes.

(5) Who followed him along with your father?
She replied Mafabi.

(6) Did they hit the Nandi and kill him?
She replied yes.

(7) Who killed the chicken? Your father?
She replied yes.

She had her story off so pat that I am
convinced that someone put the story into her
head.

I also asked her who took the Nandi's blood
and I heard her reply Mafabi.

On the day the dead body of the Nandi was
found I followed marks as of a body having been
dragged from the spot where it was found, to
the English labourers huts and to Mr. Roberts
farm, where I lost them at which engaged
the farm.

I do not think the English killed the Nandi
but I think that he was killed by his own
people who lives on Mr. Roberts farm. I have heard that
when their sister married the deceased Nandi took
the cattle of dewry. This had caused enmity
between them. I have heard that the deceased
on the Friday. (The day before body was found)
had mentioned to the Nyamara on Beane's
farm where he lived that he was going to see his
brother that day.

H. C. & G.

Sd. A. Finch.
A. S. P.

The witness is rather confused as to when
the incidents happened; this is not to be
wondered at considering it was 6 months ago.

Sd. A. Finch.
A. S. P.

Messani S/o Andagwa Kawange, working for
Mr. Bentley as a boy states: - I corroborate
the statement of Mohamed regarding the striking
of the woman by the askari, as I was present.
The askari was dressed in uniform but I do not
remember his tribe.

The woman was struck on the face with a hand,
and on the hand with a stick; she was struck
because she started to cry and shout when her
husband was tied up.

Sd. A. Finch.
A. S. P.

I brought to Messrs. Jay & Finch's farm to
endeavour to locate the woman witness, her
and her daughter. I found that they were living
on the farm and could not then be found.
I left them to be brought on next
in the morning.

Witness to this 7.15 P.M.

Sd. A. Finch.
A. S. P.

No. 349 Corporal Amara S/o Olando, Jaiho, Kenya
Police Station:

I remember the murder of a Mandi native on Mr. Bentley's farm; on the day the matter was reported, I went with Asst. Insp. Dale and P.C. George to the farm; we were shown, by Mr. Bentley's Nyapara a Soudanese, where the dead body lay in a hole near the river. The body was taken out of the hole by labour on the farm. After the body was taken out we returned to Kitale to bring the doctor.

We, Dr. Cowan, Asst. Insp. Dale, l/c. Wakuma and I went to the farm where the body was examined by the doctor. We, Dr. Cowan, Asst. Insp. Dale and myself then returned to Kitale leaving l/c. Wakuma to inquire into the death of the Mandi. I think, but I am not certain (it was so long ago) that Wakuma returned on that day with two prisoners.

On the following day Mr. Riddaway, A.I. Dale, myself and Wakuma went to the farm. When we arrived there the natives said, "the Mandi was not killed on this farm but on the farm of Brana Roberts". They showed us marks of a body having been dragged. These marks were followed from the hole past the Masibu Labourers' huts, where it was lost.

One day, I forget which day it was, I assisted P.C. Wakuma in taking 3 natives (males) and a woman from the farm to Kitale. I think they were arrested on A.I. Dale's instructions, I forget their names. They were arrested at the labourers' lines. The Soudanese Nyapara of Mr. Bentley was at the lines at the time; we all then went up to Mr. Bentley's house, where the Nyapara gave us rope to tie up the wrists of the prisoners. The 3 men were tied up with the rope; when the men were tied up the woman began to cry; she was at this time standing some distance away from me but Wakuma was standing near me and, talking to her, Wakuma told her to keep quiet, and she kept quiet.

I deny having struck the woman, by slapping her face, or striking her on the hand. I had my swagger cane with me at the time; I did not see P.C. Wakuma strike the woman.

When at on our way to Kitale we all walked together; I deny having struck the witness Masaba during the journey. I did not see P.C. Wakuma strike the woman over her buttocks, neither did I see him strike Masaba.

I never once used threats to any of the prisoners or witnesses, neither I hear Wakuma use any.

At first no one would admit or give information regarding the murder; It was after P.C. Wakuma had questioned the abote that it all came out.

I was never at any time on the farm with tracker Masaba.

R.O & C.

Sd. A. Finch.
A.S.P.

(I take statement as Corporal Amara is leaving for Nairobi today on transfer.)

Sd. A. Finch.

Abenech D/o Bakabara K'ginda woman, now living at Masibu, Masibu, Kenya, was living on Mr. Bentley's farm at Kitale, Kenya:

I remember the dead body of Mandi native being found on Mr. Bentley's farm. I was living there at the time with my husband Wasimba (Masibu, Kenya, accd. I in Police File).

No. 340 Corporal Amara S/o Olando, Jaluo, Kenya
Police station

I remember the murder of a Mandi native on Mr. Bentley's farm; on the day the matter was reported, I went with Asst. Insp. Dale and P.C. George to the farm; we were shown, by Mr. Bentley's Nyapara a Soudanese, where the dead body lay in a hole near the river. The body was taken out of the hole by labour on the farm. After the body was taken out we returned to Kitale to bring the doctor.

We, Dr. Cowan, Asst. Insp. Dale, I/C. Wakuma and I went to the farm where the body was examined by the doctor. We, Dr. Cowan, Asst. Insp. Dale and myself then returned to Kitale leaving I/C. Wakuma to bring the body into the death of the Mandi. I think, but I am not certain (it was so long ago) that Wakuma returned on that day with two prisoners.

On the following day Mr. Ridgeley, A.I. Dale, myself and Wakuma went to the farm. When we arrived there the natives said, "the Mandi was not killed on this farm but on the farm of Brana Roberts". They showed us marks of a body having been dragged. These marks were followed from the hole past the "Waishu Labourers' Hut", where it was lost.

On the day I forget which day it was, I assisted P.C. Wakuma to bring a native () and a woman from the farm to Kitale. I think they were arrested on P.C. Dale's instructions, I forget their names. They were arrested at the labourers' lines. The Soudanese Nyapara of Mr. Bentley was at the lines at the time we all then went up to Mr. Bentley's house, where the Nyapara gave us rope to tie up the wrists of the prisoners. The 3 men were tied up with this rope, while the woman was tied up the woman began to cry; she was at this time standing some distance away from me but Wakuma was standing near her, talking to her, Wakuma told her to keep quiet, and she kept quiet.

I deny having struck the woman, by slapping her face, or striking her on the hand. I had my swagger cane with me at the time; I did not see P.C. Wakuma strike the woman.

While on our way to Kitale we all walked together; I deny having struck the witness Masaba during the journey. I did not see P.C. Wakuma strike the woman over her buttocks, neither did I see him strike Masaba.

I never used threats to any of the prisoners or witnesses, neither did I hear Wakuma use any.

I fire, no one would admit or give information regarding the murder; it was after P.C. Wakuma had questioned the notes that it all came out.

I was never at any time on the farm with tracker ()

R O A G

S.A. Finch
A.C.P.

(I make statement as Corporal Amara is leaving for Nairobi today on transfer.)

Sd. A. Finch.

Absence S/o Bakabara K'ising woman now living
at () farm
Kitale, station

I remember the dead body of Mandi native being found on Mr. Bentley's farm. I was living there at the time with my husband Wasimua () accd. in Police File).

The night before the body was found I remember there was a tembe drink in the labourers' lines. The drink took place in the hut of one Sengoro (Busiki, witness sheet 19 in Police file) I drank a bowl of the tembe and then went to my hut which was some distance away. I went to sleep. Some time later I was aroused by the noise of people fighting; I did not go outside the hut; my husband was in the hut at the time, he did not go out.

In the morning at about 7 a.m. Mafuabi, Kitosh Wasimbwa and my husband were talking together; I passed near them. I heard them say they had killed the Nandi and had buried him in a hole near the river. Mafuabi and Kitosh said this. I think the hole where body was buried was ~~was~~ with hands as it was soft and muddy.

On the morning the body was found ^{Aug} my husband asked me for a white cock; I gave him the cock and it was killed in the presence of my husband, Kitosh and Mafuabi. They sat it along with one Matanda. I don't know why they killed and sat it unless it was because they were hungry. I remember my husband Okube being arrested. It was two days after the body was found. He was arrested at the labourers' lines. Mafuabi was arrested at the same time. They were handcuffed with iron handcuffs, and taken to Kitale. I did not follow.

A day later P.C. Wakuma and a Nandi askari came to the farm. C. Wakuma was wearing plain clothes and the Nandi was wearing uniform; they arrested Sengoro Kitosh and Matanda, and told me to come along with them. We all went up to Mr. Bentley's house, where Wakuma asked me if I had seen the Nandi killed; I said I had not. As I did not go out of the house when the fighting took place. He asked me if my husband had helped to kill him and I said no. I told him not to ask me anything else. We then came in to Kitale.

When at Mr. Bentley's house the Nandi askari slapped my face three times; he did not strike me on the hand with a stick.

On the way into Kitale, Wakuma hit me on the buttocks with a stick once only.

The Nandi askari who slapped my face, slapped me because I cried and I refused to stop. Wakuma struck me because I would not say I had seen my husband help to kill the Nandi.

Nobody else hit me.

When I arrived at Kitale I slept in the cell at Police Station for 3 nights and at the askaris lines for a week; at the lines I slept in Wakuma's hut with his two wives. I was not interfered with in any way there.

I remember being at the Supreme Court to give evidence. I sat outside with other witnesses including Mohamed, Mr. Bentley's Nyapara. When the European Police Officer came out. He said "if you saw your husband and the others kill the Nandi say so. You said so in the other Court, and you must say the same here". He said nothing else.

When Wakuma and the Nandi askari came to the station (witness sheet 12 Police file) they asked me to say I had hit her. He said "if you saw my husband kill the Nandi and you did not say so, I shall hit you and do not say so I shall hit you."

At the time the Nandi was killed Wanduto was living in my mother's hut; my mother's name is Sambusa and she is the wife of one Wamimbaya. In the morning she went to Songor's hut.

R.O. & C.

Sd. A. Finch.
A.S.P.

11.30 a.m.
Previously questioned
by tracker Takwani at
the farm.

Wanduto D/o Okobe, M'gishu child, about 7 years of age states:- When Wakuma questioned me I was alone, my mother was not present; Wakuma did not strike me; he said if you do not tell me the truth I shall hit you. He said if you do not say your father killed the Nandi I shall hit you. I did not tell him I had seen my father kill the Nandi. I did not tell him I had seen anyone else kill the Nandi; I did not say in the Court that I had seen anyone kill anybody. I did say in the Court that Malinda had killed the Nandi; my father told me to say this.

Whilst at Kitale I slept at the Police Lines in Wakuma's hut with his children.

At the Lines Wakuma said if you saw your father kill the Nandi say so.

R.O. & C.

Sd. A. Finch.
A.S.P.

The foregoing statements were interpreted by No. 2 959746 Macheche Okole, M'gishu native, employee of Nzola Stores, Kitale.

Sd. A. Finch.
A.S.P.

1.30 p.m.

I held an identification parade of all available Park and File. Corporal Amara is placed amongst them; the woman, Abwenge, failed to pick him out as being the man who struck her when she was in front of Mr. Bentley's house.

and contradiction.

Later, when in my office, she definitely stated he was not the man, but that he was a Nandi who was dressed in a blanket.

She pointed out L.C. Wakuma as being the man who questioned her and the child, and who hit her on the buttocks. Describes it as only a "stick" with a small stick he was carrying. She recognized A.J. Dale as being the European who spoke to her at the Supreme Court.

Sd. A. Finch.
A.S.P.

1.29

I have managed bin Malik (Sheet 11) and Busiku Wanduto (Sheet 1a) to my Office.

Cpl. Amara is shown to them, they states he is not the man they saw strike the woman in front of Mr. Bentley's house.

I send for ex Const. George, now in Kitale Prison to be shown to them.

Sd. A. Finch.
A.S.P.

1.29 noon.

I held a further identification parade in which ex. P.C. George (now a convict in Kitale Prison) is dressed in uniform and passes along with another R.F. The woman Abwange is first of all asked to pick out the askari who struck her. She failed to pick out anyone.

The ablie is also asked to pick out the askari who brought her into Kitale. She failed to pick out anyone.

Renamed, Mr. Bentley's Nyapara is then asked to pick out the askari whom he saw strike the woman in front of Mr. Bentley's house. He at once picks out S. F. Dutey.

Basika (Bisset Is.) is then asked to go along the line to see if he can pick out any askari who came to the farm during the investigation of case. He at once picked out ex. P.C. George as being the askari who arrested the two first accused in Police file.

Okube and Mafuabi states that he beat Mafuabi over the head and shoulders with a stick, so badly as to draw blood.

Another boy, on the farm, saw this also.

The boy is known and Mr. Bentley has very kindly decided to send him into ~~hospital~~ tomorrow.

Sd. A. Finch.
A.S.P.

Obwo returns from searching for Tacwani but after an hour reports he could not find him; he is believed to have gone to Kiminisi.

Sd. A. Finch.
A.S.P.

I interrogate ex. P.C. George re the allegations against him. He refuses to say whether they are true or not, he does not remember anything about the various incidents.

Sd. A. Finch.
A.S.P.

P.N.O 236860 Wanyway Obuanama, M'gishu native working for Mr. C. Bentley, states:

I remember the day the dead body of a native was found in a hole on my Master's farm. I was at work, when at about 11 a.m. someone told me.

The following Monday, two days after discovering of body, two askaris came to the farm and arrested Varemwa (Okube in Police file) & Mafuabi. One of the askaris was wearing uniform and the other was wearing a blanket; I did not know the tribe of the askari who was wearing uniform but he was light coloured and red lips, red and white spotted. The askari who was wearing a blanket was dark and appeared to be a Masai or a Handi.

After the uniformed askari had arrested Mafuabi he hit him on the face with his fist and when he was on the ground he hit him with a truncheon. I saw the askari who was wearing a blanket and he fell down. I did not hear the askari say anything. Okube was not seen. Mafuabi besides I was away and went up to the house and told Holmes of the beating.

George and
Takwaani.
C. George.
Takwaani
P.C. George.

Okube.

1.29
P. noon.

I held a further identification parade in which ex-P.C. George (now a convict in Kitale Prison) is dressed in uniform and dressed along with 12 other R.F. The woman Abwanga is first of all asked to pick out the askari who struck her. She failed to pick out anyone.

The child is also asked to pick out the askari who brought her into Kitale. She failed to pick out anyone.

Mohamed, Mr. Bentley's Nyapara is then asked to pick out the askari whom he saw strike the woman in front of Mr. Bentley's house. He did not pick out anyone.

Machia (Huset 40) is then asked to go along the line to see if he can pick out any askari who came to the farm during the investigation of case. He at once picked out ex-P.C. George as being the askari who arrested the two first accused in Police file.

Okube and Mafuabi stated that he saw Mafuabi over the head and shoulders with a stick, so badly as to draw blood.

Another boy, on the farm, saw this also.

The boy is known and Mr. Bentley has very kindly want to send him into ~~prison~~ tomorrow.

Sd. A. Finch
A.S.P.

Obwo returns from searching Gwintawani but after an hour he could not find him; he is believed to have gone to Kiminini.

Sd. A. Finch
A.S.P.

I interrogate ex-P.C. George re the allegations against him. He refuses to say whether they are true or not, he does not remember anything about the various incidents.

Sd. A. Finch
A.S.P.

P.N.C. 26660 Wanyaya Obusumua, W'gishu native working for Mr. C. Bentley, states:

"I remember the day the dead body of a native was found in a hole on my Master's farm. I was at work, when at about 11 a.m. someone told me.

On the following Monday, two days after discovering of body, two askaris came to the farm and arrested Warembwa (Okube in Police file) & Mafuabi. One of the askaris was wearing uniform and the other was wearing a blanket; I did not know the tribe of the askari who was wearing uniform but he was light coloured and red lips, red and white spotted. The askari who was wearing a blanket was dark and appeared to be a Masai or a Handi.

After the uniformed askari had arrested Mafuabi he hit him on the face with his fist and when he fell, he hit him with a truncheon. Mafuabi fell down and he fell down. I did not hear the askari say anything. Mafuabi was not hurt. I saw Mafuabi beaten I ran away and went up to the house and told Mohamed of the beating.

P.C. George and
Taker Takwani.
C. George
Taker Takwani
P.C. George

Okube

C. Wakuma did not wear uniform at any time on the farm.

J. C. George.

She would not have seen Wakuma.

I saw the woman Abwanga hit over the buttocks with a stick by the ankari in uniform. He hit her because he said "if you saw your husband (Ghana) kill the Nandi you must say", and she would not reply. It was the uniformed ankari who hit her. He did not strike her with his hands but with a stick. She did not fall down. The woman did not go to Kitale on this day but two days later.

These are all the beatings I saw. The beating of the woman which I witnessed took place near the labourers' lines and not in front of Mr. Bentley's house.

R.O. & C.

A. Finch.
A.S.P.

Taken in the presence of Mr. Bentley.
Interpreted by No. 798 1/C Muzai.

Sd. A. Finch.
A.S.P.

Witness further states; - After telling me of the beating of Mafuabi I returned to the

Sd. A. Finch.
A.S.P.

Asst. Insp. A.R. Dale, who leaves for England on 19.1.29, makes his statement and I question him thereon.

Sd. A. Finch.
A.S.P.

S.P.

Sir,

I attach my report of investigation carried out in C.R. 55/28. The murder of an old Nandi Kiningeh on the farm of Mr. O. Bentley, Kitale. (7 miles South).

At 10.30 a.m. on 14.4.28 I received a report from a Mr. Greed to effect that the body of a native had been discovered buried in the river bed on Mr. Bentley's farm.

At the time the A.S.P. Mr. Ridgway was sick at his house. I had no means of transport and went in the car of a Mr. Townsend together with him and 1/C. AMBA; I found at a river pool (shown me by Wakuma the Nyapara) the knee cap of a native protruding and had the body removed and washed clean; the native was an elderly male Nandi, entirely naked. I observed from Wakuma's statements several cuts and bruises. Two Magistrate's volunteered statements given in my file paras 3 and 4.

They showed me tracks leading from the part past the Wagigau lines where they ended in a patch of wood that I lost there two men to search round for further tracks. I returned to Wakuma and AMBA at the house where Wakuma was living in order to have the body identified.

C. Wakuma did not wear uniform at any time on the farm.

G. George

Wakuma would not have been Wakuma.

I saw the woman Abwange hit over the back with a stick by the askari in uniform. He hit her because he said "if you saw your husband (Omwani) kill the Nandi you must say", and she would not reply. It was the uniformed askari who hit her. He did not strike her with his hands but with a stick. She did not fall down. The woman did not go to Kitale on this day but two days later.

These are all the beatings I saw. The beating of the woman which I witnessed took place near the labourers' lines and not in front of Mr. Bentley's house.

R. O. & C.

Sa. Finch.
A. S. P.

Taken in the presence of Mr. Bentley.
Interpreted by No. 798 1/C Murali.

Sa. A. Finch.
A. S. P.

Witness further states:- After telling me of the beating of Mafuabi I returned to the house.

Sa. A.
A. S. P.

Post. Insp. R. Dave, who leaves for England on 15.1.29, makes his statement and I question him thereon.

Sa. A. Finch.
A. S. P.

S. P.

I attach my report of investigation carried out in G.R. 55/28. The murder of an old Nandi Kimingish on the farm of Mr. O. Bentley, Kitale. (7 miles South).

At 10.30 a.m. on 14.4.28 I received a report from a Mr. Greed to effect that the body of a native had been discovered buried in the river bed on Mr. Bentley's farm.

At the time the A.S.P. Mr. Ridgway was sick at his house. I had no means of transport and went in the car of a Mr. Townsend together with him and 1/C. Amara. I found at a river pool (shown me by Mohamed the Nyapara) the knee cap of a native protruding and had the body removed and washed clean. The native was an elderly male Nandi, entirely naked. I observed several cuts and bruises. Two Waghira volunteered statements given in my file paras 3 and 4.

They showed me tracks leading from the part past the Waghira lines where they ended in a patch of wood and I left there two men to carry round for further search. I returned to the river bed where the body was lying in order to have the body identified.

No one stated they recognised the body; at this time only the labour on Bentley's farm had seen the body. I sent round to the surrounding farms for the owners to send in their labour. I then made a rough sketch of the scene up to the point where the tracks were lost.

From the injuries I observed on the body and the secret burial I formed the opinion that the Nandi had been murdered. I left a guard over the body and returned to bring out the Medical Officer. About 12.30 I reported the facts to Mr. Ridgway and was instructed to carry on. The Medical Officer, owing to pressure of work could not accompany me until 3.30 to the scene. At this time I took with me E. M. Landells, 1/C. Amara and 3/C. George and 1/C. Manai; On the way I dropped 1/C. Amara who was given a letter for all settlers in the vicinity to send in their labour to view the body with the idea of identifying same, we arrived at the scene and the Medical Officer commenced to make a Post Mortem. At this period there was heavy rain falling which continued until about 7 p.m. and at a later period about 9 p.m. and at intervals during the night.

Whilst the M.O. was carrying out the P.M. I again interviewed the ~~xxxx~~ labour of Mr. Bentley and had them file past the body ~~xx~~ and each man to state whether he recognised the deceased. Amongst these men was a Nandi from Mr. Roberts farm adjoining Mr. Bentley's, his name was Kepketers; his manner indicated ~~xxxx~~ some uneasiness and I asked him twice whether he recognised the body and he said "No". Even on asking him his opinion of the tribe of deceased he said he did not know, this was obviously a lie as the deceased was undoubtedly a Nandi from features, hair dressing and general appearance. However I let that pass for the time ~~xxx~~ but made a note of same. Many natives from adjoining farms were present and I had them file by; none recognised the deceased. All four (4) accused in this case also filed by with the same result. By this time the M.O. had completed the Post Mortem and he gave his report to me verbally stating he would complete same in writing later (the report is attached in the file but is not consistent with the whole of the injuries I observed although the cause of death was most certainly "fractured skull"). Two sets of finger prints were taken with some difficulty from the hands of the deceased. By the time it was dark, as I could not obtain any further information, I left 3/C. George in charge of the body which was placed in a hut and locked up. I reported to the Asst. Supt. of Police at 7 p.m. of this evening and we discussed the case and he stated that he would view the scene the next morning. We arrived at the scene at 9 a.m. on the 15.4.28 together with 1/C. Amara and I was met by 3/C. George and the Sudanese Nyapara Mohamed; the first witness "Okube" was present and he showed us further tracks from immediately in front of the pile of wood ash where the tracks were lost the day previous, these led up to an old cart road and there lost; this was about 1 mile from the place of burial. These tracks were much more faint than the ones from the ash to the mud pool. I was left to carry on investigation while the A.S.I. returned to bring in a tracker Takwani who lives up the mountain.

The second lot of tracks were lost about 200 yards from the hut of the Nandi "Kepketers" whom I had been suspicious of at the time he denied knowledge of the deceased of his tribe; the hut was empty and I had ~~xxxx~~ same searched for clubs without result.

I having some knowledge of customs when murders are committed by Wagitwa, I instructed S/C. George re the customs of killing a cock as a means of sacrifice when a male is killed. Those natives from adjoining farms reviewed the body without result and I took a full face photograph before leaving the scene at 2 p.m. and the body was left in a coal hut.

I saw the A.S.P. at 7 p.m. on his return from the mountain and further discussed the case.

Takwani the tracker arrived the next morning at 9 a.m. and left for the scene, and at 6.15 p.m. they returned bringing in Okube and Wafuabi (No. 1 and 2 accused in this case) also No. 1's daughter, a girl of about 6 years and I was informed that the girl Manduto had told Takwani the whole story of the murder; she appeared a little afraid and in order to appease her, I sent her to be looked after by 1/Const. Amara's wife, a Wgitwa and sent Takwani back to the farm to bring the girl's mother in. The next morning 12.4.28 at 9 a.m. I interrogated the girl Manduto in the presence of Mr. Ridgway and she gave the statement on page 12 of file C.R. 55/28. This was given quite voluntarily and I took it down with little interruption her explanations regarding certain points, and sent her back to Amara's wife.

At this time I received a letter from A. Kruger who reported that his Nandi had been missing from the farm, this farm is about 3 miles from the scene. A.S.P. and self left to interview him and found him at the K.A.S. Brickfields; he had no labour books with him and could not quote the Nandi's name or number. A.S.P. and self then visited the Mgishe labour lines on Bentley's farm, we ourselves searched all the huts and found a trenching tool in two huts, both covered with dried mud of a similar type to the mud of the pool where deceased was buried. These were in the huts of No. 1 and 2 accused; a stringed instrument was found outside "Buseki's" hut and was taken by us. We found that Takwani had already left to Kitale with the girl Manduto's mother. We also had the Nandi Kipketere and his friend Kiprotek arrested on grounds of Kipketere's suspicious manner; we visited Mr. Kruger's farm and was informed that the Nandi missing from there was one Kimingieh who left to visit his brother Kepketere on Roberts farm during the evening of the 13.4.28 (night of the murder). It was alleged to be a custom of his to do this.

We returned to Kitale and interviewed the 1st accused's wife; at first she denied any knowledge of the affair and A.S.P. had her returned to the farm. She was not put under any restraint; her daughter was kept in the lines as we did not want her to be got at by any adverse party.

Both Nandi in custody were questioned but refused to answer. On 18.4.28 at 9 a.m. I was informed by Mr. J. J. Kruger that the Nandi's name and number was NDI. 375684 Kimingieh, the bearer of the letter a Kitosh stated that he gave Kimingieh his message on the evening of the murder and that he had stated he was going over to see his brother on Roberts farm. I allowed this Kitosh to view the 2 Nandis in cells and he recognised Kipketere as being the deceased brother and that Kipketere had visited the deceased on Kruger's farm a few days previous. I questioned the Nandi as to his reasons for refusing to recognise his own brother but received no answer.

I spoke with No. 1 and 2 accused; No. 2 was very sullen and would not answer questions. No. 1 made a rambling statement regarding a tembo drink at the huts on the 13.4.28, and that 2 others Wamisha Muteoda and Kertose were involved in and assisted

assisted in the murder.

I sent 1/C. Wakuma and 1/C. AMBIE back to the scene to interrogate these last 2 mentioned at 3 p.m. of 18.4.28; both askaris returned with the persons mentioned and also one "Busiko" another Magishu who lives at the lines with the other 4 accused; he volunteered a statement which I took down (see page 19 of 1176). This statement was given without any hesitation or reluctance and spoken in Swahili. I returned to the scene and interviewed 3 other labourers (see page 20). On 20/4/28 the woman Rubwenge wife of accused No. 1 was again brought in and gave a statement (see page 21) the general gist of it being to effect that she saw Kutosi, Mbanda, Mafuasi and her husband strike the Mandi, also about the cock belonging to her husband being killed after the burial and the identification of the 2 holes found in the huts, one being hers and the other Mafuasi's. From these statements I considered the case ready for preliminary trial; this was agreed to by 1/C. P. who was conversant with all the facts of the case from start to finish; evidence for the prosecution was completed on 28.4.28. I had to give evidence regarding the injuries I observed as the M.O. I was rather vague about some of the marks and only appeared nervous of giving his opinion into the cause of death which was far from satisfactory for the prosecution. The same day correspondence was received from the Bureau identifying the deceased from the finger print taken by us as being NDI.37568a Kimingish arap Mwitit, the missing herd from Kruger's farm.

On 30.4.28 all four accused were charged under sections 109.114 and 102.114 and committed for trial at the next High Court. During the lower Court trial, the evidence was clear and the accused quite clearly. They were not put under any restraint; no complaint was made to me regarding them as to having been beaten. On 1.5.28 all four accused appeared before the High Court under the charge of Stephens; during the trial I sat with Crown Counsel Mr. Davies and advised him on certain points. I myself gave evidence at some length; explaining the customs of killing a cock after a carrier, also the facts of the first lot of tracks being lost within 100 yards of the accused's huts, and the next day being shown further tracks leading to a near the Mandi's hut; that this was obviously a tracked trail to put suspicion on the Mandi and divert from themselves; that the first reports of the finding of the Mandi's hut and the pool was a simulation in order to divert attention again.

The woman's daughter Manduto was brought into court but would not speak; I had been half expecting this and suspected the father of advising her to be silent and not say anything, and went outside to the woman and asked her why she had not spoken her daughter so; explaining to her which was interpreted by 1/C. Wakuma. I made mention of the fact that Manduto had no gain in a court of law and that truth was required; also that anyone who tell one tale in one Court and then deny having said same in another were liable to imprisonment for perjury.

This woman was later called to give evidence and although there was a certain amount of reluctance on her part possibly due to being over-awed a little by the Judge and Counsel, she gave evidence of the killing.

- 16 -

The Judge then summed up and sentenced all four to death.

During the whole of the trial none of the accused made mention of the Kandi or Gross examined my witnesses through Council to any marked degree. Had the witness been assaulted, beaten or extorted in any way to give false evidence surely the Council for the defence would have stressed this point. There was no mention of anything of this description throughout; if anything I consider the witnesses were treated very kindly and that some person has put them up to make these allegations.

Sd. J. Dale

No. K. T. 15/1/29.

Office of the Supdt. of Police,
P. O. Box No. 55,
Kitale, 11th January, 1929.

The Commissioner of Police,
Nairobi.

COMPLAINT BY MR. O. BENTLEY AGAINST POLICE.

Reference your P. 40/30/24/28 of 3/1/29. I much regret having forwarded my enquiry file to you incomplete but would make the following explanation.

Mr. Bentley had stated that he had, on the 21/12/28, been given 15 days, by the Appeal Court, in which to take his employe (who had informed him that his evidence given in both the lower and Supreme Courts in the murder case was all lies) before a Magistrate in Kitale for his statement to be recorded.

The 15 days expired on the 5.1.29.

I had arranged for the boy to be brought in on a day on the 24/12/28 but, Mr. Bentley did not bring him until the 28.12.28, when his statement was recorded by Mr Crampton, the Resident Commissioner.

I did take a statement from the boy and made what enquiries I could into his allegations in the time allowed me.

Then, thinking you would wish to see the statement before the expiration of a time allowed (in the matter were mentioned in the Appeal Court) I forwarded the file.

I am continuing my enquiry and will forward the completed, with my findings as soon as possible.

Re your 4th of Jan. 1929. Mr Bentley informs me that he understood from the Court of Appeal that he was to take the witness only, Busiku, before a Magistrate for his statement, on oath, (re that his evidence was all lies and was given in fear) to be recorded. That this statement was, when recorded, to be sent to the Court of Appeal.

Re report Mr Bentley informs me that he does not at the moment contemplate taking any other action, and that he is entirely in the hands of the Court of Appeal.

RESTATEMENT OF ONE WITNESS

Sub-Inspector ... leaves for England on leave on the 19th inst. In consequence, and in case you consider it necessary for the to be kept back to attend any enquiry you consider should be held, I forward extracts from statements recorded from witnesses containing the threats or induce ments alleged by them to have been made by him.

(1) Busika B/o Wandote, Mgisca (the native whose statement has been recorded by the Resident Commissioner, Kitale) stated "When I got to the Police Station I was taken before a European (A. ... Wakuma (I Const.) said to him pointing to me this man saw it (the murder). The European said "You think of what you are saying, say it, say it, if you don't say it and if you hide anything I will put you in Jail for a year"

(2) Masaba B/o Warpo, Mgislu, stated: "I then went in (Police Station) and was asked by the European Officer to say what I know of the killing of the Nandi. I told him I knew nothing about the matter as I was ill on the night he was alleged to have been killed. He said, 'if you don't speak the truth you will be punished by the Government' I remember being at the Supreme Court with other witnesses when the European Officer (A.I. Dale) came out and spoke to the woman Abwenge. He said in Swahili 'You must speak the truth if you saw things, if you don't you will be punished'. It was then interpreted by an askari in Mgislu to the woman.

(3) Mohamed bin Malik, Sudanese, employed by Mr. Bentley as a headman stated: "I was present at the Supreme Court with other witnesses when the Police Officer (A.I. Dale) came out and spoke to the woman, Abwenge, in Swahili. He said 'If you don't say what you said in the Court of the District Commissioner truthfully you will be imprisoned for 6 months and you will stay in the jail with your husband, you have caused fitina with your child and she now refuses to talk'.

(4) Abwenge D/o Bakakara, Mgislu woman, stated: "I remember being at the Supreme Court to give evidence. I sat outside with other witnesses, including Mohamed, Mr. Bentley's Nyapara, when the European Police Officer came out. He said 'if you see your husband and the others kill the Nandi say as you said so, in the other Court you must say the same here' He said nothing else".

I should like to mention that the Mgislu natives are of an exceedingly low type, and they are terribly difficult people to deal with.

It is my opinion that whatever A.I. Dale said to the witnesses was not said in the nature of a threat, but only in an endeavour to get at the truth.

From the statement recorded by me there would appear to have been some beatings of natives concerned (witnesses and accused) in the case, but I doubt very much if A.I. Dale was aware of them, as all are alleged to have taken place on the farm.

I attach Asst. Insp. Dale's statement regarding his investigation of the case and his answers to questions put to him by me, for your information please.

I have instructed him to call at your office on his way to Mombasa.

Sd. A. Finch.

ASSISTANT SUPERINTENDENT OF POLICE.

The Asst. Supdy. of Police,
Kitale.

Sir,

I attach my report of investigation carried out on C.R. 56/28. The murder of an old Nandi KIMINGIEN on the farm of Mr. O. Bentley, Kitale (7 miles South).

At 10.30 P.M. 14/4/28 I received a report from a Mr. S. Creed to the effect that the body of a native had been discovered buried in the river bed on Mr. Bentley's farm.

At this time the A.S.D. Mr. Ridgway was sick at his house. I had no means of transport and went in the car of Mr. Townsend together with him and 1/Censt. Amara. I found at a small pool (abandoned by Mohamed the Nyapara) the knee cap of a native protruding and had the body removed and washed clean. The native was an elderly Nandi, entirely nude. I observed from examination several cuts and bruises. Two English volunteered statements given in my file, pages 3 and 4.

They showed me tracks leading from the pool past the English lines where they were in a patch of wood ash. I left there two men to look for further tracks and returned to the rest of the labour where the body was lying in order to have the body identified. They stated they recognized the body. At this time only the farm of Bentley's farm had been given to the body. I sent word to the surrounding farms for the owners to send in their labour.

I then made a rough sketch of the scene up to the river where the body was left. From the injuries I observed on the body and the aspect of burial I formed the opinion that the Nandi had been murdered. I left a guard over the body and returned to bring out the Medical Officer. About 12.30 p.m. I reported the facts to Mr. Ridgway and was instructed to carry on. The M. O., owing to pressure of work could not accompany me until 3.30 p.m. to the scene. At this time I took with me H.P.C. Landells, 1/C. Amara, 3/C. George and 1/C. Anai. On the way I dropped 1/C. Amara who was given a letter for all settlers in the vicinity to send in their labour to view the body with the idea of identifying same. We arrived at the scene and the Medical Officer commenced to make a Post Mortem. At this period there was heavy rain falling which continued until about 7 p.m. and at a later period about 9 p.m. and at intervals during the night.

Whilst the Medical Officer was carrying out the Post Mortem I again interviewed the labour of Mr. Bentley and had them pass the body and each man to state whether he recognized the deceased. Amongst these men was a Nandi from Mr. Roberts farm adjoining Mr. Bentley's, his name was 'Kipketeri' his manner indicated some untidiness. I asked him twice if he recognized the body and he said 'No'. When I asked him his opinion of the tribe of deceased he said he did not know. This was obviously a lie as the deceased was undoubtedly a Nandi from features, hair dressing and general appearance. However I let that pass for the time but made a note of same. Many natives from adjacent farms were brought in and I had them filed by. None recognized the deceased. 22 men (4) accused in this case also filed by with the same result.

By this time the Medical Officer had completed the Post Mortem and gave his report to me verbally stating he would complete same in writing later (The report is attached in the file but is not consistent with the whole of the injuries I observed although the cause of death was most certainly "Fractured Skull"). Two sets of finger prints were taken with some difficulty from the hands of the deceased. By this time it was dusk. As I could not obtain any further information I left 3/Const. George in charge of the body which was placed in a hut and looked up. I reported to the A.S.P. at 7 p.m. of this evening and we discussed the case and he stated that we would view the scene the next morning. We arrived at the scene at 9 a.m. on the 18/4/28 together with 1/Const. Amara and were met by 3/Const. George and the headman neapara Mohamed. The first witness "Okube" was present and he showed us further tracks from immediately in front of the pile of weed ash where the tracks were lost the day previous, then led up to an old cart road and there lost; this was about 1 mile from the place of burial. These tracks were much more faint than the ones from the ash to the mud pool. I was left to carry on investigation while the A.S.P. returned to bring in a tracker Takwein who lives up the mountain.

The second lot of tracks were lost about 200 yards from the hut of the Nandi "Kipsteri" of whom I have been suspicious of at the time he denied knowledge of the deceased or his tribe. The hut was empty and I had some searched for tracks without result.

I having some knowledge of customs when murders are committed by Wagishu I instructed 3/Const. George re the custom of killing a cock as a means of sacrifice when a male is killed.

More natives from adjoining farms viewed the body without result and I took a full face photograph before leaving the scene at 2 p.m. The body was left in a cool hut.

I saw the A.S.P. at 7 p.m. on his return from the mountain and further discussed the case. Takwein the tracker arrived the next morning at 7 a.m. and left for the scene. At 6.15 p.m. they returned bringing in Okube and Mafuabi (No. 1 and 2 accused in this case) also No. 1's daughter a girl of about 6 years and I was informed that the girl Mandute had told Takwein the whole story of the murder. She appeared a little afraid and in order to appease her I sent her to be looked after by 1/Const. Amara's wife, a Wagishu and sent Takwein back to the farm to bring the girl's mother in. The next morning 17/4/28 at 9 a.m. I interrogated the girl Mandute in the presence of Ridgway and she gave the statement on page 12 of file G.R. 55/28. This was given quite voluntarily. I took it down with little interrogation for explanations regarding certain points and sent her back to Amara's wife.

At this time I received a letter from a Mr. Kruger who reported that his Nandi herd was missing from the farm, this farm is about 3 miles from the scene. A.S.P. sent me left to interview him and found him at the K.A.R. barracks; he had no labour books with him and could not give the Nandi's name or number. A.S.P. and self then visited the Wagishu labour lines on Bentley's farm. We there interviewed all the huts and found a Wagishu who was covered with dried mud and who admitted to the fact of the body being deceased and was buried. He was in the file of No. 1 and 2 accused. A strange instrument was found outside

"Kipsteri"

Busiki's hut and was taken by us. We found that ~~the~~ had already left for Kitale with the girl Wanduti's mother. We also had the Nandi Kipketeri and his friend Kiprotich arrested on grounds of Kipketeri's suspicious manner. We visited Kruger's farm and were informed that the Nandi missing from there was one Kimingiah who left to visit his brother Kipketeri on Roberts farm during the evening of the 13/4/28 (night of the murder). It was alleged to be a custom of his to do this.

We returned to Kitale and interviewed the 1st accused wife. At first she denied any knowledge of the affair and A.S.P. had her returned to the farm, she was not put under any restraint; her daughter was kept in the lines as we did not want her to be got at by any adverse party.

Both Nandi in custody were questioned but refused to answer. On 18/2/28 9 a.m. I was informed by Mr. J.C. Kruger that the Nandi's name and number was NDI, 375654 Kimingiah, the bearer of the letter a Kitesh stated that he gave Kimingiah his poaha on the evening of the murder and that he had stated he was going over to see his brother on Roberts farm. I allowed this Kitesh to view the 2 Nandi in cells and he recognised Kipketeri as being the deceased's brother and that Kipketeri had visited the deceased on Kruger's farm a few days previous. I questioned the Nandi as to his reasons for refusing to recognise his own brother but received no answer.

I spoke with No. 1 and 2 accused. No. 2 was veryullen and would not answer questions. No. 1 made a rambling statement regarding a tembo drink at the huts on the 13/4/28 and that 2 other Wagishu Matando and Kutore were involved in and assisted in the murder.

I sent 1/Const. Wakuma and 1/Const. Amara back to the scene to interrogate these last two mentioned. At 3 p.m. of 18/4/28 both askaris returned with the persons mentioned and also one "Busiko" another Wagishu who lives at the lines with the other 4 accused; he volunteered a statement which I took down (See page 19 of file) This statement was given without any hesitation or reluctance and spoken in swahili. I returned to the scene and interviewed 5 other labourers (see page 20). On 20/4/28 the woman Abwenge, wife of accused No. 1 was again brought in and gave a statement (see page 21) the general gist of it being to effect that she saw Kutore, Matando, Mafuabe and her husband strike the Nandi, also about the cock belonging to her husband being killed after the burial and the identification of the 2 hoes found in the huts, one being hers and the other Mafuabe's. From the statements

considered the case ready for preliminary trial, this was agreed to by A.S.P. who was conversant with all the facts of the case from start to finish. Evidence for the prosecution was completed on 28/4/28. I had to give evidence regarding the injuries I observed as the Medical Officer was rather vague about some of the marks and only appeared desirous of giving his opinion as to the cause of death which was far from satisfactory for the prosecution. This same day correspondence was received from the Central Finger Print Bureau identifying the deceased from the finger prints taken by us as being NDI, 375654 Kimingiah arap Yemlit, the missing herd from Kruger's farm.

On 30/4/28 all four accused were charged under Sections 109, 114 and 302 I.P.C. and committed for trial at the next High Court. During the lower Court trial.

all my witnesses gave their evidence quite clearly. They were not put under any restraint; no complaint was made to me by any of them as to having been beaten.

On 21/7/28 all four accused appeared before the High Court under Mr. Justice Stephens; during the trial I was seen sat with Crown Counsel Mr. Davies and advised him on certain points; I myself gave evidence at some length, explaining the custom of killing a cock after a murder also the facts of the first lot of tracks being lost within 100 yards of the accused's huts and the next day being shown further tracks leading up to near the Nandi's huts; that this was obviously a "cooked" trail to put suspicion on the Nandi and divert from themselves; that the first reports of the finding of the body in the mud pool was a simulation in order to divert suspicion

The woman's daughter Nanduto was brought into Court but would not speak; I had been half expecting this and suspected the mother of advising her daughter not to say anything and I went outside to the woman and asked her why she had instructed her daughter so; speaking swahili which was interpreted by 1/Const. Wakuma. I made mention of the fact that "Lies had no gain in a Court of Law and that truth was required also that persons who tell one tale on oath in one Court and then deny having said same in another are liable to imprisonment for perjury.

This woman was later called to give evidence and although there was a certain amount of reluctance in her manner, possibly due to being over awed a little by the judge and Counsel, she gave evidence of the killing.

The judge then summed up and sentenced all four to death.

During the whole of the trial none of the accused made mention of the Nandi or cross examined my witnesses through Counsel to any marked degree.

Had the witnesses been assaulted, beaten or extorted in any way to give false evidence surely the Counsel for the defence would have stressed this point. There was no mention of anything of this description throughout. If anything I consider the witnesses were treated very kindly and that some person has put them up to make these allegations.

(sd) J. Dale

Assistant Inspector

put the following questions to Asst. Inspector Dale :-

1. Q. Whom did you leave to guard the body on 14/4/28?
 - A. J. J. George.
2. Q. Is there any reason why the tracks should be fainter beyond the wood ash?
 - A. In my opinion the same body had not been dragged beyond the wood ash. From the hole to the Mgishu lines up to near the wood ash the grass was long and the marks were well defined. Beyond there for a distance the grass was burnt and the tracks were very faint, again, beyond the burnt grass there was more long grass and bush leading up to the wagon road. The marks here were again faint. My opinion is that the tracks beyond the wood ash to the wagon road had been simulated to put us on to a false scent.
3. Q. The attitude of the Nandi was highly suspicious, and there was some evidence that the deceased had left Mr. Kruger's farm to go and see his brother on Mr. Roberts' farm (in which direction the tracks of a dead body having been dragged). You started your investigation in this direction. Why did you so suddenly stop it?
 - A. Because of the information regarding the Mgishu.
4. Q. Was any report on any beatings of accused and witnesses reported to you? Or did any of them make any complaint?
 - A. No.
5. Q. Was any force or threat used against any of the prisoners or witnesses on your instruction, or with your knowledge and consent?
 - A. No.
6. Q. Why did you come out of the supreme Court to speak to the woman witness Abwenge?
 - A. Because the child had been brought into Court and on examination by Counsel would not speak. I had been expecting this, and that she had been taught to do this by her mother.
7. Q. What did she say?
 - A. I spoke to her in Swahili, which was interpreted by Warden and said "Lies have no gain in a Court of Law and that truth was required, also that persons who tell one story on oath in one Court and deny having said same in another, are liable to imprisonment for perjury." I also asked her why she would have refused to speak, and as far as I remember she was silent.
8. Q. On the first occasion the woman Abwenge was brought into Kitale did she give any information.
 - A. No. She was interrogated in the presence of Mr. Ridgway and was allowed to return to the farm.

I put the following questions to Asst. Inspector Dale :-

1. Q. Whom did you leave to guard the body on 14/4/28?

A. E. C. George.
2. Q. Is there any reason why the tracks should be fainter beyond the wood ash?

A. In my opinion the same body had not been dragged beyond the wood ash. From the hole to the Mgishu lines up to near the wood ash the grass was long and the marks were well defined. Beyond there for a distance the grass was burnt and the tracks were very faint, again, beyond the burnt grass there was long grass and bush leading up to the wagon road. The marks here were again faint. My opinion is that the tracks beyond the wood ash to the wagon road had been simulated to put us on to a false scent.
3. Q. The attitude of the Handi was highly suspicious and there was some evidence that the deceased had left Mr. Kruger's farm to go and see his brother on Mr. Roberts' farm (in which direction the tracks of a dead body having been dragged led). You started your investigation in that direction. Why did you so suddenly stop it?

A. Because of the information regarding the witness.
4. Q. Was any report on any beatings of accused and witnesses reported to you? Or did any of them make any complaint?

A. No.
5. Q. Was any force or threat used against any of the prisoners or witnesses on your instructions or with your knowledge and consent?

A. No.
6. Q. Any day you come out of the Supreme Court to speak to the woman witness Abwenge?

A. Because the child had been brought into Court and on examination by Counsel would not speak. I had been expecting this, and that she had been taught to do this by her mother.
7. Q. What did you say?

A. I spoke to her in Swahili, which was interpreted by Wakuma and said "Lies have no gain in a Court of Law and that truth was required, also that persons who tell one story in one Court and deny having said same in another, are liable to imprisonment for perjury." I also asked her why the child had refused to speak and as far as I remember she was silent.
8. Q. On the first occasion the woman Abwenge was brought into Kitale did she give any information.

A. No. She was interrogated in the presence of Mr. Ridgway and was allowed to return to the farm.

9. Q. Why were Busiku and Masoba kept at the Police lines?

A. These men were under suspicion, and we did not want to lose them, there being a possibility of their running away. They were there with the knowledge of Mr. Ridgway. Wakuma was instructed to interrogate them.

10. Q. I understand that on the first day of the hearing of case at Supreme Court the woman refused to give evidence, is this so?

A. So far as I remember this was not so. She was at first reluctant to give evidence and there was an argument between judge and counsel as to if she could give evidence as she was the wife of one of the accused.

11. Q. I find no entry in Police file MM showing date, or under what circumstances the Mandi were released. Was there any reason for this?

This is an omission. They were ~~was~~ released on the 17/4/28 (vide O.B. 12 of 17/4/28) and re-arrested by me same date. They were finally released on 1/5/28.

12. Q. What did you say to Busiku and other witnesses whom you brought to your Office?

A. I just interrogated them in the usual way and told them that if they knew anything they must speak the truth. I used no threats. Busiku volunteered his statement.

13. Q. Was the woman Abwenge kept for 3 days in the Police cells?

A. She was not kept in the cell. (I find no entry in the O.B. of this woman having been kept in cell).

14. Q. Was the first information regarding the Mgiashu having killed the Mandi given you by the child?

A. Yes. After interrogation by Masai Tracker ^{Dakwani} Takweini, who speaks Mgiashu, on the farm in the presence of her mother.

15. Q. Why were the prisoners kept so long in Police cell, were they remanded?

They were remanded by the Magistrate to Police custody, as lengthy interrogation was necessary.

Sd/- A. Finch. A.S.P.

11/1/29.

1/1/29
11 a.m.

Cherebui arap Takwani, Algon Masai, employed by Police as a tracker states :- " I am known as arap Takwani. I remember Mr. Ridgway coming to Swana M'Kubun's farm and bringing me into Kitale. He said he wanted me to assist and assist in the investigation of a murder which had occurred on Mr. Bentley's farm. This was about 9 months ago.

Mr. Ridgway called P.C. George and told him to take me and show me Mr. Bentley's farm and the body of the murdered native. P.C. George and I went to the farm. When we got there we spoke with Mohamed, Mr. Bentley's nyapara; he took us to the hut where body lay and caused it to be taken out. I had a good look at it and found it was that of a Nandi who was known to me as one Arap Emitti.

After the body had been buried I started my enquiries, during the course of which P.C. George and I went to the Wagisha labourers lines. Whilst at the lines I saw the woman Abvenge and the child Mandate sitting there. I went along and spoke to them. I asked the woman if she knew who the deceased Nandi was and she replied she had seen him after he was dead, but she did not know who had killed him. I then spoke to the child and asked her if she knew who had killed the Nandi and she replied "Yes! I saw a man with very long hair killed by my father and another named Maj Mafuabi." I asked her if she would show me the man and she said she could. I asked her where they were and she replied that they were working on the shamba.

We, (self, P.C. George and child) then went to the shamba where the child pointed out her father Warimbwa (Okute) and Mafuabi. I asked Warimbwa and Mafuabi if they had killed the Nandi and they replied that they knew nothing about it.

We all then went up to the store near Mr. Bentley's house where we saw the nyapara Mohamed. Mohamed spoke to the child and asked her who killed the Nandi and she pointed to her father Warimbwa and Mafuabi. Mohamed then said "that is alright" take them to Kitale. He told us to take our prisoners to a Swana M'rofi who lives on the farm next to Mr. Bentley's. As we started off we saw a motor car coming, the car came towards the house and then stopped. I spoke with the European and told him that the child had told us that the two prisoners had killed the Nandi. The European told us to wait whilst he went to the store. After a short while the European came back and told us to get into the car. We, P.C. George, self, child and prisoners then got into the car and were brought into Kitale, and set down at the Police station. She repeated her story to Asst. Insp't. Dale.

When we got to the store near Mr. Bentley's house, we asked Mohamed for rope with which to tie up our prisoners. He gave us rope and the prisoners were tied up.

Whilst we were doing this the wife of Warimbwa stood some distance away, there were also a crowd of labourers. The woman commenced to cry and P.C. George told her to keep quiet. As she would not keep quiet P.C. George went over to her and slapped her face, and struck her on the hand with his swagger cane. Mohamed was present at the time. I did not touch the woman. I was carrying a blanket at the time I was on the farm. I did not touch the prisoners other than to assist in arresting them.

I did not touch the child in any way, I spoke to her quite quietly. I used no threats and did nothing to frighten her. I spoke to her in M'Gishu, a language which is also spoken by my tribe. When I spoke to her she gave me the information at once.

After handing over the prisoners at Kitale I was sent by A. I. Dale, on another case, to Cheringani. I did not go to Mr. Bentley's farm again.

When we got into the motor car the European told us to take off the rope from the prisoners hands, this we did.

I did not see P.C. George strike anyone other than the woman. He did not strike either of the prisoners at the labourers lines.

When I spoke to the child the woman Abwenge was near by and would hear what I said.

I was never on the farm with P.C. Wakuma. I was never on the farm with P.C. Munai.

P.O. & C.

Taken by me

d/- A. Finch. A.S.P.

20/1, 29

11.45 a.m.

The woman Abwenge is brought in from Messrs. Guy and Finch's farm. She is a own Arap Takwani. She now states that she knows him well but that he is not the man who struck her when in front of Mr. Bentley's house.

She is now definite that the man who struck her was the askari in uniform, who was with Takwani at the time. (ex P.C. George).

She now changes her statement and says that it was not P.C. Wakuma who questioned the child at the labourers lines, but Takwani.

The child who is also present, now agrees that the man who spoke to her first about the murder was Takwani and not P.C. Wakuma. She admits that she told him that her father and Mafuabi killed the Handi.

She also agrees that she and the others were brought into Kitale in a European's motor car.

Takwani did not strike her and he did nothing nor said nothing to frighten her.

Ed/- A. Finch. A.S.P.

Further the woman now states that she did not sleep in the cell for 3 nights as alleged in her statement, but went to the Police Station (on being called from lines) and waited there for 3 days.

Ed/- A. Finch. A.S.P.

NO. 385 A/C Wakuma Masau, Kenya Police states :-
 I remember the case of the Handi who was found murdered
 on Mr. Bentley's farm. I was in April last year. I
 have forgotten the date. When the report was received
 I was on safari on the investigation in another case.
 On my return from investigation I was informed by
 A. Dale of the murder. A. Dale told me that he had
 already arrested two accused - Wajishu - in the case.
 He also told me there was a child at the Police lines
 who had given some information and instructed me to go
 to the lines as I was of her tribe and again question her.
 I went to the lines and found a child living in
 a hut with 12 women and children. I took
 her to my house in the presence of my wives and
 children questioned her. She told me what she had seen
 her father hit the man - she did not say his tribe -
 in the stomach and kill him. I asked her if Maruati
 was with him at the time. She replied that he was.
 She said it happened at night. She also said Imgosa
 was present.

The following day I informed A. Dale of what the
 child had said.
 After the same day A. Dale told me that he had
 spoken to one Ochi about the child and she said she had
 seen the man and would not believe her evidence. The
 case was untold.

I then questioned the child and she refused to say anything.
 I then questioned her again and she refused to say anything.
 I then questioned her again and she refused to say anything.

The Government
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 I then questioned her again and she refused to say anything.

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I then questioned the child and she refused to say anything.
 I then questioned her again and she refused to say anything.

Later the same day I went along with I/C (now Cpl)
 Amara to Mr. Bentley's farm to assist arrest Kiteha,
 Matanda and Busiku and to bring the woman Abwenge, and
 the natives who were in the same hut as Matanda and
 Kiteha to the Police lines. I found Busiku and asked him to
 have been used during the tambo time. He gave it to me.
 He admitted that there was tambo in his hut on the
 night the Handi was killed. He told me the names of all
 the people who were in his hut drinking tambo. I
 arrested Kiteha and Matanda and they told me that

Masaba lived with them. Masaba denied drinking tembo with them. I found the woman and told her she had to come to Kitale. She refused to come to Kitale but sat on the ground. She said I am a woman I haven't killed anybody. As she refused to get up I hit her on the back with a stick I had, she then stood up. After we had arrested our men Masaba came to the porters lines. He spoke to us and told us to go to Kitale.

I asked the woman who had made tembo, and she replied Busiku. I asked her who had drunk it and she replied Mitoshe, Matanda, Lafanji, Lukose and Wasirinani and her mother. She also said the child was at the hut where the tembo was drunk. She told me that she took a basin of tembo to her husband at his hut. I said "I want you to tell this to my master at Kitale". Busiku also told us a similar story. We then started on our way to Kitale. While on the way to Kitale I made threats to the woman, and I did not touch her. I did not hit her because she refused to say her husband had helped to kill the Mandi. I did ask her if her husband had helped to kill the Mandi and she replied he had not.

When we arrived at Kitale we went to the Police Station but as A.I. Dale was not there we went to his house. A.I. Dale asked Busiku who had killed the Mandi and he pointed to Mitoshe and Matanda, and said the others had already come to Kitale.

A.I. Dale ordered Mitoshe and Matanda to be taken to the Police Station and the woman Busiku and Masaba to be taken to the lines where the Sergt. Major would find places for them to sleep. The woman slept in my house along with my two wives and the men slept in the syce's hut. I gave them food.

I deny having hit Masaba (Sheet 2) on the chest and back when on the way to Kitale.

The men were placed under no restraint whilst at the lines. I don't know how long they stayed there but I think it was no longer than two days. They spent the greater part of these two days waiting at the Police Station for their statements to be recorded.

I did say to Busiku, at the farm, "if you know about the killing of the Mandi and don't say so you will be imprisoned" I told him that "others had said he knew about the murder and if he didn't agree he would be punished."

The men who arrested the two first accused were ex P.C. George and Tracker Takwani.

When the woman was brought in she slept at the lines for 2 nights, and after her statement was recorded she was allowed to go to the farm for food, reporting at Kitale every day until the case in the Magistrate's Court was completed. Busiku, Masaba and the child also only slept at the lines for 2 nights only and after their statements were recorded they also were allowed to return to the farm. Every day they said they were hungry, hungry and I fed them at my hut at the lines. After reporting for six days Busiku and Masaba said the neepara wanted them to stay on the farm and work. I took them before A.I. Dal. who said they could stay on the farm and if and when he required them he would send for them. They did not come in again until the case was heard in the Magistrate's Court.

I deny having every day gone to the lines and saying to Busiku "the people up at the Police Station say they killed the man along with you, etc." The morning after

Masaba lived with them. Masaba denied drinking tembo

with them. I found the woman and told her she had to come to Kitale. She refused to come to Kitale but sat on the ground. She said I am a woman I haven't killed anybody. As she refused to get up I hit her on the buttocks with a stick I had, she then stood up.

After we had arrested our men Mwanjama came to the porters lines. He spoke to us and told us to go up to Kitale.

I asked the woman who had made tembo, and she replied Busiku. I asked her who had drunk it and she replied Kitosha, Matenda, Mafauya, Lukose and Wasirinani and her mother. She also said the child was at the hut where the tembo was drunk. She told me that she took a basin of tembo to her husband at his hut. I said "I want you to tell this to my master at Kitale". Busiku also told us a similar story. We then started on our way to Kitale.

Whilst on the way to Kitale I used threats to the woman, and I did not touch her. I did not hit her because she refused to say her husband had helped to kill the Maudi. I did ask her if her husband had helped to kill the Maudi and she replied he had not.

When we arrived at Kitale we went to the Police Station but as A.I. Dale was not there we went to his house. A.I. Dale asked Busiku who had killed the Maudi and he pointed to Kitosha and Mafauya and said the others had already come to Kitale.

A.I. Dale ordered Kitosha and Matenda to be taken to the Police Station cell, and the women Busiku and Masaba to be taken to the lines where the Sergeant Major would find places for them to sleep. The woman slept in my house along with my five wives and the men slept in the syce's hut. I gave them food.

I deny having hit Masaba (Sheet 2) on the chest and back when on the way to Kitale.

The men were placed under no restraint whilst at the lines. I don't know how long they stayed there but I think it was no longer than two days. They spent the greater part of these two days waiting at the Police Station for their statements to be recorded.

I did say to Busiku, at the farm, "if you knew about the killing of the Maudi and don't say so you will be imprisoned." I told him that "others had said he knew about the murder and if he didn't agree he would be punished."

The men who arrested the two first accused were ex P.C. George and Tracker Takwani.

When the woman was brought in she slept at the lines for 2 nights, and after her statement was recorded she was allowed to the farm for food, reporting at Kitale every day until the case in the Magistrate's Court was completed. Busiku, Masaba and the child also slept at the lines for 2 nights only and after their statements were recorded they also were allowed to return to the farm. Every day they said they were hungry and I fed them at my hut at the lines. After reporting for six days Busiku and Masaba said the neapara wanted them to stay on the farm and work. I took them before A.I. Dale who said they could stay on the farm and if and when he required them he would send for them. They did not come in again until the case was heard in the Magistrate's Court.

I deny having every day gone to the lines and saying to Busiku "the people up at the Police Station say they killed the man along with you, etc." The morning after

he arrived at Kitale he made his statement to A.I.Dale (sheet 19 Police file d/d 10/4/28. 3p.m.) therefore there was no need for me to do so.

I did say to him, on the farm, "I have received information that you know about this murder" and he admitted that he did.

I was not at the Supreme Court when the case was tried and Asst. Inspt. Dale is making a mistake when he says I interpreted for him to the woman Abwenge. I neither went to the Magistrate's Court - There was no need for me to go as I was not giving evidence. I was one of the "Guard of Honour" at the opening of Supreme Court, and when we were dismissed I asked A.I.Dale if he wanted me, and he said he did not.

I did nothing, nor said anything to the child to frighten her when I questioned her. When I first spoke to her she was in Corpl. Amara's hut. I spoke to her in Kigabu and she at once came to me. She said her father and Bafauti had killed the Nandi with sticks. I asked where the man was and she said they had thrown him away. She said they had killed him at night. She said that she slept in Busiku's hut at Mr. Bentley's farm with an old woman. She also said that her mother slept in Warimbwa's hut.

I was never on Mr. Bentley's farm with ex P.C. George and Tracker Takwani.

When the murder was reported I was on enquiry on Mr. Stoward's farm. I was never on the farm with 1/C Manai. I went to the farm once only. I left Kitale at 2 p.m. and returned at 6 p.m. the same day.

N.O.C.

Taken by me

Sd/- A. Finch. A.S.P.

Completed 25/1/29.

9/1/29

No 42 2/Bergt. Malungi 2,0 Police Lines, Kitale states:- I remember the witnesses Kusiku, Masaba and Abwenge staying at the lines. I can not say how long it was ago. So far as I remember they stayed there 5 or 6 days. They did no work.

P.C. Wakuma was not at the lines every day as he was away on investigation in cases. He was away most of the time they were there.

No restraint was placed upon the witnesses, but before they left the lines at any time they came and told me.

They left every day to get food. I don't know why they were kept at the lines unless it was feared that they would run away.

The woman slept at Wakuma's hut and the man in the porters lines.

R.O.&C.

Sd/- A. Finch. A.S.P.

no. 799 1/C Manai states:- I went with A.I.Dale, E.P.C. Landalls, and P.Cs Amara and George with also the District Surgeon to the farm on the day the murder was reported. I returned the same day with A.I.Dale, E.P.C. Landalls and P.C. Amara. P.C. George was left to look after the dead body, and to endeavour to find out who the deceased was. I did not go to the farm again.

R.O.&C.

Sd/- A. Finch. A.S.P.

This enquiry was started as a result of verbal complaint by Mr. G. Bentley to the Commissioner of Police. He alleged that during the investigation of the murder of a Nandi native, whose body was found on his farm, the Police had followed the wrong line of investigation, and had arrested 4 innocent labourers of his, an evidence which was first obtained by threats from a child and by forcing lying statements from others.

In his appeal to the Supreme Court he not only accused the Police of using unlawful means of obtaining evidence, but also accused the defending counsel (a local barrister who was briefed by Government to defend) of incompetency.

When the murder occurred Mr. Bentley was on holiday in South Africa, and when he returned the four accused had already been committed for trial before the Supreme Court.

On his return from South Africa it would appear, that from certain information given to him by his Soudanese Nympira Mohamed, he was not satisfied that all was in order and in consequence started his own enquiries on the farm.

(Before going further I should mention that all four accused and all witnesses for the prosecution were living on his farm at the time the murder was committed)

He stated that the first witness for the prosecution, Musiku s/o Wandu (sheet 1(a) of my enquiry) told him that the whole of the evidence given by him in the Magistrate's Court was lies and that he had told lies because he had been threatened by, and in consequence was afraid of, the Police. Yet, in the Supreme Court he gave practically the same evidence - the same material facts - as in the lower Court.

In his statement to the Police (sheet 19 C.F. 55/28) this witness mentioned that he saw the deceased struck under the jaw with a stick. But in both the Lower and Supreme Courts he enlarged upon this and stated that he saw all the blows struck which eventually killed him.

This fact, in my opinion, rather tells his story that the story he gave was given in fear of the Police.

He makes no allegation of having been beaten by any member of the force, in fact he distinctly states he was not beaten.

Even had his evidence in the Lower Court been given in fear of what the Police might do, he had ample opportunity of retracting when at the Supreme Court.

He had spoken to Mr. Bentley in the interim and knew that he would assist and protect him in every way. (Mr. Bentley has informed me that he gave this information, (that witness had told lies) to the defending counsel but that no use was made of it.)

He states that every day whilst at the lines P.O. Wakuma came to him and told him to say he had seen the Nandi killed.

The 2nd Witness Masaba states that he saw Wakuma speak to him once only alone at the lines, but again states that "each time he spoke to him he took him some distance away." From this it would appear that he did speak to him several times.

The question now arises as to how long these matters were detained at the lines.

From the Occurrence Book entry dates on Police file (25/28) the report of finding of body was made on the 18/4/28, a Saturday. Witness states he was arrested on the following Wednesday the 19th.

The Police file sheet 18 shows that L/Const. Wakuma and L/Const. Amara left for Mr. Bentley's farm on enquiries, on the 18/4/28 at 11 a.m. Another entry shows that they returned at 3 p.m. same date with (1) Masaba and (2) Into also one Busiku, who volunteers to give a statement, see page 19 Police file.

On page 19 is recorded a statement from Busiku s/o Wandoo taken on the 18/4/28 at 3 p.m. Wakuma states it was recorded the following morning.

I must take the written statement as being the more reliable, as I see no reason why Asst. Inspector Dale should make a fictitious date entry, also it is not to be expected that a man would remember distinctly 8 months afterwards. I am satisfied that this statement was recorded on the 18th and in consequence I fail to see how Wakuma could have spoken to him every day, unless after the statement was recorded he was detained at the lines for some days afterwards. This may account for his enlarging upon the evidence in file and the evidence given in Court.

Unfortunately the file is very "sketchy" and there is no record of any of the witnesses being detained at the lines, and it is when they were allowed to go.

Asst. Inspector Dale stated that the witness and Masaba were detained at the lines (sheet 41 question No. 9) with the knowledge of Mr. Ridgway. I have no doubt that Mr. Ridgway will be able to explain why these people were kept there. I have been unable to trace any remand warrants and am unable to see the Asst. Resident Commissioner, who since the case in Lower Court has informed me he did not issue any. Therefore their detention, although presumably they were under no restraint, appears to have been illegal.

The trial of accused was started in the Lower Court on the 24/4/28, 6 days after witnesses were brought in, and completed on the 30/4/28.

It would appear that the witnesses were kept, at any rate, until the trial was opened, and then allowed to return to the farm.

I am not satisfied that Wakuma was at the lines every day, but am convinced that he spent the greater part of the time the witnesses were at the lines on other cases. Therefore there can be no question of any "3rd Degree".

Unless Busiku knew of, or witnessed the murder I cannot understand his giving way so easily and saying he did not see anything. Masaba (2nd witness) underwent the same alleged questioning but did not admit seeing anything, and he was not called as a witness by the Police.

But, Masaba states that Busiku endeavoured to induce him to give false evidence.

The second witness Masaba (sheet 4) was brought in on the same day as Busiku but made no statement. He persisted in his denial of any knowledge of the murder and was treated as a hostile witness. He states he also was kept at the lines for about 6 days.

He accuses L. J. Wakuma of striking him whilst on his way into the lines. He said he knew nothing about the killing of the victim. The witness Masaba and the woman Amara was seen to visit him to enable him to mention of his alleged beating and Corporal Amara denies that any such beating took place.

I cannot believe that he was struck by P.C. Wakuma, as he alleges.

Reference his allegations against Asst. Inspector Dale. I have already dealt with these in my letter to the Commissioner dated 11/1/29.

3rd witness, Sheet 12.

This woman gave evidence at the lower and Supreme Courts and stated she saw her husband and another help to kill the Nandi.

She states she also was kept at the Police lines for some 6 days.

She alleges she was slapped on the face three times by a Nandi askari when at Mr. Bentley's house, but was not struck with a stick as alleged by others.

I am satisfied that this slapping was done by ex P.C. George in the presence of Tracker Takwani, but not with intent to extort evidence. Also, she says she was struck on the buttocks by P.C. Wakuma when on the way into Kitale because she would not say she had seen her husband help to kill the Nandi. The witness Masaba says she was struck, and P.C. Wakuma denies it, but admits striking her with a card because she refused to stand up and walk into Kitale.

She also alleges she slept in the Police cell for 3 nights. I have made careful and lengthy enquiries into this allegation and I am satisfied it is not true.

I have dealt with her allegations against Asst. Inspector Dale in my letter to Commissioner.

This woman is without doubt one of the lowest types of human being it has ever been my duty to interrogate. It took me some 3 hours to take her statement, and she contradicted herself so many times that I was almost giving it up in despair.

I am not satisfied that she was struck by Wakuma (a "lick" with a cane she describes it) with intent to extort evidence. But, at the same time, he had no right to touch her.

This woman was brought in to give evidence on the 18/4/28 but no statement was recorded until the 20/4/28 (sheet 21 Police file). The delay in this may have been due to pressure of work on the part of Asst. Inspector Dale.

In her statement to me she alleges that whilst being brought in from the farm to Kitale, Wakuma hit her "because she would not say her husband had helped to kill the Nandi". Yet two days afterwards she makes a statement implicating her husband and others.

I have made careful enquiries and am satisfied that no pressure was brought to bear upon her to make her change her statement, neither does she allege any.

4th witness (The child).

I had great difficulty in obtaining a statement from this witness, she is very young and shy and as a witness in a criminal case, I should say, very unreliable.

She at first alleged that P.C. Wakuma was the first Policeman to interrogate her, but later stated it was Tracker Takwani. From my enquiries I am satisfied that when he questioned her that her mother was present. She was also present when she was at the lines as both lived in Wakuma's hut.

Reference her allegations that Wakuma threatened her. There is no evidence to support this, and I cannot believe it to be true.

She had previously admitted to Tracker Takwani and Mohamed that she saw certain things and made a statement to Asst. Inspector Dale (Sheet 12) before Wakuma had been to the farm or had seen any of the parties concerned. Therefore there could be no purpose served by continuing to worry her.

She makes no complaint against Tracker Takwani.

The witness Mahamed. (Sheet 11 & 12)

This witness was on the farm when the dead body of ~~Handi~~ Handi was discovered. He alleges he followed tracks in the grass, as of a body having been dragged, on to the edge of Mr. Robert's farm.

He saw ex P.C. George slap the woman Abwenge's face, in front of Mr. Bentley's house.

He saw no one else beaten.

He saw the child just after Tracker ^{Dakwani} Takwain had questioned her, but says that she then appeared to be afraid.

He questioned her at the request of Tracker ^{Dakwani} Takwain and she made replies implicating her father and Mafuabi.

He makes no mention of seeing blood on the prisoner Okube when he saw him at the labourer's lines.

He made no complaints of any beatings to Mr. Ridgway or Asst. Inspector Dale or to either the Lower or Supreme Courts.

I have dealt with his statement re Asst. Inspector Dale ~~xxxxxxxxxxxx~~ at Supreme Court, in my letter to Commissioner.

Witness Wanyonye (sheet 24) says he saw ex P.C. George strike Okube (accused 1 in Police file) over the head with his fists and truncheon. This is corroborated by witness Busiku (sheet 19.)

He, Wanyonye also alleges he saw an askari in uniform strike the woman at the labourers' lines. The woman makes no mention of this neither do any of the witnesses. I have no doubt but that this part of his story is sheer imagination.

Reference P.C. Wakuma's admission (sheet 48) of having said to the prisoner Okube "I want the truth about the killing of the Handi, people who tell lies are punished by the Government and may be hanged, but people who tell the truth will have nothing done to them". Can this be termed an inducement to admit an offence as defined in Sec. 24 Evidence Act and Sec. 130(1) C.P.O? I am inclined to think it can be, but I may be wrong.

No confession was recorded from the prisoner and the only use made of his statement was to arrest the 3rd and 4th accused and bring in Busiku and the woman for interrogation.

Re allegation that the prisoner Okube was beaten by ex P.C. George. Okube is confined in Nairobi Prison therefore I cannot record his statement.

sd/- A. Finch.

Asst. Supt. of Police.

FINDING.

I am of the opinion the ex P.C. George, (now in Kitale Prison serving a sentence of 6 months R.I. for beating witnesses), did beat the prisoner Okube and the woman Abwenge. But, the beatings were done from sheer brutality and not with a view to extorting an admission of an offence. As he has been dismissed the force he can only be dealt with by Court.

^{Dakwani} I exonerate Tracker Takwain. I also exonerate Corporal No. 340 Amara Olando.

The witness Mahomed. (Sheet 11 & 12)

This witness was on the farm when the dead body of ~~the~~ ^{Handi} was discovered. He alleges he followed tracks in the grass, as of a body having been dragged, on to the edge of Mr. Robert's farm.

He saw ex P.C. George slap the woman Abwenge's face, in front of Mr. Bentley's house.

He saw no one else beaten.

He saw the child just after Tracker Takwain had questioned her, but says that she then appeared to be afraid.

He questioned her at the request of Tracker Takwain and she made replies implicating her father and Meruabi.

He makes no mention of seeing blood on the prisoner Okube when he saw him at the labourer's lines.

He made no complaints of any beatings to Mr. Ridgway or Asst. Inspector Dale or to either the Lower or Supreme Courts.

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I exonerate Tracker Takwain ^{Dakwain} and I also exonerate Corporal No. 340 Amara Olando.

I am of the opinion that No. 383 1/Const. Wakusa Masawa is, on his own admission, guilty of striking the woman, but am not satisfied that the striking ~~xxxxxxxxxx~~ was done with a view to extorting evidence. I recommend that he be reduced to 2nd grade constable.

Re his remarks to the prisoner Okube when interrogating him, I would request that the Commissioner of Police give a ruling on this.

I last dealt with Asst. Inspector Dale in my letter to Commissioner dated 11/1/29.

Re No. 709 1/Const. Masai. No complaint has been made against him.

Unfortunately the Magistrate's file is at the Supreme Court, I was therefore unable to obtain it for verification of date of commencement of trial, what warrants were issued etc. etc.

The two prisoners in the murder case are at Nairobi now.

(Sd) A. Finch.

COMMISSIONER OF POLICE.

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REPORT OF PROCEEDINGS OF THE
BENTLEY COMMISSION OF INQUIRY.

Thursday, 21st August,
1930.

The Commission assembled at 10 a.m. on Thursday,
21st August, 1930, at the Supreme Court (Court No. 3),
Nairobi.

PRESENT: Mr. G. V. Maxwell (Chairman),
Col. G. P. Watkins, D.F.C.,
Mr. T. A. Wood.

The Chairman read the notice constituting
Commission of Inquiry (Annexure).

ATTORNEY GENERAL (Mr. A. D. A. Macgregor, A.C.):
I would ask leave, Sir, to represent the Police as well
appearing on behalf of my own Department.

WITNESS: Mr. Oswald Bentley.

(Mr. Bentley took the oath.)

CHAIRMAN: Your name is, I think, Oswald Bentley?

WITNESS: Yes.

CHAIRMAN: I think it would be most convenient
if you would just make your own statement in your own way
first, just giving the Commission the facts and the reasons
for which you asked this inquiry - a general statement of
the whole affair, from which we can then ascertain the
particular lines of inquiry which we will follow up.

WITNESS: I have written, Sir, a small opening
preface to the various stages of the case which I thought
ought to read to you.

Mr. Bentley read the above-mentioned
paper (Annexure).

Mr. Bentley then read various papers
as follows:

HEAD I.
Police investigation at Kitale.
(Annexure).

HEAD II.
Magistrate's Court Proceedings at Kitale.
(Annexure).

A.A.
Criticism of the Magistral Proceedings
at Kitale. (Annexure)

Mr. Bentley explained that he had written this criticism at his house at the time of the proceedings, and that it was read in connection with an amplification of the last paper under Head II.

WITNESS: Will you kindly make any allowances if you think the language of this criticism is strong. It was written at a time of stress, at a time when the lives of these men hung in the balance. If I have attacked the police for what I feel was an unfair investigation it was with the one object that I thought if I could prove the police had acted unfairly it would surely help the accused to escape from their fate.

MR. Bentley explained that when the word "brother" ("ndugu") was used, he referred to the court.

HEAD III.
Police Treatment of Witnesses
and Accused.
(Annexure)

CHAIRMAN: When were the statements made that the four accused had been intimidated by the police into confessing by being told that the others had already incriminated them? Were they made separately or in the course of the proceedings?

WITNESS: They were made in the jail at Nairobi.

ATTORNEY GENERAL: About what date, Mr. Bentley? At what page of the proceedings?

WITNESS: After they had been sentenced to death, Sir.

CHAIRMAN: After the trial by Mr. Justice Stephens?

WITNESS: And before the appeal Court set in Nairobi.
May I say with regard to this very serious remark about Mr. Dale that up to quite a few days ago I had always imagined that that statement of this stupid woman, Wenge, was made to Mr. Dale before this stupid woman went into court. As a matter of fact it now transpires, and I did not realise it until quite recently - that that woman went into court on the morning of a Saturday. The court was adjourned for lunch. The court re met and sat about 2 o'clock in the afternoon. It was during this unbroken interval that this statement with regard to Mr. Dale is given. My own memory in a few words and I cannot give details in detail and this remark was made to her not before she went and gave her evidence, but after she had given her evidence and understand she was reluctant about the statement, and naturally did not wish to repeat what she had said, but the point is that if the statement is a true one it was made after she had given her evidence in the morning.

CHAIRMAN: Which remark was that exactly?

WITNESS: The remark sworn to that Mr. Lale went to the witness, her own, and threatened her that if she went back on the statement made in the original court before the District Commissioner she would be imprisoned for six months.

HEAR IV.
The trial at ...
(In ...)

CHAIRMAN: Would you tell us the date of the prosecution before Mr. Izard?

WITNESS: The 17th April, 1928.

CHAIRMAN: That is practically a year after the court proceedings.

(In the trial proceedings as usual in his notes Mr. Bentley pointed out to the Commission that probably the word "Magistrate" had been inserted in error for the word "Nandi".)

WITNESS: I have not got the original of the trial proceedings, but if they are required the Registrar of the Supreme Court is required to put them in.

ALLANBY: That is in my question as to discrepancy arising in what important, though it does not entirely remove the factor of error, the trial judge may have written down one word intending to write another.

CHAIRMAN: That is a possibility; we could ask Mr. Bai about that later.

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WITNESS: These notes were written in the privacy of my own house. I do not pretend to be a lawyer, and there may be a great deal which is simply my opinion, as having had to deal with natives all my life: such as my next paragraph.

(This paragraph dealt with an alleged Nandi custom of killing a prisoner after a murder.)

WITNESS: No, I say with regard to that that the evidence of this woman, Wenge, was not taken down verbatim. It is a summing up of extracts. That is to say, when I saw the judge in this manner interested, there was a custom against the Nandi, as is proved from the appearance of the proceedings regarding what that particular witness said about a custom. It is not mentioned on his own account. The point is that the judge seems to have believed in this custom.

CHAIRMAN: This is only a typed copy but I notice the evidence of Busiku at the trial says, "It is our custom to kill a man" I take it he is a Wagishu

WITNESS: Yes.

CHAIRMAN: In the copy I have here, in the summing up, the expression occurs "There is a custom amongst the Nandi" it must be a typing mistake.

WITNESS: In my copy it is "against"

CHAIRMAN: The words are similar.

WITNESS: "Nandi" must be a misprint. Surely, the question of this "hooker" being killed and eaten would have been a question that would be referred to the three assessors; I can find nowhere in the course of the proceedings that they were ever questioned on this Wagishu custom.

E.B.
Mr. Bentley then read a paper
amplification of Head IV.
(Annexure)

WITNESS: I do not know what Mr. Bentley said on Mr. Bentley's mind concerning these four different pleas is, but I do suggest that accused No. 2, when he says "I did not kill", there is an implication of application; when he says "I found him dead", it can be read in two distinctly different ways - it might only mean he was actually there at the time. I do not understand it.

WITNESS: I say when I keep on mentioning these statements of the police striking and intimidating accused No. 2, I am referring all the time to the police officers, who, of course, is mentioned by name in the detailed proceedings about their treatment.

WITNESS: With regard to the route of the track by the accused No. 2, in the statement he made to me he stated a point that he lost the track at a point where he was called away to attend the post mortem. A point is that in the trial his evidence appears as though he lost the track entirely quite close to the nuts of the wagon, which was the damning point against the accused. In the statement he made to me he always maintained he followed the track up to the nuts and had been reflected by the police officers to attend the post mortem; he afterwards followed it up the wagon road. This pointed to the accused's brother.

CHAIRMAN: Is the Nandi not near the wagon road?

WITNESS: Yes, Sir, an isolated hut.

WITNESS: I think Mr. Bentley said it was about unfair of him to say in his judgment, "There was a 'tent party'".

WITNESS: May I say in explanation to the... General - I will swear to this. I came down to... I was present in the court at the retrial. The Solicitor General was conducting the prosecution. He turned to the interpreter and he said to the interpreter, "Ask the witness who was at the tembo party" in Gwahala. The interpreter to whom I listened very carefully throughout the proceedings turned to the witness (the witness was Naitanu) "The Grand tembo with you?" The boy answered, "So... so... and... and... 30". The interpreter turned to the judge and said, "30... 30... and so and so"; the judge writes down, "30... 30... or live... were at the tembo party". My point is that there never was a tembo party, but the idea has never been lost sight of throughout the proceedings. It has always been spoken of as a tembo party; this is how it creeps into the minds of the prosecution, the judge, and the witness who was at the party". The interpreter in Swahili says, "The Grand tembo with you?", as he would in Swahili. Therefore a different meaning is obtained. But I do think about the tembo party because I saw a statement before the Magistrate which said, "I brewed a det... of...". I think that he accused... there was...

A... an exception to was... the... of...

WITNESS: May I say in connection with the child at the retrial which took place in September, 1947, the judge certainly remarked from the bench that the child was of such a tender age that it could not understand the meaning of an oath.

CHAIRMAN: There is a point in this like you mentioned something about the... and I have more in the... to you... to know what their tribe was?

WITNESS: I am almost certain they were... .

CHAIRMAN: They were not... the... tribe... accused, not Naitanu? I... know, we... find out because I notice that... they are... of... opinion... says they are all... of the killing of the... I was wondering whether they were Naitanu or... we must find that out.

HEAL V.
The Appeal from the...
(Annexure)

HEAL VI.
The Appeal Court in...
(Annexure)

HEAL VII.
The Appeal Court in...
(Annexure)

6.
HEAD VIII.
The Delay Before the Retrial took place.
(Annexure).

HEAD IX.
(See Head X.)
(Annexure).

HEAD X.
The Retrial in Nairobi.
(Annexure).

HEAD XI.
The Attitude of the Legal Authorities in Kenya.
(Annexure).

Mr. Bentley asked permission under this Head to read a bulky paper with regard to Mr. McCarthy's connection with the case, but was ruled out of order by the Chairman after the following discussion:

WITNESS: Mr. McCarthy was held responsible for sending this material case for trial to the High Court, as a Solicitor General.

ATTORNEY GENERAL: It is an affidavit to be made by the Attorney General as to the facts for the High Court. The matter was in the hands of the Supreme Court and the trial would, of course, take place. Mr. McCarthy had no say in any of it, whatever he did with the case. The records of all papers in the Department come to the attention of the Attorney General and he presides over the case under the supervision of the Counsel. Mr. McCarthy dealt with it at no time.

CHAIRMAN: Would not it be possible for you at any time, as Acting Solicitor General, to have been doing it for the Attorney General?

ATTORNEY GENERAL: There is no indication of that. Mr. Davis conducted it throughout. Mr. McCarthy might have had to conduct it had he not gone to leave when the retrial came on I had then just arrived.

CHAIRMAN: I think we will never hear what Mr. Bentley has to say and see whether it comes under the terms of reference. We are asked to inquire into the conduct of the law officers of the Crown in the various stages of the trial and otherwise in the prosecution of the four men above-mentioned.

WITNESS: May I say that I certainly understood from the evidence in the trial that the Attorney General would be responsible, and was in fact responsible, for passing these papers to the High Court; in other words, confirming the magistrate's finding that the case should go for trial.

ATTORNEY GENERAL: Mr. Bentley has no knowledge of what goes on inside the office. He appears to have

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information that the first person to go through the papers was Mr. McCarthy; there is nothing on the papers to show that at all. The prosecutions at that particular assize, which, as you will appreciate, included Eldoret, Kitale, Kisumu and Mombasa, were undertaken by Mr. Bruce. He went up himself.

CHAIRMAN: Are the papers which first came into the Attorney General's office here?

ATTORNEY GENERAL: Yes, they are here.

WITNESS: I know for a fact Mr. McCarthy had read through these proceedings of this case.

CHAIRMAN: Do you want to make any specific complaints against Mr. McCarthy in connection with these proceedings?

WITNESS: Speaking very generally, Sir, the complaint that I have got written down on paper which seemed to place me in a false position is that a man in Mr. McCarthy's position treated the whole affair in an extraordinarily light and trivial manner.

ATTORNEY GENERAL: From what are you deducing that? Have you any notes or statements of his?

WITNESS: All I have got in the way of documents about any snarl I had with Mr. McCarthy.

ATTORNEY GENERAL: Did you have a conversation with Mr. McCarthy in relation to these proceedings?

WITNESS: Yes.

ATTORNEY GENERAL: At what stage?

WITNESS: Before the retrial.

CHAIRMAN: Mr. McCarthy did discuss these proceedings with you? Then, of course, it is in order. I think we shall have to hear what it was.

Mr. Bentley commenced to read his paper with reference to a bet with Mr. McCarthy at the Kitale Hotel.

CHAIRMAN: I do not think this Commission could very well inquire into that.

MR. WALKINS: When Mr. McCarthy was speaking was he showing himself in any official capacity?

WITNESS: It was in the Kitale Hotel.

CHAIRMAN: I think I must rule that out.

MR. WALKINS: How did he come to mention it?

WITNESS: We were arguing about this case. I said I would make a bet with him that those boys of mine were acquitted. He said the boys were acquitted.

ATTORNEY GENERAL: Mr. McCarthy has gone. He was conducting some circuit in cases pending but he was not conducting this particular case. The retrial was pending at that time and was undertaken by Mr. Bruce, the Solicitor General, in person.

COL. WATKINS: Would you imply that Mr. McCarthy's attitude had any bearing at all on the judgment in the case or on the case itself, or was his attitude just as irrelevant as anybody's in the hotel might have been?

WITNESS: The East African Standard took such a serious view of the matter that they said they must immediately see the Chief Justice of the Colony.

ATTORNEY GENERAL: That was done. I am not minimising the seriousness of the incident at all; my objection is merely a technical one that it is not within the four corners of the terms of reference. H.H. the Chief Justice was approached. H.H. wrote to me and I summoned Mr. McCarthy, who at that particular moment had just come back from sick leave on the coast. I called Mr. McCarthy. I pointed out the gravity of the allegations. That afternoon Mr. McCarthy was boarded, and on the following morning he was invalided out of the Colony, so I literally had not time. One cannot interfere with medical boards to go into the detail I should have wished. I should like to give Mr. Bentley the assurance that I do not minimise the extreme gravity of the allegations against Mr. McCarthy. It was a deplorable incident from that point of view, but it does not seem to me, if I may say so, to come within the terms of reference, and secondly, if I may produce another argument, it does seem a little abortive in the absence of anything in writing or the possibility of hearing Mr. McCarthy's side of the case.

COL. WATKINS: You do not consider that in this case it in any way lead to a miscarriage of justice or affected the matter?

CHAIRMAN: Are you suggesting that Mr. McCarthy's - whatever this incident was - attitude in the matter was in any way prejudicial to the case of these four accused?

WITNESS: I am bound to say that, remembering the things that he said to me and the way that he looked upon the whole of this affair, it might very conceivably have affected it. It was quite obvious the East African Standard thought so. They said this trial cannot go forward.

CHAIRMAN: That is merely the opinion of the editor of the East African Standard. The whole point is we are only concerned in inquiring into the conduct of the law officers of the Crown in the various stages of the trial, and that must refer to the law officers of the Crown who were actually concerned in the presentation of the case for the prosecution. We are only concerned with the law officers of the Crown who were actually actively concerned in that case, in this prosecution, or in anything to do with it; and I think my colleague and I agree with me that it is not within our terms of reference to deal with an incident, whatever it may be, between yourself and a man who happened to hold the position of a law officer of the Crown who was not concerned in the case.

WITNESS: May I ask the Attorney General one question? Was not it quite conceivable that Mr. McCarthy might have had charge of the prosecution at the retrial?

ATTORNEY GENERAL: I do not know exactly when this conversation took place? But it is, of course, conceivable. At that time he might have had ultimately to have to undertake the prosecution; if, for instance, my arrival in this country had been in any way delayed, and if the Solicitor General had had to continue acting as Attorney General, it is quite conceivable that that might have occurred.

CHAIRMAN: If it is merely the conduct of a public officer as such, who was not actually engaged in this trial, it is not a matter for inquiry by this Commission. If Mr. McCarthy had been still in the country it would be a matter for Government to decide whether under Colonial Regulations he should be asked to explain his conduct, but to a different body.

WITNESS: I imagine a matter like that would have been very fully investigated if circumstances had been other than they were?

CHAIRMAN: He was not a law officer of the Crown connected with the trial. We are only concerned with the trial and the conduct of any officers of the police or law or any department who did have charge of proceedings, and whether their conduct in the matter was prejudicial to the trial.

MR. WOOD: May I ask a question at this stage: what was Mr. McCarthy doing up in Kitale?

ATTORNEY GENERAL: He was prosecuting on the circuit; nothing whatever to do with this matter. At that stage the court of appeal in Kampala had ordered a retrial and a retrial was awaiting trial in the appeal court. At that time Mr. McCarthy, as is the duty of Crown Counsel in rotation, was prosecuting in various cases which had been committed to trial at Elgeet, Kitale, Kisumu and Nakuru, none of which, of course, had any connection at all with this one.

WITNESS: To make it quite clear, may I say the reason why this letter is included? It is not with the idea of charging anybody or any official with improper conduct, but if you can try and translate your minds into the state of my own at the time of these proceedings, I merely wrote this screed here with the idea of helping to show that certainly one official regarded things with levity which I should have thought demanded most serious gravity. That is the only reason.

CHAIRMAN: My only point is that this particular Commission, as constituted, cannot deal with that.

MR. WALKER: You wish to indicate there is some thing that is suggested by the Government that ought to be altered? What is your view?

WITNESS: Certain questions.

MR. WALKER: I have asked the Attorney General's

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assure now that it has been entered, you wish to see how to labour the point?

WITNESS: Absolutely.

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CHAIRMAN: Those are the statements you wish to put in, Mr. Bentley?

WITNESS: I have a statement of... they are not in error.

CHAIRMAN: We wish to hear your views on the subject, we want to give you every opportunity to give a complete statement as you can. The Commission can only report on matter within its terms of reference, any other can only be noted for reference. This Commission cannot report or investigate the conduct of a Justice of the Supreme Court.

The Commission... 2. To p.m.

WITNESS: MR. OSWALD BENTLEY.

THE CHAIRMAN: You have put in these statements Mr. Bentley. Do you wish to add anything verbally to what you have already put in, or may we take it that that is your complete statement at present?

MR. BENTLEY: I should like to make one remark verbally. It is to the effect that a lot of the criticism of the trial proceedings and the original magisterial hearing were written at the time when the lives of these four boys hung in the balance and I wrote in a way I probably would not write to-day. What I would particularly stress is this, Sir. Nobody knows better than myself - it is very difficult to say this clearly - but nobody knows better than myself what a difficult job the police have got in making an investigation of this sort, and I myself believe - and always have believed that Mr. Dale - though it looks as though I have attacked him, yet I have never suggested that he acted intentionally unfair. I simply believe that he, at the time of his investigation, was convinced of the guilt of these boys of mine, and for that reason he was the more easily persuaded that there was no evidence that could be called on their behalf. I have never suggested in any letter and I have endeavoured to make it clear that I do not attack Mr. Dale and that I have no feeling against Mr. Dale. If I could, my wish was not to show that the police had blundered but to help these boys. Nobody knows better than I do, Sir, that the police have a very difficult job. The boy came up in front of them, they can perhaps get nothing out of him and the police officer turns the boy over to the police askaris, and then what goes on behind the police officer's back nobody knows; it may lead anywhere. That is all I want to say.

ATTORNEY GENERAL: May I ask Mr. Bentley a few questions, Sir?

THE CHAIRMAN: Yes.

ATTORNEY GENERAL: I would like to say, Mr. Bentley that on behalf of the police I am very grateful to you for what you have just said. I am very grateful for what you have said because I know that it does represent your more exact frame of mind.

Now I should like, if I may, to put a few specific questions to you, but first of all I put this point, Mr. Bentley, that the documents which you have read to us this morning were documents written entirely during the pendency of the proceedings against those men?

MR. BENTLEY: Yes sir, the two chief documents, marked AA and BB, which criticise the magisterial enquiry and the trial, were written at a time when these boys' lives were in danger.

ATTORNEY GENERAL: You took a very deep personal interest in the case and we all know that you often laboured under a certain degree of mental stress.

MR. BENTLEY: Yes.

ATTORNEY GENERAL: May we perhaps discount a little of the language which is used in those statements, in so far as those particular statements are not statements of fact. May we discount a little of the language which you have used in expressing yourself there?

MR. BENTLEY: I know that some of the language - I can think of one particular expression, "were herded to the scaffold" - sounds too dreadful for words; but although the language is perfectly dreadful in a way, I think, in a way, Sir, that it reflects what I feel in my mind and what I have always felt; in other words, that from the moment these boys left the police enquiry there seemed to be nothing to save them.

ATTORNEY GENERAL: Then I may take it that these statements accurately represent, not only statements of fact but your expression of opinion and comment on the conduct of the various persons charged with various duties in connection with the prosecution and trial of those boys. Those statements represent your present feelings entirely?

MR. BENTLEY: Yes Sir, they do; but I perhaps would not use the same language if I were writing them again.

ATTORNEY GENERAL: You would be a little more dispassionate, say?

MR. BENTLEY: Yes, I think that is only natural.

ATTORNEY GENERAL: You are aware of the terms of reference of this Commission? The first concerns the conduct of the police officers whose duty brought them into contact with this case, and the second the conduct of the Legal Department. I want to try, so far as we can, to separate the various allegations that fall under these two heads. Would you tell me just what charges you make against the police officers? Shall we say, first, in connection with the investigation of the case, before the proceedings before the magistrate began?

MR. BENTLEY: You mean, do I wish to make any specific charges?

ATTORNEY GENERAL: I would like, as far as I can, to get down to specific charges. The officers concerned were Mr. Ridgeway and Mr. Dale and certain askaris.

MR. BENTLEY: Yes.

ATTORNEY GENERAL: So far as Mr. Ridgeway, for instance, is concerned, have you any specific charge to make against him of conduct prejudicial to the administration of justice?

MR. BENTLEY: Absolutely non, Sir.

ATTORNEY GENERAL: I will take the case of Mr. Dale now. From the moment that Mr. Dale first came into the picture, up to the time the case went before the magistrate is there any act or omission of Mr. Dale's which you can refer to as prejudicial to the administration of justice?

MR. BENTLEY: Yes sir. I think the big thing is that Mr. Dale, if he were conducting the investigation - that witnesses that should have been called before the magistrate were never called.

ATTORNEY GENERAL: While I am on that aspect of the case, Mr. Bentley, perhaps you will tell me this. Did I understand you correctly this morning to say that he wilfully failed in one respect in that he did not take a statement from your headman in writing I think I put in, or in the police office. That is to say, the boy was never called before the police to make a statement?

MR. BENTLEY: Yes.

ATTORNEY GENERAL: You were of course in South Africa all this time. - Yes sir.

Till after the sentence of death had been passed? - Yes.

So that what what you were telling us this morning is hearsay?

MR. BENTLEY: May I make one point about that, Sir? As you say, I was not here, but I have always understood that from my head boy. It may be found that I was wrong when I said that he was never called into Kitale before the police officer conducting the investigation, though he was with him for perhaps three days on my farm helping him, and of course giving him evidence. In that connection, Sir, I have always had the idea that there was a statement of Mohamed Malik's actually in the police investigation of this case, and I ran across it quite accidentally in the Police Superintendent's office in Kitale. But Mohamed Malik has always told me that he was never called to give evidence.

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ATTORNEY GENERAL: The investigation began on the 14th April, Mr. Bentley.

MR. BENTLEY: Yes.

ATTORNEY GENERAL: There is here a statement, headed Mohamed s/o Malik, Sudanese overboy to Mr. O Bentley:

"I have worked here all told for two years and then went on leave and came back five weeks ago. I received a report from at 7 a.m. of date. He said there was a native lying in the river bed. I went with him and Kutoai to inspect the scene and then saw a native knee sticking out of mud. I helped to follow the track back, which led past the Wagishu huts and eventually lost same over the main road near Mr. A.A. Roberts' house. Since the body's removal I have looked at same and think he is either Mandi or Masai. I went to report the matter to Mr. Creed".

I think you were not aware that that statement had been taken Mr. Bentley on the first morning of the investigation.

MR. BENTLEY: Yes, I was aware of it, but the point I wish to make is that Mohamed Malik never went into Kitale, if he is to be believed - and I do believe him - in the way other witnesses went in, to make a statement for the police; and if any statement is adduced in the police proceedings in this case, very likely it is only the gist of something he said to Mr. Dale while he was conducting the investigations.

ATTORNEY GENERAL: It ends up "R.O.G. Dale"

MR. BENTLEY: It must have been on my farm.

ATTORNEY GENERAL: Yes, on the first morning of the investigation. The point is that your headman was interrogated then.

MR. BENTLEY: Obviously, Sir.

ATTORNEY GENERAL: And made a statement which contained, among other matters, the statement that he followed the track and lost same in the main road near Mr. Roberts' house.

MR. BENTLEY: Yes sir. That is the point I have always made, and that point, Sir, definitely releases the Wagishu from suspicion and tends to throw suspicion on to the cousin of the deceased.

ATTORNEY GENERAL: Are you aware also that in the first instance Mr. Dale also turned his attention to the cousin of the deceased?

MR. BENTLEY: Yes, Sir.

ATTORNEY GENERAL: And that he got no further on that line at all. He found no evidence at all, linking up the cousin with the crime?

MR. BENTLEY: I think the most damning thing of all, to my mind, was the behaviour and the attitude of the cousin at the identification parade.

ATTORNEY GENERAL: I use "evidence" in perhaps a slightly different sense. Nothing that would have constituted evidence in a court of law associated the cousin with the crime.

MR. BENTLEY: At the time of the magisterial enquiry, Sir?

ATTORNEY GENERAL: Yes.

MR. BENTLEY: May I, with all respect, disagree with Mr. Dale. He must have had evidence incriminating the cousin of the deceased with the murder.

ATTORNEY GENERAL: Can you suggest what it was?

MR. BENTLEY: Circumstantially the attitude of this cousin when he was asked to identify the corpse of a man he knew.

ATTORNEY GENERAL: Do you seriously suggest that we should have started a criminal prosecution on that straight away because this man, when he was asked to identify the deceased, could not do so?

MR. BENTLEY: I suggest that he rendered himself liable to very strong suspicion.

ATTORNEY GENERAL: You know Mr. Dale did suspect, and investigated as far as he possibly could, but he got no further; and he got nothing else linking up the cousin with the crime.

MR. BENTLEY: May I differ, Sir. When you say Mr. Dale found nothing else connecting the cousin of the deceased with the crime, I should certainly say that when Mr. Dale found out that the cousin left the farm on which he was working early on purpose to go and see the deceased, I should say that that pointed immediately to suspicion of him, and that must have convinced Mr. Dale that on the day of the crime those two were together.

ATTORNEY GENERAL: Do let me try and make myself clear, Mr. Bentley. Suspicion was present, ample suspicion. But my point is that Mr. Dale was able to get anything in the nature of proof, anything that would justify him in instituting a criminal prosecution.

MR. BENTLEY: May I remind you of the blood stains, Sir?

ATTORNEY GENERAL: Which, as you have already told us, were unfortunately washed off on the way to Kitale. But the presence of blood is not evidence at all; we have to go further and prove that it was human blood, and it was impossible, for the reasons you have given, to get that proof.

MR. BENTLEY: With all respect, Sir, I do not agree. I say that at the inception of that investigation what you will naturally - perhaps only - find is something on which you can base your suspicions. You will not necessarily find definite concrete evidence.

ATTORNEY GENERAL: And do you suggest that we are entitled to go to a court of law on mere suspicion.

MR. BENTLEY: No sir, certainly not, but I suggest you are entitled to proceed with an enquiry to the utmost limit when you have suspicion against a particular man.

ATTORNEY GENERAL: But the enquiry did proceed to the utmost limit and it exhausted every avenue in an endeavour to associate the cousin with the crime. It is within your knowledge that Mr. Dale's first enquiries were directed to those channels.

MR. BENTLEY: Yes.

ATTORNEY GENERAL: It was only when the statement was made to Mr. Dale by the child that Mr. Dale first thought that the four Wagishu might be associated with the case.

May I make one other point, Mr. Bentley. Even if the spear had reached the analyst in a fit state for analysis, it would not have been a very material factor. The wounds, you will remember, were caused by clubs, so that the presence of blood stains on a spear would not necessarily have connected that spear with this particular crime.

MR. BENTLEY: Quite.

(B-1 follows).

B. I.

MR. BENTLEY: May I say, Sir, I do not think that you have got my answer to your original questions in the shape I should like to have them. I feel the police officer in charge of that investigation was too easily sidetracked into suspecting somebody else after he first of all commented directing his attention to the cousin. I say, as an ex-actitate from the Sudan, that the evidence that Mr. Dale, if he had followed up that line of thought, could have collected against that cousin was very strong indeed. I agree that the lead on the spear point, to the guilt of nobody in particular. The blood was never analysed, as you say, and I look upon the blood on the spear as a comparatively small point, but there were things of that sort - all circumstantial, it is true - but it was the business of the police to get them.

Then the two had been on a horse and the man who was murdered owned a horse and the man that I see, so to speak, tacitly accusing of the murder to-day, would inherit those cattle. There is this other evidence that the man left his farm to go and see his cousin on the day of the murder.

I say that to a man in Mr. Dale's position, conducting an investigation of this sort, the points which should weigh very seriously, and he should have pressed his enquiry on those points. They may not be points on which you can take a man into court to-morrow before a magistrate, but they would have been sufficient, I imagine, to give Mr. Dale that there was very serious suspicion against his cousin.

ATTORNEY GENERAL: May I put it this way while these investigations were proceeding it is within your knowledge that a statement was made to Mr. Dale by the child on the 17th?

MR. BENTLEY: No, Sir, I did not know that.

ATTORNEY GENERAL: Will you think it very important? It is so; it is here.

MR. BENTLEY: Certainly.

ATTORNEY GENERAL: That statement definitely implicated the four accused men.

MR. BENTLEY: I have never understood that, Sir; I understood it implicated two.

ATTORNEY GENERAL: That was followed up by statements from the other witnesses who ultimately appeared besides the child. In the light of that Mr. Dale had no option but to have the matter investigated by a court of justice.

MR. BENTLEY: I find that exceedingly difficult to answer.

ATTORNEY GENERAL: Surely that is the duty of the police. It is not for a police officer to take

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it upon himself to say that he believed or disbelieved those statements. That is the function of a Court of Justice. The point suggested is that Mr. Dale did wrong in putting the matter before the magistrate for investigation when those statements were made to him.

MR. BENTLEY: No, I do not, but may I ask you to remember that before this child appeared Mr. Dale must have had very serious grounds for thinking that the cousin was guilty. For that reason he arrested him. I have always said - in a very very early letter - that Mr. Dale thought those boys of mine were guilty, and I say he was too quickly sidetracked by this child.

ATTORNEY GENERAL: You appreciate that there is nothing to prevent Mr. Dale or any other police officer having this investigation now against the cousin?

MR. BENTLEY: Except that a lot of time has gone by.

ATTORNEY GENERAL: But there is no legal bar to his doing so. The acquittal of this has in no way interfered with any action which might be taken against the cousin now.

I want to get one point clear about the child: you have told us that the child was intimidated and saw her mother beaten. Do you suggest that Mr. Dale was any party to that?

MR. BENTLEY: Absolutely no, Sir.

ATTORNEY GENERAL: I have to put these points to you. Do you suggest Mr. Dale was aware it was happening?

MR. BENTLEY: No.

ATTORNEY GENERAL: I should like, in Mr. Dale's interest, to put this point to you: are you aware that that child was first brought before Mr. Dale, who formed the opinion and made a note in the file to the effect that the child was frightened, and he therefore said, "I am not going to ask her any questions at all". He sent her to live with the wife of one of these men in the lines until she had got over her fright. Accepting these facts, you will agree that is not the action of a man who is out to intimidate witnesses at all?

MR. BENTLEY: I have never suggested that, Sir.

ATTORNEY GENERAL: I simply want to get it clear in Mr. Dale's interest. The statement was quite a voluntary statement, as all of them were. There is no suggestion in the statement; it did not begin by saying, "I am saying this because I have been beaten by an askari."

MR. BENTLEY: The child?

ATTORNEY GENERAL: Or any of them.

MR. BENTLEY: No.

ATTORNEY GENERAL: I think you will agree that there was nothing to indicate to Mr. Dale that these were not statements made in the way in which the very great majority of statements are made - quite voluntary, free statements?

MR. BENTLEY: Yes, Sir, but it has just occurred to me, as a result of your questions, that it seems a presumption that Mr. Dale did not know. Perhaps I am wrong. I was going to suggest that perhaps he knew that one of those two avaries who were in charge of this matter was at that time a prisoner. I may have got the dates mixed. I have never suggested that Mr. Dale knew that anybody had been intimidated at all. I do not believe it of Mr. Dale and I have never suggested it.

ATTORNEY GENERAL: Are there any other points pertinent to the investigation before the magistrates began in which Mr. Dale, in your opinion, offended?

MR. BENTLEY: I do feel, as I have mentioned, that Mr. Dale, perhaps quite naturally, was so obsessed with the guilt of these Magism that even though other people must have crossed his mind when they arrested the accused he did not call them before the magistrates.

ATTORNEY GENERAL: I will come to that point on the proceedings.

He will pass now to the proceedings before the magistrates. The first point that you made, according to the notes I took this morning, was that it was unfair of the police to call the wife and child against the husband and father.

MR. BENTLEY: That is my private opinion, Sir.

ATTORNEY GENERAL: You realize, of course, that it is quite legal to do so?

MR. BENTLEY: In England, Sir.

ATTORNEY GENERAL: You cannot call a Christian wife; you may call a wife of any other religion.

MR. BENTLEY: I do realize that in England.

ATTORNEY GENERAL: You realize that the law here is the same?

MR. BENTLEY: I do, but my private opinion I think it is unfair.

ATTORNEY GENERAL: May I put it this way: that that is a criticism of the system and not against Mr. Dale?

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MR. BENTLEY: Yes.

MR. WOOD: Is it in accordance with English law that children of five years of age should be taken before a magistrate ?

ATTORNEY GENERAL: I was coming to that point. I was going to make that point also at a slightly later stage that the trial judge on the retrial had referred to the child as a witness who did not, in his opinion, understand the nature of an oath. Are you aware that that is no test under the Indian Evidence Act at all ?

MR. BENTLEY: No, Sir.

ATTORNEY GENERAL: There is no reference in the Indian Evidence Act to competency to understand the meaning of an oath at all. The only test is whether the magistrate, with whom the decision lies, is of opinion that the child understands what is said. That you may take as a correct statement of the law. Although Mr. Justice Thomas, who has been acquainted with the Indian system for a little longer than I have, refers to the ability to understand the nature of an oath, he is really referring to something that has no relevancy to the legal system at all.

MR. BENTLEY: Yes, Sir. I merely wrote what I wrote of the child.

ATTORNEY GENERAL: That again is an objection to the system which obtains ?

MR. BENTLEY: Yes.

ATTORNEY GENERAL: Similarly, when you stigmatize as unfair the questioning of witnesses instead of allowing them to make their statements in their own way ?

MR. BENTLEY: Absolutely.

ATTORNEY GENERAL: That, you realise, is a common-place in the local courts here ?

MR. BENTLEY: I understand that; I think it is most unfair.

ATTORNEY GENERAL: That again is system ?

MR. BENTLEY: Yes.

May I amplify that point ? To me, knowing that, I know it seems unfair; but it seems more than unfair if, for the sake of argument, any witness has been intimidated - any native witness - and the police are examining him before the magistrate and are asking him questions. Try and realise the native as I try and realise him: he is necessarily ~~is~~ frightened, and as in this case it is proved he knew, in the case of Busiku, what he was wanted to say to

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help the Government, then the idea of asking that boy questions in front of a magistrate seems to me doubly unfair. The question is put to him; he knows the answer that is wanted and he gives it. If that boy came into court and the magistrate said, "What is your account of what happened?" that boy is left absolutely to fend for himself. No idea is put into his mind; he is left to make an unbroken statement. I say the court would get at the truth from that boy far more easily than they will if he is asked questions.

ATTORNEY GENERAL: You do not for a moment imagine that I do agree with anything I said? The only point that I wish to make in that particular respect is that you do not accuse Mr. Dale of anything improper in conducting the examination by means of questions and answer?

MR. BENTLEY: No, Sir.

ATTORNEY GENERAL: Another point which you made against Mr. Dale was that he asked permission to treat certain witnesses as hostile, and that permission was granted. Are you aware of the provisions of the Indian Evidence Act relating to that?

MR. BENTLEY: No, Sir.

ATTORNEY GENERAL: That a witness may be regarded as hostile if he gives any answer which varies from the statement which he has made to the police before.

MR. BENTLEY: I am not aware of that.

ATTORNEY GENERAL: It is entirely different of course from what one means by a hostile witness in English law. You will accept that as a statement? That a witness who is either prevaricating on his statement or who gives a statement different from that which he has previously given may be treated as hostile and words may be put in his mouth.

MR. BENTLEY: Will you give me more information, Sir? The charge and verse for suggesting that any witness was prevaricating; that is to say, that he changed his statement that he made before the police before the magistrate, and therefore that he should be called a hostile witness?

ATTORNEY GENERAL: I cannot at the moment, Mr. Bentley. I have not examined the papers from that point of view, but I shall be glad to do so later. The decision was the magistrate's, not mine. The application was made, must have been made, under the provisions of the Indian Evidence Act, which is the law in force here.

There is one other point before we pass from the magistrate's proceedings.

MR. BENTLEY: May I just interpose one other remark? That is, that to me, to an ordinary person reading through these proceedings and knowing what I do about this case, there was a witness, who was called No. 5 in the prosecution, who was called by the prosecution - now, he failed to help the prosecution, and as I am absolutely persuaded he could only give evidence to the effect that he knew nothing of this crime (that is the gist of his answer), he is therefore deemed a hostile witness. That you say is provided for in the Indian law on the subject. My point is, there is a boy who comes before the magistrate; he cannot help the prosecution; he says, "Yes, I was there but I saw nothing"; obviously the point I am trying to make is that you must call him for the defence.

ATTORNEY GENERAL: That is the point I am coming to. Who do you suggest, under our present system, could call him for the defence - the police?

MR. BENTLEY: I ask you in all seriousness, what is the ~~meaning~~ meaning of that question? Is it the point who could call him, or is it the point that nobody called him?

ATTORNEY GENERAL: The point I wish to make is are you making a charge against Mr. Dale in respect of the omission to take the evidence of these particular people?

MR. BENTLEY: I think Mr. Dale or Mr. X. who is in Mr. Dale's position, coming before a magistrate with a case prepared, must in duty to himself and to all his decent feelings, if he thinks there are witnesses for the defence, say to the magistrate, "There are witnesses here who can give evidence in favour of the accused."

C.I. follows.

G.P.

ATTORNEY GENERAL: He ought to have made them, in your opinion, an integral part of his case.

MR. BENTLEY: I think so, Sir, for this reason, that it was only fair to the accused. The accused were in Mr. Dale's hands at that time, and if he has to go into court and it is not his duty to find witnesses for the defence, then I think it would jeopardise the case for the accused.

ATTORNEY GENERAL: If you do not mind, let us avoid relative and legal terms like "for the defence" or "for the prosecution". I want to be as non-technical as possible. What you mean, I think, is witnesses whose testimony might help the persons who are accused?

MR. BENTLEY: Yes?

ATTORNEY GENERAL: Do you suggest that there was any evidence tending to help the case which Mr. Dale did not put before the court?

MR. BENTLEY: Yes I do, most decidedly, Sir.

ATTORNEY GENERAL: Whose testimony, for instance?

MR. BENTLEY: The testimony of a woman called Samburu, who was the grandmother of the child Nanduti, who slept in the same hut with her, and whom Mr. Dale must have known could give evidence to the effect that that child never left her hut, and could in other ways corroborate the story of the defence that no murder was done. That is only one person, but there are at least five or six witnesses that Mr. Dale, if he had made a complete investigation, must have called for the defence. Some of the people who lived in those adjoining huts, and people from the huts where accused Nos. 3 and 4 lived. There was a boy named Masiba who was called for the prosecution of No. 5.

ATTORNEY GENERAL: His evidence was before the Magistrate.

MR. BENTLEY: But he was called for the prosecution, Sir. That is to say, he was in Mr. Dale's hands and he was questioned from the point of view of the prosecution before the magistrate.

ATTORNEY GENERAL: Yes.

MR. BENTLEY: I suggest that surely the obvious course was to call that boy for the defence.

ATTORNEY GENERAL: If I tell you that the system under which we work is such that it is for the accused persons to state whether they have witnesses to call or not, don't you think that in the light of that Mr. Dale did the proper thing by putting the testimony of that witness - which was colourless from this point of view - before the court? He was putting

the whole case before the court as he saw it.

MR. BENTLEY: I do not consider that he was, Sir. I do not consider that he was.

ATTORNEY GENERAL: He called before the court this witness, who said "I know nothing about it. I can give no evidence against these people at all".

MR. BENTLEY: I do not deduce that meaning Sir from Mr. Dale's treatment of the witness before magistrate. I maintain that this witness must have been called before Mr. Dale for the defence as should five or six men or women who said they were living with these accused and saw nothing. There are quite a number of points, Sir, that Mr. Dale must make in the defence, not only from witnesses but from his own mouth; that is to say, two of the accused came and reported that the corpses had been found. That is a point in favour of the accused. These points in favour of the accused were never deduced.

ATTORNEY GENERAL: That point is the point with which Mr. Dale begins his report.

MR. BENTLEY: Yes.

ATTORNEY GENERAL: You appreciate, of course, that this was a preliminary investigation only and that all the magistrate had to have was a prima facie case, and Mr. Dale, knowing that the accused would be defended when the case came before the Supreme Court

MR. BENTLEY: Yes, he must know that.

ATTORNEY GENERAL: it would be quite competent for counsel for the defence to call any witnesses there were.

MR. BENTLEY: Yes.

ATTORNEY GENERAL: In the light of that, don't you think Mr. Dale's action was a quite normal one? He goes before the magistrate, discharges the onus which was upon him for making out a prima facie case, and leaves the matter to be thrashed out before the Supreme Court?

MR. BENTLEY: That is not my idea of what Mr. Dale's duties should be. I do not agree with that. I say the case of these four boys existed before they came to the magistrate. If he tried to find a prima facie case he must be responsible in half measure with the prosecution for the defence of these boys for the protection of these boys. If he is not, Sir, who is? May I put it in another way - I hope you will not mind my reverting to the circumstances - but the police enquiry is taken by a police officer who is a magistrate. That is to say, witness comes before the police in the police station and before a magistrate.

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You have taken the statement of these people for the prosecution and then you have the defence. All that is contained in the dossier of the police officers. If it were not so I see no protection for these boys.

ATTORNEY GENERAL: There again, it is the system.

MR. BENTLEY: It is all system.

ATTORNEY GENERAL: There is nothing about it personal to Mr. Dale?

MR. BENTLEY: Except what I have already said. I think he was so obsessed with the guilt of these boys that he omitted to call evidence which might have helped them. If you had been in his position and you felt there was evidence that could help these boys, would you have been true to your traditions of British justice, and so on, if these points had been relegated to the background in front of the magistrate? Would you have felt that you were playing the game with these boys?

ATTORNEY GENERAL: It is all a matter of opinion. You are not going to condemn Mr. Dale because he formed a certain opinion? You are not accusing Mr. Dale of any deliberate unfairness?

MR. BENTLEY: Absolutely no sir.

ATTORNEY GENERAL: If there were errors, they were errors of judgement - matters in which you did not see eye to eye with him. You do not suggest he deliberately suppressed any evidence?

MR. BENTLEY: No sir, I do not.

ATTORNEY GENERAL: Or deliberately obtained evidence which was false?

MR. BENTLEY: Certainly not, sir.

ATTORNEY GENERAL: His behaviour was not dishonest but you think it was misguided?

MR. BENTLEY: I think he should never have suppressed certain evidence.

ATTORNEY GENERAL: What do you mean by "suppressed"? That is what I want to get at.

MR. BENTLEY: I say evidence was suppressed that could have helped these boys. The evidence that was brought up at the time of the magisterial enquiry was evidence against these boys, and all the evidence that could have been called I should have thought by Mr. Dale was never called.

ATTORNEY GENERAL: That is what you mean by suppression?

MR. BENTLEY: I do not mean that he deliberately suppressed anything but he failed to call before the magistrate witnesses who might have helped the accused.

ATTORNEY GENERAL: Yes. These witnesses were quite available? No steps were taken to get them out of the way? They could have been available at the appeal before the Supreme Court?

MR. BENTLEY: Certainly, Sir. There is the evidence of a man called Usuf. I suggest very strong evidence. Usuf, I believe, is a mohamedan, and he would have sworn that the man who was murdered left his farm early to go and visit his cousin. That, Sir, surely, if you had been sitting as the magistrate in this case, would have immediately put in your mind the fact that these two men were together, presumably, on the day of the crime. That is a point that was never brought forward.

ATTORNEY GENERAL: I do not want to start technicalities, but as a magistrate you realise that that evidence would have been inadmissible. A statement made by the deceased of his intention would have been inadmissible as hearsay.

MR. BENTLEY: The statement that that boy who was murdered asked for leave to go and visit his cousin?

ATTORNEY GENERAL: That he asked for leave is admissible. Saying that he is going to visit his cousin is hearsay and would not be admissible.

MR. BENTLEY: The evidence should have been that he asked for leave to go and visit his cousin.

ATTORNEY GENERAL: But he does not ask for leave to go and see someone; he alleges that he is going to see someone. The first statement that he asked for leave is a statement of fact; the statement by him that he is going to visit his cousin is inadmissible as hearsay evidence.

MR. BENTLEY: I have never said, Sir, that he told Usuf. I said: Usuf is a boy on that farm and he could have been called to court to swear that he was a nyapara on that farm, and that on that particular day he left earlier than he should have done and was given leave to go and see his cousin.

ATTORNEY GENERAL. I am afraid I do not quite follow Mr. Bentley. The statement that he left in order to go and see his cousin must have emanated from someone. The statement of his intention, presumably, came from the deceased himself and is therefore not evidence.

MR. BENTLEY: I ask you, Sir, if you were conducting a trial for murder and you found that the man who was murdered left his farm at a particular time of the day - an earlier time than usual - to go

and see his cousin - would you not presume that he perhaps - we will use the word perhaps - did visit his cousin, and that he perhaps was with his cousin on the day of the murder?

ATTORNEY GENERAL: I am afraid, under the system we work on, Mr. Bentley, we would not. The fact that he left the farm is evidence, but if you wish to take it any further than that you must bring the testimony of the person who saw him, say at some later stage. But I am afraid we are straying far from the real point.

I am going to take you now, Mr. Bentley, to the Supreme Court. Kitale, before Mr. Justice Stephens. Is there anything that you object to there in the conduct of Mr. Dale?

MR. BENTLEY: Yes sir.

ATTORNEY GENERAL: What is that?

MR. BENTLEY: The two most glaring things, I think, in connection with Mr. Dale's conduct of the prosecution - or rather, he was not in charge of the prosecution . . .

ATTORNEY GENERAL: No, I will come to that.

MR. BENTLEY: His attitude with regard to the prosecution - were first the mention of ~~of~~ this blood-stained vest belonging to accused No. 4 - I say in all seriousness, Sir, that Mr. Dale should not have made any mention of that vest at all in a court of law, either before a magistrate or a judge - and the second point ~~was~~ the production of those two noes in evidence before the judge.

ATTORNEY GENERAL: Now let us take the ~~the~~ blood stained vest first. Those are the only two points are they, Mr. Bentley?

MR. BENTLEY: There are several points, Sir, that we have referred to this morning. The one of course is about the custom in regard to the supposed injury to the anus. Mr. Dale's evidence on this point sounds very queer. In other cases of a similar nature with this tribe he says - if this report is correct - that it often happens that they put a stick up the anus with the vicious intention to hurt the ~~victim~~ victim. I want to know what the point of that allusion was, what the idea was and which tribe he was referring to.

ATTORNEY GENERAL: Mr. Bentley, what we have to drag from you is whether you make any charges against Mr. Dale's prejudicial to the administration of justice. Do you seriously suggest, if Mr. Dale honestly answered a question to the best of his ability - you realise that the case was being conducted by Crown Counsel and that Mr. Dale was answering questions in the ordinary course - do you suggest for instance, that if a question was put to Mr. Dale "how was the accused dressed" he should

ATTORNEY GENERAL: There was no suggestion
that the bloodstains were human.

MR. BENTLEY: I am not suggesting in any
way that the bloodstains were human. I would
have been very much surprised if they had
been other than human bloodstains, but I
was not.

MR. BENTLEY: I do not suggest in any
way that the bloodstains were human. I
was not suggesting in any way that the
bloodstains were human. I was not
suggesting in any way that the bloodstains
were human.

ATTORNEY GENERAL: In the mind of a trained
lawyer?

MR. BENTLEY: The judge, sir. May not?

ATTORNEY GENERAL: You appreciate that even
if we have a case in which bloodstains are likely to
be human, we inevitably have an element of
speculation. The court would never assume that because it
was a bloodstain, it was a human bloodstain.

MR. BENTLEY: Then why is that remark made?

ATTORNEY GENERAL: Because it is a fact that
there were bloodstains on the vest.

MR. BENTLEY: With what idea was the question
asked?

ATTORNEY GENERAL: Is it not more likely that
Mr. Dale did it in his house in his apartment, as he
testified and is usually the owner of the house, he
had taken to tell the jury, to answer questions fully.

MR. BENTLEY: I am not suggesting that he
should not answer the question, but I am not
insisting why that question was asked, and if the bare
number was given to Mr. Dale, as it was, that there
were bloodstains on that vest, and nothing more is
said, I should like to know why that question asked?

ATTORNEY GENERAL: May I suggest that the
person to whom I further was counsel for the accused?
It is not for Mr. Dale to determine the issue of the
examination and the fact that the bloodstains, of course
I have to suggest that they were human bloodstains.
In the mind of a trained lawyer, I would suggest
Counsel for the accused, as I have done it.

MR. BENTLEY: Yes, I do.

ATTORNEY GENERAL: And similarly with the hoos.
What happens about the hoos is the hoos had had on them
which, so far as I can see - this must, of course, be a
matter of opinion - so far as I can see, resembling
the hat in the swamp. If you or I had been defending
we would have taken that point up at once. The swamp

was a large piece of stamp indeed.

MR. BENTLEY: If I had been defending ?

ATTORNEY GENERAL: Yes, you would not have allowed that point to go, but you can hardly blame Mr. Dale that it was not further elucidated, can you ?

MR. BENTLEY: You put the question in such a way - do I blame Mr. Dale for anything he said in this particular trial ? Now you are talking to me about the question of these hoes. I suggest in all seriousness that Mr. Dale knew that these hoes were sent for from my farm three or four days after the enquiry had started, that is to say, after the corpse had been found, and I say in fairness to the accused directly Mr. Dale starts speaking about these hoes he must turn to the court or to the Counsel examining and "Look here, too much importance should not be attached to these hoes because it was some four days after the enquiry first commenced that they were taken from the farm". It must in Mr. Dale's own opinion invalidate the meaning of his evidence on these hoes. Surely it is left in the same way as it was with the bloodstained vest; it is left, and a point is made that these hoes belonging to accused 1 and 2, helped definitely to incriminate them. It is only fair; Mr. Dale, if he knew what I am suggesting he did know, must make a point of it to the Counsel.

ATTORNEY GENERAL: They were taken on the 15th April from the huts; that is the date on which they came into his custody. They had on them mud similar to what was in the mud pool - that can only be a matter of opinion - and not earth one would expect to find if the natives had been working on coffee land as they should have been working. But he did give the date; the court was aware it was four days after the event that Mr. Dale first came into possession of them.

MR. BENTLEY: May I say with regard to these hoes that if Mr. Dale had really effectually presented this case he would have known that these two hoes that were adduced in evidence against the accused were actually used by orders of the police to disinter the corpse from the hole in which it was found. The ~~futility~~ futility of calling these hoes; perhaps he did not know, but the fact remains there is my Mohamedan boy - he would have gone into court to swear that those were the two hoes amongst others used to disinter the corpse. Therefore if any mud was found on them of the same kind as found by the stream, it could fairly be argued by the defence.

ATTORNEY GENERAL: In respect of that, you do not suggest that there is anything untruthful in what Mr. Dale said in answer to questions ? As you see, he is having the various exhibits put to him - the earring and other things. The two hoes were handed to him by prosecuting Counsel: "Yes, I do not think these hoes were taken from the hut of the accused till the 15th. I looked at them as they had mud on them

which I found was the mud from the swamp." Is there anything unfair or untruthful in that?

MR. BENTLEY: Before I answer that I would ask, did Mr. Dale know whether these hoes had been used on the orders of himself to disinter the corpse?

ATTORNEY GENERAL: Mr. Dale certainly did not know. You have stated a few minutes ago that Mr. Dale did know - I understood you to say so.

MR. BENTLEY: No, Sir.

ATTORNEY GENERAL: Mr. Dale did not know.

MR. BENTLEY: I say that on the orders of the police they were used to disinter the corpse. I could not answer that last question until I knew whether Mr. Dale knew.

ATTORNEY GENERAL: Mr. Dale was not aware that they were the same hoes at all.

MR. BENTLEY: It is quite conceivable.

ATTORNEY GENERAL: Bearing that in mind, there is nothing improper in those answers, or unfair, remembering that there was Counsel assigned for the defence?

MR. BENTLEY: I am in the lands...

ATTORNEY GENERAL: I know what a difficult position you are in. I am anxious to keep the various issues distinct here - the conduct of the police and of the law officers - we are not investigating the conduct of Counsel who defended. I have to be particularly careful to see that you do not attribute to Mr. Dale any fault which was really the fault of someone else. May I put it to you this way: leaving Mr. Dale out of account and this trial out of account entirely, what is the attitude of the normal witness? A witness goes into the box, takes the oath, and answers questions. He does not volunteer statements, but he answers questions. Even if in his opinion the answer which he gives does not fully cover the ground, if he thinks that there are points which would make things clearer, he does not volunteer the information because he normally expects that Counsel for the other side, and in turn his own Counsel in re-examination, will traverse the whole ground, and that at the end you will have a complete picture. Is not that the attitude of the ordinary witness? I do not know whether you have ever had the misfortune to give evidence yourself, but I think you will agree that that is the frame of mind in which the ordinary person gives evidence: "I have come to tell the truth; I am going to answer all the questions as clearly as I can, but he knows he is going to be cross-examined a little later."

MR. BENTLEY: Yes, Sir, but we are speaking of Native Africa, and Mr. Dale is in a position to know

that the examination is coming later, but he knows Mr. Bentley of course.

ATTORNEY GENERAL: I am not going to pursue you on these charges.

MR. BENTLEY: I have written, Sir, a letter - a very very long letter in these proceedings at a time of very very great stress - in which I said I did not accuse Mr. Dale of any wilful conduct to try and get these accused into trouble. I do not accuse him in that way. I do not speak in any vicious way about him, but I do suggest in all seriousness, if those proceedings are read, the effect left on the mind of any reasonable person as the result of Mr. Dale's answer (forgetting for the moment whose fault it was), the effect left on the mind of anybody reading these proceedings, on the judge, is that the boys are guilty. These hoos are admitted in evidence and there is nothing to counteract the weight of this evidence, and then in turn directly that evidence is adduced by Mr. Davis or Mr. Dale the noose is gradually tightening round these men's necks. Nothing is called to rebut it; you say Mr. Dale knows full well later on there will be the completion of the picture and this other stage will follow, and so on, and that he feels quite happy in his own mind that all will be well - but does he? Mr. Dale knows Kitale as well as I do; he knows the people we have to deal with. Was it fair to those boys that the damning fact about those hoos should have been left as it was?

ATTORNEY GENERAL: Which way am I to take it? You began your remarks by saying that some time ago, at a time of great stress, you wrote and said you made no charge against Mr. Dale; and in your last words I gather that you do make charges.

MR. BENTLEY: Mr. MacGregor, if you are trying with all due respect, to try and get me to make answers that perhaps seem clearer in view of the answers I have made before, I do suggest to you that throughout this case I have never contradicted myself, and with regard to Mr. Dale I have always made the point - Mr. Finch in Kitale will tell you - that when I first met Mr. Dale in connection with this case I said to him, "Let us have it out here and now; I am not going to attach any blame".

MR. DALE: Quite true.

MR. BENTLEY: I have never blamed Mr. Dale for any wilful or reckless conduct in this case, but the effect of his answer in this case, left unrebuted, went a long way towards the boys being hanged. It is the system.

ATTORNEY GENERAL: To conclude, Mr. Bentley, may I put it that so far as Mr. Dale is concerned you do not suggest that he was guilty of any conduct prejudicial to the proper administration of justice? Those are the words of the actual terms of reference to the Commission.

MR. BENTLEY: In answer to that, Sir, I feel that Mr. Dale failed in his duty in not calling certain evidence before the magistrate's court and putting, for instance, the Counsel for the prosecution engaged for the trial wise to evidence that must have helped the accused. I imagine it must have been Mr. Dale's business, and for that reason I do think that Mr. Dale was at fault. That is the point I am trying to make; he was at fault in knowing there was evidence that could help those boys and not calling it. There is a distinction.

ATTORNEY GENERAL: You appreciate that if Mr. Dale's duty was to instruct Counsel for the prosecution that Mr. Dale was in Kitale and that Counsel for the prosecution was here, and that every Counsel for the prosecution in this or in any other case has a copy of the depositions.

MR. BENTLEY: I ask, in all seriousness, is that fair?

ATTORNEY GENERAL: I gather from Mr. Bentley's answers that he wanted to make it clear that he is not accusing Mr. Dale of any fault of commission, but rather faults of omission. Could we get at just specifically what are the things which you think Mr. Dale might have done or should have done and omitted to do, so that we can get them specifically?

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MR. BENTLEY: I feel, Sir, that there were witnesses who must obviously have been called for the defence and that Mr. Dale never called them.

THE CHAIRMAN: Exactly what do you suggest he should have done about this, he being a police officer?

MR. BENTLEY: I suggest he should have done it because there was nobody else to do it. It is this: there were six or seven boys and Dale should have taken before him a magistrate and said "These boys really appear for the defence". There is the best example of all in my Sudanese Headman, who gave a great deal of help in the original investigation. I absolutely fail to understand why Mr. Dale did not call him.

THE HON. THE ATTORNEY GENERAL: But he did give evidence for the defence at the Supreme Court.

MR. BENTLEY: At the time it was arranged that he should go, but his evidence before the Supreme Court counted for nothing at all. He was asked only two questions by the judge; he was not asked a single question by the Counsel for the defence - and what sort of defence is that?

THE CHAIRMAN: Of course, you realise that Mr. Dale could hardly help that. Mr. Dale was the police officer: he was not counsel for the ~~prosecution~~ accused.

MR. WATKINS: I understand you to say, Mr. Bentley, that Mr. Dale omitted to call evidence for the accused that he knew should have been called to rebut the evidence he put in?

MR. BENTLEY: That is my feeling, Sir.

MR. WATKINS: ... the inference there that he ... he put in was worthless, because it ... been rebutted?

MR. BENTLEY: Yes.

MR. WATKINS: Forgive me for the statement, have the same difficulty as the Attorney ... for although you say you are not attaching any ... to Mr. Dale, yet there is all the time that impl ... that Mr. Dale knew his evidence was worthless because he ... there was other evidence which could rebut it which he did not call.

MR. BENTLEY: He must have known. He admitted in the retrial that he knew that the boy left his farm in order to go and visit his cousin. He was particularly asked this question: "Did you know that the boy early left his farm?" Mr. Dale answered: "Yes, I knew". I ask: "Why did Mr. ... not call that evidence to help the accused?"

THE HON. THE ATTORNEY GENERAL: In other words Mr. Dale merely put up a case for the prosecution without any consideration of the case for the defence, and in your opinion the instructions to the police officers should be that when they are investigating a case they should investigate in the first place both for the defence and for the prosecution.

MR. BENTLEY: Investigation to me implies that you frame a case for the prosecution and the answer for the defence and the magistrate sees the two. Investigation to me implies probing into both sides. That is how I understand it, and for every stage that follows the preceding one.

the same story holds good. This evidence, which could have been put forward originally in the police court never came up. Therefore, as I have said in these letters, the case was ~~maximally~~ unfairly loaded against the accused.

MR. BARKER: Whether Mr. Dale is to blame or not is for someone else to decide, but for you, looking only at the conduct of these particular proceedings, what you wish to say is that they were conducted in such a manner that only the case for the prosecution was put.

MR. BARKER: I absolutely agree that. MR. BARKER: Bearing in mind that Mr. Dale did tender three additional witnesses which were not put at all - that is so, is it not?

MR. BARKER: Yes, they were brought in, I think.

MR. BARKER: We have dealt with Mr. Dale and Mr. Dale. Certain askaris were provided to assist in the prosecution of this case. All you agree with me that, so far as the responsible officers of the police were concerned, action was taken as soon as that was reported to them.

MR. BARKER: Action was taken by whom, sir?

MR. BARKER: By the Police Department - the responsible officers of the department against the two askaris.

MR. BARKER: No sir, I am afraid I cannot agree with that because there is the date in black and white of the date when proceedings

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were taken against the man - I think his name is George - for ill-treatment of the woman Mabwenge; and the date certainly shows that these proceedings took place months after I first wrote complaining.

ATTORNEY GENERAL: Were you aware that at the time you wrote it was impossible to take proceedings because the accused was serving a sentence of six months at Kisumu for a similar offence. As soon as he was brought from Kisumu he was retried and sentenced.

MR. BENTLEY: Could he not have been brought from Kisumu Prison before?

ATTORNEY GENERAL: He could have been, if necessary, but he was there and the authorities waited until he was due for release.

MR. BENTLEY: You asked me a question a little while ago. I answer, 'I do not think they did'.

ATTORNEY GENERAL: Bearing in mind that he was at that time serving a sentence of imprisonment, have you any complaint with regard to the action of the police authorities in connection with the man "George, who was no longer, of course, a member of the Force: he was discharged from the force as a result of the first conviction?

MR. BENTLEY: I would remind you, Sir, with regard to that, that a letter was written by the Commissioner of Police in which he uses this expression: that although grave irregularities of procedure had been brought to light and the delinquents dealt with, there was nothing to substantiate the idea that an injustice had occurred. In other words, the Commissioner of Police, in describing what had happened, spoke of it as "grave irregularities of procedure".

ATTORNEY GENERAL: Were they not, Mr. Bentley, referring to the beating of a witness. Anyhow, George Manisi was dealt with.

MR. BENTLEY: The gist of that letter was that it was a comparatively trivial affair - the delinquents had been dealt with and there was nothing to substantiate the idea that any great injustice had occurred as a result. The gist of that letter insinuated that there was nothing very dreadful brought to light.

ATTORNEY GENERAL: there was another constable at Nisumu and you know he also was dealt with and was reduced from a first class to a second class constable, and as a result he left the force.

MR. BENTLEY: Yes.

ATTORNEY GENERAL: So that you are not suggesting . . .

THE CHAIRMAN: What was the charge?

ATTORNEY GENERAL: striking a woman witness.

THE CHAIRMAN: He was reduced to . . .

ATTORNEY GENERAL: he was reduced to second class officer, Sir, whereupon he left the Force. Those are the two files, if you wish to have them, Sir, dealing with these two men.

MR. BENTLEY: May I, in answer to what you have just been saying, make one observation, and that is this: that if you are able to prove that Mr. Dale acted absolutely fairly - and I hope you will be able to prove it - I do not attack Mr. Dale. I know the job he is engaged on. I know it is difficult enough, but I do suggest in all seriousness that if you, in your own clever way, are able to prove that Mr. Dale acted fairly, then it all the more proves, to my small way of thinking, that the

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system itself lamentably fails. If Mr. Dale, an important officer or official in the conduct of these proceedings, is proved by you or through you to have acted fairly in the conduct of the case, it all goes to show that there is something awfully radically wrong.

ATTORNEY GENERAL: I have to put these questions to you, Mr. Bentley, because I think you are aware - I think I told you myself in my office some time ago - that well-meaning friends on your behalf have gone the length of imputing to you a suggestion that the police and members of my Department were guilty of a criminal conspiracy to put every obstacle in your way. I would like to have it on record that when I told you so, you at once, very emphatically and very categorically repudiated any such statement, but you know, as long as this is on record, I have to take you in detail through these questions. It has been suggested that you have made that statement. I put it to you for that reason, in order to give you an opportunity, at the earliest possible moment, of repudiating it. In the light of that I must put these specific questions to you, but I am certainly not trying to catch you out in any way, and if you do not quite understand my questions I hope you will say so at once and I will try and put them to you in a simpler form.

We have now dealt with Mr. Ridgeway, Mr. Dale and the Askaris. Are there any other officers against whom you make a charge of unfairness and conduct prejudicial to the proper administration of justice?

MR. BENTLEY: No, Sir.

ATTORNEY GENERAL: Now Mr. Bentley, I am going to come to a more serious side of the picture - the conduct of the proceedings by members of the Legal Department. The first time the Legal Department came into it, of course, as you will appreciate, was in the Supreme Court, and I understood from you this morning. . .

MR. BENTLEY: Before the Appeal Court.

ATTORNEY GENERAL: Supreme Court I said - before Mr. Justice Stephens - the trial at Kitale.

MR. BENTLEY: Yes.

ATTORNEY GENERAL: As regards the conduct of the prosecution in that case, I gathered this morning that you had no adverse comments to make.

MR. BENTLEY: I thought I made it clear, Sir, that I had adverse comments to make in regard to the prosecution. A lot of these pages (memoranda previously read to the Commission) deal with the evidence as brought for the prosecution. I do not know the page numbers - page 5. How can any court listen to such statements and believe them.

ATTORNEY GENERAL: Again, Mr. Bentley, let me try and distinguish between the duties of the law officers, the functions of the court and the duties of the witnesses. May I again just go back a step. As I told you a little time ago, what the law officer has before him in such a case are the depositions taken before a magistrate, and it is on these that he has to work. You are not suggesting, surely, that Crown Counsel, in examining a witness, should not have asked him a certain question to which he had previously given an answer because he, the Crown Counsel, thought the answer was absurd?

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That is to be taking on himself the duties of the court. He has to present the case as he is aware of it. It is for the court to decide whether it believes the evidence or not. You will agree that that is the ~~evidence~~ position of the legal officer and the judicial officer vis a vis one another in a trial. Bearing that in mind, I suggest that Mr. Davies, in the course of his prosecution, was in any way unfair or prejudicial or anything of that kind.

M. SEXTON: No, why should I be. But I think, naturally, only having the proceedings of the lower court in front of him to go on, and finding no evidence for the defence adduced he naturally himself concludes that there is a case against these boys, and he argues it. But what has the pot man got these original proceedings only. Again, the system.

MR. TOLLY GENERAL: Yes, that is so.

(The witness...)

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ATTORNEY GENERAL: You do not suggest that in any way during that trial Mr. Davis was unfair in his prosecution, did anything that was unworthy of the traditions of the profession that he belongs to?

MR. BENTLEY: No, Sir, but there is a difference between saying that and saying that in my opinion the prosecution was unfair. To my mind - the whole of my point is that the prosecution was unfair - I do not think he thought it was unfair.

ATTORNEY GENERAL: I would remind you again - I must take it this way because there is a specific charge against my Department - against one or other of the law officers - it appears to be your charges are against Mr. Davis alone? You make no suggestion against my predecessor or the Solicitor General or Mr. Howell or Mr. Doran or any other member of the Department? If I may say so, I was not here at the time. The Commission has to "inquire into the conduct of the law officers in the various stages of the trial, their presentation of the case and otherwise in the prosecution of the four men above-mentioned, and to report whether in any respect their conduct was deserving of censure or in any way inconsistent with the traditions of the profession and ~~in~~ ~~the~~ the duty that they owe to the public." Bearing these terms in mind, do you suggest that Mr. Davis' conduct of the prosecution was in any way unfair or prejudicial or in any way improper?

MR. BENTLEY: No, I do not, but if he was absolutely true and loyal to his traditions his prosecution of that case would still be unfair to the accused. He should not wilfully prosecute them unfairly.

ATTORNEY GENERAL: Any unfairness arose from the lack of the system and not from Mr. Davis' presentation of the facts which were in his possession?

MR. BENTLEY: He had the proceedings in his hand, he looked at them the night before or in the morning and went into court with them. There they were in black and white, and he argued on them. Is that enough Sir?

ATTORNEY GENERAL: Do not imagine that I am trying to prevent you making a statement; as the Chairman has told you, you will have an opportunity of making a statement on the defects of the system, but at the moment I am confining myself to the two terms of reference which are specifically before this Commission. I am sure that the gentlemen who constitute the Commission will give you every opportunity of emphasizing any points that you wish to make on the defects of the existing system.

MR. BENTLEY: I do not think you will ever find I have mentioned a single word hinting that Mr. Davis at the trial acted unfairly.

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ATTORNEY GENERAL: There were certain things this morning; for instance, you did make a point that the Crown Advocate ought to have assisted the defence, and that because of that the prosecution took a most unfair course.

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MR. BENTLEY: I did not argue that, Sir; I pointed out that surely he has a double capacity.

ATTORNEY GENERAL: Let me take that point. This is a Supreme Court trial we are dealing with, and a Supreme Court here, as elsewhere, is bound in forms and rules. Are you suggesting that the Counsel for the prosecution could in any way have stepped in in aid of the defence? Let us, for instance, take a concrete instance. One of Mr. Davis' witnesses tells a story and he believes that story - we will take Mr. Dale ~~xxx~~ as the instance. Mr. Dale gives evidence about the bloodstains on the vest and he gives evidence about the marks on the shoes. Mr. Davis then sits down expecting, as he has a right to expect, that Counsel for the accused will cross-examine. If Counsel for the accused does not cross-examine or cross-examines but does not do it in any way can you suggest how Mr. Davis could then have intervened?

MR. BENTLEY: I do not know how he could have intervened. If he did not intervene, those boys ... he must intervene. He himself has told me that it is, so to speak, the unwritten duty of a prosecuting Counsel. He is a trained lawyer in this country, and incidentally was playing with Mr. Martin as a cat plays with a mouse. It was his duty to intervene.

ATTORNEY GENERAL: A moment. It is the bounden duty of every Counsel for the Crown to supply the whole of the facts before the court, to put ~~them~~ before the court everything that he knows. I think you will agree, when you take the depositions and when you take Mr. Davis' presentation of the case, that there was no attempt to ~~suppress~~ anything. Many other points were elucidated and brought out in far greater detail, but to intervene after he has concluded is another matter. You appreciate, for instance, that if Counsel for the accused chooses to cross-examine in a most prefatory manner Mr. Davis would not even have had the right to cross-examine, because I daresay you know that re-examination has to be limited to answers given in cross-examination.

MR. BENTLEY: I do not know how he could have helped, Sir, but we are dealing with Native Africa. Mr. Davis admitted to me that the defence was poorly conducted, and if he is sitting there representing the Crown and realised that through the incompetence of his brother advocate these fellows' lives were being jeopardised, can he do nothing?

ATTORNEY GENERAL: It is not the system, Mr. Bentley?

MR. BENTLEY: Yes.

ATTORNEY GENERAL: You do not suggest that Mr. Davis deliberately did anything which was wrong ?

MR. BENTLEY: I certainly do not.

ATTORNEY GENERAL: You do not suggest that there was a taint in the case known to him which was in favour of the accused which he did not get out ?

MR. BENTLEY: I do not suggest anything of the kind.

ATTORNEY GENERAL: He certainly was not guilty of failure to assist the accused to the utmost of his powers so far as his knowledge of the case went ?

MR. BENTLEY: I would not go so far as to say that; it is a different question.

ATTORNEY GENERAL: Except in so far as he played the Counsel for the accused like a cat with a mouse, to quote your own words ?

MR. BENTLEY: For instance, Mr. Davis must have heard this question of a notice mooted in court. He must have heard the Counsel for the defence say not a word about it. Challenge of radicalism. Is Mr. Davis not entitled to get at that ?

ATTORNEY GENERAL: You did mention that Mr. Davis had told you that notice as an ingredient of an offence did not matter at all, that the old days of having to lodge proof of motive have gone long ago.

MR. BENTLEY: I put in my report to Mr. Davis. How long have you been in Africa ? Do you come along here with a statement of that sort about there being not very much importance in allowing a native to be a murder trial in criminal Africa ? - suggest in all seriousness that anyone talking like that has not been very long in Africa. How can you carry through the proceedings of a court in native Africa (whatever may be the case in England) and no serious native is put in front of you ? How can four Magians murder a Mandi because another Mandi stole a cattle ?

ATTORNEY GENERAL: You remember, while we are on that, what the court of appeal said about the case as it was at the time when it left the hands of Mr. Justice Stephens ? You remember the language that they used about it, that the four accused were tried before the High Court for the murder of a Mandi on evidence which clearly supported a conviction, consisting as it did of direct evidence by eye-witnesses ? I am going to take you now back to the moment after sentence of death had been pronounced and notice of appeal had been given.

MR. BENTLEY: That last remark of yours only drove the nail into the coffin of the system more deeply than ever it was. If the Court of Appeal in Kampala say that the court in this country gave a verdict absolutely fair, on the evidence of eye-witnesses, and these boys were innocent, when the

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whole thing from top to bottom must be wrong.

ATTORNEY GENERAL: At the moment I am trying to justify Mr. Davis' conduct, not the system.

MR. BENTLEY: Yes.

ATTORNEY GENERAL: When notice of appeal was given the first point to which you took exception this morning was that accused were not permitted to be present on their appeal in Dar-es-Salaam or elsewhere. On that I would ask you to bear in mind that at the time you speak of a new Procedure Code was in course of preparation. That Code is now in force and one of the provisions in that Code is that every accused person who is in custody shall have the right to appear before the court of appeal so that to that extent at least you have won your point.

MR. BENTLEY: That is one of the best pieces of news I have heard for a long time.

ATTORNEY GENERAL: I want to take the letter that Mr. Davis wrote on the 27th February.

MR. BENTLEY: I hope you will give me a chance of answering a question about that appeal later on, because another point about the system is that these appeals, to anyone who understands the African, are a farce. If the accused is not interviewed by someone who is going to argue *in* his behalf, what has he got to go on but the original proceedings of the trial or before the magistrate? He goes in to court without even having made any effort.

ATTORNEY GENERAL: I am afraid I can safely go into that. These proceedings are not in my hands, but I am quite sure the Commission will give you every opportunity. I want to ask you about a serious matter connected with Mr. Davis that arose from your evidence this morning. The letter of the 27th February. I put to you this morning the order made by the Court of Appeal for Eastern Africa in Nairobi in December, 1928. That order was that you undertook to take Busiku to Kitale within 15 days to lodge a complaint or withdraw his statement. Notice of appeal was given the first hearing of the court of appeal was in Dar-es-Salaam in September, but you were unable to attend that hearing. You communicated with my predecessor to that effect, and he arranged for the adjournment of the appeal to Nairobi, three months later, so that so far as the very unfortunate 17 months' incarceration of these men goes, you make no charge against anyone in respect of those three months. It was impossible for you to get down to Dar-es-Salaam and you wished an adjournment.

MR. BENTLEY: Except that the letters I wrote in November and in January and in December.

ATTORNEY GENERAL: I am dealing now with the time from sentence of death till the Dar-es-Salaam sitting in September.

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MR. BENTLEY: I do suggest in all seriousness that anyone in my position, writing as I did the letters that I did, would have expected that they would have attracted more notice from the legal authorities than they did. I mean that the only thing was to sit down and wait.

ATTORNEY GENERAL: You wrote and asked if we could get an adjournment of the case.

MR. BENTLEY: I was unable to get to Dar-es-Salaam.

ATTORNEY GENERAL: We did so and we had the appeal at the next sitting which was December in Nairobi; what I was wanting to make clear was that you do not suggest we might have done anything else at Dar-es-Salaam?

MR. BENTLEY: Not at Dar-es-Salaam, but I suggest that something else might have been done in those three months.

ATTORNEY GENERAL: For instance, what ?

MR. BENTLEY: Is that for me, sir, to say ?

ATTORNEY GENERAL: I have some difficulty in appreciating what could have been done. The case was before the Court of Appeal for Eastern Africa.

MR. BENTLEY: Could you, for instance - if I had known that the Appeal Court was sitting perhaps for a week at Dar-es-Salaam - they could have told me. They could have said: If you are here by such and such a date it will be all right. It only occurs to me now.

ATTORNEY GENERAL: At the time would you not have said that we could have it adjourned to Nairobi ?

MR. BENTLEY: Yes.

ATTORNEY GENERAL: Very well. We will come to Nairobi. The Appeal Court was on and the order was given that Musiku was within fifteen days to lodge a complaint or withdraw his statements. That was on the 20th December, 1928. Now the letter of Mr. Davies to which you take exception was in reply to a letter of yours of the 24th February, 1929, stating what action had been taken now that the affidavit had been ~~sworn~~ sworn.

MR. BENTLEY: Asking what action had been taken.

ATTORNEY GENERAL: You wrote that an affidavit had been sworn and asking what action had been taken.

MR. BENTLEY: I hope you are not suggesting that that is the first answer . . .

ATTORNEY GENERAL: No, this letter is written in response to . . .

THE CHAIRMAN: I take it these letters will be put in.

ATTORNEY GENERAL: All the letters at my disposal will be put in, sir. Mr. Davies wrote:

"I am to state that no action is being taken by this department prior to the hearing of the appeals in Uganda on the 4th March.

From enquiries I have made it appears that no complaint for the purpose of instituting a prosecution has been made by you on behalf of the witnesses whom you allege were intimidated.

It was indicated to you by the court in Nairobi in the clearest possible terms that the adjournment of the appeal was granted upon your undertaking to have a complaint laid before the magistrate so that the allegations should be properly investigated.

THE CHAIRMAN: Don't you think that there is a slight misunderstanding - that all Mr. Davies had before him in writing that letter was the order of the court which referred to lodging a complaint. That could only convey one meaning to his mind and it conveyed another to yours?

MR. BENTLEY: If Mr. MacGregor tries to suggest that there is a subtle difference between the word "complaint" and "affidavit", then I ask you to refer to the letter dated 16th January, 1929, from Mr. Davies to me in which he describes Busiku's statement as a complaint. Honestly, Sir, is black white? There is his letter.

THE CHAIRMAN: What was that letter?

ATTORNEY GENERAL: Mr. Davies does say in his letter of the 16th January, Sir - Mr. Davies does use the word "complaint", but he makes it quite clear from the paragraph ahead that he is using it correctly.

I have perused the complaint put in by the witness Busiku and I think to the effect that if the allegations made in the complaint are found to be substantially true the Court will probably quash the convictions".

Immediately before that he says: "The result of the prosecution which I understand has already been instituted at Kitale"

treating it as a complaint for the institution of a prosecution.

THE CHAIRMAN: That is the same affidavit, I take it. He regarded it as a complaint.

ATTORNEY GENERAL: His point later is that no kind of prosecution has been instituted.

MR. BENTLEY: But surely, Sir, there are three or four letters of mine to show that from the start of these two appeal courts I was writing from my end - and after all, I was only a farmer - asking: "What is there to be done? Have I failed in anything? Is there anything else I should do?" I even went to Mr. Roberts in Kitale and said: "Are you sure I have done everything the Appeal Court told me to do?" He said: "Don't worry your head. Go back to your farm". I am not a lawyer like Mr. Davies is and he knew he was writing to a farmer. I do not understand these subtle distinctions between "affidavit" and "complaint". All I was anxious to do was to do what the Appeal Court in Nairobi told me to do.

ATTORNEY GENERAL: Were you present when Busiku went and made this affidavit?

MR. BENTLEY: Yes.

ATTORNEY GENERAL: Was he told that it was for the purpose of lodging a complaint. Did he understand that it was to be the institution of proceedings, or did he merely understand that it was a document to be taken away and used elsewhere?

MR. BENTLEY: Mr. Crampton said that my request was peculiar. He did not understand it. He was surprised he had had no letter from Nairobi on the subject. He said to me: "If you insist that this is what should be done, all right, I will take this statement".

ATTORNEY GENERAL: So that he did not realise the object of taking that sworn statement was for the purpose of instituting proceedings?

MR. BENTLEY: It was not as though Mr. Crampton took down that statement and pigeon-holed it. He sent it down to Nairobi where it was receipted.

ATTORNEY GENERAL: To whom did he send it?

MR. BENTLEY: To the legal authorities, Sir.

ATTORNEY GENERAL: To the registrar of the East African Court of Appeal?

MR. BENTLEY: It is here on record, Sir.

ATTORNEY GENERAL: It did not come to us certainly, Sir.

MR. BENTLEY: I will look that I can find the letter in which it is receipted. The receipt of that affidavit is receipted from Nairobi, but apart from that I was writing several letters at that time saying: "Is everything all right? Has anything more to be done? I am anxious to do everything that should be done. Is anything more wanted?" And I have receipts saying that these letters were forwarded to the Attorney General's Department in other words, I was only anxious that no stone should be left unturned when this letter came.

I want to try and prove that not only did I do what I thought I had to do, but to make doubly sure I wrote four letters to the Legal Authorities in Nairobi saying: "This affidavit has been made by Busiku. Was anything else to be done". And then I would get a letter back from the registrar saying "I have received your letter dated so and so a copy of which has been forwarded to the Attorney General's Department". So that for the legal department to insinuate now that no judicial enquiry was held because Busiku or I had failed is something I do not understand. My letters were being sent down to Nairobi saying: "The appeal court is coming on in Kampala in March. Has anything else to be done", and giving them the opportunity, if anything else had to be done, to do it.

THE CHAIRMAN: Did these letters reach the Attorney General?

ATTORNEY GENERAL: I have a letter dated the 14th January, 1929, from Mr. Bentley, addressed to the Attorney General. It is marked "Urgent" in Mr. Bruce's handwriting. That is replied to on the 16th January, a letter to which I am sure Mr. Bentley cannot possibly take any exception - a letter which strikes me as extremely helpful.

... was in the possession of the... which the court will take the court... other... conviction. The letter... Mr. Bentley takes exception to is based on the... on Mr. Davis' part that the complaint, as he calls it, was in order to begin the institution of a prosecution.

CHAIRMAN: That statement had been made in the form of a complaint for proceedings.

ATTORNEY GENERAL: I have every confidence and conviction that the letter of the 27th was written in a desire to help Mr. Bentley and to point out to Mr. Bentley that there was a difference between a complaint which would lead to a judicial investigation and something which would be merely helpful to the court of appeal when they came to decide the matter, and a mere anonymous suggestion which would put the court of appeal, as Mr. Bentley says, in a better position than they were before; and the suggestion was, "You finished the undertaking which was to be a complaint and the court will be asked to investigate and deal with it as they see fit." On their merits, as you are aware, the court of appeal of the matters which...

... in suggestion... explain to... and an affidavit at the... court in Kampala was going...

... written on the... under a misapprehension as to what... letter of the 21st February... that was one of... deal with...

... This is the text of letter: "On... from the Attorney General, Nairobi 2 I... forward herewith the copy of a letter... (January) received by me from Mr. C... and shall be glad if you will be good... to him direct." That shows I was writing... every... that would be done... something that... have done as... in Nairobi... in Kampala would have pointed...

... do you not think you could explain Mr. Davis' part in this way: that it is one of the... which... more happily... You are not suggesting that there are... misstatements in it?

... I am suggesting that it was not unfair...

ATTORNEY GENERAL: To the accused or to you? ... principally to the accused; and...

H.2.

... accidentally to me. The accused were at the back of the picture all the time. I say it was unfair. He could have written to me if he thought we were not doing things in Kitale; he could have written earlier to enquire about the judicial enquiry in Kitale. If there was nothing being done in Kitale, that should have been done between December and March Mr. Davis should have known there was nothing being done and should have written and said, "Look here, no judicial enquiry is being insituted."

ATTORNEY GENERAL: From his letter of the 10th January is it not quite clear that Mr. Davis was under the impression that things were being done by means of complaint and inspection?

MR. RENTLEY: May I ask was not the matter of such gravity that Mr. Davis should have assured himself officially of what was being done by the magistrate at Kitale? Was it always up to me, incumbent on me, to go running?

ATTORNEY GENERAL: The order was that you undertook to take this action.

MR. RENTLEY: But I suggest, there are, a private person, appealing in the court in Nairobi - the court say, "Will you take this up in front of your magistrate at Kitale". You know far better than I do. Surely it was incumbent on some official in the legal department in Nairobi to have written officially to the magistrate in Kitale and say this court has ordered that such and such action be taken, the law of the court is so and so and so; and if Mr. Bentley brings this boy in will you please take his statement. This letter should have been sent officially to the magistrate at Kitale.

ATTORNEY GENERAL: I cannot subscribe to that. It is only I find out that the order of the court did not specify Kitale or anywhere else; it might have been before the District Commissioner, Nairobi, on the next day.

WITNESS: It was specifically mentioned to the magistrate at Kitale.

ATTORNEY GENERAL: That is not in the order. I beg your pardon, that is right, but I cannot agree it was incumbent on the law officers to instruct the District Commissioner what he was to do when that application was made.

MR. RENTLEY: May I ask you to go to the place of the District Commissioner, Kitale and to take your office with you and say, "Look here, I have been ordered by the appeal court in Nairobi to bring this person and make a sworn affidavit or complaint in front of you". You know nothing about it. Are not you going to turn round to me and say "I think this is rather queer; I have heard no word of it from Nairobi". Don't you think you would feel like that?

ATTORNEY GENERAL: He probably did because you asked him to take an affidavit which amounted in effect

an extra-judicial oath, whereas the taking of a complaint by a magistrate on a matter of which he knows nothing is an everyday occurrence.

CHAIRMAN: I think we have heard all the evidence we can get on this particular point.

ATTORNEY GENERAL: I should like to put to Mr. Bentley in conclusion whether he would not be prepared to put it as high as this and no higher, that Mr. Davis' letter is not as sympathetic as, in all the circumstances of the time and the state of his mind, he would have wished it to be.

MR. BENTLEY: I say his letter was unfair, Sir. I leave it at that. I understand what fair means, and unfair.

ATTORNEY GENERAL: How could his letter possibly prejudice the accused? It was addressed to you, not to the court in any way. How could it possibly prejudice the accused?

MR. BENTLEY: It prejudiced them in this way that because I was supposed to have not fulfilled the undertaking therefore those fellows' appeals would go forward on their merits with no intention given to the allegations that I had made. How would it prejudice the accused? From A to Z.

ATTORNEY GENERAL: By disheartening you, who were acting on their behalf?

MR. BENTLEY: No. If those allegations that I had made were to cut any ice at all, were not in fact to be considered by the court ~~xx~~ of appeal in Kampala, as Mr. Davis suggested would happen, then I suggest in all seriousness

ATTORNEY GENERAL: As Mr. Davis suggested would happen - the court of appeal never saw this letter; they have no knowledge of this.

MR. BENTLEY: The court of appeal in Kampala took this letter. Mr. Jarrett for the Crown in Kampala read out the first half of the letter, and I was allowed ~~to get up and read out~~ to get up and read out the second half and point out to the court how exceedingly unfair I thought the thing was. They did discuss the letter; they thought the letter was most unfair.

ATTORNEY GENERAL: You were present there, I was not, Mr. Bentley.

MR. BENTLEY: I went to Kampala feeling, as I have put in the letter, that the day was lost. I argued and argued about this case all the way to ~~Kampala~~ Kampala. When I went to the court next day I said no matter what Mr. Davis has written to the court of appeal the position is absolutely sound and whatever the court ask of me I can answer them.

H.4

CHAIRMAN: I think the Commission has got all the evidence it can on that point.

The Commission adjourned till
2.15 p.m. on Friday, the
22nd August, 1930.

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FRIDAY, 22nd August, 1930.

ATTORNEY GENERAL: Mr. Bentley broke off yesterday afternoon, I think, at the party which I had been putting various submissions to you regarding Mr. Davies' letter of 27th February, 1929. That was just before the Court of Appeal at Kampala. We, of course, took no part in the proceedings of the Court at Kampala at all - the Legal Department of this Colony took no part in those proceedings at all.

MR. BENTLEY: May I say that I think that is very strange.

ATTORNEY GENERAL: As you have chosen to call it "strange", Mr. Bentley, may I put the facts to you. The Eastern African Court of Appeal sits in this Colony at two centres, in Uganda, in Dar-es-Salaam, and, at more infrequent intervals, in Zanzibar. In the interests of the expenditure of the Colony there is a working arrangement whereby the law officers of the Colony in which the Court sits undertake the work for all the other Colonies, the alternative of course being for us to send a law officer up to Uganda, to Dar-es-Salaam or to Zanzibar, at considerable expense to the Colony. That is a working arrangement which has been going on for some time. It was in accordance with that arrangement and for no other reason that the work at Kampala was undertaken by Mr. Jarrett. You agree that so far as the proceedings at the Court of Appeal at Kampala are concerned the Legal Department of this Colony had no part in them?

MR. BENTLEY: No personal part, no sir.

THE CHAIRMAN: I take it Mr. Jarrett was acting on behalf of this Colony.

ATTORNEY GENERAL: Mr. Jarrett received copies of the papers from us connected with the case and he acted on our behalf.

MR. WOOD: Is it not also the case, Mr. Macgregor, that in considering an appeal you are not permitted to bring any new evidence?

ATTORNEY GENERAL: That is perhaps hardly so, because that is what Mr. Bentley did in this case. He brought forward, shall I say altered evidence, but so far as we are concerned - so far as the Crown is concerned as respondents - it would not be within our cognisance to introduce new evidence. The appellant can of course do so in certain circumstances.

MR. WOOD: I was suggesting that was the real reason for the deputising as I thought that was the case, but apparently that is not so.

ATTORNEY GENERAL: The deputising was done purely and simply in the interests of economy. You appreciate, Sir, that in this case we appeared as the respondents. There is no appeal against an acquittal, only against a conviction, and we could not adduce new evidence at all.

ATTORNEY GENERAL: There are just one of two final points, Mr. Bentley. You have made considerable point of the delay which occurred before the retrial, particularly in connection with Mr. Dale's departure from the Colony.

MR. BENTLEY: Yes sir.

ATTORNEY GENERAL: You appreciate - you told us so, frankly, yesterday - that Mr. Dale went before the Court of Appeal actually sat in Kampala.

MR. BENTLEY: Yes.

ATTORNEY GENERAL: Don't you think it is a reasonable point of view to take, Mr. Bentley, that there was no reason to presuppose what the order of the Court of Appeal might be?

MR. BENTLEY: No sir, I do not agree.

ATTORNEY GENERAL: The Court might equally well either quash the conviction themselves.

MR. BENTLEY: No sir, I do not agree.

ATTORNEY GENERAL: Mr. Davies told you in his letter of the 16th January that the Court might either quash the conviction or order a retrial.

MR. BENTLEY: Yes.

ATTORNEY GENERAL: If they had chosen to quash the conviction, there would have been no reason to keep Mr. Dale there?

MR. BENTLEY: If there was a fair presumption that at the proceedings the conviction would be quashed, no, I quite see that.

ATTORNEY GENERAL: Do you think it was an unfair presumption?

MR. BENTLEY: To me, Sir, the obvious presumption was that there would be a new trial ordered. Quite obvious.

ATTORNEY GENERAL: You are taking one of three courses are you not? The Court might have dismissed the appeal, they might have quashed the conviction or they might have ordered a re-trial; and you think it was the duty of my predecessor - who in this matter acted himself, not through a junior in the Department - you think it was his duty to have kept Mr. Dale back after the completion of a normal tour of service?

MR. BENTLEY: Since you ask me, Sir, in view of the seriousness of everything, I say yes.

ATTORNEY GENERAL: Do you consider that Mr. Huggard, in acting as he did - in saying Mr. Dale might go - was doing anything unprofessional or improper, or do you put it no higher than that

if you had been in his position you would not have come to the same conclusion ?

MR. BENTLEY: May I answer that by asking another question ? Are you absolutely certain that Mr. Huggard did arrange for Mr. Dale's departure ?

ATTORNEY GENERAL: It was Mr. Huggard personally. I am quite certain of that. I am trying to find the letter now. I know it is on the file here somewhere.

Of course, you gentlemen appreciate that when I say I am certain, I mean I am certain from the correspondence. I was not myself in the Colony at the time. The impressions I have formed are based on the actual contents of letters.

THE CHAIRMAN: Quite.

ATTORNEY GENERAL: There is a letter to you, Mr. Bentley. You received a letter dated 30th April, 1929, from Mr. Huggard himself:

MR. BENTLEY: Yes sir.

ATTORNEY GENERAL: Dealing with Mr. Dale's absence from the Colony:

MR. BENTLEY: Yes sir.

ATTORNEY GENERAL: This is the letter, Sir - letter to Mr. Bentley dated 7th May, 1929. The material part of it I propose to read, Sir, with your permission:

"As regards your comments on Mr. Dale being allowed to proceed on leave, I thought I had made it clear to you that when this department was consulted in the matter the case had not yet been decided in the Court of Appeal. There was therefore no question of a re-trial in contemplation and no adequate reason for stopping Mr. Dale from proceeding on leave".

That is from Mr. Huggard personally.

MR. BENTLEY: Yes, I got that.

ATTORNEY GENERAL: Do you suggest that that was not a proper decision for Mr. Huggard to come to ?

MR. BENTLEY: You started off by asking me if I did not know that Mr. Huggard was himself, in some way, responsible for allowing Mr. Dale to go on leave. This letter does not substantiate that.

ATTORNEY GENERAL: I will come to that now. Will you accept it from me that Mr. Huggard himself saw Mr. Huggard on the question and that Mr. Huggard authorised Mr. Dale to go on leave ?

MR. BENTLEY: Yes, Sir, certainly I will.

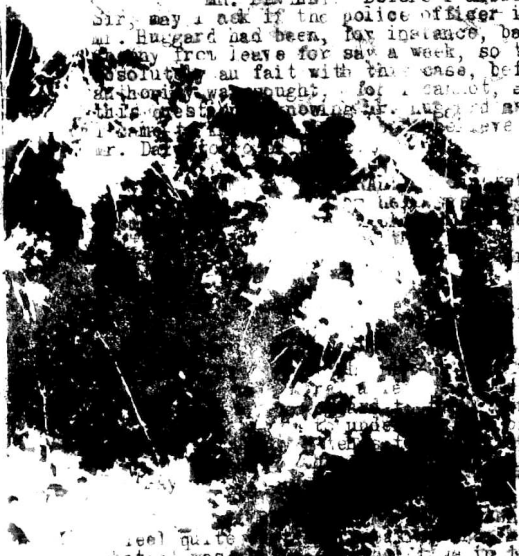
ATTORNEY GENERAL: Subsequently Mr. Huggard himself deals with the point in that letter. Do you

think that was an improper decision to come to?

MR. BENTLEY: When you use the word "Improper", Sir, you make it very difficult for me to answer.

ATTORNEY GENERAL: I have to use the word "improper" as a short cut to the subject matter of the second of the two of reference: whether his conduct in that regard is "deserving of censure or in any way inconsistent with the traditions of the profession and the duty they owe to the public" Do you suggest that in any one of these three ways he offended?

Mr. BENTLEY: Before I answer that question, Sir, may I ask if the police officer is sure that Mr. Huggard had been, for instance, back in the office from leave for say a week, so that he was absolutely an fault with this case, before his authority was sought, for a warrant, Sir, in any way. This question is knowing Mr. Huggard as I did and as I believe he all owed Mr. Denton.



... get you these ... entirely ... February is ... and this

... entirely ... from ... 27th ... Attorney General in ... prosecution ... Mr. Huggard ... was on the

... because ... memory, Sir, ... in this case that ... from Kenya, and I think it ... that he was away.

ATTORNEY GENERAL: Mr. Huggard returned from leave in February, having gone in the previous year. he did not leave again until the 25th June.

MR. BENTLEY: May I say quite positively, Sir, that speaking personally to Mr. Huggard myself, he agreed with me that the whole thing had been most unfortunate and would never have happened if he had been here.

ATTORNEY GENERAL: That is, the position subsequent to February, 1929?

MR. BENTLEY: Yes.

ATTORNEY GENERAL: May I again put my question, Mr. Bentley? Do you suggest that Mr. Huggard's conduct in that regard, or the conduct of

any law officer, was deserving of censure

MR. BENTLEY: Mr. Chairman, I appeal to you. Is the expression used by the hon. the Attorney General not a little bit too strong?

ATTORNEY GENERAL: The wording of the term of censure.

THE CHAIRMAN: I think, Mr. Bentley, he is being guided by the terms of reference of the Commission.

ATTORNEY GENERAL: "To report whether in any respect the conduct of any of the law officers is deserving of censure or in any way inconsistent with the traditions of the profession and the duty they owe to the public". I am not trying to catch you, Mr. Bentley. I merely want to clear the air and see whether there are points on which - if I may put it quite colourlessly - you differ from Mr. Huggard; or whether you are going further, and say: "This is a matter in which I definitely charge Mr. Huggard within the four corners of the terms of reference."

MR. BENTLEY: I have thought pretty hard within the last minute or two and I think that the fairest thing is to say that the official who was responsible in the Legal Department for allowing Mr. Dale to go on leave when he did - knowing that the Court of Appeal was to sit in Kampala on the first week in March - acted unfairly to the accused.

ATTORNEY GENERAL: You appreciate, of course, Mr. Bentley, that when you say the official responsible, the responsibility did not rest with the Legal Department at all. We have multifarious duties, but we do not send people on leave. It was an expression on the part of Mr. Huggard that there was no need to keep Mr. Dale.

MR. BENTLEY: May I say that in a letter from the Superintendent of Police answering a letter of mine, in which I pointed out the undesirability of allowing Mr. Dale to go on leave, the answer I received was to the effect that the Attorney General had been consulted and saw no reason to object to Mr. Dale proceeding on leave.

ATTORNEY GENERAL: That I accept, but I do have a little at the word "responsible". It is the Colonial Secretary who approves of leave in this country.

THE CHAIRMAN: Do I gather, Mr. Bentley, that your suggestion is that the responsibility rested upon the Attorney General to advise that in the circumstances Mr. Dale should not be allowed to proceed on leave?

MR. BENTLEY: Yes, I do.

ATTORNEY GENERAL: You say it was unfair to the accused?

MR. BENTLEY: Yes.

ATTORNEY GENERAL: You have already told me that you realize that the Court of Appeal might have made any one of three orders.

MR. BENTLEY: I agree with that, Sir, but I said the strong presumption was that it would order a new trial.

THE CHAIRMAN: That is to say, that was your anticipation.

ATTORNEY GENERAL: That was your own impression.

MR. BENTLEY: Which had been conveyed to me through various channels.

ATTORNEY GENERAL: You appreciate that Mr. Dale had done a full tour of service and probably needed his leave - certainly wanted it.

MR. BENTLEY: May I say I had not been home for eight years; Mr. Dale had probably been home at a shorter interval.

ATTORNEY GENERAL: You can regulate your own movements, Mr. Bentley, can you not? We cannot.

MR. BENTLEY: I am saying that if Mr. Dale had been detained in this Colony for another month it would not seriously have affected his health.

ATTORNEY GENERAL: When we come to the question of unfairness, you appreciate, of course, that the trial could have gone on in Mr. Dale's absence. You know the law makes provision for that:

MR. BENTLEY: No, Sir, never will I agree to that.

ATTORNEY GENERAL: The law does make provision. The trial could have gone on in his absence.

MR. BENTLEY: Not, in my opinion, fairly.

ATTORNEY GENERAL: You are aware that it is within the competence of the court to deal with the case in his absence:

MR. BENTLEY: It may be within the competence of the court, but it would be most unfair to the accused.

ATTORNEY GENERAL: You think Mr. Dale's evidence was of such extreme importance to the accused?

MR. BENTLEY: I consider that if the Crown proposed to put Mr. Dale's sworn depositions before the court, it was quite imperative that the Counsel for the defence should have Mr. Dale there in order to examine him.

ATTORNEY GENERAL: The delay was due to no other factor: You do not suggest, for instance, that the case was delayed in any other way? It was due only to Mr. Dale's absence from the Colony.

MR. BENTLEY: Yes, that is the reason for the delay.

ATTORNEY GENERAL: That is the only point in connection with the delay between the Kampala Court of Appeal and the ultimate retrial?

MR. BENTLEY: Yes, sir.

MR. ATTORNEY GENERAL: Awaiting Mr. Dale's return.

MR. BENTLEY: Yes.

ATTORNEY GENERAL: There is one other point . . .

MR. BENTLEY: Mr. MacGregor, have I made that quite clear? That Mr. Dalley himself told me that it was absolutely imperative from the point of view . . .

ATTORNEY GENERAL: That he preferred not to go on in Mr. Dale's absence, and therefore the case was adjourned.

THE CHAIRMAN: The delay was the fact that . . .

THE COURT: . . . suggesting that the court . . . in the absence of . . .

ATTORNEY GENERAL: . . . it I wish to make. . . may I put it . . . simply go on . . . it was competent . . . without Mr. Dale.

MR. BENTLEY: From the point of view of the law?

ATTORNEY GENERAL: So far as the system in force in Kenya is concerned, it is possible for the court to take his depositions unless an objection taken to that course.

MR. BENTLEY: Yes, but it was most unfair to the accused.

ATTORNEY GENERAL: Mr. Daly, on behalf of the accused, elected not to take that course and therefore the case was adjourned. But what I wanted to say was that you were aware that it was possible. You do not attribute the delay to any other cause: it was merely Mr. Dale's absence.

MR. BENTLEY: Yes, sir.

ATTORNEY GENERAL: Yesterday, Mr. Bentley, you did, I think, suggest that the accused were prejudiced because access to the police diaries was refused to both you and Mr. Daly. That is so, is it not?

MR. BENTLEY: Yes, that is the reason for the delay.

ATTORNEY GENERAL: That is the only point in connection with the delay between the Appala Court of Appeal and the ultimate retrial?

MR. BENTLEY: Yes, sir.

MR. ATTORNEY GENERAL: Awaiting Mr. Dale's return:

MR. BENTLEY: Yes.

ATTORNEY GENERAL: There is one other point . . .

MR. BENTLEY: Mr. MacGregor, have I made that quite clear? That Mr. Dalley himself told me that it was absolutely imperative from the point of view . . .

ATTORNEY GENERAL: That he preferred not to go on in Mr. Dale's absence, and therefore the case was adjourned.

THE CHAIRMAN: Therefore the delay was due to the fact that Mr. Dale had proceeded on leave.

ATTORNEY GENERAL: Yes.

THE CHAIRMAN: I thought you were suggesting that the court was quite competent to continue its work in the absence of Mr. Dale.

ATTORNEY GENERAL: That is a point I wish to make. May I put it as categorically and simply as I can. It was competent for the court to go on without Mr. Dale.

MR. BENTLEY: From the point of view of the law?

ATTORNEY GENERAL: So far as the legal system in force in Kenya is concerned it was permissible for the court to take his depositions unless there was an objection taken to that course.

MR. BENTLEY: Yes, but it was most unfair to the accused.

ATTORNEY GENERAL: Mr. Dalley, on behalf of the accused, elected not to take that course and therefore the case was adjourned. But what I wanted to say was that you were aware that it was possible. You do not attribute the delay to any other cause: it was merely Mr. Dale's absence.

MR. BENTLEY: Yes, sir.

ATTORNEY GENERAL: Yesterday, Mr. Bentley, you did, I think, suggest that the accused were prejudiced because access to the police diaries was refused to both you and Mr. Dalley. That is so, is it not?

MR. BENTLEY: Yes, most decidedly.

ATTORNEY GENERAL: And there is a letter on the file, I think, signed by Mr. Bruce, pointing out that the provisions of Section 139 of the Criminal Procedure Ordinance debarred him from permitting access to these files.

MR. BENTLEY: Mr. MacGregor, do you mean that Section to refer to the police investigation files?

ATTORNEY GENERAL: Yes.

MR. BENTLEY: It distinctly says "police diaries". Do you understand by that expression the police proceedings in the investigation?

ATTORNEY GENERAL: The investigation file is kept in the form of a diary. It has to run chronologically, with the hour given of each happening in the proceedings - hour to hour of each day.

MR. BENTLEY: The complete investigation by the police has to be kept chronologically?

ATTORNEY GENERAL: Yes.

MR. BENTLEY: And may be termed a "diary"?

ATTORNEY GENERAL: Yes.

MR. BENTLEY: May I say, Sir, that I think the term is misleading.

ATTORNEY GENERAL: It is a term borrowed from India and is well understood. But the point I wish to make is this, Mr. Bentley. That letter was written about the end of August.

MR. BENTLEY: Which letter, Sir?

ATTORNEY GENERAL: The letter from Mr. Bruce saying that he was unable to allow you access to the diaries.

MR. BENTLEY: I will take your word for it.

ATTORNEY GENERAL: First the letter of the 24th July in which Mr. Bruce said you were to have a copy of the police court proceedings but that he was sorry he could not let you have the diary of the Police disciplinary enquiry proceedings.

MR. BENTLEY: I understand, Sir, those are confidential papers and not for the use of people like myself. I made a point that it was the police proceedings of investigation which would have helped the accused in their defence, and therefore I felt justified, for the purpose of defence, in asking for them.

ATTORNEY GENERAL: Is it within your knowledge Mr. Bentley that on the 5th or 6th September those papers were put at the disposal of Mr. Daly?

MR. BENTLEY: I have never heard that until this minute - the police proceedings of the enquiry?

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ATTORNEY GENERAL: The police proceedings, and also the proceedings of the departmental enquiry held at Kitale. The police enquiry file and the confidential file was put at the disposal of Mr. Daly.

MR. BENTLEY: Does that include the diary?

ATTORNEY GENERAL: The diary and also the proceedings at Kitale against the offending askari. I put this very shortly, Mr. Bentley. I reached Nairobi on the 3rd September. My attention was at once - the same day - drawn to this case, and to the impasse that had arisen through reliance on Section 139. I discovered that the commissioner of Police was then living at Government house, Dar-es-Salaam. I telegraphed to him and said that as it was a case of murder I proposed to place these papers before Mr. Daly, and I asked for his covering sanction as head of the Department. I received a telegram from the commissioner of police approving of my advice, Sir, and the papers were then placed before Mr. Daly.

MR. BENTLEY: In fairness to me, may I just add one remark in explanation: that is, that until this minute I have never heard that I have a letter here from Mr. Daly in which he says: "I have tried to get these police court proceedings and I cannot, they will not release them". In all fairness to myself, Sir, so as not to try to make me look . . .

ATTORNEY GENERAL: Mr. Bentley, if I thought you had any knowledge of this it would not have been necessary to put the points to you. I was aware that it was not known to you, of course, but do you accept it from me that that was the position. Here I can speak without the files. I was in the Colony at the time.

MR. BENTLEY: Naturally. But I think it was very peculiar that Mr. Daly, who was in constant touch with me, always led me to believe that he never got them.

THE CHAIRMAN: That is a matter we can deal with as to whether, subsequent to that instruction, the files were refused, and if so, by whom.

ATTORNEY GENERAL: I was not suggesting that they were actually handed to Mr. Daly, but I put this in as evidence of the bona fides of the Department.

THE CHAIRMAN: Can we have copies of all the letters to which you have referred?

ATTORNEY GENERAL: Yes, certainly, Sir.

THE CHAIRMAN: Mr. Bentley, I think you said in referring to a letter from Mr. Daly, that he said he was endeavouring to get access to these files. Would you give me the date of that letter?

MR. BENTLEY: I will turn it up, Sir. I know it was fairly late on. Here it is. The date is 31st August - from the Attorney General.

ATTORNEY GENERAL: I did not reach Mombasa

till the 2nd September.

MR. BENTLEY: I do not mean you personally, I am speaking about the honourable the Attorney General.

ATTORNEY GENERAL: I merely mentioned that to show that it does not conflict with anything I have just said.

MR. BENTLEY: "I applied to the Attorney General for the original police record but he declined to let me have a copy of the same, and I have written formally asking him for a copy and to produce it and all files in connection with the matter to the court."

THE CHAIRMAN: Subsequent to that, application was made to Mr. Macgregor, who saw that the necessary instructions were issued.

ATTORNEY GENERAL: I would ask, that with that you would be good enough to take in a telegram marked "very urgent" to Spicer, Government House, Bar-es-balaam, dated the 6th September - three days after I reached this colony - and the reply from the Commissioner of Police, handed in at Bar-es-balaam on the 7th September; and a note dated 7.9.29 in the police file dealing with the action taken in the absence of the Commissioner of Police, showing that the case file 55/28 was shown to Mr. Daly in the presence of the Solicitor General two days before the trial.

MR. BENTLEY: For some reason which I cannot understand - perhaps it was incumbent on Mr. Daly not to explain to me that he had seen this file. But I say, sir, in this connection, that when you give your concurrence for a departure from procedure in this matter, it is the sort of step - it is a grave situation which had arisen - which I would have expected you to take. Thank you very much.

ATTORNEY GENERAL: Yes, it points to two perfectly honest predecessors and myself - if I may put it such good company - quite honestly come to conclusions in the matter. It is my opinion. I had no hesitation in my conclusion that I did, and eventually, my predecessor had a little hesitation in saying "No".

MR. BENTLEY: I am looking at it from the point of view of this case, and I cannot help saying it seems unfair.

ATTORNEY GENERAL: I cannot differ from you because I took the same point of view. But a great deal of this is a matter of opinion, is it not?

MR. BENTLEY: I am merely trying to prove my bona fides in suggesting that it seems unfair to these four accused that these proceedings should not be available.

ATTORNEY GENERAL: It is not your bona fides which are in question, but the mala fides of my department.

MR. BENTLEY: But if my bona fides are challenged.

THE CHAIRMAN: I think nobody has ever challenged your bona fides, Mr. Bentley. I think Mr. Macgregor is trying to justify his department.

ATTORNEY GENERAL: It is the bona fides of my own officers which are in question.

MR. BENTLEY: My own are in question too, and if you can show that I am not a credible witness.

ATTORNEY GENERAL: I have not attempted to yet, and I am certainly not going to begin at this late hour.

THE CHAIRMAN: They have not been questioned for one moment, Mr. Bentley.

MR. WOOD: In regard to the application for access to these files and the telegram of reply from the police superintendent, where he suggests that it is a dangerous thing and against precedent and against instructions, is it the case that these instructions apply when the police officer is also the investigating officer and the counsel for the prosecution, as it were?

ATTORNEY GENERAL: The application as made was in violation of police principles regarding privileged documents. Privilege is a matter which can be claimed only by the head of a department. It can be claimed by no one else on his behalf. It was because the responsibility for that rested on Mr. Spicer that I took the trouble to cable to him in Dar-es-Salaam.

MR. WOOD: This section 139 appears to me to deal with the police diary of the police officer investigating, but when the police officer comes before the court and appears more or less as counsel for the prosecution is he not placed in an entirely different position?

ATTORNEY GENERAL: The document is not, as you will appreciate.

MR. WOOD: As far as I know, Mr. Dale was both a policeman, a police officer, and, as he appeared in the court, counsel for the prosecution.

ATTORNEY GENERAL: He presented the case before the magistrate.

MR. WOOD: I wanted to be clear in my mind that this regulation applies to the police diary, as such, under either of those conditions.

ATTORNEY GENERAL: Yes, Sir. I have the file here and I am quite sure there is no objection to members of the Commission - Mr. Wolseley Bourne, I feel sure is not going to claim privilege on this occasion. This is prepared, not for the information of officers, but for the information of headquarters and is sent in to headquarters. If its production is desired by a person, then it is for the head of the department, under the ordinary regulations governing official privilege, to declare whether he will or will not

disclose it, with the further proviso that if the application is made in court, then the court is bound under the provisions of Section 133. This application was made by Mr. Daly and had been refused by my predecessor on the 31st August. I think it was handed to me on the afternoon of Wednesday 3rd September - the day on which I reached Nairobi. I differed from my predecessor, and wired at once, as he had to wire, to the Commissioner of Police. I could not waive his privilege as he was the head of the Department, and he had to express his willingness before I could do anything. He did so on the 7th September.

MR. BENTLEY: May I with the greatest respect suggest that, in view of the mystery which arose in my mind as to why these papers should not be released either to Mr. Daly or myself, when the Attorney General agreed that they should be released, it seems to me that it might have been a little more courteous if I had been informed. In view of the fact that I was informed three times that I could not see these papers, when the Attorney General decided that they could be released, it would have been perhaps a little bit more courteous if he had let me know.

ATTORNEY GENERAL: Would they not assume that Mr. Daly would let you know. In any case, the only application I saw was from Mr. Daly. I could not be expected, within a few hours of my arrival, to make myself conversant with a file like this. I was aware of that application, and Mr. Spicer's reply was received at 1 o'clock on Saturday afternoon. Mr. Daly was communicated with at once - we knew where to find Mr. Daly. Mr. Daly saw the papers on Saturday evening and the trial began on Monday morning. At that time I had never heard of Mr. Bentley, Kitale meant nothing to me - I did not know where it was, and I am afraid, if there is anything in what Mr. Bentley describes as "discourteous" in not being informed that Mr. Daly had access to the papers if Mr. Daly only got them on Saturday evening, that probably explains why. 12-55 p.m. is the time that Mr. Spicer's telegram was received. I doubt if there were any other offices in Nairobi open at that time.

MR. BENTLEY: Arising out of this anxiety on my part to see this file of the police proceedings, and in view of Mr. MacGregor's statements and questions to me on the matter, may I submit one point. Mr. MacGregor yesterday, so to speak, contradicted me in saying that a statement had actually been taken in these proceedings from my Sudanese headboy. I was amazed to hear it, but Mr. MacGregor went on to read out that statement made before Mr. Bale by my head boy. Without telling you how, I can inform you quite frankly, Sir, that I knew there was that statement - some statement from Mohamed Malik in those preliminary proceedings, and it was for that reason I wanted to see the file. If I could see what Mohamed Malik had said in those proceedings, or what he was said to have said, it would have been a very big point in favour of the accused. I speak absolutely seriously when I say that Malik was never called to Kitale to make a statement before the police, nor was ever a statement taken from him in the language as I understand it. I repeat, Sir -

having implicit trust in what my boy has always said about this case - that he never made a statement, or never had a statement taken in the ordinary way by the police.

THE CHAIRMAN: We can investigate that point, Mr. Bentley, when we have occasion to give evidence. We can ask him the circumstances.

ATTORNEY GENERAL: One point, Mr. Bentley, and I am done. You did make a point of the varying orders that were made on retrial. In all that you attribute no responsibility to any law officer or to any police officer?

MR. BENTLEY: Certainly not, but it was to me a queer proceeding that the trial should be abruptly stopped and these men not given a clean acquittal.

ATTORNEY GENERAL: Two days later they were acquitted. I think you came to see me the same afternoon, and the result was an acquittal two days later.

MR. BENTLEY: Yes, but it did strike me as strange.

ATTORNEY GENERAL: You know, of course, that Mr. Daly initiated the retrial.

MR. BENTLEY: Defended.

ATTORNEY GENERAL: He defended the retrial. And you now know that Mr. Daly had an opportunity of seeing the case file and the enquiry file. Are you aware that Mr. Daly in an interview immediately after the trial said he saw no reason to call for any further action as regards any police irregularity or improper procedure?

MR. BENTLEY: May I ask to whom, sir?

ATTORNEY GENERAL: To Mr. Bruce, solicitor General.

MR. BENTLEY: In open court, sir?

ATTORNEY GENERAL: I think you had Mr. Bruce's services. I think you had Mr. Bruce's services. I think you had Mr. Bruce's services.

MR. BENTLEY: I think you had Mr. Bruce's services. I think you had Mr. Bruce's services. I think you had Mr. Bruce's services.

ATTORNEY GENERAL: "Advise" is yours, Mr. Bentley. Mr. Bruce asked Mr. Daly if he had any complaint to make about the police investigation. So far as he was aware I think, from a perusal of the papers, and from what he had heard in court, Mr. Daly's reply was that he saw no reason to call for any enquiry.

MR. BENTLEY: Surely, the question is answered in the fact that one particular aspect had been changed.

ATTORNEY GENERAL: "Any further action".

MR. BENTLEY: Does it not strike you as extraordinary or strange that Mr. Bruce asked Mr. Daly, a lawyer who lives and works down here in Nairobi, such a question. What on earth should Mr. Daly know about what went on in the preliminary stages of this case. They never really in detail were ever explained to Mr. Daly. Would Mr. Daly be the man to advise Mr. Bruce on such a matter?

ATTORNEY GENERAL: Even so, it is a non-committal reply. He "saw no reason". He merely said that he saw no reason. The answer to that is that a Commission of Enquiry had subsequently been appointed and is now sitting.

MR. BENTLEY: During this discussion, in view of what has been said yesterday in regard to the letter sent to me by Mr. Davies, may I ask that that letter be included in the dossier in this case.

THE CHAIRMAN: What letter is that.

MR. BENTLEY: The letter of the 27th February 1929.

THE CHAIRMAN: Yes, we are going to get that.

ATTORNEY GENERAL: I have no further questions to ask Mr. Bentley, but I would ask if I might be accorded the right to recall Mr. Bentley if necessary. There is a large volume of documentary evidence put in which I am not able to go through yet. I may have to recall Mr. Bentley after I have gone through it.

MR. BENTLEY: Arising out of what was said yesterday by Mr. Macbragor, may I make it clear that in the letter which has been produced before the court from Mr. Huggard, in which he says there was no trial in contemplation at the time Mr. Dale was to proceed on leave, that those words were on the top of the page and they were actually the words used in the Attorney General's letter.

THE CHAIRMAN: We shall have that letter, I think, put in.

MR. BENTLEY: I want to make it quite clear, Sir, in regard to this question of Mr. Dale going on leave, that in my opinion I do consider it was unjust and unfair.

THE CHAIRMAN: Yes, Mr. Bentley, that has been noted.

ATTORNEY GENERAL: May I take that a step further. Again, Mr. Bentley, do you consider that any law officer was in that regard deserving of censure?

MR. BENTLEY: I repeat, Sir, I think it was unfair. I cannot in my position, Sir, answer that question categorically: do I consider any legal officer was deserving of censure. I cannot in my position answer that question.

ATTORNEY GENERAL: You cannot then say "yes"?

THE CHAIRMAN: You are only asked for an expression of opinion, Mr. Bentley.

ATTORNEY GENERAL: Do you consider that Mr. Huggard's conduct was one deserving of censure?

MR. BENTLEY: Mr. ~~Chairman~~ Attorney General, have you actually proved to the satisfaction of the Commission that it was Mr. Huggard who allowed Mr. Dale to go on leave?

ATTORNEY GENERAL: Let me put it this way: that the conduct of someone in the Legal Department in expressing the opinion that Mr. Dale might go on leave, which conduct was endorsed by Mr. Huggard, was conduct which, on Mr. Huggard's part or the part of any other person, was deserving of censure.

MR. BENTLEY: You compel me to say "yes" or "no". I say "yes".

ATTORNEY GENERAL: In what way, Mr. Bentley?

MR. BENTLEY: There were four Wagishu natives in prison. Mr. Dale going on leave would probably mean that their detention in prison would be prolonged another four, five or six months.

ATTORNEY GENERAL: Possibly may, Mr. Bentley.

THE CHAIRMAN: I think Mr. Bentley has answered the question as much as he can: "As I think it was unfair, then I think it is worthy of censure".

ATTORNEY GENERAL: Very well, Mr. Chairman. I will not persist further. Thank you, Mr. Bentley.

COL. WATKINS: When we adjourned yesterday I do not think we had got quite clear in regard to Mr. Davies. There was still an impression on your mind, I gathered, that Mr. Davies had behaved with levity, or lack of sympathy, or both. I could not see what that was based on beyond the one letter that you referred to. Do you feel that that is a correct interpretation of your feelings?

MR. BENTLEY: No, Sir. I have never said that Mr. Davies acted with levity. I have said he acted unfairly. I have said his attitude to me was inconsistent with his position - his attitude to me seemed to imply that he was not going to help me: that he would do the other thing. That was the effect produced in my mind as a result of various things which happened, and the letter at the end of February coming on top of it all convinced me that Mr. Davies was not acting fairly either to the accused or to me.

ATTORNEY GENERAL: May I take that a step further. Again, Mr. Bentley, do you consider that any law officer was in that regard deserving of censure?

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THE CHAIRMAN: I think Mr. Bentley has answered the question as much as he can: "As I think it was unfair, then I think it is worthy of censure".

ATTORNEY GENERAL: Very well, Mr. Chairman. I will not persist further. Thank you, Mr. Bentley.

COL. WATKINS: When we returned yesterday I do not think we had got quite clear as regard to Mr. Davies. There was still an impression on your mind, I gathered, that Mr. Davies had behaved with levity, or lack of sympathy, or both. I could not see what that was based on beyond the one letter that you referred to. Do you feel that that is a correct interpretation of your feelings?

MR. BENTLEY: No, Sir. I have never said that Mr. Davies acted with levity. I have said he acted unfairly. I am not sure his attitude to me was inconsistent with the situation - his attitude to me seemed to imply that he was not going to help me, that he would do the other thing. That was the effect produced in me as a result of various things which happened, and the letter at the end of February coming on top of it all convinced me that Mr. Davies was not acting fairly either to the accused or to me.

COL. WATKINS: He was unsympathetic ?

MR. BENTLEY: Most certainly.

COL. WATKINS: And gave you the impression that he thought the whole thing was much ado about nothing ?

MR. BENTLEY: No, he gave me the impression that he thought I had better go back to my farm and get on with a job of work instead of interfering with what really did not concern me. That was the impression I got from Mr. Davies. There were his own words at the Appeal Court in Nairobi where he advised me to confine myself as an ex-magistrate to what was relevant instead of going about attacking everybody.

COL. WATKINS: Your opinion is based on what he said in court or out of court ?

MR. BENTLEY: My opinion is based on what he said in court and on what he wrote to me.

COL. WATKINS: That one letter ?

MR. BENTLEY: No, Sir, not only one letter. There was also the interview where I had to remind him that he was acting for the Attorney General. That must explain itself, Sir.

ATTORNEY GENERAL: For the Crown I should prefer that out.

MR. BENTLEY: I am sorry. Have I made a mistake ? Mr. Davies was so obsessed with the idea of the guilt of those boys that he refused to believe that they were innocent, and I said: "Excuse me being out of sympathy with you but you are no longer Crown Prosecutor in this case. You are to-day representing the Attorney General". I think he said to me: "You must not speak like that". I said: "I am very sorry but I find you absolutely opposed. Surely all these arguments I have brought before you must affect your judgment". I said: "Take the motive". He said: "Motive ? If you have read anything recently about the invasions which have crept in in England lately in regard to motive you will find it does not amount to very much". I left his office fagged and felt that the job I had put my hand to was more difficult than it had seemed before.

COL. WATKINS: His attitude was that there was no other evidence that need be brought forward ?

MR. BENTLEY: With regard to evidence being brought forward, he said in that particular interview that he thought the defence had been poorly conducted.

ATTORNEY GENERAL: An opinion which you entirely shared ?

MR. BENTLEY: Absolutely. But good was done in telling that to me. What good was achieved ?

COL. WATKINS: Then it is that one interview in his office and that one letter on which you base your opinion?

MR. BENTLEY: Of course, Sir, the only interview which I had about it, and that was yesterday, although I think I had a few days ago. After the appeal court was in the case, it was incumbent on someone in the legal department, preferably Mr. Davies, to inform officially the D.C., Kitale, of what the Appeal Court required to be done. No letter was written to the D.C., Kitale, and I fail to understand that omission. Mr. Crompton had not the vaguest information about what it was I wanted him to do. He said: "This must take time". I said: "I quite agree but there you are. I have my time limit of 14 days. Will you please take the statement". He said: "Very well".

At a time like that that helped to convince me that I was not getting a straight deal from Mr. Davies, that he must - if he thought we were bungling things up in Kitale, that we were not getting on with this court of enquiry, surely he would have got his pen to paper and written and said: "Look, why is nothing being done"? Nothing of that kind reached Kitale, Sir. When the letter came at the end of February.

COL. WATKINS: In fact, he would not be bothered with the case at all?

MR. BENTLEY: Candidly, if you ask my frank opinion, I think he thought he would wear me down. Incidentally I think he would have worn quite a number of people down. He was an official in a very high position and I was a farmer.

THE CHAIRMAN: I gave you an undertaking, Mr. Bentley, that I would give you an opportunity to make a statement on the general system of administration but I take it you would probably prefer to make that at the conclusion of the proceedings. Is that so?

MR. BENTLEY: May I in that connection say this. That if this enquiry - I hope you will not think this impertinent on my part - but if this enquiry were not concerning itself with my attacking or trying to find fault with the officials of this colony but an enquiry to try and find out where this system is unfair to the natives we should all be happier, and the Attorney General, instead of rather cross examining me, would be whole-heartedly on my side - if he would come out into the open and try to find out if this case does show that the native of Africa gets a fair show or not. That is the only thing, Sir, which interests me, not whether Mr. Dale blundered or not, or to what extent, or whether Mr. Davies gave me a square deal. What does interest me is the whole system.

THE CHAIRMAN: As a Commission, we are bound by our terms of reference. I am sure you appreciate that, but at the same time, while we cannot necessarily deal with it as one of our terms of reference, we are willing to listen at any subsequent stage to any statement which you may wish to make on that aspect of the matter and to any expression of opinion from you, which will be fully reported.

File No. 9

(continued)

WITNESS. MUHAMMAD MALIK (Sudanese head boy to Mr. Bentley)

Witness was sitting on the ground...

Witness saw the car...

Witness saw...

Witness saw the driver of the car...

Witness saw the car...

Witness saw...

Witness saw...

Witness saw...

Witness saw...

Witness saw...

Witness saw...

When I went back to the farm and told the the people to go and get their meals and to come back at two o'clock. At two o'clock the doctor came with a sergeant, and a European came who took finger prints. He called all the boys in together and stood them up in a line. He asked them all to identify the body and they none of them could. There was a wandi belonging to Mr. Roberts' shamba. The police sergeant asked this wandi whether he knew him. He said: "No, I don't know him, but I see he has a ear ornament, which might be Suk or wandi".

Then the doctor did his job. He opened up the head and looked at the ~~wani~~ wound. Then the rain ~~begun~~ began to fall. Mr. Dale went and sat in his motor car and he sent for me and he said: "Who gave you the news?" I showed him the man Okube. Autosi told the sergeant that he was there and came and said to me: "Let us follow this track of an animal". He wrote down what I said. That was the end of the proceedings for the day. I put the body into the hut and locked it up.

Mr. DENTLEY: He said just now that the police officer called up Autosi and he said Autosi showed him the track in the grass and Mr. Dale then wrote down what Okube said. You said he wrote what he said.

WITNESS: It was a Saturday that the body was found. On the Sunday Mr. Dale and another policeman and Mr. Thorburn went for a second time to the hole where the body was. We followed the track up again to the point where it reached the road leading to Mr. Roberts' farm. We came to a hut and they said: "Whose hut is that?" I said: "It is the hut of a wandi". Then we went on and entered that hut, but one police officer went back. There was another man whom they found standing on the road.

We found the hut closed and nobody inside. They told me to break open the door and go in. We broke it open, went in and found spear. The point of it was tied up with rag and on the raft there was blood. The point was covered with a cloth and the blood was only on the iron at the bottom. Then I found another pick axe. There was no blood on the pick axe.

The floor of the hut had recently been smeared with cow-dung, just round the fire. The hut was divided into two. In the inside half you could not see anything at all, it was so dark. But the whole of the outside half was plastered with fresh cow-dung.

When we came out the bwana gave the spear to the askari and said: "Take hold of that spear". We went back again to where the body had been found. Mr. Thorburn went off to Mr. Roberts' house. As we came along Mr. Dale said to me that he thought this looked like the work of a wandi. Mr. Dale then took a photograph of the corpse. When we went back to the ~~wandi~~ house of Mr. Roberts, Mr. Dale told me that Mr. Roberts had seen an ndito walking about for the last three days now. Mr. Dale said to me: "The rain is coming on now. You go and tell the police askari to arrest the man who owns that hut, and another wandi, Mr. Roberts' driver. I went and found the askari in a hut with Okube and I gave him the message. Mr. Roberts suggested that this ndito was probably the cause of

- 20 -

the trouble because it was the wandi custom, if an ndito was stolen, to follow her up.

Then Ukobe and I went to the shamba, leaving the askari looking for that man. Afterwards I heard the askari say the man had gone but he would get him. On our way back to the shamba we met another man and his wife and two children who were coming from Charengani with loads on their heads. I asked where they were going and they said they were looking for work. I told them to go to the lines. They went to the lines and I went to my house. That is what happened on Sunday.

At three o'clock on Monday afternoon two people came, one an askari and the other one in plain clothes, and they told me it was an order to bury the body. I got some men out of the hut and told them to put the body in a hole and I went my way. The askari went with the working party. I followed afterwards, but before I got to the grave I met Ukobe. I said: "Have you finished burying the man?" and he said "yes". I said: "Where have the askaris gone?" and he said "They have gone away". I then returned to the house of Ewala Bentley. I wrote down where all the labour was working. Musuko came and told me that the askaris were down below beating Masaba. I said: "Why are they beating him?" and he said: "The askaris are beating him till blood is coming out of his nose". I said: "Wait till I have finished my job and then I will come along and see what is going on." I came out of the bwana's house and I saw the askaris bringing Masaba, Masaba and a small child girl, the child of Mafuaba. I asked the askaris what the matter was, and they said they had got news that these two had done the murder. I asked them where they got the news that these two men had done the murder and they said it was from that small child. The askari in a blanket said: "Ask that child. I saw the child was frightened and shivering with fright and crying, and I called another man and I told him to take the child gently. I said to them: "I do not understand Bagishu so that I cannot talk to the child. Will you talk to her and ask her the story?" I said yes to the askari who was wearing the blanket. The askari asked the ndito the story.

He said: "Did somebody go into the house of your father?" and the child gave a grunt. He said: "Did your father give this man some food?" and the child gave another grunt. "And did your father turn him out and tell him to go and sleep outside?" and the child grunted again. "Then did your father take a runga and follow the man?" and the child grunted again. "Was Masaba with your father?" and she said "yes". The askari asked the ndito who took the blanket of the man who had died. I heard myself the child say Masaba. Mafuabi then said something in Bagishu which I did not understand and the askari turned on him and told him to shut up and hit him. He gave him two punches. Mafuabi then spoke to me in Swahili. He said: "Tell my brother to look after my property so that it is not stolen." The askari then hit him again and told him not to speak. The askari said: "We want to take these people to Kitale but we have not got any handcuffs. Will you please give us some rope. I brought some rope and they tied their hands together. Mafuabi's wife when she saw her husband tied up cried.

Then the askari gave the woman a smack and told her to shut up. The woman went on crying and then he hit her over the hand with a stick. She fell on the ground and I said to ~~her~~ the askari: "Don't keep hitting her. Go off with your prisoners and leave us alone".

th. Day.

(The Commission adjourned till 9
Saturday, 3rd August, 1930).

SATURDAY, 23rd AUGUST, 1930

WITNESS: MOHAMED MALIK (continued).

WITNESS was sworn by Mr. Bentley in Arabic.

MR. BENTLEY: Mr. Chairman, my point in connection with this evidence is that this witness had evidence which was vital to the defence of these boys and therefore must have been called, and I want to ask him one or two questions to convince the Commission.

THE CHAIRMAN: Very well.

MR. BENTLEY: After the nose had been washed was it perfectly recognisable?

WITNESS: It had not swollen: you could see everything.

MR. BENTLEY: ~~My question~~ I want to ask why he thinks the Nandi denied all knowledge of his cousin.

ATTORNEY GENERAL: I do not want to apply the strict rules of evidence, but it would be quite valueless what he thought.

THE CHAIRMAN: Perhaps we could put it this way. Was there a relation of the dead man among the people who passed the body?

ATTORNEY GENERAL: He has told us that.

COLONEL WATKINS: He said a Nandi. I do not think he said he was a relation.

THE CHAIRMAN: When all the people on the estate were taken to see the body were there relations of the dead man among those who passed the body?

WITNESS: There was one Nandi - his brother. He was not a brother from the same mother, but he was somewhere near.

THE CHAIRMAN: How did that man behave when he went near the body?

WITNESS: Mr. Dale told him to pass by the body and look closely at it. He came and stared at the body and turned and stepped back. One of the policemen then pushed him forward and said go and have a look at it properly. When he stepped back again the policeman pushed him forward again, rather violently, so that his hat fell off.

THE CHAIRMAN: Was he resisting going near the body?

WITNESS: He did not want to go near and the askari had to push him up. Then the askari asked

him: "Do you know the body?" and he said "I see that the ears are like the ears of a Nandi or a Suk by the iron ornaments in them".

MR. BENTLEY: With regard to the track, will this witness swear in his capacity as a tracker that the track he followed up to the incriminating road on Mr. Roberts' farm was the same track as the track lower down by the stream.

THE CHAIRMAN: Is he an experienced tracker?

COL. WATKINS: He says they are all experienced trackers and that all his tribe, if they see tracks, they never lose them.

THE CHAIRMAN: Did you follow the track from the place where the body was found?

WITNESS: There were no marks or feet where the body was found because of the long grass, but the grass was crushed down as if by tracks of a body. I followed it up to the road going to Mr. Roberts' farm. It went up towards the huts of the Bag' then down again towards the river. Then it went up between the huts, leaving some on each side, and then on till it got to the road leading to Mr. Roberts' house.

MR. BENTLEY: Was track through the long grass and over the short grass, where a fire had been burning, two parts of the same track?

WITNESS: On the top there had been a fire and the grass had been burnt short. Naturally, the appearance of the track there was different, but I am sure it was only one track. Down in the grass there was the mark of only one man. If there had been two they would have made a wider track.

THE CHAIRMAN: The point is not so much whether it is the track of one man but whether it is the track of the same man.

MR. BENTLEY: What he is trying to convey to the Commission is that the track which led over the ground where the grass had been burnt was obviously the track of something having been dragged.

COL. WATKINS: The trouble is that down below he saw no tracks which could be identified with the track up above where the mark was that of a body having been dragged the whole way, as Mr. Bentley says.

MR. BENTLEY: There are several questions this witness should be asked. For instance, did he show this track to Mr. Dale, leading up to the wagon road of Mr. Roberts' farm.

THE CHAIRMAN: On what day did you show that track to Mr. Dale?

WITNESS: It was on the second day that I showed that to Mr. Dale and another policeman and Mr. Thornburn.

ATTORNEY GENERAL: Was that the first day Mr. Dale visited the spot?

WITNESS: No, he came on the Saturday, and on the Sunday, when Mr. Dale came back with Mr. Thorburn I then showed him this other track.

MR. BENTLEY: To your knowledge did Mr. Dale take your statement, either on the farm or, secondly, in the police office at Kitale?

WITNESS: I did not see him write it down. I do not know whether he wrote it down.

THE CHAIRMAN: Wasn't you were speaking to Mr. Dale, or during that time you were talking to him on the farm, was he writing in a book?

WITNESS: He had some paper in his hand but I did not see him write.

THE CHAIRMAN: I thought he said yesterday that Mr. Dale sat in his car and wrote.

MR. BENTLEY: But you are asking this witness if he saw Mr. Dale writing anything at the place where they were following the tracks, and he said "no".

MR. BENTLEY: Were you taken to Kitale either for the police investigation for the enquiry before the magistrate?

WITNESS: I went to the High Court case only I did not go to the others.

MR. BENTLEY: Will you tell us what you know about the two hoes that were called in as exhibits at the trial belonging to accused No. 1 and No. 2.

WITNESS: I saw them in the Court. I heard the police had collected the jembes and the hoes of Mwash and Kafaba. I did not see that myself.

MR. BENTLEY: Will this witness swear that these two hoes were used to disinter the corpse by the orders of the police?

THE CHAIRMAN: It is difficult in that form. May I suggest the question should take the form of "Does he know these two men were employed in disintering the corpse and used these two hoes. I think it would be very difficult for him to swear positively that these particular hoes - as he had only heard where they came from - were used for that purpose.

MR. BENTLEY: He knows these two hoes and who they belong to. He saw these two hoes in Court. Can he positively identify those two hoes?

WITNESS: They are the property of my master.

THE CHAIRMAN: Does he know one from another?

WITNESS: My master's custom is to issue the blade of the hoe and not the haft. Each man cuts his own haft and after that he says: "This is my hoe". I heard these were the hoes of the two accused but I did not recognise them.

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MR. BENTLEY: What orders did this boy give about disinterring the corpse when the police ordered the corpse to be disinterred?

WITNESS: There were many people put on to dig up the body.

THE CHAIRMAN: Was Masaba one of them?

WITNESS: These two men, Masaba and Mafuaba were following up the tracks, they were not engaged in digging up the corpse. Their jembees were in the store - there were three altogether - and when I called the people to dig up the body they took these three jembees and used them for digging up the body.

MR. BENTLEY: Were the jembees of these first two accused boys taken to help to disinter the corpse.

CL. WATKINS: May I ask who these three hoes belonged to in the store?

WITNESS: I have asked him: "where were these hoes in the store?" and he says "Yes."

And these three hoes were used for digging up the body? - Yes.

Who did they belong to? - One belonged to Masaba, one to Mafuaba and one belonged to Saki.

~~XXXXXXXXXX~~

MR. BENTLEY: Before these two jembees were taken into Kitale for the purposes of the trial, were they used for any other work on the farm?

WITNESS: After digging up the corpse each man went away with his own hoe and went on with the work of the shamba.

MR. BENTLEY: Have you any evidence with regard to the bloodstained shirt of the fourth accused belonging to Kitosi?

WITNESS: I went out with Kitosi and Busika and shot a buck for my master. After I had cut its throat I told Kitosi to take it home. Its blood poured out over Kitosi's shoulders. After that he called another boy and told him to take it along.

MR. BENTLEY: The point of these last two questions is this: that if you agree that this witness is speaking the truth, my point is that he must be called for the defence.

THE CHAIRMAN: Yes, we understand that.

MR. WOOL: Could he be asked what was the interval in days between the incident of the buck?

WITNESS: I cannot say for certain, but possibly three or four days. It was certainly not many days - only a few days.

MR. BENTLEY: And you say before the Court that you lost the track near the Bagisnu?

ATTORNEY GENERAL: I must object to this question, Sir. After all, we have a written record, and oral evidence to controvert a written record is completely inadmissible. I must protest against questions of that sort.

MR. BENTLEY: May I put what I want to say in this way? I think Mr. Dale has recorded that this witness showed him this track leading up to this road, and then at the trial he is said to have said that he lost the track at a point which helped to incriminate the Bagishu. Is it not fair to find out if perhaps the interpreter misunderstood him. Now can he have made such a damaging remark in a Court? He has always protested to me that he never did. He said he left the track to go and attend the postmortem.

ATTORNEY GENERAL: I propose to put in Mr. Dale's diary, which entirely corroborates everything the witness has been saying about the track. In the statement taken from the witness in Mr. Dale's account of his meeting on the morning of Sunday, the 15th with Constable "George" and the Sudanese, who appears as an intelligent native, the same account of the affair appears there, so the ~~bona fides~~ of the bona fides of the witness there can be no question. If there was a piece of wrong interpretation, and if the judge's notes are wrong in that respect, can it possibly be urged that it is either an error on the part of the police, an error on the part of the legal department or a fault in the system, which are the things you are investigating at the moment?

THE CHAIRMAN: Yes, quite; but I see Mr. Bentley's point also.

ATTORNEY GENERAL: If it is to establish the bona fides of the witness . . .

MR. BENTLEY: No, Sir, it is not that.

THE CHAIRMAN: I do not wish to snout out anything you wish to say, Mr. Bentley. The whole object of this Commission is to get at the facts leading up to this charge of murder, but we know you wish to have something to say in regard to the whole judicial system. I gather the point you wish to make in this connection is that, possibly through wrong interpretation, a note was made by the High Court Judge which did not, in fact, represent what the witness said. Is that not so?

MR. BENTLEY: Yes, Sir, it is. And if Mr. Macgregor says that this boy's statement agrees with what Mr. Dale has written down . . .

THE CHAIRMAN: That has been admitted - that the statement of the witness is a perfectly honest statement as far as he can say, and tallies exactly with what was taken down from him at the time.

COL. WATKINS: Mr. Bentley is endeavouring to prove that this witness ought to have been called before the Lower Court.

ATTORNEY GENERAL: If I can be assured under which of the names of reference it falls, I am prepared to deal with it.

COL. WATKINS: There is a third, I think.

ATTORNEY GENERAL: No, Sir, there are two terms of reference.

THE CHAIRMAN: Yes, there are three quite distinct terms of reference. One of the terms certainly falls into two quite distinct heads. I want to enquire into the circumstances in which these four particular men were charged with murder.

I want to ask in what language he gave his evidence before the High Court.

WITNESS: In Swahili.

THE CHAIRMAN: Do you know who was interpreting the Swahili to the Judge?

WITNESS: One of the clerks was the interpreter.

THE CHAIRMAN: Was he a native, an Indian, or what?

WITNESS: I do not know his tribe.

THE CHAIRMAN: Was he an African?

WITNESS: He was a black man.

MR. BENTLEY: May I, Sir, ask him on that point if he understood what the interpreter was saying, my idea being that the interpreter's Swahili was very "high-brow"?

WITNESS: I did understand, but I did not understand very well. His Swahili was very difficult.

MR. BENTLEY: I just want to add that there is a witness that I say could have rebutted evidence given for the prosecution and therefore he should have been called. But apart from that, when he was called, you get this awful fact, to my mind - that when he was called before the Court, from some unfortunate mischance, accident, anything you like, he did not give the evidence he could have given, and in fact, the evidence he did give was damaging to the accused.

THE CHAIRMAN: At present this is the time for examining the witness.

MR. BENTLEY: There is the point in regard to the evidence of Wabwenge that, since it is stated that throughout these proceedings this boy is admitted to be an intelligent boy, and he says as heard Mr. Dale threaten the woman Wabwenge . . .

THE CHAIRMAN: Just put your question, Mr. Bentley.

MR. BENTLEY: Did you at any stage in these proceedings hear any police officer use any threat to any witness?

COL. WATKINS: I should like to take his mind back to the interview and get him to describe what happened.

Yes, that is, very much

... say why you have said
... for six months and you
... jail." The woman did not
... and so he called up another attorney
and said: "Tell this woman what I have said to her".
That is all that heard.

THE CHAIRMAN: Where did that take place?

COL. WATKINS: That was outside the D.C.'s office where the high court was being held.

THE CHAIRMAN: Was that before the woman went into court?

COL. WATKINS: She had gone into court on the Friday. This was on the Saturday.

ATTORNEY GENERAL: He ... leted her

COL. WATKINS: ... says that he heard that of the ... woman had given a ... at 2 o'clock ... refused to say anything

And this incident

Yes

GENERAL: If you will turn to the ... you will see that the Court ... on the first day and Wabwenge ... also that the child refused to ... adjourned till July 21st. The ... called again.

BENTLEY: There are only two more questions on this point. Will Colonel Watkins ask the witness, when he heard this officer make that threat to Wabwenge, how did it strike him?

THE CHAIRMAN: Was he present throughout the trial?

WITNESS: I was outside all Friday and I was outside on Saturday till I was called inside.

THE CHAIRMAN: After Mr. Dale had spoken to the woman in this way, was the woman called again into court?

WITNESS: She was not called again after that threat.

MR. BENTLEY: The last question I wish to

ask this witness is does he understand the difference between a police officer making a threat of this kind and a police officer or any Government official going up to a witness and saying "Look here, you have got to tell the truth."

THE CHAIRMAN: I don't think that would help us very much.

MR. BENTLEY: This statement of his is a most serious statement, and I said "Think what you are saying. If a police officer comes up to a woman . . ."

THE CHAIRMAN: Yes, but we are the judges of whether that was right or not, not he. You must allow us to form our own conclusions. He has made a quite definite statement, Mr. Bentley.

MR. WOOD: Earlier on, when he was describing that identification parade, he described the reluctance of one of the parties, and I think that is also on the record. Was there any reluctance on the part of any of the others. Is it a native custom, or is it a native custom amongst certain tribes. Was it reluctance on the part of a particular individual which he pointed out. That seems to be part of Mr. Bentley's case.

ATTORNEY GENERAL: Reluctance to view a dead body.

MR. WOOD: There is a reluctance to view a dead body on the part of a number of people. In this instance the reluctance of one individual is made a strong feature. He was present at that parade. Did he notice any reluctance on the part of any of the others?

COL. WATKINS: The question I asked him was: "A lot of people looked at the body. Were they forced or did they go voluntarily?" His answer was that they were sent for from our own shamba and from neighbouring shambas. The only man who refused to go near the body was the Nandi. He says there was only one Nandi who went near the body, and he was also the only man who refused to go up to it of his own accord. He is unable to say whether it is the custom of the Nandi to be reluctant to go near a corpse.

MR. BENTLEY: May I say, with regard to the last question put to the witness, if the Nandi who came up to the corpse found his cousin dead, would not the Nandi naturally have taken all steps to identify him?

ATTORNEY GENERAL: That is a perfectly proper matter for comment, Sir, but the witness cannot say what is done.

MR. BENTLEY: Excuse me, Sir. I am only frightened of leaving anything undone to help things.

COL. WATKINS (to witness): Thank you.

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WITNESS:

WITNESS: To the Court of Appeal at Nairobi in December, 1928.

THE CHAIRMAN: Do you wish to ask Mr. Davies any questions, Mr. Bentley?

MR. BENTLEY: Yes, I will with permission ask Mr. Davies one or two questions. First of all, in the Appeal Court which sat in Nairobi in December, I would like to ask Mr. Davies if on reflection he does not consider his remarks to me were uncalled for.

WITNESS: Are those particulars mentioned contained in any letter?

MR. BENTLEY: No, Mr. Davies, I did not make the remarks you made in open court, in which I suggested I was not doing anything very clever, that I was going about attacking everybody, as an ex-magistrate it would be better if I confined myself to what was relevant.

WITNESS: I certainly did not know you in connection with your application for a writ, I heard personally, and I had known you for some weeks before that I did not know you, I would permit you to conduct the case, I would have told me that if possible you would conduct the case on your own lines because you were in a position that no advocate was, at short notice, you were in to conduct the case adequately.

MR. BENTLEY: Do you mean I suggested that I was more clever than a lawyer?

WITNESS: I do not want to hear any innuendo but that was the statement you made to me.

MR. BENTLEY: Could you rather not express what I said in this way: That I said I was an idiot with the details of this case - or do you think I thought I could conduct this case better than any lawyer?

WITNESS: I did think by that that you meant you were in a position, better than any lawyer with short notice could possibly be to conduct the case.

MR. BENTLEY: To do that I think you said I was an idiot, I would like to know if you would permit me to say that I suggested that I was rather uncalled for?

WITNESS: To the best of my recollection, when you did address the Court of Appeal, you did confine most of your observations to attacks on the police.

MR. BENTLEY: But this expression of yours - "instead of attacking everybody" - was it justified?

WITNESS: Justified from your observations to the Court of Appeal. Mr. Bentley, which consisted entirely of the merits of the case, but not at all to the conduct of the police officers, and at that juncture of the proceedings I did not think those allegations were relevant.

MR. BENTLEY: Do you think so now, Mr. Davies?

WITNESS: I do not quite understand that.

MR. BENTLEY: Do you think those remarks made about the police now, in view of what you have heard, were relevant?

WITNESS: Of course they were relevant if those allegations could be substantiated. If they were substantiated they were of very material importance to the case, I agree.

MR. BENTLEY: At that time you were actually mistaken in your ideas in regard to those allegations?

WITNESS: You will agree with me, Mr. Bentley, that statements of that kind are very often made in a criminal case, and I am afraid I cannot regard them very seriously unless I am satisfied that they are substantiated by investigation.

MR. BENTLEY: Mr. Davies, I would remind you of the interview I had, when I asked to see the Attorney General, and I was shown into your office. At that time, if you believe me, I was quoting the gist of two letters I had written to the legal authorities, dated 5.9.28 and 25.11.28, and I was giving you the gist of those two letters. In other words, I detained you Mr. Davies for perhaps two hours labouring points which, in three quarters of the incidents, were new points; and I did my utmost to show that I thought there had been a grievous miscarriage of justice. Do you remember my going at great length to point out that I thought there had been a miscarriage of justice?

WITNESS: I think there were two interviews. I do recollect a lengthy interview in which we discussed the case very thoroughly indeed, and in regard to the allegations I think I am right in saying that my advice to you was - even at that stage - to institute a prosecution against these people whom you alleged ill-treated those witnesses, and that then the Court of Appeal would be in a position, having regard to the investigations, to place the proper value on those allegations.

MR. BENTLEY: Mr. Davies, may I ask, is it not true that you were in no way influenced - you were working for the Attorney General, the fountain head of justice in this Colony. Were you in no way influenced by those new points which I was able to bring to your notice?

ATTORNEY GENERAL: I am very flattered. I did not know I was the fountain head of justice. I was under the impression there was a Supreme Court.

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WITNESS: Do you impute any irregular motives to me in regard to that?

MR. BENTLEY: Were the contents of those letters, Mr. Davies, of which I was giving you the gist - do you not agree that at the time you told me: "Mr. Bentley, your remarks leave me cold. They do not influence me".

WITNESS: I do not think I used language of that kind.

MR. BENTLEY: Were you, Mr. Davies, in no way influenced by the case I put up for the defence to show that there had been perhaps a miscarriage of justice?

WITNESS: To the best of my recollection I told you at the time that although these allegations were made in regard to the conduct of police officers, these allegations had not been substantiated, and that until they were so substantiated there could not possibly be an intervention; and that if those allegations were true I was quite prepared to support an appeal on the merits of the evidence. That is, to the best of my recollection, what I told you, but it is a long time ago.

MR. BENTLEY: Do you remember my feeling and saying I was most disheartened with the result of that interview.

WITNESS: I do not, Mr. Bentley. I thought we parted very amicably. I did not think there was any feeling between us. In fact, I think I was very indulgent with you indeed.

MR. BENTLEY: Do you remember me reminding you that I thought you were no longer Crown Prosecutor in the case?

WITNESS: I do not. I did not regard myself as having finished with the case. The case was down for appeal and I anticipated that I should be down for that appeal.

MR. BENTLEY: Do you remember saying that in your opinion you thought the defence had been poorly handled?

WITNESS: Mr. Bentley, I do not think you are going seriously to suggest for a moment that I would, to you as a layman, criticise the conduct of another professional man.

MR. BENTLEY: Do you remember saying to me that it was a favourite method of people like myself to attack the police.

WITNESS: I had no evidence on which to base an attack of that kind, but I might have said that it was quite a favourite method of certain people like you to attack the police. To the best of my recollection I remember telling you that allegations were very easily made, and very often were made in criminal matters of this sort, and that before any notice could be taken of them, and any regard had to those allegations they should be thoroughly investigated.

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MR. BENTLEY: Do you remember telling me, in regard to modern methods of investigation, that in England the question of a motive is unimportant?

WITNESS: I did not go quite so far as to say that, but I said evidence of motive was not essential for a conviction in the case of a murder trial.

MR. BENTLEY: You did not say it was not thought of much importance?

WITNESS: No, Mr. Bentley, I am certain I did not say anything like that. I am perfectly well aware of the law in regard to murder cases, and I might have said it was not an essential factor in a conviction for murder that a motive should be proved. That, I still think, in my opinion, is good law.

MR. BENTLEY: Will you believe me when I say that as a result of interviewing you I left your office most disheartened?

WITNESS: I am afraid I cannot quite appreciate that. You came and saw me a second time.

MR. BENTLEY: May I, at this juncture, assure you that it was so.

May I ask you if you can help me to understand why it was Mr. Dale was not detained in the Colony for perhaps a month in view of the fact that the Appeal Court at Kampala might grant a new trial?

WITNESS: I am subject to correction on this, but it would appear from the office file; it is some time ago - I rather think I had some conversation with the Attorney General and the Commissioner of Police in regard to the holding up of Mr. Dale's leave. At that time it was not contemplated that the Court of Appeal - having regard to the fact that no investigation had been made into the allegations with regard to police conduct - that the Court of Appeal would do anything else but adjourn it again so that they would be able to have an investigation and know exactly what weight to give to those allegations. That is as far as I remember. I stand to be corrected. I do not know whether there is anything on the file.

MR. BENTLEY: You must think that the letter you wrote to me just before the Appeal Court sat in Kampala was fair?

WITNESS: Mr. Bentley, as far as I can recollect it was a true statement of the facts. I hope you are not suggesting that I lied in writing anything else to you.

MR. BENTLEY: Mr. Bentley, you did not consider evidently from the way you spoke as I was instructed by...

WITNESS: I wrote that letter because I was present in the court of Appeal and I was present when Mr. Justice Pickering stated in unequivocal terms, in the clearest possible terms, that they would have no regard for those allegations unless they were investigated, and he explained to you clearly that, in order to have that investigation, you should take the native to the magistrate in Kitale and institute a prosecution.

MR. BENTLEY: You remember those were the words "and institute a prosecution" ?

WITNESS: I can almost swear to it.

MR. BENTLEY: Can you actually swear to it ?

WITNESS: To the best of my recollection, but it is a long time ago.

(Permission was here given to the witness to refresh his memory by referring to a newspaper account of the proceedings).

WITNESS (continuing): The last paragraph of Mr. Justice Pickering's statement, yes. I still think I am right in saying that Mr. Justice Pickering pointed out to you in the clearest possible terms that to have these allegations investigated you would have to take this man before a magistrate, lay a complaint and institute a prosecution.

MR. BENTLEY: To help matters you do not think any official connected with the Legal Department, after the Appeal Court made that decision in December, 1928, should have corresponded officially with Kitale to show Kitale what was wanted ?

WITNESS: But the Crown was not initiating the prosecution. It was no part of my duty, nor anybody else's in the Legal Department to initiate the prosecution.

MR. BENTLEY: Don't you agree with me that it was somebody's duty. There was the magistrate at Kitale absolutely fogged. This order was made in the Court at Nairobi that I should conduct this witness to the magistrate at Kitale?

WITNESS: I understood you gave an undertaking to the Court of Appeal, having regard to Mr. Justice Pickering's observations, that you would institute a prosecution, and I thought at the time you perfectly understood what you were required to do, and I naturally thought you would do it.

MR. BENTLEY: Then you think I did not do it.

WITNESS: What you did do was, not to institute a prosecution, but to take Busiku to the

magistrate to swear an affidavit; and I do not see that a mere affidavit placed the Court in any better a position than they were before with your statements in the Appeal Court in Nairobi.

MR. BENTLEY: You know I am a farmer, don't you. Did you ever see any letters written between these dates, December, 1928, and March, 1929, in which I was writing down here to Nairobi saying "Has everything been done from this end that was ordered to be done", or didn't you get the impression that that was my attitude at the trial?

WITNESS: I am afraid if I replied to the letters, I must have seen them.

MR. BENTLEY: You don't disagree that letters that letters which I sent down to the registrar were handed in to the Attorney General's office.

WITNESS: I believe most of them were. I would not like to say that all the letters you sent to the registrar of the Supreme Court were sent to the Attorney General.

MR. BENTLEY: The import of those letters was "Am I at Kitale doing all I am supposed to do".

WITNESS: I could never have had that information; otherwise I should not have written in the terms I did to you.

MR. BENTLEY: With regard to this point, your suggestion that you considered I acted, so to speak, wrongly - that is to say, that I did not interpret the wishes of the Court in Nairobi correctly - may I inform you that Sir Charles Griffin, who was present in ~~Kampala~~ the Court at Nairobi, and again at Kampala, described this letter which you wrote to me - which you signed, which was sent to me, as one - well, I will put it in this way: he thought he could not understand it. In other words, he said I had ~~done~~ actually done what the Court had told me to do.

WITNESS: I find it very difficult indeed Mr. Bentley to understand that observation coming from a member of the Court of Appeal who was present in Nairobi. But I would remind the Commissioners that these observations came from Mr. Justice Rickerling. Mr. Justice Rickerling was not a member of the Court of Appeal in Kampala, and if I might be allowed to express an opinion, I doubt very much whether Mr. Justice Rickerling would have subscribed to an observation alleged to have been made by Sir Charles Griffin.

MR. BENTLEY: I did not say anything about Mr. Justice Rickerling.

WITNESS: No, but my point was that these observations in regard to the investigation were made by Mr. Justice Rickerling, entirely by him, in the Court of Appeal at Nairobi.

MR. BENTLEY: Will you believe me when I assure you that in the Appeal Court of Uganda Mr. Jarrett, one of the Crown Counsel of the Uganda Administration, was asked what he would have done as the result of the receipt of this affidavit?

that he replied: "I should have caused a judicial enquiry to be instituted". Will you believe me when I say that?

WITNESS: Of course I have to believe you. I am not in a position to controvert a statement of that kind. I was not present at Kampala.

MR. BENTLEY: Well, if you believe that statement, what does it show? The Judge, the President of the Court, turned to Mr. Jarrett and he said: "This all seems queer" but here is this letter blaming Mr. Bentley. Now the affidavit was made by Susiku in Kisumu. Mr. Jarrett, what would you have done if you had been placed in the position of the Acting Attorney General in Kenya Colony? What would have done? Mr. Jarrett did not like the question, but he said: "Well Sir, it should have caused this judicial enquiry to take place".

WITNESS: Well, with the greatest respect and deference to Mr. Jarrett, I must say that I cannot agree with him in that observation, and I certainly would not have made that observation myself.

MR. BENTLEY: In regard to that point, Mr. Davies, will you agree that the Appeal Court in Kampala agreed with him when he made that ~~statement~~ answer.

WITNESS: I am quite prepared to believe that. I am not in a position to know anything of what was said by any member of the Court of Appeal in Kampala which is not on the record.

MR. BENTLEY: Does not that go to show that the Appeal Court thought your letter was unfair.

THE CHAIRMAN: I do not think we are going to get very much further. Bentley, by a question of that kind, the Commission must form its own opinions on that letter.

MR. BENTLEY: May I ask, Mr. Chairman, if I am privileged on this occasion to ask Mr. Davies questions in regard to one or two points at the actual trial. Am I in order?

THE CHAIRMAN: I shall not be able to tell whether the question is in order until I have heard it.

MR. BENTLEY: I should like to ask him what prompted him to ask a question of Mr. Dale about the blood-stained shirt of Aitosi.

WITNESS: May I see the record? I do not quite understand what the point of the question is.

THE CHAIRMAN: Are you in a position to answer that question?

WITNESS: I am afraid I am not, Sir.

THE CHAIRMAN: What is it you are trying to establish, Mr. Bentley?

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THE CHAIRMAN: What is it you are trying to establish, Mr. Bentley?

am trying to establish this.

It was conducted unfairly when I mentioned this matter to the Attorney General, informed me that he was replying to questions put to him by the counsel. What I want to know is what he was replying to put the question.

THE CHAIRMAN: Well, I think I can best put it to Mr. Davies in this form: in conducting the case for the prosecution, had you any other idea or desire in your mind other than to see the facts elucidated and justice done?

WITNESS: No, sir, I had not. In the whole of my career as prosecuting counsel I have always considered it my duty to place the whole facts before the court, and I do not think that I can ever be accused of doing anything more than putting the full facts as they are known to me.

MR. BENTLEY: Do you consider that as a relevant fact?

WITNESS: If I put it then I must have considered it relevant.

MR. BENTLEY: May I ask you why you thought it relevant?

WITNESS: Let us deal with that generally if I may. I am unable to deal with any particular question that I put such a long time ago, but I should consider it relevant inasmuch as that if one of the accused was found with bloodstains,

even if such bloodstains had not been analysed,

but Mr. Bentley, I do not think you suggested that to the court. Without analysis and without a finding by an analyst that it was human blood I should never have put a question of that kind.

MR. BENTLEY: Then what was the point of the reference to a bloodstained skirt in that Court of Justice?

WITNESS: I put it in general terms: Did you find any marks resembling blood on any of the clothing of the accused. That is, as far as I remember what I said. I did not go any further and say that they were human bloodstains.

MR. BENTLEY: Do you agree with my observation that the impression you must have left on the Court, you being an advocate of experience, must have been that these bloodstains had something to do with this murder.

WITNESS: There is a possibility, but do you not see that I pressed that as being human bloodstains?

MR. BENTLEY: I do not suggest that you pressed it.

WITNESS: That was one of the facts which came to my notice and I put it before the Court. It was for the Court to place any value on that which they thought fit.

MR. BENTLEY: May I ask how it came to your notice? Perhaps you could not answer.

WITNESS: I am afraid I could not. It was either on the depositions of the Magistrate's Court or I was instructed by the police officer. It must have been either on the original depositions or I must have been instructed by the police officer in charge of the investigation.

MR. BENTLEY: I can only say I hope you were not instructed by the police officer.

WITNESS: I hope you are not suggesting that I should put a question of that kind unless I had definite information on the point.

MR. BENTLEY: What I am suggesting is that there is a reference in the Court . . .

THE CHAIRMAN: You have put your question to Mr. Davies and Mr. Davies has answered it. It is for the Commission to place its value on the matter.

MR. BENTLEY: You do not agree that the bloodstained shirt, the blood never having been analysed - you do not agree that it was irrelevant?

WITNESS: No.

MR. BENTLEY: Do you consider it was a relevant point?

WITNESS: It was a fact which had come to the knowledge of the prosecution, and it was my duty in conducting the prosecution to bring all those facts to the notice of the Court.

MR. BENTLEY: And you considered it was relevant.

WITNESS: It is for the Court to consider whether it was relevant or not.

MR. BENTLEY: But you, surely, would not bring up a point that was not relevant.

WITNESS: In my opinion it was relevant.

MR. BENTLEY: Even if those bloodstains had not been analysed?

WITNESS: That is not a question of relevancy but a question of value.

MR. BENTLEY: You have just said you thought it was relevant.

THE CHAIRMAN: The fact remains that the Court did not reject this evidence as irrelevant.

MR. BENTLEY: That is the whole point.

THE CHAIRMAN: I do not think we are here to go into abstract questions of that kind; only as to whether Mr. Davies was guilty of conduct deserving of censure. I cannot go into the whole of Mr. Davies' methods of conducting a prosecution. The Court took no exception to them.

MR. BENTLEY: If that point is brought up in Court about a bloodstained shirt - which is accounted for by a buck being shot - and it is not explained that it is not human blood, I ask, is it fair?

THE CHAIRMAN: I am not here to answer those questions. Will you please understand, Mr. Bentley, that the Commission will hear the evidence and will render a report, but we are not here to answer these questions now.

MR. BENTLEY: Reverting to that letter, you do not consider the expression "you have failed in your duty" to a man in my position in this country, in any way unfair.

WITNESS: I gave you credit for perfectly understanding the observations made and the instructions given to you by Mr. Justice Pickering at the Court of Appeal here in Nairobi.

MR. BENTLEY: You do not consider that that Court, composed of three judges, vindicated my action in this connection and said I had done all I had been told to do. In view of that, you do not think that expression "you have obviously failed in your duty" was unfair, Mr. Davies?

WITNESS: From my information I do not think for a moment that it was unfair. As I said, I understood you perfectly realised the meaning of the observations made by Mr. Justice Pickering at the Supreme Court at Nairobi. I gave you credit for understanding them, and I am not sure whether you were not asked if you understood what you had to do.

MR. BENTLEY: You have known all along my motive in bringing this forward and trying to help these boys of mine.

WITNESS: Quite.

MR. BENTLEY: That it was a decent motive.

WITNESS: I do not think I have ever questioned it.

THE CHAIRMAN: No, I am sure you have not.

MR. BENTLEY: And you do not think it was unfair?

THE CHAIRMAN: You have asked that question

several times, Mr. Bentley. I do not see any point in repeating a question that has been answered half a dozen times already.

MR. BENTLEY: Will you agree that the effect of that letter - which you wrote to me and of which a copy was sent down to Kampala - if I had not gone to Kampala myself, might have very seriously prejudiced those accused natives; if the presumption had been made that it was fair, they would have been hanged as a result of that letter.

WITNESS: I do not think that is a reasonable presumption at all.

MR. BENTLEY: Even though you stressed the fact that the allegations would be disregarded and that these appeals would go forward on their merits. You do not think that would prejudice the accused natives in the eyes of the Court.

WITNESS: In what way, prejudice the Court? I do not know the letter would ever come to the attention of the Court. That letter was a personal letter to you with regard to the observations to you with regard to the fact that it was a personal letter to you. I sent a copy for Mr. Barrett, who appeared for us.

stated that... that these appeals would go forward on their merits. You do not think it was a hard letter, particularly as it was produced in Court.

THE CHAIRMAN: Mr. Davies has already explained that in writing the letter he was simple and direct, and that he produced it in court.

...the letter... a copy of...

MR. BENTLEY: ... these
processes. ...
should brief a lawyer.

WITNESS: I told you, ...
that there were two alternatives.
You were not entitled to appear ...
that you could make representations to the Court
to brief a lawyer on behalf of the accused, or
brief a lawyer yourself. They were the only two
possible alternatives.

MR. BENTLEY: What were the alternatives?

WITNESS: I told you, if you ...
yourself make representations to the Court of
appeal to brief a lawyer ... they would accede
to your request. The other alternative was, if you
were not satisfied with that arrangement, that you
could brief a lawyer yourself.

MR. BENTLEY: And who would pay the expense?

WITNESS: Mr. Bentley, I could not do more
than point out the alternatives to you.

MR. BENTLEY: Mr. Davies, there is only
one point more. I would remind you that I am not
a member of your profession and I know nothing about
the law, but will you believe me when I say that
this misunderstanding about the words "complaint"
and "affidavit" on the part of Justice was something
which I did not understand and I wanted you to
enlighten me on the point.

WITNESS: I quite understand if you say
you did not understand. But I was under the
impression that you did understand what was told
you by Mr. Justice Pickering in clear and unequivocal
terms, and I did not think for a moment that you
could misunderstand those instructions.

MR. BENTLEY: You keep on saying that Mr.
Justice Pickering made a point of telling me in
very unequivocal language what I should do, but to
counteract that statement of yours is it not a fact
that the appeal Court in Kampala did ...

THE CHAIRMAN: That has already been
answered. We have the records in both cases.

MR. BENTLEY: May I remind you in conclusion
that in the letter you wrote to me about the 16th
January between December, 1928, and March, 1929
you did speak of the "complaint" which had been
put in by Justice ... and then came the letter saying
that this statement of Justice ... was a complaint.
I was fogged and that
... either as a complaint or an affidavit.
You yourself used the word "complaint" in your letter
of the 16th January.

WITNESS: May I just look at your letter
to which this letter was an answer, just to refresh
my memory.

At that time I was under the impression that the magistrate would have regarded that affidavit as a complaint, and I think I told you afterwards that if you had made a proper representation to the magistrate he could not possibly have failed to institute the proper proceedings. From your letter I understood that you had not told him when you took the native to him to swear his affidavit that it was for the intention of a prosecution against the police officers concerning alleged ill-treatment of witnesses.

Mr. BENTLEY: Arising out of that point, if it was presumed that I had failed to do what I was told to do, when the Attorney General's Department received that affidavit from Kitale would not that be the time surely to point out that I was not doing what I had been told to do?

WITNESS: A prosecution of that nature can only be instituted by a complaint and if the intention was indicated to the magistrate it is difficult to understand why the magistrate did not institute a prosecution.

Mr. BENTLEY: Do you seriously consider that that statement made by Musiku on oath was not a complaint?

WITNESS: It was in the form of an affidavit, Mr. Bentley, and had any representations been made to the magistrate that it was desired to have that treated as a complaint for the institution of a prosecution, as was your undertaking given to the Court of Appeal at Nairobi, it is very difficult to understand why the magistrate did not institute a prosecution. He must have regarded it as an affidavit and not as a complaint.

Mr. BENTLEY: We must amplify that, if you will allow me. Of course, the thing I was trying to get was a new trial. You knew any steps I was taking was in order to get a new trial for these boys. For that reason I came to Nairobi; for that reason I went to ~~xxxxxx~~ Kitale, all for the sake of getting this new trial. If you knew I had made some technical mistake, and therefore, that I should fail to get this new trial, would you not have helped me, Mr. Davies, in pointing that out?

WITNESS: As I have told you before, I thought you perfectly understood the instructions given to you by the court of Appeal here, and having regard to your experience as a magistrate, I never contemplated for one moment that you could possibly misunderstand those instructions.

Mr. BENTLEY: You will never agree, of course, that this language about "affidavit" and "complaint" to anyone in my position could be called a quibble?

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WITNESS: Except in so far as this is

concerned. I think you will appreciate that just having a mere affidavit before them they are in no better a position to deal with the allegations than they were here at the Court of Appeal in Nairobi. You were prepared at that time to swear an affidavit you were prepared to get an affidavit by Musiku to put before the Court of Appeal, and you were told in clear terms that the only possible regard the Court would have was to a proper investigation of the allegations and that they would not accept an affidavit. They said that they would and must insist upon an investigation. Having regard to the attitude of the Court of Appeal in Nairobi, I find it very difficult to understand their attitude in Kampala.

MR. BENTLEY: There is just one final question arising out of that, and that is that you knew that to complete things Musiku must make a statement in such a way that a judicial enquiry must follow, the findings of which would be put before the Court of Appeal at Kampala, and to use your own language, the result of which would appear to depend upon the result of the prosecution. You knew that between December and March I was bungling the thing to such an extent that the . . .

WITNESS: I had no knowledge at all that, to use your own words, you were "bungling" the affair. It came to my knowledge just before I wrote that letter to you, a copy of which I sent to the Attorney General, Uganda, that you had failed, as I understood it, to carry out your obligations.

MR. BENTLEY: Even though the Registrar had said he had sent my letters to you.

THE CHAIRMAN: Mr. Davies has replied to that already.

MR. BENTLEY: My point about the judicial enquiry is that if you thought I had not done . . .

WITNESS: Mr. Bentley, if you had asked for my assistance at all I would gladly have given it to you. But I understood that you knew perfectly what you had to do.

MR. BENTLEY: Is it not asking for your Department's assistance when I write down and say "Have I done all I should have done." Is that not asking for assistance? At this time, Sir, I was in communication with the Registrar of the Supreme Court, and the Registrar's Department were assisting me in this same case. In this letter I say I shall keep as well as I can . . .

THE CHAIRMAN: Did you get any reply from the Registrar?

MR. BENTLEY: Yes Sir. This is the sort of reply - one dated 10 January: "I have the honour to forward herewith a copy of a letter received from me from Mr. Bentley. I shall be glad if you will reply to him direct. This is signed by . . ."

the Registrar, His Majesty's Court of Appeal and dated 9th January.

ATTORNEY GENERAL: And to that the reply is Mr. Davies' letter of the 16th January.

THE CHAIRMAN: I take it that letter was written, Mr. Davies, on the understanding on your part that the statement made by Suskiss before the Magistrate had been in the form of a complaint complaint for the purpose of instituting proceedings.

MR. BENTLEY: I should like to thank Mr. Davies for what he has said, that he would have helped me if I had asked him.

ATTORNEY GENERAL: May I take the opportunity formally to ~~thank~~ put in these letters, or will you accept them without formality?

THE CHAIRMAN: Thank you.

COLONEL WATKINS: My questions are directed rather to elucidating habitual and traditional conduct in these cases by Crown Counsel rather than to your own personal conduct in this particular case. Do you in these cases get the police record and police diaries to work on?

WITNESS: If we are not satisfied with the depositions we ask the police for any information to clear up any ambiguity there might be.

COL. WATKINS: Do you yourself examine the witnesses before they appear in the court?

WITNESS: Never.

COL. WATKINS: You simply accept the record?

WITNESS: Yes.

COL. WATKINS: Supposing you see that defending counsel is, shall we say, inexperienced or unskilled, or you think he is not doing his job properly and there is some danger that his conduct of the case is prejudicing the accused. Would you consider it your duty to give what assistance you could?

WITNESS: I should, and I invariably do it.

COL. WATKINS: And you bring out any points for the accused which you see he is not bringing out?

WITNESS: Yes, I have done it many times.

COL. WATKINS: That, I understand, is the traditional conduct of Crown Counsel in the conduct of all these cases?

WITNESS: Yes.

COL. WATKINS: When you were conducting the case in the High Court, had it come to your knowledge that a bloodstained spear had been found in this road, but?

WITNESS: No.

COL. WATKINS: You had no information about it ?

WITNESS: No information at all. To the best of my recollection, Sir, I make that statement, but had it come to my knowledge, and it was to the advantage of the accused, even if the advocate for the defence did not, I should certainly think it my duty to bring that up.

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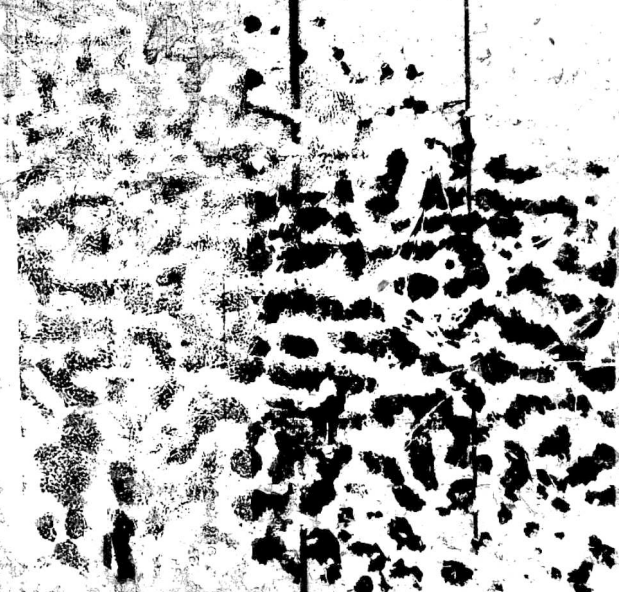
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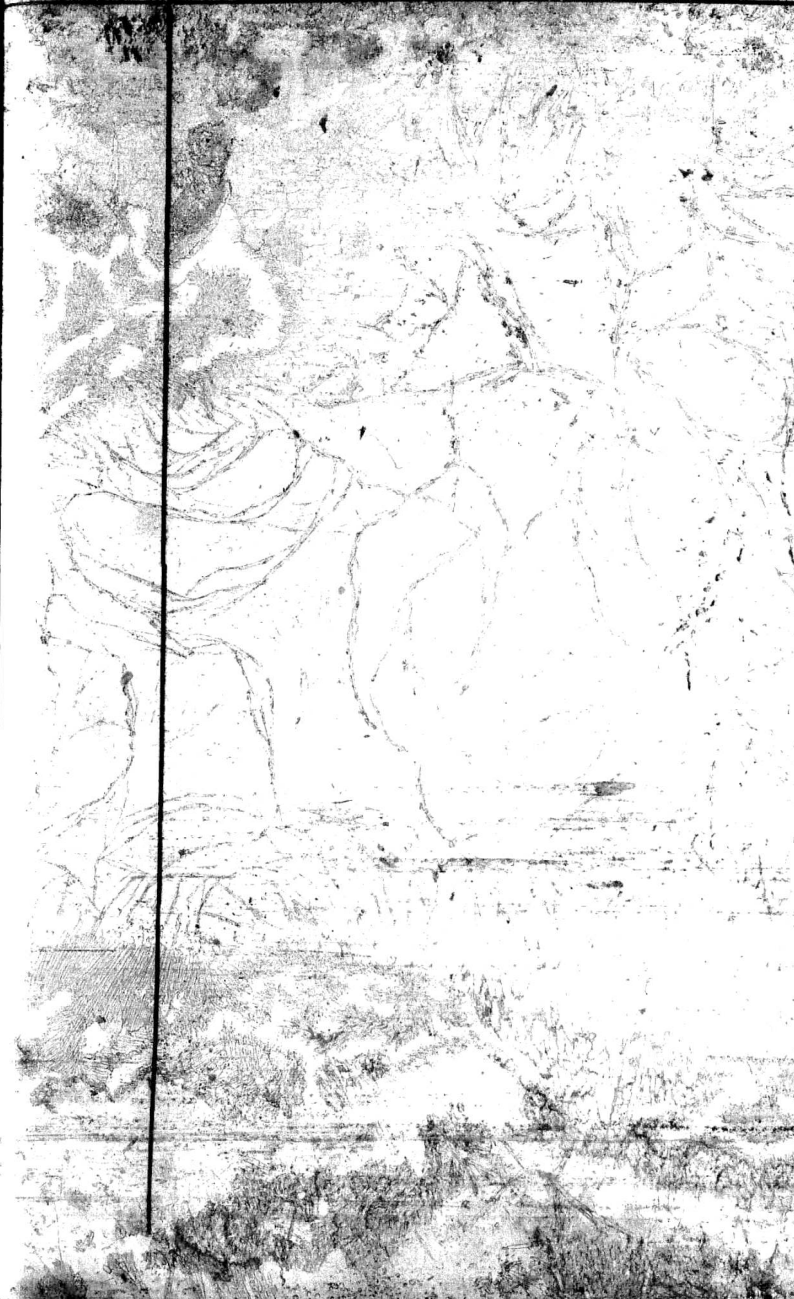
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WITNESS: Assistant Inspector Joseph Dale.

THE CHAIRMAN: Your name is Joseph Dale and you are an Assistant Inspector of Police?

WITNESS: Yes, Sir.

THE CHAIRMAN: You were in charge of the investigation of this case under Mr. Ridgeway, who was the Assistant Inspector at Aitale at the time?

WITNESS: Yes.

THE CHAIRMAN: You actually opened the Police Diary, the case file?

WITNESS: Yes, on the 14th April, 1928.

ATTORNEY GENERAL: To take you through shortly, Mr. Dale, you took a statement from Mr. Bentley's head man, Mohamed Malik on the 14th April, which is recorded.

WITNESS: On the date it was recorded, yes, Sir.

ATTORNEY GENERAL: I think, if you turn on to page 8, on the following morning - Sunday morning - you have a record there of having gone out again at 9 o'clock with Mohamed Malik to investigate the track, and it is fully recorded there?

WITNESS: Yes.

ATTORNEY GENERAL: Did you also investigate the possibility of bringing home the responsibility for this murder to the Nandi?

WITNESS: Yes, Sir. That was my first line of investigation.

ATTORNEY GENERAL: Did you get any evidence against him?

WITNESS: No, Sir. There was no evidence brought out to implicate him in any way.

ATTORNEY GENERAL: Have you since September 29th made very full enquiries about the Nandi?

WITNESS: I have not, Sir, but I understand.

ATTORNEY GENERAL: I beg your pardon. If you look at page 28 or 29 of the file, that deals specifically with the possibility of making a case against the Nandi, there has been full investigation so far as you can see from that file?

WITNESS: Yes - I have not read the complete file.

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WITNESS: Assistant inspector Joseph Dale.

THE CHAIRMAN: Your name is Joseph Dale and you are an Assistant Inspector of Police?

WITNESS: Yes, Sir.

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WITNESS: Yes - I have not read the complete file.

ATTORNEY GENERAL: I will put that file in, sir.

ATTORNEY GENERAL: (To the other matter, Mr. Bell - the witness's statement that was the second day of the trial).

ATTORNEY GENERAL: Has that witness or after she had given evidence.

WITNESS: She had already been in court and refused to say anything.

ATTORNEY GENERAL: The child had also given evidence?

WITNESS: Cannot remember, sir.

ATTORNEY GENERAL: You are saying it was a witness who had come in and said that it was...

ATTORNEY GENERAL: That people who... the one thing in one... later on...

ATTORNEY GENERAL: ...subsequently... the course... this matter?

ATTORNEY GENERAL: Do you know Mr. Finch's...

ATTORNEY GENERAL: Is that it?
WITNESS: Yes, sir, that is his signature.

ATTORNEY GENERAL (to the Chairman): I think that is the shortest way, sir, of dealing with the matter. (The Attorney General's papers handed in to the Chairman).

It seems as this allegation was made it was investigated.

MR. BURNHAM: May I ask what is contained in the paper which has just been put in?

(An extract from the report of the... disciplinary...)

WITNESS: May I just say... statement in regard to that...

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the witnesses were being interviewed by myself and the Assistant Superintendent, and no report was made whatever by the witnesses regarding any ill-treatment they received.

THE CHAIRMAN: Mr. Dale, how did you first receive word of this murder?

WITNESS: From a Mr. Creed, who lives on an adjoining farm.

CHAIRMAN: When you received that information you proceeded immediately in person to the spot?

WITNESS: Yes.

THE CHAIRMAN: Do you know that the law requires you to take two responsible inhabitants with you on these occasions?

WITNESS: When they are available, sir, yes.

THE CHAIRMAN: Were there any available?

WITNESS: I took a Mr. Townsend with me but I do not think there was anybody else available.

THE CHAIRMAN: Was not Mr. Creed available?

WITNESS: No, sir, because he had other business on hand.

COL. WATKINS: Did he sign the report?

WITNESS: Mr. Creed.

COL. WATKINS: No, the man you took?

WITNESS: No, Sir.

COL. WATKINS: The law ~~requires~~ lays down that it shall be signed by such police officer and other persons, or by so many of them as concur therein.

THE CHAIRMAN: When you arrived at the spot did you find a dead body, and did you take it and wash it, and then did you make a full report?

WITNESS: No, I returned for a doctor.

THE CHAIRMAN: Did you at any stage - and here again I am only following up the procedure of the Criminal Procedure Ordinance - make an investigation and draw up a report of the apparent cause of death, "describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner or by what weapon or instrument, if any, such marks appeared to have been inflicted. The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the nearest magistrate empowered to hold inquests".

WITNESS: That was forwarded later from the doctor, after the doctor had completed his post-mortem.

THE CHAIRMAN: There was not one made by yourself?

WITNESS: No, Sir.

THE CHAIRMAN: Who sent for a doctor?

WITNESS: I came back and brought one with me.

THE CHAIRMAN: Where was the body then lying?

WITNESS: In a tool shed. I suppose it would be called a farm implement shed of Mr. Bentley's farm.

THE CHAIRMAN: It had been removed?

WITNESS: Yes.

THE CHAIRMAN: Was it lying on the ground?

WITNESS: No, we had it placed on a table on the back.

THE CHAIRMAN: You had observed a wound in the anus of the corpse had you not?

WITNESS: If I remember rightly, it could hardly be called a wound.

THE CHAIRMAN: You considered the state of it appeared to be something not due to disease but to some external injury?

WITNESS: Possibly, but I left that more to the medical officer.

THE CHAIRMAN: I will just remind you here of the evidence you gave in the lower court.

(An extract from Mr. Dale's evidence in the lower court was read).

Did you point out that particular bruise or condition to the doctor?

WITNESS: I could not remember. I know I made that observation myself.

THE CHAIRMAN: You do not remember whether you called the doctor's attention to it?

WITNESS: I do not, Sir.

THE CHAIRMAN: Were you present when the doctor made the post-mortem?

WITNESS: I was sitting on the running-board of the car taking statements during the time the doctor made the examination.

THE CHAIRMAN: Do you know whether he as

much as turned to ...

WITNESS: Yes, I know ... I could see that much from where I was ...

THE CHAIRMAN: Do you know whether he examined that part of the body ...

WITNESS: ... I can't say that.

THE CHAIRMAN: How long did the post-mortem examination take ...

WITNESS: We arrived back again at 4 p.m. - 4.30 p.m. at 5.30 p.m. the post-mortem was complete. There was no ...

THE CHAIRMAN: A minute ...

WITNESS: ...

THE CHAIRMAN: ...

WITNESS: ...

THE CHAIRMAN: ...

WITNESS: ...

THE CHAIRMAN: ...

WITNESS: ...

THE CHAIRMAN: ...

WITNESS: ...

THE CHAIRMAN: ...

WITNESS: ...

THE CHAIRMAN: ...

WITNESS: ...

THE CHAIRMAN: ...

WITNESS: ...

THE CHAIRMAN: You hear Mr. Townsend and Mr. Theobald too?

Mr. Theobald, yes.

GOV. ATKIN: Not Mr. Townsend?

WITNESS: Mr. Townsend was present later on.

THE CHAIRMAN: I take it from the report that you were rather suspicious of the attitude of this Nandi?

WITNESS: Yes, Sir.

THE CHAIRMAN: On breaking open his hut you found a spear?

WITNESS: Yes, Sir.

THE CHAIRMAN: What kind of a spear?

WITNESS: It was a semi-moran spear with a steel blade and a steel ~~butt~~ haft - a blade about this length (length indicated) and a butt of the same length.

THE CHAIRMAN: I understand you found the blood was on the butt, not the blade.

WITNESS: Yes.

THE CHAIRMAN: You handed that spear, I gather, to an askari?

WITNESS: Yes, Sir.

THE CHAIRMAN: Did you wrap it up first?

WITNESS: No, Sir, I do not think I did.

THE CHAIRMAN: It was observed too that in this hut there had been fresh cow-dung, quite new, but over a considerable portion of the hut did you have any of it removed?

WITNESS: No, Sir.

THE CHAIRMAN: You did not investigate underneath.

WITNESS: No.

THE CHAIRMAN: Then I take it you arrested the Nandi on suspicion?

WITNESS: Yes. He was not present at the time but he was arrested by the police without warrant on suspicion later.

THE CHAIRMAN: Was he taken before a magistrate?

WITNESS: No, Sir. I think we released him from the police station later when we found there was no further information against him.

THE CHAIRMAN: How long was he in custody?

WITNESS: I may be wrong in small details such as hours, but I think he was arrested at 3-30 p.m. on the 16th and released at 10 a.m. on the 17th.

THE CHAIRMAN: When they brought this Nandi to the police station was he told why? Was he charged or cautioned?

WITNESS: No, Sir

THE CHAIRMAN: He was never cautioned?

WITNESS: It was merely an arrest on suspicion. We had nothing to go on.

THE CHAIRMAN: But was he not told on what suspicion he was arrested?

WITNESS: Not by me.

THE CHAIRMAN: Who brought him to the police station?

WITNESS: That I cannot remember.

ATTORNEY GENERAL: I have here, Sir, for the use of the Commission, copies of what has been prepared entitled "A Schedule of Incorrect Police Procedure and Irregularities in the Investigation of the Case". I have spare copies for the use of the Commission. I think, Sir, you will find that covers a good deal of the ground. These are, as you see, Sir, admitted irregularities.

THE CHAIRMAN: He was released. In whose orders was he released from custody?

WITNESS: Well, I was in charge of the police station.

CHAIRMAN: So it was yourself?

WITNESS: Yes.

THE CHAIRMAN: Did you just release the man or did you receive orders?

WITNESS: Probably I discussed the matter with the S.P. before I did anything.

THE CHAIRMAN: You don't remember?

WITNESS: I don't remember.

THE CHAIRMAN: Anyhow, he was released?

WITNESS: Yes.

THE CHAIRMAN: What was the reason for his release?

WITNESS: No further information. It was just a matter of suspicion with the spear; and on the identification parade I became suspicious

of his manner, that is all. So far as I remember there were two Nandi arrested.

THE CHAIRMAN: Did they both live in this hut?

WITNESS: No, only the one. I arrested the other one at the same time.

THE CHAIRMAN: Who was the other man?

COL. WATKINS: It appeared in Mohammed Malik's statement. Sir. One was the driver of Mr. Thorburn's and the other the man who lived in that hut.

THE CHAIRMAN: Were both the men shown at the identification parade?

WITNESS: I do not think the second one was shown at the parade.

THE CHAIRMAN: What day was that?

WITNESS: I do not know.

THE CHAIRMAN: What day was that?

WITNESS: I do not know.

THE CHAIRMAN: What day was that?

WITNESS: I do not know.

THE CHAIRMAN: What day was that?

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WITNESS: I do not know.

THE CHAIRMAN: What day was that?

WITNESS: I do not know.

THE CHAIRMAN: I would like to know about these shoes, Mr. Davis. What made you send for the shoes?

WITNESS: I did not send for them. I found them, together with my plain clothes man, was with the Assistant Superintendent searching the huts. We found these shoes in it.

THE CHAIRMAN: On what day was that?

WITNESS: I am sorry to have to tell you.

THE CHAIRMAN: I quite understand that it is a long time ago and you have to search through your file.

WITNESS: On the 17th of ...

THE CHAIRMAN: That was three days after ...

WITNESS: Yes, Sir.

THE CHAIRMAN: So we can see that ... where did you find these shoes?

WITNESS: In the ...

THE CHAIRMAN: ... sent when you found them?

WITNESS: No, Sir. They were already under arrest.

THE CHAIRMAN: What made you take them?

WITNESS: ... dry mud on the ... the shoes, which appeared to be ... mud out of which we took the ...

THE CHAIRMAN: Were there any other ... any time to account for that mud?

WITNESS: Not by me.

THE CHAIRMAN: ... did not occur ... the mud which was ...

WITNESS: No, Sir, not at the time.

THE CHAIRMAN: What implements ... were used for disinterring the ...

WITNESS: There were shoes and ...

THE CHAIRMAN: Just to return for the moment to these hands. They were arrested and ... from custody, but apparently they were re-arrested.

WITNESS: Yes, Sir.

THE CHAIRMAN: What led to that ... if ... been discharged from custody, what fresh evidence ... led to their re-arrest?

WITNESS: According to the remains I have in my file, I said I think both ... and the second ... are hiding something and I will have them sent ...

Kitale for further interrogation.

THE CHAIRMAN: But were they brought to Kitale under arrest on suspicion of murder?

WITNESS: Yes, for further investigation.

THE CHAIRMAN: In what capacity were they taken to Kitale - in the capacity of accused people, under suspicion, or as witnesses?

WITNESS: As persons under suspicion.

THE CHAIRMAN: You say interrogation is the usual thing?

WITNESS: In a lengthy trial of this description it has often been my experience that a witness has to be well talked to before he will come out with anything.

THE CHAIRMAN: That is not quite my point. I gather they were under arrest and kept in cells or in the guard room.

WITNESS: They were kept in cells.

THE CHAIRMAN: Then they were, I take it, under arrest on suspicion. Is it usual to question such people?

WITNESS: We try to obtain as much information as we can.

THE CHAIRMAN: Were they taken before the magistrate at any stage?

WITNESS: No, Sir.

THE CHAIRMAN: And they were released apparently on the 1st May.

WITNESS: No, Sir. Surely that is wrong.

THE CHAIRMAN: I have here the Occurrence Book, which records their release on 1.5.28 at 8 a.m.

WITNESS: There must be something wrong there. They were never kept in custody for any length of time.

MR. WOLSELEY BOURNE: They were released at 8-30, there being no further evidence against them.

WITNESS: Surely there must be a mistake. What was on the 1st May?

MR. WOLSELEY BOURNE: Yes.

WITNESS: Can I have the cross reference?

MR. WOLSELEY BOURNE: Yes - 38.17.4. That is the date they were arrested - the corresponding entry in the previous book. The entry on the 17th of the 4th will be arrest or being taken to the police station. Is that there?

WITNESS: Yes, Sir.

THE CHAIRMAN: I understand some witnesses were taken to Kitale. Were they taken - sent over just to attend at Kitale, or were they taken to Kitale under arrest?

WITNESS: No, Sir. Not under arrest. There would be an escort, but they came voluntarily. They were not in the position of being in custody.

THE CHAIRMAN: They were received by you as coming in voluntarily and they made voluntary statements?

WITNESS: Yes.

THE CHAIRMAN: How long did they stay at the police station?

WITNESS: I cannot remember. They were not put under any restraint at the station. Their conduct was good.

THE CHAIRMAN: To be precise?

WITNESS: No, Sir.

THE CHAIRMAN: At the police station brought in, or were they taken to the station?

WITNESS:

THE CHAIRMAN: station?

WITNESS:

THE CHAIRMAN:

WITNESS: put in the police station the

THE CHAIRMAN:

WITNESS: Yes, Sir.

THE CHAIRMAN: Why?

WITNESS: Well they were taken at night and it was dark. I do not think they wished to go back.

THE CHAIRMAN: For how many nights did they stay?

WITNESS: I could not tell you, Sir, at the moment, but at such time as I had completed their statements.

THE CHAIRMAN: Can you tell me on what date they came and on what date their statements were finally completed?

WITNESS: I commenced taking the first lot of statements, I think, on the 17th and completed them on the 20th. The 20th was the last statement taken from the Bagishu.

THE CHAIRMAN: Was there any reason for detaining them for three days for these statements?

WITNESS: Lengthy interrogation, that is all. If you will realise also this point that I have other work to do as well. I was not only employed on the one case. I have all the responsibilities of the police station and the other work to be attended to.

THE CHAIRMAN: Quite. How far is the farm from the police station?

WITNESS: Probably Mr. Bentley will be able to tell you about that. I should say about seven miles.

THE CHAIRMAN: Was there any reason why you should not have gone out and taken their statements on the farm?

WITNESS: No, there was no particular reason, Sir. I may have been engaged on other work at the time.

THE CHAIRMAN: Now did you at any time - I gather you did not - put in a full report to the magistrate?

WITNESS: Not the one you are asking about.

THE CHAIRMAN: Did you at any time apply to the magistrate to hold an inquest?

WITNESS: I believe I did, Sir. Probably the magistrate will be able to tell you better about that.

MR. WOOD: I think Mr. Dale said that the maximum time any of these people were kept in the police lines was three days. Is Mr. Dale conversant with the daily population of the police lines?

WITNESS: No, Sir. It is rather difficult occasionally. You do not know from day to day how many of the relatives of the police askaris are there.

~~XXXXXXXXXXXX~~

MR. WOOD: So that if you had a definite statement that one or other of these people were kept there for eight days.

WITNESS: Then I have no knowledge of it.

MR. WOOD: You are quite certain that none of them could have been kept there for eight days?

WITNESS: No, I am not certain. If I remember rightly, I believe some of the witnesses expressed their wish that they should be allowed to stay in the police lines and I fed them.

THE CHAIRMAN: I gather Musiku was detained 7 days; Masaba, 8 days; Nkwenge, 9 days; and the child, death for 10 days. Is that so?

WITNESS: I would not like to swear. I could not swear.

THE CHAIRMAN: But would you not know that these people were in the police lines?

WITNESS: No, Sir, not from hour to hour.

THE CHAIRMAN: Who was feeding them, and at whose expense?

WITNESS: I remember buying some food for them myself one day.

THE CHAIRMAN: I take it that is Government issue?

WITNESS: No, Sir, out of my own pocket.

MR. BENTLEY: The first question I would like to put, in fairness to Mr. Dale, is in regard to the serious suggestion of a threat to the woman Watwenge. Was the interpreter that Mr. Dale used an askari interpreter?

WITNESS: Yes, Sir.

MR. BENTLEY: May I ask you, Mr. Dale, from what you know of police askaris, is it not conceivable, if you turned to that askari interpreter and said: "Tell this woman she must speak the truth. People who do not speak the truth can be punished" - is it not conceivable that that askari might have added this remark about six months imprisonment to amplify what you were saying - to further bring home to her, Billy shenzi woman, what you were getting at?

WITNESS: It is possible.

COL. WATKINS: The language which was understood by the witness Mohamed Malik was the Swahili statement and not the Bagishu statement.

WITNESS: But in fairness to myself, don't you think it is possible that this witness, who admittedly has not a very intimate knowledge of Swahili, might have been mistaken by what I said?

THE CHAIRMAN: Apparently there was a three-cornered interpretation - from English to Swahili, and from Swahili to Bagishu.

COL. WATKINS: He first spoke to the woman in Swahili; then he spoke to the askari in Swahili; and then the interpreter put it into Bagishu. But actually the only language Mohamed understood was the remark made to the woman in Swahili. He did not understand what the interpreter said to the woman in Bagishu.

MR. BENTLEY: Am I in order in asking to see the statement which was made by Mohamed Malik to Mr. Dale?

(Mohamed Malik's statement was read out by the Chairman).

WITNESS: I would not like to swear. I could not swear.

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MR. BENTLEY: Am I in order in asking to see the statement which was made by Mohamed Malik to Mr. Dale?

(Mohamed Malik's statement was read out by the Chairman).

five natives taken into Aitale who said they saw nothing.

WITNESS: There is a man here who said he slept in the hut of Maawa that night and never came out.

MR. BENTLEY: I think you will find there are others.

(Mr. Bentley here read out the names of several boys who claimed that they saw nothing.)

If there were one or two people who went to Aitale and said they saw nothing, would it not be your duty to call those boys in their evidence helped the accused. Would it not be your business to see that they came before the magistrate?

WITNESS: No. As far as I am concerned such evidence has nothing to do with the prosecution.

MR. BENTLEY: But, surely . . .

WITNESS: I am not wishing to give the impression that if anything else came out other than purely negative evidence that I would not bring it forward. That is part of the investigation.

MR. BENTLEY: Witnesses who said they saw nothing . . .

WITNESS: But that would not have any bearing on the case, Mr. Bentley, if the accused had wished to call witnesses they had full privilege and plenty of time in which to do it. All these people mentioned by you had no bearing on the case at all.

MR. BENTLEY: Why did you have the Mandi cousin's hut broken into?

WITNESS: ~~There was no other way~~ to inspect the hut and see what I could find inside.

MR. BENTLEY: What prompted you to break it open?

WITNESS: Only the indication of the tracks which led up to Mr. Robert's farm.

MR. BENTLEY: Only the track . . .

WITNESS: I do not think this is fair to me. In going through an investigation of this kind we have to take all sorts of minor things into account. It was the indication of the tracks going towards that hut which made me go up to inspect the hut.

MR. BENTLEY: Who snuggled you that night?

WITNESS: My own affairs and your affairs.

MR. BENTLEY: Did not my nyapara originally place that tracker?

WITNESS: That I could not say.

MR. BENTLEY: Who were present when he took you along?

WITNESS: I and the Superintendent were present.

MR. BENTLEY: You laid some store by it?

WITNESS: I put it down as part of the investigation.

MR. BENTLEY: But you did not think it necessary to call Mohamed before the magistrate?

WITNESS: Not when I had many other witnesses.

MR. BENTLEY: Because the evidence incriminating the Mandi in that hut helped to divert suspicion from these Bagishu.

WITNESS: I gave evidence regarding that, Mr. Bentley, in both the Lower Court and the High Court.

MR. BENTLEY: But you thought it was unnecessary to call Mohamed.

WITNESS: No.

MR. BENTLEY: Why?

WITNESS: Mohamed Malik was called before the High Court and he gave his evidence.

MR. BENTLEY: It is called the High Court, Mr. Dale because . . .

THE CHAIRMAN: He has answered the question, Mr. Bentley. Do you wish to put a further question?

MR. BENTLEY: Did you, Mr. Dale, at the time of your investigation, not know that Usuf, on Mr. Kruger's farm, said that the man who was murdered left his farm early on the day of the crime?

WITNESS: He did not say that he left the farm but he said he knew he asked for permission to leave.

MR. BENTLEY: Did you know that?

WITNESS: Yes.

MR. BENTLEY: Did you attach any importance to that?

WITNESS: I took it down as a matter of investigation.

MR. BENTLEY: You said it was amazing that the cousin denied all knowledge of the accused at the identification parade.

WITNESS: I still think it is amazing, but what his motives were we could never find.

MR. BENTLEY: Have you not any suspicion :

WITNESS: No.

MR. WOLSELEY BOURNE: A subsequent investigation has been made and nothing can be brought home to him.

THE CHAIRMAN: Thank you. I will purposely refrain from asking questions like that because I did not want to embarrass the Criminal Investigation Department.

MR. WOLSELEY BOURNE: there has been a most careful investigation with a view to bringing home his guilt, but we have not been able to do that.

MR. BENTLEY: Do you know that the cousin inherits his cattle :

WITNESS: No, I do not know that.

MR. BENTLEY: Would it not be part of your duty to ascertain :

WITNESS: I did not know who this dead handi was or who was his next of kin. A handi can bequeath his property to anybody.

MR. BENTLEY: Can you :

WITNESS: Yes.

MR. BENTLEY: You can take it. From what I know it is a handi custom that a handi cousin inherits it.

WITNESS: No.

MR. BENTLEY: You will not believe it.

WITNESS: No, not always.

MR. BENTLEY: That point, I suggest, Sir, can be proved.

When Kitosi appeared in the case did Karama or any other askari show you a shirt he was wearing with blood on it :

WITNESS: No.

MR. BENTLEY: Did you, in fact, see askari boys in these shirts :

WITNESS: I saw it, yes.

MR. BENTLEY: How did you come to see it :

WITNESS: I was wearing it.

MR. BENTLEY: Did you ask him about it :

WITNESS: No.

MR. BENTLEY: Was the shirt taken from him :

WITNESS: No.

MR. BENTLEY: Are you sure?

WITNESS: Not by us.

MR. BENTLEY: Are you sure that Takana did not take the shirt away?

WITNESS: He could not because he went to jail with it.

MR. BENTLEY: Is it not conceivable that the boy Aitosi spent two days in jail without a shirt at all?

WITNESS: That I cannot say. He may or may not.

MR. BENTLEY: At any rate, did you speak to Aitosi about the blood?

WITNESS: No.

MR. BENTLEY: In fact, the blood did not bother you?

WITNESS: No.

MR. BENTLEY: Then may I ask, if you did not pay any attention to it, why you referred to it in a court of justice?

WITNESS: Probably because the counsel for the prosecution put a question to me. I attached no particular importance to it at the time; otherwise I should have made mention of it in my case file.

MR. BENTLEY: But when seen before the magistrate, the witness Masaba was asked by you if he saw this blood on accused's shirt.

WITNESS: When, in the lower court?

MR. BENTLEY: Yes.

WITNESS: I cannot remember the whole of the proceedings.

MR. BENTLEY: I think you will find, if you look it up, that the witness Masaba was asked if he noticed anything about this shirt.

MR. WOOD: You remember when you gave evidence before in the Supreme Court - I take it, before Mr. Justice Stephens - you made some reference to this shirt that has been talked about. Can you remember - can you repeat what you said about it?

WITNESS: I could not repeat my exact words now.

MR. WOOD: You are stated here to have said that on the white dress of accused No. 4 there were spots of dried blood but now he appears in Court with a red vest on. Those two statements in conjunction - did you see them exactly like that?

WITNESS: I must have done if it is on the record.

MR. WOOD: You did not suggest there is no innuendo that he must have got rid of the previous shirt with the blood on it. It is just an expression of surprise that he now appears in Court with a red vest. You never enquired what he did with the original vest?

WITNESS: No.

MR. BENTLEY: Do you remember in the Lower Court what ~~the~~ allusion was made to the hoes?

WITNESS: - With regard to the mud?

MR. BENTLEY: No, I am asking if you remember what allusion was made to them. Do you remember, Mr. Dale, a question was asked to whom they belonged?

WITNESS: I think that most likely would be asked.

MR. BENTLEY: ~~It is~~ is that the only allusion to those hoes, Mr. Dale, in the Lower Court, the question as to whom they belonged?

WITNESS: I do not remember.

MR. BENTLEY: Do you remember, Mr. Dale, that a point was made in the High Court that the mud adhering to those hoes corresponded to the mud in the stream?

WITNESS: Was similar.

MR. BENTLEY: Will you agree that no allusion was made to that in the Lower Court?

WITNESS: I cannot remember the evidence that went through in the Lower Court.

MR. BENTLEY: Will you take it from me that it was so?

WITNESS: Not unless I saw the magistrate's file.

THE CHAIRMAN: That is the magistrate's record. Your evidence begins about the middle of the page.

(The file was handed to witness)

I appear to have made no mention of it.

MR. BENTLEY: How do you account for incriminating evidence not being mentioned in the Lower Court and then, perhaps two months later, being mentioned in the High Court. Does it not strike you that that is unfair?

WITNESS: May I ask if in that trial any reference was made in the Lower Court regarding the ownership of the hoes?

CHAIRMAN: I cannot find any reference. Is here it is.

WITNESS: I must have done if it is on the record.

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WITNESS: May I ask if in that trial any reference was made in the Lower Court regarding the ownership of the hoes?

CHAIRMAN: I cannot find any reference. Yes here it is.

The exhibit 3 was in Mafuaba's hut and exhibit 4 in Masaba's hut. That is the reference to the hoes.

MR. BENTLEY: Mr. Dale, you are one of the chief officers engaged on this investigation. With your legal knowledge did it not strike you that the motive given in Court was ridiculous?

WITNESS: No.

MR. BENTLEY: For this crime?

WITNESS: No.

MR. BENTLEY: That because another hand stole my cattle.

WITNESS: I think, if you want my opinion, an expression of that if a certain number of natives are under the influence of liquor and a man of another tribe comes along - with a man under the influence of liquor anything might happen.

MR. BENTLEY: Did you find evidence that any man was under the influence of liquor?

WITNESS: Yes, evidence was given by eye-witnesses that they had drunk liquor.

MR. BENTLEY: Yes. Do you know how much they had to drink?

WITNESS: Evidence was given in regard to that.

MR. BENTLEY: You do say you made a point of people being under the influence of drink?

WITNESS: I cannot remember exactly the evidence given, but I know that liquor had been drunk.

MR. BENTLEY: Do you remember, when you were making that original investigation, hearing that there was dissention, or rather, very bad feeling between the two Wandi concerned?

WITNESS: No. The only information I received regarding the two Wandi in question was - I forget now, but I think it was a crime on a young girl. But that is being investigated now by the C.I.D.

MR. WOOD: Can we have it clearly in our minds - it is not clear in my mind - which Wandis you are referring to. There is the deceased Wandi and the two Wandi who were arrested.

WITNESS: between the deceased and the owner of the hut on Mr. Roberts' farm.

THE CHAIRMAN: I gather they are supposed to be on bad terms?

WITNESS: Not bad terms, but disagreement.

THE CHAIRMAN: Do you know that Mr. Roberts turned one of them off his farm. They used to live on his farm together.

WITNESS: No.

MR. BENTLEY: You did not know that Mr. Roberts had turned one off the farm?

WITNESS: He has turned several off.

MR. BENTLEY: No, that one.

WITNESS: No, I did not know that. I know several bands from adjoining farms were removed.

THE CHAIRMAN: Did not I gather that the dead man was the missing man from Mr. Kruger's farm?

MR. BENTLEY: Had that man not previously lived on Mr. Roberts' farm and been turned off?

WITNESS: I have no knowledge of that.

MR. BENTLEY: May I suggest that that is true?

THE CHAIRMAN: We do not know. We have to get evidence of that.

MR. BENTLEY: There has been certain mention made that the trail was lost at the wood ash heap. Can you fairly describe what happened that way - that the track was lost at the wood ash heap.

WITNESS: There was a termination of the tracks there, which I saw myself, and beyond that was bare ground.

MR. BENTLEY: In other words, that was the line of cultivated ground between high grass and low grass. Would it not be fair to say that at the time you got as far as that wood ash heap, and that then you yourself returned to other duties, it would not be quite fair to say the track was lost.

WITNESS: No. I lost the tracks which were quite distinct up to there. We case round for several yards, and then I left my men to see if they could pick up the tracks, and I returned to continue with the post-mortem. Then later I was shown a second lot of tracks, but they were not joined up to the place where I lost the other - but they continued on a line in a similar direction.

MR. BENTLEY: You never found any track between the Bagishu huts and the wood ash heap which would be in favour of the accused?

WITNESS: Yes.

MR. BENTLEY: Such a point, Mr. Dale, it would not be within your province to bring out before the magistrate - circumstantial evidence in favour of the accused?

WITNESS: The magistrate would probably ask that. If he did not, I have no object in bringing it out. If statements are made voluntarily by a number of persons, which is alleged to be evidence, I produce that evidence.

MR. BENTLEY: Anything that you know?

WITNESS: Anything that would assist them would be brought out.

MR. BENTLEY: The point is have you no circumstantial evidence that could help these accused ?

THE CHAIRMAN: He has answered that question Mr. Bentley.

MR. BENTLEY: Then may I ask why he did not produce it ?

THE CHAIRMAN: Because he did not consider that particular evidence material. We can go on all day arguing this. You are rather putting your opinion as regards the value of evidence against Mr. Dale's. It is for us to assess that.

MR. BENTLEY: Were there any Nandi engaged on my farm at the time of this crime ?

WITNESS: No, not to my knowledge.

MR. BENTLEY: Did you not think it queer that a Nandi should come down to my huts at night ?

WITNESS: Well, that is a matter of opinion again.

MR. BENTLEY: What is your opinion ?

The reason I am asking you that is that if you think it was queer it is circumstantial evidence in favour of the accused, and therefore why not call it.

WITNESS: Do you attach any particular importance to the fact that a strange Nandi came to these huts at night ?

MR. BENTLEY: But do Nandi visit the Bagishu.

WITNESS: It is not a custom: that can be said of any of two tribes.

MR. BENTLEY: Particularly the Nandi I am speaking of.

You said just now that these boys who were taken as witnesses to Kitale could have left the police lines at any time.

WITNESS: Yes. If they had any complaint to make they could have made it to myself or to the Sergeant Major in charge.

MR. BENTLEY: Did you say these boys would have been allowed to go back to the farm if they had asked to?

WITNESS: Yes.

MR. BENTLEY: And yet you had them there for purposes of investigation?

WITNESS: They were

MR. BENTLEY: That what?

WITNESS: They were there voluntarily in finding the

MR. BENTLEY: that you took a keep them when hand them over

WITNESS: Yes

MR. BENTLEY: to get what he

WITNESS: Yes

MR. BENTLEY:

WITNESS:

MR. BENTLEY: there for inter have gone back had they wish

WITNESS: is it not

WITNESS:

WITNESS:

MR. BENTLEY: we

WITNESS:

MR. BENTLEY:

WITNESS:

WITNESS: remember

MR. BENTLEY: have gone back to

WITNESS: Yes

WITNESS: right - probably the to state better than request that they be allowed to stay.

MR. BENTLEY: Do you seriously suggest that

WITNESS: Well, I cannot swear to it now.

MR. BENTLEY: I ask you now - a shensi Bagishu - would he be likely to ask to stay in the police lines?

WITNESS: Well, I will not swear, but I seem to remember some kind of request.

MR. BENTLEY: Do you suggest that the statements were made voluntarily?

WITNESS: Yes. These statements were made by the witnesses to the superintendent in charge, and if there are any allegations otherwise I think the Superintendent in charge can give evidence.

COL. WATKINS: Mr. Dale, on a matter of procedure, supposing you found that in the course of your investigation there were two sets of circumstances, throwing suspicion on two sets of people. Do you put up both sides to the magistrate for investigation, or do you consider it your duty to select one and try and get a conviction on that one?

WITNESS: If there is suspicion of other people I bring it up certainly before the magistrate.

COL. WATKINS: You said in your evidence that the track was lost at the waggon road on Mr. Roberts' farm some 200 yards from the hut of a Nandi called Kipketer. Kipketer filed past the body but gave no recognition. That is one of the suspicious incidents leading to the interrogation of the Nandi. Apparently these circumstances were pointed out by you at the time and not put up to the magistrate. That is the usual procedure - I am not blaming you - that is the usual procedure. The police officer usually selects one set of circumstances and puts them up to the magistrate.

WITNESS: In one particular case.

COL. WATKINS: How long had you been out in this country when you conducted this investigation?

WITNESS: Six years.

COL. WATKINS: It is conceivable that this enquiry might have been conducted by an officer who had not been out even as much as six years?

WITNESS: Yes.

COL. WATKINS: Leaving that point - the enquiry at several points lays stress - considerable stress - on native custom.

WITNESS: Yes.

COL. WATKINS: I see here, for instance, take it you were prosecuting in this case, and most of it represents question and answer. It has to be inferred then that you led a question which led to an answer that a fowl was killed and eaten by the four people who were supposed to have committed the murder.

WITNESS: Yes.

COL. WATKINS: Did you attach any importance to it?

WITNESS: Yes, Sir.

WITNESS: Would you call an habitual happening a custom?

MR. BENTLEY: Yes, I certainly would.

WITNESS: Then I will leave it at that. On several occasions I have known it happen.

THE CHAIRMAN: Mr. Bentley's point was which tribe were you referring to?

WITNESS: The Bagiana.

THE CHAIRMAN: Not the dead man, but the tribe of the accused?

WITNESS: Yes.

File No. S _____

(continued)

WITNESS: Mr. Ivor Ronald Gillespie

THE CHAIRMAN: You are a magistrate and at this time you were a second class magistrate. In 1928 you were a second class magistrate at Kitale?

WITNESS: Yes.

the chairman; I understand from files here that you held the preliminary investigation in this trial?

WITNESS: Yes.

THE CHAIRMAN: What I want to know is, before this actual case came on in the form of a case, did you receive a full police report on the state of the body?

WITNESS: To tell the truth, Sir, I had almost forgotten all about the case. My recollection is that the police reported to me that this body had been found. A P.16 would have been sent in. That should be on the record in the preliminary investigation. That would be the form in which I should receive it.

THE CHAIRMAN: That was the only form received?

WITNESS: I could not say it was the only form received.

THE CHAIRMAN: The point of my question is - I am simply referring to the Criminal Procedure Ordinance - there is another one following that.

(The Chairman here quoted the relevant extract from the Criminal Procedure Ordinance).

Do I understand that the only report you received was that P.16?

WITNESS: I could not tell you at all, Sir. In some cases I think they do send them in - in cases where there is to be a murder trial - and in some cases they donot.

THE CHAIRMAN: Did you hold an inquest?

WITNESS: I cannot remember, but my recollection is that I did not.

THE CHAIRMAN: Were you aware, at the time you held your preliminary investigation, that there was evidence - that the police had gone so far as to arrest a Nandi, or two Nandi, on suspicion for the same crime?

WITNESS: I recollect hearing something of one Nandi being arrested and released. My recollection is that one Nandi was arrested.

THE CHAIRMAN: Was any Mandi ever brought before you and charged with the crime?

WITNESS: Not to my recollection, Sir. I do not recollect that one was arrested, Sir. I remember there was suspicion of a Mandi, or two Mandi, but they were never brought before me.

THE CHAIRMAN: Were you aware when conducting - I take it that at some stage or other, when you decided there was nothing before you that rendered it in your opinion necessary to hold an inquest, that you conducted an enquiry before proceeding with the particular charge against the specific four accused?

WITNESS: If I did not hold an inquest, I believe what probably happened was that the trial was coming on in the near future and I did not consider it necessary to hold both an inquest and a preliminary investigation.

THE CHAIRMAN: That is to say, you had no reason to suppose that there was a prima facie case against other parties?

WITNESS: No, Sir.

THE CHAIRMAN: Had you been informed that the nut of the mandal had been broken open and a blood-stained spear found in it?

WITNESS: No, I have no recollection of ever having heard that statement. It is true that any bloodstained spear was ever

THE CHAIRMAN: I realise I have been cautious, naturally, in putting questions to a judicial officer in respect of a judge during the whole course of that proceedings. I had any information, opinion, or anything else been brought to your attention would indicate to you that there was a case against other parties?

WITNESS: The whole trend of the case led me to believe that there was more in it than what appeared on the case file - that there was something else behind which we were never able to get at. My feeling then, and my feeling now after having heard all this, is that those four persons took part in the murder. I believe there probably was somebody else present whom we never heard anything about.

THE CHAIRMAN: You mean that even if they were not actually principals they were accessories?

WITNESS: Accessories at the time and therefore principals.

COL. WATKINS: Mr. Gillespie, in a case of this kind, what would be your attitude as a magistrate? Would you consider yourself bound entirely just to accept the police evidence and the police case without adding to it in any way?

WITNESS: Certainly not, Sir. If I thought there was any evidence on behalf of the accused I should call it. I should ask the witnesses if they

anybody to call, and even if they refused to call anybody and I considered it necessary to call that person I should do so.

COL. WATKINS: Your attitude is not the abstract attitude of the jurist, who deals only with the evidence put before him.

WITNESS: Not in the preliminary trial - not in any trial, as a matter of fact.

COL. WATKINS: You consider it your duty to conduct a further investigation?

WITNESS: To call any witnesses whom I thought it necessary to call.

COL. WATKINS: None of the evidence suggested to you that there might be other people who might be equally guilty with the accused?

WITNESS: I do not recollect anybody at the time or I think I should certainly have called them.

COL. WATKINS: There is one sentence which struck me very particularly just now. I do not know whether you were in the room.

WITNESS: No, Sir. I was not.

COL. WATKINS: In the evidence of Mr. Bale the track was alleged to have been lost near Mr. Roberts' farm.

(An extract from the report of the proceedings in the Lower Court was here read.)

Kippter filed past the body but gave no information. There we have a man of the same tribe living in the same neighbourhood. Actual evidence could have been led to show that they were related and what there was bad blood between them.

WITNESS: Was any evidence led, Sir? Was the man ever called.

COL. WATKINS: That man? No, I do not think he was. He was arrested and released.

WITNESS: I cannot ~~recall~~ recollect why I did not call him, Sir.

COL. WATKINS: I merely wondered whether that was an indication of an attitude on your part that there was no need to call him.

WITNESS: No. If I thought that any useful object would be served - that there was any reason for him to be called, I should have called him.

THE CHAIRMAN: When you were conducting this enquiry in the Lower Court did you call for the police diaries of the case under enquiry?

WITNESS: No Sir. I never do. There is very often a lot of evil in that, which might prejudice the accused.

THE CHAIRMAN: But you have only to commit

them for trial. You do not think it a good thing, to give you an insight into the case ?

WITNESS: I have not done so in the past.

THE CHAIRMAN: I see there was some slight reference to a wounding or inflammation of the anus. There was a suggestion at the time that it was caused by something thrust into the anus, and I observe also that there is another reference to that in the doctor's evidence. Did it occur to you to ask ~~the~~ the doctor about that wound ?

WITNESS: I do not remember, Sir. But I should take the doctor's evidence about that. What is the doctor's evidence about that ?

THE CHAIRMAN: The doctor's evidence is that he paid a certain amount of attention to the head and body but to nothing else. It appears entirely to have escaped the notice of the doctor holding the post-mortem examination.

WITNESS: I ~~remember~~ believe there was now something about a wound of the anus, but I do not remember anything more about that.

THE CHAIRMAN: There was no medical evidence from the post-mortem anyway.

WITNESS: I am very vague about that, it is quite possible that I might be mixing it up with some other case.

MR. BENTLEY: May I ask if you remember after all this business was over, I came into your office one day.

WITNESS: On two occasions, Mr Bentley.

MR. BENTLEY: And I told you I thought there had been a miscarriage of justice, and I was rather disturbed about it.

WITNESS: Yes.

MR. BENTLEY: Do you remember telling me anything ?

WITNESS: I remember on the first occasion you came to my office about it after the Supreme Court trial. As far as I remember I told you the case had passed out of my hands and that I did not agree with your feelings on the matter at all. On the second occasion I think you spent an hour with me discussing the matter. I cannot remember telling you anything, or any particular things I did tell you.

MR. BENTLEY: Will you, as a magistrate, not agree with me that an ordinary accused native, in a tribe like the Bagishu tribe, will always find it difficult to understand what is meant when you ask him if he has any witnesses to call on his own behalf ?

WITNESS: I agree that he will always find

them for trial. You do not think it a good thing, to give you an insight into the case.

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THE CHAIRMAN: I see there was some slight reference to a wounding or inflammation of the anus. There was a suggestion at the time that it was caused by something thrust into the anus, and I observe also that there is another reference to that in the doctor's evidence. Did it occur to you to ask ~~the~~ the doctor about that wound?

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WITNESS: I ~~remember~~ believe there was ~~no~~ something about a wound of the anus, but I do not remember anything more about that.

THE CHAIRMAN: There was no wound from the post-mortem any more.

WITNESS: I am quite possible that in some other case.

MR. BENTLEY: After all this business office one day.

WITNESS: Yes.

MR. BENTLEY: And had been a miscarriage disturbed about it.

WITNESS: Yes.

MR. BENTLEY: Do you anything?

WITNESS: I remember on the first occasion you came to my office about it after the Supreme Court trial. As far as I remember I told you the case had passed out of my hands and that I did not agree with your feelings on the matter at all. On the second occasion I think you spent an hour with me discussing the matter. I cannot remember telling you anything, or any particular things I did tell you.

MR. BENTLEY: Will you, as a magistrate, not agree with me that an ordinary accused native, of a tribe like the Bagisha tribe, will always find it difficult to understand what is meant when you ask him if he has any witnesses to call on his own behalf?

WITNESS: I agree that he will always find

it difficult to know what is meant by cross-examination. I think a native of the meanest intelligence understands when he is asked if he has any witnesses to call.

MR. BENTLEY: A lot of extra evidence was found after the High Court sat. Do you not think it peculiar that they did not call witnesses?

WITNESS: I think my recollection of the case, Mr. Bentley, was that it went rather against them that they did not call any witnesses.

MR. BENTLEY: Yes, I think it would, naturally. Perhaps you have not followed the case and therefore do not see it is strange that they did not call evidence?

WITNESS: I have not followed the case since it passed through the stage of the High Court at Aylesbury. I do not know what has been found out since then.

MR. BENTLEY: When mention was made before you of this bloodstained shirt did you ask any questions about it?

WITNESS: I cannot recollect, but I do not think it had any great weight. After all, it might have been his own blood. I do not recollect anything about a bloodstained shirt at all.

MR. BENTLEY: If you thought it of not much importance do you not think it was your business to tell Mr. Dale to drop this matter of the shirt?

WITNESS: No.

MR. BENTLEY: You would not give him advice?

WITNESS: Not as to how he is conducting his case.

MR. BENTLEY: If you attached any importance to the blood-stained shirt and he told you?

WITNESS: Then I should certainly put it on the file.

MR. BENTLEY: Supposing Mr. Dale had made a point of the mud adhering to those hooves of the accused, would you not have proved into that a bit?

WITNESS: I should have put it on the file. There were any particular remarks about the condition of the hooves.

MR. BENTLEY: Don't you think it strange that a man in the position of a police officer should, before you, simply bring evidence with respect to the ownership of these two hooves and then later on, before the High Court Judge, make a very big point that the mud on these hooves was the same mud as the mud in the stream where the body was found? Do you not think it is peculiar that the police officer, who in April made mention of these hooves to you, should later on make a big point about the mud and should not have made the same point to you?

WITNESS: If he knew of the facts at the time of the preliminary enquiry it would be.

MR. BENTLEY: Of course he knew the whole of the facts about the mud.

You do say most decidedly that if there was evidence which could be called for the defence you would naturally call it and that if there was such evidence you were wrong in not calling it?

WITNESS: If it occurred to me that there were certain witnesses who knew anything which would be to the advantage of the accused and I failed to call them, then I should be getting wrongly.

MR. BENTLEY: If Mr. Dale found witnesses were reluctant and he said "I find the evidence is reluctant. May I treat these witnesses as hostile witnesses?" it would not occur to you to say to Mr. Dale: "Yes, they are reluctant. Why should not they be called for the defence?"

WITNESS: If they were prosecution witnesses I do not think so. I do not remember any evidence in the case that went to assist the accused.

MR. BENTLEY: If Mr. Dale had made a point in front of you that the insertion of a stick up the anus of the victim was a Bagishu habit would you have taken that for granted with your experience?

WITNESS: I should have entered it on the file. But I do not remember anything of the kind in connection with this case.

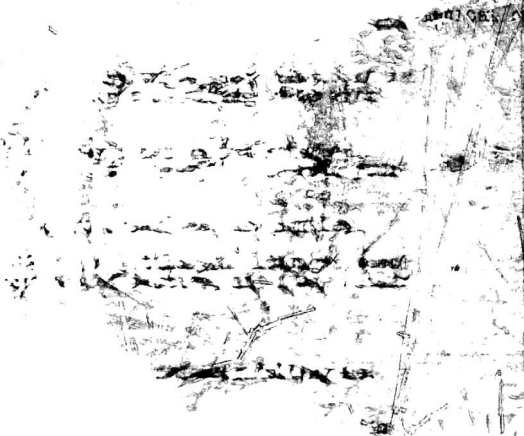
MR. BENTLEY: I ask you, don't you think it peculiar that Mr. Dale makes no point of this being a Bagishu custom in front of you, the magistrate, but he does make this point in saying that it is a Bagishu custom later on.

WITNESS: If he knew of the custom at the time it is certainly curious he should not have brought it before me, but I suggest it is something which came to his knowledge after the preliminary enquiry and before the Supreme Court trial.

MR. BENTLEY: That is so.

File No. S

(continued)



MONDAY, 25th August, 1950.

WITNESS: Mr. Joseph Dale.

THE CHAIRMAN: Perhaps you can tell me by refreshing your memory. I want to know more about these witnesses. There was a witness apparently called Masaba. On what date did Masaba go to Kitale Police Station?

WITNESS: I have it on the record as the 19th April. I interviewed the following of Mr. Bentley's labourers from the farm. Masaba is one of them.

THE CHAIRMAN: He was at the police station then I take it?

WITNESS: Yes.

THE CHAIRMAN: In what circumstances was he sent there? Was he there voluntarily or was he taken there under escort?

WITNESS: I have no record here, Sir.

THE CHAIRMAN: Don't you remember.

WITNESS: I am afraid I do not.

THE CHAIRMAN: Take the witnesses generally who came from the farm. Were they brought in under escort or did they come as free agents?

WITNESS: I think you can take it that a certain number were sent for and a certain number were interviewed on the farm.

THE CHAIRMAN: Does that mean that the police were sent to go and arrest them and bring them in?

WITNESS: NO. There is no case of arresting.

THE CHAIRMAN: I want to know definitely whether the witnesses came from the farm as you or I might be sent for or whether they simply came as

WITNESS: In the absence of Mr. Bentley on the farm, any witnesses who may have remained may have been sent for through the native police.

THE CHAIRMAN: Who would go and get them?

WITNESS: Persons probably connected directly with the investigation of the case.

THE CHAIRMAN: Who brought them in ?

WITNESS: I have no record of that on my file.

THE CHAIRMAN: Were they brought in by askaris ?

WITNESS: Of that I have no record.

THE CHAIRMAN: But do you not remember ?

WITNESS: No, I am afraid I do not.

MR. WOOD: Is not there a question rather relevant to that, based on his previous experience. Is it not a fact that when you have to deal with natives some distance away you have only one course to follow ?

WITNESS: Being ? Which course to follow ?

MR. WOOD: To bring them in.

WITNESS: Yes, more often than not.

MR. WOOD: You could request a European to come in presumably and rely on him coming, but if you want natives from some distance what courses have you open to follow ?

WITNESS: Well, the first course is to go out yourself and interview the natives. On the other hand, you can send out and ask the employer of the natives if he will kindly allow the bearer of the note to bring these people in for interrogation.

THE CHAIRMAN: But in this particular instance your recollection does not serve you as to which method you employed.

WITNESS: No, Sir.

THE CHAIRMAN: Was anybody in charge of Mr. Bentley's farm in his absence ?

WITNESS: I understand Mr. Thornburn was looking after it.

THE CHAIRMAN: Was he asked to send them in ?

WITNESS: No, not to my knowledge.

THE CHAIRMAN: Masaba - you say his statement was taken on the 19th. You don't remember on what day the witnesses were sent for ?

WITNESS: I have no record on my file.

THE CHAIRMAN: Is there no record of sending for witnesses for interrogation ?

WITNESS: No, Sir.

THE CHAIRMAN: Masaba was interrogated by you at the police station on the 19th, I think you said. Who was the officer in charge of the police station. Who was the senior officer in charge at Kitale ?

WITNESS: Myself.

THE CHAIRMAN: No other senior officer resident there ?

WITNESS: Yes, the Superintendent.

THE CHAIRMAN: Where does the Superintendent live ?

WITNESS: The Superintendent has his office separate. He is in charge of the district.

THE CHAIRMAN: You are in charge of that particular police station. I see.

Masaba was interrogated on the 19th. On what day did he leave the police station. How many times was he interrogated ?

WITNESS: According to my record, once.

THE CHAIRMAN: On what day did he leave the police station ?

WITNESS: I have no record regarding the time. As regards witnesses giving evidence or making statements before me at the time I was in charge of the police station, there is no record kept in the Occurrences Book or any other book, other than the record in the file.

THE CHAIRMAN: May I put it in this way. I have here the police file, which has been handed to me, from which I gather that Masaba was detained eight days at the police station.

WITNESS: If that was so, Sir, it was not to my knowledge.

THE CHAIRMAN: Is it possible for people to be detained at the police station without your knowledge if you are in charge of it ?

WITNESS: At the police station it is impossible for anybody to be detained without my knowledge - at the police station.

THE CHAIRMAN: Was he detained in the police lines then ?

WITNESS: That I have no knowledge of.

THE CHAIRMAN: Does anybody know what goes on in the police lines ?

WITNESS: Yes, the sergeant major in charge of the lines is supposed to know what is going on.

THE CHAIRMAN: Does he not report to you who is in the lines ?

WITNESS: An admission report is given every evening at six o'clock, but not to me.

THE CHAIRMAN: To whom
 WITNESS: To the Assistant Superintendent in
 Charge.

THE CHAIRMAN: Who would that be?

MR. WOLSELEY BOURNE: Mr. Ridgeway, Sir.

THE CHAIRMAN: I do not know who I should get -
 perhaps I am asking the wrong witness?

MR. WOLSELEY BOURNE: Mr. Ridgeway, I suggest,
 might be able to give you information in regard to that.

THE CHAIRMAN: I see. I am asking the wrong
 witness, am I?

MR. WOLSELEY BOURNE: I do not think Mr. Dale
 could possibly know of anybody moving about the police
 lines. They do not come directly under the control,
 normally, of the officer who happens to be in charge of
 the police Charge Station. What happens outside really
 would not come under his control.

THE CHAIRMAN: When these witnesses however
 did come in to make statements who would have sent for
 them, the Superintendent or ~~himself~~ yourself?

WITNESS: That is rather difficult to answer,
 Sir, in that way. If I may put it to you in this way:
 that the Superintendent was cognizant of the steps
 taken in the investigation of this case, and anything
 that I did he had knowledge of and was probably
 discussed between us both. Probably I sent for them
 and probably he did.

THE CHAIRMAN: Take Masaba. Have you the time
 at which his statement was taken?

WITNESS: No, Sir - just the 19th.

THE CHAIRMAN: You have got the time of day

WITNESS: No, not the time it was taken. This
 following were interviewed on Mr. Bentley's farm amongst
 the Masaba labourers . . .

THE CHAIRMAN: What is on the farm?

WITNESS: Yes.

THE CHAIRMAN: I want to know the date Masaba's
 statement was taken and the time.

WITNESS: From this it would appear that
 interviewed these people on the farm and not at the
 police station. It is rather difficult for me to
 remember.

THE CHAIRMAN: Do you remember any of these
 people coming into the police station - Busiku, Masaba,
 Mabwenge?

WITNESS: I remember Busiku and the woman and
 her child.

THE CHAIRMAN: To whom?

WITNESS: To the Assistant Superintendent in Charge.

THE CHAIRMAN: Who would that be?

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WITNESS: That is rather difficult to answer, Sir, in that way. If I may put it to you in this way that the Superintendent was cognizant of the steps taken in the investigation of this case, and anything that I did he had knowledge of and was probably discussed between us both. Probably I sent for them and probably he did.

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WITNESS: No, Sir - just the 19th.

THE CHAIRMAN: You have got the time of day?

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THE CHAIRMAN: What is on the farm?

WITNESS: Yes.

THE CHAIRMAN: I want to know the date Masaba's statement was taken and the time.

WITNESS: From this it would appear that I interviewed these people on the farm and not at the police station. It is rather difficult for me to remember.

THE CHAIRMAN: Do you remember any of these people coming into the police station - Busiku, Masaba, Mawenge?

WITNESS: I remember Busiku and the woman and her child.

THE CHAIRMAN: Were their statements taken at the police station ?

WITNESS: They were taken at the police station, yes.

THE CHAIRMAN: On what date ?

WITNESS: Busiku's was taken on the 18th and Nandutu's on the ~~18th~~ 17th, she being the Bagishu girl - the child.

THE CHAIRMAN: Yes.

WITNESS: What was the name of the woman - Wabwenge ? That was on the 20th. That was the completion of her statement.

THE CHAIRMAN: How many times was her statement taken ?

WITNESS: Once according to my file.

THE CHAIRMAN: I take it she and the child came in together, did they not ?

WITNESS: As far as I remember.

THE CHAIRMAN: Is it not her child ?

WITNESS: Yes.

THE CHAIRMAN: Do you know, Mr. Bentley, if these people are still available. Are they in the country or have they gone back to Uganda?

MR. BENTLEY: Some of them are available. One or two are back on the farm. Busiku got a job elsewhere. Masaba is there. Wabwenge lives on a farm five or six miles away, Sir.

THE CHAIRMAN: She is available ?

MR. BENTLEY: I am not certain, but she was.

THE CHAIRMAN: How many statements were taken from Wabwenge ?

WITNESS: One.

THE CHAIRMAN: Did she not come in with her own child ?

WITNESS: I cannot say.

THE CHAIRMAN: Does the Occurrence Book show any dates of these people coming in ?

MR. WOLSELEY BOURNE: Nothing until the 19th. In the case of witnesses coming in there is no record in the Occurrence book.

THE CHAIRMAN: These dates are taken from something, I take it ?

MR. WOLSELEY BOURNE: Yes, from various records and statements made to the senior officer in the Commissioner's office regarding police irregularities - admitted police irregularities. Mr. Ridgeway would be able to give more definite information in regard

to the detention of witnesses.

THE CHAIRMAN: I do not know whether Mr. Dale will be able to answer this question or not, but it looks likely that mother and child would come in together. I want to know why the child's statement was taken on the 17th and the mother's on the 20th.

WITNESS: I have made a record on the file regarding what I thought when the child was brought into the police station. The child was frightened at the moment and I made a record on my file that I did not interview or interrogate her at all till such time as she was in a calmer mood.

THE CHAIRMAN: The child's evidence was taken on the 17th and the mother's not till the 20th.

WITNESS: In the case of interrogation of witnesses it never has been my practice to rush people into saying anything.

THE CHAIRMAN: Quite, but it does not take three days.

WITNESS: From my experience it has often taken several days.

MR. WOOD: Is it customary to have as witnesses children of five years of age? Is that a common practice?

WITNESS: I have had several cases in which I have had to bring up children of various ages. The magistrate has to state whether he thinks the witness is a witness who can be heard and understood and who can understand what is said to it.

MR. WOOD: There is nothing in law against that.

ATTORNEY GENERAL: The discretion is left to the court, Sir.

WITNESS: In cases where probably there have been only children who have been eye-witnesses of certain offences committed, then those are the only witnesses who can be brought up.

ATTORNEY GENERAL: The practice, if I may say so, Sir, is extremely common here. It may be owing to the prevalence of sexual offences against very young children. If I may say so, Sir, I share Mr. Wood's doubts at times, but the discretion rests with the Court.

THE CHAIRMAN: Have we the case file here where those policemen were convicted of assault?

ATTORNEY GENERAL: No, Sir. I have got the case file regarding one of them. The file and crime sheet of the other is recorded as believed lost at the Supreme Court re-trial, Nairobi. This is a reconstructed one as far as possible. The proceedings before the magistrates at Kitale are, I take it, what you are referring to. I think I have a copy of those.

MR. BENTLEY: I have a copy, Sir.

ATTORNEY GENERAL: The prosecution in the second class magistrate's court at Aitale, the Crown versus George James. I have a copy of that here.

THE CHAIRMAN: What was the date of this alleged assault? Was it before they came to the police station?

ATTORNEY GENERAL: Yes.

THE CHAIRMAN: I take it Mr. Ridgeway has gone back to Thika?

MR. WOLSELEY BOURNE: Yes, but I can get him at any moment.

THE CHAIRMAN: I do not think there is any further question for Mr. Dale. I wanted to ask about the detention of witnesses in the police lines, but apparently this is not the question with which he is the most competent witness to deal.

MR. WOLSELEY BOURNE: I think Mr. Ridgeway would be able to give the Commission more definite information about that.

ATTORNEY GENERAL: May I add, on the point you have just mentioned as to the relative chronological order of these things, that the witness Nabwenge at Aitale said she was beaten on the day that Okube and Mafaba were arrested. She says: "I was beaten in front of Mr. Bentley's house and not in the lines".

THE CHAIRMAN: When she came into the police lines afterwards and apparently was there for a long time. That is what I want to know.

ATTORNEY GENERAL: Mohamed Malik in giving evidence said it was the day on which Okube and Mafaba were arrested. Okube's wife began to cry when she saw her husband.

MR. BENTLEY: May I ask Mr. Dale questions?

CHAIRMAN: Yes.

MR. BENTLEY: Mr. Dale, is it not true that certain of the witnesses actually went into Aitale with the accused under escort?

WITNESS: Yes. I have it on record on my file that that was so.

MR. BENTLEY: Mr. Chairman, have you heard Mr. Dale's answer?

THE CHAIRMAN: No.

MR. BENTLEY: He says "yes".

WITNESS: I am just quoting from my file. I cannot remember now.

MR. BENTLEY: Would it not be your duty to order, if necessary, the detention of witnesses?

WITNESS: No. I never detain witnesses without orders.

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WITNESS: No. I never detain witnesses without orders.

MR. BENTLEY: Whose orders?

WITNESS: Only on a magistrate's order.

MR. BENTLEY: Do you suggest the magistrate ordered the detention of these witnesses?

WITNESS: No, I do not.

MR. BENTLEY: Do you suggest that they stayed there of their own accord?

WITNESS: Yes.

MR. BENTLEY: Mr. Dale, do you think that is likely?

WITNESS: Very likely.

MR. BENTLEY: May I rather press this point. In what way do you mean it is likely?

WITNESS: Mr. Bentley, if this is a personal argument regarding my opinion and your opinion, I do not think that is fair.

THE CHAIRMAN: Just put the question of fact, Mr. Bentley, as to whether they were detained or not. When it comes to a question of what is likely and what is unlikely, we must form our own conclusion on that from the evidence.

MR. BENTLEY: In other words, my question should be "Who ordered the detention?"

THE CHAIRMAN: Or "Was detention ordered?"

WITNESS: There was no detention ordered by myself.

THE CHAIRMAN: Mr. Dale's answer is that they were not detained by his orders; he does not think they were detained by anybody's orders.

WITNESS: But if I may be allowed to put forward my experience of police investigations, often when it is a case of violence, grievous hurt, murder and other cases, it has been the case often that witnesses who were going to give evidence for the prosecution did not wish to return to places where they have come from, such as a farm where they may have been working, when they are giving evidence against somebody else of possibly the same tribe. They are frightened to go back and yet they are speaking the truth in the evidence they are giving against other people.

THE CHAIRMAN: You mean, in effect, that they ask for police protection?

WITNESS: Yes.

MR. BENTLEY: How do you account for the fact that directly the investigation was finished they did go back to the farm?

WITNESS: I could not suggest anything regarding

back to their own district, the bagishu country, or they may not. I do not know.

MR. BENTLEY: With regard to the statement of my Sudanese head boy, do you remember it? When you say you took his statement, it was read over to him?

WITNESS: Regarding the reading over of statements, we often find it quite impossible. You ask a man in Swahili - at least, we will take that as the language used. You ask: "Now do you think so and so?" and he says "Yes". "Did this happen?" "Yes, that happened." You read that over to him and that is a read over statement and found correct. I have often found that done in magistrates' courts and I have done the same thing myself to save time.

THE CHAIRMAN: Do you mean, if you put a question to a witness and he answers in the affirmative or negative, that as each answer is given you read it over, or do you mean that at the conclusion of the statement you read the whole statement?

WITNESS: Sometimes, but more often than not, if you wish to save time and you ask a man a certain thing and he gives you an answer, then that is read over to him.

ATTORNEY GENERAL: And that takes the place of reading it over to him - repeating it to him?

YES WITNESS: Yes, Sir.

MR. BENTLEY: Do you remember if you read over this victim's statement?

WITNESS: I do not remember whether I read the whole of his statement over to him after I had completed his statement or whether I repeated his answers as they were given.

MR. BENTLEY: Do you remember if he signed his name to the statement?

WITNESS: No, that is not necessary.

MR. BENTLEY: Or thumb-marked it?

WITNESS: No.

MR. BENTLEY: Do you remember if the statement taken from him on the farm was at the beginning of the police investigation? ~~XXXXXXXXXX~~

WITNESS: It was the date I gave on my file I cannot remember otherwise.

MR. BENTLEY: What was the date?

WITNESS: I have it down here. It was the 14th of the 4th.

MR. BENTLEY: In other words, at the very beginning.

WITNESS: At the beginning of the investigation.

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WITNESS: At the beginning of the investigation.

MR. BENTLEY: You did not think it necessary to take his statement later when the investigation developed. You did not consider it necessary to send for him at Kitale?

WITNESS: I could not have thought so at the time; otherwise I should have done so.

MR. BENTLEY: Did you hand over any of the witnesses in this case to Wakuma, the askari?

WITNESS: Yes, I handed over the daughter of the woman whose name I believe her name was, for him to take her to the lines for her to be pacified by Wakuma's wife, as she was in a peculiar state at the time and I did not wish to interrogate her or take down any of her statements while she was in that excited state. I remember sending Wakuma down with this girl to his wife.

MR. BENTLEY: Would not she have been better pacified at the farm?

WITNESS: There was nobody at the farm at the time if I remember rightly.

MR. BENTLEY: How do you mean?

WITNESS: Very few of your labourers were on the farm at the time this offence occurred.

MR. BENTLEY: Was my head boy not on the farm?

WITNESS: Your head boy is of another tribe to the Bagishu.

MR. BENTLEY: But it is obvious he did try to pacify the child.

WITNESS: I have no record of that. I have no proof of that.

MR. BENTLEY: Did you think the policeman's wife was the best person to pacify a frightened child?

WITNESS: They were of the same tribe.

THE CHAIRMAN: Which policeman's wife?

WITNESS: Wakuma's wife, Sir.

MR. BENTLEY: Did you hand over any of the other witnesses to Wakuma?

WITNESS: I do not remember. I do not remember handing anybody over to Wakuma other than the child.

MR. BENTLEY: Was Wakuma one of the askaris charged with assault?

WITNESS: Yes.

THE CHAIRMAN: He was reduced?

WITNESS: Yes.

THE CHAIRMAN: That was for striking her on the farm is it not?

WITNESS: Yes.

MR. BENTLEY: Did you not hand over Busiku, the chief prosecution witness, to Nakuma?

WITNESS: No, I have no recollection of it.

MR. BENTLEY: Do you remember where Busiku stayed?

MR. WITNESS: No, I have no recollection.

MR. BENTLEY: Do you not know where any of the witnesses stayed?

WITNESS: No. Not in any specific hut or house of anyone.

MR. WOOD: Mr. Dale, earlier on in this enquiry I think at one stage you admitted that you personally provided ~~food~~ money for feeding some of these people.

WITNESS: Yes.

MR. WOOD: Surely at that stage, you must have known where they were?

WITNESS: But I have no recollection of the exact dates or time that these people were in the police lines. But I do remember giving money for the purchase of food for some of one of the witnesses. Under what circumstances I have no record now, but I do remember paying money for their food.

MR. WOOD: You do not consider it rather strange if someone comes up to you and says: "Ewana, give me a certain amount of money to feed these witnesses" and you don't know where they are - they might be miles away.

WITNESS: No, Sir, because I have done it many times.

MR. WOOD: And the witnesses may not be within ten miles of the place.

WITNESS: I think I should have known something about it at the time, but I cannot recollect who approached me or took the money at the time; but in my own experience I have done it many times.

MR. BENTLEY: Were you very ill when you went home on leave?

WITNESS: I was not very ill, but I had had fever, I think, five times, in several months previous to that. I think that can be vouched for by the medical records at Aitale.

MR. BENTLEY: I am not quite sure whether this point has been asked before, but in Mohamed's statement, which I have never been privileged to see, he does state does he say that the track was actually tracked up to that wagon road towards Mr. Roberts farm. Can you admit that, don't you?

WITNESS: No. The first statement made to me, Mr. Bentley, if I can read it out, is to the effect that he lost it at the wood ash heap.

MR. BENTLEY: You say the first statement he made.

WITNESS: Yes.

MR. BENTLEY: ... several statements

WITNESS: He made the statement which I have taken down, but it has been my experience to listen to a number of statements, if you take down, you take down, it would be a waste of time to take down everybody's statement until you know whether it had any connection with the case, otherwise.

MR. BENTLEY: Of course it had connection with the case.

WITNESS: ... had taken down, yet.

MR. BENTLEY: Is it not a fact that, if it is suggested Mohamed lost the tracks, it could have been more correctly stated that he left those tracks because he went with you to attend the post-mortem?

THE CHAIRMAN: Do you remember the expression he used in Swahili in saying he lost those tracks?

WITNESS: No, Sir, I am afraid I could not remember, but having personally accompanied him in the first instance to the place where the body was, and there been any further tracks I should have followed them myself with him. But we could not find any more and that is the main reason I returned to the place where the body was and completed, or endeavoured to complete the remainder of the examination of the body, but if there had been other tracks I should have followed them up.

MR. BENTLEY: But did you not follow up that track with Mohamed later?

WITNESS: Later on the next day.

MR. BENTLEY: And this statement was taken before you did that?

WITNESS: At what exact period in course I cannot quite state at the moment.

MR. BENTLEY: But if you had taken this statement after you had followed the track which did incriminate the other bandi you would presumably have put it down.

WITNESS: I did put it down.

THE CHAIRMAN: Is that in the statement ... that is the reason I ... place, on suspicion.

MR. BENTLEY: Is that in the same statement where it is said he lost the track at the Bagishu nuts?

WITNESS: Yes, if it is.

MR. BENTLEY: Well, how do you reconcile the two statements, he lost the track, which incriminated the Bagashu, and then carried on the track and lost it again over the road near Mr. Roberts farm.

THE CHAIRMAN: I take it, if he lost the track it does not mean that he lost it permanently. You can lose your way, and in a moment be on the right track again.

WITNESS: If I was led for a certain distance along this track and then no one could show you any further track at the moment, then we lost the track at the moment.

MR. BENTLEY: But when you left the wood ash you left to attend the post-mortem.

THE CHAIRMAN: Yes, that has been noted.

MR. BENTLEY: You, as a police officer, would not you subscribe to the view that the ordinary Bagishu witness in a very backward tribe, would naturally be frightened anywhere near the police station - would be frightened of anything to do with proceedings of this sort?

WITNESS: Yes, that is probably true of all tribes I have had any experience with.

MR. BENTLEY: Particularly a backward tribe?

WITNESS: Yes, it is possible that they would be. It is probable because I have found it so.

ATTORNEY GENERAL: There is only one point, Sir. You will appreciate that I have heard very little of Mr. Dale's evidence - only this afternoon's. When you sent an askari in for those witnesses, was there, so far as your instructions went or your knowledge went, any compulsion applied to them?

WITNESS: None at all, Sir.

ATTORNEY GENERAL: You did not act by order in writing under section 132, to compel attendance?

WITNESS: No.

ATTORNEY GENERAL: They were all, I take it, at liberty. You never suspected any of them?

WITNESS: No.

ATTORNEY GENERAL: Were you aware that any compulsion was used?

WITNESS: No, none.

ATTORNEY GENERAL: At the time I understand that Mr. Thurnburn was looking after the farm, but there was nobody but Mr. Bentley in charge of the farm?

WITNESS: Mr. Chairman, as the majority of the charges seem to be on me, may I ask that Mr. Hidgey, the Assistant Superintendent, be allowed to say something on my behalf, or at least to be examined by the commission.

THE CHAIRMAN: Certainly. We shall not be in a
ridgeway to say anything that is relevant to the
enquiry.

MR. BENTLEY: Am I in order, Mr. Chairman, in
asking if you will allow me to correct an answer
which I gave to Mr. Macgregor the other day, which
Macgregor said to me, discussing the conduct of the
trial - he asked me if I did not agree that the
prosecuting counsel found out some fact which damaged
the accused and was irrelevant, that it would be too
late to draw attention to it; and I said "Yes, I
think it would have been too late". Anything which
could help the Crown Counsel, I should have said
at any point in those trial proceedings he should have
drawn attention to it. Therefore I do not agree.

ATTORNEY GENERAL: I have no recollection of
asking the question in that form. What I did say was
that if the Crown Counsel had completed his examination
in chief, and the point was not made in cross-examina-
tion, he could not, in re-examination, traverse that
point.

MR. BENTLEY: Yes, I remember that.

ATTORNEY GENERAL: The examination is limited to
the questions actually asked in cross-examination. The
only course would be to draw the trial judge's attention
to it, so that the witnesses might, if necessary, be
recalled. The point I endeavoured to make was that the
prosecuting counsel in re-examination, was not entitled
to go out of the scope of the cross examination.

The Commission adjourned sine die.

COMMISSION OF INQUIRY, KITALE.

15th September 1950.

Present: S. F. Maxwell, M.C.,
Lt. Col. Watkins, C.B.E., D.S.O.

Commissioner of Police

Boyd

Cecil Augustus Thurburn Sworn: I remember the occasion on which a body of a native was found on Mr. Bentley's farm. Mr. Bentley was a South African and I was watching his interests in his absence. On a Saturday Mr. Bentley's head boy handed came up to my farm and reported to Mr. Kruger that a body had been found in the stream on the farm. Mr. Kruger then (into Kitala and made a report to the Police. This was in the morning. In the afternoon I met Mr. Dale and Mr. Landells on Mr. Bentley's farm. Arrangements had been made for all Mr. Bentley's, Robins' Roberts' Mzimba's, Orr's and my own boys to be paraded in order to see if they recognised the body. I went down to the stream with Mr. Dale and had the body removed on a sheet of corrugated iron to a waste crib about 300 yards from the site where it was found. Dr. Cowen came out and examined the body. All the boys were made to pass it singly in order to identify it. I was present all the time. On the Sunday Mr. Dale and Mr. Blighay came out. We were about a track by two of the natives who were afterwards accused and released. The track ascended from the stream and continued straight over a mile leading towards Mr. Bentley's farm. From there Mr. Dale, returned and on arrival and myself proceeded to the Roberts' farm. We saw Mrs. Roberts and told her that we were going to examine her herd's huts. The doors were locked. The huts were broken into. Evidence and the accused produced a spear belonging to a Nandi herd boy. This

spear ...

spear had the two steel ends covered with rags. The steel butt end had blood on it. I did not see blood on the haft. Mr. Dale instructed the askari to take the spear down to Mr. Bartlett's house and bring it into Kitale the following day.

There was a heavy storm just after the askari had left.

On Tuesday afternoon I met a uniformed askari and a plain clothes askari proceeding to Kitale with 3 or 4 of the accused, an old woman and a little girl. The plain clothes askari told me that the man had committed the murder and that the small girl was his witness. I got Mr. Robertson to give them a lift into Kitale, the whole party I brought them in his car and handed them to Mr. Dale. I had no further connection with the case.

BY CHAIRMAN: It would have been quite easy for Mr. Dale to obtain other Europeans of the neighbourhood if he had wanted them. I was not asked to sign any police report. We were able to follow the track up to the boundary line on the Sunday morning. There were 2 huts in an isolated position - both belonging to the same man. Mr. Dale did not replace the rags on the spear. I do not remember whether he put any label or identifying mark on it. When I met the police and others on Tuesday they were all in a group. I could not say if the woman and child were going willingly. The men were handcuffed but not the woman and child. The Mandi had been arrested. At the village he said that he did not know the accused or the track - whether by the huts or Mandi.

BY DALE WALKER. I was present at the medical examination. The doctor examined the case as well as the head wounds. Incrimination was not satisfactory

or curtailed by approaching water. I did not know the deceased or the other Mandi. I have been out nearly 7 years. I have employed only a few Bagishu.

BY CHAIRMAN: The Examination of the case was external only. I have seen similar condition in dead Germans who had been lying in water. It did not appear to me to be a pierced wound.

BY ATTORNEY GENERAL: Mr. Landells was also present during the medical examination. I think he came out with the doctor.

BY MR. BENTLEY: I was told that the deceased Mandi was related to the Mandi herd. The body was doubled up but I gathered the impression that deceased was smaller than Mr. Roberts' herd. There was a woman and child with the party that I took to Kitale. The child appeared frightened. The track was as though something had been dragged or as if a buck had passed through. I did not see human footmarks. It was a single track. It had rained the night before. It was dark that night when I went to bed. It seemed to me to be the same track all through. I saw nothing to identify any Bagishu with the crime. I was not called at the District Commissioner's inquiry.

ALBERT BYRN DAIRYFIELD TOWNSEND: Sworn: I remember the dead body being found on Mr. Bentley's farm. On the Saturday morning Mr. Dale came to me in the Kitale Hotel and asked me to drive him to Mr. Bentley's farm where apparently a murder had been committed. I drove him with an askari to Mr. Bentley's house where we met Mahomet who came with us and showed us the creek at the river. There were 3 or 4 Bagishu natives at the spot where we got out of the car. One of them led us to the place on the other side of the river where a human knee was sticking out of the mud. Mr. Dale gave

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instructions for the body to be dug out. This was done in our presence with considerable difficulty. Mr. Dale was given instructions that the body should be washed. We then both examined the injuries. Mr. [Name] was left in charge of the ashari and we proceeded with one of the men afterwards accused and with [Name] to follow the track over which we imagined the body had been [Name]. The line proceeded roughly parallel to the river until approaching the Bagishu [Name] where it turned off right-handed. We followed the track past the Bagishu hut for about 100 to 150 yards, where we lost it. I then returned to Kitale to Mr. Ridgway's house. Mr. Ridgway was ill in bed. He was Superintendent of Police.

[Name] appeared to me to be had injuries to the side of the head and to the arm. There appeared to me to be an injury to the arm. It appeared to me to have been caused by the insertion of a stick or something rough.

BY COL. WATKINS: I saw nothing perfunctory on the part of the police - nothing done that should not have been done and nothing left undone that should have been done. I was not called as a witness either in the lower court or in the Supreme Court. I had the impression that the wrong people were being charged with the murder.

BY ATTORNEY GENERAL: No questions.
 BY MR. [Name]: The demeanour of the Bagishu who led us to follow the track seemed to me that of an innocent person who was trying to give assistance. I cannot remember why Mr. Dale left the track when he did. We did not take great pains to follow the track further because Mr. Dale wanted to get back to Mr. [Name].

Mr. Ridgway and proposed to come out again in the afternoon. I saw no evidence that would in my mind connect the occupants of the Bagishu huts with the murder. Mr. Dale and I visited the huts. I do not remember any specific injury to deceased's ankles.

RALPH HUGHES HUGGARD: Sworn. I was present at an interview between Mr. Bentley and Mr. Huggard about a year ago. Mr. Dale was then absent on leave. Mr. Bentley was anxious to know when the retrial had taken place and mentioned that he had asked by letter that Mr. Dale's leave should be stopped. Mr. Huggard expressed ignorance of such a letter. My impression was that Mr. Huggard having only recently returned from leave was not au fait with the facts of the case. He appeared surprised. I don't recollect to whom the letter was said to have been written. I gathered the impression that had Mr. Huggard seen the letter he would not have allowed Mr. Dale to go.

BUSIKO S/O OMDOTI: I am a Mgishu. I used to work for Mr. Bentley. I remember a dead body being found on the furn. I gave evidence against four Bagishu charged with murder. That was untrue. I afterwards made an affidavit before Mr. Grompton. The body was found on a Saturday. On the Wednesday I was seized to be brought before the District Commissioner. Then Mr. Dale said that I and Mungu were to be taken to the Police lines. Next day there was no investigation and we were sent to cut wood. Next day the askari Wakuma said we were to take our kipandas to Mr. Dale. We gave our kipandas to Mungu who left us cutting wood. Then Wakuma came back and said Mr. Dale says you are to come back to the house in case you run away. I said I won't run away. I was kept in the Police lines on Thursday, Friday and Saturday. On the Friday Wakuma called me and said that Mungu and Warishi had

had confessed to killing a man and had said that I was
 an eye-witness. Wokumu afterwards took me out of sight
 behind the hut and said now I am going to tell you
 something good to say. If you will say that you saw
 Makushi and Warimba kill the man you can go home. I was
 silent at first and then said that I had not seen any
 man killed. He said "You (plural) refuse to give evidence
 though you killed a man and ate it" Wokumu then
 went and fetched Masaba who also refused to say that
 he had seen a murder. Wokumu then said that if I would
 not give this evidence I would get no food. This took
 place in his hut. He then told me go out. He followed me
 and again took me behind the hut and told me that if I
 would say as he told me I would continue to sleep in the
 lines without food. He said I had better obey him.
 When I refused he went and got a stick and said he would
 beat me if I persisted. He did not actually beat me.
 He said he would tell Mr. Dale that I knew all about it
 but was refusing to speak. Eventually I was taken to Mr.
 Dale at the Police Station. we were kept waiting outside
 for some time and then Mr. Dale said we were to be taken
 back to the lines and he would take our statements on
 Sunday and go to Court. He did not come back on Sunday.
 We were taken before him on Monday. Wokumu said I knew
 all about it; Mr. Dale said that if I did not give
 evidence he would look me up for a year. I said I knew
 nothing. I was sent outside and Wokumu whispered to
 me "Obey the words of the Swada" I then said "yes
 they did kill someone" I was then sent some distance
 away and Masaba was called in. I then saw Warimba and
 Wenge called in. Wokumu called me back close to the
 window. I heard Mr. Dale make Wenge if she had seen her
 husband kill anyone. She said she had not. Her husband
 then ...

then said "Say you saw it and then we can go home as witnesses in the case." The woman stayed and said she had seen the murder. Wenge came out. I heard Mr. Dale say to Wakuma, that woman has never only half her statement "take her to the line, if she has any more to say she can say it to you and you can report to me." He complained to Mr. Dale that we were very hungry and he gave us 4 kibanda of peaches. Wakuma took us to the lines where he gave us jackets and got us to work in his shamba. Masha was sent to sleep in the milk stable and I with the District Commissioner's boy, because I had spoken. I know nothing about the death of the man who was found. I had never seen him before.

It was Mr. Dale who threatened me with a year's imprisonment. I remember saying in the Supreme Court that it was the askari who threatened me, it was all one, Mr. Dale's words and the askaris were the same. I did not tell the truth to Mr. Dale. My first statement to Mr. Dale was untrue and was influenced by the askari. When Mr. Dale threatened me he pointed his pen at me and spoke in Swahili which I understand. Wakuma repeated everything in the Bagisha language.

BY MR BENTLEY: I did not get permission to make tembo on the occasion. I did make some nobody was drunk, it was a very dark night with a little rain. I remember that because Karidi when returning to the cattle home was afraid to go alone. It was Wakuma who suggested the theft of Mr. Bentley's cattle as a motive for murder. I have never seen a Mandi visit the Bagisha lines.

CHARLES HENRY COHEN: Sworn: I am District Surgeon. I remember being called to examine a dead body on Mr. Bentley's farm. Death was due to fracture of the skull by a heavy blow on the back of the head. I did not even see a wound in the scalp. I examined the body all over. A stick thrust by the anus would not be likely to cause death. There were bruises all over the body.

BY MR. BENTLEY: The bruises and abrasions were made before death - I saw no abrasions on the ankles.

ADJOURNED TO 2.15.

RESUMED.

wenge:(female):

I used to live on Mr. Bentley's farm. I remember a dead body being found. I remember the Police coming out. A tribal policeman told me that if I would say that my husband committed the murder I would be released. He threatened to beat me if I did not give evidence in Court ^{to} that effect. I was beaten by another policeman near Mr. Bentley's house. The European police officer was not there. I was brought into Kitale by the police under compulsion. I was taken to the Police station and taken before the Police Officer who had come to the farm when the body was found. He asked if I knew anything about the body. At first I said no. Then I remembered what the askari said and I told the officer as the askari had bid me. I slept in the Police lines I was taken there by the askari. It was about 6 o'c p.m. I wanted to go back to the farm, but the askari said I could not go lest I ran away. I was not well at the Police lines. I did not like it. I was kept against my will - on the night before the body was found I was on the farm. I do not know what happened. I did not see the dead body. My husband's name is Charles. He was the

our hut together that night. Nandana is my daughter
She slept that night in the hut of my mother Sambura.
The European police officer did not treat me un-
kindly in any way.

BY MR. BENTLEY: I do not remember a fowl being
killed. I do not know whether it is Nguni custom
to kill a fowl if a man has been killed. I was given
food in the Police lines. I had food every day with
the askaris.

THEO:

I used to work for Mr. Bentley I
remember when the Police came to the farm to in-
quire about a dead body. A native askari called me
to explain what the child Nandana was saying. An
askari/Kanga had the child by the wrist and she
was trembling. The askari let her go and she ran
behind me and caught me round the waist from
behind saying "They want to kill me". I told the
askari Kanga we had better go to Mahomed. The policeman
then asked where Mahomed's hut was and I showed
him. The policeman then went and pulled Mahomed out-
side and boxed his ears so that he fell down in the
doorway.

I did not come to the Police Station. I
was called to the District Commissioner's Court and
asked if I had seen a man come to the farm at night.
I said I had not. The police man did nothing to
frighten the child. The child was then struck
by the police man. He was very ill at the time when the askari
struck him. He had been sick five days.

MASAMA affirmed: I am a Nguni - I work for Mr.
Bentley ...

Mr. Bentley, I remember when the dead body of a Nandi was found on the farm, A policeman beat me. He asked me for a statement. I said, I had no evidence to give and he beat me with a stick on the chest. I was taken by force to the Police station. I was pushed along. The Police Officer who had come to the farm interrogated me. He said tell what you know. "If you did not see anything don't talk lies". The officer then told the askari to take me to the Police lines and make close inquiries. I was at the Police lines a week. I was kept against my will. For three nights I got no food. The nights I got food I had to go before the European Police Officer to get it. I was made to work, I aut weed with the prisoners. I was made to work under the charge of an askari.

BY MR. BENTLEY: For three days I was locked up in the Police cells. That was when the magistrate was taking the case against the 4 Nandis. I got food on the Friday and Saturday, but not on Sunday. I was let out on Monday and returned to the farm. When I stayed in the Police Lines I was locked up at night in the male stable. When I was in the Police cells Wakidiari was locked up with me. There is still something wrong with my chest as the result of the beating.

When I was first arrested I was handcuffed. This was outside my hut. When the handcuffs were taken off and put on another man, I saw Matanda and Kutoi beaten by the Police - I received two blows with a stick at the lines on the face and two on the back on the way in. I was beaten because I would not make any statement. Altogether I was two weeks in Kivale. At the farm I share a hut with Matanda and Kutoi.

MR. MATHIS, appears and states that he has been called as a witness as he understands that Mr. Dentley wishes to ask him some questions.

He has no evidence that would throw light on the subject of the inquiry but would like to say that he considers that suspicions have been unfairly cast on his conduct at the defence of the four accused, whereas what happened at the second trial was simply that the witness Busike stated that all his evidence at the first trial was a tissue of lies; consequently the 4 accused were acquitted without being called upon for a defence. *he adds*

" I should like to say also that I have appeared on several occasions in Court against Mr. Davies and have always found him most fair in conducting prosecutions. BY COUNSEL WATKINS: When appearing for the defence all we get is the record of the proceedings in the Court below. We have not access to the Police files, we are not restricted to the witnesses in the lower court. We can call others. I should feel at liberty to follow up any clue that appeared to indicate guilt of some one else. I visited the farm after I was briefed. That was some weeks after the occurrence.

There was no proof that a Sow had been killed. It would necessarily affect the case. If I had had access to the Police file it might have helped me. It would depend upon what was in the file.

I was surprised at the verdict in view of the fact that everything depended upon the evidence of Busike who was practically an accomplice, and the evidence of the woman seemed incredible in view of the darkness.

MR. MATHIS (alias WATKINS): Affirmed: I work for Mr. ... I had to work for Mr. Dentley

I remember a dead Maudi being found on Mr. Bentley's farm. I was brought to the Police station by an askari Kanga - a Masai - I came willingly, I was put in the guard room. I was locked in. I was accused of killing the Maudi. I was locked up for 3 days Masaba was in the same cell.

KUDOSI: affirmed; MGINA.

I remember that a dead Maudi was found on Mr. Bentley's farm and I was charged with murder. I was arrested and brought to the Police station. There was blood on my singlet. I was asked about it. The European Police Officer whose name I don't know asked me. He was the officer who came and had the body dug up. I explained that it was the blood of a buck that I had carried. The askari tried to make me admit that I knew who had killed the Maudi. He took me out of the cell and asked me to say that it was the three other askaris. I refused and Wokum took the buck to the cell.

ADJOURNED SINCE D.E.

I remember a dead Mandi being found on Mr. Bentley's farm. I was brought to the Police station by an escort Kanga - a Masai - I came willingly. I was put in the guard room. I was locked in. I was accused of killing the Mandi. I was locked up for 3 days Masaba was in the same cell.
 KUDOSI: affirmed: MGiabu.

I remember that a dead Mandi was found on Mr. Bentley's farm and I was charged with murder. I was arrested and brought to the Police station. There was blood on my singlet. I was asked about it. The European Police Officer whose name I don't know asked me. was the officer who came and had the body dug up. I explained that it was the blood of a buck that I had carried. The askari asked me to try to make me admit that I knew who had killed the Mandi. He took me out of the cell and asked me to say that it was the three other askaris. I refused and Wokumu took the buck to me in the cell.

ADJOURNED SINCE DUE.

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C0533/413

Constitution (Amendment) Bill

and Order of 1930

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11/24/31

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