

KENYA

C.O.
54366

Recd
Recd 4 NOV 20

57+366

PLEADING AND TORTURE OF NATIVE

460

1920

Sept

Transfull report of hearing of case and statement
of proceedings of appeal with covering memo by Mr Justice
Maxwell and states that Longley Hawkins is now undergoing
the sentence imposed

53893

Handwritten signature
Sir H. Reed

I do not think it is necessary to
comment fully on the case.

In two places (end of (D)(f) and
end of (H)) the Governor ^{seemingly} refers (in
the latter case without giving the sentence)
to Mr Maxwell's comment on the several
visions which might have been
brought against Hawkins if the policeman
had lived to give evidence. The Govt
says that this remark was made
by Mr Maxwell "judgment" - (? Summary
of), but that I find it in his
report to the Council. The
report is on page 10 of the
minutes of the meeting of the
Council on the 11th inst.

From the point of view of Council as
with the Governor the only further step is

Copy & enclo to org & 100
on copy sub by logs

Subsequent Paper

and take up is, I think, the idea of
the discipline which makes it possible
for a man to be able to do a great
business of criminal investigation, whether
on his own account or in the investigation of
another. We ought to comment on
this, I think, and say that a great
rule, which is drawn up for governing
the action of police officers, and not
whenever they are in the street
or in other circumstances of the kind.

As regards the House of Commons
I think that a copy of the despatch
with the enclosure, ~~and the~~
placed in the library, from which it is
the duplicate of the regulations, and
to be complete except for the sketches
sketches, for completeness, the
copy now sent in should be used for
the purpose.

6. Oct 9. 11. 20

am happy to have what I think is the
early copies in possession of the
and finally, to any recent advance
I have had info for some time
From the point of view of the
the result in any opinion shall with
the month of the year.

It is a scandalous thing that an Assant should be sent out to hunt for evidence in a "lost property" case without apparently any supervision save that of the local and what not "the property" whose notions of obtaining evidence resolved themselves into torturing natives to extort confessions.

But for this lax police procedure this case might not have occurred at all or might at any rate have been a far less serious one and I agree with Mr Bottomley that the system of "criminal investigation" needs drastic overhauling in Kenya.

J.S.R.

25/11/30.

Sir G. Fiddes

This is a revolting case and will, no doubt, be turned to account by the "Indian" and "Compulsory Labour" agitators.

We do not appear to have given any undertaking to lay papers, but Sir A. Yeo asked on the 5th of August (H. of C. 35407) and 4th of November (H. of C. 53893) whether a Report of the case would be laid and I think that we had better proceed as proposed by Mr Bottomley at (A) of his minute.

Before this is done, however, I think that a strongly-worded despatch should be sent to the Governor expressing the Secretary of State's ^{abhorrence} ~~condemnation~~ of such acts of callous brutality, saying ~~that~~, in view of statements which have appeared in the Press of this country during the trial that cases of this kind are very rare and that the general behaviour of the Whites show a strict

strict sense of duty, fairness, and humanity towards
the natives - then content strongly on the law police
procedure and say that immediate steps should be taken
to remedy this state of affairs (on the lines of Mr
Bottomley's and Mr. Hiley's speeches)

Draft to be for consideration, as Lord Meizer
will probably wish to see the exact wording. When
this despatch has gone it should be placed with the
other papers in the House of Commons Library.

H. J. R.

26/11/20

Draft. Dft for consideration - I shall send to
Library of the House, so we can consider the
matter in dft. comes on.

Dec. 2. 11

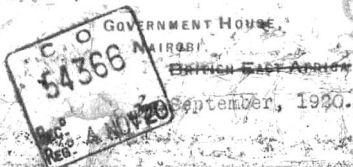
~~Colony~~
Lord Meizer

See Dft. herewith. - I don't
like the idea (as we are) of putting MS
in the Library as a substitute for keeping papers.
It is a considerable expense to print all
this. Possibly Col. Amery's reply on 5/3/20
showing that justice had been done, was a
disturbance of the matter, & that we might
lead to a quarter of a year of anything unless we
are very reluctant to do so.

- (1) I don't think it is necessary to put it in the Library
- (2) I don't think it is necessary to put it in the Library

KENYA AND THE
PROTECTORATE

1074



My Lord,

With reference to Your Lordship's despatch No. 1155 of 11th August, I have the honour to transmit herewith a full account of the hearing of the case of Rex versus Longley Hawkins, in the Magistrate's Court, and in the High Court, and also a statement of the proceedings in appeal, together with a covering memorandum by Mr. Justice Maxwell, Acting Chief Justice, who was the presiding judge at the High Court trial.

2. I trust that these papers will convey to Your Lordship all the information that is desired. But the following resume of the facts may assist in obtaining a grasp of the events as they occurred:-

- (a) Hawkins lost Rs. 400/- and some important papers and suspected some of his employees of having stolen them.
- (b) In order to extort a confession on this point he inflicted severe injuries on three male natives, one of whom died as a result, and caused a female native to be beaten.
- (c) He was committed for trial by the High

Court on three charges of voluntarily causing grievous hurt to extort a confession under Section 331 Indian Penal Code, and on a fourth charge of voluntarily causing hurt to extort a confession under Section 330 Indian Penal Code.

(d) After trial in the High Court he was found guilty of two acts of hurt to extort confession and one act of grievous hurt for the same purpose and sentenced on the first charge to two years' rigorous imprisonment and on the second charge to the same punishment, the two terms to run concurrently; on the third charge he was sentenced to pay a fine of Rs.2000/- with the alternative of nine months rigorous imprisonment.

(e) The actual injuries were committed by a native policeman named Kisanda and by Hawkins himself, the former acting in some cases with the latter's knowledge and in some cases without it.

(f) Kisanda had been sent to the accused's farm to investigate the supposed theft and remained there for that purpose. Prior to the hearing of the case, he committed suicide apparently through fear of the consequences of his actions and remorse. In his judgment Mr. Justice Maxwell remarked that had Kisanda's evidence been available, it is probable that Hawkins would have been charged with an even more serious offence than those with which he was actually charged and found guilty.

the victims of Hawkins' vindictive action (with Kisanda's assistance). Mucheru was first grossly ill-treated by Kisanda - not apparently with the knowledge of Hawkins.

Ricku and Kamangu were then arrested, tied together and flogged by Kisanda and Hawkins with a kiboko or sjambok. They were kept tied up all night and at intervals during the following day they were again severely injured by both Hawkins and Kisanda.

(i) On the strength of a statement alleged to have been made by Kamangu that his mother knew where the rupees were, the latter, a woman of between 35 and 40 and three months pregnant, was sent for by Hawkins and flogged at his orders by Kisanda. She was sent to find the money but failed to do so.

(j) Kamangu and Ricku were again flogged. They were then taken to a vice, and the accused caused their fingers to be placed in it and crushed. It should be noted ^{that} with reference to the question asked in the House of Commons by Sir Alfred Yao, Dr. Henderson's evidence did not include any statement to the effect that "the fat had been crushed out of the muscles" of the victims.

(k) It appears, but is not certain, that Ricku and Kamangu were again beaten by, or at the orders of, Hawkins on the following day. However, as the farm was in the hands of the British the farm in custody in Henderson's hands were

were tied together all that afternoon, and he was flogged by Hawkins and later with Hawkins' connivance by Kisanda.

(1) He was then taken by Kisanda to look for the missing ropes and returned in three hours like in a state of collapse. Hawkins struck him two or three times with a kiboko and seeing his condition, left him. Mucheru died in the evening of that day, Hawkins having taken no steps to render him any medical assistance in spite of his condition.

3. It is apparent therefore that Hawkins was guilty of most brutal and cruel behaviour towards the three male natives Mucheru, Rickai and Kamanga, and in a somewhat less degree, towards the woman Mukemi. It would appear that the remark of Mr. Justice Maxwell, that if Kisanda had been alive to give evidence, a much more serious charge might well have been preferred against him.

4. The appeal against the judgment was based on certain arguments relating to the manner in which the direction to the jury was framed, and was dismissed. Hawkins is therefore undergoing the sentence imposed.

5. I thoroughly endorse the remarks of the learned judge and of the Appeal Court, to the effect that the crime was one of exceptional heinousness and savage brutality and demanded the summary punishment meted out in this case.

has

has received the approval of the vast majority of white inhabitants of this Colony. Public opinion is definitely against acts of this kind towards natives and the attitude of England is in no way typical of the average European's standard of conduct towards the native. A case of this kind is merely a notable exception to the proper sense of responsibility as regards just dealing with natives which is generally entertained by the white settler.

I have the honour to be,

Your lordship's

humble, obedient servant,

Edward Northey

GOVERNOR.

2457

Downing Street,
December, 1920.

29

DRAFT.

Sir,

I have etc. to acknowledge the receipt of your despatch No. 1074 of the 30th of September forwarding an account of the proceedings in the case of Rex versus Longley Hawkins.

~~I have read the papers with great interest.~~ I cannot express too strongly my abhorrence of such acts of callous brutality as have been revealed in this case and. In view of statements which have appeared in the Press of this country, I am glad that it was made clear during the trial that cases of this kind are ^{being} very rare, and that the general behavior of the European residents in Kenya shows a strict sense of duty, fairness and humanity towards the natives.

I am much dissatisfied to find that it should have been possible for a native policeman to use violent measures of... an his own account or at the instigation of... In this case the Askari appears to

and
14/12/20

Govr. Sir E. Northey, K.C.M.G.,
MINUTE. C.B.

- Mr. Jeffries 1.12.20
- Mr. Batterbee 7.
- Mr. Boltonley 2.12.20
- Mr. Grindle.
- Sir H. Lambert.

- Mr. H. Read. 2/21/20
- Sir G. Fiddes 8.
- Mr. Albery
- Lord Milner. M 23/12

to learn from your text in the opinion of the presiding judge

for course

3 copies for the press... to be a stain

to have been subject to supervision save that of the infamated owner of the lost property, whose notions of obtaining evidence resolved themselves into torturing natives in order to extort confessions.

4. But for this procedure, which indicates a most regrettable laxity of police discipline, the case might not have occurred at all, or might, at any rate, have been of a far less serious nature; and I must ask you to take immediate steps to remedy the present state of affairs and to cause strict rules to be drawn up governing the action of police

~~Askaris sent out to investigate reported cases of theft for on other occasions of the kind.~~

I have, etc.

Askaris in circumstances of this kind, the good name of the Colonial administration is involved, and it is essential that even Askaris should know that the crimes of his fellow natives are not at his mercy and that the orders of unofficial Europeans have no weight in such matters. I should be glad to have ^{request -} that you will inform me in due course what action has been taken to carry out my wishes.

MILNER

6

N. 3731/20

468

HIGH COURT,

Nairobi,

21st September 1920.

THE HONOURABLE
THE ACTING CHIEF SECRETARY,

17/30.9.20

NAIROBI.

CRIMINAL CASE NO. 47 of 1920.

Rex versus Hawkins.

Sir,

In answer to your request (1605 of 20. 9. 20) for a report on the above named case I have the honour to forward herewith in duplicate the following papers (pages 1 - 115).

- A. 1 - 3. Copies of the Charges against the accused.
- B. 4 - 5. Copy of Judgment and Sentence.
- C. 6. Memorandum of Appeal.
- D. 7 - 9. Copy of Judgment of H. M.'s Court of Appeal for Eastern Africa.
- E. 10 - 12. The first two sections of my address to the Jury.
- F. 13 - 18. The third section of my address to the Jury. The last three paragraphs of the prefatory remarks thereto on page 13 apply to the whole of E.F. and G.
- G. 19 - 24. Summary of the Contents of the fourth section of my address to the Jury; concluding (pp. 22-24) with my comments on the evidence of the witnesses Hawkins (accused) and Waller.
- H. 25. The final section of my address to the Jury.
- J. 26 - 27. The relevant extracts from the Indian Penal Code which I had typed out for the Jury's benefit.
- K. 28 - 66. Copy of the Notes of Evidence of the Case in which some of the evidence has been used.
- L. 67-115. Copy of Proceedings before the Court (as provided).

The Memorandum of Appeal

Jury I

ing up was based. From them I transcribed it in full except its fourth section the same evening and I handed it to the Court of Appeal where it was I see pronounced "Unimpeachable" also at his request and "as a matter of courtesy not of precedent" gave a copy (F) of what I had said on the relevant part to the Appellant's Counsel.

In the fourth section of my summing up I examined the evidence on either side dealing separately with each victim's experiences day by day from 5-8 May inclusive. That part alone occupied over an hour in delivery and it would be useless to attempt to repeat it. I therefore (G) merely recapitulate its essentials. I had made a minute analysis of the evidence and dealt with it point by point particularly emphasizing its various contradictions improbabilities and impossibilities.

I shall certainly take similar precautions in future and, if I differ from them, I shall unhesitatingly state any so called "verbatim reports" in the local press or their reporters' efforts in other Court matters be any indication of their intelligence and their accuracy.

Hawkins is a man of exceptionally powerful physique. Evidence of insanity on his behalf was ever submitted to the Court. That he was so obsessed by the loss of his cash as to have become temporarily mentally ill-balanced would be the only possible excuse for the prolonged acts of callous cruelty of which he was, in my opinion, rightly convicted. The so-called "Kiboko" used by him was "a horrible looking man on the worst" seen by the District Commissioner Nambu "in years experience of the country".

It was fortunate for him that the native policeman who committed suicide before the case started otherwise a serious charge would have been brought against him.

It will be noticed that terrible as his evidence was,

(3)

... before me nor before the committing Magistrate did
render any anything which could be twisted into meaning
"fat had been crushed out of the muscles" of the victims.
... would seem to be merely a journalistic elaboration where,
... y, no elaboration was necessary.

I have the honour to be,

Sir,

Your obedient servant,

T. D. Maxwell

ACTING CHIEF JUSTICE.

~~I am able only to forward one copy of the proceeding
before the Magistrate. If another is required I will
obtain from Membasa or have it made.~~

EAST AFRICA



PROTECTORATE

In the ~~RESIDENT MAGISTRATE'S~~ Court

471

The Crown

Prosecution

versus

~~James Makine~~

Defendant

I, ~~H. G. GOSWAMI, P. M.~~

do hereby charge you ~~GEORGE MAKINE~~

that you on or about the ~~17th~~ day of ~~June~~ 19~~20~~ in ~~U. E. N.~~ ~~U. E. N.~~ PROVINCE

did beat severely with a broad-bladed ~~knife~~ one ~~Maheba~~ ~~between 8 & 9 p.m.~~ and that you did ~~beat~~ ~~the said Maheba~~ with the said ~~knife~~ between 4 & 5 p.m. when he was in severe bodily pain in consequence of ~~which~~ injuries (along with others) the said ~~Maheba~~ died at 8 p.m. on 8.5.20 and that you did cause these injuries to the said ~~Maheba~~ with intent to extort from him a confession.

and thereby committed the offence of ~~voluntarily causing grievous hurt to~~ ~~one~~ ~~person~~

punishable under Section ~~302~~ of Ordinance No. ~~1~~ of ~~1914~~

and within my cognizance and I hereby direct that you be tried on the said charge.

Dated ~~17th~~ day of ~~June~~ 19~~20~~

(Sd.) ~~H. G. Goswami~~

EAST AFRICA PROTECTORATE

A 2.

In the RESIDENT MAGISTRATE'S Court

472

at NAIROBI.

THE CROWN

Prosecuter
Plaintiff

versus

Lonley Hawkins

Accused.
Defendant

A. Doerly, M. B.

do hereby charge you Lonley Hawkins

that you on or about the 5th, 6th & 7th 1920 in Nairobi, Ukamba Province, did beat one Ricku one Kamangu with broad-thonged kiboko and on the 7th day did squeeze the fingers of the said Ricku and the said Kamangu in a vice, with intent to extort a confession from them; and that through the injuries caused to them by you they have been unable to follow their ordinary pursuits and have been in severe bodily pain during the space of 20 days.

and thereby committed the offence of voluntarily causing grievous hurt to extort a confession (on two counts)

punishable under Section 332 of Ordinance No. of I.P.C.

and within my cognizance and I hereby direct that you be tried on the said charge.

Dated 17. 8. 1920

(Sd.) A. Doerly

EAST AFRICA PROTECTORATE

In the RESIDENT MAGISTRATE'S COURT

A-3. 473

at Nairobi

The Crown

Prosecutor Plaintiff

versus

Lonley Mutini

Accused

Defendant

I, A. S. Dooly, B.A.,

do hereby charge you, Lonley Mutini

that you on or about the 14th day of 5, 1920 in Nairobi, Kenya Province were present when a woman named Mukani was beaten with your kiboko by a native policeman with intent to extort confession and that you did intentionally aid the said policeman by allowing him to use your kiboko for the purpose

and thereby committed the offence of voluntarily causing hurt to extort confession

punishable under Section 330 of Ordinance No. 10 of 1912

and within my cognizance and I hereby direct that you be tried on the said charge

Dated 17th day of 9, 1920

(Sgd.) A. S. Dooly

IN H. M. HIGH COURT OF EAST AFRICA AT NAIROBI.

Criminal Case No. 47 of 1920

Max

Prosecutor

474

versus

Longley Hawkes

Accused.

Jury retired at 3.27 p.m.

Jury returned at 4.28 p.m.

Are you unanimous? Yes.

What is your verdict on first charge?

Guilty of hurt to extort confession.

On second?

Guilty of grievous hurt to extort confession

On third?

Guilty of hurt to extort confession.

1st Charge. We find accused beat witness to extort confession both at 2 p.m. and on his return from tennis and that on this occasion he used a kiboke.

2nd. We find him guilty collectively by beating and squeezing in the vice.

3rd. In that he was present when the blows were struck, was within ear-shot when further blows were struck, and that he stood by and did not report the same to the authorities.

JUDGMENT:

You have been found guilty of 2 acts of hurt to extort confession and to one act of grievous hurt for the same purpose. I do not wish to add to the humiliation of your present position by saying

more than this that I concur in the verdict of the Jury and that I consider it my duty to inflict a severe and an exemplary punishment.

The sentence of the Court is that on the 1st charge you suffer rigorous imprisonment for 2 years.

On the 2nd charge you suffer rigorous imprisonment for 2 years: the two terms to run concurrently: and in addition on the 3rd charge you pay a fine of 2000 rupees (two thousand) with the alternative of nine months rigorous imprisonment.

(Sgd.) T. D. Maxwell

J

9. 8. 20.

Jury discharged from jury service for 12 months.

(Sgd.) T. D. Maxwell

J.

9. 8. 20.

True copy.

(Sgd.) T. D. Maxwell

Ag: C.J.

IN HIS MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA.

CRIMINAL APPEAL NO: 6 OF 1920.

(Original Criminal Case No. 47 of 1920 of the High Court)

(of the Kenya Colony)

(at Nairobi)

LONGLEY HAWKINS

APPELLANT
(accused)

versus

RE:

RESPONSE TO
PROSECUTION

MEMORANDUM OF APPEAL

The Appellant appeals against the judgment and sentence pronounced herein on the following and other grounds:-

1. The learned Chief Justice erred in his direction to the Jury on the law affecting the case.
2. The learned Chief Justice erred in his direction to the Jury on the weight to be attached to the evidence of certain of the witnesses in the cases.
3. The Verdict of the Jury was against the weight of evidence.
4. The Learned Chief Justice was erred in not directing the Jury not to regard the political aspect of the case urged by the learned Crown Counsel for the prosecution.
5. The learned Chief Justice erred in his summing up of the whole case on the law and evidence adduced in the case.
6. That the proceedings of the Court in the above cases were unfair and oppressive.

(Sgd.) A. E. Harms,
ADVOCATE FOR THE APPELLANT.

B. D. Maxwell
AG: C. J.

Nairobi.

Dated thirteenth day of August 1920.

IN HIS MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA

Criminal Appeal No. 6 of 1920

From Criminal Case No. 47 of 1920 of H. M. High Court of East
East (Sittings at Nairobi)Lonsie Perkins.....Appellant
(Original Accused)

Versus

H.M.Respondent
(Original Prosecutor)GORAN GUTHRIE-SMITH J. (UGANDA), SHERIDAN J. (EAST AFRICA) AND
WELCHER, ASSISTANT JUDGE (NAIROBI)JUDGMENT:-

This is an appeal from convictions and sentences by Mr. Justice Maxwell. There were 3 charges the first concerning the beating of a native Wucheru, the second concerning the beating of two natives Kamangu and Riaku and torturing them by squeezing their fingers in a steel vice and the last concerning the beating of a woman called Mukami.

The first point argued was that charge number 2 involved two distinct offences and so there were really four charges in the one trial which is against the provisions of Section 193 of the Criminal Procedure Code. We think however that the case rather falls under Section 194 of the same Code by which any number of offences committed in the course of the same transaction may be tried in one trial. A transaction has been defined to be a course of action direct to a single purpose or to a single end, or a series of acts which are connected by a common purpose, and the acts are connected by. It appears that the accused had lost a large sum of rupees in a box stolen from his house and that an askari was sent out to help in the recovery of them.

The method adopted was to subject every native suspected to merciless beating in the hope of extorting a confession or information as to the whereabouts of the rupaes. There was therefore such a custom spread throughout the area that the acts were subject to Section 194.

It is true that the Section must be carefully applied and there might be multiple charges coming within in its terms which it would be improper to try together owing to prejudice and oppression to the prisoner. Nothing of that sort is present in the case before us and as a matter of fact the prisoner's Counsel at the trial agreed that it would be better not to have separate trials. The evidence in this case shows clearly that the accused did a large amount of beating personally using for the purpose a very heavy kiboko of the kind used by Somali cattle drivers. The major part of the beating was done by the askari partly in the accused's presence or having and either by his orders or with his tacit approval, but as to the larger part not in his presence and as we shall assume in his favour without his knowledge. He says himself that the askari was a policeman and it was not for him to interfere with the way the askari carried out his function. We think he was wrong in this and that he was under a very strong moral duty to interfere if he saw the askari breaking the law. We think it probable that the askari would never have gone so far as he did unless he knew he had the accused's approval. We think that a charge of abetment would have lain but however that may be the Prosecution at the trial took a more lenient view and only charged the accused in respect of the askari's beating. It is to be noted that the askari was distinctly instigated and to have been present at them. An abettor under those circumstances is made liable as a principal by Section 114 of the I.P.C.

We have before us the notes of the Judge's summing

(3)

up and are satisfied that his statement of the law is unimpeachable and that he directed the attention of the Jury to the exact points upon which their decision was requisite for a conviction and we think further that the verdict was in every respect justified by the evidence.

Then as to the sentences. The record discloses a long continued series of acts characterized by utterly heartless callous brutality. Fortunately it is true that cases of this sort are extremely rare in East Africa. As far as my experience goes the white inhabitants of this part of Africa behave towards the native races with a very adequate sense of the strict duty they are under to exercise the most scrupulous fairness and humanity. This however makes it the more deplorable to come upon such a lapse into savage brutality as the accused has exhibited and justifies the imposition of a heavy sentence.

The appeal is therefore dismissed.

- (Sd) F. Guthrie-Smith.
- (Sd) Joseph Sheridan.
- Sd) C. F. Belcher Asst. J.

27th August 1920.

True copy.

(Sgd.) T. D. Maxwell

AG: C.J.

We have now reached the penultimate stage of this long trial to which you have listened with such patient attention.

As a matter of possible interest I have had the statistical records of the High Court searched to see how many offences similar to those charged against the accused have been dealt with in this Court during the last 12 years - offences in which a European was charged. I find there have been none at all under Section 331: and only one under Section 330.

The subject matter of this case is in this country therefore an almost unheard of offence and as such I need hardly say it requires your most careful scrutiny.

Were it not so rare it would still be your duty to examine the evidence with no less care for it is a truism that in criminal matters each case is independent of every other and no decision upon facts forms a precedent for any other decision.

II.

E.

Before examining in detail the evidence in this case I wish first to make a general comment on that you have heard from the natives.

Those of us who have lived any length of time in Africa particularly those of us whose work lies in the Law Courts know but too well this simple elementary fact.

The unsophisticated African is congenitally incapable of telling a simple and direct story in a simple and direct way. More particularly is he incapable of doing so when his narrative is about events which occurred some time previously. In the interval he seems [so to speak] to chew the cud of his recollections, to revolve in his mind over and over again all the incidents in question, to add to them, - possibly, even probably, to distort them -, and the result is but too often a curious amalgam of fact and fancy.

I do not suggest for a moment that a raw African is incapable of inventing and swearing positively to a series of sheer malevolent lies - that is a failing which he shares with some members of every race - but I wish to warn you that as a general rule because much of his story in a witness box is grotesquely improbable even palpably impossible that is in itself no reason for disregarding the whole as one would be far more entitled to in the case of a European witness or a witness of another superior race.

When two such witnesses give very varying versions of the same incident that is again no reason for disbelieving the basis of their evidence.

On the contrary when 2 such men give identical

versions of the same incident depend on the same details and especially to the same unimportant details - then is the time for suspicion and disbelief.

Then it is as nearly certain as anything can be certain in the witness box that their evidence is the result of concoction and collusion. It would seem from our European point of view that nature had played a queer trick on the blackman when she made him and had given him a perverted memory. Possibly somewhere at the back of his mind he thinks the same of us.

Let me illustrate my meaning.

It has no doubt been the experience of some of you to have been safely piloted by a raw (and possibly naked) African through apparently pathless bush, or amongst bewilderingly similar mangrove swamps. He has previously been there of course, he has mentally visualized and can remember in order the various landmarks which to our eyes are too often indistinguishable.

But after your safari if you try to get him to narrate in consecutive and intelligent order the events of the day's march he will be unable to do so and still more so if you ask him for those of yesterday. He lacks the faculty on which we pride ourselves - the faculty of remembering a series of events: but in its place he has this compensation and can remember amazingly a series of things.

It will be for you to say Gentlemen of the Jury when we come to examine the evidence in detail whether that in the witness's evidence in this case is so contradictory as to be unsatisfactory: so non-contradictory as to be not above suspicion: or so near the happy medium as to be worthy of your credence beyond any reasonable doubt.

LAW.

Rex v Hawkins.

For the purposes of his appeal, Mr. Macrae asks me to supply him with a copy of what I said in my summing up on the subject of the law relevant to this case.

I am not in the least bound to do so. I do so as a matter of courtesy not of precedent.

I spoke extempore and therefore have no exact copy of my words. There is no newspaper report (if there were it would be inaccurate) nor, so far as I know, any shorthand report of what I said.

From my notes I have however reconstructed the following.

It at all events contains everything I said and nothing that I did not say. Nearly always I think I can claim to have recalled the precise words - which I prepared with great care - in no place have I in any way whatever altered the sense. The order of a few of the sentences is however perhaps a little different.

(Sgd.) T. D. Maxwell

Ag: C. J.

III.

I now pass to the law which is relevant to the subject matter of these charges.

Two days ago I had prepared for you and I handed you typed extracts of the sections of the Indian Penal Code which affect this case. Those you still have (A copy is on the file).

You will see

- a) On what sections these charges are based 330, 331.
- b) What is meant (in law) by "hurt" and "grievous hurt" 319, 320(b).
- c) The voluntarily causes hurt and grievous hurt respectively 321, 322.
- d) What is meant by abetment: and
- e) What is the law's point of view when a man who otherwise would be an abettor is present when the offence he instigates or aids is committed 107, 114.

Mr. Allen has suggested that it is impossible for you to return a verdict of "guilty of grievous hurt" in the case of the boy Mucheru because he is dead and that therefore in connection with him no charge can lie other than one for murder or manslaughter. I disagree with him. The Crown Counsel has never attempted to suggest that the boy died otherwise than as a result of the injuries inflicted upon him by the askari Kisanda in the absence of the accused: but the Crown case is that before he died that boy suffered injuries from ~~the~~ accused himself which endangered his life and that those injuries were

If you are satisfied from the evidence that he did so, then if you are so satisfied you return a verdict of guilty on this count as it stands.

Or you may return a verdict of guilty of hurt for the same purpose if you are satisfied on the evidence

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evidence that the injuries inflicted on the boy
Luchneru were inflicted to extort confession but were
not "grievous".

Further Mr. Allen contends that the accused is
nowhere charged with abetment and that you cannot
therefore find him guilty of abetment. That is
perfectly true. The Crown does not ask you for such
a verdict.

ec p.18

Refers beginning this morning up I read aloud
x the note I have recorded on that point. I will
however try to explain my meaning more fully.

The accused is charged with having voluntarily
caused hurt and grievous hurt respectively to extort
confession. Now there are more ways than one in
which a man can voluntarily cause hurt or grievous
hurt.

If I take a stick and beat a man with it till
his life is endangered particularly if like Luchneru
he is handcuffed throughout I cause him grievous
hurt.

Also - and no less - do I do so if I instigate
another to do the same thing (or intentionally aid
him in doing the same thing) and if I am present
when such act or acts are committed by him. That
"and" is very important.

What is meant in this connexion by being
"present" has been the subject of many a complicated
leading case. The word has been held to cover all
sorts of legal niceties of meaning. Ordinarily we
need not consider them in this case. Or whatever
the word "present" does or does not mean - it does
mean that the accused is present at the time of the
act which he instigates or intentionally aids when
he is an eye or an ear witness of what passes.

The point for your consideration is this.

Did accused instigate or intentionally aid Kipanda to do illegal acts, and was he thereupon in this sense guilty when Kipanda did them? If so accused shall be deemed to have committed such acts.

That he is charged with having committed such acts: that is why he is not charged with "abatement": and that is why there is no suggestion as to his having been an abettor.

In this case it is absolutely and utterly immaterial whether one or more or all of the four (Mushera Kamangu Richa and Mukami) were or were not guilty of the original theft of the rupees or had any subsequent knowledge of it of any sort or kind. Assume if you care to that the three boys were the actual thieves and this unhappy woman the actual receiver. That makes no shadow of difference to the gravity of the offences with which the accused is charged. It is only fair to the 4 victims to add that their inflexible silence under prolonged torture (by whomsoever that was inflicted) shows a stoicism of which one could hardly believe Africans of their class to be capable and that the chances are therefore that they know no more about the original theft than you or I. But, as I say, that is immaterial.

It is safe to assume (the fact is mutually conceded) that Mushera, Kamangu and Richa did receive grievous hurt and that Mukami did receive hurt.

But from whom? and for what purpose?

... from Kipanda or from the accused either actually or constructively? i.e. Did the accused actually deal any blows which you consider amount to hurt and grievous hurt as charged respectively to extort confession or, if he did not do so did he

F.

- a) instigate Kisanda to do that thing?
 or b) intentionally aid Kisanda by an act or illegal
 omission in the doing of that thing?

And (again) you have that same important "and" which
 he present when such act or acts were committed?

In the charges about the 3 ways if you consider
hurt only (to extort confession) has been proved you
 may return a verdict to that effect.

Finally I may add that on these charges of hurt
 and grievous hurt "to extort confession" respectively
 - you are entitled to return a verdict of "hurt" or
 "Grievous hurt" merely if you consider the purpose
 "to extort confession" not to have been proved
 beyond any reasonable doubt. At the same time it is
 my duty to warn you that should you do so it would
 be almost entirely on the evidence of the accused
 himself: for the evidence of the Crown witnesses is
 so indissolubly blended with evidence as to the
 extortion of confession that if you reject it on one
 point it would be unsafe to accept it on the other
 and being unsafe it would be unfair to the accused.

(Sgd.) T. D. Maxwell

AG: C. J.

* NOTE.

With reference to the contention of the accused's Counsel that he is not charged with abetment. I wish to say this.

The accused is charged on 2 counts with having voluntarily caused grievous hurt and on one with having voluntarily caused hurt: all with the purpose of extorting confession.

Under Section 114 I.P.C. a person who, if absent would be liable to be punished as an abettor, is present when the act or offence is committed he shall ~~should be deemed~~ to have committed such offence.

It is therefore unnecessary in my opinion specifically to have charged him also with abetment.

That would only have been necessary had the Crown case been that the accused was in any way an abettor of the illegal acts admittedly committed by one or more of the sakaris in his absence. That is nowhere suggested.

I have the power under Section 186 Criminal Procedure Ordinance, 1913 at this stage to add the charge of abetment to each of those already preferred against the accused but in view of above ruling I refrain from so doing.

I rule further that accused can be charged with grievous hurt "to endanger life": the death being more directly due to acts of Kisanda: otherwise accused would have been charged with murder.

IV.

I have examined the evidence in detail and summarized the facts. They are briefly as follows.

April 30. A chest box containing 400 rupees and important papers is stolen from the accused.

During the next few days Richu, Kamanga and Mucheru 3 employees of the accused are suspected of the theft - the suspicion being based mainly on the results of native ordeals. A complaint is made to the police at Ruiru. A police constable is sent out to accused's farm. His name I spell as Misanda: (the initial letter is a guttural H and the "S" has a "th" sound: consequently in various papers connected with these proceedings he appears also as "Masanda and Githanda). There is no doubt that on or about the night of 30th April he disgracefully illtreated the suspect Mucheru: tying him up head downwards to a roof beam or long pole and beating him to extort a confession. There is however no evidence that the accused was cognizant of this -

On the evening of 5th May 2 weeks after the theft Richu and Kamanga were under arrest suspected of it at accused's farm: they were tied together and flogged to extort confession by Misanda and also - as the Jury found - by the accused - They were kept tied up all that night, and all the next day 6th May throughout which they were again severely beaten at intervals again ~~with~~ by Misanda and the accused.

Kamanga is alleged to have cried out that his mother knew where the stolen rupees were. That is his own evidence of an incident that happened when he must have been frantic with pain and terror.

Personally

Personally I did not believe it but I did not think it fair to the accused to put my own theory before the jury. It is this. That the wretched boy simply exclaimed "my mother oh! my mother". It is an ejaculation that is always on the lips of an African in moments of intense emotion. Be that as it may the woman was sent for by accused's orders (she is between 35 and 40 and was 2 months pregnant) and by his orders first flogged by Kasanga and then sent away with him on an unsuccessful errand to find the missing money. (I pointed out to the jury that though the Crown emphasised her pregnancy it is more than unlikely that the accused was aware of it first because it was in a very early stage and secondly because even if it had been more advanced the Kikuyu method of wearing skins would tend to obscure the fact.)

On her return accused according to his own statement was so angry with Kasanga for "having got his mother into trouble" that he promptly flogged him again and also - "apparently to show his impartiality" as the Crown Counsel suggested - Richa as well.

There was at no time any objection by the counsel for defence (until the case went before the Court of Appeal) to the charges in connection with the ill-treatment of Kasanga and Richa being taken together. Had there been one I should certainly have suggested that the two boys were the subjects of the same punishment. The fact that the long whiplash which was used must also have reached the other: that fact and the above incident shew in my opinion conclusively that so far as they were concerned the hurt they received was of "one transaction".

They were then taken to the vice - a formidable looking instrument as much as one man can lift - and their fingers crushed by the accused.

The next morning (Friday 7th May) accused had occasion to go to the Police Station at Ruiru but - very significantly - made no complaint to the Police as to the behaviour of Kisanda during the preceding two days.

The evidence is very conflicting as to whether one or both of the boys were beaten by accused on this day. Kamangu himself says not. The European witness saw Kisanda mal-treating Richa and it is to this that Richa may be referring when he asserts they were both beaten by the accused on his return.

On the Saturday (8th May) Musheru arrived about 2 p.m. at accused's farm in custody and handcuffs. It is doubtful if the handcuffs were ever removed: at any rate his hands were tied together throughout the afternoon.

He was flogged by the accused "for insolence" on his arrival and immediately afterwards - and undoubtedly with accused's connivance - by Kisanda.

He was taken away - strong and well - by Kisanda to look for the missing rupees. Accused meanwhile went to play tennis. Musheru was brought back by Kisanda some 3 hours later: he was then in a state of collapse. Accused struck him 2 or 3 times with a kiboko and then seeing his condition left him. In spite of his condition the accused in his own words "did not do anything for him then" - the boy died about 6 p.m.: in fact, as I pointed out to the jury (emphasising that his callous indifference formed no part of the charges against him) all the ever did do for Musheru was 2 days later when

WALLER.

I think when Captain Waller came into the box as a Crown witness he felt some sympathy for him in being called upon to give evidence against his friend and host. Indeed we would have been more than human or less than human had we not. And he would have been more - or less - than human if he had not consciously unconsciously or subconsciously tried to minimize the weight of his evidence. I do not know how he struck you but speaking for myself I confess that much of my sympathy had evaporated before he left the box. His manner to say the least of it was not very conciliatory. His use - no less than 4 times - of the extremely scornful and unnecessary word "niggers" shewed (to my mind) at least but scant sympathy towards the natives of this country in which he has recently selected to settle. Again he is prepared to swear that the boys all regarded the vice incident as a joke and were laughing at it accordingly; though the accused's own evidence on that subject is that the laughter was "a little hysterical". The joke at any rate was rather a grim one from the victims' point of view i.e. if you believe their evidence and that of the Medical Officer who saw their fingers shortly afterwards. Captain Waller propounds the theory that those injuries were caused by Kisanda with a split cane - the accused endorses this. You may believe that if you wish but I would like to point out that there is no little of evidence to support it and that not one of the other Crown witnesses, who were examined in this case - Captain Waller further asserts that on the Friday he saw Kisanda "tapping" one of the boys on the head with

a flat bit of wood - the words he used were a broken
bit of a whisky case but I cannot find that they are
correct - nor that he did so "threateningly".

Question how does one "say threateningly"? The
two words are self contradictory.

I think you will be safe in coming to the con-
clusion whatever you may think of his evidence and
feel towards him that Captain Miller is a singularly
inaccurate observer.

It was obviously necessary for the Crown to call
him. Had it not come so and had it transpired
subsequently that he had been present at any of the
occurrences which form the basis of these charges
the inference would have been irresistible that the
whole case was founded on unborne and prejudiced
native evidence.

That concludes the evidence on which these 3
charges are based.

(Sgd.) T. D. Maxwell

AG: G. J. J.

V. Gentlemen, you have a very grave and very serious public duty to perform. You have sworn in the old world phraseology of the jurors' oath well and truly to try the issue joined between Our Sovereign Lord the King and the prisoner at the bar and a true verdict to give according to the evidence.

I now ask you for that verdict and rely upon you that according to your oaths and your consciences it is a true one.

By returning a verdict against him you brand the accused (till recently an officer in His Majesty's Forces) as a man guilty of a series of callous contemptible cruelties: a man who has forgotten that membership of the dominant race has its responsibilities as well as its privileges - you must therefore consider well before you do so. If on the evidence you think there is any reasonable doubt as to the guilt of the accused on all or any of these charges, it is your duty to give him the benefit of that doubt.

If on the other hand you consider the offences with which he is charged or any of them to have been proved against him beyond any such reasonable doubt it is your bounden duty to put aside all personal feelings in the matter and any preconceived ideas on the subject that may possibly from any cause whatsoever have entered your minds and to return a verdict accordingly without fear or favour, affection or ill-will.

I will only add this: if you consider it your duty to return a verdict of guilty on any of these charges I shall ask you to inform me as to which specific act or acts of the accused that verdict refers.

(Sgd.) T. D. Maxwell

A person abets the doing of a thing, who -

107.

First - Instigates any person to do that thing; or

Secondly - Engaged with one or more persons in a conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or,

Thirdly - Intentionally aids, by an act or illegal omission, the doing of that thing.

114.

Whenever any person who, if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

319.

Whoever causes bodily pain, disease or infirmity to any person, is said to cause hurt.

320.

The following kinds of hurt only are designated as "grievous":-

Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

321.

Whoever does any act with the intention of thereby causing hurt to any person, or with knowledge that he is thereby causing hurt to any person, is said "voluntarily to cause hurt".

322.

Whoever ~~causes~~ voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely

to cause is grievous hurt, and if the hurt which he causes is grievous hurt, he said "voluntarily to cause grievous hurt."

150.

Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer, or any person interested in the sufferer, to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished.

151.

Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer, or any person interested in the sufferer, to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished.

Kasanda, Kisanda and Sitanda are synonymous
also Moko and Njhu.

1. J. DeWinton
2. B.S. Dumas
3. E.W. Playfair
4. W.C. Hamilton
5. J. Scott
6. E.C. Hargreaves
7. H.G. Shelton
8. P. Schutzen
9. P.H. Johnson

2 challenges for Crown. 3 for defence.

E.W. Playfair selected foreman.

Jurors sworn.

Allen has no objection to charges as they stand.

Blackall (for Crown) opens; and calls:

Arthur Birrell when sworn states:--

I am Inspector B.A.P. stationed at Suiru in April last. I received a report from the accused about 16 April. I produce it Ex 1. I sent a Kikuyu cop 2 or 3 days later Nwasi by name to accused's farm. Later accused reported personally. On 30.4.20 I returned and found Moko and Mocheru in the cells. They were in good health and quite all right. On Wednesday 5.5.20 or thereabouts I sent Moko to accused's farm as he said if he were sent he would say where he had hidden the box. On 4 May I received another letter from accused (Ex 2) in consequence of which I sent Mocheru to the farm. The next day 9 May accused came to the police station and told me that Mocheru had died the previous evening. I asked him if poison had been administered and he agreed with me that it was possible that he could be the murderer. He also stated that he had seen the box and he said he had seen it in a field about 20 yards from the house lying under a tree. I went to his farm with him and

and reached his farm about 12 on 9.5.20. when I got there I went with accused to see the body. The body was slightly decomposed: it was that of Bucheru. I noticed about 3 marks on the chest over the heart and towards the spine. These may have been caused by a Kiboko or a stick. I was alone with accused. I asked him about the marks. He said he had thrashed him with a kiboko and he showed me a kiboko which he said he had used to thrash the kiboko produced by X. Later I saw Capt. Waller on the farm. I spoke to him in the presence of the accused. The same evening I returned to Muiuru. I remember 13 May Thursday. That day I told Cpl Wamai to fetch Hasanda: that was at the Muiuru Station: I then heard a rifle shot. On going to a hut I saw several people there including Capt. Moore and I saw Hasanda lying dead. On 9 May when I went to accused's farm I did not see Kamangu and Moku.

Re-examined:-- On 13 May I sent Cpl Wamai to fetch Hasanda so that I might search him and then arrest him. Captain Moore is my superior officer. He usually resides at Mambu. On 13 May he was at Muiuru in connection with the death of Bucheru. It was a result of my enquiries that caused me to send for Hasanda. I sent Wamai to bring him to me. He then immediately committed suicide. He was in a tent within the police compound.

Re-examined:--

Hasanda was to be arrested in connection with the beating of a woman so far as I know.

Taken as read by consent.

(Sgt) T.P. Maxwell

4.8.20

Frederick Louis Henderson: sworn states:

I am in charge of the Native Civil Hospital. I remember on 13 May examining the body of a male native brought in from Muiuru the previous evening. It was decomposed so much so that I could form no opinion as to the cause of death. The heart had been brought in previously I subsequently examined

examined it. It had already been cut open and examined. I know a native named Rikku. I went to Suira on 11 May and brought him into the hospital from there. He was there for about 2 months. He was very ill and unable to walk. I produce my report made at the time Ex 4. I do not know how the bruise on the finger was caused. It might have been caused by being squeezed in a vice. The other wounds might have been caused by such a kiboko as Ex 3. Portions of the boys skin had been killed: such might happen from beating by a heavy weapon. He was in bed 2 or 3 weeks. He came out of hospital after 2 months. I have seen a good many men who have been beaten. The only one I have ever seen worse than Rikku was the boy Kananga. Rikku was in great pain in hospital. He could hardly move in bed. His left arm was very swollen. The only large wound he had was on the top of the left shoulder. About Kananga - He was brought in on the evening of 12 May was seen by Dr Fisher on arrival, by me on 13 May and every day subsequently. He is still in hospital. The injuries he had received had in my opinion endangered his life. I produce my report on his case at the time Ex 5. There was also a wound on the head which was not noticeable till the skin died off. It might have been caused by such an instrument as Ex 3. I have never seen a boy in such a bad state from a beating. The injury I refer to in Sec 7 of my report might have been caused by a vice. I examined a woman Mucami. I made no written report on her. She had only one mark on her on the shoulder. That was on 14 May at Suira. That appeared to have been caused by the same sort of instrument as the wounds on the boys.

XI. Examined:--

With regard to the case of the woman Mucami, I have seen her in hospital and she has given evidence at Suira and then returned. I cannot say precisely when she was discharged from hospital.

hospital. After he gave the evidence at Mairu he did not return. He had a wound on his shoulder which had not healed.

By Murori: The amount of Mairu was empty. I found no sign of any gross poison.

Taken as read by consent.

(Sgd) T.D. Maxwell.

4 August, 1920.

Harold Edward Waller: sworn states:—

I am a friend of the accused. Last April and May I was staying at his farm. I was there when a sum of money was stolen about 4 or 5 May. I came to Mairu for 2 days and then returned. I returned on a Thursday afternoon 6 May about 5 p.m. I was on the farm on 7.5 May. I saw no beatings on 7 May. On that day Captain Hawkins (accused) went into Mairu about 9 a.m. on his bicycle. He returned about 2 p.m. I knew Bicku and Kamanzu. I did not see either of them beaten on Friday 7th. On Thursday 6th I did see them beaten. They were each hit 2 or 3 times by accused the reason being I understand that one of them was lying about his mother. There was nothing to show me that either of them had been beaten before. They were beaten with a stick. I was present when accused made the 2 boys put their fingers in a vice. That was on the Thursday about 6 p.m. I don't know the reason why the vice was used. I do not know who told them to put their fingers in. Accused and an askari turned the handle of the vice. I thought every one was playing the fool. I understood it to be a joke. Accused said that he would not be satisfied unless the boys were satisfied. I thought if they had their fingers hurt, they would be satisfied. The next day 7th May I saw

saw nothing happen in the way of thrashing. I was near the vice practically the whole time. I never heard the boys cry. They were all laughing. On Saturday 5th I saw Kucheru, Muroheru, accused and the askari. Afterwards I saw him being sent out to look for the stolen 8 rupees. Then accused and I went to play tennis. Later I saw Kucheru return with the askari. I saw him sitting down on the ground. Water was poured over him. When Kucheru came back accused pulled him up and made him sit upright. He spoke to him. I did not see accused hit him I was not actually present the whole time. Had there been any blows struck I must have heard them. Kucheru reported not to be speaking. Accused and I went out and found him dead. It was then about 7 p.m. (on last day 8 day I saw Njoku and Kamanu I saw that Njoku's arm was swollen as if he had been badly beaten.

X-Examined:--

I returned on Thursday 6th day (about 5 p.m at the farm) I found a number of natives lined up in front of the house. There was a woman there too. I did not see her beaten. I saw her being taken off by the askari into the hollow down below the farm. Njoku and Kamanu were beaten before she left. Accused beat them with this kiboko. He gave them about 3 strokes each. One boy was struck as he was standing up. He sat down and was struck again. The other boy was struck standing up. I understood they had lied and said the woman had the rupees and that is why they were being thrashed. We then had tea accused and I. Then the incident at the vice happened. I agree the squeezing of fingers in a vice is not a joke. Accused was joking in the matter. He said he would not have been there if he had known. I am aware that the boys were all talking the incident at the vice as

as a joke. I know their fingers were out about. My opinion that injury was inflicted by the askari with a broken pipe. That was all I saw on Oct. During the time between Oct. 15 April (the theft) askaris used to harass the farm with natives inquiring about the theft. The askaris were I think sleeping on the farm. I used to see them fairly late at night and also early in the morning. There was no European supervision over these askaris in their proceedings with these natives. I remember 7 May Friday. Accused went to Ruiru about 9 a.m. to attend a meeting. He returned about 2 p.m. I remained on the farm. I saw Rikku or else Kamangu I can't say which and an askari with him that morning. They went off about 10.30 a.m. apparently to the reserve. The other boy (if it was 'nt Rikku) I never saw the whole day. I did not see the askari and the boy till the evening. On 7 May I never saw the accused with any natives at all. I saw the boy (probably Rikku) with the askari. The askari had a flat board about 2 ft long and 2 in wide and was tapping the boy on the head but not hard, so it struck me. I thought the askari threatening the boy; that was before they went into the reserve. I cannot say if the askari took this piece of board with him. I gave evidence before the magistrate at Ruiru. I saw one boy there, Rikku, I am practically certain it was the same one I saw with the askari at the farm. On Saturday 8 May Mueheru was brought up by an askari to the farm about 2 p.m. I saw Mueheru beaten both by the askari and the accused. The askari reported to the accused that he had brought Mueheru back to find the pupa. Accused went out at the back of the house where the boy Mueheru was sitting. Accused spoke to Mueheru. There were other boys there and the askari came and stood by. The accused then went into the house and later on 3. When accused took the pupa. Before that Mueheru made a noise with his mouth and spat on the ground: it was then that accused sent for Ex 3

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3. Accused took the Kiboko and Mocheru was made to lie down and accused hit him 12 or 15 times with his fist. He was struck on the buttocks. I also saw the askari beat the boy Mocheru. I saw the askari handed the 3 to the askari or three hit down. The askari hit Mocheru 2 or 3 times; then I went into the house and I heard 9 or 10 more strokes. The askari was a big Kavirondo. Later on I saw 2 askaris and Mocheru go off to look for the rupees. When he went off Mocheru was quite all right. He showed no signs of being injured or distressed. Accused and I then went to play tennis. Later both askaris returned with Mocheru. We ~~were~~ still playing tennis. When he arrived back Mocheru seemed to be in a fainting condition; he sat down was moved on a few yards and then sat down again. We finished the game of tennis and went into tea. Accused spoke to the boy and the police probably on the way into tea but I cannot remember this. After tea we both went out and played tennis again till about 6 p.m. Then I saw accused go up to Mocheru pull him up into a sitting position and then boys threw the water over Mocheru. That was roughly 6.30 p.m. By 7 p.m we ascertained the boy was dead. I am quite satisfied there could have been no severe beating given by the accused to Mocheru after tennis had a hard blow been struck I must have heard it. On the Thursday both I saw the woman go away with the askari into the bush. I saw her later. She was present at the vice incident. She was covered up but on one shoulder she had marks of a Kiboko.

Re-Exam:

I am not in a position to say that a finger hit with a cane will not cause a mark. I am not aware that the Kikuyu native is in the habit of spitting without any apparent cause. I understood for one to spit is a mark of contempt. After a beating one does not become stiff for a few minutes. I do not

not agree that when a native askari beats a European's servant in the presence of that European it must be assumed that he has that European's consent.

(Sgd) T.D. Maxwell

4.4.20.

Seconga wa Meroge; affirmed states:

I am cook to the accused. I am still in his employment. I remember the day Richu came to the farm from Mwiru. An askari Kasanda brought him. I was there when he arrived. Kasangu was then arrested. They were not tied up. I heard Richu say to Kasanda that he would show where Luoneru had put the rupees. I remember the next day: Richu and Kasangu were beaten then. They were beaten by Kasanda and by the accused but he did not beat them very often. The same day the woman Mukami was beaten

Till 2 p.m.

(Sgd) T.D. Maxwell

Mukami was beaten because Kasangu her son said she had got the money. I was in the kitchen and do not know who ordered her to be beaten. I saw Kasanda when I came out of my kitchen beating the woman. I stood there. I went away with her to her house. Kasanda went too. We went there for her to produce the box. She failed to produce it so I came back. When she was beaten with the Kiboko Ex 31. When she came back from her house they all went to the vice. I was in the kitchen. I heard someone shouting out "finger". The shout appeared to be in the nature of a cry of pain not a laugh. The next day I saw Richu and Kasangu beaten by Kasanda. I did not see anyone else beat them. That was in the bush that they were being whipped. I left the bush and went to the kitchen. I remember the day Kasangu arrived about 3 p.m. I was there. I saw when he received two strokes. That was when he came from Mwiru - from the accused. I was in the kitchen when he came back from the bush.

bush. I saw him lying outside. Accused asked him where the box was: accused gave him 3 blows with the kiboko then he seemed to feel nothing.

Wednesday On the Wednesday tiou was brought from suiru by the askari. That day Kamangu was arrested. It was tiou who said that he would point out where the money was. tiou went to the bush with the askari. When he came back, I was not present. So far as I know no one was beaten on the Wednesday. I was not near the others all the time. That evening (Wednesday) Kamangu was beaten by an askari (Kisanda) with firewood in the kitonen. That was near 7.30 p.m. Accused was then in his own house. The next day Thursday I do not remember seeing a number of boys and a woman near the house. That day Kamangu and tiou I saw being beaten in the bush in the morning by Kisanda: besides those three and myself no one else was present. The askari was beating them with the stick which I see - Ex 6. I left them there and went back to the house. That same afternoon I saw Mucheri being beaten near the house. She was beaten by Kisanda with a kiboko which I recognize Ex 3. Accused was present. After she was beaten she went off to her own house with her and the askari to look for the rupees. She did not find them. The askari beat her again at her house. She was there very much beaten by Ex 3 by the askari Kisanda. When she and I saw the askari returned to accused's house I saw accused there. It was then that I saw accused there. It was then that I saw him beaten tiou and Kamangu. He gave them about a beating. I cannot say how many strokes. He beat them then because of the stolen box of rupees. It was after that that they went to the vice. I did not go with them. Mucheri was brought from suiru by an askari and returned about 2-3 p.m. He was Odera & Kavirondo. When he arrived

arrived accused gave his 2 blows with a ...
 "Where is the box?" Muegeru was insolent. He made a noise
 with his mouth, accused left him alone. Then Muegeru went to
 the bush with Oden and Kisanda to look for the rupees. M
 accused and the other European went to play tennis. I saw
 Muegeru going out with the 2 askaris. He was all right and
 in good health. Later on I saw him coming back with the 2
 askaris. The Europeans were still playing tennis. Muegeru
 was then in a bad state. He came and lay outside the ditch.
 He was crouching down unable to move quick and an askari was
 telling him to go on. Accused came in for tennis for tea.
 I saw him after tea he went and spoke to Muegeru. He said
 "Where is the box?". Muegeru did not reply. It was then
 accused gave him 3 blows but seeing he was ill then left him
 alone. Then I threw water on Muegeru and later he died. I have
 seen Kanangu today he has a big wound on the top of his head.
 He was given a blow with firewood in the kitchen of Kisanda
 that first evening.

de-Examp:-- By making an insolent noise ...

Murt: Muegeru spoke in the way of not obeying. The vice is kept
 in a place which we call a store. There are no walls only
 a mat rail. It is about 50 yards (distance agreed to by
 counsel).

S.O.C.

(Sgd) T.D. Maxwell. 4.1.20.

Kanangu wa Karia : affirmed: states:

I remember when the rupees were stolen from my master
 the accused. Some days later I remember the accused ...
 the goat. M An the ...
 then firewood ... Muegeru did the same.
 There was another ordeal with a hot knife which we were to
 to lick. Accused told us. Richu and I licked the knife and
 many other boys. The accused came there with a witchcraft

witchcraft man and he made us lick it. Mochera did not do so. Rionu and I were burned by the knife and we were upon
 accused. Mochera and I were beaten. Rionu said he had seen
 Mochera with a tin containing a rag and 10 rupees. There-
 upon Mochera was arrested and Rionu and I were released.
 Later Rionu and before him Mochera had been sent into Mwiru.
 I remember the day Rionu came back again. He and I were
 arrested and accused ordered us to go and show where the ^{stolen} money
 was. I said I did not know where it was. He was not satisfied.
 Then Rionu and I were dragged together by the accused and an
 askari to look for the rupees. We could not find them because
 we did not know where they were. When we came back Rionu and
 I were beaten by the accused. I received many blows. Rionu
 was also beaten by him too. We were not laid down. We were
 flogged anywhere all over the body. Rionu and I were tied
 together by the askari after my beating I was able to put on
 my clothes but the next day I was beaten again and then could
 not. That night we both slept in Kapirira's house (a houseboy)
 We were tied together; our hands tied to a pole in the ground.
 We slept the whole night like that. The next morning accused
 started beating us both again. No one else was there. We were
 were beaten from about 7 a.m. onwards. He would beat us and
 go away for a bit and then come back and beat us again. This
 lasted throughout the day till about 5 p.m. I was then unable
 to do anything. I was beaten by Ex 3. I am unable to count
 the strokes we got: they were very many. I was X beaten all
 over the body. We were tied against each other and beaten
 lying down. That afternoon we had a little ^{grain} given us. We
 tried to eat it but were unable to swallow it because
 as he beat us because of the stolen rupees. We were both tied
 with our hands tied together to our necks. Rionu on the same
 rope as Rionu. We were tied up again that night. The next day
 accused and an askari came and told us to show them where the
 stolen money was. We could not refuse: we were dragged. That

witchcraft man and he made us lick it. Mocheru did not do so. Aliku and I were pursued by the askari and we were interrogated. Later that same evening Aliku said he had seen Mocheru with a tin containing a bag and 2 rupees. Thereupon Mocheru was arrested and Aliku and I were released. Later Aliku and before him Mocheru had been sent into Nairobi.

20. I remember the day Aliku came back again. He and I were arrested and accused ordered us to go and show where the ^{stolen} money was. I said I did not know where it was. He was not satisfied. Then Aliku and I were dragged together by the accused and an askari to look for the rupees. We could not find them because we did not know where they were. When we came back Aliku and I were beaten by the accused. I received many blows. Aliku was also beaten by him too. We were not laid down. We were flogged anywhere all over the body. Aliku and I were tied together by the askari after my beating I was able to put on my clothes but the next day I was beaten again and then could not. That night we both slept in Kamiriri's house (a houseboy) We were tied together: our hands tied to a pole in the ground. We slept the whole night like that. The next morning accused started beating us both again. No one else was there. We were beaten from about 7 a.m. onwards. He would beat us and go away for a bit and then come back and beat us again. This lasted throughout the day till about 5 p.m. I was then unable to do anything. I was beaten by Bx 3. I am unable to count the strokes we got: they were very many. I was beaten all over the body. We were tied against each other and beaten lying down. That afternoon we had a little grass which we tried to eat it but were unable to do so because the askari as he beat us because of the stolen rupees. We were both tied with our hands tied together to our necks. We were on the same rope as Aliku. We were tied up again that night. The next day accused and an askari came and told us to show them where the stolen money was. We could not refuse: we were dragged. "not

... accused went on his bicycle to Ruiru; we arrived about 11 a.m from the bush. I don't know what time the accused went into Ruiru. I knew Kachinga. That morning he went into the bush with us, and an askari. I was beaten in the bush by the accused the day before he went into Ruiru. The same day he went to Ruiru accused returned. I do not know what time he returned. I was lying down. On his return accused did not beat us again. I told him my mother the stolen rupees. I said so to make him stop beating me. When I told this accused sent for my mother. When she arrived the askari Kaganda asked her where the rupees were. She replied she knew nothing about it. The askari then started beating my mother with the Kiboko Ex 3. Accused gave him the Kiboko for the purpose. Accused said to the askari " Beat her and make her produce my money. They are hiding it". My mother said nothing: what could she say? she had no money. She was then sent to her house to look for the stolen money. The askari returned with Bukami later and said to accused that he had done his best to make her produce the money but had not succeeded. When my mother returned with the askari we were all taken to the vice. Signu's finger was put into it. I recognize the vice the same as the one produced Ex 7. He put his finger in and the accused turned the handle and squeezed it. Then he put mine in. He said he was doing this in order to make us confess about the stolen rupees as we had not been sufficiently punished before. When my finger was squeezed I cried out in pain. I did not know whether as a joke. Signu also cried out with the pain. I remember the next day but not that day Kachinga said. He arrived that day at 2 p.m. He was then tied up and afterwards beaten severely by accused. When he had finished beating him accused said to him show me the stolen rupees. Kachinga said he would do so. I then saw Kachinga go away with two askaris to look

.20
5.20
x 3.
.20
.20

510

look for the money. They were Kavironda from Mutru. When he went Macheru was walking and falling down. He had no strength. After some time (1/2 an hour) Macheru was the accused. Macheru was playing tennis. Macheru was in the same condition as when he went. Macheru was playing tennis and gave him 2 shillings with a Kiboko. I am quite sure there were 20. The other European was at the door of the house some little distance away (25 or 30 yards away - accused). Then accused and the other European went away to play tennis. Later on Macheru died. The hit on my head I got from the accused: not from the askari with a piece of firewood.

11th 2 p.m. 5.8.20.

(Sgd) T.D. Maxwell. 4/3/20.

5.8.20. As before.

R.C.C.

(Sgd) T.D. Maxwell 5.8.20.

X. Macheru:-

When Aichu and I were ~~xxx~~ burned by the knife we were both arrested. Then Macheru was arrested and we were released as I have said. That night Aichu slept in my house. Macheru also slept there after the ordeal with two askaris. The name of one is Wansi and one is a Mandi whose name I don't know. That night Macheru was beaten by the two askaris with a Kiboko - a small one not Ek 3. Macheru's feet were tied together and to a pole about 8 ft high. He was swinging head downwards when he was beaten. Eventually he promised if they would stop he would show where the rupees were. Some time afterwards he was taken to Mutru police Station. After that in consequence of what he Macheru had said at Mutru Aichu was arrested at the ~~10 p.m.~~ Later Aichu was sent back. That day I was arrested by a Kavironda whose name I don't know. He was beating me very severely. It is not a fact that accused never touched me. He beat me that night I slept in Macheru's hut. The askari - the Kavironda - was there too. It is not a fact that he beat me severely 2 or 3 times that night: he did not

not beat me at all. It is not a fact that I cried out. The
 asked me some time. He did not beat me but in the
 consequence of my cries, the mark on my head is not caused
 by being struck by firewood by the askari in the hut that
 night. The next day (6.v.20) Richu and I went into the bush
 to look for rupees with 2 askaris. I know a woman named
 Wanchare. That morning we saw her climbing the hill and
 carrying a bunch of bananas. She did not tell the askaris
 to stop beating us. When we saw her the askaris were telling
 us to go inside a cave to look for rupees. The askaris were
 not beating us. We had neither of us told the askaris the
 rupees were in the cave. It is not a fact that the woman
 advised us to show the rupees and so avoid a beating. She
 did not speak to us. She passed us merely. Accused came down
 to hear the cave but not in answer to our cries for we were
 not crying. Accused spoke to the askaris but I don't know
 what they said to each other. I did not hear him tell
 the askaris to stop beating me and Richu. After that I and
 Richu and the askaris and accused went back to the farm.
 That was in the morning before 1 p.m. After the accused's
 lunch hour I told the askaris my mother had the stolen rupees
 that was after we were beaten. When I said that accused was
 present as well as the askaris. Consequently my mother was
 sent for and asked about the box of rupees. The askaris struck
 her with a stick. He did not take the boxes from the veranda;
 it was handed him by the accused. After she was beaten she
 was told by the askari to go her own house and look for the
 rupees. I saw her when she returned. Her shoulders and back were
 Her shoulders and back were covered with stripes of a stick.
 The askari came and said to the accused "I have beaten her
 very much but she has no box of rupees". When accused heard
 that he said we had been lying; he did not beat us again but
 took us to the vice. Richu and I were taken. Wanchare came too
 to the vice. She was ordered to go back. Accused did not

not hand Ex 3 to her and tell her to beat me he gave her no
 kiboko. She did not beat me. Witness shows how the vice was
 used on a hand i.e. by the insertion of one finger (full length
 horizontally) and finger was put in the same way. Accused turned
 the handle. He said if we lied he would squeeze our fingers
 more; he did not mention squeezing our heads. After the vice
 incident I slept again at Kamivuru's hut. The next day accused
 went to Ruiru on a bicycle. He did not go in the early morning.
 Before he went he accompanied me and Aicha and the askaris into
 bush. That afternoon we were not beaten. Accused returned
 from Ruiru in the afternoon. He did not beat us that day nor
 did the askaris. The next day Mueheru arrived at the farm about
 2 p.m. I was near the hut of Kamivuru Mueheru was at once beaten
 by accused with Ex 3. Mueheru was given no chance to speak
 before he was beaten. The beating was a long one. I do not know
 how many blows he struck. If Mueheru was insolent to accused
 before being beaten I did not see it. I was just inside the hut.
 He might have made an insolent noise without my hearing it if
 I was inside the hut. After accused had beaten Mueheru the 2
 askaris did not beat him. It would be a falsehood to say that
 the askaris beat him before they took him away into the bush.
 They took him when the Europeans went to play tennis. When he
 went to the bush he was sick and falling down: It would be
 untrue to say he was then all right. He returned in the same
 bad condition. Anyone could see that. Accused then went and
 gave him 20 strokes with a kiboko. That evening Mueheru died.
 I heard yesterday that the askari Misanda has shot himself
 I don't know why he did. He did not beat me.

Ex - 3 (Kiboko) :-

When accused finished beating Mueheru before Mueheru was taken
 into the bush I was near the door of the hut. I remained there
 all the time. I put my whole finger into the vice. When accused
 squeezed me I tried to draw it out, then the askari tried to
 push it back. The 2nd finger of the right hand is the one I used

By : Rionu's finger was put into the vice by the accused, who else? When Ducheru was tied up at the back of the chair the accused was not present.

By Court:—

I was circumcised the last circumcision season. I was circumcised one harvest, since then there has been another harvest and now crops are in the ground again. My finger was not kept long in the vice. It was squeezed hard: then I shouted and then accused released the screws. accused was not present any night when our hands were tied round the ndipole.

R.U.

5.8.20.

(Sgd) T.D. Maxwell

Walter Francis Glenavon Campbell sworn: states:—

I am D.C. ~~Kira~~ Kiamou. I produce the statement of accused made at the inquest on Ducheru.

XI Examined. Nil.

By Court:— The Wakia of the Kiamou District are circumcised approximately between 12 and 14 I understood the last witness by his answer just now to imply he had been circumcised about a year.

A.C.

(Sgd) T.D. Maxwell.

John Robert Tully called for purposes of XI Examination.

Not Examined.

(Sgd) T.D. Maxwell.

Chafob S /C Shagga: called for purposes of XI Examination.

Not Examined.

(Sgd) T.D. Maxwell

Abdul Karim called for purposes of XI Examination.

Not examined

John Patrick Rogers sworn: states:—

I am Superintendent, Police in charge of Kiamou. After the proceedings in the lower Court accused asked me to send Chero to him. I did so. He said he wished to quest on him.

XI Examined:— nil.

Till 5. 8. 20.

Taken as read by consent.

(Sgd) T.D. Maxwell. 5.8.20.

Uchuu wa Kairai affirmed as follows:-

I was taken to the accused and was there where the rupees were stored. I was a shamba boy. I was sent to the police station at Kairai 2 days after an ordeal had been performed. About 5 days later I was taken out to accused's farm, again it was a Wednesday. When I arrived afterwards Kamangu was arrested. We were tied together by an askari. We were taken before the accused. The accused told us to produce the stolen rupees. We were tied together, taken to the kitchen and Kamangu was beaten I also was beaten by the accused and an askari. I was much beaten by them. I cannot count the strokes. That night I slept in Kamangu's hut. We were still tied together and we were tied to a pole in the ground. The next morning we were taken out again beaten by accused and then he told us to go and show where the money was. We were taken out "amongst the grass". There we saw a woman with a bunch of bananas Makachora, accused and an askari were with us. The woman did not ask the askari to stop beating us. The askari was beating us with Bk 6. Accused was present and he also beat us. The askari beat us repeatedly at intervals. We returned to the accused's house about the middle of the day. I knew the mother of Kamangu. That afternoon she was beaten. Accused told her to produce the money. Kamangu had said before then that she knew where the rupees were. Kamangu had then been much beaten, he was unconscious and water was poured over him to revive him by an askari down by the stream. The woman was beaten by an askari. Her name is Fukami. Accused was present. She was beaten with Bk 3. The askari beat her and killed her for the rupees. I was beaten by the accused. I was very badly beaten by him. I do not remember what happened when Fukami came back. I was absolutely beaten. I returned. I was taken to the place. When we got there accused put our fingers in a Kamangu's (my) hand and turned the handle. Meanwhile we were being beaten. I tried to pull my fingers out for the

the vice but I could not altogether as it was very much squeezed. The accused pushed my finger back and also turned the handle. The vice hurt me a great deal. My finger was swollen, & I cried.

Q. How did you feel? A. I did not think it was a joke, I remember the

C. next day. Accused went to Ruira on his bicycle. That day I was beaten too: about 2 p.m. when he returned. Accused tied us and beat us both. I cannot count the blows: I was beaten for a long time. I was lying down. I remember Saturday (8.5.20) Mugeru was brought out to the farm. When he arrived we were inside a hut (Kamangu and I) when we came out we found he had been tied up and was being beaten by accused. He had a beating with K3.- very much- I cannot count the strokes. Accused said he was beating him on account of the stolen rupees. When the accused stopped beating him an askari also beat him. After that Mugeru was sent off to the bush with two askaris. One was Kisanda and the other was the Kavirondo who had brought him. I don't know his name. When he started to go away to the bush with the askaris he had been beaten very much and he was ~~xxx~~ staggering. About an hour later I saw him come back: he was in the same condition as when he went. Then he was again tied up and again beaten by the accused. I cannot count the strokes. I was absolutely done up. I had been so much beaten. I had not been beaten that afternoon. That evening Mugeru died. The reason accused gave us for beating us was he said because we had hidden his stolen rupees.

Xi. Examined: -- I was taken by an askari to accused's farm on 5.5.20. I had not told the police at Ruira that Kamangu knew about the rupees. When I arrived at the farm Kamangu was arrested. That was because Mugeru said Kamangu and I had removed the stolen money from where he had hid it. ~~xxx~~ The askaris took us to the bush to look for the money. We said we did not know where it was and we came back without it. We slept that night in Kamangu's hut. That night I and Kamangu were beaten in the hut by the accused and by an askari. That was 7 p.m. or thereabouts. That was the first time Kamangu

Kamangu and I were beaten that day. Accused beat us when we were in the kitchen before we went to Kamiriru's hut. The kitchen is that of the accused himself. I am quite sure of the incident. It would be incorrect to say that accused did not beat us that night but only the askari did so. If Kamangu said so it is not true. I did not see the Kavirondo askari beat Kamangu that night on the head with a piece of firewood. I saw no one do so. I did see the accused knock Kamangu on the head with a lump of firewood that night. It was thus that Kamangu got the big wound on his head. I know Gakunga took. If he says a Kavirondo askari beat Kamangu on the head with a bit of firewood he would be quite wrong. The next day the askaris took me and Kamangu into the bush to look for the stolen rupees. The askaris beat us then. They beat us near Wakochoro's shamba. I remember a cave there. They beat us near the cave. The European (accused) came there then. Wakochoro did not speak to us. She passed us. She did not advise us to show where the stolen rupees were. Accused spoke to the askaris and they to him. I did not hear what they said. Later we all went up the hill together to the house. Up to then the accused had been beating us that day and not only the askaris. Whilst accused was at luncheon the askaris did not beat either of us again. The askaris sent in to tell accused that Mukami knew where the rupees were. Kamangu had said so himself. That was because he had been so much beaten. When accused heard this he came out. The woman was sent for and came. She was beaten by an askari. Then she was told with an askari to look for the rupees at her own house. She went and later returned without them. Accused then beat both me and Kamangu. He did not say to us it was for telling lies about the woman. When she came back from her own house her shoulders showed kiboko marks. Later we were all taken to the vice. It

It was the accused who held my finger in the vice and at the same time turned the handle. When my finger was in the vice I was also being beaten. Kamangu was also beaten when his finger was in the vice. Both of us were beaten by the accused then. That day nothing more happened. We slept at Kamwiru's hut. The next day accused went to Muri and returned about 2 p.m. That morning Kamangu and I were taken to the bush by the askaris to look for the rupees they beat us then: upon: very much. We were both of us very exhausted by the beatings we then got. That was the condition we were in when the accused returned at 2 p.m. or thereabouts. He then tied us both up and gave us another ~~3~~ beating. Kamangu would ~~be~~ ^{that} telling ~~that~~ ^{that} him if he said ~~that~~ ^{that} neither of us were beaten/~~Kamangu~~ day at all. The next day Macheru was brought to the farm by an askari named Odera. We were then in a hut. When we came out we saw accused beating Macheru. We heard accused tell Macheru to produce the stolen rupees: that is whilst he was beating him. I did not hear anyone say accused was beating Macheru for insolence and spitting. After accused had finished beating Macheru he went away to play tennis. The askari then said to Macheru "let us go and look for the rupees" : and the askari also beat him. Then he was sent off into the bush with 2 askaris if Kamangu says Macheru was not then beaten by an askari he would be wrong. Then Macheru and the askaris went to look for the rupees and the Europeans went to play tennis. That was about 2.30 p.m. The askaris and Macheru came back from the bush about 5.30 p.m. The Europeans were then still playing tennis. When he went to the X bush he was staggering. Other witnesses would ~~be~~ wrong if they said he was quite fit and strong. He had lost much strength. On his return Macheru was ~~very~~ and very sick. Accused immediately tied him up again and gave him a very severe beating. I saw it myself. Macheru died the same evening.

On 6.5.20 the day I came from Mbari the first beating I had was at 4 p.m. from the accused and an askari. Later at 7 p.m. we were also beaten by T. Dava Moid. On 6.5.20 Kamangu said his mother knew where the rupees were. I was present when he said so. Kamangu said that to the accused at that time he was "very much beaten and unable". At the vice first my fingers was brushed first and then Kamangu's. On the 5th when we were beaten my wrists were tied together and tied to my knees. At night my wrists were tied to a pole. I was tied up together on the same rope with Kamangu when we were beaten we were tied our 4 hands together. If anyone were to shout aloud at the cave it would be possible to hear him at the house. I was circumcised three harvests ago. This is the 3rd the crops now in the ground.

"C.C.

(Sgd) T.D. Maxwell. 6.4.20.

Makani wa Maria; affirmed states:--

I am the mother of Kamangu. I remember one day being taken to the house of the accused in connection with the loss of rupees. There I saw Kamangu being beaten by an askari. Accused told an askari to tell me to go and produce the box of rupees. He was there when Kamangu was being beaten. I said I know nothing about the box. Then an askari began to beat me much with a stick, or one like it. He got the kiboko from someone. I don't know if accused or some one else gave it him. Accused was present when I was being beaten. When the askari finished beating me he said "We will go and I will produce the box". I said to him that I knew nothing about the box. Then the askari told me to go and I went. Then he used the same kiboko. Then we returned to the accused. When we got there accused said to me "Come and beat Kamangu; for having been beaten on account of him". I tried to beat

beat him but I felt pains in both hands and I dropped the kiboko. When I was beaten I was 3 months in the family way.

The next day I had a miscarriage. The mark I show on my back is the result of repeated kiboko blows. I was flogged all over the body when I was standing up. When Kamangu was being beaten he was tied together hands and legs together and he was lying on the ground. I know Richu. I did not see him being beaten.

12- Examined:- The askari began to beat me when I went up to the house from the coffee shamba. When I arrived Kamangu was being beaten by the askari. Richu was not beaten when I was there. He had been beaten. Both boys were absolutely done up and unable. When I arrived accused was already there. Then near the accused's house the askari gave me a few strokes and some 30 or so, going to and down at my house. When I returned from my house with the askari the accused said to me I must beat Kamangu. It was then getting dark. I did not see accused then beat the 2 boys. I went home. When I was before the magistrate I did not show him the scar on my back. I was not asked to show it. The scar I have got is the result of repeated kiboko blows.

13- Examined:- When I arrived at the house and was beaten the first time I received 30 strokes in the presence of the accused.

By Jurors:- The accused saw me being beaten: then I went away: was again beaten by the askari on the way: and again at my house. The worst beating was at my house. The beating I saw at accused's house and on the way to mine is what I call strokes.

(B. d) P. D. Maxwell, 6.8.20

14- Henderson recalled: still on oath:-

I see a scar on the last witness' back. A round scar. I first saw it on 14 May. At that time the wound was precisely

precisely similar to the wounds on the boys, Siam and Kadarau. Such a wound might have been caused by a Kiboko. Nearly all wounds on the boys were also similar. (No 10 case was sent to Sir by me for the preliminary trial. He was away for a week. I sent out for him. He returned and was finally discharged 1/2 July.

Taken as read by consent.

Till 2 p.m.

(Sgd) T.D. Maxwell. 6.6.20.

(Sgd) T.D. Maxwell. 6/6/20.

2 p.m. as before.

Sukran Dass: sworn Statement

I am Sub Assistant Surgeon at Klabu. I remember going to the accused's farm on 17 May. I saw the body of a dead native there. I examined it. I found on post-mortem that the body had injuries on it. There were 14 marks on the front portion of the body varying from 2 in. to 4; 10 in. length from 1/3 to 1/2 inch in breadth. They were superficial. The skin was not broken. They were only blue marks. There was one mark on the left arm near the elbow joint which I think was due to the pressure of a tin box that had been placed over the body. I opened the body and found all the internal organs were in normal condition. I found no trace of poison. The heart was full of black blood: the venous side of it. Otherwise it was in a normal condition. In case of severe shock I should expect the heart to be in such a condition as I saw. When the blood so collects the blood does not flow to the brain and arteries and that causes death. I formed an opinion of the cause of death: it was due to shock. Such an instrument as No. 10 might have caused the injuries on the body. Such an injury does not necessarily correspond with the injury: it might occur even some days later. A shock that is fatal can be caused without leaving any external mark another than those of superficial injuries. I brought the heart myself into Dr Henderson.

Examination:-

the case of severe shock death may occur simultaneously or within a few days or within a few hours.

By the Examinee:- Will

By a Juror:- The body was that of a good strong man. He was between 20 and 25 years old.

Taken as read by Consent.

(Sgd) T.D. Maxwell. 6.8.20.

Musoni wa Karia: recalled: still on oath:

I know a woman named Wakochoro. I do not know the cave near her shamba. I know her shamba. It is further from accused's house than is my house. Anyone calling out loud at my house could be heard at the house of accused. My house is about half an hour from accused's house. I do not know what half an hour is. It is not a long time. Wakochoro is beyond my place as one goes from the house of the accused.

B.C.C.

(Sgd) T.D. Maxwell. 6.8.20.

Kapwira wa Ngampe: affirmed states:-

I am a house boy of the accused. I am still living with him. I spend most of my time in or about the house. I do not know much about these beatings. I know Kamangu. I remember the time of the ordeal. I saw Kamangu and Ntchu beaten the day they went to show where the stolen rupees were. On their return they each received 2 strokes from a ~~stick~~ by the accused. When they were asked about the money they did not reply. That is why he struck them. They went into the house. I went into the kitchen. The boys remained outside. That is the only time I have ever seen him beat them. They were struck on the buttocks. I was about 10 yards away. I remember the day Musoni was beaten. She was sent for, passed the kitchen and went to where her son was. I heard nothing. I heard her cry. I was not present when anything happened.

happened at the vice. I remember the day Musheru was brought to the farm. He came and sat down. Accused came and asked him about the money: he was innocent and accused gave him 2 blow-s with a kipoko. There was another European there (Waller). If he says that my master gave Musheru 12 or 15 strokes he may not be wrong if accused beat Musheru before I came up. When Musheru was brought we all went out to see him. I was there the whole time. Accused only gave 2 strokes to Musheru and then he went away to play tennis. Later I saw Musheru being off into the bush with 2 askaris. He passed the kitchen. I did not see the askari beat Musheru. I went into the kitchen when the accused went away. When Musheru came back about an hour later I saw him. Musheru lay down outside the kitchen. Accused came and spoke to him. He did not reply. He could not and accused gave him 3 strokes with the 3. Then the accused went into his house.

2. Remained:—

I remember after the ordeals that Nionu and Kamangu were arrested. Later they were released and Musheru was arrested. I remember the day Nionu came back to the farm with Corporal Wassei. That day Kamangu was arrested by Nisanda. That evening they were sent into the bush with an askari to look for the money but came back without it. That night they slept in the hut of Gakunga. The askaris were there too. I did not hear them being beaten that night. I could not see them from 6 p.m. or see them. I do not know if my master went to the hut where they were that night. That day I do not know if my master beat those boys. I was outside the house when I saw it. Had he done so near the house. The next day the boys were taken by the askaris into the bush. They returned about lunch time 12 noon when they went out with the askaris into the bush that morning they first went with Gakunga. Gakunga came back. Askari took breakfast and afterwards accused went down into the bush where they had gone before

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before lunch time, about 11 a.m. they all returned. That Thursday afternoon the askaris may have beaten them in the bush- I don't know. I did not go there. That afternoon Muzani was sent for and came- She was sent for because Kamenu said he had given the stolen money to her to keep for him. Before she came I saw accused beating neither of the boys. Then the woman came. I saw her pass the kitchen. Later I heard her cry. I was in the kitchen. I did not see the boys go to the vic. The next day Friday accused went to Mufiru on his bicycle. That morning before the accused left the boys went with an askari to show where the rupees were. He did not go with them. Was they returned without the rupees. I did not go with them. I don't know what happened there. My master returned between 3 p.m. I did not see him beat them then. He asked an askari if the money had been found and he was told no. I did not see the boys beaten at all that day. The next day Musheru was brought out by Odera about 2 p.m. Accused asked Musheru if he had come to produce the box. Musheru said yes. Accused went into the house and returned. Then Musheru was insolent and accused gave him 2 blows on the buttocks. Accused went to play tennis and Musheru and the askaris to look for the rupees. That was about 2.30 p.m. Musheru and the askaris came back about 5.30 p.m. Musheru was then very sick. He was panting as if had been running fast. My master came from playing tennis. Musheru did not reply. Then accused gave him 3 strokes with a Kiboko and then he went in to have tea. It is untrue that my master gave him 20 blows; he did not do so in my presence.

He- Examined:- Nil.

By counsel:- Nil.

By Court: My master generally has tea either 4 or 5 p.m. That Saturday he had tea about 5.30 p.m. He started playing tennis about 2.30 p.m.

A.C.C.

(Sgd) T.H. Maxwell. 6.8.20.

Karanga wa Kamanga affirmed states:--

I am a house boy of the accused and am still in his employment. I remember when there was a theft of rupees, never saw accused, but either Kamanga or Miona. I remember when Mionera came back. When he arrived he was given 2 blows with a kiboko by the accused. When he arrived Mionera said nothing. After the 2 blows he was sent to point out the stolen rupees. No one else struck him then. He went away quite well. I remember when he came back. He then had no strength. Then accused came. Mionera was lying on the grass near the house. Accused gave him 3 blows. Then he went in to tea.

XI Examined:-- When he came on Saturday my master gave him 2 blows. That was because Mionera said "I know where the box is". After accused had given him 2 blows and before Mionera was taken away I did not see the accused beat him. I had returned to the kitchen. Accused left the spot after I did. I went into the kitchen. Accused left the spot before I did. The 2 g blows were on the buttocks. When Mionera went to look for the rupees he was all right. He was ill when he came back. Then accused spoke to him and when he could not reply accused gave him 3 blows. It is not true that accused gave him then 20 blows.

By Examined:--

By Jurors:-- Nil.

A.C.C.

(Sgd) T.D. Maxwell, 6/8/2

Kamau wa Picheha: affirmed states:--

I work for the accused. I am a scamba boy still for him. I remember the day Miona was brought out. That day I saw Kamanga receive 2 blows from Mionera the askari. I remember the next day. I know the vipe Ex 7. That day I was not present near it. I was at the place where we were later. When I was there I heard Kamanga cry out

5.20.
5.21.
Ex 7

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out from the wine-shop. He cried out "Do not squeeze me" I will go and show where the money is". Afterwards the same evening Panga, Rionu and Kamangu. I noticed Rionu's finger was worse swollen than Kamangu. Both were swollen. The next day I did not see the accused striking Rionu or Kamangu. I remember the day Macheru came back. When he arrived he was beaten by Kisanga. I did not see the accused beating him. When the askari beat him the accused was present. I went away before Macheru went into the bush. I went away before the accused did. When Macheru came back I had returned. Accused came there. Macheru was very ill. Accused gave him two blows and I went to fetch some food.

Xc. Explained:-- When Macheru came back from the bush that evening the two Europeans were still playing tennis. Accused came from the tennis and gave Macheru 2 or 3 blows. It is untrue that he gave him 20 blows: if he did I was not present. I did not stay. On the night of 5.5.20 Rionu and Kamangu slept at Kamwira's hut. Before going to sleep they were in the kitchen. I was away I don't know what happened. Kamangu was beaten that evening in the kitchen by Kisanga with a bit of Kuni. That is what has hurt his head. Accused was in his dining room.

Xc. Explained:-- When Kamangu was hit on the head I was present.

By Jurors:-- When accused came back from playing tennis he struck Macheru with a Kiboko Ek 3. The kitchen is big. It is some little way to the dining room ("here to outside 40 ft") it is a different building but there is a covered way. There is no belt in the kitchen. He is accused in the dining room and I in the kitchen he could hit and I could easily hear. Kamangu sleeps in the same hut as Rionu and I think there too struck him.

A.O.C.

Till 7.8.20.

(Sgd) S.D. Maxwell 6.8.20

(Sgd) F.H. Maxwell.

7.8.20.

... ..
... ..
... ..

(Sgd) Maxwell 7.8.20.

Blackall suggests the jury are entitled to question witness.
I rule against it as he is not called under Section 423 Criminal
Procedure Ordinance.

V.M. Fisher who gave evidence in the lower court is not called
by the Crown. Allen acquiesces and has no wish to examine.
Case for prosecution closed:—

DEFENCE.

Lancelot Hawkins: sworn statement:—

I served in K.A. till the end of the year. After that
I became manager of a Bital Estate of Davies Evans 5 miles
from Suiru Station. About 15 April a box containing about 47
rupees and some valuable papers was stolen from my bedroom. I
informed the Police at Suiru. I have a lot of natives working on
that farm. I informed their elders of this theft, those in the
neighbourhood. They suggested they should hold a trial by ordeal
according to native custom. There were 2 ordeals striking the
goat and licking a hot knife. Richu and Kamangu were caught by
the hot knife. Luoheru did not take that ordeal. I saw the hot
knife ordeal. The person tested placed the knife (out of the
fire) on his own tongue himself and licks it. Some askaris were
there at the time of the ordeal and saw both Richu and
Kamangu. Later they were released and Luoheru was arrested
as they put the blame on him. Later Richu was taken into Suiru.
He was originally under arrest but was really sent in to spy
on Luoheru. He was brought back on 5 May. Both Richu and Luoheru
had previously been arrested back twice and then returned to
Suiru. Then 5.5.20. Kamangu was arrested owing to information

information given by one of the other two. Ntshu and the askari arrived about 9 p.m. at dusk. I spoke to them. They were carrying the stolen rupees, which Kamangu said were in an old bearhole some 500 yards away. Ntshu and I and the askari also went. The rupees were not there: it was getting dark and the boys said they would show the spot in the morning. We then returned to the house. The askaris and the prisoners slept in the boy's huts that night. While I was at dinner I heard shouts and cries from the kitchen about 7.30 p.m. I went out to the kitchen and stopped the askari from making the prisoners cry- both prisoners were there: I think both were crying but perhaps it was only one. I returned to the house. Later about 8 p.m. I heard cries again and went out to the kitchen again. As I went into the kitchen I saw the askari with his fingers interlocked with Kamangu's bending them backwards. I stopped the askari. I returned. I heard nothing else that night. It is untrue that I beat them badly that day at 4 p.m. as one of the boys said. They did not arrive till 6 p.m. I did not beat them between 6 & 7 p.m. I went to the kitchen that day for no purpose except to stop the cries as I have said. I heard Gakunga say he had seen the askari hit Kamangu on the head with a bit of firewood. I did not hit him with anything. About 6.5.20 Thursday I heard Kamangu say I had them tied up and flogged them incessantly from 7 a.m. to 5 p.m. That is untrue. I heard him say in X- Examination that I had beaten them in the bush. I did not go with them into the bush that morning. About 11 O'clock I saw them for the first time that day. I heard cries as I was returning from ploughing. I went to see what was happening. I saw these two boys cowering in front of me with an askari. They had evidently been badly beaten. The askari said the boys had stated the rupees were in the cave and he was trying to force them to go in to look for them. I saw

see a woman being assaulted by him. She spoke to the two boys
and told them to produce the rupees, and thus close the whole
matter. I then returned to the house with the boys and the
askaris. I arrived back about 12 noon. That afternoon some
information was brought to me to the effect that Kamangu said
his mother had the rupees. Then I went out to see where the
boys and askaris were. That was about 4 p.m I sent for the
woman. She came. On the arrival I told her Kamangu said she
had the rupees. The askaris picked up a kiboko and threatened
her and gave her two or three with it over her skin-clothes.
I then sent her with the askari to her own house to get the
rupees. She returned without them. When she returned without
them, when she returned she had been beaten. The askari said
he had not found the rupees. On seeing the state she was in I
beat Kamangu - only Kamangu so far as I remember: I might have
given the other stroke or two: I probably did: I don't think I
gave Kamangu more than six strokes. I beat him for lying about
his mother and told him so: I did not beat him to extort a
confession about the rupees. It is untrue that I flogged
Kamangu earlier and that as a result he said his mother had
the rupees. He might have been flogged but not by me nor in
my presence. It is not true that I handed the askari a kiboko
to beat the woman nor that she was given 30 strokes in my
presence. The askari used a kiboko. I don't know if it was mine
for certain: probably it was. I did not give it him. So far as
I remember the kiboko was on the veranda: in any case I
am sure I did not hand it to him. I did not stop his beating
the woman because the incident happened so very quickly that
askaris did not hurt her. I remember myself and some of the boys
adjourned to the vice-shed: an open shed with roof and no
walls. I have heard the evidence about my putting their fingers
in the vice - squeezing them. I certainly put their fingers in
the vice. I did not screw it up so as to hurt the fingers. I
kept screwing it up but they kept drawing their fingers out
just when vice was ready to bite them. I told them they had been

been lying about their mother. I said if they lied any more about her I would screw their hands right off and their heads too. The boys at first thought I was in earnest. When we first got to the area Mwachera certainly did cry out but that was because I made his mother give him a beating. I think that was before he put his finger in the vice. I handed the woman the kiboko but she could not beat him she had no strength. It was an insult to him that is all. Subsequent to this vice incident neither of the boys nor their friends complained to me they had been hurt in the vice. The nail of one of them (Alomu) I think had been injured but not in the vice. On Friday 7.5.20 about 6.30 a.m. I went off on my bicycle to town to a meeting and also to attend the case dealing with this theft (which was postponed). I returned to the farm about 3.30 p.m. I did not beat either of the boys that day. The statement of Alomu is quite incorrect. (p. 34). On Saturday 8.5.20 Mwachera was brought out by an askari about 2 p.m. When they arrived I went out and spoke to them and said "You have been sent up here to point out where the stolen rupees are". He said he would not do so. I told him he would be kept on the farm till he did do so: thereupon he made an insolent noise with his mouth and spat towards me. I sent for my kiboko this one Ex 3. I put him down and gave him 10 or 12 strokes with it on the buttocks for his insolence. It is untrue that I flogged him to extort a confession for his. Captain Walker was there at the time. After that we both went into the house preliminary to playing tennis. I heard blows- an askari beating Mwachera- I sent word that he was to stop and take him away to look for the hidden rupees. I saw Mwachera actually leave with the askaris before we went to tennis. He appeared to be a) right I noticed no weakness nor staggering nor falling and that at about 2.30 p.m. I saw Mwachera with the askaris and the latter I was still playing tennis and was shortly after 4 p.m. I spoke to the 2 askaris as they passed the tennis court and said "Did he find anything?" The askari said "No". Then we went

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went on playing I was going in for tea. I saw Macheru. He was lying on the lawn just outside the kitchen. I spoke to him. I asked him where the rackets were. He did not answer. I asked him his sitting position. He did not answer. I thought he was snoring. I think I gave him a kiss poke a/kick with the tennis racket or something like that. Then I saw he was ill. I went in and had tea. Then I went out to tennis again. Before doing so I saw him and noticed he was very ill. I did not actually do anything for him then. I went on playing tennis. On my return I saw him at the fire where the boys boil their water. We came off the court about 6 p.m. went in to have a sundowner. An askari came to the door and said Macheru could not speak and they could not wake him up or something like that. I went out and found he was dead. I heard Richu's evidence. It is untrue that as soon as Macheru arrived on 8.5.20 I tied him up, and gave him a terrific flogging. It is untrue that when he went out into the bush with the askaris he was then staggering and very ill. It is untrue that I did give him 20 strokes or tied him up on his return. As said by Richu and Karangu. It is not correct that I used a Kiboko. I might have give him a tap or two with a tennis racket. The next morning I reported the death of the boy to the Police. My house is about 1 mile or 1 1/2 miles from that of Mukami. The cave is about 800 yards away from my house - in a different direction. Mukami's house is S.E from mine. The cave is almost W. My kitchen is a separate building altogether from my house. There is no covered way from one to the other. If one called loudly from my dining room one could be heard in the kitchen.

It is explained:- The ordeal of striking the goat is as follows. A goat is tied up with his head between his feet. The biggest suspect goes up and strikes the goat on the head with a stone and starts it swearing his innocence. Then others follow each striking the goat similarly swearing. The goat dies

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dies after the first few blows. I am not a member of the Society of Prevention of Cruelty to Animals. I think there is a certain amount of truth in the not killing a guilty man with a very dry tongue and no guts burned: an innocent man has plenty of saliva and does not. There was no compulsion on any of the employees to go through the ordeals. On 5.5.20 when I was at dinner I heard shouts in the kitchen as I have said. I stopped the askari. I said to him he was to leave the boys alone as they had promised to show the rupees. The next day, At 8 p.m I went out again. I reprimanded the askari in the same way the second time. I am an officer in the army and am used to having my orders obeyed. On this occasion I did not know how much right I had to interfere with a Policeman in the execution of his duty. I do not consider the beating of a prisoner part of the duty of policeman. I consider while he was at my farm I had a certain amount of moral control over the policeman. On the morning of 6.5.20 I went down to the cave as I have said. The askari was the same as had been beating the boys the previous evening. I went into Ruiru on 7.5.20 and had occasion to go to the Police Station. I did not report that the askari had been beating the boys. I did not consider it my duty to do so. It was not my business. The police had sent the askari to my farm to perform a duty and he did it in his own method. I considered myself under no legal or moral obligation to complain to the police. I remember the afternoon 6.5.20 Mutani was brought up because Kamangu had said she knew where the rupees were. Before the boy had said this he had been beaten. It may have been in consequence of this beating that he said this about his mother. By this time I had caused to believe people who said they knew where the rupees were. I was sure that Kamangu was telling the truth when he said his mother knew where the rupees were. When she arrived the askari first threatened her in my presence saying "Now produce the rupees". That was before he struck her. She was wearing the usual skin-clothes. It was obvious she could not produce the rupees on

on the spot. I did not stop the askari when he threatened her as I thought she would probably say where the rupees were. Kamangu had said they were down at her house. The woman denied all knowledge of the rupees. I did not believe her. I thought she had them. She is lying because when she says she got 10 kiboko strokes in my presence. She only had 2 or 3 I knew from previous experience that this askari was fond of beating people. He had just given her a few strokes. I did not warn him not to beat her when he was taking her off to her house. When she was returned I saw she had been badly beaten. I then thought the best thing was to beat Kamangu for lying and for getting his mother into trouble. I did not consider a better remedy would have been to report the askari and have him punished. As a fact I did go into the Police Station the next day. When we went to the vice at first they were frightened: afterwards when they saw I was not in earnest they certainly did laugh in a sort of hysterical way. They were frightened at first: when they saw that I did not squeeze their fingers right off they laughed and were amused. Had I wished to do so I could with that vice have smashed the bones easily. I cannot say if Kamangu is correct or not in saying a boy shouted out in pain. He may be. The boys certainly shouted out in pain and not in laughter. Mukami is incorrect if she says she did not beat Kamangu. She did so. The boy had been beaten before by the askari earlier the day and his skin was sensitive to pain therefore and he cried out. Kioku's finger was already swollen - so far as I remember - when he came to the vice. I have the same theory as had Miller as to these injuries on the fingers having been inflicted by a broken bone. I am not sure if the swollen finger was put into the vice. It may have been another. The vice was not pressed so that it could hurt anyone. It was pressed but not tight. On 3.5.23 on his arrival Muehara said he would not point out the rupees.

Rupees. By "I would keep him on the farm" I meant a threat. He had just come out of prison awaiting trial. Then he was released because of that threat. Then I gave him the beating of which I speak. When I had finished the askari continued but not at my orders or at my instigation. I threw the kiboko and went into the dining room. In that instance I was upset at the askari beating the boy but not so much as usual when he did so as I was angry with this boy. Later I saw Mueheru going off into the bush with two askaris. My surmise is that the really bad beating which caused this man's death was given by Kisanda. Odera is the only known witness alive who knows what happened in the bush then. I am not calling him as a witness because he will not talk. I have questioned him and he says that that day he saw nothing happen. It was he who came out with Mueheru that afternoon at 2 p.m. On my return from tennis I pulled him up into a sitting position. I suspected him of shamming. At the time 2 or 3 strokes with a kiboko to him in his then condition would be worse than 15 or 20 to a man in ordinary health. Had I given him 2 or 3 strokes then with Ex 3, I would have been guilty of Callous cruelty. I did not in fact use it. I deny having done so entirely. When I poked him with the tennis racket I saw he was very ill. The boys gave him water. I admit that all these three boys and the woman were grossly ill-treated and that this happened on my farm: the first three being my servants. I admit in a way a moral responsibility for the business simply because it happened on my farm. Otherwise I have a perfectly clear conscience.

Re: Examination: Odera was accused with me before the Registrar at Nairobi. He was discharged. Afterwards my solicitor said he would like to see him and see if he could give any information as to what had happened on the farm. Between 3 or 5.30 p.m. I asked S/O's permission to interview the boy. I interviewed him at my farm. He gave me no information and denied having seen anything. He would not even admit having seen me beat the boy this he was standing by my side at the moment.

By a juror:- I have been in the country nearly 9 years now and speak both Kikuyu and Ki Swahili.

Taken as read by consent.

7.8.20

(Sgd) T.D. Maxwell.

9.8.20

Longley Hawkins recalled still on oath:-

I do not remember if Mucheru was released from his handcuffs. When he went away with the 2 askaris he was certainly not handcuffed. When he was insolent to me I cannot say if he was handcuffed. When he went away with the askaris he may have a bit of rope on his wrists. I cannot swear to it. When he returned and prodded him with a tennis racket he then had a rope round his wrists; the rope (native rope) may have been round his neck. I cannot swear to this.

Taken as read by consent.

9.8.20.

(Sgd) T.D. Maxwell.

Allen calls no further evidence.

DEFENCE closed.

(Sgd) T.D. Maxwell. 9.8.20.

Blackall addressed Court and Jury.

10.10 am to 11.4 a.m.

- 1. Crdeals- cruel.
- 2. Action of accused not a hasty outburst.
- 3. Absence of Odera.

Allen replies.

11.4 am to 12. 50 p.m.

- 1. Rumours and reports and news papers.
- 2. Jury System.
- 3. Conduct of police in this case. " Systematic regime for purpose of extorting confessions from prisoners. Police Station at Nairobi. 2.2. Filing of charges about 30 askaris inadvisable if there was not a... did this that the askaris should have so behaved.

4. Evidence.

4. Evidence.

A. Statements and things Contradictory, Unreliable, Absured, Inapparent.

5. Meehan cannot have been " grievously hurt". Must have been murdered or manslaughtered.

6. Not charged with abetment.

Till 2 p.m. 9.8.20. (Sgd) M. Maxwell.

With reference to the contention of the accused's counsel that he is not charged with abetment I wish to say this.

The accused is charged on 2 counts with having voluntarily caused grievous hurt and on one with having voluntarily caused hurt: all with the purpose of extorting confession.

Under Section 114 V.C. a person who, if absent would be liable to be punished as an abettor, is present when the act or offence is committed he shall be deemed to have committed such offence.

It is therefore unnecessary in my opinion specifically to have charged M.M also with abetment.

That would only have been necessary had the Crown case been that the accused was in any way an abettor of the illegal acts admittedly committed by one or more of the askaris in his absence. That is nowhere suggested.

I have the power under Section 136 Criminal Procedure Ordinance 1913 at this stage to add the charge of abetment to each of those already preferred against the accused but in view my above ruling I refrain from so doing.

I note further that Meehan can be charged with grievous hurt to endanger life by the act of being more directly due to acts of Meehan: otherwise accused would have been charged with murder.

Run up 1.50 p.m. to 3.20 p.m.

1. Statistical records. Very rare offence (by European only one previous case under Section 33 none under Section 331)

2. Comment on native evidence generally.

Is this ~~so~~ contradictory as to be unreliable? So non-contradictory as to be suspicious or ~~poor~~ medium?

3. Law. Inmaterial if any of these witnesses were guilty or not of original theft.

4. Examined evidence in detail as regards each charge.

5. Solemn ~~oath~~; Public duty. Benefit of doubt.

then. I noticed nothing wrong with them. They came to the office
 and I saw that in charge of the Police Station, but he was
 not here when I returned. I sent out a man with J.C. Masanda to
 search for the box alleged to have been stolen. This was on
 5.5.20. ^{X2} With in the Police S.B. (Ex 2) from which I get the
 date; I made the entry myself. I sent them because he said
 that if he was sent out again he would show where the box was.
 I next received this note (Ex 3) from Accused 1. I received
 it on 5.5.20 ^{Sent Mchru Mch Nelson 1st 11 am on 5.5.20} Mchru was in good condition of health when
 he left the Police Station. He had no marks of beating on him.
 On 5.5.20 when I sent them to Accused 1 he was in a healthy
 condition. On 9.5.20 Accused No 1 came to Police Station and
 reported that Mchru had died the previous evening. I went
 up to the Masanda about 10 A.M and saw the body which I
 identified as Mchru. I noticed six marks on the chest and
 stomach and inside. They were scars which might have been
 caused by a kiboko. The body was slightly decomposed; I did
 not turn it over to examine the back. I asked Accused 1 to
 keep the body from hyenas and I put two sentries on guard on
 it. I returned to Police Station on 10.5.20. I went back at
 11 a.m. with Sergeant of Police and the Indian S.A.S. Mchru
 Das who examined the body of Mchru which I identified again.
 Dr Menderaka came but subsequently. C. Masanda returned to
 Mchru post, on 10.5.20 about 8 p.m. On 13.5.20 Masanda com-
 mitted suicide. On his return I asked Masanda if he had flagged
 Mchru on the other people, but he denied it. On 15th Mchru
 and I were in the office in the morning; Superintendent called
 Masanda to make inquiry of his. Superintendent was
 put him in guard room after the investigation. This was about
 4.30 p.m. I was in tent with Superintendent. He told me to
 get Masanda from his hut. I sent Masanda to bring Masanda;

Mwanda; shortly afterwards I heard a shout from the direction of his hut. I went into office and came out again. When I got to hut Superintendent and Wandi were there. Mwanda was lying on the ground dead with a bullet wound in his chest. An inquest was held on Mwanda. I do not know the verdict.

Mwanda came down with Mwanda on the 10.5.40 at 8 p.m. I know Mwanda he was brought here in a car and taken to Nairobi.

Cross-examination reserved. J.C.C.

(Sgd) A.V. Dooly

John Patrick Neare, Sergeant

I produce correct copies of the entries in the Mwiru Post-Office book concerning the case under investigation. I have made 3 notes which are not parts of the original. I made the copies myself. I also put in a sketch plan (Ex 4) of the house and premises of accused 1.

No Cross-examination. J.C.C.

(Sgd) A.V. Dooly

Walter Francis Blundell (Mr. Campbell) Sergeant

N.S. Mwanda. This is a statement made by accused 1 in the inquest proceedings before me on the death of Mwangi. It was read over to him and signed by accused 1 in my presence. This is the book produced by Captain Hawkins (Ex 4) which I marked as Exhibit 1.

J.C.C.

(Sgd) A.V. Dooly

John Robert Tully, Sergeant

N.S.C. stationed at Mwiru Post. I have been on duty from Nairobi to relieve S.P.O. Atter. He was not here when I arrived. I also received orders from Superintendent Neare to go to accused's farm. I also received a case file and a letter

letter written by Captain Hawkins from Superintendent. I found no prisoners here on my arrival. These entries of 28.4.1938 are in my handwriting 4.30 p.m. I made all entries upto No 10 of 30.4.38. I remember the prisoner Miska. I went to Captain Hawkins on the morning of 29.4.38. I investigated the case of theft there. I took Accused's statement. I returned to Police Station and found Miska and Moberu in the cells. I examined these prisoners about 7.25 p.m. and searched them. I took off all their clothes except a small cloth. They were both quite alright. Their finger impressions were taken by me on 30.4.38. They were both quite all right both. At 10.30 a.m. on 30.4.38. Constable Ogeye Otieng went to Accused's farm with Moberu. I made the entry. I had nothing further to do with the case of theft from Accused's farm.

Cross-Examination reserved.

A.C.C.

(Read) A.S. Dorricks

Witness: Miska, accused, Miska Moberu

I worked for Accused's on his shamba. I knew Moberu; he worked there also. I knew Masegwa; he was cutting firewood there. I remember when Accused's said his box had been stolen. Accused's wrote our names down all our names. Four men were arrested Kiocho, Marogi, Masegwa and Moberu by Mendi and Mendi Abxari. We were all made to "ring uthege" (order) striking the goat. Accused's called me from work and told me to go to the ordeal. All the boys on the farm did this; we also licked the hot knife. I and Masegwa were burnt by the hot knife. Moberu did not lick the hot knife. He ran away. I & Masegwa were arrested on the spot. Moberu was arrested after wards. We were arrested by Coy. 1. This was about 1 1/2 months ago. I stayed at work for a week after I was arrested. I was discharged from arrest and

and so the money was taken off. I slept in Kana's hut with 2 policemen. Mwanu said he would go and show where the money was. He went the next morning with Mwanu; they did not find the box. I did not go to point out where the box was hidden. Mwanu was kept two days here on the farm under arrest. He went four times to point out where the box was. The box was not found. Mwanu was then brought here by Mwanu and the and Mwanu Kana/w and I remained at the farm working. I was brought to P/S Mwiru by myself. Mwanu was here. At 6 p.m. last evening Mwanu called Mwanu and said he would show him where the ~~box~~ were next day. He went and I went too with Mwanu. Mwanu took us into the bush, but he did not show us anything. He went to accused's farm and Mwanu reported to Captain Mwanu to sleep in accused's boy's quarters last night. The following morning, we returned to Police Station Mwiru. On Wednesday (5 days later) I went with the Kavirondo askari to Captain Mwanu Mwanu. I left Mwanu here and found Mwanu on the farm. The Kavirondo askari told Captain Mwanu he wanted to take Mwanu to show where the money was. Mwanu was arrested and I was told to go with him. We refused to go. Then the askari beat us for an hour from 4 p.m. with a Kipaka and cane. He began beating me with the cane. This is it (X 7). I was not beaten before then, neither at P/S or on road. We were beaten outside accused's house, about 10 yards from the house accused was present and was holding Mwanu by the arm while I was being beaten. My hands were tied with rope. The askari tied my hands. He tied my hands here (Mwiru). Mwanu's hands were not tied. This was because I did not know where the money was. The Kavirondo askari beat us because Mwanu told him we knew where the money was. He told the askari to beat us. Mwanu

us. Kibangu and I slept in Kaviru's boy's quarters, and the
 akhari slept there also. I was tied up to a post, by the
 akhari and he was Kibangu. This was in Kaviru's hut. Next
 day the Kavirudo akhari ^{wanted} wanted us and took us out, and
 accused us. This was between 7 a.m. We were tied hand and
 foot and round the neck and accused I took a Wilson and beat
 us. He beat me and Kibangu. He beat me on the legs and arms;
 I was lying on my back. This is ~~the~~ ^{the} Kiboko he beat me with
 The Kiboko was not wet when I was beaten. I was beaten many
 times- more than 25 strokes. He beat us for some hours and
 then ~~went~~ ^{went} to rest. He went away at 12 noon and returned at
 2 p.m. He then asked us again to show him where the money was
 and he began to beat us again. He went on with this till 4 p.m.
 Then he told Kaviru to give us gruel, we could not drink it
 because when we tried to drink we were sick. Kaviru sent one of
 accused's servants. Kavirudo was also beaten by accused 1,
 equally with me. We were both tied up and lying on our backs,
 from 8 a.m. to 4 p.m. We were released at 12 noon. The Kavirudo
 akhari untied the rope round our necks, but left our feet
 tied. We lay there, but went into the kitchen at noon. This
 was not inside, but in the shade of the kitchen. Accused 1,
 beat us so that we might go and point out the box, which had
 been stolen by Tokuru. Accused 1 said while ~~that~~ he was
 beating us, "Go and show me where the box is". We did not
 go to look for the box that day. We did not go because we did
 not know where it was. We slept in Kaviru's hut. We were
 tied by the hands to the post that night, not by the feet.
 Next morning Kibangu and I were again beaten by accused 1
 at 8 a.m. This Kiboko ~~was~~ ^{was} given 25 strokes. He came to
 beat us at 9 a.m. He returned at 2 p.m. He beat us again, at

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at 6 p.m. Accused 1 brought out a vice and put the middle
(the finger) of my right hand into it and turned the vice.
He squeezed my finger severely; accused 1 said he would
torture and beat us for 3 months as he got permission from
the Government. Kamangu was also tortured. Kamangu cried out
with pain and so did I. After being taken out of the vice
we were ^{not} strapped again. The Kavirondo askari was there, accused
1 turned the handle. He did it to make us tell him where we
had hidden the Supes gun. Again I slept in Kamangu's hut.

We were both tied up in the hut by the Kavirondo askari. I
saw the woman Mucasi wa Kaire. I saw her beaten by the
Kavirondo askari, the third day in the presence of accused 1.
She is the mother of Kamangu. Kamangu said she told the askari
that is why she was beaten. The next day (Saturday) Mheru
came from P/S Airu to the Shamba. He was brought to produce
the Supes. He was brought by Accused 2. They came at 2 p.m.
Mheru was beaten by Accused No 1, to make him produce the
Supes. He was beaten with this Kiboko (Ex 6). The Kiboko
was dry as it is now. I was lying outside; I did not count
the strokes. He was severely beaten. He was also beaten by
the Kavirondo askari (who is not here). Accused 2 did not
beat him; but he was present when he was beaten. Accused 2
made no attempt to stop the beating. The Kavirondo askari beat
Mheru with his cane. (Ex 7). Mheru then said he would
show them the Supes. He went with the Kavirondo askari and
Accused 2. No other person went with them. I was lying down
at this time; I did not see where they went. They were away
about half an hour. There was a lot of water near where Mheru
was beaten at the Hut. The water was very muddy. The Kiboko
was very dry and the water by accused No 1 before he
beats Mheru. He put it into the vice 4 times. He put it

It rained several times during the course of the beating. When the askaris returned with Koberu, Accused 1 was playing tennis with another European. The Kavirondo askari went and spoke to Accused 1. Accused 1 left the game and came to where Koberu was and asked him where the box was. Koberu was swollen all over his body; he was sitting on the ground. He had come there on foot. He walked in a feeble and uncertain manner. He was not like what when he went with the askaris; *he was alright when he went with the askaris* Koberu was left near the kitchen. Accused No 1 came back and asked Koberu how it was he had not found the Rupees; Koberu did not reply. Then Accused No 1 beat him from 4 to 5 p.m. with a stick (Ex 6). Accused/ left off and went away into the house. Koberu was taken by the Kavirondo askari to the place where the water is boiled. The Kavirondo askari put his hands under Koberu's arms and supported him Koberu very slowly to the place where the water is boiled; Koberu walked slowly with his support. Koberu was cooked for him till 6 p.m. Koberu began to tremble all over ^{his} the body. Koberu went and fetched the Kavirondo askari who poured water over Koberu and he ran and reported to Accused No 1. The Accused No 1 came out with a lamp. He turned Koberu over; but Koberu did not get up. Accused No 1 took Koberu by the arms; and the askari took him by the legs and took him behind the boy's hut in the bush. Accused 1 went into the house and sent for me. He put medicine on my wounds and swelled. Koberu was moved *at 6.30 pm. He was moved to the hospital. I saw him there and he was dead.* the boy's hut; Accused 1 beat Koberu last before he died. Another European was present at the first beating of Koberu on the Saturday at 2 p.m. He saw Koberu when he was being beaten by Accused 1 and asked him. He was in the house at the last beating of Koberu. The people about the house were present at the beatings, but not the shamba labourers. I did not

see Akhara beaten by any body except on the Saturday. When
 I went to the farm on Saturday, he was quite fit. I did not
 see him. I was not beaten by any body else except
 accused 1 and the Havirand Akhari. I don't know if I was
 beaten by any other person. I don't know if the other 4
 were beaten or not. When Akhara was beaten the last
 time, accused 2 was not there. On their return accused 2 said
 must return to Guiru as there was no body there. Accused 2
 was not there. When accused 1 began to beat Akhara the last
 time. The Havirand Akhari had this cane (Ex 6) and accused 1
 had a small kiboko when they returned with Akhara. Akhara said
 nothing to any body after he returned.

Cross- Examination. Reserved.

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B.C.C.
(Sgd) A. P. Doerly

Dr. Louis Henderson

Medical Officer in charge Native Civil Hospital. I
 remember examining the body of a male native brought from Guiru
 on the evening of the 12th day. It was brought in by the man in
 charge of the Municipal Mortuary Car. I could point him out. The
 body was much decomposed and it is impossible to say what was
 the cause of death. I examined the organs, but they were too
 decomposed for me to form any opinion as to the cause of
 death. The heart was not in the body. I examined a heart brought
 in by S.A.S. Nuthrendass. I found nothing wrong with it.
 It had already been cut open and examined. I could find nothing
 wrong with the other organs I examined, but they were almost
 rotten. The body was bloated and swollen, but looked well-
 looked. I cannot form an opinion as to his age; he was an

I know the man who brought the body. He was a native of Guiru
 and his name was ... His color ... were to his left ear and
 ... This is my report on this (Ex 8). The date of the

was beaten by any body except on the Saturday. When he returned to the farm on Saturday, he was quite fit. I did not see any marks on him. I was not beaten by any body else except Accused 1 and the Havirondo men. I don't know if I was beaten by any other person. I don't know if the other 4 men were beaten or not. When Kenaru was beaten the last time, Accused 2 was not there. On their return Accused 2 said they must return to Muira as there was no body there. Accused 2 was not there. When Accused 1 began to beat Kenaru the last time. The Havirondo men had this cane (Ex 6) and Accused 3 had a small kiboko when they returned with Kenaru. Kenaru said he was not hit by any body after he returned.

Cross- Examination: ~~Reserved.~~

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S.C.C.
(Sgd) A. W. Doerly

Dr. Louis Henderson

Medical Officer in charge Native Civil Hospital. I was called to examine the body of a male native brought from Muira in the evening of the 12th day. He was brought in by the man in charge of the Municipal Mortuary Car. I could not point him out. The body was much decomposed and it is impossible to say what was the cause of death. I examined the organs, but they were too decomposed for me to form any opinion as to the cause of death. The heart was not in the body. I examined a heart brought to me by S.A.S. Mackendage. I found nothing wrong with it, and it had already been cut open and examined. I could find nothing wrong with the other organs I examined, but they were almost unrecognizable. The body was bloated and swollen, but looked well-preserved. I cannot form an opinion as to his age; he was an

I know the man right. I came out to Muira on the 11th day and found him here and took him into Muira. He was covered with marks and scars. His chief injuries were to his left arm and hand. This is by report on page (Ex 8). The cuts on the

The diagrams are contused wounds and some lacerated. He came into hospital on 11th day and is still in hospital. He is nearly well now but in great pain for the first fortnight. His eye was very swollen. I do not think there was any danger of his life. These injuries could not be caused by an ordinary Kiboko i.e. a ground nut. These wounds were large areas. Here the skin was destroyed and subsequently sloughed. The wounds must have been caused by a broad weapon used with great force which crushed the skin and destroyed it as a burn would. They were not burns. I think this Kiboko (Ex 6) could have caused the injuries. I saw I noticed the 2nd finger of Mison's right hand. It was very tender, slightly swollen and there was some ^{white} exudate out from under the nail. I don't know how that injury was caused. Squeezing the finger in a vice might cause such an injury. There was one cut in the bend of the left elbow which looked like an ordinary Kiboko cut. Mison could not walk here, he could not get out of bed for a week. He is at present unfit to work on a Shamba.

Kisanu wa Maria was brought into hospital on the 12th day and is still in hospital. He is unable to appear in Court. This is my report on him (Ex 9). It is true. His injuries endangered his life; he was in severe bodily pain and is still. His injuries were caused by a weapon similar to those of Mison - a broad weapon which crushed the skin. I did not notice any wounds that might have been caused by this case (Ex 7). There is one wound on the head not noted because it was hidden by the hair. I noticed that there was a small abrasion and contusion of 2nd finger of the right hand. It might have been caused by a vice.

I saw Miss Mison (Mison wa Maria). She had a contused wound over the left shoulder-blade which seemed to have been caused by the same sort of weapon as caused the injuries to the other two men. I saw her on 11.5.5. I noticed no other injuries. This injury was not serious.

Harris Edward Miller, Narrator

I ~~know~~ know accused 1; I have been ~~knowing~~ staying with him at his farm, Nairobi. When the ~~last~~ last of a box of ~~was~~ was admitted on the farm I was there. Accused 1 went round to the native quarters that night and took the names of all the boys who were there. A report was sent to Police next morning. I think, ~~three~~ ^{two} days after accused 1 came late Police, a Sunday; I think. After that a ~~native~~ ^{askari} and an askari came to the farm. Two or three days later a boy was arrested, I think. The boy, who is dead was arrested. This boy, ~~was~~ was sitting with the askaries; I don't know if he was arrested. The first person I saw ~~beaten~~ ^{beaten} was the dead boy; this was on a Saturday I should say. This was a fortnight or three weeks after the first arrest. I have no knowledge of beatings prior to that date. The night the boy who is dead was arrested; the next morning he was badly ~~knocked~~ ^{knocked} about with one eye closed. I don't know who caused the injuries. He had marks on his shoulders, ~~and~~ ^{and} buttocks. These marks looked as though they had been caused by a fairly thin stick. He had a blanket and one could see on his shoulder and buttock. He was up at the house. I went down to the river where the dead ~~boy~~ said he had put the ~~stick~~. I went with accused 1; the dead boy was there with the two askaries. That was the day after he was first arrested. The marks were new, I had seen him the day before with no marks. The next time I see any marks of injuries was the day after I returned from Nairobi. A fortnight or three weeks later, two or three days at the outside before dead boy died. I saw ~~him~~ ^{him} and another boy hit by accused 1 and an askari. They were beaten at the same time for trying about a woman who was ~~with~~ ^{with} both boys hit. The woman was there when they were beaten. I cannot say whether they had been ~~before~~ ^{before} I saw no marks. Each of these men were hit about 3 times each by accused 1 and by the askari. I was passing and went on ~~to~~ ^{to} the house.

Accused 1 came into the house a few minutes afterwards
 accused 1 was using this stick (Ex 6) and so did the askari.
 I think the askari had this cane (Ex 7). I saw no other beating
 that day. I saw the askari go into the holly with the woman later
 that day I saw she had several white marks on the
 shoulder as though she had been hit. I did not see her beaten
 at the house. This was probably on Thursday or Friday. Next day
 I think Accused 1 came into suria. The askari took sicko into
 the terrace. The askari was tapping sicko on the head with board.
 I am sure it was sicko and not the other. I did not see any
 beatings that day. The askari did not return with sicko till the
 evening. I noticed then that sicko's arm was swollen. On the
 Saturday the dead boy came to the Shamba with Accused 2. They came
 to the door and accused 1 began to talk to them. Accused 1
 spoke to the boy and I saw the dead boy ^{Ex 6} ~~put~~ spit
 on the ground. Accused 1 sent for this... ~~...~~..... I think the
 boy had a ~~...~~... on his wrist. I think he was sitting when he
 spit on the ground. I don't know where Kamangu was. Sicko was
 sitting close by. I never saw dead boy's feet tied. This was
 about midday. accused 1 on getting his ~~...~~..... beat the
 dead boy 12 to 15 times. I don't know why he beat him; he told me
 it was because the native had spit on the ground. Both the
 Kavirondo askari and Accused 2 were there. The Kavirondo askari
 took the sjambok; and hit the boy 2 or 3 times and I went away
 with Hawkins. He was beaten 10 or 12 times. I heard blows after
 we left. I should say and Accused 1 went out and the beating
 stopped. I think Accused 1 then took the boy to the Shamba and
 beat him several times and the askari went to the Shamba with the
 sjambok. Accused 1 said he did not want to take the boy to
 show where the box was. He made no other statement as to why he
 had spoken to the askari. I did not notice a tin of water there.

there. There is a water-barrel generally there. I don't remember if it was used or not. I did not see the alcohol dipped into water. We finished lunch and went to change for tennis. While I was changing I saw the dead boy go past in charge of Accused 2 and the dead assent. I think the dead assent had this stick in his hand; I cannot remember if Accused 2 had anything. This was between 3 and 4 p.m. We played tennis and while playing (an hour later to 2). I saw the assent return with the dead boy. The dead boy seemed to be in a fainting condition and he had to be helped to get along. I saw nothing else till I was fetched out to see the dead boy. Accused 1 and I finished our set and then went in to tea. I was with him while he was having tea. This was probably after 5 p.m. I think we sat inside till one of the house boys, I think, came and reported that the dead boy could not speak. I was not at Accused 2's side the whole time. If there had been any hitting outside where the boys were I could have seen through the window. I can swear that Accused 1 did not hit any body in the yard after we left the tennis-court. The other two boys were beaten, I was told, because they had said that the mother had the rapees. Accused 1 beat them first and then explained the reason to me. The boy's spitting seemed to be insulting. I saw a group of three or four people round the vice. Accused 1 said he had told them that if they stink lied & in about their potter they would have their fingers squeezed in the vice and then their heads. The boy stinks and the one who is here were safe standing there. Tawkins was working the vice and it looked like a joke. The boys were putting their fingers in and pulling them out when the vice touched them. when depended was beaten by accused, the assent were outside in the house, accused went to accused the house. accused was all accused by accused.

Accused 1 and Accused 2

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There, there is a water-barrel generally there. I don't remember
 on the 2nd floor or when I did not see the things dipped into
 water. We finished lunch and went to change for tennis. While I
 was changing I saw the dead boy go past in ~~change~~ or accused 2
 and the dead ~~accused~~. I think the dead ~~accused~~ had this slice (~~in~~
 in his hand; I cannot remember if accused 2 had anything. This
 was between 3 and 4 p.m. We played tennis and while playing (an
 hour later to 2). I saw the eskaries return with the dead boy.
 The dead boy seemed to be in a fainting condition and he had to
 be helped to get along. I saw nothing else till I was fetched
 out to see ~~the~~ dead boy. accused 1 and I finished our set and
 then went in to tea. I was with his wife he was having tea.
 This was probably after 5 p.m. I think we sat inside till one of
 the house boys, I think, came and reported that the dead boy
 could not speak. I was not at accused 2's side the whole time. If
 if there had been any hitting outside where the boys were I could
 have seen through the window. I can swear that accused 1 did
 hit any body in the yard after we left the tennis-court. The
 other two boys were beaten, I was told, because they had said
 that the mother had the rapees. accused 1 beat them first and
 then explained the reason to me. The boy's spitting seemed to be
 insulting. I saw a group of three or four people round the vice.
 accused 1 said he had told them that if they ~~didn't~~ lied about
 about their potner they would have their fingers squeezed in the
 vice and then their heads. The boy screamed and the one who was
 here were standing there. Fawkins was working the vice and it
 looked like a joke. The boys were putting their fingers in and
 pulling them out when the vice touched them. when descended was
 beaten by accused the shouts were audible in the house. accused 1
 went in with me to lunch. The things were not dipped in water
 anywhere.

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Evidence page No 11.5 12

Accused 1: on same bail.

Accused 2: remanded to 11.6.20

(and) A.V. Dooly

11.6.20

Moore for Police.

Accused 1. (Allen for him)

} present.

Accused 2: on remand

Witness Affidavit

I am Accused's cook. I remember when he had a box with in it stolen. Accused 1 ordered that all of us should take the ordeal of "ringa uterage" and of the hot knife. Aicha and Kamanga were burnt by the knife. Meneru did not lick the knife; I do not know why. He was there. He refused to lick the knife. Corpi Wabai and a Thadi (name) were present. Wabai asked Aicha and Kamanga about the matter. Aicha then said that he had seen Meneru with the box. Kamanga was arrested by Wabai because he was supposed to know about the matter, also Kibiria and Karoki. No body was arrested after the ordeal. Meneru was arrested the day after and brought to Mwiru. I did not see any body beaten. I saw and heard no beatings that day. I saw no marks on any body that day. Aicha and Kamanga and Meneru slept in Kamanga's hut that night with Corpi Wabai. I saw them next morning. I saw no marks on them. Next morning Aicha and Kamanga were set free; Meneru said "Perhaps it is Aicha who has the box". On Wednesday Meneru was brought to Mwiru by Wabai. He returned that day to the house with Wabai. Wabai said that the box was taken from Meneru here in Mwiru. Three days later he came back with Wabai, a Kavirama (name). They arrested Kamanga. This was a Wednesday. Aicha and Kamanga went with Masanda and

and accused 1. to look for the box. I did not go, on Friday I saw Kisanda and Kamangu were to look for the box. That day Kisanda and Kamangu were beaten by Kisanda. He beat them with his hands. In the evening they said Kamangu and the box; so Kamangu was brought from the bush.

On the Wednesday Kisanda and Kamangu came to the place with Kamangu. I went to look for the box and left them looking for the box. This was Friday.

On the Wednesday they came at 6 p.m. Kisanda said Kamangu had the box. They went into the bush to look for the box. On returning they said they would go to look for the box next morning. They slept there. I did not see them, the day. On Thursday we went early - Asari, Kisanda, Kisanda, Kamangu and I. Kisanda and Kamangu were beaten by Kisanda with his hands in the bush. Kisanda got about 10 strokes. When they returned Kamangu said the box was with his mother. Kamangu's mother was beaten last evening, by Kisanda. Kamangu was beaten after Kamangu and Kisanda in the bush and before Kamangu's mother was beaten. Kamangu was beaten by Kisanda and by accused 1. Kisanda beat Kamangu first; and accused 1 beat Kamangu and Kisanda also. accused 1 did not beat them severely. He beat them with his hands (Ex 6). I was not near; I do not know how many strokes Kisanda gave Kamangu at the house. Kisanda and Kamangu were being beaten by Kisanda when Kamangu said his mother had the box. Kamangu was sent to fetch Kamangu's mother. Kamangu's mother came and he told her to go and fetch accused 1's box; she said she did not know where it was. Kisanda said "if you do not give me the box, I will beat you". accused 1 did not go to see Kisanda and the box was not found. Kisanda and Kamangu were beaten by Kisanda, so they were beaten the women. We did not find the box and we returned her to the place. She was not beaten on her return. She was beaten by Kisanda with his hands (Ex 6).

It was the veranda of accused's house. On our return to the house, accused 1 said Kambugu's mother had not got the box, so he took them and Kambugu to his vice (No 10). I did not go to the vice; I do not know what happened there; I went to the kitchen. Kisanda and Accused 1 and another European, whom I saw outside the Court yesterday were there. I was in the kitchen and I heard one of them cry out "My finger, my finger". No body was beaten between the time the woman was brought from the bush to the time they went to the vice. I saw Kisanda and Kambugu with Kisanda at the ^{fire} time afterwards and asked why they had been crying out. I did not notice any thing wrong with their hands. On Saturday I saw a letter from the Mbaraka to the Z/S. Mbaraka came with Accused 2. He was asked about the box by Accused 1. This was at 2 p.m. He said he did not know where it was. He was given 2 strokes with this Kiboko (No 6) by Accused 1. He then he would go and show the asteri where the box was. Accused 1 went to place tennis while Mbaraka went with Kisanda and Accused 2, to look for the box. They returned but it was about 10 or 11 o'clock. When they came back Mbaraka lay down outside in the grass. Then Accused 2 took his overcoat and came back to Mbaraka. Accused 1 left his game and came to where Mbaraka was. After his tea Accused 1 came and asked Mbaraka again about the box, he came with the other two people. Mbaraka called by name and replied; but when asked about the box he made no reply. Mbaraka walked to the spot, he walked freely. He was all right when he went to the bush with Accused 2 and Kisanda. Mbaraka was given about 3 strokes with the Kiboko by Accused 1 and Accused 2. I was in the kitchen at that time. Accused 1 given. Accused 1 when he saw that he could get no reply from Mbaraka, left him and went into the house. I was there when Accused 1 went into the house. Mbaraka and the other

it from the kitchen of accused's house. On the 13th I went to the
 house; accused 1 said Kamenge's father had not get the box;
 so he took them and Kamenge to his wife (the 1st). I did not
 go to the vice; I do not know what happened there; I went to
 the kitchen. Kiganda and accused 1 and another European, whom
 I saw outside the Court yesterday were there. I was in the
 kitchen and I heard one of them cry out "My finger, my finger"
 His body was beaten between the time the woman was brought
 from the bush to the time they went to the vice. I saw Kiganda
 and Kamenge with Kiganda at the time afterwards and asked
 why they had been crying out. I did not notice any thing wrong
 with their heads. On Saturday I saw a letter from the Kanda
 to the P/S. Moberu came with accused 2. He was asked about the
 box by accused 1. Kiza was at 2 pm. He said he did not know
 where it was. He was given 2 strokes with this kibeke (No 6)
 by accused 1. He knew he would go and show the square where
 the box was. Accused 1 went to play tennis while Moberu went
 with Kiganda and accused 2, to look for the box. They returned
 but at what hour I do not know. When they came back Moberu
 lay down outside in the grass. Then accused 2 took his over-
 coat and came back to Moberu. Accused 1 left his gun and came
 to where Moberu was. After his tea accused 1 came and asked
 Moberu again about the box, he came with the other European,
 Moberu called by name and replied; but when asked about the
 box he made no reply. Moberu walked to the spot, he walked
 freely. He was all right when he went to the bush with accused
 2 and Kiganda. Moberu was given about 3 strokes with the
 Kibeke by accused 1 after he returned from the bush. He was
 and accused 2. I did not know what happened there. The strokes
 given. Accused 1 when he saw that he could get no reply
 from Moberu, left him and went into the house. I was there
 when accused 1 went into the house. Moberu and the other

At 11:00 AM I was called by accused 1. On our return to the
 house, accused 2 said Kibanda's mother had not got the box;
 so he took Kibanda and Kibanda to his wife's (No. 10). I did not
 go to the vice; I do not know what happened there; I went to
 the witness. Kibanda and accused 1 and another European, whom
 I saw outside the Court yesterday were there. I was in the
 kitchen and I heard one of them cry out "My finger, my finger"
 His body was beaten between the time the woman was brought
 from the Bush to the time they went to the vice. I saw Kibanda
 and Kibanda with Kibanda at the time afterwards and asked
 why they had been crying out. I did not notice anything wrong
 with their heads. On Saturday I saw a letter from the Kibanda
 to the P/O. Kibanda came with accused 2. He was asked about the
 box by accused 1. This was at 2 PM. He said he did not know
 where it was. He was given 2 strokes with this kibeke (No. 6)
 by accused 1. He then he would go and show the square where
 the box was. Accused 1 went to play tennis while Kibanda went
 with Kibanda and accused 2, to look for the box. They returned
 but at what hour I do not know. When they came back Kibanda
 lay down outside in the grass. Then accused 2 took his over-
 coat and came back to Kibanda. Accused 1 left his game and came
 to where Kibanda was. After his tea accused 1 came and asked
 Kibanda about the box, he came with the other European,
 and Kibanda called by name and replied; but when asked about the
 box he made no reply. Kibanda walked to the spot, he walked
 freely. He was all right when he went to the Bush with accused
 2 and Kibanda. Kibanda was given about 3 strokes with the
 kibeke by accused 1 after he returned from the Bush with Kibanda
 and accused 2. I was in the kitchen and I saw Kibanda
 given accused 1 when he saw that he could get no reply
 from Kibanda, left him and went into the house. I was there
 when accused 1 went into the house. Kibanda and the other

other man went into the house with accused 1. This was about 7.30. Witness was not present again. Witness crawled to the place where the bath-water was boiled. I heard witness say "Is he asleep or what is the matter?". I went there and poured water over body and I found he was dead. This was at 7 P.M.

Cross-Examination reserved.

R.S.G.

(Sgd) A. V. Doshi

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Autopsy Report

S. S. Khandal. I went to accused's farm on 10th May with Superintendent of Police and S.P. A. N. On arriving there I saw the dead body of a male native. It was lying a little distance from the house under a tree and it was covered with a big tin box. I held a post-mortem. I found one scar on the left arm and a little above the elbow-joint. I found 14 other marks of injuries on the front portion of the body. There was one mark abrasion inside the right thigh (2" long, 1/3" broad; it was superficial). These 14 injuries were about 2" broad; 2 1/4" long they were not deep. The skin was broken; they were blue in colour. I did not look at the eyes. I opened the body externally and found all the organs including the heart in a normal condition, but it was full of black venous blood (that is not a usual condition of the heart, in cases of severe shock, the blood collects in the heart and a big vein and does not go to the brain. The great vessels become artificial masses of blood. I came to the conclusion that this man had died and that some of the injuries might have been caused by this cause (shock) but the injuries on the arm and the other injuries on the body were caused by this blow (shock). The injuries on the arm appeared to have been caused by an instrument which was sharp (like a knife or a stick).

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shock, fatal in its effects, may be caused without leaving any external marks. I consider that case # 110 with this ribcage (see B) on the stomach when as I saw on the stomach of deceased might have produced fatal shock; shock can also be caused by pain due to injuries. The case (Mr 6) might also cause shock sufficient to cause death. Death from shock may be simultaneous with the injuries or may cause after some hours. I took the heart into Nairobi to Dr Henderson. The body was slightly decomposed, it had been dead more than 24 hours; not more than 48.

Gross Examination reserved.

R.C.G.

(Sgd) A.N. Dooley

Case # 110 - Shamba Affirmed:-

I went to a Shamba where I saw Accused 1 about 12th or 13th May to remove a corpse. I am in charge of the Municipal Mortuary cart. I examined the body of a male native and took it to Nairobi to the Police Station. I then took it to the mortuary. I went to Dr Henderson and told him this body was in the mortuary. He came with me to the mortuary and I pointed out the body to Dr Henderson. A Police Asstari took me to the Shamba and Accused 1 showed the body to me.

The police put a guard on the body and I showed it to Dr Henderson the next day.

R.C.G.

(Sgd) A.N. Dooley

Case # 111 - Shamba Affirmed:-

I am a house boy of Accused 1. I remember the day Captain Samuels had a box stolen from him. On discovering this Captain Samuels went round and wrote down every body's name. Two days after Accused 1 ordered to take the chest of the chest and the not wife, Akim and Akim were taken by the chief Akim. Akim did not like the chief; he refused to do so. Akim said that he had when Akim took the box. Akim went with Accused 1 that day to find the box. Also another European and Akim (Corporal) Akim

Wamai was the only asitari there. On returning Meneru was called
 by Wamai and Mieru told him to hand back the box.
 Meneru said he would do next day to show where the box was.
 He slept with Gakungu, the cook, that night. A Mendi asitari
 also came that evening and slept with them. Mieru and Kamanga
 slept in their own quarters. No body was beaten that day. Next
 morning Meneru went with Accused 1 and the other European and
 Wamai and Gakungu and I followed them. I saw them looking for
 the box; but it was not recovered. They returned to the house.
 Meneru was not beaten that night; niou is a room in the same
 house as Gakungu's. Next morning Meneru was brought into Muiru
 by Wamai and the Mendi asitari. Mieru and Kamanga were left on
 the Uamba. Meneru returned to the farm 2 days later with Wamai.
 Again he went out to look for the box, but did not find it. He
 returned to Muiru. Mieru was brought to Muiru by another Mendi
 asitari. Mieru was brought to the farm by Kithanda, I cannot say
 what day it was. They arrived at noon. Kamanga was arrested
 that day. Kisanda went with Kamanga and Mieru to look for the
 box. They returned without the box. I saw no body beaten that
 day. Mieru and Kamanga and Asitari Kithanda slept in my hut with
 me. Mieru and Kamanga were tied up by their hands to a pole.
 Their feet were not tied. They were not beaten that night. Next
 morning they went with Kisanda and Gakungu. They did not get
 the box. Gakungu went to cook food 9 A.M. Accused 1 went to
 look for the box by himself. They returned at 12 noon. Accused
 1 beat Kamanga and Mieru that day; Kisanda beat them first.
 Accused 1 beat them at noon with iron spikes (Ex 6). Each
 got 2 strokes and then they went with Kithanda. Accused 1 said
 he was there because he was tired of looking after the
 stolen box. They were held by Kisanda and were struck on the

his buttocks. I was at the kitchen-door; they only got two
 strokes each. Accused 1 told Kithanda not to strike the men any
 more while he was inside. I saw the woman, Muehuru's mother, with
 I did not see her struck, but I heard her cry, ^{and} was ^{with} with
 Kithanda. Accused 1 was in his bedroom. Muehuru said his mother
 had the box and she was beaten because she denied it. I know this
 vice (Ex 10); it belongs to our Shamba. I did not see any
 people go to it during this time.

When Muehuru came he said he would show the box; then he
 made a vulgar noise with his mouth and accused 1 gave him 2
 strokes with the Kiboko. Then accused 1 went to play tennis.
 Muehuru went with Accused 2 and Kithanda. Accused 3 was present
 and Muehuru was beaten by Accused 1: Accused 2 did not try to
 prevent Accused 1 from beating Muehuru. When they went Muehuru
 was quite all right. They left at 2 P.M. and returned at 5 P.M.
 Kithanda had this case (Ex 6) and this Kiboko (Ex 7).

Accused 1 left the Kiboko outside after he beat Muehuru. When
 they returned I noticed that Muehuru was creaking heavily; he
 was walking slowly and as soon as he got into the compound, he
 fell down. The Accused 1 came from tennis and asked Kithanda if
 Muehuru had produced the box; on Kithanda saying No Accused 1
 struck him three times with the Kiboko (Ex 6) and went away
 to have his tea. About 6 P.M. we left Kithanda and Muehuru out-
 side. Muehuru was not struck again. As soon as accused 2 returned
 from the bush; he took his overcoat and left. It was about 4.30
 P.M. when Muehuru was beaten by accused 1 the last time. Accused
 went inside; we were in the kitchen. Then Kithanda called
 Muehuru. Muehuru went out and poured water on Muehuru; Muehuru
 did not get up again. It was between 5 and 6 P.M. that Muehuru
 was taken out with the vulgar noise; accused 1 and he came
 back. At 7 P.M. Muehuru was already dead.

dead.

Gaurhi--

Wuchera was lying on his side when he returned, accused I struck him on the buttocks. I noticed marks of blows on his back and also that he was very tired before accused I hit him. If accused I hit them any more than that I was not there. I did not see Wuchera struck on the stomach. Accused I did not see Wuchera arrive the last night. He was lying like a sick man. Accused I did not examine Wuchera; he questioned him and getting no answer, hit him 3 times.

Group- Examination reserved.

S.C.C.

(Sgd) A. J. Doherty

Karanja wa Kamondo affirmed:--

I am a house-boy of Accused 1. I was there when they took the ordinal of the goat. I was not there when they took the ordinal of the hot knife. Wuchera, Neku and Kamangu were arrested on account of the theft of the box; Wamsi, Corpi and a Jandi askari were there at the time. Wuchera was brought to Suirua, Wamsi Neku and Kamangu were left on the farm. Neku was brought to Suirua. Neku came to the farm on a Thursday with Kithanda. They came at 4 P.M. Kithanda told Accused 1 that Kamangu had the Rs; Kamangu was therefore arrested and was kept by Kithanda. Accused 1 and Kithanda took Neku and Kamangu to look for the money. I remained behind. They returned about 6 P.M. They went into Kamwira's house. I was working in the house at the time. I did not see or hear them struck that day. The next morning I saw Kithanda and Gakunge taking Neku and Kamangu out. Gakunge returned first to give Accused 1 food, then Accused 1 went out. They returned at 2 P.M. I saw no body struck that day. I saw Neku struck by Kithanda on Saturday in Kamwira's hut. I did not see accused 1 strike Neku or Kamangu at the time.

On Saturday Muehru was brought from Naira by Accused 1. I asked Muehru where his suppers were, Muehru said he was having tea with a Kiboko - this was (Ex 6) on the buttock. Then Accused 1 told Muehru to take Muehru to show the money; Accused 2 went with them. This was about 3 P.M. They returned near 4 P.M. while Accused 1 was playing tennis. Muehru was all right when he went, on his return he was unable to speak; he lay down in the grass; he was completely knocked out. Muehru said he had been beaten by Mithanda. I did not see Muehru hit after he returned. Accused 1 was having his tea. ~~When~~ he finished, Accused 1 came out and asked Muehru if he had shown where the Ru/4- were. Muehru did not reply and Accused 1 struck him three times with this Kiboko (Ex 6) on the buttock. He was not beaten by any other person; he was hit about 4 P.M. Accused 1 left Muehru where he was and went XXXX into the house. Muehru lay down near the place where the bath-water is boiled. At 7 P.M. I heard he was dead.

Cross- Examination reserved.

L. N.

(Sgd) A. E. Dooley

Kasuku Mithanda, Affirmative

I went for Accused 1. I cut firewood. I remember the day the people on the farm took the ordeal of the goat and Mithanda the hot knife because of Accused 1's suppers which were lost. Mithanda, Mithanda, Mithanda and Kasuku were arrested. Mithanda and Kasuku were were hurt by the knife; Muehru did not lick the knife. Mithanda then said that Muehru had stolen the Ru and Muehru was arrested. Const. Mithanda was there. I remember Mithanda and Muehru being brought to Naira; afterwards Mithanda was brought to the farm by Mithanda. I don't remember the day Muehru was brought to Naira. I don't know if Muehru was ever beaten before. I don't know where the suppers were. Mithanda asked Kasuku where he were the suppers were. Mithanda asked Kasuku where he

... Kithanda, Moku and Kamanga went with Accused 1 to look
 for the money. After their return they went to the
 place where the water was boiled. I
 body struck that day. Next morning, Kithanda, Kamanga
 Moku went to look for the money. I did not see Accused 1
 went after them; Sakunga had preceded him. Next day
 they went to cut firewood. I saw no body hit; I had
 to go to cut firewood. I saw Moku hit twice with a stick
 Kithanda. I saw Kamanga struck 4 times with a stick by
 Moku. On the 3rd day I saw Moku struck 4 times with a
 stick by Accused 1. I saw him struck by Accused 1 only on that
 occasion. I did not see Accused 1 hit Kithanda. I saw Kithanda
 die. He came with Accused 2. When they arrived Kithanda
 said "sore and show me the corpse". and he struck Mocheru 7 or
 8 times with his keseko (Ex 6). I did not see accused 1 strike
 Mocheru. Then Mocheru went away with Kithanda and Accused 2. He was
 strong and all right when he went. When he returned he was
 weak, but like a person with no strength. Mocheru stood
 up. Accused 2 took his overcoat and went away. Mocheru was
 lying up when Accused 1 came out and struck him twice with
 a stick (Ex 6). I went away to cut firewood. When I returned
 I saw Mocheru lying in the place for boiling water. He was
 there greasing; I called Sakunga who poured water over
 Kithanda and Sakunga went to call Accused 1. Accused 1
 to squeeze Mocheru about the body, but he did not get up.
 Kithanda took him by the legs and Accused 1 by the arms and took
 them down the houses. He was dead.

I know this vice (Ex 10). It belongs to our people. I
 saw Mocheru's father take him to the forest. Mocheru
 was there for some time. I saw Mocheru's father say
 "show me where the things are". They were in the forest.
 The vice is kept. I saw Kamanga, his fingers were swollen
 and Mocheru's fingers were swollen more than Kamanga's.

Kamanga's.

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I saw Kamani. I did not see her beating.

(Sd) A. J. Doerly

~~Witness was Kamani affirmed :-~~

Kamani told me that I was taken to the house of Accused one day. It was taken and told to produce a box. I said to the accused that I did not know anything about the box. I was struck severely by the accused, 30 strokes with a kiboko like this (Ex6) ^{his hand}. Accused No 1 was present. Accused had the kiboko in when I got there. I was struck in order that I should produce the box. I saw no body else struck that day. I did not see any body else beaten except Kamani who was beaten by the accused. 10 or 12 feet and hands were tied and accused was there, but he did not strike him. Both Akoni and Kamani were tied up near to each other by the hands. I did not see them beaten. I went away with the accused and the box, at night when we got to my house. He then returned me to Accused's. In the evening Accused I said to leave me alone as I knew nothing of the box. Next morning I had a miscarriage; this was due to the beating and received the day before. I was 3 months gone in the family way. Accused 1 was present during my beating at the house.

XX Order- Examination Reserved.

A. J. D.

(Sd) A. J. Doerly

~~Witness was Kamani affirmed :-~~

4815 Corp. R.A.P. lice. I got orders on a Monday about 4 o'clock and 20 days ago to go to Accused's Shamba. I got there about 1 P.M. Accused I told me he had lost the box. On Wednesday the people in the shamba were made to take the cross of the box. The box was taken to the shamba. Akoni and Kamani were there.

front of the knife; Muehuru refused to lift the knife. Accused 1 gave orders that the people were to "pig-merge" and to kick Muehuru. I saw Muehuru being kicked by accused 1 and it was that they had been burnt, and Muehuru said it was because they slept in the same house as Muehuru and it was Muehuru who had stolen the box. Accused 1 told Muehuru to show him where the box was. We went with accused 1 and the European who was here yesterday. We did not find the box. I slept in Muehuru's hut with Muehuru and Kipteso, Nandi ashari. No body was beaten and not even a little. I brought Muehuru to the Police Station on Friday. Muehuru beat him nor did I see his signs. I was here at Muehuru's time except for two days while Muehuru was here; he was not touched by any body, Muehuru was brought to Muehuru after Muehuru was not struck. I returned to accused 1's shamba the following Wednesday with Muehuru and Muehuru. We slept the night there and returned with them on Thursday. Muehuru had told he would show where the box was, but he did not. No body was beaten that day that night. When I got to Muehuru, I got news that Muehuru had arrived; he returned to Muehuru in the evening. I have not seen Muehuru to the fact except when I went with Superintendent Moore. Muehuru were not beaten while in Muehuru. Muehuru I last saw Muehuru he was perfectly fit; I saw Muehuru when he went from here to accused 2; he was perfectly fit. I did not see accused 1 when he left here. Kipteso had his swaggar - came with him on the shamba.

Gross-Examination Reserved.

A.C.O.

(Sd/-) A.C.O.

Moore has one other witness Kamanga wa Karim to call.

He is still unable to attend Court and is in hospital.

(Sd/-) A.C.O.

Pindling as accused 2

There is no direct evidence that accused 2 hit any
... in an attempt to ... present ... Accused 1
struck the deceased ... and also there is a description
that ... was beaten when he was away with the ...
and accused 2 ... but even so there is a little of evidence
that accused 2 ... either offence.

Therefore ... accused 2 ... order that he be
released.

11.5.2. ...
Accused 1 ...

17.5.2.

At Native Hospital Nairobi.

Accused surrenders to his ...
Joseph W. Karua affirmed as later, refer
Karua W. Karua affirmed, states:-

I worked for accused 1 ...
I remember ... had a box with ...
Karua and ... and Karua were arrested ...
The ... was ... we were ...
and ... the ... and ... the ...
both ... I ... he ...
... went through ...
... the ... but ...
... the ...
... and I were ...
... and a ...
We were taken to ...
... in a ...
... the ...
... and I were ...
... the ...

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...di askari. I was beaten. He was beaten with a ribbon- ...
 ...which the askaries had. This is not it (X 6). ... was tied
 ...with his feet above and his head below; he was ...
 ...because he said he would show them where they were in
 ...the morning. His feet were a foot above from the ground and his
 ...hands were tied behind his back; his head was above the ground.
 ...back was in a ... He was swinging head down. ...
 ...askaries beat him with the He ...
 ...that he would show them where the ... were. I did not see
 ...him in the morning. I slept in ... then. When he said he
 ...would show where the ... were; he was at once released and was
 ...not beaten any more. I did not see ...
 ...work. I don't know where he slept ...
 ...was eventually taken to ... by the 2 ...
 ...how long after. I did not see him beaten again before being taken
 ...to ... I did not see him again before he was taken to ...
 ...then the ... after He returned to ...
 ...house. After 3 days, on returning, he said he would show where
 ...the ... were. I did not see them the ...
 ...and asked about the ... because ...
 ...together with As the ... were ...
 ...together. I was tied by the feet and hands and ...
 ...was beaten ... on the legs, sides, ...
 ...along. An ... was ...
 ...at. I ... with ... I was beaten very
 ...severely so that I could not put on my clothes. I was ...
 ...to ... I ... beaten at 6 ...
 ...beaten at the same time. I was beaten at 7 ...
 ...askaries beat ... no body ...
 ...because he was said to ...
 ...and that he would ... for three months. I ...
 ...with ... and ... I ...

custody. Akoni slept with me that night. The askaris slept in
 Makunga's hut. The next morning we were seized again and were
 again beaten by Akoni with this stick (see photo) as the
 Europeans were present. He did not beat us. We were not
 by any native. Akoni was also beaten by Akoni. We were
 beaten at 3 a.m. that morning. We were led to a hut where we
 were beaten until evening. He beat me and then when he was
 then return and beat us again. I cannot say what day it was
 it was. We slept in the hut's quarters. The next morning we
 were not beaten. Akoni said he was going to get Mocheri
 and us to the river. Mocheri arrived on 2/12/42 with a
 askari who I do not know. Mocheri was with me and the
 accused with this stick (see photo). He was beaten very
 badly on the back. He was badly hurt and feeling the pain,
 he went to the river to produce the witness. He did not
 and had pain. There was no water in the river. He
 was put into the water. Mocheri was beaten very
 badly. The accused told him to produce his spear. Akoni
 accused told him to produce his spear. Akoni stopped beating
 Mocheri and went to play tennis. Mocheri went to the
 river only once. I was with Mocheri. Mocheri was
 very ill when he left. He walked a little and then
 been staggering on account of his back. He was
 very badly hurt. They did not let him go. He was
 beaten when he returned. He went and hit Akoni. Akoni
 left the hut and came and beat Mocheri with this stick (see photo),
 but not severely - not as many as 2 strokes. The witness went
 away to play again and the askari, who was with Mocheri
 and Mocheri with this stick (see photo) which accused had
 there. He beat him. They then the askari Mocheri. The three
 askaris and I went to the fire; then Mocheri died at
 the askari was the last person who beat Mocheri before he died.

did. The accused did not beat Madara before he went to look for the suspect.

With the vice which is kept in the shed. On the second day Accused called asari and me to the vice. Accused and the asari put the middle finger of my finger and also that of Aluku into the vice. Accused worked the handle until the vice squeezed our fingers badly. It made me cry; I cried out with the pain. The skin of my finger was broken; but the bone was intact. Aluku was also hurt badly in the vice; he did not cry out. We were squeezed in the vice that we might say where the suspect were.

My mother came there that day because I said she had the suspect. I was being badly beaten by Accused so I said this to stop him beating me. My mother was beaten by the asari. Accused did not beat her; but he was near by when she was beaten. He beat her with this kiboko (Ex 6). Accused handed it to asari; Accused did not want to hurt her, so he handed the kiboko to asari. She went away then with the asari and Gaxang. They returned and accused gave her leave to go.

SEARCH--

This case (Ex7) was with asari who tied us up. I did not see any body use the same.

Cross-Examination Reserved. W.C.C.

(Sd) A. J. Poori

Witness Madara Pinner, affirmed:--

Medical Officer. I was present with Dr Henderson on the 13.7.50 when he made a post mortem examination of a hair native who was brought in by the asari. This is half of the hair native's body. The previous evening I saw the body of the same native brought in by Abdul Karim. The one that was examined by Dr Henderson. The heart was not in the body at the P.M. I

I did not open the body the previous evening.

566

Was there any other evidence?

(Sgd) A. S. Dooly

Abdul Karim, affiant, states:-

I drive the Municipal Mortuary cart. I went out with Ohajoo to a farm at Nairu. I got an Akari at Nairu station and he took me to Accused's farm. Accused pointed to a spot and we dug there and the stretcher-bearer took out a body of a male native. I brought this body into Nairobi to the Civil Hospital with an injured man whom we got at accused's farm. we put the corpse into a ward and I reported to Mr Pyssep.

This was on 12.3.28.

R.O.C.

Cross-Examination reserved.

(Sgd) A. S. Dooly
or

Accused does not make a statement/nor call witnesses for defence in these proceedings.

(Sgd) A. S. Dooly

More:
Attest

Findings:-

On the Evidence I do not find that a prima facie case has been made out that the accused struck Richard with the intention of causing his death, nor with the intention of causing such bodily injury as is likely to cause death nor with the knowledge that he was likely by such act to cause death.

Under Section 300 I.P.C. thirdly, it is sufficient for a charge of murder that an act is done with the intention of causing bodily injury and the bodily injury intended or inflicted is sufficient in the ordinary course of nature to cause death. In this case, I do not consider that there is prima facie proof that the injury accused intended to inflict

I did not open the body the previous evening.

S.O.C.

Gross - Examination.

(Sgd) A.N. Doerly

Andai Karim, affirmed, states:-

I drive the registered Mercury cart. I went out with Chajoo to a farm at Naira. I got an askari at Naira station and he took me to Accused's shamba. Accused pointed to a spot and we dug there and the stretcher-bearer took out a body of a male native. I brought this body into Nairobi to the Civil Hospital with an injured man whom we got at Accused's farm. We put the corpse into a ward and I reported to Mr Pysen.

This was on 12.5.20.

S.O.C.

Gross - Examination reserved.

(Sgd) A.N. Doerly

or

Accused does not make a statement/~~and~~ call witnesses for defence in these proceedings.

(Sgd) A.N. Doerly

Moore:

Allen:

Finding:-

On the Evidence I do not find that a prima facie case has been made out that the accused struck Kachera with the intention of causing his death, nor with the intention of causing such bodily injury as is likely to cause death nor with the knowledge that he was likely by such act to cause death.

Under Section 306 I.P.C thirdly, it is sufficient for a charge of murder that an act is done with the intention of causing bodily injury and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. In this case, I do not consider that there is prima facie proof that the injury accused intended to inflict

injury, and the fact, in the ordinary course of nature to cause death, nor that, even if it is granted that Accused struck Muzani last before he died, he had knowledge that Muzani was in such an exhausted condition that a comparatively light beating would cause his death. I therefore do not propose to charge either under Section 302 or 304 I.P.C.

The facts remain, however, that Muzani is dead and that Aliku and Kamangu were so injured between 5th and 6th May that neither of them is yet able to carry on his ordinary work as a ~~shopkeeper~~. It is therefore, clear that the three of them have been the victims of grievous hurt and there is evidence that this hurt was caused by the Accused in this case; by the askari (Mithanda and possibly by other askaries).

The evidence is conflicting as to how much of these injuries was caused by Accused; but it seems to me that this is a question ^{for a jury} ~~for a judge~~ to decide and I therefore propose to charge Accused with causing grievous hurt to Muzani, Aliku and Kamangu with intent to extort a confession under Section 331 I.P.C.

There is evidence that Accused 1 was present when the woman Muzani was struck by the policeman Kiseada and the Accused; two kikoko was used. There seems therefore to be a prima facie case that Accused abetted the beating of Muzani by aiding Kiseada to beat Muzani in that he allowed him to use his kikoko for that purpose and he Accused was present, according to ~~some~~ of the evidence, at the time of the beating, I charge ~~with~~ him with voluntarily causing hurt to Muzani to extort a confession under Section 331 I.P.C.

I therefore commit the accused for trial on the first three charges of voluntarily causing grievous hurt to extort a confession under Section 331 I.P.C. and on a fourth charge of voluntarily causing hurt to extort a confession under Section

299
10

Section 33-1, P.C.

563

(Sgd) A.V. Dooly
Resident Magistrate.

Allen applies for Bail.

Mag allowed assured ^{own} bond of 6000/- until Mr Allen Davies
Evans can be produced to sign the Bail bond for surety in the
of 6000/-

(Sgd) A.V. Dooly

(Sgd) A.N. Dooly.

B. No. 12/28.4.20.

Kia Ora Maori Coyd.

Kia Ora.

No. 4.20.

569

To,

The C.C.
Police Post,
BURB

Dear Sir,

Last night at about 2 p.m. or so the Estate Cash to containing about Rs 400/- odd and some valuable papers was stolen from my bed-room.

I immediately took the names of all the labourers who ought to have been on the premises and found that the majority were here (Except for those who are squatters on the farm)

It must have been done by someone who knew the movements of the servants and I imagine it was about dinner time it happened.

I have not told a soul what is missing except the servants, who are beyond suspicion, so I may find someone who will give the show away by saying too much.

I shall be greatly obliged to you if you will investigate the matter at your earliest convenience.

Yours faithfully,

(Sgd) I. Hawkins.

| Time | Date | Time | Place | Police Charge file No if any. | Remarks | Initials of Officer making entry. |
|---------|---------|---------|-------|-------------------------------|--|---|
| 6 a.m. | 29.4.20 | 6 a.m. | M.P. | | On opening the OB I find the following prisoners in cells: 1. Disu wa Kirio. 2. Mchero wa Onyango. 3. Saku wa Mutus. OB 4 of 29.4.20. OB 9 of 29.4.20. | A.B.A. |
| 6 a.m. | 29.4.20 | 6 a.m. | M.P. | | On opening the OB I find the following prisoners in cells: 1. Disu wa Kirio. 2. Mchero wa Onyango 3. Saku wa Mutus. OB 4 of 29.4.20. | A.B.A. |
| 8 a.m. | 29.4.20 | 1 p.m. | M.P. | | PC 5776 Hisenda leaves with Disu wa Kirio to search for box containing Rs 40/- | A.B.A. |
| 6 a.m. | 29.4.20 | 6 a.m. | M.P. | | On opening the OB I find the following prisoners in cells: 1. Mchero wa Onyango 2. Saku wa Mutus. 3. Odengo wa Ambero 4. Rethiri wa Mutus Macheria 5. Njuguna wa Murai. OB 4 of 29.4.20. OB 6 of 29.4.20. | A.B.A. |
| 6 a.m. | 29.4.20 | 6 a.m. | M.P. | | On opening the OB I find the following prisoners in cells: 1. Mchero wa Onyango. OB 4 of 29.4.20. (Note: there are other ten prisoners mentioned in Koambu, J.P.M. here) J.P.M. | A.B.A. |
| 8 a.m. | 29.4.20 | 11 a.m. | M.P. | | PC 6445 Odera leaves with prisoner Mchero to make investigations. | A.B.A. |
| 9 a.m. | 29.4.20 | 10 a.m. | M.P. | | Mr Hawkins to Police Station and reports that Accused Mchero who was sent to his farm for investigation died last night. | Doctor and Suptd in Charge Mombu informed. A.P.A. |
| 9 a.m. | 29.4.20 | 6 p.m. | M.P. | | E.P.C. Acton returns having examined the body but can find no cause of death except some scars. | PC 5776 Hisenda & PC 5028 Mchero detailed to report what was over body. A.B.A. |
| 10 a.m. | 29.4.20 | 11 a.m. | M.P. | | Superintendent I/C and Doctor to P/ Station re OB of 8.5.20 and leave for Mr Hawkins to hold post-mortem on Mchero. | A.B.A. |

| Date | Time | Event | Remarks |
|---|-----------|---|---|
| 10.5.20 | 4 p.m. | E.P.C. Action returns. | |
| 10.7.20 | 8 p.m. | PC Hissanda to P/Sin with prisoner Mbu who informs me that he has been beaten by Mr Hawkins. | Also a note from Mr. H. Waller C/O Mr Hawkins reporting a case of the |
| 11.5.20 | 6 a.m. | On opening the OB I find the following prisoners in cells L. Dyeu wa Kirio. OB # of 29.4.20. | |
| 11.5.20 | 8 a.m. | 3rd PC 6445 Odeas went with note to Superintendent 1/c wa: OB # of 10.5.20. | Returned 4 p.m. |
| 11.5.20 | 9 p.m. | M.C Nairobi and Doctor M Kyambu to P/Sin to examine Dyeu wa Kirio. | Left 5.20 p.m PC Milt Disu Gen. N.C.K |
| 11.5.20 | 11 p.m. | Dead dog from Native Civil Hospital to take up the body of deceased Mchero and also take prisoner Kamanga to Hospital | Left 4 p.m. |
| 11.5.20 | 12 noon | Superintendent 1/c to Police Station. | Left 12.15 p.m to arrest Mr Hawkins with Corpl 4815 Wemai PC 5776 Hissanda. |
| 11.5.20 | 5 p.m. | Superintendent returns with Mr Hawkins. | |
| 11.5.20 | 8.30 p.m. | A rifle shot heard in PC 5776 Hissanda's hut and on Superintendent 1/c and Corpl Wemai entering find that he was committed suicide. | |
| 11.5.20 | 5 a.m. | D.C. Kwambu and A.D.C. Kyambu to P/Sin to hold Court. | |
| 11.5.20 | 10 a.m. | Inquest held on deceased Mchero and PC 5776 Hissanda. | |
| 11.5.20 | 1 p.m. | Court adjourned. | |
| 11.5.20 | 3.30 p.m. | D.C. A.D.C. Mr Moore, E.P.C. Action to Court. | |
| <p>Note: There are no entries in the Bulim OB from the 17th April to the 27th April both inclusive. The entries on the 28th April are in Mr Radgewaya's handwriting who has been from Bulim it being Court day at Bulim. From then there are no further entries till 4.30 p.m on 28.4.20 when E.P.C Tally opened the book. J.P. Moore. S.P.</p> | | | |
| (Sgd) J.P. Moore. | | | |

| Date | Time | Min | Notes | Initials |
|---------|-----------|-----|---|----------|
| 10.5.20 | 4 p.m. | | E.P.C. Action returns. | |
| 10.5.20 | 8 p.m. | | PC Hiswanda to P/Sin with prisoner Bisu who informs me that he has been beaten by Mr Hawkins reporting a case of the following prisoners in cells L.Disu wa Kirio. OB 4 of 29.4.20. | |
| 11.5.20 | 8 p.m. | | 3rd PC Ogers went with note to Superintendent 1/c re: OB 6 of 10.5.20. | |
| 11.5.20 | 9 p.m. | | M.O. Mafabi and Doctor Kwambu to P/Sin to examine Dian wa Kirio. | |
| 11.5.20 | 11 p.m. | | Dead car from Native Civil Hospital to take up the body of deceased Mhero and also take prisoner Kamanga to Hospital. | |
| 11.5.20 | 12 noon | | Superintendent 1/c to Police Station. | |
| 11.5.20 | 5 p.m. | | Superintendent returns with Mr Hawkins. | |
| 11.5.20 | 8.50 p.m. | | A rifle shot heard in PC 5776 Hiswanda's hut and on Superintendent 1/c and Corpl Mwangi entering and the he was committed suicide. | |
| 11.5.20 | 9 a.m. | | D.C. Kwambu SAC A.D.C Kwambu to P/Sin to hold Court. | |
| 11.5.20 | 10 a.m. | | Inquest held on deceased Mhero and PC 5776 Hiswanda. | |
| 11.5.20 | 1 p.m. | | Court adjourned. | |
| 11.5.20 | 2.30 p.m. | | D.C. A.D.C. Mr Moore, E.P.C action to Court. | |
| | | | Notes: There are no entries in the diary OB from the 17th April to the 22nd April both inclusive. The entries on the 23rd April are in A.I. midways handwriting as he has come from the Court day at Ruiri. From then there are no further entries till 4.30 p.m. on 29.4.20 when E.P.C Tally opened the book. J.P. Moore. S.P. | |
| | | | Returned 4 p.m. | |
| | | | Left 5.20 p.m PC file Kipbarote leaves with Bisu for N.C.M | |
| | | | Left 4 p.m. | |
| | | | Left 12.15 p.m to arrest Mr Hawkins with Corpl 4815 Wamsi PC 5776 Hiswanda. | |
| | | | | A.B.A. |
| | | | | A.B.A. |
| | | | | A.B.A. |
| | | | | A.B.A. |

(Sgd) J.P. Moore.

Exhibit 3.

L 184

O. P. 5 of 7

573

(Sgd) A. N. Doorky.

KIASA.

SATURDAY.

To,

The O.C. Police Post.

Ruira.

Dear Sir,

Could you possibly send the prisoner Mcheru up for a day as your askari says that if Mcheru comes up the box will be found at once. Both these prisoners agree to show where the box is if Mcheru comes up here.

If possible I should like him up today if you can oblige me.

Thanking you.

Yours faithfully,

(Sgd) L. Hawkins.

Places he might die. I did not turn the map over or look at his buttock as I put my first finger of my left eye whilst seeing the post-mortem. The cut is not deep but is dangerous when doing post-mortem. I saw my fingers while cutting near the bladder I stopped to dress my finger and just then my dresser who was cleaning and brushes out my thumb dropped. I went to dress it and in the confusion forgot to turn over the body and then we went away. The post-mortem took about an hour. The heart was full of blood due to shock in my opinion.

Read over Correct.

(Sgd) W.F.G. Campbell.

Captain Longney Hawkins, British subject, of Kia Ora, Kumbungu having been cautioned that anything he says may be used against him later I informed that he need make no statement volunteers as follows:

(Sgd) W.F.G. Campbell

I am Manager of Kia Ora, Farm. On afternoon of 8th instant the deceased Meneru wa Nyango who was in my employ as a shamba boy arrived in my farm at 2 p.m. he was then a prisoner with an askari in charge and handcuffed. I told the men that he had been sent to point out where the cash box was hidden, and he became insolent he spat on the ground and I gave him a few strokes with a kiboko (Ex 1) he was sitting down, this was at 2.15 p.m. I then went in to lunch, after lunch I saw deceased go off with two askaris, I then went to play tennis. As we were playing at about 4.15 p.m. deceased returned he seemed to be in a bad condition. I saw him at about 4.30 p.m. and he seemed ill and I left ~~him~~ speaking with the other two prisoners. At about 5.45 p.m. I came off the tennis court and saw deceased going to the prison. At about 6.15 p.m. I saw deceased in the prison with two askaris.

C.O. 233

236

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-11-2001 BY 60322 UCBAW

about 7 p.m. the askari Hissanda came in and said he could not wake the deceased. I went out with Captain Waller and a bottle of water but found that the man was dead and the body was cold. The following morning early I came to Rufra and reported the matter to Constable Eaton who came out immediately to see the boy. On the 12 night of 1914 I had the body covered over with the dipping tank.

(Sd) L. Hawkins.

Read over and signed in my presence.

(Sd) W. F. G. Campbell.

Harold Edward Waller, British Subject sworn:—

About 3 weeks ago I was staying with Captain Hawkins on his farm at Kila Ora. One evening two askaris said of themselves Captain Hawkins told me that they had come to arrest a native who had stolen a box of rupees. On the following morning I saw a native in charge of the two askaris his eye was closed and swollen and he was ~~was~~ knocked about rather badly on the shoulders and buttocks I then went down to the river with Captain.

(Sd) A. N. Doorly

Injuries received by
Richu wa Kisio.

(1) Right Arm.

tender &
slightly swollen
bruise.pus coming
from under
nail.

(a) Contused and Lacerated wound. On outside of Arm.

(b) Contused and lacerated wound on outer side of forearm.

(c) bruise of end of 2nd finger
pus coming from under nail.(2) Left Arm and Shoulder.(a) Contused lacerated wound on
shoulder Skin sloughing off.(b) Many other similar wounds on arm
and forearm of various sizes and
shapes (14 of these are shown in
diagram). The arm is much swollen
/ acutely/and inflamed and/painful.

(3)

Right Leg.

L102
577

Various lacerated contused wounds on outer side of thigh as illustrated also on Knee and buttocks.

(4) Left Leg.

Lacerated contused wounds as shown in diagram.

(5) Back

1100

578

Various lacerated-contused wounds of back as shown in diagram also one contused wound on the top of the head. 1" long x 1/2" wide.

(6) Chest.

Two lacerated-contused wounds as shown in diagrams.

This man is severely injured and unable to walk and can move in his bed but his condition is not critical.

Neironi, 5/20.

(Sgd) F.L. Henderson.
As: S.M.O.

Police
Form

Exhibit 5
(Sgd) A.M. Doherty

L110

579

MEDICAL EXAMINATION REPORT.

No.

From, Crown Police,
N A I R O R I

To, The Medical Officer,
Native Civil Hospital,
N A I R O R I

Dated, 13.6.20.

Sir,

I have the honour to request you to examine Kamangu wa
Karia Mwikuyu sent to hospital on 12.6.20 and to furnish me with
a report on reverse of the nature and extent of bodily injury
sustained by the said.

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

(Sgd) Long- Innes.

For Commissioner of Police.

Vide attached
notes.

(Sgd) F.L. Henderson.

M.O.

(5) Back

100

578

Various lacerated-contused wounds of back as shown in diagram also one contused wound on the top of the head, 1" long x 1/2" wide.

(b) Chest.

Two lacerated-contused wounds as shown in diagrams.

This man is severely injured and unable to walk and can move in his bed but his condition is not critical.

Net 001. 1/25/20.

(Sgd) F.L. Henderson.
Av: S.M.O.

MEDICAL EXAMINATION REPORT

No.

From,
Crown Police,
N A I R O B I

To,
The Medical Officer,
Native Civil Hospital,
N A I R O B I

Dated, 13.5.20.

Sir,

I have the honour to request you to examine Kamangu wa
Karis Mikuyu sent to hospital on 12.5.20 and to furnish me with
a report on reverse of the nature and extent of bodily injury
sustained by the said.

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

(Sgd) Long- Innes.

For Commissioner of Police.

Vide attached
notes.

(Sgd) F.L. Handerson.

M.O.

Names of injuries whether
 Size of injury in
 inches, palm
 length, breadth and
 depth.
 On what part of the member "hurt" or
 body inflicted.
 "Grievous Hurt" or
 "What kind of
 weapon inflicted."

Various injuries
 vice attached
 notes
 "Grievous Hurt"
 Not known.

Definitions: "Hurt". Any bodily pain, disease, or affliction not constituting "Grievous Hurt".
 "Grievous Hurt".

First. — Emasculation.
 Second. — Permanent privation of the sight of the eye.
 Third. — Permanent privation of the hearing of either ear.
 Fourth. — Privation of any member of the hand.
 Fifth. — Destruction or permanent maiming of the powers of any members of the body.
 Sixth. — Permanent disfigurement of the face or head of a man.
 Seventh. — Any hurt which endangers life, or which keeps the sufferer to bed during space of twenty days in severe bodily pain, or prevents to follow his ordinary pursuits.

Note: — In the opinion of the V.C. a hurt which is not "Grievous" at the time of sedition may become "Grievous" as a result of the effects thereof should be made in Col. 6.

(1844) J. L. Henderson
 Judicial Officer.

Injuries received by Kamangu wa Karia admitted to hospital.
12. .20 at 5 p.m.

(1) Lacerated wound on chin - Left side $1\frac{1}{2}$ " long. 580

(2) Right Arm.

Lacerated wound over point of elbow - size of a Rupee, nearly
exposed bone in skin over this area.

(3) Left Arm.

(a) Irregular lacerated wound 3" x 2" over point of shoulder

(b) Lacerated wound - size of half a rupee over insertion of the
deltoid muscle.

(c) Oval lacerated wound 4"x3" from above middle of arm to bend
of elbow.

(d) Small wound 3" above back of wrist.

(1) Right Leg.

- (a) Two lacerated wounds 6" apart, each slightly larger than a rupee, both suppurating and discharging offensive pus. Leg and ankle swollen. These wounds are severe.
- (b) Lacerated wound $2\frac{1}{2}$ " x $2\frac{1}{2}$ " 5 1/2 inches below crest of ileum on buttocks—wound circular.

(2) Left Leg.

- (a) Large irregular lacerated wound 6"x6" on outer side of thigh skin black and sloughing on this area.
- (b) Various small contused wounds over front of knee.
- (c) Contused wound $1\frac{1}{2}$ " long x 2" wide, on outer side of thigh below great trochanters.
- (d) Ditto 1 1/2" long and behind and for superior spine of ileum.

Wide Diagram.

Various ^{dried} contused wounds of various sizes and shapes- skin black and/or shaded areas.

(7) Also contusion and abrasion of skin on palmar surface of 2nd finger of right hand over 2nd phalanx.

(8) The general condition of this patient is very bad. His eyes are sunken- whole face is drawn and pinched. He can hardly move arms or legs and any movement at all in bed is painful.

I consider his condition critical.

Nairobi.

17.6.22.

(Sgd) F.L.Henderson
Ag: S.M.D.

Substance of information in brief.

The accused had a box containing Rs 400/- and some valuable papers stolen from his house. Amongst others he suspected the Complainant and in order to extort a confession from him as to where the stolen property was hidden he beat him with a kiboko causing grievous hurt.

Date. 18.5.20.

(Sgd) J.P. Moore, S.P.
Officer in charge Kyambu Station.

Substance of information in brief.

The Accused had a box containing Rs 400/- and some valuable papers stolen from his house. Amongst others he suspected the Complainant and in order to extort a confession from him as to where the stolen property was hidden he beat him with a kiboko causing grievous hurt.

Date. 18.5.20.

(Sgd) J.P. Moore, S.P.
Officer in charge Kyambu Police Station.

Substance of information in brief.

L 114
583

The accused had a box containing Rs 400/- and some valuable papers stolen from his house. Amongst others he suspected the Complainant and in order to extort a confession from him as to where the stolen property was hidden he beat him with a kiboko causing grievous hurt.

Date. 18.5.20.

(Sgd) J.P. Moore, S.P.
Officer in charge Kyambu Station.

Substance of information in brief.

The Accused had a box containing Rs 400/ - and some valuable papers stolen from his house. Amongst others he suspected the Complainant and in order to extort a confession from him as to where the stolen property was hidden he beat him with a kiboko causing grievous hurt.

Date. 18.5.20.

(Sgd) J.P. Moore, S.P.
Officer in charge Kyambu Police Station.

Substance of information in brief.

Accused had a box containing Rs. 400/- and some valuable papers stolen from his house; it was suspected that the Complainant knew where the stolen property was hidden and accused instigated and abetted Constable Hissanda of the Police beating her in order to extort a confession thereby causing grievous hurt.

Date. 18.5.20.

(Sgd) J.P. Moore, S.P.

Officer in Charge Kramos Station

Substance of information in brief.

Accused had a box containing Rs. 400/- and some valuable papers stolen from his house; it was suspected that the Complainant knew where the stolen property was hidden and accused instigated and abetted Constable Hissanda of the Police beating her in order to extort a confession thereby causing grievous hurt.

18.5.20.

(Sgd) J.P. Moore, S.P.

Officer in Charge Kramos Station.

(Sgd) A. N. Door

M. 113/88.4.20.

585

Mia Coa 113/88.4.20.

15.4.20.

To,

The C.O.
Police Post,
BATHUR

Dear Sir,

Last night at about 7 p.m or so the Estate Cash box containing about Rs 400/- odd and some valuable papers was stolen from my bed-room.

I immediately took the names of all the labourers who ought to have been on the premises and found that the majority were here (Except for those who are squatters on the farm)

It must have been done by someone who knew the movements of the servants and I imagine it was about dinner time if happened.

I have not told a soul what is missing except the servants, who are beyond suspicion, so I may find someone who will give the show away by saying too much.

I shall be greatly obliged to you if you will investigate the matter at your earliest convenience.

Yours faithfully,

(Sgd) E. Hawkins.

| No & Date. | Reference if any. | Time. | Nature of Occurrence. | Action Taken by Rollie and result. | Case File No. if any. | Initials of Officer making entry. |
|----------------|----------------------|------------|---|---|-----------------------------|--------------------------------------|
| 11 16.4.20. | | 10 P.M. | E.P.C. Abton reports sick with fever. | | | |
| 12 17.4.20. | | 10 A.M. | E.P.C. Abton sick in bed. | | | |
| 13 18.4.20. | | 4.30 P.M. | E.P.C. Tally arrives here for duty. | | | |
| 14 19.4.20. | | 6 P.M. | Received 3 letters from Mr. Hawkins, Kiara, of each box containing about 25 ACC/ and valuable papers. | Case file opened. Corporal Wamai pro- ceeds to make further enquiries. | G.N. 98/20 | |
| 15 20.4.20. | | 10.30 A.M. | 2815 Corp'l Wamai Kames reports back from Mr. Hawkins with 2 prisoners. | Searched and placed in cells. | | J.S.M. |
| 16 20.4.20. | | 10.30 A.M. | Tally E.P.C. proceeds with 5066, 2/0 Kipth to make further enquiries re CB 5/28.4.20. | Returns 5.30 P.M. 29.4.20. | | J.S.M. |
| 17 20.4.20. | | 6 A.M. | On opening the CP I found the following prisoners in cells. (1) Cdeyo wa Abbero. (2) Muluagus wa-burui. (3) Maching'it-Shipu Kapbaris (4) Moberu wa Yenge. (5) Dishu wa Kingo. | | | |
| 18 20.4.20. | | 10.30 | 3625 I P.C. Geyo Cline proceeds to Mr. Hawkins Kiara with accused Moberu to find box con: 84 400 and correspondence. | | | |
| 19 21.4.20. | | 6 P.M. | E.P.C. Abton returns from Moi Hospital. | | | |
| 20 22.4.20. | | 6 A.M. | On opening the CP I find the following prisoners in cells (1) Dishu wa Kirio. C.H. 4 (2) Yoneru wa Yenge. of 29.4.20. | | | |
| 21 23.4.20. | | 2 P.M. | E.P.C. Tally leaves for Kiambu. | | | |
| 22 23.4.20. | | 6 A.M. | On opening the CP I find the following prisoners: in cells. 1. Dishu wa Kirio 2. Moberu wa Geyanno. C.R. 4 D/ 29.4.20. | | | |
| 23 23.4.20. | | 2 P.M. | On opening the CP I find the following prisoners in cells. (1) Dishu wa Kirio. (2) Yoneru wa Geyango. (3) Suku wa Yatus. C.P. 4 of 29.4.20. C.P. 9 of 2.5.20. | | | |

| No & Date | Refer to if any | Time | Nature of Occurrence | Action taken by Police and result. | Case file No. if any. | Remarks. | Initials of officer making entry. |
|--------------|-----------------|---------|--|---|-----------------------|--|-----------------------------------|
| 2 4.5.20 | | 6 a.m. | On opening the C.P.I find the following prisoners in cells. 1. Dusu wa Kirio. 2. Mobero wa Nywango. 3. Suka wa Mutua. C.P.I 4 of 29.4.20. C.P.I 9 of 2.5.20. | | | | |
| 2 5.5.20 | | 6 a.m. | On opening the C.P.I find the following prisoners in cells: 1. Dusu wa Kirio. 2. Mobero wa Nywango 3. Suka wa Mutua. C.P.I 4 of 29.4.20. | | | | A.P.A. |
| 2 5.5.20 | | 1 P.M. | PC 5776 Hissanda leaves with Dusu wa Kirio to season for bag containing 15 4CC. | | | | A.P.A. |
| 2 6.5.20 | | 6 A.M. | On opening the C.P.I find the following prisoners in cells: 1. Mobero wa Nywango 2. Dusu wa Kirio. 3. Tesugo wa Akabero 4. Futihi wa Mutua Leacharia 5. Njuguna wa Kureia. C.P.I 4 of 29.4.20. C.P.I 0 of 5.5.20. | | | | A.P.A. |
| 2 7.5.20 | 209 of 8.5.20 | 6 a.m. | On opening the C.P.I find the following prisoners in cells: 1. Mobero wa Nywango. (C.P.I 4 of 29.4.20. (Note: where are other season prisoners mentioned in Report 2.5.20.) | PC 5200 Kiptani, 2455 C.P.I 0 of 30.5.20 all prisoners to Kwasulu (Note: this cannot be correct as prisoner Mobero was not sent to Kwasulu. J.P.P) | | | A.P.A. |
| 2 8.5.20 | 209 of 8.5.20 | 11 a.m. | PC 5445 Odera leaves with prisoner Mobero to make investigations. | | | | A.P.A. |
| 2 9.5.20 | | 10 A.M. | PC 5445 Odera leaves with prisoner Mobero to make investigations. S.P.C. Maken leaves to place the body in a secure place and investigate the cause of death. | | | Doctor and Supt in charge Kwasulu informed. | A.P.A. |
| 2 9.5.20 | | 5 P.M. | PC 5445 Odera returns having examined the body but was unable to determine cause of death except three scars. | | | PC 6776 Hissanda & PC 3625 Mobero detailed to keep watch over body. | A.P.A. |
| 2 10.5.20 | | 6 a.m. | Superintendent of Prisons at 8.5.20 and leave for Kwasulu to hand post-mortem on Mobero. | | | | A.P.A. |

| Date | Time | Who | What | Where | Case File No. if any | Remarks | Initials of Officer making rtr |
|---------|-----------|---|------|-------|--|---------|--------------------------------|
| 10.5.20 | 4 p.m. | E. C. Aotui returns. | | | | | A.B.A. |
| 10.5.20 | 8 p.m. | PC Hissada to P/Stn with prisoner Diaw who informs me that he has been beaten by Mr Hawkins. | | | Also a note from Mr. H. Waller C/C Mr Hawkins reporting a case of theft. | | A.B.A. |
| 11.5.20 | 6 a.m. | On opening the CB I find the following prisoners in cells 1. Diaw wa Kirio. PR 4 of 29.4.20. | | | | | |
| 11.5.20 | 7 a.m. | Mr PC 0445 Gdera went with note to Superintendent I/O re: CB 9 of 10.5.20. | | | Returned 4 P.M. | | A.B.A. |
| 11.5.20 | 9 p.m. | P.C. Nairobi and Doctor M Kyambu to P/Stn to examine Diaw wa Kirio. | | | Left 5.20 p.m. PG 6116 Kipterote leaves with Diaw for N.C.H. | | A.B.A. |
| 12.5.20 | 12 noon | Dead car from Native Civil Hospital to take up the body of deceased Kwaro and also take prisoner Kawango to Hospital. | | | Left 4 p.m. | | A.B.A. |
| 13.5.20 | 12 noon | Superintendent I/O to Police Station. | | | Left 12.15 p.m. to arrest Mr Hawkins with Corpl 4815 Wambui PC 5776 Hissada. | | A.B.A. |
| 14.5.20 | 5 p.m. | Superintendent returns with Mr Hawkins. | | | | | A.B.A. |
| 14.5.20 | 8.10 p.m. | 5 Rifle shot heard in PC 5776 Hissada's hut and on Superintendent I/O and Corpl Wambui entering find that he was committed suicide. | | | | | A.B.A. |
| 14.5.20 | 9 a.m. | D.C. Kyambu and A.D.C. M Kyambu to P/Stn to hold Court. | | | | | A.B.A. |
| 14.5.20 | 10 a.m. | Request held in deceased Mhero and PC 5776 Hissada. | | | | | A.B.A. |
| 14.5.20 | 1 p.m. | Court adjourned. | | | | | A.B.A. |
| 14.5.20 | 2.30 p.m. | D.C. Mhero, Mr Moore, E.P.C. Abkes to Court. | | | | | A.B.A. |

Note: There are no entries in the Ruiru CB from the 17th April to the 22nd April but three it being Court day at Ruiru. From then there are no further entries till 4.3.21 when E.P.C. Wally opened the book. J.P. Moore - S.P.

(Sgd) J.P. Moore.

Serial 3.

589

(Sgd) A.N. Doorty.

KIAGRA.

SATURDAY.

To,

The C.C. Police Post.

Rufu.

Dear Sir,

Could you possibly send the prisoner Meneru up here for a day as your askari says that if Meneru comes up the box will be found at once. Both these prisoners agree to show where the box is if Meneru comes up here.

If possible I should like him up today if you can oblige me.

Thanking you.

Yours faithfully,

(Sgd) L. Hawkins.

EXHIBIT 3.

589

(Sgd) A.N. Doorty.

KIAGRA.

SATURDAY.

To,

The C.C. Police Post,

Ruiru.

Dear Sir,

Could you possibly send the prisoner Meneru up here for a day as your askari says that if Meneru comes up the box will be found at once. Both these prisoners agree to show where the box is if Meneru comes up here.

If possible I should like him up today if you can oblige me.

Thanking you.

Yours faithfully,

(Sgd) L. Hawkins.

Places he might die. I did not turn the man over or look at his buttocks as I cut my first finger of my left hand whilst doing the post-mortem. The cut is not deep but is deep when doing post-mortem. I cut my finger whilst cutting near the bladder I stopped to dress my finger and gauze then my dresser who was cleaning the bruises out his thumb deeply. I went to dress it and in the confusion forgot to turn over the body and then we went away. The post-mortem took about an hour. The heart was full of blood due to shock in my opinion.

Read over Correct

Carson James Cowling, British subject, of Kia Ora, Kyamba having been advised that anything he says may be used against him I informed that he need make no statement volunteers as follows:—

(Sgd) W. F. J. Campbell

I am Manager of Kia Ora, farm. On afternoon of 1st instant the deceased General W. Nyango who was in my employ as a shamba boy arrived in my farm at 2 p.m. he was then a prisoner with an escort in charge and handcuffed. I told the man that he had been sent to point out where the cash box was hidden, and he became impatient he sat on the ground and I gave him a few strokes with a piko (stick) while he was sitting down. This was at 2.15 p.m. I then went to school after lunch I saw deceased go off with two akas (prisoners) that went to play football. They were playing at about 3.15 p.m. When he returned he seemed to be in a bad condition. I saw him at about 4.30 p.m. and he seemed ill and I left him speaking with the other two prisoners. At about 5.45 p.m. I came off the tennis court again and saw Accused going by the fire in a ambulance. I spoke to him again and he said he was ill. At about

about 7 p.m. the askari Hissa came in and said he could not wake the deceased. I went out with Captain Waller and a bottle of Whisky but found that the man was dead and the body was cold. The following morning early I came to Bairu and reported the matter to Constable Adon who came but immediately to view the body. On the night of 9th I had the body covered over with the dipping tank.

(Sgd) L. Hawkins.

Lead over and signed in my presence.

(Sgd) V.F.G. Campbell.

Harold Edward Waller, British Subject sworn:--

About 3 weeks ago I was staying with Captain Hawkins on his farm at Kia Cra. One evening two askaris amid of themselves Captain Hawkins told me ~~XXXX~~ they had come to arrest a native who had stolen a box of rupees. On the following morning I saw a native in charge of the two askaris his eye was closed and swollen and he was ~~HE~~ knocked about rather badly on the shoulders and buttocks. I then went down to the river with Captain.

about 7 p.m the askari Hissanda came in and said he could not
 make the deceased. I went with Captain Waller and a bottle
 of Whisky but found that the man was dead and the body was
 cold. The following morning early I came to Mwiru and reported
 the matter to Constable Adams who came out immediately to view
 the body. On the night of 9th I had the body covered over
 with the dipping tank.

(Sgd) L. Hawkins.

read over and signed in my presence.

(Sgd) W.F.G. Campbell.

Harold Edward Waller, British Subject sworn:—

About 3 weeks ago I was staying with Captain Hawkins
 on his farm at Kia Cra. One evening two askaris and of them-
 selves Captain Hawkins told me ~~XXXX~~ they had come to arrest
 a native who had stolen a box of rupees. On the following
 morning I saw a native in charge of the two askaris his eye
 was closed and swollen and he was ~~we~~ knocked about rather
 badly on the shoulders and buttocks I then went down to the
 river with Captain.

(Sgt) A. N. Doody

592

Injuries received by
Alonso wa Kialo.

1917 Night

tender &
slightly swollen
on bruise.pus coming
from under
skin.

- (a) Contused and lacerated wound on outside of leg.
- (b) Contused and lacerated wound on outer side of arm.
- (c) Wound on end of 2nd finger
pus coming from under nail.

(2) Left Arm and Shoulder.

- (a) Contused lacerated wound ^{3" x 2 1/2"} on
shoulder Skin sloughing off.
- (b) 15 or other similar wounds on arm
and forearm of various sizes and
shapes (14 of these are shown in
diagram). The arm is much swollen
(acutely) and inflamed and painful.

(3)

Right Leg

593

Various lacerated contused wounds on outer side of thigh as illustrated also on Knee and buttocks.

(4) Left Leg.

Lacerated ^{Various} contused wounds as shown in diagram.

(3) Right Leg

593

Various lacerated contused wounds on outer side of thigh as illustrated also on Knee and buttocks.

(4) Left Leg.

Lacerated ^{Various} contused wounds as shown in diagram.

L124

(3) Right Leg.

593

Various lacerated contused wounds on outer side of thigh as illustrated also on knee and buttocks.

(4) Left Leg.

Lacerated ^{various} contused wounds as shown in diagram.

(5) Back2125
594

Various lacerated contused wounds of back as shown in diagram also one contused wound on the top of the head, 1" long, x 1/2" wide.

(6) Head

Two lacerated
contused wounds
as shown in
diagram.

This man is severely injured and unable to walk or move in his bed but his condition is not critical.

Report: 13.5.20.

MEDICAL EXAMINATION REPORT.

NC.....

From,
Crown Police,
N A I & C B I

To,
The Medical Officer,
Native Civil Hospital,
N A I & C B I

Dated, 13.5.20.

Sir,

I have the honour to request you to examine Kamanu wa
Karia Mwikuyu sent to hospital on 12.5.20 and to furnish me with
a report on reverse of the nature and extent of bodily injury
sustained by the said.

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

(Sgd) Long- Innes.

For Commissioner of Police.

Vide attached
notes.

(Sgd) F. L. Handerson,
M.C.

Police
Form

Exhibit 9. 595
(S. A. V. Doorty)

MEDICAL EXAMINATION REPORT.

No.

From,
Crown Police,
N A I & C B I

To,
The Medical Officer,
Native Civil Hospital,
N A I & C B I

Dated, 13.5.20.

Sir,

I have the honour to request you to examine Kamancu wa
Karia Mwikuyu sent to hospital on 12.5.20 and to furnish me with
a report on reverse of the nature and extent of bodily injury
sustained by the said.

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

(Sgd) Long-Innes.

For Commissioner of Police.

Vide attached
notes.

(Sgd) F.L. Handerson,
M.D.

Remarks.

On what part of the "Hurt" or By what kind of
body inflicted. " Grievous Hurt "

Size of injury in
inches, being
injury whether length breadth and
cut, wound, or depth.
bruise.

Not known.

" Grievous Hurt. "

Various injuries
vide attached
notes.

Definitions:-- " Hurt", Any bodily pain, disease, or infirmity not constituting " Grievous Hurt".

- First.-- Emasculation.
- Secondly.-- Permanent Privation of the sight of the either eye.
- Thirdly.-- Permanent Privation of the hearing of either ear.
- Fourthly.-- Privation of any member of joint.
- Fifthly.-- Destruction or permanent impairing of the powers of any members or part.
- Sixthly.-- Permanent disfigurement of head or face.
- Seventhly.-- Fracture or dislocation of a bone or bones.
- Eighthly.-- Any hurt which endangers life, or which causes the sufferer to be, during space of twenty xxx days, in severe bodily pain, or unable to follow his ordinary pursuits.

In the opinion of the M.O. hurt which is not " grievous" at the time of examination may eventually become " grievous" as note to last effect should be made in Col. 6.

(Sgd) F.L. Henderson.
Medical Officer.

Injuries received by Kanangu wa Karis admitted to hospital.
12.5.20 at 5 p.m.

(1) Lacerated wound on chin - L side 1 1/2" long.

(2) Right Arm

596

Lacerated wound over point of elbow - size of a Rupee, nearly
opposite base of thumb over this area.

(3) Left Arm

(a) Irregular lacerated wound 3" x 2" over acromion of shoulder

(b) Lacerated wound - size of half a rupee over insertion of the
deltoid muscle.

(c) Oval lacerated wound 4" x 3" from above middle of arm to bend
of elbow.

(d) Small wound 3" above back of wrist.

(a) Two lacerated wounds 5" below knee on shin - each slightly larger than a rupee - both suppurating and discharging offensive pus. leg and ankle swollen.

These wounds are severe.

(b) Lacerated wound 2½" x 2½" . Six inches below crest of ilium on buttocks - wound circular.

(5) Left Leg.

(a) Large irregular lacerated wound 6" x 6" on outer side of thigh skin black and sloughing on this area.

(b) Various small contused wounds over front of knee.

(c) Contused wound 4½" long x 2" wide, on outer side of thigh below great trochanter.

(d) ditto 1½" x 1½" below and behind outer or superior spine of ilium.

Vide diagram.

Various ^{dried} contused wounds of various sizes and shapes- skin black
x and/or shaded areas.

(7) Also contusion and slight abrasion of skin on palmar surface
of 2nd finger of right hand over 2nd phalanx.

(8) The general condition of this patient is very bad. His eyes
are sunken- whole face is drawn and pinched. He can hardly
move arms or legs and any movement at all induced is painful.

I consider his condition critical.

Nai'oui.

13.5.20.

(Sgd) F.L.Henderson.

Ag: S.W.C.

2134

599

stance of information in brief.

The accused had a box containing Rs 400/- and some papers stolen from his house. Against others he executed the Complainant and in order to extort a confession from him as to where the stolen property was hidden he beat him with a kiboko causing grievous hurt.

18.5.20.

(Sgd) J.M. Moore. S.P.
Officer in charge Kyambu Station.

stance of information in brief.

The Accused had a box containing Rs 400/- and some papers stolen from his house. Against others he executed the Complainant and in order to extort a confession from him as to where the stolen property was hidden he beat him with a kiboko causing grievous hurt.

18.5.20.

(Sgd) J.P. Moore. S.P.
Officer in charge Kyambu Police Station

stance of information in brief.

The accused had a box containing Rs 400/- and some papers stolen from his house. Amongst others he suspected the Complainant and in order to extort a confession from him as to where the stolen property was hidden he beat with a kiboko causing grievous hurt.

te. 18.5.20.

(Sgd) J.P. Moore. S.P.
Officer in charge Kyambu Station.

stance of information in brief.

The accused had a box containing Rs 400/- and some valuable papers stolen from his house. Amongst others he suspected the Complainant and in order to extort a confession from him as to where the stolen property was hidden he beat with a kiboko causing grievous hurt.

te. 18.5.20.

(Sgd) J.P. Moore. S.P.
Officer in charge Kyambu Police Station

132

Substance of information in brief.

Accused had a box containing Rs 400/- and some valuable papers stolen from his house; it was suspected that the Complainant knew where the stolen property was hidden and accused instigated and abetted Constable Hissanda of the Police beating her in order to extort a confession thereby causing grievous hurt.

Date. 18.5.20.

(Sgd) J.P. Moore. S.P.

Officer in charge Kyambu Station

600

Substance of information in brief.

Accused had a box containing Rs 400/9 and some valuable papers stolen from his house; it was suspected that the Complainant knew where the stolen property was hidden and accused instigated and abetted Constable Hissanda of the Police beating her in order to extort a confession thereby causing grievous hurt.

18.5.20.

(Sgd) J.P. Moore. S.P.

Officer in charge Kyambu

Station.