

X 1931

KENYA

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Education Facilities in Native Reserves

Previous

see 16200/30 (Estimates 1931)

Subsequent

Mr. Easton 8/7
 Mr. Mayhew 10/7
 Mr. Parkinson 16/7
 Mr. Cottonwood 16/7
 Mr. Shields 29.7.
 Mr. Parkinson 30/7
 Mr. Eastwood 30/7
 Mr. Allen (on leave) 1/8
 Room 29/7

IN HIS MAJESTY'S SUPREME COURT OF KENYA.

Criminal Case No.48 of 1931.

R E X

v.

UNGALIA S/O AKICHO.

DECLARATION VERIFYING TRANSCRIPT OF SHORTHAND NOTES.

I, John Herbert Gitsham, Official Shorthand Writer of His Majesty's Supreme Court of Kenya at Nairobi, do solemnly and sincerely declare that having been required by the Registrar of the Supreme Court to furnish to him a transcript of the shorthand note relating to the trial of the above case, to which transcript this Declaration is annexed, I, the said John Herbert Gitsham, certify that this is a correct and complete record of the proceedings at the said trial.

SWORN at Nairobi this 16th
day of May, 1931,
Before me,

J. H. Gitsham
Murray Hall

Registrar.

44
END

Court: (To Complainant)

If you wish to say anything now Mr. Pitchford. I do not quite understand what you wish to say but I think that as far as this Court is concerned there has been nothing in the nature of insinuations of any kind or description made. What has taken place outside this Court is a matter really which I cannot take cognizance of in any shape or form, but if you wish to say anything you are at liberty to do so.

Pitchford: It is just in regard to the suggestions that I might not have been quite sober on my return.

Court: The question I asked was done deliberately and I have to ask it. Beyond that question of mine which was perfectly fair and had to be asked - I did not ask you because it was an embarrassing question. As far as everything goes it shows that you were not under the influence of drink. You could not have driven 6 miles on a bad road and also if you had been taking anything in excess you would have certainly shown it to the Doctor when he examined you. He said he found no such sign or suggestion. As far as I am concerned I have no feeling whatever in the matter.

Pitchford: I have brought the witnesses at whose place I spent the night and to prove how the rain prevented me from leaving. There was just the remark "a night out". I thought it might have inferred that I had been having a "binge".

~~XXXXXXXXXX~~

was somewhere about 6 o'clock at night or between 6 & 7. That would make a delay to the time when the complainant came back of 6 hours and I can understand that a man, who was enthusiastic in getting his work done, might be and probably would be upset - to put it no stronger than that - that he had been hung up on his job of work. Well that was the state the accused was in when the complainant came back.

(Accused suddenly taken ill and retires from the Court for a few minutes).

The complainant had been out. He had done a day's work and had been out for a long afternoon and evening and got back late at night, probably tired out, and then he found the Census paper to be filled in and what, to him, probably was a man making a nuisance of himself and demanding to be taken over to another farm at an impossible hour, and he doubtless was feeling a bit irritated too.

These two men came into conflict and I do not suppose anybody really knows exactly what did happen. There is no doubt that after they did meet, the accused simply lost all control of himself and inflicted a terrible assault with a weapon that might easily kill a man. From the number of blows that he inflicted I think there can be very little doubt that the accused did try to lay out the complainant. The only thing in his favour being I gather from the medical evidence of Dr. Higgins, that the accused certainly did not put all he knew into the opening blows, because had he done so the Doctor says he would have broken the complainant's skull. That is the only thing in his favour and that moves me to say that the charge of attempted murder has not been brought home. But this is nearly as bad a case as probably you can get with anything short of manslaughter and I convict the accused under Section 214 of unlawfully causing grievous harm to the complainant.

I think I would not be doing justice if I did not inflict a heavy sentence. I have taken into account all that can be said for the accused in the way that he was moved - that the guiding force moving him was an enthusiasm for his job or to avoid getting into trouble with his job - but it is I think a very lucky thing that he is not here on a charge of having killed Mr. Pitchford. Had he been charged with killing Mr. Pitchford, he would have been in a very difficult position to save paying the price himself with his life. Luck has been on his side in that he did not happen to get that extra force into the blows which he struck which might otherwise have broken Mr. Pitchford's head - broken his skull I mean. It may be that Mr. Pitchford's skull is a harder substance than usual. Anyway luckily for the accused Mr. Pitchford has survived this assault. As I said I cannot give anything but a heavy sentence in this case.

The sentence of the Court is to go to prison for 5 years with Hard Labour.

P.T.O.

Court: I shall want to consider my verdict I think and I will give it tomorrow morning.

Court adjourned till 30.4.51.

9 a.m. 30th April 1951.

Complainant makes an application to the Court to hear him with regard to aspersions on his character, which is refused by the Court at the present time.

Judgment.

This case like all cases affecting serious charges of assault or injury requires very careful thought as to the actions of the chief parties concerned. In a usual trial in England in these cases it is mainly for the Jury to decide and the Jury are a number of men. In this case it has got to be decided by one.

The very little small points of detail make all the difference as to whether the charge is one of attempted murder or felonious wounding or injury. I do not think there is any other assault section which can be said to be appropriate to the present and I have to look at the state of mind as far as I can of the party at the time when the assault took place.

The accused is a Police Constable given a number of Census papers to take out to various farms for the purpose of getting them filled in. The accused started off with a large number of papers and delivered some of them. Sometime during the day he arrived at the house of the Complainant. I think from the evidence before me complainant says he went out about 4 in the afternoon and it was some time after that that the accused got to his house. Undoubtedly he was unlucky there because he found the owner away and that hung up his getting on with his job. I do not say that there was no alternative for him because obviously there must have been some arrangements made for dealing with cases where the owner was away. Anyway he stopped there until the owner returned and the owner returned - I think though there is according to the evidence a vast difference in the time - but anyway between 10 and 1.30 at night. The Doctor's evidence fairly well clinches it that Mr. Pitchford's and Miss Baker's evidence is the more reliable and is probably correct. Somewhere after one o'clock at night.

There can be little doubt I think that after a man had been injured as the complainant had been injured, that the Doctor would be sent for at once. There was a broken arm, broken scalp in two or three places, bruised and knocked about all over, and he naturally would send for the Doctor as quickly as he could. The Doctor says he got the message at 2.30. The Doctor was about half an hour on the way, so that I have very little doubt that the assault took place somewhere between 1 and 2 in the morning; nearer two than one probably.

The accused had been kept waiting some time after 4 o'clock. One boy says it was dark and the other says it was not dark, but I suppose as a matter of fact it.

there for a considerable time and went to sleep. I think at that time it was pretty clear that the accused was worried and felt he had to get on and deliver his papers. I suppose he had a certain number of houses to go to. Somehow or other, I do not quite know, there was a dispute between the accused and the water boy or the two boys, and they all left the boys' hut together and went out and were making a row. This woke up the Memsahib and she called Mr. Pitchford. Then we come to the most difficult part of the story. We have here apparently a most unprovoked assault altogether; according to the complainant's story absolutely unprovoked. There was nothing in his saying a few words "I shall report you to your Chief tomorrow." Of course the evidence of the house-boy is not much to go on. He says that the complainant on being given a slap on the back of the neck promptly fell down. I do not believe he saw anything at all. That is nonsense. If by any chance there was any truth in the story, I know what the complainant would have done and that would be to hit hard. So that boy's story goes out altogether - he never saw anything at all. The old man that draws the water, he saw trouble was coming and got away - and then he told two stories. He told one story to the Police because he thought the Police would like to hear it. I would point out to you that this was not a case perhaps of two askaris taking this man and bullying him. Even the best forces have a black sheep among them. They were two European Officers of the Police Force. There was no pressure brought to bear.

The question that I am going to put to you, first of all, gentlemen, is this:

Who hit the first blow?

and the second question I am going to ask you is:

Did the accused intend to kill the complainant? Who first touched the other one? I do not say a hard blow.
(Replying to first question):

Assessor No.1: I do not believe the askari would dare to touch the complainant first. I think he must have been pushed.

Assessor No.2: I agree. I do not believe that the askari would begin to hit a European.

Assessor No.3: I also agree that an askari would not begin to hit a European.

(Replying to second question):

No. 1 : I do not think he intended to kill at all.

No. 2 : He did not intend to kill. It was only a mere fight.

No. 3 : I do not think he intended to kill him.

Court: As far as the charge is before the accused, you are all three of opinion that the accused is not guilty of that offence?

Assessors: Yes.

Court: (To Accused)

That is the case against you and it is now for you to make up your mind what you are going to do. You have been a policeman and should know quite well the procedure. You can either make a statement on oath or a statement from the dock. If you make a statement on oath you will be liable to cross-examination. If on the other hand you do not wish to make a statement at all, you are at liberty to say so. You can say that your statement which you made before is now in evidence and you may elect to make no further statement.

Accused: I have no further statement to make.

Court: Are you calling any witnesses?

Accused: No.

Court: (To Assessors)

Well gentlemen, now we have got to deal with this matter. There is no doubt of course that the accused hit Mr. Pitchford breaking his arm as you see and knocked him about very badly indeed. The question we have got to decide is not whether he did that, but whether the intention of the accused at the time he did it was to kill Mr. Pitchford. It is very difficult to be exact. We have got to remember it was all very late at night, if we do not call it early in the morning. There is no doubt it certainly was well after midnight, anything to a couple of hours afterwards. There is no doubt as to that time and the Doctor's evidence is conclusive. He says he got the message about 2.30. It took half or three quarters of an hour; that would make it pretty near 2 a.m. when this assault took place. I do not think this occurred as quickly as Mr. Pitchford seems to remember after he came home. I think there was some gap in between. There seems to have been two completely different disputes over this business. There was first the dispute as soon as Mr. Pitchford and Miss Baker got home, in which in accused said he wanted him to give him a lift on to Mr. Cousins' farm and in which the question of where the accused was to stop for the night was discussed any way, and there seems to be a bit of difference between the two sides as far as that goes. Mr. Pitchford told the accused he could stop there if he wanted to. There is no doubt that at that time in the morning, I think Mr. Cousins could quite safely be reckoned on being asleep and he would not even welcome a Census officer at that time. I take it Mr. Cousins is a farmer and farmers go to bed early and do not want to be knocked up to sign Census papers. As far as Mr. Pitchford refused to take the accused on that night, there is nothing in it. Mr. Pitchford had no knowledge that anybody was coming there with census papers that day. Of course, if he had, then I should think he was to be blamed for going out, unless he had forgotten about it. There is no evidence that he had. There is not very much in the accused's complaint that he had kept him waiting a long time. I think that disposes of the disputes really. After the first complaint the accused went back to the boys' quarters and stopped there for some time. Both boys say he was

The Memshib caught hold of my whistle lanyard and took it from me. I left it with her and went to the Camp of the P.W.D. and slept there. Next morning I went on to the farm of Mr. Cousins and later I was arrested by Inspector Connor on Col. Pudsey's farm."

Statement made by the Accused before the Magistrate
on 20th March 1951.

"It was not my fault. I arrived on Mr. Pitchford's farm at 5.30 p.m. I found he was not on the farm. The house boy told me he had gone to Kerara Estates. The house boy said he would return for dinner. I waited for Mr. Pitchford. He arrived at 10.30 p.m. He found the papers I had for him on his table. I reported to him with the house boy. I asked Mr. Pitchford if I could sleep on his farm as it was now night. He refused to let me sleep the night on his farm and told me to go and sleep on Mr. Cousins farm. I asked him again to let me sleep on his farm saying 'where shall I go for it is now night' - He refused; again telling me to go to Mr. Cousins farm. I then went off to the house boy's quarters to get my overcoat and knapsack which I had left there. I put on my knapsack and overcoat and left the boys hut. As I came out I met Mr. Pitchford. I saw him standing there, I thought he might strike me so I retired into the boys hut. The boy peeped through the door and told me that Mr. Pitchford had gone. I then went out of the hut on my way to Mr. Cousins. As I left Mr. Pitchford followed me saying 'why did you not leave a long time ago as I told you to'. He pushed me with his hands from behind and boxed my ears. I was very angry. I had a rungu in my hand I swung round and hit Mr. Pitchford on the head with it, I must have hit him on the head but I thought I had hit him on the chest. We then closed and I threw Mr. Pitchford to the ground. While on the ground I gave him a blow with my fist and caught him round the throat. The rungu had dropped to the ground in the struggle and was underneath us. The memsahib came up and took the rungu away. I then got up and left Mr. Pitchford.

- Q. You know that the accused went to sleep?
- A. He covered himself with a blanket and we also did. We nearly got to sleep when we heard him getting up and saying "Kwa heri".
- Q. You had not gone to sleep, you say?
- A. No.
- Finch: May I put a question if you have no objection, Sir.
- Q. In your statement to the Police, did you not make a statement to Mr. Ebblewhite?
- A. Yes.
- Q. Did you not say that after the conversation near the messahib's hut, that the bwana was the last to go through the gap in the hedge?
- A. I said that the bwana walked first and the accused went behind.
- Q. You deny having made that statement?
- (no reply)
- Q. At what stage of the assault on Mr. Pitchford did you run away?
- A. After he had received a slap and one blow with the rungu I went.
- Q. Did you see Mr. Pitchford slap the askari?
- Court: Mr. Pitchford's memory may have been doubtful. If Mr. Pitchford was slapped by the accused I have little doubt as to what he did. He would hit back.
- Finch: Did you hear any blows struck when you were standing near the kitchen when the water boy and the accused were talking to Mr. Pitchford?
- A. I did not hear the blows. I saw the blows given.
- Q. I do not mean the blows struck by the accused on Mr. Pitchford. Before the accused struck Mr. Pitchford, did you hear or see any blows struck?
- A. Yes.
- Q. What sort of noise was it?
- A. Like a slap.
- Finch: I do not think the witness understands the question. I do not think I will press the question.

Statement made by the Accused before the Magistrate read.

Case for the Crown closed.

- Q. Where was the bwana standing when he struck him?
- A. Between the house and the kitchen.
- Q. Then at this time they must have walked from the place where the bwana first saw them through the hedge and out to the back.
- A. Yes.
- Q. Who was walking in front when they came through the hedge.
- A. The bwana was ahead.
- Q. What did you see happen when they got the other side of the hedge?
- A. I saw the accused strike the bwana first with his hand.
- Q. Where did he hit him with his hand.
- A. On the cheek.
- Q. And then?
- A. The bwana fell down and then he (the accused) struck him with the rungu.

Court: You say that the first blow was given by the accused to the complainant?

A. Yes.

Q. What did the bwana do?

A. The bwana did not do anything.

Q. Did the slap knock your bwana down?

A. Yes. You can kill one with a blow.

Q. You never saw any of this at all?

A. I did see it.

Ebblewhite: You say that after you saw the accused hit the bwana, with the rungu, you ran off to call the headman?

A. Yes.

No Cross-examination.

To Court:-

Court: After the bwana got back and after he gave all the letters to the askari, you say the accused went with you back to the hut?

A. Yes.

Q. Did he go to sleep?

A. Yes. I gave him my bed and I slept.

Q. You all went to sleep?

A. Yes.

- Court: Did you say to him the bwana is outside go to him yourself.
- A. As I had not seen him outside I did not. I went outside first to the kitchen.
- Ebblewhite: What did you go to the kitchen for?
- A. He said let us all go to the bwana and I went on ahead.
- Q. And you stopped at the kitchen?
- A. Yes.
- Q. What did the other two do?
- A. They followed me.
- Q. Did they stop at the kitchen with you?
- A. Yes.
- Q. And then what happened?
- A. He kept on repeating "Take me to the bwana".
- Q. Did anybody take him to the bwana?
- A. Bwana heard the noise and came.
- Q. What to the kitchen?
- A. No. The accused and the water boy walked near the house. There was a fruit tree.
- Q. Did you see the bwana at this time?
- A. Yes.
- Q. Where did you see him?
- A. He came to the fruit tree.
- Court: Which way did he come from?
- A. He was near the mensahib's room.
- Ebblewhite: Did you hear any conversation?
- A. The complainant asked the accused what is the matter and the accused replied this boy of yours wants to beat me. Bwana replied this boy of mine would not beat you for nothing.
- Q. Then what happened?
- A. The askari made plenty of noise and the bwana replied you are making this noise, tomorrow I will write a letter and send it to Kitale. The accused replied "take me now" and kept on repeating that and at last the bwana said "no, tomorrow." Bwana said "Go to sleep".
- Q. Did he go away?
- A. He refused. He did not go to sleep but walked behind the bwana and struck him.

Court: Had you gone to bed when the bwana came back?

A. Yes.

Ebblewhite: Where did the accused see the bwana?

A. The bwana came and asked what is the matter. The askari replied "I want to go to Bwana Cousins."

Q. Did he say anything else to the bwana?

A. No.

Q. Did the accused say anything?

A. The Bwana went inside and wrote a letter.

Q. What did he say?

A. He gave the letters to the accused.

Court: One letter or many letters.

A. Many.

Ebblewhite: What did he say to the accused?

A. The accused told the bwana "It is better you take me to Bwana Cousins in your car."

Q. What did the bwana say?

A. The bwana refused. The bwana went back to sleep.

Q. What did you do?

A. I went with the askari to go to sleep. We slept for about an hour, then the askari got up again.

Q. What did he do when he got up?

A. He dressed himself and he said to us "Kwa heri" (Goodbye).

Q. Did he go?

A. When he came to the door he did not open it but he said the bwana is outside. He came back and sat on the bed.

Court: Did you look outside?

A. Yes.

Ebblewhite: Did you see the bwana?

A. I did not see him.

Court: Did you hear anybody walking about outside?

A. No.

Ebblewhite: What did the askari do when he came and sat on the bed?

A. He caught hold of me and told me to take him to the bwana and repeated it.

Court:

WAMANYOLELE S/O KATANI sworn:-

- Ebblewhite: Are you employed by Mr. Pitchford as houseboy?
- A. Yes.
- Q. You know the accused?
- A. Yes.
- Q. You know him as a Police askari?
- A. Yes.
- Q. Do you remember the day he came to the farm with some Census papers?
- A. Yes.
- Q. What time did he arrive?
- A. 6 p.m.
- Q. It was not dark?
- A. It was before it was dark.
- Q. Where did you see him when he came to the farm?
- A. He found me at the kitchen near our house?
- Q. Did he say what he had come for?
- A. He said that he had brought letters for the bwana. I told him that the bwana had gone out for a walk.
- Court: I thought he had gone in a car?
- A. In a motor car.
- Ebblewhite: Did you tell the accused what time your bwana was coming back?
- A. The bwana had told me that he would return for food.
- Q. Did the accused stay on the farm?
- A. Yes, I took him to our quarters. We remained till about 10 o'clock in the night.
- Q. Did the bwana then return?
- A. He returned at 10 p.m.
- Court: Can you read the clock? What is the time?
- A. (Looking at a watch) Nearly 10. (Correct time 11.15)
- Ebblewhite: What happened when the bwana returned?
- A. The askari told me to take him to the bwana.
- Q. Did you go?
- A. Yes.

- A. He was struck 3 times on the head.
- Q. Did you attempt to stop the accused hitting the bwana?
- A. I had gone round the kitchen when I heard the blows given and then the bwana called me "This askari is killing me" and the same time the memsahib came, I came.
- Q. What happened then?
- A. I caught the askari but he is too strong and pushed me off.
- Q. What did you do then?
- A. I ran to call the other boy, the neopara.
- Q. And when you came back was the accused there?
- A. He had run off.

Cross-examined by Accused:-

Accused: Did you not give a clearer statement to the Police and now you are against that?

Superintendent Finch interposes:

- Finch: Would Your Honour have any objection to my putting a question to the witness through the Court in regard to his statement to the Police?
- Court: Yes you may ask him yourself.
- Finch: Do you remember on the day following the assault on Mr. Pitchford, Mr. Ebbblewhite and myself and an askari coming to the farm?
- A. Yes.
- Q. Did you make a statement to this bwana (Mr. Ebbblewhite)?
- A. Yes - he asked me "What time did you see the askari come".
- Q. In your statement do you remember telling Mr. Ebbblewhite that Mr. Pitchford pushed and slapped the askari before the askari struck him?
- A. Yes. The reason I said it was this - because on one side there were two Police Officers, and an askari on the other.
- Court: Are you prepared to say anything to please anybody, is that it?
- A. I was shivering.
- Finch: Did any Police Officer threaten you or strike you?
- A. No. Only my heart.
- Court: I see you are ready to say anything but what is the truth?
- A. If you think that perhaps he will beat you.

- A. At this time he was speaking to the accused.
- Q. They were not walking, they were standing still; is that what you mean?
- A. No - we had not begun to walk.
- Q. You said you had gone off with the askari?
- A. That was at first. The bwana replied "I thought you had already gone. Are you still here."
- Court: You were with the accused near Miss Baker's hut and the complainant came there and he and the accused had words. The accused said "You are a bad bwana - you have kept me late and I do not want to sleep here" and then the bwana said "you are drunk, I shall report you to Kitale" and then accused said "if you think I am drunk put me in the car and take me to Kitale" - and the bwana said "go yourself on foot". Now after that you say the accused wanted to go back with you to your hut?
- A. Yes and the bwana followed us.
- Court: You two went off towards the hut and the bwana followed you?
- A. Yes and before we got inside we saw the bwana behind. ~~and then the bwana came up~~
- Q. And then the Bwana came up to you and said "What, are you still here" to the accused?
- A. Yes.
- Ebbelwhite: And then what happened?
- A. It was then the accused said "you are a bad bwana" and he struck him.
- Q. When the bwana came up and said "What are you still here", was any more said at that time?
- A. The askari replied.
- Q. That is all that happened?
- A. "You have kept me late here".
- Q. Did he say anything more?
- A. He said that "I have been waiting for you here. You have kept me long. I had letters for the other bwanas" and then he struck the bwana.
- Q. When the bwana came up and said "What are you still here", did he touch the accused?
- A. No.
- Q. Not at all?
- A. No.
- Q. What did you see done?

A. The accused came back and sat on my bed.

Court: He did not go out then?

A. No.

● Ebblewhite: How long did he sit in your hut this time?

A. He ~~was~~ sat on my bed and at the same time he got hold of me saying "take me to the bwana". I asked him which bwana - bwana Cousins? He said "no your bwana".

Q. Did he say for what reason?

A. He said "he has kept me long".

Q. Had he this time got all his envelopes with him?

A. Yes in his haversack.

Q. Did you agree to go to the bwana with the accused?

A. He took me by force and came shouting loudly.

Q. Did he at that time have anything in his hands?

A. He had a rungu with him (Exhibit A).

Q. Did you take him to Mr. Pitchford?

A. Yes. The bwana heard the noise and came.

Q. Whereabouts did you see the bwana?

A. I took the accused to the bwana.

Q. Where did you see the bwana?

A. Near Miss Baker's hut.

Q. What did the accused say to Mr. Pitchford?

A. "You have kept me late here and I do not want to sleep here. You are a bad bwana." The bwana then said "You have taken drink - you are very drunk. I shall write a letter and send to Kitale to report you." The accused replied "If you think I am drunk, put me in your car and take me to Kitale."

Court: How far is the farm from Kitale?

Ebblewhite: About 10 miles, Your Honour.

Q. What happened next?

A. The bwana replied "You can go yourself on foot." At that time the askari wanted to go back with me to my hut to sleep. We all walked together.

Q. Who was in front?

A. Because he wanted to strike me I held one end of the rungu and the askari held the other end.

Q. Where was Mr. Pitchford - was he in front of you or behind?

Ebblewhite: And when the accused went off with the houseboy, did you remain in the hut?

A. Yes.

Q. What time did they return?

A. After a short time they came back.

Q. Did you hear anything of the conversation between Mr. Pitchford and the accused?

A. Yes, I could hear the askari and the bwana speaking. The bwana told the askari if you want to sleep here you can sleep; if you want to go, you can go.

Q. You said the askari came back with the house boy?

A. Yes.

Q. What did the accused say he would do?

A. He said let me sleep.

Court: Did he go to sleep?

A. Yes.

Q. Did you see him?

A. Yes.

Q. You were there all the time?

A. Yes.

Ebblewhite: To what extent did he undress?

A. He took off his greatcoat, his jersey and also his haversack.

Q. How long did he stay in the hut?

A. He slept till 11 o'clock.

Q. Do you mean by that, that he was sleeping for about one hour?

A. Yes.

Q. What did he do then?

A. He said "kwa heri" I am going. Then he started to dress.

Q. What happened after he finished dressing?

A. After he had dressed, he went to the door and as he was just going out, he hesitated saying the bwana is passing outside.

Court: Did you look out?

A. No. The other boy looked.

Ebblewhite: Now what happened next?

A.

Q. Was it dark?

A. Yes.

Ebblewhite: Did he come to your hut?

A. Yes.

Q. What did he say?

A. He enquired where the Bwana had gone and I replied that he had gone for a walk.

Q. Was anybody else in the hut when he came?

A. Myself and the house-boy.

Q. What did the accused say when you told him the Bwana had gone out?

A. He said "I will wait for him".

Q. And did he wait in your hut?

A. Yes in my hut.

Q. And did he do anything with his papers?

A. He gave them to the boy.

Q. And what did the boy do?

A. He took the papers inside to the bwana's house.

Q. And what did the askari do?

A. He returned to our quarters.

Q. Did he just sit down or go to sleep?

A. He sat down.

Q. Do you remember Mr. Pitchford coming back to the farm?

A. Yes.

Court: At what time did he come?

A. At 10 p.m.

Ebblewhite: Had you gone to bed?

A. I was sitting down. I had not gone to bed.

Q. What did the accused do when Mr. Pitchford returned?

A. He asked the boy to take him to the Bwana.

Q. Was the accused quite normal at that time?

A. He was all right.

Court: Had he had anything to drink?

A. No.

To Court:-

Court: When you went out, Miss Baker, did you intend coming home for dinner?

A. We did.

Q. Did you leave any message before you went away?

A. We usually tell the boy. I think that evening that we told him definitely that we were coming back.

Q. Who cooks the dinner?

A. I.

Q. Always?

A. Yes.

Q. How long did it take you to drive back that evening?

A. I should think about 25 minutes or half an hour. I could not say.

Q. You had dinner at Kerara?

A. Yes.

Q. You had not seen Mr. Cousins that evening.

A. No.

Q. You agree with the Doctor. He said it was about 6 or 7 miles from Kerara to your house.

A. About 7 I should think.

MUSAMARI S/O MAGONGA (Mohamedan) sworn:-

Ebblewhite: Are you employed by Mr. Pitchford as a wood & water boy?

A. Yes.

Q. Do you know the accused?

A. Yes.

Q. Who is he? Is he an asker?

A. Yes.

Q. Do you remember him coming to Mr. Pitchford's farm?

A. Yes he brought some letters.

Q. What time did he arrive at the farm?

A. He arrived about 8 p.m.

Court: How long was he there before the shauri? Are you quite sure it was 8 o'clock.

A. Yes.

- Q. And is that the rungu (Exhibit A) that you took away from him.
- A. That or a similar one.
- Q. What did you do with the rungu yourself?
- A. Mr. Pitchford told me to hit him, so I hit him.
- Q. Do you know the rungu that you took away?
- A. Yes.
- Q. Did you afterwards give it to the police?
- A. Oh, yes. I did.
- Q. You hit the askari - did the askari do anything?
- A. He managed to get it back again but I kept hold of it.
- Q. And then what happened?
- A. Then Mr. Pitchford told him to give it to me.
- Q. Did he?
- A. He said no he would not because I would hit him again.
- Q. And then what happened?
- A. Mr. Pitchford said there would be no further "shauri" tonight if he would give it to me.
- Q. Did he give it to you?
- A. Then he gave it to me.
- Q. And what did you do with it?
- A. I took it and threw it in the house.
- Q. And what did the accused do?
- A. I did not stay. I went back to help Mr. Pitchford in.
- Q. And when you went back was the accused there?
- A. I did not see him.
- Q. Can you identify this man (accused)?
- A. I could not.
- Q. You went and helped Mr. Pitchford and Mr. Pitchford was later treated by the Doctor?
- A. Yes.

No cross-examination by accused.

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