1935. Kenya.

No. 38036. (Part 1.)

SUBJECT CO533/455

Murders by the Lambaren

& death of Mr. T. Powys.

Previous

23048/34.

Subsequent

Part 2.

Parliamentary Question by Sir A. Knox ——

C.S.
Samburu Mudeno

No1 on P.G. file.

1 To Governor Tel 21 Secret - cons —— 29 January '35

2. To Governor Tel 22 Secret —— 29 Jan '35

3. Governor Byrne Tel 15 Secret —— 30 Jan '35

States that whilst he sees no objection to proposed reply the P.G. suggests that answer should be postponed until air mail letter is received which together with despatch will show that no commission of enquiry is necessary.

4 Tel. to Governor. No. 24 Secret 30/1/35

5. Sir G.Fox. (s.o.) .....19th Jan. 35.

6. Lt. Col. A.J.Muirhead. (s.o.) ..23rd Jan. 35.

Mr. Freeston

The Secretary of State has received the attached letter from Sir Gifford Fox, MP. and wishes the Department to prepare as soon as possible a draft reply.

28.1.35.

From the enclosures to Sir Gifford Fox's letter it appears that some of the settlers have had a meeting, passed resolutions and sent them, not to the Governor as they should have done but to various Members of Parliament. From the top of the enclosure to Major Muirhead's letter it appears that copies have been sent to Captain Guest, Major General Knox, Sir Gifford Fox and Lord Scone, so it is to be supposed that we will get a series of questions from those Members.

We have not got any report of the tribal and in any case we cannot sit here in judgment upon the Court proceedings. The Secretary of State has addressed an enquiry to the Governor of Kenya (see No.41 on 23048/34) and until a reply is received it will not be possible to say anything very much.

With regard to Sir Gifford Fox's second enquiry, it was not Sir Gifford Fox who asked for statistics of criminal assault, but Lord Scone (see No.2 on 23026/34 Parliamentary file). Major General Knox on the same day asked how many cases of criminal assault on white women by natives had been reported

in

in the last twelve months. The information in reply to the two questions is to be found in No.30 on the main file 23026. From those figures it appears that the number of cases of assaults on women was ten, there being one case of rape, five cases of indecent assault, and four other assaults. In regard to the first case the charge was not proceeded with because the accused were found guilty of murder and have since been hanged. I submit a draft of the reply which the Secretary of State might send to Sir Gifford Fox and a draft letter which Captain Dugdale might send to his correspondent.

East African Dept.

Could Mr. Luke have the draft of a letter, for Captain Dugdale's signature, to Major Muirhead, M.P., Parliamentary Private Secretary, Ministry of Agriculture, in reply to the letter from Mr. Gerald Edwards about the state of anxiety in Kenya among settlers, resulting from the recent murder cases.

Eastwood
26.1.35.

Sir

The attached draft reply was prepared before this morning's discussion. Mr Freeston has now enquired whether the Secretary of State wishes a reply to be sent to Sir G. Fox to-day (in which case the draft will need alteration) or whether he would prefer that a reply should not be sent until after the question has been answered in the House to-morrow, when in which case Sir G. Fox could be referred to the answer.

29/1

Mr Freeston

The Sec. of S. directed that the reply should be held up until after this afternoon. There may be supplementaries in connection with the Question.

Mr. Flood
Sir C. Bottomley
I have ventured to revise the draft.

31/1

Mr Luke
31/1

7. To Sir G. Fox. ( 5 ansd.) s.o. 6th Feb 1935.

8. To Lt. Col. A. J. Muirhead. 6th Feb. 35.
( 6 ansd. & encls. retd.)

9. Gov. Kenya. Secret. .....31st Jan. 35.

Trans. letters and Memoranda relative to the case. Considers that no useful purpose will be served by appointing a Commn. of Enquiry. States action which is being taken to maintain law and order in the Samburu area.

C.J. DESTROYED UNDER STATUTE

10. Gov. Kenya 4C. .....15th Jan. 35.

Criminal Case.

Trans. copy of transcript of shorthand notes of trial of Bari Cle Laduma and four others charged with the murder of Mr. Powys.

11. Sir J. Byrne to S of S. —— 30 January, 1935.
12. Extract from a letter from Mr Hanagan to Mr Bethel Lovey.
13 Minute by S of S on pp 9–12.
14. To Gov. Kenya. Tel. 37 Secret (Cancd) 11.2.1935
15. To Gov. Kenya. (P.P) —— 11.2.1935
16. To Gov. Kenya Tel. No. 38 Secret (Cancd) 11.2.1935

Later

17. Lady Eleanor Cole —— 11/2/35
Encl: extracts from a letter from Mr. Pardoe. dated 30 Jan. 35

18. To Lady Eleanor Cole. s/o. 17 ansd. 13/2/35

19. Extract from letter to Mr. Bushe from Mr Hanagan dated 29 Dec. 34



Sir J. Maffey

(Encls to No 20)

I have had the attached letter from Lady Eleanor Cole, and I propose to reply as drafted. I should like you and Bottomley and Bushe to be satisfied with it.

25.1.35.

Sir C. Bottomley

Mr. Bushe

25/1

I have no alteration to suggest. I think it is undesirable that the Governor, when he has received the information, will be free to make any use of it he may think fit.

W.L.S. 25.1.35.

Sir J. Maffey

Sir Eric Phipps 25/1

The Royal Jnr 29/1

Mr Byle

Mr. Flood

Sir C. Bottomley

Sir J. Maffey 31/1

(Exhibit No 70)

Lady Eleanor Cole's further letter of the 30th of January about the Powys case. The Secretary of State has read this letter and strongly dislikes the idea of dealing with Mr. Pardoe's charges against the Kenya Administration on the basis of extracts from letters to Lady Eleanor Cole communicated to the Secretary of State for his private information.

He therefore gave me the outline of an answer to Lady Eleanor Cole which I have reproduced in the draft attached. I have no doubt he would welcome the advice of the Department and the Legal Adviser on it before issue.

E A Boyd

31.1.35.

What I feel is, that if Mr Pardoe has definite charges to make he should make them to the Governor. It is not likely that there will ever be more than gossip - which very soon gets accepted as fact locally and by people here. To make charges via people here & the S. of S. is really going the wrong way to work. But people in Kenya persist in this sort of thing and we must take things as they are. If Lady Cole or anyone else will come out with definite charges then they can be enquired into. But I doubt there being any definite grounds of accusation and no matter what sort of enquiry is held the settlers will say it is biassed.

I cannot suggest any alteration in the draft.

J. E. W. Flood
31.1

People in the Colonies have an undoubted right to address to the Secretary of State allegations

rule that they should do so through the Governor. This is the only fair and efficient method, since by that means alone do we get both sides of the story. I do not know if the Secretary of State would wish to add to the draft that if specific allegations are to be made, they should be made "to the Governor or to me through the Governor".

31.1.35.

I should be inclined not to add those words. In the latter case it would mean substituting action by the Governor for action by Lady E. etc. and I do not think we should argue that. Put the thread come out with the other.

W.C.S. 31.1.35

20. To Sir J. Byrne (Personal) —— 2nd Feb. 35.
(A.S. corrs. with Lady Eleanor Cole).

19. S.C. letter from Sir A. Knox to the S. of S. dated 1st Feb. 1935.
21

Mr. Freeston. Mr. Flood

~~Mr. Bushe.~~ 6
Sir C. ~~Bailey~~ 6

In proof

The Secretary of State has received the attached letter from Sir Alfred Knox, M.P.

Will you please advise?

4.2.35.

S. of S. might suggest that Sir A. Knox should await the arrival of the full Report which the Governor has been asked to supply, and which S. of S. has promised to place in the H/C. Library.

(As regards the conduct of the prosecution by a junior officer, I find, on comparison of the dates, that it cannot be said that the A.C. was prevented from taking it himself by attendance in Legislative Council. Leg. Co. adjourned from Friday Nov. 30th till Dec. 13th; the trial (at Nakuru) ended on Dec. 4th (according to the Times correspondent.)

4/2

P.T.O.

Even if Council adjourned at the end of November it would no doubt be necessary for Mr. Harragin to remain in Nairobi, because in the natural course of events he would be up to his eyes in work arising out of the proceedings which had already taken place and getting ready for the resumption of discussions on the 13th December. Anyhow, he could hardly have arranged, in advance, to undertake a prosecution starting just after the adjournment took place, so that I think we are fully justified in assuming that Mr. Harragin's job as Attorney-General prevented him from undertaking the prosecution himself, even if he had wished to do so.

Draft reply herewith.

J. I. W. Flood

6.2.35.

Yes I think so. There is fact and Mr Harragin in a letter - why he sent Mr Wallace.

HB
6/2

Mr Burke, Mr Boyd

Sir A. Knox's letter

Can you confirm please that the T.G.S. said, at the end of the general discussion on the Powys case today, that he would leave Sir A. Knox's letter unanswered?

Est Boyd
11/2/35

Yes - HB
11/2

22 To Sir J. Byrne (S.O) — 12 Feb. 35

23 Govt. Deputy Wade 84 (Air Mail) — 13 Feb. 35
Trans. addl. copy of transcript of shorthand notes of the trial of Bari Sadadumar & four others.

24 W. Harragin (S.O) — 13 Feb. 35
Furnishes his views on the Court proceedings in Powys case & explains why Mr Wallace was sent to prosecute.

Noted 16/3. No furr. action till Govr replies to 14, 16 and 22.

Wait

J B Thornton
4/3 etc

DM

25 Sir J. Byrne (Conf) Air Mail _____ 22 Feb 35

State that it is hoped to send a despatch by air mail & state as to action taken as regards Mr Cornell.

26 Governor Byrne 108 (Air Mail) _____ 24 Feb 35

Furnishes a complete report regarding the circumstances of the death of Mr J. L. Powys & subsequent investigation & legal proceedings

The Cornell episode (No.16) is dealt with in paragraph 15 of the despatch (pages 14/16) and in the first enclosure. The parts played by Inspectors Acton and Ash (see No. 22) are clearly set out in ~~paragraphs~~ pages 6-7 and 27-28.

This exhaustive review shows beyond dispute that the charges of incompetence and indifference brought against Government by the irresponsible aspirants to the Leroghi Plateau are baseless. It is only fair to the Governor and his officers that their acquittal of these charges should be public and emphatic.

I submit a draft question ~~for~~ and answer in the House of Commons. If it is approved, the Secretary of State will no doubt wish, in sending out the relevant Hansard extract, to thank the Governor for the trouble he has taken and to express his satisfaction that the criticisms lodged against the administration have been conclusively shown to be without foundation.

L B Freeston
5/3

The Governor has gone very fully and thoroughly into the history of this case and I agree with Mr. Freeston that the despatch completely disposes of the charges brought against the Government and its officials. At the same time, it is not to be expected that publication of the despatch will ~~dispose~~ see the end of these charges either outside or inside the House of Commons.

I think the suggestion of an agreed Question and Answer is a good one, and I think Mr. Freeston's draft reply is adequate. It is very desirable to make it clear that Government has done everything possible and that we fully share the view that there is nothing more to be said or done. Whether the accused were guilty or not cannot now be established. On the face of it, the grounds for their arrest even did not seem particularly strong, but that was a matter for the local police who knew the value to be attached to the evidence which they had collected. It is to be hoped that this will mean the last of it, but I am afraid there will be more.

In a case like this, it is inevitable that there should be rumours and contradictory evidence. It is quite on the cards that a party of Samburu might have claimed to have murdered a white man in order to impress their young lady friends when, in point of fact, they had not done so. I can quite understand that if they found a dead body they might have mutilated it and cooked up a story to glorify themselves. If they did that it would be inevitable that there would be all sorts of rumours and reports which would gain local currency, but could not be substantiated

or brought into Court as evidence in support of the murder charge. I should like to draw special attention to Mr. Harragin's memorandum enclosed. It seems to me a thoroughly sound, level-headed presentment of the case, and bears out the high opinion that we all have of Mr. Harragin's ability.

It seems quite clear that at first everybody was satisfied that Mr. Powys had been killed either by a fall from his pony or by a lion. — W. Gth.

J.R.A. Flood
6.3.

I agree. The cartridge-case remains a mystery, but not more so than at the time of the inquest.

At the bottom of p. 24 the Governor refers to a detailed — covering the trial transcript which it is proposed to have in the library. It may save trouble if a copy of the debate is put with the transcript.

W.G.G.
7.3.35.

I agree. Mr. Harragin's memorandum (the last enclosure to the despatch) is a very sound & ample exhibition.

J.H.
7/3/35

This is an excellent despatch, & the Governor should be authorised to publish it locally, of course with the enclosures. I think he will be very well advised to do so, because otherwise the critics will say that we have not heard the whole story.

Sir A. Keith put the original question. He should be given the chance of putting this one.

M.S.
8/3

Parliamentary Question by Sir A. Keith — No 2 on PQ file.

Reference taken in Promotion Branch.

R MAIL 2/4.
Promo Diff Case
re Mr Harragin

No Hyde 2HO (w/c 2 Jan 38036/40) 16 Dec 1935.

2 APR 1935

38036/35.

27

C.O.

Mr. Garson. 1/4
Mr. Fuck
Mr. Hood 1/6
Mr. Parkinson.
Sir G. Tomlinson
Sir C. Bottomley.
Sir J. Shuckburgh.
Perm. U.S. of S.
Parly. U.S. of S.
Secretary of State.

C.D.
R APR
D

DOWNING STREET,

AIR MAIL.

April, 1935.

**DRAFT.**

(No.26)

KENYA.

NO.

O.A.G.

Copy of Official Report 27/3
(No.2 on 38036 P.Q.)

Sir,

I have etc. to acknowledge the receipt of Sir Joseph Byrne's despatch No.108 of the 24th of February regarding the circumstances of the death in 1931 of Mr.T.L.Powys and to transmit to you ~~a copy~~ copies of a further question on this subject ~~that~~ which was asked in the House of Commons (on the 27th of March) and of my answer thereto.

2. I am grateful for the trouble ~~that you have~~ which has been taken in this matter, and I take this opportunity of expressing my satisfaction that the criticisms lodged against the Administration have been conclusively shewn to be without foundation.

3. In the circumstances I think that you would be ~~very~~ well advised to

FURTHER ACTION.

AIR MAIL

KENYA

No. 108



26

GOVERNMENT HOUSE
NAIROBI
KENYA

24th February, 1935.

Sir,

I have the honour to refer to your recent answer to a Question in the House of Commons relative to the circumstances of the death in 1931 of Mr.T.L. Powys, and to submit the following report, complete in itself, which I hope will enable you to answer any further enquiries which may be made.

2. Lady Eleanor Cole was granted a temporary grazing permit in 1930 of about 10,000 acres around the spring known as Il Pinguan and around the pools in the Palaglan River, see Squares H.5 and 6 and I.5 and 6 of the Baringo Sheet North S. A.437. The land is unalienated Crown land. To the South lies the settled Laikipia area and some way to the North is the area occupied by the Samburu tribe. The area covered by the temporary grazing permit is partly within the Northern Game Reserve.

A large portion of this sheep-grazing area is a valley with a gentle slope of about 3 miles in width on the South side and a much steeper slope on the North side. On the South side the valley flattens out into the Il Pinguan Plain.

The country is scattered with small bush

with/

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

with occasional thorn trees. The soil is sandy with outcrops of rock. There is a perpetual wind.

3. Lady Eleanor Cole employed the late Mr. T.L.Powys, a young Englishman, as a farm manager at her farm near Nanyuki; the separate grazing area, some 45 miles away, was managed by a Mr. T. Hawson Shaw.

Mr. Powys left the farm near Nanyuki on the 10th October, 1931, for the grazing area; and on the 18th October, 1931, the manager of that area went to open a road of access some ten miles distant. He remained in camp at this point leaving Mr. Powys alone at the temporary homestead on the grazing area.

Mr. Powys had resided in Kenya for a number of years and it is reported that he spoke Masai, a language closely akin to the Samburu, with fluency. Enquiries subsequently made show that he was on good terms with the native employees on the grazing area.

At 8 a.m. on the 19th October, 1931, it appears that Mr. Powys gave certain Kikuyu employees instructions to open a waterhole some 1½ miles along the valley and stated he would inspect their work at 11 a.m. He left at some time between 8 a.m. and 11 a.m. on a white pony and proceeded in the direction of some water troughs about 3½ miles along the valley. He is said to have been unarmed.

His movements are unknown until about 11 a.m. when the Kikuyu working at the waterhole saw the riderless pony returning from the direction of the Il Pingwan Plain.

The pony was eventually caught and was taken back by a syce to the waterhole and thence to the troughs, where he shouted but received no response.

A further search was organised by the native employees, Kikuyu and Masai, along the valley for some ten miles without result. But at the water troughs some 3½ miles along the valley hoof marks of a pony were found, their direction was, however, impossible to ascertain because the tracks had already been partially obliterated by a herd of zebra. The question was further confused by reason of the fact that it was not known whether the tracks were those of the pony when ridden by Mr. Powys or by the syce. The search was unsuccessful and the party of natives returned at 6 p.m.

On this day, the 19th October, 1931, no rain had fallen for a considerable time, the perpetual wind has already been mentioned. During the night a shotgun is said to have been fired by the native employees, but without response. Subsequent examination showed that one barrel was dirty.

At daybreak on the 20th October, 1931, one of the Kikuyu employees rode to Mr. Rawson Shaw's camp, some 10 miles away, with the news. Mr. Rawson Shaw at once left by car and a further search, which included the use of an aeroplane, was organised in which the Inspector of Police from Rumuruti and a number of Europeans took part. This was unsuccessful as was signalling by lamps and by shots during the night.

Early on the 21st October, 1931, an intensive search took place by aeroplane and on the ground. At about 2-30 p.m. a ground party led by a Mr. Rutherford found the remains of Mr. Powys on the South slope about 3½ miles from the temporary homestead. The ground was immediately examined and two well defined hoofmarks as though the pony had been suddenly halted were found. A few yards away, and almost in front, was a bush under

which/

which was found signs of some wild animal having laired. Ahead of the hoof marks was a mark on the dusty ground which was considered to have been caused by Mr. Powys falling from his pony. Close by was his hat. About 9 yards away were two boulders freely spotted with marks of dried blood while at the base of one was a mark where a pool of blood had existed. Between the boulders and the hat was spoor identified at the time as that of a lion and near by were indications of the recent presence of vultures. There was also similar spoor which was traced for 120 yards going away from the scene. Scattered about was found the deceased's clothing, 5 human ribs, two thigh bones, left foot in boot and 3 arm bones. On his shirt was found animal hair, believed to be that of a lion or hyena. The neck part of the deceased's shirt and pullover were torn away and there appeared to be more blood on the chest of the shirt and pullover than elsewhere on those garments. The trousers were found intact except for a large triangular tear in one knee; there was, however, no blood near the tear. The buttons were still fastened. There was a heavy leather cartridge belt, containing 7 m.m. rifle cartridges, in the belt loops of the trousers, which was also found fastened.

All these signs appeared to suggest that the pony on scenting, or seeing, a lion suddenly stopped and threw the deceased who either broke his neck or was stunned by the fall. The lion was then thought to have carried him into the

boulders/

boulders and there killed and devoured him aided by vultures and hyenas.

4. The Europeans present agreed, and confirmed their opinions in writing, that Mr.Powys' death was due to misadventure. The scene was visited by Mr. N.E. Powys, an uncle of the deceased, who wrote that he was satisfied that "there was nothing whatever to suggest that he met his death by foul play by any person".

No spear marks were discovered in the remains, which were however, fragmentary, and no such marks were found in any of the clothing. The traces of blood, the animal spoor and the hair found on the clothing were all thought evidence of the body having been taken by a lion from where it lay to where the larger quantity of dried blood was found, that is to where it was partially devoured by the lion and then by hyenas and vultures.

The Inspector of Police, to whom reference has already been made, completed an inquest report, which was submitted to the District Commissioner, Rumuruti. In view of the general opinion that death was accidental the District Commissioner dispensed with a Magisterial enquiry and accordingly endorsed the Police inquest file.

The matter was thereupon considered closed although vague rumours, from what source it is not clear, began to circulate that Mr.Powys had been murdered by Samburu. This was the position at the end of October, 1931.

5. On the 12th December, 1931, a native named Kiberenge son of Lokambari, of mixed native extraction/

extraction, but who lived under the Samburu Headman Loiben son of Loigoben, visited a Mr. A. Armstrong, to whom he was well known, and volunteered information regarding a recent "spear-blooding" murder of a native in that area.

At this stage I may mention that in common with other tribes of Nilotic and Hamitic strain the Samburu follow the custom of what has been termed "Spear-blooding", which is regarded as proof of manhood and which is usually the result of insults from the nubile girls of the tribe. Needless to say every effort has been made to suppress this custom wherever it occurs.

His informant told Mr. Armstrong that he was in serious difficulties with the tribe, the Samburu, to which he had attached himself. He had, he said, been unable to secure the assistance of the District Commissioner, Rumuruti, who was away; and he said he had been threatened by the Police when he had endeavoured to give information in regard to the murder of a European, Mr. Powys.

It is clear that Kiberenge was at the Police station on the night of the 11th December; for Inspector A. Ash, who had just handed over the station to Inspector A.B. Acton, states that, as he was passing the station on that evening, he was called in by Inspector Acton and told that a native had just come in and made a statement to the effect that Mr. Powys had been murdered. Inspector Acton at that time was sitting at the office table, and Inspector Ash himself interrogated the natives who were on the verandah, Inspector Ash leaving the office to go on to the verandah. The latter is

of/

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of/

of the opinion that Inspector Acton could have overheard the conversation if he had been listening. Inspector Ash has only a hazy recollection of what happened, or what questions he asked, but he is satisfied that he asked one of the natives, whom he now believes to be Kiberenge, how Mr.Powys had been killed and that Kiberenge replied he had been speared. Inspector Ash then told Kiberenge that he knew this to be untrue as he (Ash) had examined Mr. Powys's clothes. It is quite possible that Inspector Ash warned Kiberenge against making what he (Ash) believed to be an erroneous statement, and it is presumed that this warning to Kiberenge is what Kiberenge interprets into threats and accusations of fabricating evidence.

To Mr. Armstrong Kiberenge stated that some time before, when in his Headman's village, he saw six Samburu moran (men of the warrior class) arrive armed and that one was carrying something hidden under his cloth. He stated he heard these moran say that they had killed and mutilated a European and that they produced the evidence of mutilation. He stated that the Headman then swore the moran to secrecy over spears and gave instructions as to the disposal of the evidence of mutilation by the girls of the tribe. He stated that he was offered five cows as the price of his silence. It is important to note that the Samburu Laibon, Ole Odume, lived in the same village as the Headman.

6. On the 14th December, 1931, this same Kiberenge made a statement to the Assistant Superintendent of Police in command of the unit who was then at Rumuruti, Mr. K.T.M.Holmes, and he

reiterated/

reiterated what he had stated to Mr.A.Armstrong. He gave the names of the six moran and further details, which he stated he had overheard, of the murder.

7. As a result of the information received, the Criminal Investigation Department were informed and an Inspector, Mr. W.R. Elliot, met the District Commissioner, Isiolo, Mr. R.G.Darroch, and the a Superintendent of Police, Mr. J.B. Grenfell-Hicks, on the confines of the Samburu country. A further search was made and a skull, believed to be that of Mr.Powys was found. It was subsequently proved that the skull was not that of Mr.Powys; and about a month later a second skull, identified by a gold-filled tooth, and proved to be that of Mr. Powys, was found by a native and was produced at the inquest. A fracture of the lower jaw was observed in the second skull and seemed to support the theory of death from a fall from a horse.

Various statements made by Kiberenge were disproved; and the officers concerned, as a result of their investigation, were of the opinion that there were no grounds to support a contrary opinion of the cause of death to that expressed at the time the remains of Mr.Powys were found.

At the instance of the Commissioner of Police, the District Commissioner, Rumuruti, Mr. H.R.Carver, held an inquest and on the 16th February, 1932, found that Mr. Powys' pony had shied at a lion and had thrown its rider whose neck was broken as a result of the fall. the verdict was one of death through misadventure.

8. On the 27th January, 1932, Kiberenge son of Lokambari was charged before the District Commissioner, Rumuruti, with giving false information to a public servant, Section 115A of the Penal Code. He pleaded guilty and retracted his previous statement. He was sentenced to five months hard labour. Nothing further transpired during 1932 or until November, 1933.

9. Towards the end of November, 1933, a Mr. G. Colvile, who in 1926 was granted temporary permission to graze stock on an area at Banyaban north of the Laikipia farms, received information from native sources that Mr. Powys had been murdered by Samburu. One of Mr. Colvile's informants suggested that he should interview a Samburu prisoner in Rumuruti prison who was then on remand on a charge of complicity in a murder of two Kikuyu. This Mr. Colvile was allowed to do. A statement was made to the District Commissioner, Rumuruti, on the 25th November, 1933, by the prisoner, Mariri son of Legada, a Samburu of the Loimusi section implicating the Lorogishu section, whose Headman, Loiben son of Loigoben, figures earlier in this narrative, and implicating also the Laibon Ole Odume, who was living with the Lorogishu clan, in the death of Mr. Powys.

This man's story was confirmed by two Dorobo natives, (these particular Dorobo are hunters and are an offshoot of a more powerful tribe), in so far as it related to the singing of a song by the Samburu describing the vultures pecking the body of a European.

10. This information was reported to

Government/

8. On the 27th January, 1932, Kiberenge son of Lokambari was charged before the District Commissioner, Rumuruti, with giving false information to a public servant, Section 115A of the Penal Code. He pleaded guilty and retracted his previous statement. He was sentenced to five months hard labour. Nothing further transpired during 1932 or until November, 1933.

9. Towards the end of November, 1933, a Mr. G. Golvile, who in 1926 was granted temporary permission to graze stock on an area at Banyaban north of the Laikipia farms, received information from native sources that Mr. Powys had been murdered by Samburu. One of Mr. Golvile's informants suggested that he should interview a Samburu prisoner in Rumuruti prison who was then on remand on a charge of complicity in a murder of two Kikuyu. This Mr. Golvile was allowed to do. A statement was made to the District Commissioner, Rumuruti, on the 25th November, 1933, by the prisoner, Mariri son of Legada, a Samburu of the Loimusi section implicating the Lorogishu section, whose Headman, Loiben son of Loigoben, figures earlier in this narrative, and implicating also the Laibon Ole Odume, who was living with the Lorogishu clan, in the death of Mr. Powys.

This man's story was confirmed by two Dorobo natives, (these particular Dorobo are hunters and are an offshoot of a more powerful tribe), in so far as it related to the singing of a song by the Samburu describing the vultures pecking the body of a European.

10. This information was reported to

Government/

Government and on the 28th November, 1933, orders were given for a District Officer, Mr. C.H.Deverell, and a Police Officer, Mr. T.R.J.Ridgway, to conduct an entirely new investigation.

This they began on the 2nd December, 1933, at Kisima in the Samburu area. These officers considered that no information would be obtained while the Laibon, Ole-Odume, was still at large. He was arrested on the 3rd December, 1933.

11. I should here explain that the Nilote-Hamitic pastoral tribes have, as their priestly functionaries, individuals who are called Laibons. These are not necessarily "black" magicians and they may be "white" magicians. Generally the Masai Laibons were of the greatest assistance to the establishment of British rule and they have proved a power for good amongst their own people, but amongst other Nilote-Hamitic tribes the same credit cannot be given. I mention this tribal functionary now because I wish to make it clear that at no stage has it been proved that the death of Mr.Powys had a ritual significance associated with "black" magic.

12. After the arrest of the Laibon, one Champati son of Lasoni, the head of the Il Ngwesi Samburu moran, made a statement implicating two of the Piain Gishu section of the Samburu. These two men were arrested on the 7th December, 1933, and were subsequently sentenced to death. They confessed complicity in two murders of natives, but they denied complicity in the death of Mr.Powys and in this denial they were supported by other Samburu.

Later/

later, Champati son of Lasoni, withdrew his statement.

13. On the 15th December, 1933, the Officer-in-Charge of the Northern Frontier District, Mr. V.G.Glenday, O.B.E., accompanied by the District Commissioner, Isiolo, Mr. C.A.Cornell, met the District Officer, Mr. C.M.Deverell, and the Assistant Superintendent of Police, Mr. T.R.J.Ridgway, to discuss the future conduct of the investigations.

The Officer-in-Charge informed the Samburu Headman and Elders that he was not satisfied that they had produced all the evidence: that the Laibon Ole Odume would be removed because his presence was considered detrimental to the production of evidence; that ten days would be allowed within which to produce further evidence; and that it would depend upon their attitude as to the severity of the measures which he would ask Government to impose.

The District Officer was instructed to make a rigorous search for the Masai-Lumbwa, Kiberenge son of Lokambari, to whom reference is made in paragraphs 5,6, 7, and 8 above; and to obtain further evidence as to the alleged malignity of the Laibon who was then taken a considerable distance away to Meru in custody. No trace was found of the man Kiberenge son of Lokambari.

14. In consequence of "spear-blooding" murders of natives which had evidently been perpetrated by the Samburu, a meeting was held at Rumuruti on the 17th January, 1934, at which were present:-

the/

The Acting Provincial Commissioner, Rift Valley Province (Mr. H.R.E.Welby),

The Officer-in-Charge, Northern Frontier District, (Mr. V.G.Glenday, O.B.E.)

The District Commissioner, Rumuruti, (Mr. H.H.Trafford)

The Assistant Superintendent of Police, (Mr. T.R.J. Ridgway)

The Inspector of Police, Rumuruti, (Mr. G.E.Griffiths)

and Mr. Glenday decided to meet the situation by the following measures:-

(i) To produce all available information before the Supreme Court to secure the removal of the Laibon.

(ii) To take administrative action to depose the Headmen LOIBEN OLE LOIGOBEN and OLE LELELIT who were alleged to be instrumental in the suppression and withholding of evidence.

(iii) To impose punishment on the tribe under the Collective Punishment Ordinance.

(iv) That the further investigation of the alleged murder of Mr.Powys should be conducted by Mr.Ridgway while an administrative officer remained in the locality to provide him with any assistance he might be in need of.

(v) That a baraza would be held by the Officer-in-Charge, Northern Frontier District, at Kisima, at an early date when he would make known to the tribe the requirements of Government and would in public depose the Headmen referred to in paragraph (ii).

An immediate result was that evidence was led in the charge against the Laibon, Ole Odume, and on the 19th January, 1934, a Judge of the Supreme Court, on the complaint of the Officer-in-Charge, Northern Frontier District, recommended to me that the Laibon should be deported under Chapter 61 of the Revised Laws of Kenya.

In my absence the matter was referred to my Deputy who consulted my Executive Council, with whose advice he concurred, and in agreement on my

return/

return on the 15th February, 1934, I signed an Order of Deportation of the Laibon to Kwale in the Coast Province.

I took this action for the following reasons:-

(a) The Laibon was thought to be the instigator of a series of six assaults which resulted in the murder of twelve Kikuyu natives in the Laikipia and Nanyuki areas.

(b) There was evidence to show that the Samburu tribe were afraid to give information bearing on the cases while the Laibon remained among them.

(c) The Laibon's power over the Samburu tribe was believed by the Administrative officers concerned to be such as to render investigation of the cases in (a) almost impossible.

(d) Similarly as to the investigation of the cause of Mr.Powys' death.

(e) It was, in the opinion of the officers concerned, in the interests of peace, order and good government that he should be deported from his home to another place in the Colony.

The Laibon was interviewed by the Assistant Superintendent of Police but gave no information regarding the death of Mr.Powys.

The Officer-in-Charge of the Northern Frontier District, on returning to Samburu was not in a position to give immediate effect to the courses numbered (ii) and (iii) above, upon which he had decided. The District Officer, Mr.Deverell, and/

and the Assistant Superintendent of Police, Mr. Ridgway, were, however, directed to continue the investigations in Samburu.

15. The Samburu country is included in the Northern Frontier District the greater part of which is desert. It is inhabited by various races of nomadic pastoralists who wander with their flocks and herds over an area the boundaries of which are roughly the Abyssinian Frontier, the Italian Frontier, the Indian Ocean, the Tana River, the Meru highlands, the settled Laikipia District, the territory of the warlike Turkana, and Lake Rudolf.

The inhabitants of this area are often at variance with each other. The climate, the vastness of the area, the perpetual drought, and the hardship imposed upon both man and beast, together with the characteristics of the tribes, combine to render its administration, and that of the neighbouring country of the Turkana, a matter of no ordinary difficulty.

This Northern Frontier District, some 95,632 square miles in extent, is controlled by an Officer-in-Charge and the Samburu area, some 7,400 square miles in extent, was, at the time of which I write, administered under him by the District Commissioner, Isiolo, Mr. C.A.Cornell.

While the investigations to which I referred at the close of the preceding paragraph were being made, Mr.Cornell went to Samburu country for the purpose of collecting witnesses in cases of "spear-blooding" murders of other natives by the Samburu.

When in Samburu country, and when in a situation of great difficulty, Mr.Cornell caused

two/

two Samburu youths named Marire son of Legada and Champati son of Lasoni, to be given ten strokes with a hippopotamus hide because, to quote his own words:- "when they came in front of me they stated that practically all what they had told the District Officer at a previous enquiry and also what they had told the Police were deliberate falsehoods and they assumed an attitude of defiance, casualness and indifference and had nothing they intended to say". A reference to paragraphs 9 and 12 of this despatch will show that both of these youths had made statements implicating another section of the Samburu in the death of Mr. Powys; that the first named youth was in custody on suspicion of being concerned in the "spear-blooding" murder of Kikuyu natives, from which he was subsequently released for lack of evidence; and that the second youth subsequently withdrew his statement.

Mr. Cornell was called upon for an explanation of his conduct and I enclose a copy of his letter, which need no longer be regarded as confidential. Mr. Cornell's explanation impressed me as a straightforward acknowledgment of his error in exceeding his powers. I was unable to condone the occurrence but I was only too well aware of the great difficulties in which he and others concerned with the Samburu tribe were working and of the opposition with which they were confronted.

Enclosure I.

In consequence I caused him to be informed that I realised the difficulties and constant strain with which he had to contend in Samburu; that I coul not pass over an action so contrary to the principle

to/

to be observed in dealing with natives; that he was officially reprimanded; and that he would be transferred to another district.

Mr. Cornell was so transferred to Moyale on the Abyssinian Frontier where, I wish to add, he has shown considerable resource and ability.

16. On the 30th and 31st March, and the 1st April, 1934, when further evidence was forthcoming, a baraza or Public Meeting of Samburu was held at Kisima. An enquiry was held by the District Commissioner, Isiolo, under the Collective Punishment Ordinance No.54 of 1930, in respect of various murders of natives by Samburu in the Laikipia and North Nyeri Districts and, on the advice of the Officer-in-Charge of the Northern Frontier District, of the Chief Native Commissioner and of the Attorney General, I ordered the imposition of a fine of £900 upon five sections of the Samburu tribe. The Order I made also provided for payment of £295 out of the fine to the next of kin of ten murdered natives as compensation, this sum represents the customary payment in the tribe of the deceased.

It was quite clear that the Samburu had combined to suppress detailed evidence and my reasons for imposing the fine were more particularly:-

(a) The Samburu were the only tribe in the vicinity who were blooding their spears during the period in question;

(b) statements or confessions by individual Samburu murderers had been made to the Police implicating themselves in "spear-blooding" murders, thereby showing that the

Samburu/

Samburu were "spear-blooding" during this period;

(c) Samburu were found with tribal marks on them indicating that they had killed some human being other than members of their own tribe;

(d) Samburu were in certain cases identified as the murderers;

(e) No flocks or cattle were stolen from the deceased;

(f) Samburu spears and ornaments were found at the scene of the murders;

(g) All the murders were committed on lonely farms in the vicinity of the Samburu;

(h) No evidence can be obtained from the Samburu with regard to the ownership of the spears, etc;

(i) The Samburu Elders practically all admitted that the murders were the work of their young men;

(j) From the very nature of the custom the practice of which brings prestige to the warrior class, it is possible that the murderers themselves would be the first to advertise their own prowess to the sections at fault.

17. It will be seen from the foregoing paragraphs of this despatch that questions of an anthropological and sociological nature had arisen; and because it was understood that the deported Samburu Lalhon, Ole Odume, see paragraph 12 above, had now something to communicate, an Education Officer, Mr. L.E. Whitehouse, who speaks Masai fluently/

fluently, and the premier Laibon of the Masai tribe, Kimurai, were instructed to go to Kwale to discuss matters with the District Commissioner there and with the Samburu Laibon.

The discussions held at Kwale in April and May, 1934, shed no new light upon the problems which had arisen.

18. Earlier in the year, on the 31st January, 1934, Mr. G. Colvile, see paragraph 9 of this despatch, had written to the Colonial Secretary asking for an interview on the subject of Mr. Powys' death. This interview took place on the 8th February when Mr. Colvile stated that his object was to refute any idea that the agitation regarding the alleged murder of Mr. Powys had any political flavour.

He stated he was convinced that Mr. Powys had been murdered; and he urged that if the Samburu could be made to understand that only the actual murderers and their abettors would be punished they might be prepared to give information. He considered that Government must show it was convinced of the murder and that it was determined to bring it home to the guilty persons.

It was pointed out to him that it was essential to obtain convincing evidence and it was decided to obtain a complete record of the investigations to date.

This was done and a copy of the record was sent to:-

Lt.-Col. Lord Francis Scott, D.S.O.
Member of Legislative Council for the Rift Valley Constituency;

Mr. E.H. Wright,
Member of Legislative Council for the Aberdare Constituency;

Mr. G. Colvile.

Mr. E. Pardoe, who manages an estate for Lady Eleanor Cole.

I myself held a meeting on the 23rd April, 1934, at which were present the above and:-

The Colonial Secretary,
The Acting Chief Native Commissioner,
The Acting Provincial Commissioner, Rift Valley Province,
The Commissioner of Police,
The Officer-in-Charge, Northern Frontier District,
The Senior Assistant Colonial Secretary,

at which Mr. Colvile said statements which were now missing had been made to a Police Officer corroborating the statements of Kiberenge son of Lokambari, see paragraphs 5, 6, 7 and 8 above. In reply to this the Commissioner of Police said it was possible that these alleged statements had been made, but that he had denials from both of the Police officers who might have been concerned and that he would investigate further.

The Officer-in-Charge of the Northern Frontier District informed the meeting of the recommendations he was considering making to me regarding the imposition of a collective fine on the Samburu for "spear-blooding" murders of natives.

I informed the meeting that Government would be grateful for any further information from Mr. Colvile regarding the death of Mr. Powys; and I said I intended to open a new Government station in Samburu at Kisima forthwith.

Mr. Wright enquired whether the choice of Kisima as a site for a station meant that that place was regarded as in Samburu country. He was informed that the proposed site was suitable on administrative grounds.

Mr. Colvile was of opinion that the Administrative officers in the Northern Frontier District were

prejudiced/

prejudiced; and that the amount then under consideration by the Officer-in-Charge, Northern Frontier District, for a collective fine was insufficient.

The questions raised by the Members for the Rift Valley and Aberdare constituencies relative to the Samburu land question on the Leroghi Plateau were, of course, extraneous to the purpose of the meeting. Since the meeting those questions have been fully dealt with in Chapter VI of the Report of the Kenya Land Commission. Copies of the record of this meeting were sent to those present.

On the 26th May, 1934, a Resolution was passed by a Public Meeting of Laikipia residents which contained the following clause:-

> "Quite apart from the above, commencing in 1932, the long series of murders committed by the Samburu now total 32. Should Government recompense these people by awarding them an additional 1,087,000 acres, it can only be regarded by both natives and Europeans as condonation of the crimes, and must inevitably provoke further murders, on the one hand, with consequent reprisals, in the form of direct action by ourselves, on the other."

As you are aware, the Report of the Kenya Land Commission was debated in Legislative Council in October, 1934.

On the 16th June, 1934, in order to facilitate closer administration, the area occupied by the Samburu tribe was transferred to the Rift Valley Province and a new headquarters, at Maralal, was occupied. The two unsatisfactory Headmen were suspended and have subsequently been deposed.

19. I now continue the narrative concerning the death of Mr.Powys from paragraph 14

of/

of this despatch and, in illustration, I attach a continuation of that Police Report, dated the 5th April, 1934, which I understand you have placed in the Library of the House of Commons.

Enclosure II.

Enquiries continued to be made by the Administrative and Police Officers concerned, but no information of value concerning the death of Mr. Powys was obtained, as had been hoped, during the early stages of the collection of the fine which I had imposed on the 26th June, 1934, on five of the Samburu sections in connection with "spear-blooding" murders of natives by the tribe.

About the 20th September, 1934, the Police obtained information which led to certain Dorobo making statements to the District Commissioner, Rumuruti, Mr. H.H. Trafford, regarding the names of certain Samburu who, they alleged, were concerned in the death of Mr. Powys. This led to seven Samburu being arrested and placed on remand.

20. In order to familiarize myself with conditions on the spot and to inspect the new station I went to the Samburu country and, on the 30th September, 1934, accompanied by:-

The Acting Chief Native Commissioner,
The Provincial Commissioner, Rift Valley Province,
The Deputy Director of Animal Industry,
The District Commissioner, Samburu,
The District Officer, Samburu,

I addressed a baraza, or meeting, of about one thousand Samburu, and some Turkana, with their Headmen at Maralal.

Enclosure III.

I enclose a record of the meeting and it will be seen that I warned the tribesmen in the clearest possible language that if there were

signs/

signs of any further misbehaviour I would send the King's African Rifles and Police to the area; and that the tribe would have to bear the cost.

Other subjects with which I dealt were over-stocking, stock diseases, stock theft, and trespass by the Turkana.

It will be observed that I announced that the Kenya Land Commission had recommended that the Samburu should be given the use of the Leroghi Plateau and that a decision on this recommendation would shortly be given.

The questions asked and statements made by the Elders show clearly the state of society in which these pastoralists are living. I should perhaps explain the reference to marriage made by the various speakers:- Like other Nilote-Hamitic tribes the Samburu social organization is based on age groups which average about seven and a half year periods. These age groups have names and as the moran proceed to manhood the oncoming "age" takes over the duties of protecting the tribe and of making war from the preceding "age". Each "age" endeavours to mark its term of office by some signal exploit, or attribute, before the time comes for the "age" to marry. Once married the "age" has no warriors' duties.

During July and August, 1934, the Samburu were absorbed in the feastings which are a preliminary to the handing over to the new "age" and when I was in Samburu the outgoing "age" was engaged in searching for brides.

It is more than probable that the numerous "spear-blooding" murders of other natives were

caused/

caused by the outgoing "age" endeavouring to distinguish itself and, as will be observed from the native speeches in the record of my meeting, there was, and I think there still is, reason to hope that the lawlessness will not be repeated when the new "age" has been initiated.

It will be observed that at the baraza on the 30th September, 1934, I did not refer to the death of Mr.Powys, it was then sub judice.

21. I have learnt with satisfaction that, since the 2nd October, 1934, no further instance of this type of murder has been reported to Government. On that day, however, another typical "spear-blooding" murder took place some distance away from Maralal on the farm of a Mr.Wallace. Immediate instructions were given to the tribe by the District Commissioner, Samburu, that the murderers were to be brought in within a week and extra police were despatched under Section 68 of Chapter 36 (Revised Laws of Kenya) in accordance with my statement to the Samburu in open baraza.

Orders under Chapter 129 (Revised Laws of Kenya) were issued by the Provincial Commissioner, Rift Valley Province, through the Headmen, prohibiting the carrying of spears by moran(warriors) of the "age" which was about to marry. He reported on the 3rd November, 1934, that these orders were not being obeyed as fully as they should have been. In consequence I instructed that as part of the usual training of the King's African Rifles and Officers' patrol should go to the Samburu country. The tribe was informed that this patrol would take place. This, it was reported, made a profound impression

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upon them.

Two patrols of the King's African Rifles under two officers with the District Commissioner and the District Officer, Samburu, accompanied by the Police, left on the 7th January and returned on the 7th February, 1935.

The entire collective fine, and the cost of the special police up to date, has been collected.

22. In paragraph 16 I traced the events leading up to the arrest of seven Samburu in connection with the death of Mr.Powys. After due consideration the Police decided to withdraw the charge against two of these accused in order to permit their citation as witnesses for the prosecution.

This the Magistrate allowed and on the 2nd November, 1934, the Resident Magistrate, Nakuru, sitting at Rumuruti, Mr. G.G. Robinson, committed the five Accused, all of whom were of the Lorogishu clan, to the Supreme Court on a charge of murdering Mr.Powys.

Extensive searches had continued for the native Kiberenge and shortly after the committal of the five Accused an unsubstantiated report was received that he had been murdered in the Samburu area in November, 1933. Two Samburu, said to be his murderers, were arrested, but in the Attorney General's opinion insufficient evidence was forthcoming after investigation either to retain them in custody or to place them on trial.

23. The Supreme Court trial opened at Nakuru on the 27th November before Mr.Acting Justice Gamble, with three Samburu assessors, and concluded on the 4th December, 1934. All five accused were acquitted. A copy of the proceedings was transmitted to you in my despatch No.40 of the 15th January,

1935.

24. On the 5th December, 1934, the day after the trial had concluded, a letter was sent by the Earl of Errol, who stated he was also writing on behalf of Mr.G.Colvile, already mentioned in this despatch, and of a Captain Eckatein asking for an interview with me in order to discuss "the serious position that has arisen owing to the acquittal of the Powys murderers and to place further facts before him(me)". A reply was sent by my direction asking for a summary of the further facts and of the aspects of the matter which it was desired to discuss.

Lord Errol and Mr.G.Colvile answered on the 9th December, 1934:-

(a) On the facts presented by the prosecution in the Supreme Court Trial the trying Judge could have come to no other decision.
"But all the doubts raised in the Judge's mind could have been cleared up if the full facts had been brought out; notably the circumstantial evidence which supports the evidence of the witnesses for the prosecution".

(b) The general aspects of the situation the writers wished to discuss were:-

1. The reactions ".....which are certain to occur among both the European and native populations as a result of the acquittal of these five Samburu murderers.....".
2. The position of the Crown witnesses when they return to Samburu.
3. Government's attitude to the Samburu.

The answer concluded with the remark:-

"Government/

"Government must realise the probability that when these murderers return free to their own country, a further series of murders are bound to occur, and that as a result retaliatory measures will be taken by an exasperated European community".

I saw Lord Errol, Mr.Colvile and Captain Eckstein with the Attorney General on the 3rd January, 1935, the former read a memorandum which criticised the presentation of the evidence in the Supreme Court and also alleged:-

1. A miscarriage of justice in the case of Kiberenge son of Lokambari.
2. Misconduct by a Police officer regarding alleged statements.
3. The case of Mr.Cornell, with which I have dealt in paragraph 15 above.
4. Endeavours by Administrative Officers to hush up the case of Mr.Powys.
5. The hostility of Government to any who attempt to bring home crimes to the Samburu

and other similar allegations.

I was urged by Lord Errol and Mr.Colvile to appoint a Commission of Enquiry into the case of Mr. Powys; and I was informed that if they were unable to obtain satisfaction they were resolved to take the matter to the highest authority.

On 26th December, 1934, a Mr. F.T.Bamber, who left the service of this Government in 1922, wrote as Chairman of a Public Meeting attended by residents in the Laikipia and Thomson's Falls areas enclosing a Resolution asking for the appointment of a Commission of Enquiry to investigate the circumstances of Mr.Powys' death, the cause of the delay in bringing the alleged

murderers/

murderers to trial and the reasons for their acquittal, "in view of the fact that the doubts which arose in the mind of the Learned Judge could have been removed if the Prosecuting Counsel had made full use of the evidence which was available, and known to be in his possession".

With this Resolution I received a copy of a memorandum adopted at the same Public Meeting and authorised to be sent to certain Members of Parliament. This memorandum covered much the same ground as the memorandum read to me by Lord Errol. It also remarked that the Samburu were the tribe;

> ".....which is now to be rewarded by the gift of a large tract of land on the Leroghi Plateau, from which they have descended upon us to commit these murders ....."

It expressed no confidence in the methods adopted to bring the tribe to order; and it asked those Members of Parliament to whom it was addressed that the administration of the Colony should be made the subject of serious enquiry. A suitable acknowledgment was sent and on the 8th January, 1935, the same Mr. Bamber, but writing as Chairman of the Laikipia Farmers Association, informed me that the deputation of Lord Errol and Mr. Colvile to me was unauthorised by his Association or by the Laikipia public.

I may add, with reference to the allegation of misconduct by a Police Officer in regard to the supposed statements made by Samburu in support of Kiberenge's statement, that Inspector Acton states he has no recollection of recording on the night in question any statements with regard to the death of Mr. Powys. He states, however, that it is quite possible he took down statements from these Samburu in connection with the murder of a herdsman

which

which he was then investigating. Inspector Acton states that although it is possible a conversation may have taken place that night with regard to the death of Mr. Powys he cannot remember if one did; but he is satisfied that, if any such conversation did take place, it could not have been of any evidential value or he would have recorded it automatically. Undoubtedly the native sergeant, when sending in Kiberenge and the three Samburu, sent with them a letter addressed to the Inspector. This letter cannot now be traced, but from the sergeant's statement it would appear that any reference in that letter to the Powys case was confined to the statement made by Kiberenge in regard to that case. Inspector Acton is at the moment on leave in England and it is impossible, therefore, to examine him more closely on this point.

Mr. Holmes, Assistant Superintendent of Police, after taking Kiberenge's statement two days after the statements of the Samburu are supposed to have been made, records that he asked these Samburu if they had any evidence to give with regard to the Powys' case and they replied that they had no information to give except what Kiberenge had told them. Since this point was raised a few months ago two of these Samburu have been traced and interrogated. They deny that any statement with regard to the Powys case was given by them; but little reliance can be placed on their word at this date as it is probable that they would deny any fact which would identify them with the Powys murder in any way.

25. In view of uninformed criticisms which have been made upon the conduct of the case before the Supreme Court, I enclose a memorandum by the Attorney General (Mr. W. Harragin K.C.).

Enclosure IV.

I/

I wish to make it quite clear that I attach the greatest importance to maintaining the constitutional position which is that the Attorney General, by virtue of his office, is solely responsible for deciding whether a prosecution should take place; and, moreover, that the conduct of any prosecution is entirely within his sphere.

There cannot in my understanding of the English constitutional position, be any question of his receiving instructions from his Government in this matter.

The Attorney General deals fully with this aspect in the enclosure to this despatch and his statement needs no endorsement from me.

26. There remains the criticism that it was the deliberate policy of myself and of my Government not to secure a conviction before the Supreme Court, see paragraph 24 above regarding my interview with Lord Errol, Mr.Colvile and Captain Eckstein. With that incredible accusation I do not propose to deal, save to remark that my Government would welcome the publication of this despatch.

27. The prolonged nature of the various enquiries, the repeated letters and articles in the Press both in Kenya and in England and the later ill-considered agitation cannot but have caused pain and distress to the parents and relatives of Mr.Powys.

I had not his acquaintance, but I wish to say that all I heard of him is to his credit; and that nothing which has occurred since his death has diminished his reputation and the esteem in which he was held by Europeans and by natives.

I have the honour to be,
Sir,
Your most obedient, humble servant,

W. Byrne

BRIGADIER-GENERAL.
GOVERNOR.

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26. There remains the criticism that it was the deliberate policy of myself and of my Government not to secure a conviction before the Supreme Court, see paragraph 24 above regarding my interview with Lord Errol, Mr. Colvile and Captain Eckstein. With that incredible accusation I do not propose to deal, save to remark that my Government would welcome the publication of this despatch.

27. The prolonged nature of the various enquiries, the repeated letters and articles in the Press both in Kenya and in England and the later ill-considered agitation cannot but have caused pain and distress to the parents and relatives of Mr. Powys.

I had not his acquaintance, but I wish to say that all I heard of him is to his credit; and that nothing which has occurred since his death has diminished his reputation and the esteem in which he was held by Europeans and by natives.

I have the honour to be,
Sir,
Your most obedient, humble servant,

BRIGADIER-GENERAL.
GOVERNOR.

Enclosure I 41

COPY

DISTRICT COMMISSIONER'S OFFICE,
ISIOLO
NORTHERN FRONTIER PROVINCE.

CONFIDENTIAL.

18th April, 1954.

Officer-in-Charge,
Northern Frontier District,
ISIOLO.

SAMBURU COMMITTEE.

With reference to the confidential letter (C86/8 dated April 9th, 1954) from the Commissioner of Police to yourself with a confidential report from the Inspector of Police, Rumuruti, to the Assistant Superintendent of Police, Naivasha, regarding the statement by Mr.Collinson that a Samburu youth named Ole Legada had received a beating. This is perfectly true. Both Ole Legada and another youth named Champati Lasoni received ten strokes each with a hippo hide on February 19th at Sugota Marmora by my orders.

The circumstances were these. I went up to Sugota Marmora for the purpose of collecting all the witnesses in the recent cases of murder on the Laikipia border. The witnesses were sent to Rumuruti on February 14th, and were returned to me the following day as the police considered there was insufficient evidence in each case to take into Court.

As I had to stay at Sugota Marmora some days (whilst the boundary was being surveyed by the Government Surveyor), and realising the seriousness of the recent murders, I endeavoured to collect further evidence, and whilst doing so questioned both Ole Legada and Champati Lasoni.

Both

case both these Both of them are about 18 to 20 years of age. When they came in front of me they stated that practically all what they had told the District Officer at a previous enquiry and also what they had told the Police, were deliberate falsehoods, and they assumed an attitude of defiance, casualness, and indifference, and had nothing they intended to say. All the Headmen and many Elders and Moran were present, and I considered I could not leave the position in what then had become ridiculous, added to which I could not fail to notice that the rest of the Samburu present were watching me to see if I was going to accept both Ole Legada's and Champati Lasonis' behaviour without demur.

I accordingly told both these youths in front of everyone that I was not prepared to come there and be told untruths, neither was I going to allow them to adopt such an attitude and return to their friends to brag about it. I said further that I did not propose to ask them anything more, but I did intend to punish them, and accordingly ordered that they should each receive ten strokes immediately.

This was duly carried out in the orthodox manner with a wet cloth in the presence of everyone.

I take full responsibility for this, knowing that I had exceeded my legal powers, but I respectfully maintain that the circumstances warranted such measures, and in such a position I had to act, and act quickly, according to my belief and sense irrespective of future consequences to myself.

I only wish to add, however, though the words "beating and flogging" sound formidable, in this

case

case both these youths received nothing more than what would have been meted out to them in an English Public School.

As the Superintendent of Police, Naivasha, (Mr.Ridgway) was camped about a mile from me at the time, I desire to place on record that he was not present, neither did he know what had occurred, neither did I, nor have I ever informed him about the incident, nor was he directly or indirectly connected with it.

I have seen both Ole Legada and Champati Lasoni walking in the Samburu Reserve since the date in question on several occasions, and as far as I am aware they are still in their villages.

(Sd.) C.A. Cornell.

DISTRICT COMMISSIONER,
ISIOLO DISTRICT.

Enclosure II

THE DEATH OF MR. T/ POWYS.

A continuation of the report dated 5th April, 1934.

The evidence of Mr. Deverell in connection with the collective fine proceedings was subsequently recorded and the Officer-in-Charge of the Northern Frontier District recommended to Government that a collective fine be imposed upon the Samburu tribe. The imposition of a fine was approved and it is understood that the amount was fixed at £900.

The two Samburu (LONGURE OLE LENKAIASES and LEMONKWEKERI OLE UNKALA alias KARIMON OLE LENGALA) referred to in page 16 of the report dated 5th April, 1934, were on the 15th May, 1934, at the Supreme Court Sessions held at Nyeri found guilty of the murders of two Wakikuyu natives on the 28th August, 1931, near Nanyuki, offences they admitted. They were sentenced to death.

Following the institution of the collective fine, inquiries were continued by the Police and the local Administrative officers concerned but no information of material value was obtained.

During June 1934 an Administrative station was opened at Maralal in the Samburu Native Reserve and thereafter the administration of the Samburu tribe was transferred to the Rift Valley Province.

The collection of the collective fine was commenced and it was thought that its imposition might result in the disclosure of information in connection with the death of Powys and with murders alleged to have

been/

been committed by members of the Samburu tribe. The Administrative officers stationed in the area continued their inquiries and informers were used but no evidence was forthcoming and the hope that the imposition of the collective fine might assist was without avail.

About the 20th September, 1934, a police informer obtained information from a Nderobo headman (NASIDE OLN LENOIBATERE) to the effect that certain residents in his village had seen a number of Samburu on the Il Pinguan Plain at about the time Powys met his death.

A number of Wanderobo villages are situated in the settled area of Laikipia of which some are not far distant from the Il Pinguan Plain and the Samburu Reserve.

As a result of a report by a police informer, to the District Commissioner, North Laikipia (Rumuruti) (Mr. H. H. Trafford), certain Wanderobo within his jurisdiction were interrogated by the District Commissioner. As a result of that examination, which appeared to indicate information of evidential value, he telegraphed on the 24th September, 1934, for Mr. Ridgway, Assistant Superintendent of Police, Naivasha, who was still in charge of the investigations. Mr. Ridgway immediately proceeded to Rumuruti, arriving the same day, 24th September, 1934. He discussed with Mr. Trafford the information in question and it was decided that the latter should endeavour to obtain all available information from the Wanderobo and that he should, as their Administrative Officer, record statements, a proceeding occupying from the 21st to the 28th September, 1934.

In/

In brief, the information furnished by the Wanderobo alleged that when searching in 1931 for sheep that had strayed on the Il Pinguan Plain at about the time Powys had met his death, they encountered a number of Samburu tribesmen. They stated that one of these Samburu was carrying the head of an European and that two others of the Samburu approached and conversed with them. These two Samburu were said to be members of the Lorogishu clan of the Samburu tribe and their identity and names were furnished (LAPENEDO OLE LESHEMETO and LAITETE OLE LESORI).

On the 1st October, 1934, Mr. Ridgway visited the Nderobo village. He interviewed and interrogated residents and learnt that one of the two Samburu tribesmen who had spoken to the Nderobo natives, LAITETE OLE LESORI, was at that date in Rumuruti Prison undergoing a term of imprisonment for stock theft. He also elicited the information that the Samburu whom the Wanderobo stated they had seen carrying the head of an European was MAJERO OLE LERONO. Mr. Ridgway visited a spot pointed out to him by the Wanderobo witnesses as the place where they had met the Samburu. He thereafter returned to Rumuruti accompanied by the Wanderobo witnesses in question.

On the 4th October, 1934, an identification parade was held by Mr. Ridgway at Rumuruti. The convicted prisoner LAITETE OLE LESORI was present in the parade and was identified and named by three of the Wanderobo witnesses as one of the Samburu who had conversed with them when they had met the party of Samburu on the Il Pinguan Plain at about the time Powys

met/

met his death.

As a consequence of this evidence and of other information furnished by the Wanderobo natives, warrants of arrest were applied for and issued by the Magistrate at Rumuruti (Mr. Trafford) on the 5th October, 1934, against the five following Samburu :-

1. LAITETE OLE LESORI
2. LAPEREDO OLE LESEMETO
3. MAJERO OLE LERONO
4. LAGOI OLE LESOIBA
5. MARITIN OLE LOLOBIALA.

On the 5th October, 1934, Mr. Ridgway proceeded to Naralal, Samburu Reserve, to execute these arrest warrants. On the 6th October, 1934, he arrested MAJERO OLE LERONO, LAGOI OLE LESOIBA and MARITIN OLE LOLOBIALA, and returned with the three prisoners to Rumuruti who, with LAITETE OLE LESORI, the convicted prisoner in Rumuruti prison, were produced before the Magistrate at Rumuruti on the 8th October, 1934, and remanded to prison custody. The remand proceedings could not be effected on the 7th October by reason of the absence on that date from Rumuruti of the Magistrate.

Following further information volunteered by one of the Samburu now accused, LAITETE OLE LESORI, on the 11th October, 1934, Mr. Ridgway at Rumuruti arrested BARI OLE LADUNA and MBALE OLE LAIGITILE who were remanded by the Magistrate to prison custody on the same date. The two Samburu in question had been sent to Rumuruti with others in order that further identification parades might be held. The total number under arrest for complicity in the murder of Mr. Powys being then six.

On/

On the same date (11th October, 1934) an identification parade was held at Rumuruti comprising, inclusive of the six suspects, twenty-one Samburu and Lkumi natives all similarly dressed. The Nderobo witness LIAMIT OLE LENOIBATERE identified and named LAITETE OLE LESORI and LAGOI OLE LESOIRA as having been among the Samburu he had seen on the Il Pinguan Plain at about the time Mr. Powys met his death. He also identified BARI OLE LADUMA but did not name him as having been a member of the party.

Another Nderobo witness, PARIYAHALU OLE SENGERRE identified and named HAJERO OLE LEROMO, LAGOI OLE LESOIRA, MARITIM OLE LOLOBIALA, BARI OLE LADUMA and LAITETE OLE LESORI as having been seen by him on the occasion referred to on the Il Pinguan Plain.

The next Nderobo witness, SALEU OLE LENOIBATARE identified and named HAJERO OLE LEROMO, LAGOI OLE LESOIRA, MARITIM OLE LOLOBIALA, and LAITETE OLE LESORI as having been members of the same party.

Two further Wanderobo witnesses, SEGATIAN OLE LALCHUA and LURASI OLE NABIRI, identified MARITIM OLE LOLOBIALA and LAGOI OLE LESOIRA as Samburu whom they had met near Maralal, Samburu Native Reserve, shortly after the death of Mr. Powys when these two Samburu had admitted killing an European and requested the gift of a ring worn by one of the Nderobo. It is stated that it is a Samburu custom that no member of the tribe may wear a ring until he has killed a human being or committed some great act of bravery.

At 5 p.m. on the 12th October, 1934, LAPEDEDO OLE LESHUETO arrived at Rumuruti under escort from

Maralal/

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Maralal/

Ihralal, Samburu Reserve, he having been arrested by the District Commissioner at the request of Mr. Ridgway who held a warrant for his arrest. The Magistrate being absent from Rumuruti, he was retained in Police custody until the 15th October, 1934, when he was remanded to prison custody.

On the 20th October, 1934, Mr. Ridgway proceeded to Nairobi and discussed the case with the Acting Commissioner of Police when it was decided that the charges against LAITETE OLE LESORI and LAPEDEDO OLE LESELETO be withdrawn to permit their being cited as witnesses for the prosecution. This procedure was adopted as investigation indicated that, although the two Samburu in question were seen on the Il Pinguan Plain on that date, they were not accompanying, nor connected with the alleged activities of the other five Samburu under arrest. These two Samburu had, however, met the other party and were in conversation with them at the time of the approach of the three Wanderobo and were sent by the party of five Samburu to meet these Wanderobo in order to ascertain their business. Accordingly the Police telegraphed to Rumuruti requesting the withdrawal of the charge of murder against these two Samburu (LAITETE OLE LESORI and LAPEDEDO OLE LESELETO) and the Magistrate granted the application on the 23rd October.

The five Samburu suspects now remaining under arrest are members of the Lorogishu clan of the Samburu tribe and resided in the same village as the Headman of that clan, LOIKEN OLE LOIGOKEN alias VAIPULE OLE LOIGOKEN, and the Laibon, OLE OIUNA, both referred to

in the Police report dated the 5th April, 1934.

Statements were now (October, 1934) given by Headman LOIBEN OLE LOIGOBEN alleging that he had visited the Laibon late one night at about the time Powys met his death - a date fixed by the appearance of an aeroplane used (on 20/21st October, 1931) in the search for Powys - and there found the five suspects in the company of the Laibon OLE OMUHA and in possession of the head and genitals of an European. LOIBEN OLE LOIGOBEN stated that he heard on that occasion two of the suspects boast of having murdered an European. He was also the witness of a "cleansing ceremony" carried out by the Laibon upon the five suspects. Confirmatory statements were also obtained from two brothers of the Laibon - SAMANGA OLE LAIDUHA and SABURURIA OLE LAIDUHA - who were also present.

Four Samburu girls, lovers of four of the five suspects, also gave statements alleging that these four had vaunted their prowess in killing an European.

Prior to the commencement of the magisterial enquiry in the lower Court, the suspect BARI OLE LAIDUHA made a voluntary statement to the Magistrate at Rumuruti affirming his presence with the four others on the Il Pingunn Plain on the date that Mr. Powys met his death, setting out the manner in which the death had been effected.

On the 1st and 2nd November, 1934, the Magisterial Inquiry was held, in the charge of murder against the five suspects, at Rumuruti, by the Resident Magistrate, Nakuru. Evidence was adduced from witnesses who were present at the finding of the remains of the body of Mr. Powys. In addition, evidence was recorded of

the/

the finding of a human skull subsequently identified as that of Mr. Powys by reason of a gold-filled tooth. In this connection it should be mentioned that the skull referred to on page 18 of the Police report dated the 5th April, 1934, has been found not to be that of Mr. Powys.

The additional evidence detailed above as obtained in September/October, 1934, also was presented, resulting in the five accused being on 2nd November, committed by the Lower Court at Rumuruti, for trial by the Supreme Court on a charge of the murder of Mr. Powys.

It had been arranged that the conduct of the prosecution in the committal proceedings before the lower Court should be conducted by a law officer of the Crown. He was furnished with all information in the hands of the Police, but, unfortunately, on grounds of ill health, was unable to undertake that duty. The prosecution in the lower Court was, therefore, conducted by the Staff Officer to the Commissioner of Police who was especially detailed to perform that important duty in view of his knowledge and experience in Police and Court work in this Colony.

Evidence obtained by the Police indicated that the LAIBON OLE OUUMA, who was alleged to have conducted the "cleansing ceremony" on the return to their village of the five suspects with the trophies stated to have been excised from the body of Mr. Powys, was at least an accessory after the fact of murder. It was suggested by the Police that he should, with the five suspects, be brought before the lower Court on that charge. The Provincial Commissioner Rift Valley, after consultation with the Attorney General, considered that on administrative grounds that procedure should not be adopted. Subsequently, the

advocate/

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that of Mr. Powys by reason of a gun-fitting too
this connection it should be mentioned that the
referred to on page 12 of the Police report de[illegible]
6th April, 1954, has been found not to be that [illegible]
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resulting in the five accused being on 2nd Nove[illegible]
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prosecution in the committal proceedings before
Court should be conducted by a law officer or [illegible]
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was at least an accessory after the fact of murd[illegible]
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the five suspects, be brought before the Lower Co[illegible]
on that order by the Provincial Commissioner Rift
after consultation with the Attorney General, com[illegible]
that on constitutional grounds that procedure [illegible]
not be adopted. Subsequently, the [illegible]
advocate



advocate for the defence of the five suspects caused the Laibon to be cited on sub poena as a witness for the defence at the trial by the Supreme Court.

At a meeting between the Attorney General, the Provincial Commissioner Rift Valley and the Acting Commissioner of Police it was decided, the Acting Commissioner of Police expressing contrary views, that to effect the object of retaining supervision over the movements of the Laibon OLE OUMA, then in custody at Kwale under an order of deportation issued under the provisions of the Deportation Ordinance, Cap. 61, during his visit to the place of trial, Nakuru, to give evidence in the trial, it was necessary to effect his arrest and removal to Nakuru on a warrant on a charge of "Accessory after the fact to the murder of Mr. Powys".

The Supreme Court trial opened at Nakuru on the 27th November and concluded on the 4th December. The five accused were acquitted.

During the trial before the Supreme Court at Nakuru two of the accused (MARITIM OLE LOLORIALA and MAJERO OLE LERONO) alleged in their statements from the dock, upon which they could not be cross-examined, that they had suffered illtreatment and torture by Police and others during the period they were under remand at Rumuruti. Those allegations were not supported by the advocate for the defence, nor by the trial judge. An enquiry was instituted by the Acting Commissioner of Police and as a result the allegations were held to be unfounded and incapable of substantiation.

Extensive searches have been conducted in Laikipia, the Samburu Reserve and in the Northern Frontier District in an endeavour to locate KIBERENGE

s/o /

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s/o LOKAMBARI, the native referred to in page 8 of the report dated 5th April, 1934, who originally gave information alleging that Powys had been murdered. The quests have, however, been unsuccessful and information was received after the committal of the five accused for trial that KIBERENGE had been murdered in the Samburu Reserve in November, 1933. The report which is unsubstantiated forms the subject of enquiry by the Administrative and Police Officers concerned and although two Samburu stated to be the perpetrators of the alleged crime were arrested, insufficient evidence is forthcoming either to justify their retention in custody or to place them upon trial on a charge of murder.

*G. Pritchard Brown.*

ACTING COMMISSIONER OF POLICE.
14/2/1935.

NAIROBI.

Enclosure III



MINUTES OF A BARAZA HELD BY HIS EXCELLENCY THE GOVERNOR AT MARALAL, SAMBURU DISTRICT, ON 30th SEPTEMBER, 1934.

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PRESENT:

His Excellency the Governor,
Hon. H.R.Montgomery, Esq., Ag. Chief Native Commissioner,
Hon. H.E.Welby Esq., Provincial Commissioner, Rift Valley Province,
Hon. Major Brassey-Edwards, Chief Veterinary Officer,
G.R.B.Brown Esq., District Commissioner,
Major T.C.Wells, Private Secretary toH.E. the Governor,
Major J.R. Saidler, Senior Assistant Engineer,
F.R. Hale Esq., Veterinary Officer,
W.A.W. Clark Esq., District Officer.

All Samburu and Turkana Headmen and about one thousand Samburu and Turkana tribesmen.

HIS EXCELLENCY THE GOVERNOR'S SPEECH.

His Excellency the Governor informed the Samburu and Turkana present that he was very glad to see them, and he appreciated the fact that many had come long distances to see him. He had been greatly displeased by the recent misbehaviour of the Samburu and had found it necessary to punish the tribe. A Collective Fine had been levied on the Samburu tribe because of suppression of evidence concerning murders. If he saw signs of further misbehaviour, he had other and stronger means at his disposal or which he would not hesitate to make use. If necessary he would send King's African Rifles and Police to the district and the Samburu would have to bear the cost. It was the duty of the headmen, elders and leaders of the warriors to restrain the young men. The new age grade which was due for initiation must be kept under control.

The Land Commission had made its report and recommended that the Samburu be given the use of Leroki plateau. The decision of Government would be given shortly. But the tenure of Leroki by the Samburu would not be similar to the tenure of land in Native Reserves. They would not be allowed to ruin the country by overgrazing, and conditions/

conditions would be imposed to prevent overstocking.

He was sorry to hear of the stock thefts on the Suk boundary. He was aware that the Suk had begun it but this did not justify thefts by the Samburu. This cattle stealing must stop. Owing to veterinary restrictions compensation had not yet been paid in full, but arrangements would be made for the completion of payment.

He wished to inform the Turkana that it had been reported that they were straying south and east of El Barta He now ordered them to remain on El Barta. He had been told that the Samburu often connived at these trespasses. All Government headmen must understand that it was their duty to assist in keeping the tribal boundaries.

Government intended to commence rinderpest vaccinations at once and to make a sustained effort to eradicate pleuro pneumonia amongst Samburu cattle. In their own interests the Samburu were asked to co-operate by bringing their stock to the crushes immediately when required.

HEADMAN LENGERASSI, EL MASULA SECTION, said that they were all delighted to see His Excellency the Governor and that they understood the orders he had given. It was true that trouble had been caused by the warriors. But Government had already taught them a lesson. There was now peace among the Samburu.

Leroki plateau was Samburu country. He wanted it to be kept for the Samburu. Members of other tribes should be allowed on Leroki only in definite employment by Government or traders.

HEADMAN LEMONDILLE, LEGUMAI SECTION, said that they were all glad to see His Excellency the Governor. He had been at great pains to follow Government's orders and hoped that he would soon have opportunity to rest, as there was peace among the Samburu. The warrior age-grade which

had/

which had caused trouble was now marrying. As married men they would settle down. The Samburu would not connive at Turkana trespass outside El Barta. Leroki Plateau had always been Samburu country. He himself had been born on Leroki. He always paid his taxes. But this year it was difficult to get money for tax because of the fall in stock prices. As this was the first time His Excellency the Governor had come to Samburu he hoped that anyone who had anything to say would do so.

HEADMAN LEKULAL, NYAPARAI SECTION, explained that the good name of the Samburu had been besmirched by the acts of a few young men. He believed that the young men would commit no further mischief. They were about to marry. When the new age-grade was initiated, its members would be closely controlled by the Elders. In days past the Samburu had grazed as far North as Marsabit and South to the Uaso Nyiro. Their grazing area was now restricted. They hoped that Leroki would be theirs for ever. Stock accustomed to Leroki could not live in the low country. It was a great benefit that Government should assist the Samburu with rinderpest vaccinations and pleuro-pneumonia innoculations.

HIS EXCELLENCY THE GOVERNOR, said that rinderpest vaccination would be given free. But the Samburu must provide two or three bullocks per hundred head of stock for the making of vaccine on the spot.

HEADMAN LEKULAL, said that all stock-owners were willing to give two or three bullocks in a hundred. He hoped that Government would assist them too by giving many traders permission to enter the District.

HIS/

HIS EXCELLENCY THE GOVERNOR, said that there were facilities and that further facilities, i.e., five shops would be given at Meralal.

HEADMAN LEKULAL, said that they all hoped on completion of the rinderpest and pleuro-pneumonia campaigns to be given permission to trade their stock to Rumuruti.

HIS EXCELLENCY THE GOVERNOR, said that the Chief Veterinary Officer and the Veterinary Officer had heard this request.

HEADMAN KULAL, NGITHIR SECTION, TURKANA, said that he had heard Government's orders and been greatly distressed by them. A long time ago Government had returned all Turkana to Turkana proper. Then Government granted the Turkana permission to return to southward to graze on El Barta. He hoped that Government would assist the Turkana to obtain grazing. They had done no wrong. But now there would be no fresh grazing for Turkana stock.

HIS EXCELLENCY THE GOVERNOR said that the El Barta area was sufficient for their needs.

HEADMAN KULAL said that in his opinion the El Barta area was insufficient.

HIS EXCELLENCY THE GOVERNOR said that on no condition could he allow the Turkana to graze outside El Barta. The Turkana had a very large country of their own. They must not trespass beyond their boundaries.

HEADMAN LELERUK, LOROGISHU SECTION, SAMBURU, said that he was glad to be able to greet His Excellency the Governor. The Samburu were now peaceful and law-abiding. The recent trouble had been caused by only a few people and not by the tribe.

Leroki was Samburu country. Lamondille was an

old/

old man. But his father before him had lived on Leroki.

There remained one evil. Rinderpest infection was spreading through the stock on Leroki. He hoped that Government would wait until the cattle had recovered from rinderpest before continuing pleuro-pneumonia innoculations.

He had found that the stock sent to the Suk as compensation had been infected with rinderpest on the Suk boundary.

LOLOPARAGWI, AIGWENAK OF NYAPARAI SECTION, SAMBURU, said that he and his contemporaries were about to marry and hand over to a new age-grade. It was true that some warriors had caused trouble, not of intent, but out of foolishness. They had not learnt to work, and they did not even know the meaning of a "collective fine". Now they understood both and were prepared to obey all orders from Government.

LEKERESHA, AIGWENAK OF LONGELLI SECTION, SAMBURU, said that he wanted all the young men of his age-grade to marry as soon as possible.

HEADMAN NOBWIN, NIBELLAI SECTION, TURKANA, said that at times Turkana had grazed as far south as the Uaso. They had not come into conflict with any of the neighbouring tribes. During a famine among the Samburu the Turkana had succoured many Samburu children. He himself had come from Kerio. He wanted Government to aid him by giving him more land and more water. The Turkana and Samburu paid the same taxes to Government.

HIS EXCELLENCY THE GOVERNOR repeated his order that the Turkana must not trespass outside their own area in El Barta.

HEADMAN/

HEADMAN LENGATAI, LL PISINGISHU SECTION, SAMBURU, said that it was the duty of a Government headman to look after his section and collect their taxes. The present age grade was about to marry. The Samburu could not afford to pay cash for innoculations but could provide three bullocks per hundred. The Samburu country could not support Turkana cattle as well as Samburu. He understood that the Wanderobo in Mukogodo were now included in this District. If they were allowed to move northward Leroki would be overstocked. If Turkana and Wanderobo were allowed to come to Leroki, the Samburu would beg permission to graze their stock as far as Rumuruti.

HIS EXCELLENCY THE GOVERNOR, said that he was very glad to have met the Samburu and wished them to carry out the orders he had given.

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Enclosure IV

RE: THE POWYS MURDER

In view of the questions which have been raised in regard to this matter I desire to take the opportunity of dealing with certain aspects of the case in so far as they affect my Department and my responsibilities as Attorney General.

It should not, I think, be necessary for me to emphasize the fact that, as Attorney General of the Colony I am responsible for the direction and conduct of criminal proceedings and that a wide and unfettered discretion is essential to the proper exercise of these functions. It is obviously imperative, in the interests of justice, that the performance of these public duties should be uninfluenced by any political or other outside considerations. I feel that a brief outline of the history of the Powys Case will best explain the circumstances of this particular prosecution and the reasons for the decisions taken by me. This will further enable me to comment upon the suggestions which have been made to the effect that Government was not interested in securing a conviction and that the prosecution was entrusted to Counsel who was not sufficiently experienced to press home so important and complex a case.

2. In 1931 Mr.Powys was found dead under the circumstances set out at the trial. An inquest was held at which evidence was given not only by persons whom I will call, for want of a better name, police witnesses, but also by those European settlers of the District who happened to know anything about the matters in issue. There is not the slightest doubt that the public generally,

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at that time, agreed with the Coroner's verdict of accidental death.

3. Before the inquest rumours were being circulated that Mr.Powys had in fact been murdered by Samburu natives. A native by the name of Kiberenge actually came forward and made a statement to that effect. For reasons best known to himself he retracted this statement at a later date and was prosecuted under section 115A of the Penal Code for giving false information to a public servant. He pleaded guilty to this charge and was sentenced to five months imprisonment.

4. At the end of 1933 certain responsible people in the vicinity came to the conclusion, from the whisperings of various natives, that after all Mr.Powys might have been murdered, and that a certain witchdoctor by name Ole Oduma was implicated in the crime. Further investigations were made without any satisfactory result owing to the alleged influence of this witchdoctor. Although at that time no evidence could be obtained definitely to connect Ole Oduma with the murder of Mr. Powys, a deportation order was obtained on other evidence and Ole Oduma was removed from the District at the beginning of 1934.

5. No further evidence of importance was obtained until the middle of 1934 when native information was obtained which implicated five Samburu in connection with the murder of Mr.Powys. It should be noted here that the receipt of this information followed the infliction of various punishments on the Samburu tribe in respect of native murders which had been traced to that tribe, but about which the Samburu would supply no information whatsoever.

6. In the middle of 1934 further evidence was obtained which resulted in the arrest of five Samburu in October ~~September~~ of that year on a charge of having murdered Mr. Powys in 1931. All the evidence which had been collected was submitted to this Office. I personally considered this evidence in collaboration with the Police and one of my Crown Counsel, Mr.Wallace, whom I directed to conduct the prosecution on behalf of the Police at the preliminary enquiry before the Magistrate at Rumuruti. The date of hearing was fixed, the witnesses collected and the Resident Magistrate, Nakuru (a professional Magistrate) was detailed to take the preliminary investigation. On the day before the preliminary hearing took place Mr.Wallace was taken ill and the Doctor refused to allow him to go to Rumuruti. The prosecution, therefore, had to be entrusted to Mr.Leslie, an experienced Police Officer, who had been in touch with the facts of the case from 1931. The accused were ~~not~~ represented at the preliminary hearing but I have every reason to believe that it was properly conducted.

7. This preliminary enquiry took place on the 1st and 2nd of November and the accused were committed for trial before the Supreme Court on a charge of Murder. The record of the case upon which I drafted my Information was received at this Office on the 12th of November. The trial was to be held at Nakuru and the next sitting of the Supreme Court in that Town would not have taken place under ordinary circumstances until February, 1935, as the Court had already held its November sitting. In February there would have been no Session of Legislative Council and I had every intention, as is my custom in these cases, of appearing and personally conducting the prosecution.

8. On or about the 4th of November I received a telephone message from the Provincial Commissioner in

Nakuru/

Nakuru in regard to the native witnesses who had given evidence on behalf of the Crown at the preliminary inquiry. He said that if they were allowed to disperse and return to their homes he was satisfied that there was every probability that influence would be brought to bear on them to make them alter their evidence when they appeared before the Judge. The Provincial Commissioner further expressed a fear that some of these witnesses might not be allowed to give evidence at all, and he urged me to make every effort to have a special session fixed immediately by the Chief Justice for the hearing of the case.

9. An application was made immediately to the Chief Justice and he arranged for a special session at Nakuru on the 27th November which was the earliest possible date.

10. The Budget Session of Legislative Council had been fixed for the 24th of November. It was expected to last, as in fact it did, for at least one month and it therefore became apparent that it would be impossible for me to conduct the Powys Case. I therefore detailed the Solicitor General to prosecute in mystead, and with this object in view he proceeded on Circuit. After he had left Headquarters it became apparent to Government that the Legislative Council meeting was likely to be controversial and as the Solicitor General was a Government member of Legislative Council it was essential that he should be present at every division. I was instructed to recall him to take his place in Council.

11. I was thus left with only two Crown Counsel, Mr.Lewey and Mr.Wallace, as I was short of one Crown Counsel on the establishment. Mr.Lewey, the Senior Crown Counsel, was engaged at that time in the prosecution of a long and complicated criminal case in Nairobi in which a member of Legislative Council and four others were accused of Arson

and/

Conspiracy. It was in fact the longest criminal case ever heard in East Africa and occupied the Court for twenty-eight working days. As.Mr.Lewey was single-handed it was obviously impossible for me to send him to Nakuru to conduct a murder case which might have lasted for two weeks. Mr.Wallace was at that time prosecuting at the Criminal Sessions at Mombasa. He was, I knew, thoroughly conversant with all the facts of the Powys Case as he had been collaborating with the Police throughout the stages preparatory for the preliminary hearing. I had formed a high opinion of his ability, and rather than trust the Powys prosecution to some local advocate, incidentally at great expense, I decided to send for him. When, therefore, I was under the necessity of recalling the Solicitor General from the Nakuru Circuit I summoned Mr.Wallace by telegram from Mombasa and made other arrangements for the conduct of the remaining cases in that District. Mr.Wallace arrived in Nairobi on Saturday the 24th November and left for Nakuru on the next day, together with Mr.Leslie who, as I have already mentioned, was familiar with all the details of the case.

12. It will thus be seen that it was impossible in the circumstances for any more Senior Officer of the Department to take the case. The adequacy or otherwise of Counsel in Court must always be a matter for individual opinion but I have heard no adverse criticism of Mr.Wallace's conduct of this prosecution from any one competent to express a professional opinion. It is true that Mr.Wallace is comparatively new to this Colony but, as I have already said, I have been most favourably impressed by his ability. I have carefully perused the shorthand transcript of the evidence and judgment and of Crown Counsel's address to the Court and have made enquiry of responsible persons who were present throughout the trial and I am satisfied that the Crown case was presented in a thoroughly competent manner by Mr.Wallace.

13. I cannot conclude these observations with regard to the criminal proceedings without a reference to the conduct of the Police. In my numerous conferences with various officers of the Police Force in the course of this matter I have been most impressed by the keenness with which they have carried out their work and by their determination to bring the offenders to justice. I am satisfied that they left no stone unturned in their lengthy and difficult investigations.

14. There remains the suggestion that it was the deliberate policy of Government not to secure a conviction. I find it difficult to deal with restraint with such a criticism. The necessary implication must be that I, together with every responsible officer of Government concerned, have followed officially a course of conduct not merely unworthy of the respective appointments which we hold, but definitely dishonest. Quite apart, however, from considerations of honesty or dishonesty the policy suggested would have been one of meaningless stupidity.

15. When I arrived in the Colony, in November, 1933, the inquest on the death of Mr.Powys had already been held, and the finding, on the evidence which was then forthcoming, had been accepted as correct by Government, including, of course my predecessor the Attorney General. It is a little difficult, therefore, to understand the suggestion that I personally could have had any conceivable interest in supporting that finding at all costs when the matter was re-investigated two years later. In fact, at any rate in the eyes of the ignorant, it might be said that I had nothing to lose and everything to gain were I to succeed when others had apparently failed. The necessary implication, therefore, would appear to be that

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I was acting on the instructions of Government and that it was the considered policy of Government that the prosecution should fail. While denying emphatically the truth of such a ludicrous suggestion I would point out again that questions relating to such prosecutions are matters for the personal decision of the Attorney General and that the responsibility is and must be his as the principal law officer of the Crown. There can be no question of his receiving instructions from Government.

16. Government has devoted an enormous amount of time and trouble and has been involved in very considerable expense in the endeavour to obtain evidence in this case. Apparently it is now suggested that, when success was within its grasp, Government took steps deliberately to ensure that failure and not success should be the ultimate result. Apart from the Powys Case, the Samburu in the past two years have repeatedly caused serious trouble to Government by their conduct, more especially in regard to spear-blooding murders. Here was an opportunity of bringing to justice five Samburu alleged to be guilty of the murder of a European. Is it a credible suggestion that this opportunity was deliberately rejected because in 1931 an Inspector of Police and a Coroner had formed the opinion that Mr.Powys' death was not the result of murder but of an accident?

17. It was the duty and responsibility alike of the administration, the Police, the legal authorities and Government generally to ensure the punishment of the guilty persons whoever they might be, in the interests of justice and of law and order. Political considerations rendered it equally desirable that the prosecution, if possible, should be successful. It must inevitably have been more satisfactory to Government to have the guilty convicted and punished, even after a delay of three years, rather than/

than to add the Powys Case to the list of Samburu murders in which Government had been unable to bring the murderers to justice.

18. In conclusion I would observe that the practice and traditions of the English criminal law impose certain restrictions upon the conduct of prosecutions. It has long been a legitimate source of pride as well as a safeguard of individual liberty that the Crown should conduct such matters with scrupulous fairness as well as with firmness; that it should "prosecute but not persecute". I am satisfied that, subject to a due regard being had to this principle, everything possible was done to secure a conviction in this case.

Nairobi,
14th February, 1935.

W. Harvey
ATTORNEY GENERAL

CONFIDENTIAL.
BY AIR-MAIL.



25
68

22nd February 1935.

No 22

My dear Sir Philip,

I have received your letter of the 12th February on the subject of the Powys case. We completed the draft of the despatch this morning and I hope to send it by this air mail.

The Acton-Ash incident has been fully dealt with: I consider that our critics are making too much of this. As regards Cornell I have thought it advisable to explain matters in the open despatch because the complaints against him are referred to in the allegations made by Erroll & Co. One has to take into consideration the extraordinarily difficul position in which our District Officers administering these backward tribes are sometimes placed; but admitting this I decided to take disciplinary action as soon as I heard of the way in which he dealt with these truculent youths. I reprimanded him and transferred him to Moyale on the Abyssinian border.

Yours very sincerely,

(Sgd.) J. A. BYRNE.

MAJOR THE RT. HON. SIR P. CUNLIFFE-LISTER, P.C., G.B.E., M.P.
COLONIAL OFFICE,
DOWNING STREET, S.W.1.

R & wait R despatch
(25 Feb) [illegible]

69

24

Secretary of State

You may care to glance at this private letter to Mr.Bushe from the Attorney General in Kenya about the Powys case.

for Luke

23.2.35.

ATTORNEY GENERAL'S OFFICE, 24

NAIROBI, 13th February, 1935.

10

My dear Bushe,

Thank you for your letter of the 5th February and also for being good enough to push throu[redacted].

With regard to Powys's case you have no doubt by this time received my lengthy and various reports on the case which were forwarded with a Secret despatch at the end of last month, but in case you have not, I will answer your questions seriatim:-

No 9

(1) How is it a new comer was sent to prosecute in a difficult native case?

There was no one else who could go. Bruce and myself were engaged in Legislative Council. I had directed Bruce to absent himself from Legislative Council to take this case but was ordered by the Colonial Secretary to recall him. Lewey was engaged in a very long arson case, one of the defendants being a member of Legislative Council (Mr. Mangat). I was therefore left with only Wallace who in my opinion was and is a painstaking and able young Counsel.

It may be asked why I did not have the case postponed until I could take it myself -

The answer is that on the day after the case was committed from the Lower Court I was rung up by the Provincial Commissioner and informed that if the case was not brought on in the immediate future and the witnesses thereby allowed to depart once more into their Reserves that he (the Provincial Commissioner) was of the opinion that their evidence would be tampered with or even that they would never again be found.

The next ordinary Sessions of the Supreme Court would have been in February but acting on the advice of the Provincial Commissioner I had a special Sessions fixed on the 27th November.

(2) Are such arrangements made entirely on your responsibility?

These arrangements were entirely on my responsibility and the Governor was in no way a party to them.

(3) Did Wallace in fact do the case badly and if so was that due to his inexperience in dealing with natives?

In my opinion Wallace's prosecution was entirely adequate, but of course it is impossible for me to say that an older hand more experienced with natives might not have got something more out of them; but the facts remain that all the Crown witnesses lived up to their preliminary statements, and the accused were only acquitted because the Judge was not entirely satisfied with their bona fides, and I fail to see how any Counsel could have done a great deal to make his witnesses appear truthful in the box.

I have privately spoken to the Judge who tried the case and to a police officer of experience who actually conducted the case in the Lower Court and they both assured me that they were perfectly satisfied with the presentation of the case by Wallace. This from a policeman is in my view high praise as the police having failed to obtain a conviction would naturally be only too pleased to place the blame on to other shoulders.

That one of the witnesses for the Crown had volunteered his evidence some 2 years previously and had been flogged by a District Commissioner for his [illegible]

that Wallace failed to bring this out.

No witness for the Crown had been flogged by a District Commissioner 2 years previously or to the knowledge of the Or myself at all. I am fully aware that 2 natives had been flogged 2 years previously by a District Commissioner in connection with this case but they were not witnesses in the case.

I enclose for your information a report that I sent in to the Colonial Secretary on the case. It was forwarded with a Secret despatch from the Governor to the Secretary of State but you may not have a copy. Today we received a telegram from the Secretary of State asking for a memorandum by me which he intends to lay on the table of the house. I am having this prepared but it will be merely a reiteration of my report to the Colonial Secretary.

Nov 7

Nov 16

As you do not mention your health I gather that you must be better and also that you have recovered without the help of a doctor's knife for which you must be truly thankful.

In great haste.

Yours sincerely,

W Manager.

P.S. Bruce is still working hard & keeping. The trouble is that his arrival in Jamaica does not count for pension until he is sixty. I trust that you will be able to place him before Sam due for leave as H.E. & the C.S. do not want him to act for me.

WM

This is my memorandum to accompany the open Dockets. I send this as well as my original short to Mr. C.C. which was not laid himself.

RE: THE POWYS MURDER

In view of the questions which have been raised in regard to this matter I desire to take the opportunity of dealing with certain aspects of the case in so far as they affect my Department and my responsibilities as Attorney General.

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2. In 1931 Mr. Powys was found dead under the circumstances set out at the trial. An inquest was held at which evidence was given not only by persons whom I will call, for want of a better name, police witnesses, but also by those European settlers of the District who happened to know anything about the matters in issue. There is not the slightest doubt that the public generally,

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4. At the end of 1933 certain responsible people in the vicinity came to the conclusion, from the whisperings of various natives, that after all Mr.Powys might have been murdered, and that a certain witchdoctor by name Ole Oduma was implicated in the crime. Further investigations were made without any satisfactory result owing to the alleged influence of this witchdoctor. Although at that time no evidence could be obtained definitely to connect Ole Oduma with the murder of Mr. Powys, a deportation order was obtained on other evidence and Ole Oduma was removed from the District at the beginning of 1934.

6. No further evidence of importance was obtained until the middle of 1934 when native information was obtained which implicated five Samburu in connection with the murder of Mr.Powys. It should be noted here that the receipt of this information followed the infliction of various punishments on the Samburu tribe in respect of native murders which had been traced to that tribe, but about which the Samburu would supply no information whatsoever.

6. In the middle of 1934 further evidence was obtained which resulted in the arrest of five Samburu in September of that year on a charge of having murdered Mr. Powys in 1931. All the evidence which had been collected was submitted to this Office. I personally considered this evidence in collaboration with the Police and one of my Crown Counsel, Mr. Wallace, whom I directed to conduct the prosecution on behalf of the Police at the preliminary enquiry before the Magistrate at Rumuruti. The date of hearing was fixed, the witnesses collected and the Resident Magistrate, Nakuru (a professional Magistrate) was detailed to ~~hear~~ the preliminary investigation. On the day before the preliminary ~~trial~~ hearing took place Mr. Wallace was taken ill and the Doctor refused to allow him to go to Rumuruti. The prosecution, therefore, had to be entrusted to Mr. Leslie, an experienced Police Office, who had been in touch with the facts of the case from 1931. The accused were not represented at the preliminary hearing but I have every reason to believe that it was properly conducted.

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and/

Conspiracy. It was in fact the longest criminal case ever heard in East Africa and occupied the Court for twenty-eight working days. As Mr. Lowry was single-handed it was obviously impossible for me to send him to Nakuru to conduct a murder case which might have lasted for two weeks. Mr. Wallace was at that time prosecuting at the Criminal Sessions at Mombasa. He was, I knew, thoroughly conversant with all the facts of the Powys Case as he had been collaborating with the Police throughout the stages preparatory for the preliminary hearing. I had formed a high opinion of his ability, and rather than trust the Powys prosecution to some local advocate, incidentally at great expense, I decided to send for him. When, therefore, I was under the necessity of recalling the Solicitor General from the Nakuru Circuit I summoned Mr. Wallace by telegram from Mombasa and made other arrangements for the conduct of the remaining cases in that District. Mr. Wallace arrived in Nairobi on Saturday the 24th November and left for Nakuru on the next day, together with Mr. Leslie who, as I have already mentioned, was familiar with all the details of the case.

12. It will thus be seen that it was impossible in the circumstances for any more Senior Officer of the Department to take the case. The adequacy or otherwise of Counsel in Court must always be a matter for individual opinion but I have heard no adverse criticism of Mr. Wallace's conduct of this prosecution from any one competent to express a professional opinion. It is true that Mr. Wallace is comparatively new to this Colony but, as I have already said, I have been most favourably impressed by his ability. I have carefully perused the shorthand transcript of the evidence and judgment and of Crown Counsel's address to the Court and have made enquiry of responsible persons who were present throughout the trial and I am satisfied that the Crown case was presented in a thoroughly competent manner

13. I cannot conclude these observations with regard to the criminal proceedings without a reference to the conduct of the Police. In my numerous conferences with various officers of the Police Force in the course of this matter I have been most impressed by the keenness with which they have carried out their work and by their determination to bring the offenders to justice. I am satisfied that they left no stone unturned in their lengthy and difficult investigations.

14. There remains the suggestion that it was the deliberate policy of Government not to secure a conviction. I find it difficult to deal with restraint with such a criticism. The necessary implication must be that I, together with every responsible officer of Government concerned, have followed officially a course of conduct not merely unworthy of the respective appointments which we hold, but definitely dishonest. Quite apart, however, from considerations of honesty or dishonesty the policy suggested would have been one of meaningless stupidity.

15. When I arrived in the Colony, in November, 1933, the inquest on the death of Mr.Powys had already been held, and the finding, on the evidence which was then forthcoming, had been accepted as correct by Government, including, of course my predecessor the Attorney General. It is a little difficult, therefore, to understand the suggestion that I personally could have had any conceivable interest in supporting that finding at all costs when the matter was re-investigated two years later. In fact, at any rate in the eyes of the ignorant, it might be said that I had nothing to lose and everything to gain were I to succeed when others had apparently failed. The necessary implication, therefore, would appear to be that

I was acting on the instructions of Government and that it was the considered policy of Government that the prosecution should fail. While denying emphatically the truth of such a ludicrous suggestion I would point again that questions relating to such prosecutions are matters for the personal decision of the Attorney General and that the responsibility is and must be his as the principal law officer of the Crown. There can be no question of his receiving instructions from Government.

16. Government has devoted an enormous amount of time and trouble and has been involved in very considerable expense in the endeavour to obtain evidence in this case. Apparently it is now suggested that, when success was within its grasp, Government took steps deliberately to ensure that failure and not success should be the ultimate result. Apart from the Powys case, the Bamburu in the past two years have repeatedly caused serious trouble to Government by their conduct, more especially in regard to spear-blooding murders. Here was an opportunity of bringing to justice five Bamburu alleged to be guilty of the murder of a European. Is it a credible suggestion that this opportunity was deliberately rejected because in 1931 an Inspector of Police and a Coroner had formed the opinion that Mr.Powys' death was not the result of murder but of an accident?

17. It was the duty and responsibility alike of the administration, the Police, the legal authorities and Government generally to ensure the punishment of the guilty persons whoever they might be, in the interests of justice and of law and order. Political considerations rendered it equally desirable that the prosecution, if possible, should be successful. It must inevitably have been more satisfactory to Government to have the guilty convicted and punished, even after a delay of three years, rather than/

than to add the Lowye Case to the list of Samburu murders in which Government had been unable to bring the murderers to justice.

18. In conclusion I would observe that the practice and traditions of the English criminal law impose certain restrictions upon the conduct of prosecutions. It has long been a legitimate source of pride as well as a safeguard of individual liberty that the Crown should conduct such matters with scrupulous fairness as well as with firmness; that it should "prosecute but not persecute". I am satisfied that, subject to a due regard being had to this principle, everything possible was done to secure a conviction in this case.

Nairobi,
14th February, 1938.

W Hanley
ATTORNEY GENERAL

LEGAL DEPARTMENT.

80

No.L.7/47/2.

ATTORNEY GENERAL'S OFFICE,
NAIROBI,
28th January, 1935.

The Honourable the Colonial Secretary,

RE: POWYS MURDER.

In the letter from the Secretary of State there is one definite charge which this Department must meet. Why was a new and inexperienced Crown Counsel assigned to conduct the prosecution on behalf of the Crown in an important and complex case?

The answer to this question is really very short. He was the only member of this Department available. The Attorney and Solicitor General were engaged in Legislative Council and Major Lewey was engaged in a long and complicated Arson case in Nairobi. It was inadvisable that the Powys case should be postponed as the Provincial Commissioner informed me that if the native Crown witnesses were allowed to disperse and return to their villages, no reliance could be placed in their future evidence if indeed they could be found again for the purpose of giving evidence.

While it is true that Mr. Wallace is comparatively new to the Colony, I have formed a very high opinion of his ability and as he had been collaborating with the Police all through the preparation of the case for the preliminary hearing, he was au fait with all the details of the case. The case was being defended by an Advocate without great experience as a defender of criminals.

As there is a further suggestion that Government was not interested in securing a conviction. I will now set out the history of the case as far as I know it and I attach a copy of the investigations made by the Police. The Administration were also making enquiries independently of the Police.

2. In 1931 Mr. Powys was found dead under the circumstances so clearly set out at the trial. An inquest was held at which not only persons whom I will call, for want of a better name police witnesses, were examined but also any European settlers of the District who happened to know anything about the question in issue and there is not the slightest doubt that the public generally at that time agreed with the verdict of the Coroner, namely, accidental death.

3. Before the inquest rumours started to be circulated that Mr. Powys had in fact been murdered by Samburu natives. A native by the name of Kiberenge in fact came forward and stated this fact but for reasons best known to himself he retracted this statement later and was prosecuted under section 115A of the Penal Code for giving false information to a public servant to which charge he pleaded guilty and was sentenced to five months imprisonment.

After this prosecution no further evidence of importance was obtained until the middle of 1934 when further native information was obtained implicating five Samburu in the murder of Powys. It should be noted here that this information followed in the wake of various punishments which had been inflicted on the Samburu tribe in respect of native murders which had been traced to the Samburu but about which the Samburu would supply no information whatsoever.

4. At the end of 1933 certain responsible people in the vicinity came to the conclusion from the whisperings of various natives that after all Mr. Powys might have been murdered, and that a certain witchdoctor by name Ole Oduma was implicated in it. Further investigations were made without any satisfactory result owing to the alleged influence of this witchdoctor and although at that time no evidence could be obtained to definitely connect Ole Oduma with the murder of Mr. Powys, a deportation order was obtained on other evidence and he was removed from the District at the beginning of 1934.

5. In the middle of 1954 further evidence was obtained which culminated in September of that year in the arrest of 5 Samburu on a charge of having murdered Mr.Powys in 1951 and all the evidence was collected and submitted to this office. I personally considered the evidence in collaboration with the Police and one of my Crown Counsel, Mr.Wallace, whom I directed to conduct the prosecution on behalf of the Police at the preliminary enquiry before the Magistrate at Rumuruti. The date of hearing was fixed, the witnesses collected and the Resident Magistrate, Nakuru (a professional Magistrate) was detailed to hear the preliminary investigation. The day before the preliminary trial took place Mr.Wallace was taken ill and the Doctor refused to allow him to go to Rumuruti with the result that the prosecution had to be entrusted to Mr.Leslie an experienced Police Office who had been in touch with the facts of the case from 1951. The accused were not represented at the preliminary hearing and I have every reason to believe that it was properly conducted.

6. The preliminary enquiry was heard on the 1st and 2nd of November and the accused were committed for trial before the Supreme Court on a charge of murder. The record of the case upon which I drafted my Information was received at this Office on the 12th of November. The place where the trial was to be held was Nakuru and the next sitting of the Supreme Court in that Town would not have taken place under ordinary circumstances until February, 1955, as the Court had already held its November sitting. In February there would have been no ~~sittin~~ sitting of Legislative Council and I had every intention, as is my custom in these cases, of appearing and prosecuting in this case myself.

7. On or about the 4th of November I received a telephone message from the Provincial Commissioner in Nakuru to the effect that if the native witnesses who had given evidence on behalf of the Crown at the preliminary inquiry were allowed to disperse and return to their homes he was satisfied that there was every probability that they would be influenced to alter their evidence when before the Judge and he even expressed a fear that some of them might not be allowed to ever give evidence at all and he urged me to make every effort to have a special session fixed immediately by the Chief Justice for the hearing of the case.

8. An application was immediately made to the Chief Justice and he fixed a special session at Nakuru on the 27th November which was the earliest possible date that he could manage.

9. The Budget Session of Legislative Council had been fixed for the 24th of November and was expected to last, as it in fact did, for at least one month and it therefore became apparent that it would be impossible for me to conduct this case myself. I, therefore, detailed the Solicitor General to take it in my stead and with this object in view he proceeded on Circuit. After he had left Headquarters it became apparent to Government that the Legislative Council meeting was likely to be a stormy one and as the Solicitor General was a Government member of Legislative Council it was essential that he ~~would~~ should be present at every division and I was instructed to recall him to take his place in Council. I was then left with two Crown Counsel - Major Lewey and Mr.Wallace. Major Lewey was involved at that time in a case in Nairobi in which a member of Legislative Council and four others were accused of arson. It was in fact the longest criminal case which has ever been heard in Kenya and it was down for hearing on or about the 5th of December. It was, therefore, obvious that it was impossible for me to send him to Nakuru to conduct a murder case which might have taken two weeks. Mr.Wallace who I knew was conversant with all the facts of the Powys case was at that time conducting the Criminal Sessions at Mombasa and rather than trust the Powys case to some local Advocate, incidentally at great expense, and in view of the fact that I have formed a very high opinion of Mr.Wallace's ability, I recalled him by telegram from Mombasa, making other arrangements for the remaining cases in that District. He arrived back in Nairobi on Saturday, the 24th November and left for Nakuru on the 25th together with Mr. Leslie who, as I have mentioned before, knew every detail of the case. The result of the case you already know but I would like to say here that having perused a short hand-transcript note of the evidence and of the addresses by Counsel and in particular Mr.Wallace's address and the Judgment in the case and having discussed the case with two unbiassed persons with knowledge of legal matters who were present in

Court during the whole of the trial I am satisfied that the case was conducted in a most competent manner by Mr. Wallace.

10. With regard to the suggestion that Government was not interested in securing a conviction, I find it difficult to reply with restraint, as it can only mean that every senior officer of Government connected with the case is unworthy of holding the position that he does and in particular myself. When I arrived in the Colony in November, 1933, the inquest into the death of Mr. Powys had already been held and the finding on the evidence which was then forthcoming had been accepted as correct by Government including the then Attorney General. It is, therefore, difficult to understand the suggestion that I personally could have had any conceivable interest in supporting that finding when it was again investigated two years later. In fact looking entirely by the sordid side of this tragedy I had everything to gain and nothing to lose in the eyes of the ignorant if I were to succeed where others were apparently satisfied to fail. The suggestion can therefore only mean that I was acting on the instructions of Government and that it was the considered policy of Government that the prosecution should fail.

His Excellency is himself aware of the enormous time, trouble and expense that Government had expended in endeavouring to obtain evidence in this case and that they should decide to fail when a satisfactory conclusion of their endeavours was in sight would I suggest be not only dishonest but incomprehensible. The the suggestion is entirely untrue His Excellency is aware and my considered opinion is that it is only being put forward in order to bolster up the claims of certain settlers who are anxious that the Samburu should be removed from the Leroki Plateau and who are aware that Government has advised against such a course.

11. I trust that I have now made it clear why a senior officer of this Department could not take the case. ~~Where~~ Whether or not the officer who was entrusted with the conduct of the case was adequate or not can only be a matter of opinion and so far as I have yet seen in the files there has been no criticism from any competent of expressing a legal opinion. With regard to the conduct of the Police I can only say, for what it is worth that in the many conferences which I have had with the various officers of Police in the course of this case I have been impressed with their enthusiasm and anxiety to bring the offenders to justice and I am satisfied that they left no stone unturned in their lengthy and difficult investigation. The Police and Government generally during the last two years or more have been having constant difficulties with the Samburu particularly with regard to their blood-spearing murders and to suggest that Government would deliberatively miss an opportunity of bringing to justice five Samburu who were alleged to be guilty of the murder of a European merely because in 1931 Inspector Ash and the Coroner believed that his death had been an accident and not a murder is so incomprehensible that it is difficult to believe that anyone would seriously put forward the suggestion, particularly when it is realised that it was obvious to everyone that it would have been more satisfactory politically to Government that the accused should be convicted even after three years than that the Powys murder should be added to the many other Samburu murders in which Government had been unable to bring the murderers to justice.

12. On another file I have dealt with all the detailed allegations of negligence put forward by Lord Erroll and others.

Sd. W. HARRAGIN

ATTORNEY GENERAL.

P.S. A revised edition of this accompanies the open dispatch which is to be laid on the table of the H of C by the S/S

WH

AIR MAIL

KENYA

No. 94


GOVERNMENT HOUSE
NAIROBI
KENYA

23



13th February, 1935.

Sir,

With reference to my despatch No. 40 of the 15th January, I have the honour to transmit an additional copy of the transcript of the shorthand notes taken at the trial of Bari ole Laduma and four others in Supreme Court Criminal Case No. 160 of 1934.

No. 10

I have the honour to be,

Sir,

Your most obedient, humble servant,

Cornwade

GOVERNOR'S DEPUTY.

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

# I N D E X.

IN HIS MAJESTY'S SUPREME COURT OF KENYA

SESSIONS HOLDEN AT NAKURU

27th NOVEMBER, 1954

B E F O R E

HIS HONOUR MR ACTING JUSTICE OAKLEY

(AND ASSESSORS)

CRIMINAL CASE NO. 160 OF 1954.

R - R - X

VERSUS

1. BARI OLE LADUMA
2. MARITIN OLE LOLOMALA
3. MBALI OLE LAIGITILE
4. LAGOI OLE LESOIBA
5. MAJERO OLE LIRONO

(Transcript of Shorthand Notes of Walter Ico, Official Shorthand-writer to the Supreme Court of Kenya).

MR T. D. WALLACE, CROWN COUNSEL, appeared for the Prosecution.

MR WILLIAM ALLAN appeared for the five Accused.

P L E A

THE DISTRICT REGISTRAR: At the Sessions holden at Nakuru on the 27th day of November 1954 the Court is informed by the Attorney General on behalf of our Lord the King that Bari ole Laduma, Maritin ole Lolomala, Mbali ole Laigitile, Lagoi ole Lesoiba and Majero ole Lirono are charged with

the following offence - murder contrary to section 103 of the Penal Code. The particulars of the offence are that they on or about the 10th day of October 1931 in the Rift Valley Province murdered Theodore Powys.

What do they say?

ACCUSED NO. 1: I did not kill.

ACCUSED NO. 2: I did not kill.

ACCUSED NO. 3: I did not kill.

ACCUSED NO. 4: I did not kill.

ACCUSED NO. 5: I did not kill.

MR JUSTICE GAMBLE: A plea of Not Guilty is entered for all five accused.

ASSESSORS

1. PARKEMET OLE LAKORDAT
2. NDAI OLE LEKALEN
3. LEKOMOT OLE LEKORIAN

CHARGE TO THE ASSESSORS

MR JUSTICE GAMBLE: Tell the Assessors that they will listen to the evidence for the Crown and the Defence; after that they will hear the addresses of Counsel for the Crown and for the Defence; after that I shall address them on the case generally, and in conclusion they will be asked to give me their opinion as to the guilt or innocence of each of the accused persons.

Interpreter - KIBAIWA OLE LEMBARBARA affirmed.

MR WALLACE ADDRESSES ON BEHALF OF THE CROWN.

May it please Your Honour, Assessors, Members of the jury, the late Theodore Powys.

The five persons in the dock stand charged

with the murder of Theodore Powys who it is alleged by the Crown met his death in exceedingly tragic circumstances over three years ago.

At that time the deceased was employed by Lady Eleanor Cole as the Manager of one of her estates in the Rumuruti area, and on the morning in question, Monday the 16th of October 1931, he left his home at Il Pingwan at about 8 o'clock in the morning with the intention of inspecting the estate. Cathombe, his personal boy, saw him leaving that morning mounted on a pony. That is the last occasion on which he was seen alive.

At about noon on the same day the riderless pony arrived back at the homestead, and Cathombe, thinking that his master had dismounted and carelessly tied up the pony, sent out one of the shamba boys to bring the pony to his master. The boy was unable to find the deceased and returned a couple of hours later. Cathombe became somewhat perturbed and organised a search for his master. The search lasted until sunset but they were unable to find any trace of him.

The next morning, since Theodore Powys had not returned, Cathombe decided to go and see Mr Rawson Shaw who like the deceased, was a Manager of Lady Eleanor Cole. At that time he was out on safari at a distance of about ten miles from the homestead. Mr Rawson Shaw immediately communicated with other settlers in the area and an extensive search was undertaken. They even chartered an aeroplane in order to help them in the search.

That day their search was fruitless - that was on the Tuesday; but on Wednesday at about 2 o'clock they came upon the remains of the late Theodore Powys.

Inspector Apb, who was at that time in charge of the Police at Rumuruti, investigated the case and came to

with the murder of Theodore Poyo who it is alleged by the Crown met his death in unexceptionably tragic circumstances over three years ago.

At that time the deceased was employed by Lady Eleanor Cole as the manager of one of her estates in the Kimberley area, and on the morning in question, namely the 10th of October 1941, he left his home at 11 Bingham at about 6 o'clock in the morning with the intention of inspecting the estate. Gethsemane, his personal boy, was also leaving that morning accompanied on a pony. That is the last occasion on which he was seen alive.

At about noon on the same day the riderless pony arrived back at the homestead, and Gethsemane, thinking that his master had dismounted and unsaddled the pony, sent out one of the house boys to bring the pony to his master. The boy was unable to find the deceased and returned a couple of hours later. Gethsemane became concerned and organised a search for his master. The search lasted until sunset but they were unable to find any trace of him.

The next morning, since Theodore Poyo had not returned, Gethsemane decided to go and see Mr Hanson Shaw who, like the deceased, was a manager of Lady Eleanor Cole. At that time he was out on contact at a distance of about ten miles from the homestead. Mr Hanson Shaw immediately communicated with other neighbors in the area and on exhaustive search was undertaken. They even chartered an aeroplane in order to help them in the search.

That day their search was fruitless - that was on the Tuesday; but on Wednesday at about 3 o'clock they came upon the remains of the late Theodore Poyo.

Inspector Abb, who was at that time in charge of the Police at Bunnett, investigated the case and came to



[illegible]

In that they underwent a preparation ceremony for three days at the hands of the Laibon, Ole Laiduma, and that they then set out together from their canyatta, and having arrived at Il Pingishu killed the deceased, and returned home that on their way home they met two Lumburu, and these two Lumburu will tell you that when they met the accused the accused had in their possession the head, an arm, and the private parts of a European and that the accused told them that they had met a European who was riding a horse and having upbraid him they removed the various parts of his body to which I have referred. Also at this place were three Wanderobo and these three Wanderobo will tell you that although they did not speak to the accused they distinctly saw that they were in possession of the head, arm, and private parts of a European. The suggestion of the Crown is that the accused then returned to their canyatta, and on arrival there they assembled outside the Laibon's hut, and three witnesses will come here and tell you that the accused told them the same story which they had already told the two Lumburu and the three Wanderobo, and also that they were in possession of the head and private parts of a European, the presumption being that they had apparently dropped the arm en route. These three witnesses will also tell you that the Laibon then carried out the purification ceremony, walking round all the five accused, and that they were told by the Laibon to take back the parts of the European's body which they had brought; that they buried the parts in goat manure that night, and left the next morning.

Also evidence will be adduced before you of four girls, who were lovers of four of the accused in the dock, that each of the accused, or four of the accused, told

four of these girls the same story that they had met a European riding a horse and had killed him.

These two further witnesses will also tell you that they met one of the accused later - about six months later - and that he handed them for a ring and they told him that only a man who had killed was entitled to wear a ring, upon which he replied that he had killed a European near Ii Pingwan.

Now that very briefly is the evidence which will be adduced before you, and if the allegations of the Crown are proved to your satisfaction, then I think there will be very little doubt left in your minds that the prisoners in the dock are guilty of a foul, cold-blooded, and entirely motiveless murder.

I will call Superintendent Ridgway.

ROBERT RADGRAY sworn:

Examined by Mr Wallace.

1.Q. MR JUSTICE GAMBLE: Your full name? — A. Robert Ridgway, Sir.

2.Q. MR WALLACE: You are Assistant Superintendent of Police, Nairobi? — A. I am, sir.

3.Q. I think you have been in charge of the investigations in this case for the past year? — A. That is correct.

4.Q. Where did you go in the course of your investigations? — A. I visited a place called Ii Pingwan, a place called Mara Mara which is on the border of Embu and Likipia.

5.Q. I think various places were pointed out to you by certain people, and did you make measurements of those places? — A. Yes, I did.

6.Q. Did you mark them on an Ordnance map? — A. I did.

7.Q. Is that the map marked by you? (Ordnance map handed to witness). — A. Yes, sir. (Map put in and marked "Exhibit 1")

8.Q. Did you make a place plan of the places which you had marked? — A. I did.

MR JUSTICE GAMBLE: How do you mean, Mr Wallace?

MR WALLACE: He marked certain places on the map and then attached a plan to it pointing out where the places were. "Key" would be the more correct word. (To witness): Is that the key? (Key

plan handed to witness). — A. Yes, sir.

(Key plan put in and marked "Exhibit 1a")

9.Q. You made certain measurements? — A. I did.

10.Q. Do you know where the late Mr Powys lived? — A. Yes, sir.

11.Q. Tell us how far it is from his house to the dam. Did you make notes at the time? — A. I did, sir. The turnstead to the dam is 5½ miles.

12.Q. Were you pointed out where the remains were found? — A. I was.

13.Q. By whom? — A. By Mr Royson Shaw.

14.Q. From the dam to where the remains were found? — A. 1½ miles.

15.Q. Were you pointed out where the skull was found? — A. I was, sir, by Mr Royson Shaw.

16.Q. How far was it from the remains to the skull? — A. 1000 yards.

17.Q. Do you know the compatta where the deceased lived at that time, in 1931? — A. I do.

18.Q. How far is it from that compatta to the spot where the remains were found? — A. 15 miles.

19.Q. I think another spot was pointed out to you by an Edwards? — A. Yes.

20.Q. As what? — A. As where they met Sanjuni.

21.Q. What Sanjuni? — A. The deceased.

22.Q. From that spot to where the remains were found how far is it? — A. 6 miles, sir.

23.Q. How far is it from the deceased's homestead to where the remains were found? — A. 6 miles, sir.

24.Q. Did these Vanderobs point out another place? Can you give us their names? — A. The witness Idamat.

25 MR JUSTICE GAMBLE: What did he show you? — A. Where the Vanderobs lived in 1931.

26 MR WALLACE: Is he the man who pointed out to you the spot where they met the deceased? — A. Yes.

27.Q. On the 2nd December last did you take an arrest, or were you present when an arrest was made? — A. On the 2nd December I was at home here. I was present when a Lathon by the name of Ole Laidama was arrested.

28.Q. Did he get anything? — A. The exhibits to Court.

29 MR JUSTICE GAMBLE: On his person? — A. Yes, sir, when he was arrested. Do you know the case pretty well? — A. I do.

30 MR WALLACE: Not all of the exhibits? — A. The Laibon was in possession of all those articles, sir. (Witness indicates greater kudu horn, lesser kudu horn, and a bag containing numerous articles).

CROSS-EXAMINED BY MR ALLAN.

(Cont)

MR JUSTICE CARRIE: (to Mr Wallace): Do you want them all to go in as one exhibit?

MR WALLACE: I think separately, Your Honour. I want the Kudu horns separate.

51.Q. Was he in possession of that horn (lesser Kudu horn) and the bag when he was arrested? — A. He was, sir.

(Lesser Kudu horn and bag put in and marked "Exhibits 2")

(Greater Kudu horn put in and marked "Exhibit 3")

52.Q. On the 6th October this year did you make any further arrests? — A. On the 6th October this year I arrested Accused Nos. 3, 4, and 5.

53.Q. Did you arrest the other two accused? — A. On the 11th October this year I arrested Nos. 1 and 2.

54.Q. All on a charge of murder? — A. Yes, sir.

55.Q. What happened after that? Have they been under arrest since? — A. They have been under arrest since.

56.Q. Did you make any other arrests? — A. I arrested two other Bantu in connection with this case and they were later released.

57.Q. I think you held various identification parades. Give His Honour a detailed account of them. — A. On the 6th of October this year, Your Honour, a parade was held in the Immigrant Prison. There were twelve Bantu present, sir, including a man by the name of Lesori who is now a witness for the prosecution. The witness Lizmet picked out Lesori and named him.

58.Q. MR JUSTICE CARRIE: That is the Lesori? — A. Yes, sir. The witness Salem also picked out Lesori and named him. The witness Pariyamalu also picked out Lesori and named him. On the 11th October I held another parade at the same place. There were 21 Bantu including the five accused and the witness Lesori. The witness Lizmet at the parade picked out Accused No. 4 and Lesori, who is a witness, and named them.

59.Q. He had already picked out Lesori? — A. This was the second parade, sir. He also picked out accused No. 1 but did not name him. The next witness was Pariyamalu and he picked out Nos. 2, 3, 4, and 5 and named them. He also picked out the witness Lesori and named him.

60.Q. Named all four? — A. All four, Your Honour. The witness Salem picked out Nos. 3, 4, and 5, also the witness Lesori, and he named them all.

61 MR WALLACE: You know the spot where the remains were found? — A. I do.

62.Q. Do you know the area pretty well? — A. I do.

63.Q. In order to go from the spot where the remains were found to the complete of the accused which way would you go? — A. You would cross the Angata Vergot plain.

CROSS-EXAMINED BY MR ALLAN.

(Over)

Cross-examined by Mr Allan.

64 MR ALLAN: At the identification parades, was there any opportunity of these witnesses getting information as to who they were to pick out? — A. None whatsoever, Sir.

65.Q. You may remember the evidence given by Pariyanalu in the lower Court. He then told the Court that another man told us, I was also of the party so I picked him out but I did not see him myself. — A. I don't know.

66.Q. If that could have happened in one case .....? — A. These parades were held strictly in accordance with Police Standing Orders, and Mr Crawford, the District Commissioner, was present. It was impossible for witnesses to get into touch with each other.

67.Q. What is the distance from the Kanderebo village to the Sambura manyatta?

MR JUSTICE OWEN: You can give it approximately if you did not measure it. (To Mr Allan): That is to the accused's manyatta, Mr Allan?

MR ALLAN: Yes, Your Honour.

WITNESS: It is 24 miles. The Sambura manyatta to the remains is 18 miles, and the remains to the Kanderebo village is 6 miles.

68 MR JUSTICE OWEN: You are assuming they are in a straight line. If the remains were not in a straight line between the two manyattas the distance would be greater? — A. It would be a little further, Sir.

69.Q. Assuming the accused's manyatta and the remains were in a straight line it would be 24 miles? — A. Yes. And taking a straight line from the Sambura manyatta to the Kanderebo manyatta it would be less. It would be 22 miles about.

70 MR ALLAN: Can you mark the Kanderebo village on the plan? — A. Yes. I have marked it, Sir.

71.Q. On the 2nd December the Laibon was arrested? — A. Yes.

72.Q. What was he arrested for? — A. He was arrested by the Administration, not by us.

73.Q. Then how did you get possession of these things? — A. I was in the same camp as the A.D.C. who arrested the Laibon, at the place called Hera Hare.

74.Q. The D.C. handed you these things? — A. I saw them in the D.C's camp; I examined them, in fact.

75.Q. Could you know the Laibon again if you saw him? — A. Yes.

76.Q. The Laibon was down at Mombasa, he was deported to Mombasa, and he has been brought up here for this trial.

MR WALLACE: The Laibon at the moment is in prison. It is necessary to inform Your Honour that he has been

(The witness withdrew)

arrested as an accessory after the fact.

MR JUSTICE GAMBLE: Have him sent for. It is necessary that he should be here.

57 MR ALLAN: Lenori and Lesemeto were also arrested and charged? — A. Yes. They are the Samburu.

58 MR JUSTICE GAMBLE: They were also arrested for murder? — A. Yes, Sir, and released.

59 MR ALLAN: Had you a meeting with Lenori and Lesemeto? Did you take a statement from them? — A. I did, yes.

60.Q. I suppose it was after receiving their statement that you released them? — A. Yes.

61.Q. There are several points I want to put to Superintendent Hildreny. It may save time later on. The Samburu are Samburu? — A. Yes.

62.Q. And their period of ownership is about up? As a matter of fact they are going out now? — A. These people are just about going out of power now.

63 MR JUSTICE GAMBLE: Handing over to the fresh age? — A. Yes, Your Honour.

64 MR ALLAN: It is common knowledge, I think, that this section to which these accused belong is, or prior to the death of Mr Powys was, the most despicable section .....

MR WALLACE: I don't know if the Superintendent was in the area at the time.

MR JUSTICE GAMBLE: If he can answer the questions he can answer them.

WITNESS: I was there for three years in 1924 and came back in charge of Kalwadha. I was there for a period of about six years.

65 MR JUSTICE GAMBLE: You say the Loroghisha section is the lowest? — A. From what I have been told I understand so. I cannot say for certain.

66 MR ALLAN: Were you in the district when this section had trouble with another section and were beaten? — A. I was not in the district, but I understand that is true.

67.Q. The Samburu, like the Masai, have the theory of blood-spearing? — A. Yes.

MR JUSTICE GAMBLE: Spear-blooding, I think, is the word.

MR ALLAN: Oh yes. Spear-blooding.

68.Q. Although these women cohabit with the Uditu of their own section, when they choose wives they carry into another section? — A. That is correct, sir.

69 MR JUSTICE GAMBLE: That is to say a Loroghisha woman could not, when the time came, carry a Loroghisha girl? He would have to go to another section? — A. Yes, Your Honour.

(The witness withdrew)

MR JUSTICE GAMBLE: The Laibon has arrived. Recall Mr Ridgway.

ROBERT RIDGWAY informer cntd.

Cross-Examined by Mr Allen.

70 MR ALLEN: Is that the Laibon? — A. That is the Laibon, sir. He is very much thinner since I saw him last.

71 MR JUSTICE GAMBLE: The man in Court is the Laibon you saw arrested and in whose possession those exhibits were? — A. Yes, sir.

(The witness withdrew).

GATHOBBE WA GATHOBE affirmed.

EXAMINED BY MR WALLACE.

72 MR WALLACE: Do you remember Mr Powys? — A. Yes.

73.Q. I think you were his cook? — A. Yes.

74.Q. Do you remember the time he died? — A. Yes.

75.Q. Have you any idea how long ago that is? — A. I don't remember.

76 MR JUSTICE GAMBLE: A long time ago? — A. Yes.

77 MR WALLACE: Do you remember the last time you saw him? — A. Yes.

78.Q. What time of the day was that? — A. He left in the morning about 8 o'clock.

79.Q. Left where? — A. He left the homestead.

80.Q. Where is the homestead? — A. Il Pinguan.

81.Q. How did he go? — A. He went on horseback.

82.Q. In what direction did he go? — A. He went in the down direction.

83.Q. Is the homestead on a hill? — A. Yes.

84.Q. Did he come back? — A. The horse came back without him.

85.Q. At what time? — A. The horse returned at 12 noon.

86.Q. Where were the bridle and reins? — A. Round the neck.

87.Q. Which way round the neck? — A. On the back.

88.Q. What did you do then? — A. I called a syce and I ordered him to take back the horse in the direction the horse had taken.

89.Q. What happened then? Did the syce come back? — A. In consequence of information received he came back.

90.Q. And what did you do then? — A. I summoned other people to assist.

91.Q. Other boys on the farm? — A. Yes. We went to look for the bullock.

92.Q. How long did you look for him? — A. Until 6 o'clock in the evening.

93.Q. And the search was fruitless? — A. Yes.

94.Q. What did you do the next day? — A. I took the horse in the morning and went and informed Mr Shaw.

95.Q. That time? — A. I got to his place about 8 o'clock in the morning.

96.Q. What time did you leave your place? — A. 6 o'clock in the morning.

97.Q. And you told him? — A. Yes. "Bullock is missing since yesterday".

98.Q. What did you do then? — A. I got into his car, leaving the horse there, and returned to the farm. I left Mr Shaw at home and I went with Bullock Dollinson to show him where the deceased usually goes.

99.Q. I think this was on the same day, the Tuesday? — A. Yes.

100.Q. And you found nothing that day?

MR JUSTICE GAMBLE: Two days elapsed. There were two blank days?

MR WALLACE: Yes.

101.Q. Did you see an aeroplane that day, the Tuesday? — A. Yes.

102.Q. Both days? — A. Yes.

103.Q. Did you search again on the Wednesday? — A. Yes.

104.Q. What happened on that day? — A. I got into Mr Ash's car and we went further, leaving other people behind still searching.

105.Q. That is the Police Bwana? — A. Yes. We were called by an askari and he gave us certain information. We went back to where bwana had been found.

106 MR JUSTICE GAMBLE: What bwana? — A. The deceased.

107 MR WALLACE: And what did you find there? — A. First I noticed his hat; then I saw a jumper, sweater, and a pair of trousers; a belt .....

108.Q. Where was the belt? — A. It was attached to the trousers. A chain attached to a ring, and keys.

109.Q. A shirt? — A. Yes.

110.Q. Where were the keys? — A. Attached to the trousers. The belt was not unfastened. The buttons were, except the top one.

111.Q. You are quite sure they were the clothes of your brand? — A. Yes, I am certain. I was asked about that and I said "Yes".

112.Q. Were these the clothes he was wearing when he left that morning? — A. Yes.

113.Q. What remains did you find? — A. One leg with boot on. Some bones, but I did not know what part because they had been eaten.

114.Q. Did you see the head? — A. We searched for the head on that day but could not find it.

CROSS-EXAMINED BY MR ALLAN.

115 MR ALLAN: How many horses were at the house? — A. Three horses at the time, the fourth having died previously.

116.Q. Where were you when the pony came home? — A. I was in the kitchen.

117.Q. And you saw the pony from the kitchen window?

MR JUSTICE GAMBLE: I don't wish to check your cross-examination, but is there anything you can usefully cross-examine this witness on? You are not disputing the fact that the horse did come back?

MR ALLAN: I want to cross-examine him as to the condition of the horse, Your Honour.

118.Q. When it came back was it hot? Had it been running? — A. It was.

119.MR JUSTICE GAMBLE: Sweating? — A. Yes.

120.MR ALLAN: It looked as if it had come fast? — A. Yes.

121.Q. Did you send the same horse back, or did you send the syce with another pony? — A. With the same horse; but he did not go far.

122.Q. Did you see a mark on the leg of the horse? — A. Yes. A stab wound; an incised wound.

123 MR JUSTICE GAMBLE: Whereabouts was it? — A. On the back of the thigh.

124 MR ALLAN: Outside or inside? — A. Outside.

125.Q. You showed that to Inspector Ash? — A. Yes.

126.Q. When you saw the pony in that condition were you frightened that something had happened to the brand? — A. Yes, because I thought about his not returning.

127.Q. Then you went and searched for him all that day? — A. Yes, until the evening.

128.Q. When did you give up? — A. 6 o'clock in the evening.

129.Q. You gave up when it got dark? — A. Yes; we came back home in the dark.

130.Q. Do you remember if it was a dark night? — A. Yes;

but not very, very dark.

151.Q. I think you said you went with Inspector Ash to where the clothes were. Did you see any marks of the horse there at that spot? — A. Yes, we saw the horse's hoofs.

152.Q. What did you see? — A. We saw the horse's hoofs, and also the lion spoor. Some marks which were said to be lion spoor.

153 MR JUSTICE GAMBLE: What did you think? — A. All the others said they were of the lion.

154.Q. I don't want to know what the others said. You saw the marks? — A. I only saw the horse's hoofs; I did not see the lion spoor.

155.Q. MR ALLAN: You saw all the clothes. Did you see any blood marks on them? — A. Yes.

156.Q. Where was the blood? — A. On the breast, the left breast of the pullover, and the trousers were covered with blood.

157.Q. Where was the blood on the trousers? — A. All over. Covered.

158.Q. Before the aeroplane came, did you make a place for it to land? — A. Yes.

159.Q. Was that close to the house? — A. As far from here to the bazaar.

MR JUSTICE GAMBLE: We will call that near the house?

MR ALLAN: Yes.

MR WALLACE: No re-examination, Your Honour.

(His Honour read over his notes which were found correct and the witness withdrew).

THOMAS RAWSON SHAW sworn:

EXAMINED BY MR WALLACE.

160 MR WALLACE: Your full name? — A. Thomas Rawson Shaw.

161.Q. Did you know Theodore Powys? — A. I did, sir.

162.Q. What was his occupation? — A. He was managing part of Lady Eleanor Colo's Estate. A Sub-Manager.

163.Q. Up to the time he died? — A. Yes.

164.Q. I think you are also a Manager for Lady Eleanor Colo? — A. Yes.

165.Q. And you were at that time? — A. Yes.

166.Q. At the time he died he was taking every one he got, from you? — A. Yes.

167.Q. Do you know a boy called Gathambo who was a cook to

Mr Powys. He says he went over to you one morning some long time ago and told you his master was disappeared. What date was that? — A. 10th October.

148.Q. Is that the day he arrived? Did he come on the 10th or did he say his master had disappeared on the 10th? — A. It was the day after he disappeared.

149.Q. What day of the week was that? — A. I don't remember for certain.

150.Q. What year? — A. Three years ago.

151 MR JUSTICE GAMBLE: 1951? — A. Yes.

152 MR WALLACE: What time of the day did the boy arrive? — A. About 8 in the morning.

153.Q. When he told you of the disappearance of Mr Powys what did you do? — A. I send for two of my nearest neighbours and we started back to Il Piugum.

154.Q. That is where Mr Powys was? — A. Yes. I was away in camp.

155 MR JUSTICE GAMBLE: With Gathombe? — A. Yes.

156 MR WALLACE: How far was your camp from Mr Powys' house? — A. About 10 miles.

157.Q. Tell us your movements on that day and the next. What did you do?

158 MR JUSTICE GAMBLE: Did you search all that day? — A. Yes, we searched that day.

159.Q. Without result? — A. And that night. Without result.

160 MR WALLACE: I think an aeroplane was chartered? — A. Yes.

161.Q. Who chartered that? — A. Major Edwards.

162.Q. It was used in the searches on the Tuesday and Wednesday. Is that right? — A. Yes.

163.Q. What happened on the Wednesday, the next day? Did you search again? — A. Yes. We started out at dawn. We had collected a lot of boys. Wednesday morning was the day we found him.

164.Q. Where did you find him? — A. May I point it out on a map?

165.Q. How far from his house? — A. About 4 miles South East.

166 MR JUSTICE GAMBLE: What did you find? — A. He was found.

167 MR WALLACE: Did you go along and see what was found? — A. I went along but they were already coming back. I saw the remains when we reached camp.

168 MR JUSTICE GAMBLE: Where was camp, Mr Gina? — A. Where Mr Powys was living.

169.Q. Was there a house there? — A. Mud and grass.

170 MR WALLACE: What did you see there? — A. A few bones. Clothing: shirt, cardigan, trousers; one boot with a foot in it. I don't remember anything else.

171.Q. Did you recognise those clothes? — A. Yes.

172.Q. As belonging to him? — A. To Mr Ponyo.

173.Q. Had you been in fairly close contact with him prior to this? — A. Yes, fairly.

174 MR JUSTICE GAMBLE: He was a friend of yours? — A. Yes.

175 MR WALLACE: Was the mud brought in with the remains? — A. No.

176.Q. Did you examine the trousers? — A. Yes.

177.Q. Were they intact? — A. They were intact.

178.Q. Was there a belt? — A. Yes.

179.Q. Was it shut or open? — A. Shut.

180.Q. Were the clothes blood-stained? — A. Yes.

181.Q. How much blood was there on the trousers? — A. Quite a lot.

182.Q. Where? — Small blood-stains all over. Most of the blood round the waist, under the belt.

183.Q. What about the rest of the clothes? Had they blood stains? — A. Yes. The cardigan was very torn and blood-stained.

184.Q. Were the clothes torn? — A. Yes.

185.Q. Much torn? — A. The cardigan was very torn and the collar of the shirt was torn out.

186.Q. The trousers? — A. They had small tears in them. I don't remember any big ones.

187.Q. Do you know Superintendent Ridgway? — A. Yes.

188.Q. Did you receive certain information early in 1953? — A. Yes, about a skull.

189.Q. From whom? — A. From one of our Masai herds, Kisuka.

190.Q. And as a result of what he told you what did you do? — A. I went out with him to a certain place.

191.Q. What did you find? — A. We found a skull.

192.Q. Had you any idea to whom that skull belonged? — A. Mr Ponyo.

193.Q. Why did you think that? — A. Because it was fairly near where the rest of him was found and because it had a gold stopping in the tooth.

194 MR JUSTICE GAMBLE: Which tooth? Back or front? — A. Fairly well back. I cannot remember much.

195 MR WALLACE: Did Mr Posyd to your knowledge have a gold stopped tooth? — A. Yes.

196.Q. What colour hair had deceased? — A. Very dark or black.

197 MR JUSTICE GAMBLE: Dark brown or black? — A. Very dark. I should think black.

198 MR WALLACE: Did you show the Superintendent where you found the skull? — A. Mr Ridgway? - Yes.

199.Q. When you went back to the camp with Gathombo that morning did you see a pony? — A. Yes; I saw the pony.

200.Q. Did you examine it? — A. Not very carefully. I looked at it.

201.Q. Can you tell us about a scar or not? — A. There was a scratch on the inside of the off hind leg.

202.Q. You are quite certain of that? — A. I am.

203 MR JUSTICE GAMBLE: On the inside of the off hind leg? — A. I think it was the off hind. It was certainly on the inside.

204.Q. Only one scar? — A. Three or four little scratches.

205 MR WALLACE: Do you mean three or four scratches with the scar or three or four as well as that? — A. I was referring to the wound.

206.Q. Made up of three or four scratches? — A. Yes.

CROSS-EXAMINED BY MR ALLAN.

207 MR ALLAN: You know the pony quite well? — A. Yes.

208.Q. Do you know if it shied easily? — A. Yes, it shied, but not more easily than most ponies.

209 MR JUSTICE GAMBLE: Some ponies do not shy at all? — A. It certainly shied.

210 MR ALLAN: You gave evidence at the Inquest? — A. Yes.

211.Q. Do you recollect what you said about the pony then? "It shies easily at anything". Is that correct?

MR JUSTICE GAMBLE: The note I have today is - "It certainly shies but not to excess".

212 MR ALLAN: These marks you saw on the pony's hind leg. Were they close together? — A. Yes; say half an inch or an inch apart.

213.Q. Have you any experience of lion? — A. Very little.

214.Q. Could it have been the mark of a lion's paw? — A. It is difficult to say. It might, possibly. More likely a scratch from a bush.

215 MR JUSTICE GAMBLE: What was the first thing that came into your mind: bush or lion? — A. I cannot remember that.

216 MR ALLAN: You saw the clothing and examined the trousers? — A. Yes.

217.Q. And so far as the trousers were concerned, was there much blood on them? — A. Not very much.

218.Q. The blood that was on the trousers, where was it?

MR JUSTICE GAMBLE: He has told us that. On the inside of the belt round the waist.

219 MR ALLAN: The skull was found about 1000 yards from the rest? — A. Yes.

220.Q. Have you frequently noticed that in the bush you very often find a head by itself with no other bones round about it? — A. Yes, I think I have.

221.Q. Buck or any animal? — A. Yes, where that animal ..... Buck or anything.

222.Q. Did you examine the spot where the pony had been? Did you go to the place where the body was? — A. I did but go to the actual spot until afterwards.

223.Q. Do you know anything about the pony's foot marks or lion spoor? — A. No.

224.Q. You attended the Inquest at Kwaruti and gave evidence? — A. Yes.

225.Q. Did you examine the shirt? — A. At the time?

226.Q. At the time of the death of Mr Powys? — A. Yes.

227.Q. You have described the tears as triangular?

228. MR JUSTICE GAMBLE: He has not yet today.

229 MR ALLAN: The tears in the shirt, what shape were they? — A. So far as I remember they were triangular. It is a long time to remember all that.

230.Q. I think you were the person who went and viewed the skull? — A. Yes.

231.Q. When you found it had it the appearance of having lain out for a long time? — A. Yes, I thought it had.

232 MR JUSTICE GAMBLE: Bleached? — A. Yes.

233.Q. No matter adhering - just bone? — A. Yes.

234.MR ALLAN: Had the grass grown round it? — A. Yes.

235 MR JUSTICE GAMBLE: In 1931 were lions common or uncommon in that area? — A. Quite a lot of lions in that area.

236 MR ALLAN: May I ask another question, Your Honour? A matter I had forgotten. (To witness): Do you know General Arbuthnot? — A. I have met him.

237.Q. Was he shooting in that locality about that time? — A. Some little time before that.

238 MR JUSTICE GAMBLE: Have you any idea how long? — A. Not

my farm outside Rumurity.

255.Q. I think you received certain information about the disappearance from Mr Shaw? — A. Yes.

256.Q. What date do you think that would be? — A. I think October 1951.

257.Q. You don't remember the day in October? — A. I cannot.

258.Q. As the result of this information, what did you do? — A. I went up to the Pingnan Valley where Mr Shaw told me to meet him.

259 MR JUSTICE GAMBLE: To search? — A. Yes, Sir.

260 MR WALLACE: I think you found nothing that day? — A. Not that day.

261.Q. The next day did you continue the search? — A. Yes.

262.Q. What did you find that day? — A. We found the remains of Mr Powys.

263.Q. Whereabouts? Do you know Mr Powys' house or the place called "The Camp"? — A. Yes.

264.Q. How far from that? — A. About 4 miles.

265.Q. Tell His Honour in detail exactly what you found? — A. My recollection, Sir, is the first thing I saw was the hat. Then, in order, the trousers, shirt, and pullover, all distributed about.

266.Q. Did you recognise those clothes? — A. Yes, sir.

267.Q. As whose? — A. As Mr Powys', the deceased's.

268.Q. You knew him fairly well? — A. Yes. And found the boots.

269 MR JUSTICE GAMBLE: A pair of boots? — A. I think only one boot, Sir, and the foot was in it.

270 MR WALLACE: Besides the foot, did you see any other remains? — A. Yes, we saw several small bones. I think rib bones as far as I remember, and the thigh bone, I think.

271.Q. Did you find the head at that period? — A. No, sir.

(THE COURT ADJOURNED UNTIL 2 p.m.)

AT 2 P.M.

EXAMINATION OF HUGH MILNER COLLINSON continued.

272 MR WALLACE: You said Mr Collinson you did examine these trousers? — A. Yes, sir.

273.Q. Were they torn? — A. Yes, Sir.

274.Q. Was the shirt torn much? — A. Very much.

275.Q. And the cardigan? — A. The cardigan was torn.

276.Q. How about the trousers? — A. The trousers were

intact as far as I know. I think there was one large tear on the knee.

277.Q. What do you mean by intact? — A. They were lying with all the front buttons done up and the belt done up.

278.Q. What type of belt? — A. It was a heavy leather belt with pockets for cartridges.

279.Q. Were all the clothes blood-stained? — A. I think all the clothes were blood-stained.

280.Q. Were the trousers specifically much blood-stained? — A. There was a considerable amount of blood round the waist on the inside.

281.Q. Were any part of the remains inside the trousers? — A. No.

282.Q. Could you give us an idea what type of country it was round about? — A. It was sandy sort of soil, sparse bush, no grass. A considerable amount of flat rocks thereabouts.

283.Q. Did you see any tracks in the vicinity? — A. There was a considerable number of tracks of vermin of all descriptions.

284 MR JUSTICE GARRIE: Hyaenas and things? — A. Yes, all kinds of tracks, Sir.

285 MR WALLACE: From the condition of the remains at that time would you say they had been eaten by vermin? — A. I thought they had been eaten by birds.

286.Q. That was your impression? — A. Yes, sir. They had been finished by birds.

287 MR JUSTICE GARRIE: The birds would not disarticulate the bones, would they? — A. They would pick the bones quite clean in a few minutes. Birds will eat the muscles holding the bones together in a very short space of time.

288 MR WALLACE: From your experience out here, Mr Collinson, what part of the body do you think a vulture would make for first? — A. I think without doubt the eyes first.

CROSS-EXAMINED BY MR ALLAN.

289 MR ALLAN: You have said you found no head. Did you find any of the larger bones, for example, the pelvis? — — A. I am afraid I don't remember. I don't think there was anything very big there.

290.Q. Did you examine the clothes closely? — A. I think so, sir, from my recollection.

291.Q. The tears in the clothes; of what nature were they in shape? — A. It is difficult to say at this time. The cardigan was completely pulled to pieces. The shirt had several large tears in it and a number of smaller tears.

292.Q. Can you recollect the shape of those tears? — A. I think they were rectangular tears.

The place was marked with spoor of all kinds.

510.Q. You cannot remember how near to the scar this spoor came? — A. No, Sir, I am afraid not.

511 MR ALLAN: You remember giving evidence at the Inquest? — A. Yes.

512.Q. I have got the file here. Is this the evidence you gave? "I saw the spoor of lion and hyaena, also vulture. I saw the mark of a skid about 14 inches long and about 6 to 8 inches broad, and I remember the earth at one end was piled. It appeared to me to be the mark of the shoulder of a man thrown from his horse".

MR JUSTICE GAMBLE: That is more or less word for word what he has said today.

513 MR ALLAN: (Quoting): "There was a hat near the far end of the mark. There was a mark of blood on the ground about 8 yards away, of area about 18 inches square. Near the blood was lion spoor". Do you recollect that? — A. I remember the blood and I remember the spoor.

514 MR JUSTICE GAMBLE: How far from the skid? — A. I think it was six or seven yards from the skid mark. It was on a big flat stone, very noticeable indeed.

515.Q. There was lion spoor round the stone? — A. Yes, Sir.

516 MR ALLAN: Do you recollect finding any hair? — A. Of the deceased?

517.Q. Oh, no. Of any animal? — A. Yes, I remember I did find one on one of the clothes.

518.Q. Of what animal do you think it came from? — A. I think I said lion at the time; but I would not like to be so certain now.

519.Q. I will read your evidence further. "On the shirt I found what appeared to be one lion hair. It was about 6½ inches long, tawny with black at the end. There was also jackal hair". That is correct, is it? — A. Yes, Sir. From that description it might also have been a hyaena or long jackal hair.

520 MR JUSTICE GAMBLE: One hair you took to be lion? — A. Yes, Sir.

521 MR ALLAN: On the ground when you examined it was there any mark of Native foot-marks indicating a struggle of any kind? — A. Not that I saw. I did not say exactly that. I said I did not see any foot-marks indicating a struggle which was what you asked. I don't think it was correctly interpreted.

522.Q. The soil, I presume, was soft enough to show signs of a struggle? — A. It was not soft at all. It was very hard. There was a certain amount of dust which would have shown superficial marks.

523.Q. Did you see the skull when it was brought in? — A. No, Sir.

534.Q. The belt the deceased was wearing, was it an ordinary cartridge belt? — A. It was a leather belt with superimposed holes for cartridges.

535.Q. You told us you attended the Inquest. Can you tell us the others who attended the Inquest? — A. A great number of them. By name?

536 MR JUSTICE GAMBLE: Europeans? — A. Mr Shaw, Mr Pardoe, Mr Ash of the Police, Mr Acton, I think, I am not sure.

537 MR ALLAN: Mr Kuhne? — A. Oh yes, I think he was there.

538.Q. Mr Rutherford? — A. Yes, Captain Rutherford was there.

539.Q. At that Inquest, did you come to a unanimous conclusion? — A. I don't think we came to a conclusion at all. It was found by the Magistrate, I take it.

540.Q. At that time is it correct to say that your impression was that the deceased had fallen off his horse and been attacked by lion? — A. My opinion at that time was that he had been frightened off the horse by lion, but I never went so far as to say that he was attacked by the lion. I think the lion frightened the horse and he was thrown off.

541.Q MR JUSTICE GAMBLE: Did you form any opinion as to what caused his death? — A. No, Sir. I thought at the time he had probably been killed by the fall. That was my state of mind.

542.Q. The ground was sufficiently hard probably? — A. Yes, Sir. Undoubtedly.

543 MR ALLAN: Would it be fair to say that you were quite satisfied at the time that the deceased had met his death accidentally? — A. I think so, sir.

544.Q. The trousers I think were slacks. Corduroy slacks? — A. Yes, Sir.

RE-EXAMINED BY MR WALLACE.

545 MR WALLACE: You are speaking from memory about the Inquest, Mr Collinson? Do you remember whether Inspector Ash was on leave or not? — A. I think he was. He went on leave.

546.Q. And it was at the Magisterial Inquiry that you (not) gave evidence? — A. Yes.

547 MR JUSTICE GAMBLE: You know this country pretty well, Mr Collinson? — A. Yes, Sir.

548.Q. Are lions common or uncommon? — A. Common, Sir.

549.Q. Is it a safe country for a man to ride about unarmed on horseback? — A. I don't think it is, Sir.

550.Q. Would you do it yourself? — A. No, Sir.

(The witness withdrew)

ERIC WILSON PARDOE sworn:

EXAMINED BY MR WALLACE.

541 MR WALLACE: Your full name, Mr Pardoe? — A. Eric Wilson Pardoe.

542.Q. I think you are General Manager of Lady Eleanor Cole's Estates? — A. Yes, sir.

543.Q. Did you know Mr Ponya? — A. Yes.

544.Q. Well? — A. Very well. Yes.

545.Q. Do you remember going to Il Pinguan on the 21st of October 1951 to a certain spot pointed out to you? — A. Yes.

546.Q. When you arrived there what did you find? — A. I went to a place about three miles from the homestead where the remains of Mr Ponya had just been found.

547.Q. What remains did you see? — A. We found a place where his hat and some articles of clothing were, and some distance further on we found a foot and various bones.

548 MR JUSTICE GAMBLE: A foot with a boot on? — A. Yes. The foot was in the boot.

549 MR WALLACE: What clothes did you find? — A. We found a jumper and shirt where we found his hat, and where the foot was we found his trousers.

550.Q. You had no doubt they were his clothes? You knew them well? — A. I knew them well.

551.Q. What was the condition of the shirt? — A. The shirt had a tear in it on the left breast.

552.Q. Was it intact otherwise? — A. I don't recollect any other tear in the shirt.

553.Q. Was the shirt blood-stained? — A. Yes.

554.Q. Much? — A. One side of it.

555.Q. Which side? — A. The left side.

556.Q. With regard to the trousers, what condition were they in? — A. The trousers had a small tear on the knee and they had a tear up near the left pocket.

557.Q. They were corduroy trousers? — A. Yes, khaki corduroy.

558.Q. Slacks? — A. Yes, slacks.

559.Q. Describe the condition of the trousers again. — A. They were fastened up in front and they had a belt on them, a leather cartridge belt.

560 MR JUSTICE GAMBLE: Was the belt fastened round the waist? — A. Yes, Sir.

561 MR WALLACE: Were the trousers blood-stained? — A. They

were blood-stained I think on the left back. (Witness indicates left hip).

552 MR JUSTICE GARRIE: The left buttock? — A. Hip, more. Not quite on the back.

553 MR WALLACE: Did you find the hand at that time? — A. No, we did not find the hand.

554.Q. Were there any part of the remains inside the trunsors? — A. No, none.

555.Q. Can you tell us what colour hair the deceased had? — A. Black.

556.Q. Can you tell us anything about his teeth? — A. He had some gold stopping in one or more of his teeth. I don't know how many.

557.Q. It is about three miles from the homestead? — A. Just about that.

558.Q. And was it on the hill or not where you found the remains? — A. It was on the slope leading out of the valley.

559.Q. What type of country? — A. It is bush country. The slopes leading away from the valley are fairly thick bush and then the bush thins on top.

570.Q. What type of soil? — A. Reddish soil.

571.Q. Soft or hard? — A. Fairly hard.

CROSS-EXAMINED BY MR ALLAN.

572 MR ALLAN: So far as you know, Mr Purdoe, Mr Powys had no trouble with natives round about? — A. None whatsoever.

573.Q. Did you attend the Inquest at Umtali? — A. No.

574.Q. Did you sign the Report? — A. I signed a statement the day the remains remains were found.

575.Q. Did you visit the place where the remains were found with Inspector Ash? — A. On the day the remains were found, yes.

576.Q. Did you see the pony's foot-marks? — A. Yes, I did.

577.Q. What impression did you form from the marks? — A. That the pony had stopped suddenly.

578.Q. Did you also see the mark on the ground as though someone had been thrown? — A. Yes.

579.Q. From that mark did you come to the conclusion that Mr Powys had been thrown? — A. Yes, I thought so.

580.Q. Did you see any lion spoor? — A. I could not swear to that. We saw spoor we thought was probably lion.

581.Q. Did you see the hat? — A. Yes.

582.Q. Did you see a pool of blood near the hat? — A. Yes.

it was some few yards away from the hut.

583.Q. Was the line spoor there? — A. Yes, it was somewhere there.

584.Q. With regard to the tear on the shirt, on the left breast, could you describe that tear - the shape? — A. I think the tear in the shirt was a three-cornered tear.

585.Q. You saw the skull when it was brought in? — A. No, I did not.

586 MR JUSTICE GARDIE: The remains were buried, were they not? — A. Yes.

587 MR ALLAN: And the clothes too? — A. Yes. In the same box.

588 MR JUSTICE GARDIE: On the spot? — A. No, at the homestead.

589.Q. And the skull? — A. It was found a long time afterwards and taken to Lumundi. I don't know what happened to it.

MR ALLAN: I think the skull was sent to a relative.

590.Q. The deceased has an uncle here, Mr H. E. Posyn? — A. Yes.

MR ALLAN: I think the skull was sent to him.

591.Q. After what you had seen there had you any hesitation in coming to the opinion that Mr Posyn had met his death accidentally? — A. At the time I saw no reason to think otherwise.

592 MR JUSTICE GARDIE: What force did you think the accident took? — A. I thought that he had died of being thrown from his horse or that he had been pinched by a lion.

593 MR ALLAN: Do the Senburu often visit Lady Eleanor Cole's farm? — A. Very seldom. We did have about two months history a couple of Senburu working for us.

594.Q. That I mean by visits from Senburu, Senburu out hunting or anything like that? — A. I have never seen them.

595.Q. You have never seen a Senburu woman on the farm? — A. No.

RE-EXAMINED BY MR WALLACE.

596 MR WALLACE: You said in cross-examination, "I saw a mark as if cartridge had been thrown". Would that be just as consistent with a person being pulled off a horse? — A. Yes, every bit, sir.

MR WALLACE: Thank you.

597 MR JUSTICE GARDIE: Can the bush such that five men could have hidden themselves so that a horse would only have

been there at the last moment? — A. Yes, I think it was.

598.Q. Mr Collinson said the road against bush. He was referring to the bush at the spot where the remains were found? — A. There is a sort of large jungle(?) bush which it could be quite easy for five people to hide behind.

599.Q. You mean there was a particular bush? — A. That grows all over that country. It is not a bush with a single stem. It could easily conceal five men.

600.Q. There are plenty of hides round there? — A. Yes, Sir

MR JUSTICE DUCKER: Thank you, Mr Pardoe.

(The witness withdrew)

ALBERT AGHEsworl

EXAMINED BY MR WALLACE:

601 MR WALLACE: I think you were the Inspector in charge at the Police Station at Kumuruti in 1951? — A. Yes.

602.Q. In the result of certain information you received on the 16th October 1951 what did you do? — A. I proceeded to Mt Pingwin.

603.Q. That was a Tuesday, I think? — A. I cannot remembe

604.Q. What did you do? — A. I searched the whole of the night with two other Europeans for the late Mr Poyys who had been missing, and the following morning organised a search party and made another search for him.

605.Q. What did you find that day? — A. On that day I was called to a spot in the vicinity and there I found what purported to be the remains of the late Mr Poyys.

606.Q. That spot was about four miles from the homestead? — A. About that.

607.Q. I think you carried out investigations? You were in charge? — A. Yes, I did.

608.Q. Did you draw up a report at that time? — A. I did.

MR WALLACE: May the witness refresh his memory from that report

MR JUSTICE DUCKER: Any objection, Mr Allan?

MR ALLAN: None, Your Honour.

(Report handed to witness).

609 MR WALLACE: What did you find? — A. On this appeared to be a game track were the impressions of a pony's forefeet for feet as if he had dropped quite suddenly, as though he had pulled up suddenly. To the left, that is, North West obliquely from the pony,

was a slide mark in the ground about 1 foot wide and 8 feet in length. It was about 1 inch in depth.

410.Q. What is the soil like there? — A. It resembled [illegible]. It was pretty free from grass.

411.Q. We have one witness who says she says it was fairly hard with dust on top. Is that a fair description? — A. Yes. At the end of the slide mark was a tarsal bone. From this point and running North West about nine yards off were some rocks.

412 MR JUSTICE GAMBLE: North West, you mean the left hand side? — A. North East, Your Honour.

413.Q. What did you find? — A. There were some rocks which were blood-stained. From the hut to the rocks the only marks on the ground appeared to be the pad marks of some animal. They appeared to my mind to be about the size of a lion's. There were the marks as if quite a large flock of vultures or wild birds of the air had collected on these rocks. Straight ahead, that is the original front, about 20 yards off on another game track was a woollen sweater. 23 yards from the rocks.

414 MR WALLACE: What was the state of that sweater? — A. It appeared to have been pecked by quite a lot of birds. There were innumerable holes in it. 15 yards further on was a tree near to which was a 7 millimetre cartridge .....

MR JUSTICE GAMBLE: Does that matter?

415 MR WALLACE: What else did you find there? — A. There was a place there where there appeared to be the lair of an animal. 9 yards ahead was a blue shirt. The shirt was blood-stained round the neck - congealed blood.

416.Q. Was it torn? — A. Yes, round the neck.

417.Q. Anything else? — A. No, I don't think so.

418 MR JUSTICE GAMBLE: How was the shirt torn? — A. There was a jagged edge all round the neck.

419.Q. Had it a collar? — A. No, Your Honour.

420.Q. Had it ever had a collar? — A. It might have had, Your Honour.

421 MR WALLACE: One witness has told us there was a triangular tear on the left breast? — A. I cannot definitely state. I do remember in the congealed blood we took out two hairs of an animal. In the pocket of the shirt was a leather cigarette case.

422.Q. I don't think that is necessary. Did you find a pair of trousers? — A. Yes, 270 yards ahead. They were a pair of khaki slacks. The front fly buttons were fastened.

423.Q. Was there a belt on the trousers? — A. Yes, a leather cartridge belt.

425 MR JUSTICE CAMPBELL: Fastened? — A. I could not remember, Your Honour. It was attached to the trousers.

426 MR WALLACE: I think you found a chain with keys? — A. Yes, four keys.

428 Q. What was the next thing you noticed? — A. There was a [illegible] drag mark 20 yards ahead about 18 inches wide, and 100 yards ahead to the left was a left boot and two human thigh bones.

427 Q. Was there a foot in the boot? — A. I cannot definitely say, sir. 6 yards ahead were five human rib bones.

428 Q. Did you find the head? — A. No.

429 Q. Were there any remains in the trousers? — A. Nothing at all.

430 Q. I think you came to the conclusion at that time that death was due to misadventure? — A. That is so.

431 Q. I think you examined ..... On the 28th you examined the pony? — A. I did.

432 Q. A week after the remains were found? — A. It would be about that, sir.

433 Q. What was the result of that examination? — A. I took an impression of a mark on the inside of the near hind leg.

434 Q. What did this seem like? — A. It appeared to me to be three clay marks, three punctures.

435 Q. There were just the three punctures on the inside of the near hind leg?

436 MR JUSTICE CAMPBELL: Three puncture wounds? — A. Yes, Your Honour.

437 Q. You first of all said clay marks. Were they consistent with clay marks? — A. Yes, Your Honour.

438 MR WALLACE: Could you expect to find a clay mark on the inside of the hind leg? — A. Yes.

439 MR JUSTICE CAMPBELL: How high up? — A. About 8 or 9 inches towards the outside, here. (Indicating).

440 MR WALLACE: Did you find other remains? — A. About 53 yards in the opposite direction to the direction in which I have travelled were three tarred arm bones, from the part where the pony's grey marks were.

441 MR JUSTICE CAMPBELL: Backwards? — A. Yes, Sir. There were a pair and one other arm bone.

442 Q. Were arm and upper arm? — A. I could not say whether they were two fore arm or two upper arm.

443 Q. Two bones of an arm and a half? — A. Yes, Your Honour.

CROSS-EXAMINED BY MR ALLAN: — A. Yes.

(See over)

Cross-Examined by Mr Allan.

444 MR ALLAN: After Mr Pouya was reported missing to you you searched all day and all night? — A. All night and then all day.

445.Q. How did you search at night - with lamps? — A. There were two other Europeans and we went out with guns to all the water-holes and shouted and fired the guns expecting he had found his way to a water-hole.

446.Q. Was it a dark night? — A. It was very dark indeed.

447 MR JUSTICE GAMBLE: In that the night following the disappearance of Mr Pouya or the night further on? — A. That would be the night of the 20th.

MR WALLACE: He disappeared on the 18th. I don't think the witness was informed until the Tuesday, morning

WITNESS: I went out immediately I was informed on the Tuesday, Your Honour.

449 MR ALLAN: When you took the impression from the pony what did you do with it? — A. I placed it in the Police Inquest file.

450.Q. Is that the thing? (Paper handed to witness). — A. Yes.

450.Q. Have you checked up that with a lion spoor? — A. No, I have not.

451 MR JUSTICE GAMBLE: This apparently was not taken until the 16th November? — A. That was the second occasion I visited the scene.

453 MR ALLAN: That is the mark from the pony? — A. Yes.

454.Q. What date did you take that actually? — A. If it states the 16th it would be on the 16th November. The second occasion I visited the scene.

(Put in and marked "Exhibit A")

454.Q. Would you mind just explaining what are these marks? — A. These three marks are made by Stockholm Tar.

455.Q. If it was a lion's paw how would you tell? — A. I think from the general position of the three puncture marks.

456.Q. This represents the puncture wounds? — A. Yes. It is only supposition that it was a lion's paw, of course.

457.Q. Can you think of anything else it might be? — A. It might be any other animal.

458.Q. It could not be a donkey? — A. No, quite.

459 MR JUSTICE GAMBLE: You think it was a lion? — A. In my opinion, Your Honour, it was the claw marks of an animal similar to a lion.

460 MR ALLAN: You examined the ground very thoroughly? — A. Yes.

601.Q. Did you examine it with others? — A. There were several Europeans.

602.Q. And you came to the conclusion, from what you saw on the ground and the marks, that Mr Powys had been thrown from his horse and either killed or afterwards killed by a lion — killed by the fall or by a lion? — A. Yes.

603.Q. Were the remains and the clothes buried? — A. Yes.

604.Q. Did you visit the spot where these clothes were buried again? — A. Yes.

605.Q. Why? — A. For the purpose of re-examining the clothing.

606.Q. What induced you to return to the scene?

607 MR JUSTICE GAMBLE: How long after the burial? — A. On the 10th November.

608.Q. You disinterred the remains on the 10th November? — A. Yes, Your Honour.

609 MR ALLAN: Was that because you had heard certain rumours? — A. Yes.

610.Q. You went to examine the clothing to find out if there was any trace of a weapon having been used? — A. Yes; that is so.

611.Q. Looking specifically for holes made by a weapon, did you find any? — A. I did not.

612.Q. And today are you satisfied that neither in the shirt nor the trousers was the mark of a sharp weapon? — A. Yes.

613 MR JUSTICE GAMBLE: You are satisfied today there was no mark on the shirt or trousers which could have been caused by a sharp weapon? — A. Except birds' beaks, Your Honour.

614 MR ALLAN: A spear thrust, or an arrow, or a stabbing knife would make a clean hole in cloth? — A. Yes.

615.Q. A triangular tear is usually the result of a catch or something? If you catch your coat on the handle of a door? — A. Yes.

616.Q. And the tears you saw on the shirt may have been the result of dirty claws or the beaks of birds? — A. To my mind it appeared to be by beaks of birds, pecking marks.

617 MR JUSTICE GAMBLE: Are there any carrions about there? — A. I don't remember seeing them there, Your Honour.

618 MR ALLAN: The shirt took was a ragged tear? — A. Yes.

619.Q. On the ground near the remains was there no indication of a struggle having taken place? — A. None whatsoever.

MR JUSTICE GAMBLE: The remains were scattered over a distance of about 600 yards, Mr Allan.

MR ALLAN: Near the slide, I should say, Your Honour.

WITNESS: By marks other than the marks of animals.

480 MR ALLAN: Among the remains found was a boot? — A. Yes.

481.Q. You mean a boot? — A. A left boot.

482.Q. Was it a heavy boot? — A. It was an ordinary [illegible] boot.

483 MR JUSTICE GARRIE: There was a foot inside that boot? — A. I cannot remember, Your Honour.

484.Q. You remember a left boot? — A. Yes.

485 MR ALLAN: Near where the slide was and the pony's footprints was there any indication of grassy boot marks? — A. [illegible]

486.Q. So that as far as the ground indicated Mr Powys had never been on this foot there? — A. That is so.

487.Q. You said you found two hairs. Can you describe them? — A. They were more or less brown in colour and about three to four inches in length.

488 Mr JUSTICE GARRIE: They were in the shirt? — A. In the congealed blood on the shirt, Your Honour.

489 MR ALLAN: Round these hairs in the shirt do you remember if there was blood? — A. It was round the whole neck of the shirt.

490.Q. You were talking about punctures in the shirt as if made by bullets of bible? — A. They were very small smear marks of blood. Hardly not worth taking notice of.

491.Q. They did not look as if they had bled freely? — A. Certainly not.

492.Q. Would a vulture pecking in the ordinary way produce a wound that would bleed freely? — A. Not after death.

493.Q. But a living man?

MR JUSTICE GARRIE: Could a vulture be able to peck at a living man?

494 MR ALLAN: A corpse just newly dead?

MR JUSTICE GARRIE: A corpse does not bleed, Mr Allan.

MR ALLAN: I can give you that from Taylor, Your Honour. It is exposure to the air which coagulates the blood. That takes about 5 to 10 minutes. But where the blood is still in the body it may take several hours.

495.Q. When did you go on leave? — A. The last occasion was December 1931, about Christmas.

496.Q. Did you know Kiberenge? — A. I met him once.

497.Q. You were not here when his investigation was going on? — A. No.

498.Q. Have you ever seen any of these accused before? — A. The one of the left (No. 1 accused) seems familiar to me. His face.

499.Q. Were you present when the Inquest was held? — A. No.

500.Q. You had gone on leave? — A. Yes.

501.Q. From the ground could you tell what rate the pony had been travelling at? — A. No, I could not tell.

502.Q. The stall is said to have been 1000 yards away. Is that an unusual distance to find a head? — A. I have not had any other similar experience to this.

503.Q. Have you noticed often in the bush country that you find the head, say of a buck, without another bone at all? — A. I am not a hunter. I have not. I cannot answer from experience.

504.Q. You cannot tell your country about these ant hills and remember which they were? — A. I am afraid not.

505.Q. Were other parts of the body missing? — A. There were the spine, pelvis, and certain rib bones. There were the lower leg bones missing too.

RE-EXAMINED BY MR WALLACE.

506 MR WALLACE. Soon after the remains were found were they buried with the clothes? — A. Yes.

507.Q. How soon? — A. That same evening. It would be about three hours.

508.Q. On the 21st October? — A. On the Wednesday.

509.Q. You disinterred them on the 10th November? — A. Yes.

510.Q. What was their condition at that time? — A. Quite good.

511.Q. And the clothes? — A. Exactly as I put them in.

512.Q. Do you know much about lions? Have you ever seen them? — A. Yes, hundreds of times. But I am not a hunter. I don't believe ..... I don't like killing them.

513 MR JUSTICE GAMBLE. At the place you found the skid mark, Mr Ash, was the bush sufficiently thick to hide five people so that a lion could suddenly come on them? — A. It was very thin, very sparse. They could have hidden individually behind the bushes.

514.Q. Have you any explanation as to how this alleged claw mark could get in that peculiar position on the pony? — A. The conclusion we came to was that the lion springing one of his legs levelled on the pony. The pony is going along, and the lion sprang across it and one foot caught on the pony.

515.Q. But would not that be on the pony's flanks? — A. If the pony was standing like this it would have got it there. (Indicating).

(The witness withdrew).

WALTER ROBERT ELLIOTT sworn:

EXAMINED BY MR WALLACE.

516 MR WALLACE: Your full name, Mr Elliott? — A. Walter Herbert Elliott.

517.Q. Inspector, C.I.D.? — A. Yes.

518.Q. You were also Inspector in 1931? — A. Yes.

519.Q. As the result of certain information did you go to Rumurutti in 1931, December? — A. I did.

520.Q. To make further investigation into the death of the deceased? — A. Yes.

521.Q. I think a skull was found in January? — A. A skull was found, but I don't know exactly when.

522.Q. Was an inquest held as a result of your enquiries? — A. Yes; at Rumurutti.

523.Q. The skull had been found before that? — A. Yes.

524.Q. And the Magistrate brought in a verdict of Death by misadventure? — A. Yes.

CROSS-EXAMINED BY MR ALLAN

525 MR ALLAN: When you arrived at Rumurutti you found that certain rumours were floating about? — A. Yes.

526.Q. They had been set going by a man called Kiberengi? — A. Yes.

527.Q. When you got to Rumurutti did you get a statement that Kiberengi had given to the Assistant Superintendent of Police, Mr Holmes? — A. Yes; it was handed to me.

MR JUSTICE GAMBLE: How do you propose to get that statement in? The Crown very wisely refrained from getting it in, as they could not. The statement was [illegible].

MR ALLAN: I don't know where Mr Holmes is now.

MR JUSTICE GAMBLE: Neither do I.

WITNESS: Mr Holmes, I believe, is at Lumbwa now.

MR JUSTICE GAMBLE: The statement was not made to Mr Elliott.

MR ALLAN: But Mr Elliott got a copy of the statement and going on the facts in the statement given to him to make his investigations.

MR JUSTICE GAMBLE: It is not only secondary evidence; it is third or fourth hand.

MR WALLACE: The statement was actually put in for my friend's information.

MR JUSTICE GAMBLE: The statement in the lower Court.

528 MR ALLAN: What investigations did you make? — A. I started

investigated the truth of the statement, the statement being to the effect .....

MR JUSTICE GAMBLE: Leave it at that.

629 MR ALLAN: Did you see Kiberengi? — A. Yes.

630.Q. Did he make a statement to you? — A. No. He did not make a statement, but I asked him certain facts which were already written in the statement.

631.Q. You put certain questions and got certain replies? — A. Yes.

632.Q. Did you interview certain people? — A. Yes, I interviewed quite a number of people in Samburu.

633.Q. Did you interview Lopokoo? — A. I don't remember the name.

634.Q. The chief? — A. A chief.

635.Q. Would you know him if you saw him now? — A. No, I would not.

636.Q. The whole result of your investigation was that you came to the conclusion that Kiberengi's information was false? — A. I came to that conclusion.

637.Q. I suppose there was a thorough investigation? — A. Yes, a very thorough investigation.

638.Q. Kiberengi was subsequently prosecuted at your instance? — A. He was, for giving false information.

639.Q. He pleaded guilty? — A. Yes.

640.Q. And said that he had been put up to it by a Police officer?

MR WALLACE: Obj not.

MR JUSTICE GAMBLE: Whether Kiberengi was prosecuted for giving false information or not does not help us, as I do not know what it was and I do not intend to know because it is not going to.

MR ALLAN: All I want to get, Your Honour, is that there was an investigation.

MR JUSTICE GAMBLE: As we do not know what Kiberengi said does it help us to know the result of the investigation?

MR ALLAN: It will help, Your Honour, when Mr Elliott, as he will, admits that there was an Inquest afterwards and going on at the same time and that the result of that Inquest was that the deceased died by misadventure.

MR WALLACE: I have put that in chief already.

MR JUSTICE GAMBLE: That is all in. I don't wish to stop the cross-examination but it is not getting us any further.

641 MR ALLAN: In your investigations did you interview most of the witnesses called in this case, the Native witnesses?

— A. I don't know the witnesses, and I would not remember them if I did.

548.Q. You made notes? — A. I made notes on my file of the witnesses interviewed.

MR WALLACE: Mr Leslie has the file here if it would help.

MR JUSTICE GAMBLE: I do not see how it is going to help.

MR ALLAN: I still want to know the witnesses he did interview.

WITNESS: This is a very lengthy file, Your Honour, and I would have to read through it before I could tell what witnesses I interviewed.

MR ALLAN: The importance will be when the native witnesses are called to see whether Mr Elliott did get into touch with these people. Kiberengi made certain allegations.

MR JUSTICE GAMBLE: I don't know what he said and I never will.

MR ALLAN: Mr Elliott says he did and he says he investigated those statements. I simply want to know what people he interrogated in the course of his investigations.

MR JUSTICE GAMBLE: How will that help the case?

MR ALLAN: It may help me in the cross-examination of these native witnesses if they were interviewed by Mr Elliott.

MR JUSTICE GAMBLE: Mr Elliott can refresh his memory during the night and he will be in a position to answer your questions in the morning.

THE COURT ADJOURNED TO 28-11-1934 AT 10 a.m.

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551. 28th NOVEMBER, 1934. 10 a.m.

WALTER ROBERT ELLIOTT on former oath.

Cross-Examination by Mr Allan (continued).

553 MR ALLAN: You have now had an opportunity of examining your file, Mr Elliott. Tell the Court shortly the nature of the investigations you made and why you came to the conclusion you did. — A. Kiberengi made a statement that he had been given .....

MR WALLACE: I must object, Your Honour. If my friend asks the witness what conclusion he came to as the result of the investigation .....

MR JUSTICE GAMBLE: What Kiberengi told the witness is not evidence.

MR ALLAN: I quite agree, Your Honour.

WITNESS: I interrogated a number of witnesses and of those witnesses I recorded three statements. They were the statements of a young girl named Macharia, the second

Rahemi, a girl, and the third girl named Rainmith. I held an identification parade with a number of Moran on the parade, and Kiberengi pointed out two Natives whom he had referred to in his statement. The names of the two Natives .....

MR JUSTICE GAMBLE: I do not see where this evidence is leading us at all.

564 MR ALLAN: As the result of your investigation the C.I.D. took no action? — A. Only against Kiberengi.

MR JUSTICE GAMBLE: I think we have it already that Kiberengi's information was found to be false after a very thorough investigation.

MR ALLAN: That is all, Your Honour.

MR WALLACE: No Re-examination.

(The witness withdrew).

L E B E R I N - O B - L E G E L O L O affirmed.

EXAMINED BY MR WALLACE.

565 MR WALLACE: You are a Masai and you are employed as a herd by Mr Ramson Shaw? — A. Yes.

566.Q. Do you remember Bwana Powyn? — A. Yes.

567.Q. Do you remember the time he disappeared? — A. Yes.

568.Q. Were you employed by Mr Ramson Shaw then? — A. Yes.

569.Q. Did you assist in the search? — A. Yes.

570.Q. How many days? — A. Two days.

571.Q. Do you know Gathambo? — A. Yes.

572.Q. Was the first day the day Gathambo came over to see Bwana Shaw? — A. Yes.

573.Q. Did you find anything that day? — A. No.

574.Q. And the next day? — A. We found something the third day; we failed on the first and second.

575.Q. How many days did you search? — A. Three days; and we found him on the third.

576 MR JUSTICE GAMBLE: What did you find? — A. We found the clothing and small bones.

MR JUSTICE GAMBLE: I don't think this witness matters much. We have ample evidence about the remains.

MR WALLACE: Very well, Your Honour.

577.Q. Do you know Superintendent Ridgway? — A. Yes.

578.Q. Did you point out to him the place where you found the remains? — A. Yes.

CROSS-EXAMINED BY MR ALLAN.

559.MR ALLAN: You were the second person to find the remains? — A. Yes.

560.Q. You saw the marks of the pony when you got there? — A. Yes.

561.Q. And where the pony had stopped up? — A. I saw the marks where the horse had stopped and also the running marks of the horse.

562.Q. You also saw the marks of a lion? —

MR WALLACE: I think my friend ought to put the question fairly.

MR JUSTICE GAMBLE: This is your witness, Mr Wallace.

MR WALLACE: He should be asked a question.

MR JUSTICE GAMBLE: The answer can be I did or I did not. I think it is a fair question.

MR ALLAN: I am taking it this way to make it shorter.

563.Q. Did you see the marks of a lion? — A. No.

564.Q. You gave evidence at the Inquest? — A. Yes.

565.Q. Did you tell the District Commissioner that you saw marks of a lion? — A. I don't remember having seen the lion spoor.

566.Q. Do you remember seeing a place where you told the D.C. two lions had lain down?

567 MR JUSTICE GAMBLE: Why did you tell the D.C. you saw the spoor of lion? — A. I did not tell the D.C.

MR JUSTICE GAMBLE: Did he actually, Mr Allan.

MR ALLAN: I will read his deposition. "We saw his bones and his clothes. We saw the tracks of his pony. We saw tracks of lion and the place where lions, probably two, had lain down. We were very fond of Mr Powys. I saw the marks where the pony had dug his feet in hard and another mark which looked as if a man had fallen. We were there first. We saw no human tracks; only lion. If there had been man there we should have seen their footmarks".

568.MR JUSTICE GAMBLE: According to the Inquest Report you distinctly told the D.C. you saw the tracks of lion. The D.C. did not make it up. — A. I told the D.C. that I had seen the place where something had lain, but I did not tell him that.

569 MR ALLAN: You did not tell him about lions at all? — A. Yes. I mentioned I saw a place where something had lain, perhaps lions or hyaenas.

570.Q. Would you know lion's footmarks if you saw them? — A. Yes.

571.Q. Did you see any footmarks of human beings? — A. No; because the soil was hard.

572.Q. Did you see the imprint of a human's boot? — A. No.

573.Q. Can you account for having told the D.C. that you saw lion footprints and now you say you did not?

574 MR JUSTICE GAMBLE: The D.C. made it all up, did he? — A. Perhaps other people told him.

MR JUSTICE GAMBLE: You must remember in fairness to the witness it is two and a half years ago.

575 MR ALLAN: Do you think your memory was more accurate two and a half years ago than it is now? — A. My memory is as good now as it was two and a half years ago.

MR WALLACE: No re-examination, Your Honour.

(His Honour read over his notes which were found correct and the witness withdrew).

KISAKA OLE SIRONOA affirmed:

EXAMINED BY MR WALLACE.

576 MR WALLACE: Did you know Bwana Powys? — A. Yes.

577.Q. And you used to work for him? — A. Yes.

578.Q. Were you working for him at the time he disappeared? — A. Yes.

577.Q. Is that a long time ago? How long? Short or long? — A. This is the fourth year.

578.Q. Some time after he disappeared did you find anything a mile Il Piugani? — A. I did not find anything.

579.Q. MR JUSTICE GAMBLE: I think you can lead him a bit on this. It is non-controversial.

580.MR WALLACE: Do you know where his remains were found? — A. Yes, I know the place.

581.Q. Did you not find something fairly near this sometime after Mr Powys disappeared? — A. I found a skull.

582.Q. Have you any idea whose skull it was? — A. Bwana Powys.

583.Q. Why do you think that? — A. Because of his teeth.

584 MR JUSTICE GAMBLE: What was wrong with his teeth? — A. Because of the gold in one of the teeth.

585 MR WALLACE: And had Bwana Powys gold in one of his teeth? — A. Yes.

586.Q. You are quite certain of that? — A. Yes.

587.Q. You knew him well? — A. Yes.

588.Q. When you found it what did you do? — A. I tore a piece of my shuka and climbed a tree and tied it.

589 MR JUSTICE GAMBLE: As a landmark? — A. Yes.

590 MR WALLACE: What did you do then? — A. The following

morning I went to inform Bwana Shaw.

CROSS-EXAMINED BY MR ALLAN.

591 MR ALLAN: When you saw the skull was it lying in the open in the grass or was it hidden in any way? — A. There was grass growing round it.

593 MR JUSTICE GAMBLE: There were no signs of it being hidden? — A. No. Just laid there.

(His Honour read over his notes which were found correct and the witness withdrew).

LOLDIBEDO OLE LESEMETO

affirmed.

EXAMINED BY MR WALLACE.

MR ALLAN: Before this witness is affirmed in the ordinary way, Your Honour, I understand that the Samburu, like the Masai, have an oath. You will find it in the first volume of the Law Reports. The oath they take is an oath on the mother's garment for a man, and the woman takes an oath on the father's garment. For what it is worth, I think they might be asked to take their own oath.

MR WALLACE: It seems to me not to be in keeping with the practice and dignity of the Court.

MR JUSTICE GAMBLE: If we carried Native practices to an extreme we should have to bring in a goat. Each particular tribe has its own particular form of oath. If we have a Kikuyu we shall have to bring a live goat into Court and kill it in Court. I think affirmation in the ordinary way.

MR ALLAN: As Your Honour pleases.

(The witness was affirmed).

593 MR WALLACE: You are a Samburu? — A. Yes.

594.Q. What section of the tribe do you belong to? — A. The Loregiema.

595.Q. Do you remember going out on safari several years ago to see the Wanderobo? — A. Yes.

596.Q. When did you go with? — A. Olo Lesori.

597.Q. What time did you leave your boma? — A. About sunrise in the morning: 6 o'clock.

598.Q. Which way did you go? — A. Angata Wergoi. We went past Angata Wergoi.

599.Q. What did you see? — A. We found a buck which had been killed by a hyaena. We skinned it and cut one leg.

600.Q. With what? — A. With a spear.

601.Q. What did you do then?

MR JUSTICE GAMBLE: What is the exact significance of the band, do knowing?

MR WALLACE: The suggestion, Your Honour, that this witness might have been involved; as there was blood on the spear when they got the wounded.

602.Q. What did you do then? — A. We saw some people.

603 MR JUSTICE GAMBLE: How many? — A. Five.

604.Q. What tribe? — Lorogiqua Samburu.

605.MR WALLACE: Do you know them? — A. Yes.

606.Q. Where are they? — A. The five accused.

607.Q. Did you speak to them? — A. After they saw us, I saw them.

608 MR JUSTICE GAMBLE: They saw you and Ole Lesori? — A. Yes. They saw them. We went towards them.

609 MR WALLACE: Did you go alone or did Lesori go with you? — A. We both went. When we got close to them we saw a band and arm and private parts.

610.Q. Of whom? — A. Of a European.

611 MR JUSTICE GAMBLE: Man? — A. Yes.

612 MR WALLACE: Where did you see them? — A. Placed on the ground. Originally it was in their hands.

613 MR JUSTICE GAMBLE: Who was carrying the head? Take them one by one. — A. Lirono, the fifth accused.

614.Q. Who was carrying the arm? — A. Lenoibe, the fourth accused.

615.Q. Who was carrying the private parts? — A. Lenoibe, the fourth accused.

616 MR WALLACE: They were the five accused dressed? — A. They had twisted their shukas round the waist.

617.Q. Is that the usual way to wear a shuka? — A. No. The usual way is as I am wearing. (Round the shoulders).

618.Q. Is there any significance in wearing the shuka round the waist? — A. If people go and find fights they twist their shukas in that fashion.

619.Q. Did you have a conversation with the accused? They are of the same section as you, are they not? — A. Yes. I spoke to one of them.

620.Q. Who did you speak to? — A. Lirono, the fifth accused. I asked them, "What is this you are carrying?" The reply was "A European".

621.Q. Who replied? — A. Lirono. I asked them "Where did you kill?" and they said "At Il Pingan".

622.Q. Yes, go on? — A. I asked him whether he was by himself or with others and he answered that the European was alone on a horse. I asked him "where is the horse"? and he said "The horse ran away". As we were talking I saw three Wanderobo.

623.Q. You say you asked Lirono where they had killed and Lirono said "At Il Pingwan". Was he referring to himself alone? — A. He was sitting beside Lesoibe.

624 MR JUSTICE CARRLE: Did he say he had killed alone or what? — A. Lirono said it was by who killed, and then Lesoibe said "It was I who killed".

625.Q. The others said nothing? — A. Yes.

626 MR WALLACE: What weapons were they carrying? — A. Each had two spears.

627 MR JUSTICE CARRLE: Had the spears got the little leather covers on or off? — A. No leather caps.

628 MR WALLACE: Were their spears clean or had they blood on them? — A. There was blood on them.

629.Q. Each was carrying two? Ten spears in all? How many had blood on them? — A. Six had blood.

630.Q. Do you know to whom those spears belonged? — A. I knew about two. The others were lying on the ground.

631.Q. Which two belonging to them? — A. Accused 4 and 8's were blood-stained.

632.Q. How were you wearing your shuka that day? (The witness demonstrated).

633 MR JUSTICE CARRLE: You were going to war, were you? — A. No.

634.Q. Just now you told us Masai never wear them like that unless they are going to war? — A. We roll them right up from the bottom or roll up from the top.

635 MR WALLACE: Yours was down, was it? — A. Yes.

636.Q. After you had killed the buck did you clean your spear - or after cutting the leg off the buck? — A. I did not clean it.

637.Q. Then you saw three Wanderobo? — A. Yes.

638.Q. Did you go and talk to them? — A. Yes.

639.Q. Did you know those Wanderobo? — A. I knew two.

640.Q. Who were they? — A. Ole Kaibotana and Ole Kgari.

641.Q. Do you know their first names? — A. I don't know.

642.Q. Tell us in your own words what happened now? — A. I asked them what they were searching for and they replied stinged parts. The Wanderobo asked who the accused were and I deceived them by saying I did not know them.

643.Q. Why did you do that? — A. Simply deceiving them. After I had deceived the Wanderobo they chivered and we.

[illegible] were chitchatting along [illegible] — A. Because I did not [illegible] I was [illegible] it.

C44.Q. How far away was it from the place where you were talking to the dirge [illegible] to the place where you talked to the Wanderobo? — A. As far as from here to that fence.

MR JUSTICE CARRIE: Could it be 100 yards?

MR ALLAN: [illegible] — A. I don't know how many [illegible]

MR JUSTICE CARRIE: How do you get the call to, Mr Allan?

MR ALLAN: It is more than 100, Your Honour.

C45 MR WALLACE: When you were talking to the Wanderobo could you see the accused? — A. Yes.

C46.Q. [illegible] EXAMINED BY MR ALLAN.

C46 MR ALLAN: What manyatta do you belong to?

MR JUSTICE CARRIE: Do you mean two or three years ago? The Wanderobo are always on the move.

MR ALLAN: I am referring to the time of the crime.

C47 MR JUSTICE CARRIE: At the time of this commission? — A. Ol Burgut.

C48 MR ALLAN: How far is that from the manyatta where the accused lived? — A. Their manyatta was far away at a place called Ikoti.

C49.Q. How far is this Ol Burgut from the manyatta of the accused? — A. A long way.

C50.Q. Is their manyatta nearer Angata Burgut than Ol Burgut? — My manyatta is further than Angata Burgut.

C51.Q. A long way?

MR JUSTICE CARRIE: What are you getting at, Mr Allan?

MR ALLAN: I am trying to get where these people were going when they over came across this place at all.

C52.Q. You were going to visit Wanderobo, where? — A. I was going to visit my sister.

C53.Q. Where? — A. At one Lenkei's place.

C54.Q. Can you tell us there that is? — A. Il Jugo(?)

C55.Q. Did you ever get the sun or moon you on your way back?

MR JUSTICE CARRIE: Ask the question as simply as you can. Then we get the accused was in going or coming back?

WITNESS: I was going.

C56 MR ALLAN: Did you ever go there then? — A. I returned.

C57.Q. Why? — A. I went to Olo Keri. I returned to the place where I had spent the night.

C58.Q. When you got up to go [illegible] why did you not?

C58.Q. Why? — A. I got frightened after seeing the accused.

669.Q. What were you frightened for? — A. Because I did not want people to say it was I who had done it.

670.Q. You think you found was killed by a bullet? — A. Maybe by bullet or bayonet.

671.Q. Do you know Il Pinguan? — A. Yes.

672.Q. When you had the accused, how far away from Il Pinguan were you? — A. I don't know how long it would take, but it was not far from the place where I met them.

673.Q. When you met them were they on the Amata Kerpel way? — A. They were between Amata Kerpel and Palinglan.

674.Q. You know two of the accused before? — A. Yes.

675.Q. When you met the accused why did they sit down? — A. I don't know the reason why.

676.Q. Were they trying to hide anything? — A. Yes.

677.Q. But you were too small for them and you saw these things? — A. Yes.

678.Q. How far away were you when you first saw these things? — A. The same distance, the distance to the house.

MR JUSTICE GAMBLE: I do not want to stop you, Mr Allan. What he actually said was: "I went towards them, close to them, with Lorent. On getting close to them I saw the head, the arm and private parts of a European male. Accused 5 was carrying the head and Accused 4 the arm and private parts".

679 MR ALLAN: That was when you saw the five accused first. From there did you see anything. Did you see the head and other things from that distance? — A. I could see the European's head that distance.

680.Q. And you could see the arm? — A. No, I did not see that at that distance. I only saw the head.

681.Q. When you were at that distance is that when they sat down? — A. Yes, they turned round and saw me and sat down. They looked and saw me.

682 MR JUSTICE GAMBLE: Saw you and your friend? — A. Yes.

683.MR ALLAN: Did they hide the things from you when you came up to them? — A. They did them beside them.

684 MR JUSTICE GAMBLE: What did they hide them under? — A. They put them on the side away from me.

685 MR ALLAN: It was quite clear they did not want you to see these things? — A. Yes.

686.Q. And yet when you asked them about it they told you the whole story? — A. Yes.

687.Q. You have said that you saw the head. Did you see the head quite distinctly? — A. Yes, truly.

688.Q. When you got up to speaking distance why did you ask

them what they were carrying if you knew? — A. I did, but I had already seen it.

Q90.Q. With the five accused and yourself and Lekori there were seven Wanderobo, three? — A. Yes.

Q91.Q. Were they seven of you there when the Wanderobo approached? — A. Yes, when the three Wanderobo appeared, the five were sitting down and I was standing with Lekori.

Q92.Q. Did the Wanderobo stop about the distance of the fence away? — A. I looked and saw them. They started walking towards us and I and Lekori walked to meet them.

Q93.Q. How far away from the five accused were you when you did meet them? — A. They only started walking a bit, and when they noticed that I was walking towards them they stopped.

Q95.Q. How far away from the five accused were you? How far were the Wanderobo away? — A. Quite near the fence.

MR WALLACE: What they actually said was they were near the fence when they met them.

Q96 MR JUSTICE GAMBLE: Then you actually met and greeted the Wanderobo how far away from the five accused was it? — A. As far from here to the middle of the field.

MR JUSTICE GAMBLE: How many yards would that be?

MR ALLAN: About 60 I should think.

MR JUSTICE GAMBLE: Do you agree on 60, Mr Wallace?

MR WALLACE: Yes, Your Honour.

Q97 MR ALLAN: Before you left the accused to meet the Wanderobo did the accused hidden the head and arm and other parts?

MR JUSTICE GAMBLE: They never actually hid them because there was nowhere to hide them. You cannot hide a human head like that.

MR ALLAN: They could have put their clothes over it.

Q98.Q. Did they hide these things close in to them and put their clothes over them? — A. They placed them on the ground.

Q99.Q. Did you tell the Wanderobo what you had seen? — A. No.

Q100.Q. Did you speak about it at all to the Wanderobo? — A. No.

Q101.Q. The Wanderobo did not speak to you about it? — A. No.

Q102 MR JUSTICE GAMBLE: It sounds very incredible. You meet a party of women carrying a European's head and you do not discuss it with the Wanderobo? — A. We were surprised but we did not speak to the Wanderobo about it.

Q103 MR ALLAN: Have you spoken to anyone about this? — A. I did not speak to anybody. Only myself and Lekori knew about it.

Q104.Q. The Wanderobo knew nothing about it?

MR WALLACE: How does he know whether the Wanderobo seen anything about it?

MR ALLAN: He says there was no discussion, which is a most amazing thing, and what I wish to put to him is, Would the Wanderobo have spoken about it if they had seen anything.

MR JUSTICE GAMBLE: How does he know.

(THE COURT ADJOURNED FOR 10 MINUTES AND RESUMED AT 11-45 A.M.)

703 MR ALLAN: You were arrested by the Police? — A. Yes; formerly I was arrested.

704.Q. From the day you saw this until you were arrested you had never discussed this thing with anyone? — A. No, I had not spoken to anyone.

705.Q. You did not tell the Jailer, and you did not tell Logoben the chief? — A. I did not.

706.Q. You have said that you were wearing your shuka down? — A. Yes.

707.Q. The Wanderobo, when they come to give their evidence, will say that your shuka was rolled round your waist the same as the rest of them. — A. It will be untrue if they say so.

708.Q. Had you no reason whatsoever for telling the Wanderobo you did not know the accused?

MR JUSTICE GAMBLE: We have been into that at some length in chief. He said three times "I deceived them". He was asked three times and he said "No".

709 MR ALLAN: When you reached the accused were all their spears on the ground? — A. Yes.

710 MR JUSTICE GAMBLE: Stuck in the ground or lying on the ground? — A. All lying on the ground.

711 MR ALLAN: In your conversation with the accused, were they boasting of what they had done? — A. Yes; these two, Numbers 4 and 6. Each one said "I killed", and the other one said "I killed".

712.Q. You still say they were boasting although they tried to hide the things? — A. They were trying to hide them before they recognised me properly.

713.Q. Did you see that the private parts were wrapped up in? Were they wrapped up? — A. Not wrapped in anything.

MR WALLACE: No re-examination.

(His Honour read over his notes which were found correct and the witness then withdrew).

LEISETI OLE LESORI affirmed:

EXAMINED BY MR WALLACE.

714 MR WALLACE: You are a Camburu? — A. Yes.

715.Q. Loroglian? — A. Yes.

716.Q. Do you know Ole Lesunkio? — A. Yes.

717.Q. Do you remember going out on safari with him a long time ago? — A. Yes.

718.Q. Where did you go? — A. To Dorobo.

719.Q. Which way? — A. Through Angata Wargai.

720.Q. Tell His Honour exactly what happened that day. — A. We went through Angata Wargai and just before we crossed Paleglen Valley we saw a dead buck. My companion asked me to wait while he skinned it to see whether there was marrow inside the bones of the buck. He cut the leg.

721.Q. What with? — A. With a spear.

722.Q. Were you carrying a spear? — A. Yes.

723.Q. After Lesunkio cut off the leg what did you do? — A. I was standing and I noticed the accused coming.

724.Q. The whole five of them? — A. Yes, the whole five. I told Lesunkio there were some people. When they saw us they sat down and we walked close to them. We recognised them as Loroglian.

725.Q. You are Loroglian too. Do you live in the same village? — A. Yes, I am Loroglian. I do not live in the same village.

726.Q. Do you live far away? — A. It is a long way away.

727.Q. You approached them? — A. Yes.

728.Q. What happened then? — A. Lesunkio spoke to them "What is this you have done?" Number 5 accused said: "We have killed".

729.Q. Who does the "we" refer to? — A. When Number 5 said ..

730 MR JUSTICE GARVIE: He said "I have killed"? — A. Yes. And Accused 4 said, "I have killed". Number 5 had a head, a white man's head.

731 MR WALLACE: Can you tell us what colour hair it had? — A. I did not notice what colour the hair was.

732.Q. Lirumo (No. 5) was carrying the head of a European? — A. And Lesoitu (No. 4) was carrying the private parts.

733 MR JUSTICE GARVIE: Nothing else? — A. Lesoitu also was carrying an arm.

734 MR WALLACE: Male or female? — A. Male.

735.Q. Were the private parts of an African or a European? — A. European.

736 MR JUSTICE GARDLE: And the arm the same? — A. Yes.

737 MR WALLACE: What happened then? — A. While Lesemoto was speaking to the accused we noticed three Wandorobo. We left these people sitting down and walked towards the Wandorobo.

738.Q. When you saw the Wandorobo first how far away were they? — A. That tall three near the fence.

MR JUSTICE GARDLE: About 100 yards away.

739 MR WALLACE: When you met the Wandorobo how far away from the accused were you? — A. At the same place - the fence.

740.Q. How long did you talk to the Wandorobo for? — A. We only spoke to them for a short time.

741.Q. And when you left were the accused still there? When you stopped talking to the Wandorobo? — A. While we were talking to the Wandorobo these people walked away.

CROSS-EXAMINED BY MR ALLAN.

742 MR ALLAN: When you saw the five accused approaching how far away were they - when you first saw them? — A. A little beyond the fence.

743.Q. From the ground floor? — A. As far from here to that corrugated iron building.

MR JUSTICE GARDLE: 150 yards.

746 MR ALLAN: Did they sit down immediately they saw you? — A. They came on a little way and then sat down.

747.Q. Did you see these things before they sat down? — A. I did not see.

748.Q. You did not see Kirumo carrying anything then? — A. I did not see, but when I went closer I saw the head on the ground.

749.Q. Did they show you it or did you see it for yourself? — A. We saw ourselves. They did not show it to us.

750.Q. Did they try to hide them? — A. Yes.

751.Q. How did they try to hide them? — A. They tried to hide them in the grass but we saw it before.

752.Q. There was grass there, and they tried to cover them all up with grass? — A. Yes.

753.Q. Was the grass long? — A. About that length (indicating

MR JUSTICE GARDLE: About 2 feet 6 inches.

754 MR ALLAN: Were the arm and the private parts rolled up in grass or cloth or anything like that? — A. They were not wrapped with anything.

755.Q. Did you talk with them for long? — A. Lesemoto spoke to them for a short time only.

756.Q. Did they tell you not to say anything about what you had

seen? — A. No.

757.Q. Have you told anyone about what you saw there? — A. No, I have not told anyone. I don't know about Lesemoto.

758.Q. When you left the five accused you walked to about the fence and talked to the Wandorobo? — A. Yes.

759.Q. Did you tell the Wandorobo what you had seen? — A. No.

760.Q. Was there any conversation between Lesemoto and the Wandorobo about the European at all? — A. No.

761.Q. You stopped and talked to the Wandorobo and then when you turned round to look for the five accused they had disappeared?

MR JUSTICE GAMBLE: He did not say that, Mr Allan. He said the five accused got up and walked off.

762.Q. MR ALLAN: When you had finished talking to the Wandorobo did you know where the accused had gone? — A. We did not see them going. After talking to the Wandorobo they went away.

763.Q. Did you see them again that day? — A. No.

764.Q. Is there a Laibon in your manyatta? — A. No. At the accused's manyatta there is.

765.Q. You know the Laibon? — A. Yes. Lindoma.

766.Q. Did you ever tell Lindoma about what you had seen? — A. No.

767.Q. Did you tell the Chief Logoheu? — A. No.

768.Q. I think you were arrested by the Police? — A. No.

769.Q. When did you first tell this story? — A. After I was arrested at Rumuruti.

770 MR JUSTICE GAMBLE: You have just said you never were arrested? — A. I thought you meant formerly.

MR JUSTICE GAMBLE: Was he in fact arrested?

MR WALLACE: Not on this charge, Your Honour. He was in custody for stock theft.

MR JUSTICE GAMBLE: He was not convicted?

MR WALLACE: He is a convict at the moment. He has come from the Gaol.

771 MR ALLAN: Who did you tell this to?

MR WALLACE: I must explain things: I think I am confusing my friend. He was actually in custody for stock theft at the time, and then he was charged with this offence and then discharged.

MR JUSTICE GAMBLE: When was that? Mr Allan's question is when did he first tell the story to the Authorities.

772.Q. Who did you first tell? — A. Mr Ridgway.

seen? — A. No.

757.Q. Have you told anyone about what you saw there? — A. No, I have not told anyone. I don't know about Lesemeto.

758.Q. When you left the five accused you walked to about the fence and talked to the Wandorobo? — A. Yes.

759.Q. Did you tell the Wandorobo what you had seen? — A. No.

760.Q. Was there any conversation between Lesemeto and the Wandorobo about the European at all? — A. No.

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763.Q. Did you see them again that day? — A. No.

764.Q. Is there a Laibon in your manyatta? — A. No. At the accused's manyatta there is.

765.Q. You know the Laibon? — A. Yes. Lindume.

766.Q. Did you ever tell Lindume about what you had seen? — A. No.

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MR JUSTICE GAMBLE: When was that? Mr Allan's question is when did he first tell the story to the Authorities.

772.Q. Who did you first tell? — A. Mr Ridgway.

773.Q. That was the first person you ever revealed this matter to? — A. Yes.

774 MR ALLAN: So far as you know no-one else knew about it? Do you attend the usual dances? — A. Yes.

775.Q. At the dances was this ever talked or sung about - about the killing of an European? — A. Yes.

776.Q. Which dance? — A. The 'Kharingoi'.

777.Q. Did you attend? — If there was a dance at my manyatta I attended.

778 MR JUSTICE GAMBLE: At Kharingoi did they sing about the death of a European? — A. This Kharingoi had nothing to do with the killing.

779.Q. You have just said that you attended the usual dances and at the dances there were songs about the killing of a European. — A. No; it is not correct.

780.Q. You did not hear any songs about it? — A. No, I did not hear, because these people belong to a different manyatta.

781 MR ALLAN: At the Kharingoi dance all the women stand on one side and the males on the other side?

MR JUSTICE GAMBLE: I think you are rather working in a circle, Mr Allan. What the witness is trying to say is that there was no reason why his manyatta should sing about the death of a European as they had nothing to do with it.

782 MR ALLAN: The Kharingoi dance is to celebrate the coming of rain or grass or crops? — A. I do not know.

783.Q. Do you know any of the other dances? Do you know the 'Gigurt'? — A. I do not know.

MR JUSTICE GAMBLE: You have probably got the name wrong, Mr Allan.

784.Q. The 'Nigurt' dance? — A. I do not know.

785 MR ALLAN: The 'Kiaratoi'? — A. Yes.

786.Q. What is that about? — A. Simply a dance.

787.Q. When a lion has been killed and there is a dance, what is the name of that dance? — A. No.

788.Q. Did you ever hear of a dance called the 'Gicoroto'? — A. I do not know.

789.Q. The Kandorobo that you met; did you know any of them before? — A. No.

790.Q. Did you go to the Dorobo country that day? — A. No, I returned.

791 MR JUSTICE GAMBLE: Why? — A. We got frightened.

792.Q. What of? — A. From that we saw these men had.

MR WALLACE: No re-examination.

795 MR JUSTICE GAMBLE: You know there were a lot of inquiries going on shortly after this European had been killed; Police Officers came out, and there was an aeroplane? — A. I do not know.

796.Q. You did not see the aeroplane? — A. No.

797.Q. Even if you did not know, why did you not report to someone in authority that a European had been killed? — A. Because no-one asked me. The Government did not ask me.

798.Q. That is your only reason? — A. Yes.

(His Honour read over his notes which were found correct and the witness then withdrew).

LIAMET OLE RAIBOTANE affirmed:

EXAMINED BY MR WALLACE.

797 MR WALLACE: Do you know Solem? — A. Yes.

798.Q. And Parimmalu? — A. Yes.

799.Q. Do you remember going out for a walk with them one day to look for a goat a long time ago? — A. Yes.

800.Q. Just tell His Honour in your own words what happened and what you saw that day? — A. We were looking for our lost sheep and goats. We found a hyaena had eaten five and we got these two.

801.Q. Where abouts were you looking for these goats and sheep? — A. Olopek.

MR JUSTICE GAMBLE: It is not marked on the map.

802.Q. Do you know a place called Il Pinguan or Angata Wergoi? — A. Yes, I know.

803 MR WALLACE: Anywhere near that? — A. It was near Il Pinguan.

804.Q. Tell your own story. — A. We found some people in Il Pinguan.

805.Q. What sort of people? — A. Samburu.

806.Q. How many? — A. Five. Two of them came towards us. When they approached close to us they asked what we were looking for and we replied "Goats".

THE COURT ADJOURNED TO 2 P.M.

AT 2 p.m.

807 MR WALLACE: When you saw the five Samburu whereabouts were they? — A. As far from here to that post at the entrance.

MR JUSTICE GAMBLE: About 50 yards.

808 MR WALLACE: And were they standing up or sitting down? —

A. Sitting down.

609.Q. And what was the country like round about where they were sitting? Open or what? — A. Behind them there were trees. In front of them it was open ground.

610.Q. Could there have been others there that you could not see? — A. Yes; if there were others they could not be seen. Three sat down and two came towards us.

611.Q. Do you know who they were who came towards you? — A. Lesonto and Ole Lesoni.

612.Q. Did you know them at that time or have you got to know them since? — A. I had seen them long before, when they were children, and after I saw them I knew them.

613.Q. Were they carrying spears? — A. Yes.

614.Q. Could you see the other people who remained under the tree when these two came forward? — A. They could not be seen properly, but I could see them looking round.

615.Q. What did you see? — A. I saw the head of a European and as they noticed they placed it down.

616 MR JUSTICE CARRLE: Who? — A. Lirono.

617 MR WALLACE: And how did you know it was the head of a European? — A. Because it was a white head.

618.Q. Did you see the colour of the hair? — A. Black.

619.Q. Did you recognize any of the other people under the tree besides Lirono? — A. No; I could not recognize.

620.Q. Did you go to a parade at Ruruti, an identification parade? — A. Yes.

621.Q. Did you go to two parades? — A. Yes.

622.Q. Were there many people in these parades? — A. Many. I did not count.

623.Q. What tribes? — A. Samburu, Kikuyu and others.

624.Q. Did you pick out some people that day? — A. Yes.

625.Q. Them did you pick out? — A. I picked out three persons.

626.Q. Who were they? — A. Ahmed Nos. 1, 4 and 5.

627.Q. What did you pick them out on? — A. I said I had seen these people before they had sat down.

628.Q.MR JUSTICE CARRLE: On the day in question? These were three of the people you had seen on the day in question? — A. I had seen the head before they had sat down.

629 MR WALLACE: Did you not say a moment ago that you had only seen No. 5? How do you explain that? — A. I say I knew them after I saw them.

630.Q. Did you know their names? — A. No.

631.Q. But you knew Lirono's name? — A. The man who was searching for goats with me told me this man was Lirono.

632.Q. Did you ever pick on Lesori at an identification parade?

MR JUSTICE GAMBLE: As he knew Lesori well before it seems rather futile.

633 MR WALLACE: What were the people wearing who were sitting under the tree? — A. They had twisted their shukas and tied them round their waists.

634.Q. What weapons had they? Did you see? — A. Spears.

635.Q. Do you know Bwana Ridgway of the Police? — A. Yes. I know Bwana Karadadi. (Witness indicates Superintendent Ridgway).

636.Q. And did you point out to him some time ago the place where you had met the Samburu? — A. Yes.

637.Q. And did you also show him where you lived? — A. Yes.

CROSS-EXAMINED BY MR ALLAN.

638 MR ALLAN: You are getting an old man now, are you not? — A. Yes.

639.Q. And sunlight is not just as good as it used to be? All old men lose their sight? — A. I can see very well with my eyes.

640.Q. What is wrong with your right eye? Can you see with that? — A. No, I cannot see with that.

MR JUSTICE GAMBLE: Could he see three years ago, Mr Allan?

641 MR ALLAN: Can your right eye the same three years ago as it is today? — A. Yes, it was in the same condition.

642.Q. Can you see that fence over there? — A. Yes.

643.Q. How many people do you see at the fence? — A. The distance was not so far.

644.Q. Never mind the distance. How many people do you see at that fence? — A. There is one man there.

645.Q. Can you tell whether that man is black or white? — A. He is black and he is wearing white clothes. (Correct).

MR WALLACE: He is about 40 yards beyond the fence.

646 MR ALLAN: When you first saw the accused they were sitting down? — A. They were standing when I first saw them.

647.Q. And what was Lesori doing? Was he standing too? — A. Three sat down and two came forward. Lesori and Lesemeto.

648.Q. The only people you spoke to were Lesemeto and Lesori? — A. Yes.

649.Q. You did not go close to the other people who were sitting down? — A. No.

650.Q. Did Lesori and Lesemeto tell you anything? — A. No.

851.Q. They did not say anything about the head of the beast?

MR WALLACE: I object, Your Honour. He has had the opportunity of cross-examining the other two.

MR JUSTICE GAMBLE: You may ask the witness if he discussed the head with Lesori.

852 MR ALLAN: Did you say anything to Lesoroto and Lesori about the head of the beast? — A. No.

853.Q. Why not? — A. Because we were afraid of them and because they came rushing towards us.

854.Q. Lesoroto and Lesori rushed at you? — A. Yes.

855.Q. Had they their spears? — A. Yes.

856.Q. Did you ask them why they were rushing at you? — A. We noticed that they were enemies and they did not seem friendly.

857.Q. What did you talk about? — A. They asked us, "What are you looking for, and we replied, "Goats", and we asked them where they were going and they said simply here.

858.Q. That was all the conversation? — A. That is all. And we called backwards. We were armed with arrows.

859.Q. Did they frighten you in any way? — A. They did not, but we were not happy with them.

MR JUSTICE GAMBLE (to Interpreter): He said, "Our hearts were not pleased".

860 MR ALLAN: Where did you go then? — A. We went to look for the goats.

861.Q. You continued to look for the goats? — A. Yes; and found them.

862.Q. When you went back did you tell anybody about all this that had happened? — A. In the morning of the following day I told two people.

863.Q. Who were they? — A. Lolgerula .....

MR JUSTICE GAMBLE: He is not a witness?

MR WALLACE: No.

MR ALLAN:

864.Q. Did you tell your chief? — A. No.

865.Q. Who is your chief? — A. Olo Naibotane(?).

866.Q. When did you first hear that an European had been killed or had died? — A. Three days afterwards.

867.Q. When you saw these things did you not suspect that an European had been killed?

868 MR JUSTICE GAMBLE: When you heard the news that a European had been killed why did you not report to someone in authority what you knew? — A. I was afraid to go and

tell my chief about it because I had not seen it properly.

669. MR ALLAN: You had not seen what properly? — A. I saw the head only and I thought it was of a European.

670. Q. It was a head like an European's? Had it two eyes? — A. I did not notice about the eyes because I did not go close.

671. Q. Had it two ears? — A. I did not go close to see what was there and what was not there.

672. Q. Lenemoto and Lenori have both said you were never closer to the Senburu than that fence.

MR WALLACE: With great respect, Your Honour, I think one of them said that when they saw the Senburu first they were at the fence, and when they went to speak they were half way up the field - 60 yards. Lenemoto in cross-examination said, "The Wanderobo and we met about 60 yards away from where the accused were sitting".

MR JUSTICE GAMBLE: That is so.

673. MR ALLAN: Lenori says you were never closer to where three of the accused were sitting than the fence. Is that correct?

MR JUSTICE GAMBLE: It is a very difficult question to ask an unsophisticated Ndorobo.

WITNESS: As far from where I am to that man sitting down.

MR ALLAN: That is approximately 50 yards.

674. Q. If Lenemoto says it was half way across this grass field that is still wrong? — A. It was near. I even showed it to the Bwana.

675. Q. The Bwana of the Police? — A. Yes, the Maredadi.

676. Q. When did you first tell this story to anyone except your two friends? — A. I never told anyone.

677. MR JUSTICE GAMBLE: Did you not tell the Police? — A. Bwana Maredadi only. There were many other people in the motor-car when I told it to Bwana Maredadi.

678. Q. MR ALLAN: Have you told it to the D.C. at Rumuruti? — A. Yes; but I did not take him to the place.

MR JUSTICE GAMBLE: What are you getting at, Mr Allan?

MR ALLAN: I am trying to find out how many times he has repeated this story.

MR JUSTICE GAMBLE: How is that going to help me?

MR ALLAN: I think it is most important, Your Honour. What I want to ask him now is, since he told the Police has he discussed this many times.

679. Q. Since you told the Bwana Maredadi about this have you talked about it in the Dorobo camp or Kanyatta and with your friends? (The witness did not answer).

MR WALLACE: No cross-examination, Your Honour.

880 MR JUSTICE GARRIE: How were Lesori and Lesemeto dressed? — A. They had twisted their shukas.

881.Q. The same as the others? — A. Yes.

882.Q. When you were talking to Lesemeto and Lesori what were the other Samburu doing? — A. Sitting down.

883.Q. And when Lesori and Lesemeto had finished talking what did they do? — A. The two joined the other three, and we went away.

884.Q. Leaving all five together? — A. Yes.

885.Q. Did these five people appear to you all one party or two parties or what? — A. They were one party when we saw them.

886.Q. Did they give you the impression of one party or a joint enterprise? — A. I formed the opinion that they were the same party.

MR ALLAN: Could Your Honour mind noting .... Pariyanain says they were carrying much meat.

887 MR JUSTICE GARRIE: Were Lesori and Lesemeto carrying anything? — A. Nothing beside the spears.

(His Honour read over his notes which he found correct and the witness then withdrew).

**RAIBO OLE RAIBOTARE** affirmed:

EXAMINED BY MR WALLACE.

888 MR JUSTICE GARRIE: Are you any relation to the last witness? — A. Yes; he is my brother.

889 MR WALLACE: Do you know Pariyanain? — A. Yes.

890.Q. Do you remember a long time ago going out on safari with your brother Lisamet and Pariyanain? — A. Yes.

891.Q. What did you go to look for? — A. Goats.

892.Q. Where? Near Angata Werdi? — A. Not near.

893.Q. Did you meet anyone that day? — A. Yes.

894.Q. When did you meet? — A. We met five persons.

895.Q. What tribe? — A. Samburu tribe.

896.Q. Did you know them? — A. Yes.

897.Q. Had you ever seen them before? — A. I had not seen them before that day.

898.Q. How far were these people when you saw them? — A. Slightly this side of the grass beds.

MR JUSTICE GARRIE: About 60 yards I should think.

899.Q. Is that when you first saw them? — A. Yes.

900 MR WALLACE: What did you do? — A. We were walking in a line abreast at a distance apart, and then after we noticed them we called ourselves together.

901.Q. Tell us the story. — A. When we stood together, we three, two of the other party came towards us.

902.MR JUSTICE GAMBLE: Two of the Seaburu? — A. Yes.

903 MR WALLACE: What did the others of the Seaburu do? — A. They sat down.

904.Q. How far away were you from the three who sat down when the other two came to speak to you? — A. The same distance I have already said.

905.Q. Did you know either of the people who came towards you? — A. Yes.

906.Q. By name? — A. Lenani and Lemacto.

907.Q. You knew them that day? — A. I knew Lemacto before.

908.Q. What did you see that day? — A. I saw people holding a European's head.

909 MR JUSTICE GAMBLE: What people? — A. These people.

910.Q. Which? — A. Lirumo, No. 5 accused.

911 MR WALLACE: How did you know it was a European's head? — A. I saw the head was white, and then the hair.

912.Q. What colour was the hair? — A. Black.

913.Q. The two Seaburu who came to you, had they got spears? — A. Yes.

914.Q. Were they carrying anything else? — A. Meat.

915 MR JUSTICE GAMBLE: Who was carrying meat? — A. Lemacto.

916.Q. Were you awake or sleep? (i.e. Ox meat or game). — A. I could not tell.

917 MR WALLACE: Were the people under the tree carrying spears? — A. Yes.

918.Q. Could there have been more than three people under the tree at those you saw coming then? — A. We could only see three. There were trees and bushes.

919.Q. Do you remember attending a parade at Samuruti where there were a lot of people drawn up in a line? — A. Yes.

920.Q. And did you pick out some people there that day? — A. Yes.

921.Q. Whom did you pick out? — A. Accused Nos. 5, 6, and 2.

922 MR JUSTICE GAMBLE: What did you pick them out for? Then had you seen them before? — A. They were the three under the tree.

933.Q. On the day you saw the head? — A. Yes.

934 MR WALLACE: Did you pick out anyone else at that time? — A. Only these three.

935 MR JUSTICE GAMBLE: Had you ever seen them from the day of the head to the day you picked them out at Bamenda? — A. No; I did not see them between.

936 MR WALLACE: But you are quite certain these are the three people you saw under the tree? — A. Yes.

CROSS-EXAMINED BY MR ALLAN.

937 MR ALLAN: How long did you know Lemeneto before you met him that day? — A. Since long.

938.Q. Had you seen him since he was a child? — A. Yes.

939.Q. Many times? — A. Yes.

940.Q. And your brother had seen him too? — A. I know him because he is of my age.

941 MR JUSTICE GAMBLE: Does your brother know him? — A. He does not know him: he has only heard of him.

942 MR ALLAN: When you saw these five Sesburu approaching, they were all walking? — A. They were standing when I saw them.

943.Q. All bunched up in a crowd? — A. They were standing, and three sat down and two came towards us.

944.Q. When you saw them two coming towards you did you stop? — A. Yes, we stopped.

945.Q. When they were standing were they standing under a tree? — A. Yes.

946.Q. And that was the same tree they sat down under? — A. Yes.

947.Q. Legori and Lemeneto came towards you. Were they wearing shukas? — A. Yes.

948.Q. How were they wearing their shukas? — A. Twisted round their waists.

949.Q. When you saw the five, had they spears in their hands or were their spears on the ground? — A. They were holding them in their hands and as they saw us they was set them down on the ground.

950.Q. You said No. 5 was holding the head; I think you said that No. 5 was carrying the head. Do you mean by that he was standing with the head? — A. He was standing with it, and as soon as he saw us he placed it down.

951.Q. He dropped it? — A. He dropped it.

952 MR JUSTICE GAMBLE: He dropped the head when he saw you? — A. Yes.

953.MR ALLAN: He dropped the head into the grass? — A. Yes.

954.Q. But before he had dropped it you were able to see it was

146

a white face and black hair? — A. Yes; truly I saw.

945.Q. When Lesemeto and Lesori came to you did you say anything to them about what you had seen? — A. I asked, "What are you holding in your hands?"

946 MR JUSTICE GAMBLE: Whom did you ask, Lesemeto or Lesori? — A. Lesemeto. The reply was, "We don't know".

947 MR ALLAN: Lesemeto said, "I don't Know"? — A. He replied he did not know, because we were shivering and they were shivering.

948 MR JUSTICE GAMBLE: Who were shivering? — A. Both sides were shivering.

949.Q. I do not see that the fact that both sides were shivering necessarily means he does not know about the head. — A. They knew what it was but they did not want to tell us; but we had already seen.

950.MR ALLAN: Was that all that was said about it? — A. Yes.

951.Q. Did Lesemeto and Lesori go back to the three who were sitting down? — A. We saw them turn back. We also turned away but we did not notice where they went to.

952.Q. What happened to the three sitting under the tree? Were they there when you left? — A. They were still sitting when we left.

953.Q. Did you get back to your village that night? — A. Yes.

954.Q. Did you tell anybody about what you had seen during the day? — A. I did not tell anyone.

955.Q. Why not? — A. We were afraid of what we had seen.

956.Q. Why were you afraid? Did you know that the Serikali (Government) would be angry if they got to know about it? — A. We were afraid. Kiborengi went and talked about the news and he was sent to prison, and we were afraid.

957.Q. But the first time you heard about this was before Kiborengi had been sent to prison?

MR JUSTICE GAMBLE: What the witness said was, "The reason I did not tell anybody was because Kiborengi did and he was sent send to prison".

MR ALLAN: It was a long time from the day this actually occurred until Kiborengi was arrested.

MR JUSTICE GAMBLE: When did Kiborengi make a statement ? That is the relevant date.

MR ALLAN: I think it was the 12th of Sorry December.

958 MR JUSTICE GAMBLE: Kiborengi was not a Samburu, was he? There is no new? — A. He was an Ntendo, and he went to live in Samburu.

959 MR ALLAN: When you met the Samburu did you know about Kiborengi having got into trouble?

MR JUSTICE GAMBLE: Just one moment. Kiborengi had not got into

trouble then.

MR ALLAN: I am putting it to the witness.

MR WALLACE: That is not a fair question.

MR ALLAN: I am trying to check up whether this meeting ever took place. If the witness says, "Yes, I knew of Kiburengi, that is why I never said anything about the matter", it will have a tremendous effect on this case.

Q. The day you met Lemanto and Lecori did you know about Kiburengi?

MR WALLACE: I still object to the question. I think it is being put in a very unfair way.

MR JUSTICE CAMPBELL: I have heard your objection.

WITNESS: Before. We met them before Kiburengi had got into trouble.

MR JUSTICE CAMPBELL: I think, as a matter of fact, it still does not explain why he did not tell the chief. Kiburengi could not have got into trouble before the 18th of December. Do you know, Mr Allan, what I mean?

MR ALLAN: I thought he might have given away the whole story by making an admission, Your Honour. That is why I put the question.

Q. Why did you not tell anyone before Kiburengi got into trouble? You did not know he was going to get into trouble. — A. I wanted to ascertain where this trouble had come from.

MR JUSTICE CAMPBELL: Where is Kiburengi, Mr Wallace?

MR WALLACE: I have information that it is hearsay. It is that he is not in the land of the living. I am not in a position to prove it.

Q. MR JUSTICE CAMPBELL: Was it not your duty, having seen the head of a white man, to tell the chief at once? — A. I was afraid that I might be accused of having killed him.

Q. MR ALLAN: Did you know that the Government were out looking for an European and that an aeroplane had come? — A. I only saw the aeroplane.

Q. And did you ask what the aeroplane was doing there? — A. I did enquire because we saw the aeroplane while we were in our village.

Q. The aeroplane kept going backwards and forwards?

Q. MR JUSTICE CAMPBELL: Did you not hear that there were Police, and Europeans and Natives out looking for a European? — A. At Lemanto we came to our conclusion to enquire.

Q. MR ALLAN: Lemanto and Lecori say that the first time they heard about you wanderers you were far away on that fence out there. — A. We saw them as far from here to that hands.

968.Q. Who told you that the name of No. 5 accused was Lirongo? — A. I heard.

969.Q. Who from? Where? — A. From women.

970.Q. What women? Lorogichu women? — A. Lesemeto.

971.Q. When did Lesemeto tell you this? — A. He told me on that day and subsequently.

972 MR JUSTICE GAMBLE: The day you met them? — A. Yes.

973 MR ALLAN: So you had several meetings after this with Lesemeto? — A. Yes.

974.Q. How many? — A. I have known him for a long time.

975.Q. What did you discuss at these meetings? — A. On the first occasion we did not talk much, but afterwards we have talked. He has come to my village and we have talked.

976.Q. After this meeting with Lesemeto and Lesori Lesemeto came to your village. What did you talk about? — A. Lesemeto came to his sister and I asked him whether he knew these young men, these women, and he said Yes.

977.Q. And he told you about the woman?

MR JUSTICE GAMBLE: In this evidence?

MR ALLAN: I asked him how he got to know Lirongo.

978.Q. When Lesemeto came did you ever mention about the European again? — A. Yes. I asked him, "What did those women have on that day?"

979.Q. The next time Lesemeto came to your place? Why did you ask him what they had? — A. I had already seen but I wanted to be quite certain in case I might be asked.

980.Q. Then did you see Lesemeto another time? — A. After the last conversation I have not seen him again.

981.Q. Is it Lesemeto's sister who lives in your manyatta? — A. Yes.

982.Q. Is she an adim or a married woman? — She is married.

983.Q. Is she married to a relation of yours? — A. Yes.

984.Q. And I suggest you are in Court today to help Lesemeto and that is why you are giving evidence?

MR JUSTICE GAMBLE: Does his evidence help Lesemeto very much?

MR ALLAN: It is intended to, Your Honour.

MR JUSTICE GAMBLE: Even on the depositions? As far as I have gone the evidence against Lesemeto and Lesori is almost as strong as against the accused.

MR ALLAN: I agree, Your Honour; but at the moment Lesemeto and Lesori are free men.

MR WALLACE: No re-examination, Sir.

trouble then.

MR ALLAN: I am putting it to the witness.

MR WALLACE: That is not a fair question.

MR ALLAN: I am trying to check up whether this meeting over four years, if the witness says, "Yes, I knew of Kiberengi that is why I never said anything about the matter", it will have a tremendous effect on this case.

Q. The day you met Lomanto and Lesori did you know about Kiberengi?

MR WALLACE: I still object to the question. I think it is being put in a very unfair way.

MR JUSTICE CARRE: I have heard your objection.

WITNESS: Before, we met them before Kiberengi had got into trouble.

MR JUSTICE CARRE: I think, as a matter of fact, it still does not explain why he did not tell his chief. Kiberengi could not have got into trouble before the 18th of December.

MR ALLAN: He thought he might have given away the whole story by making an allegation, Your Honour. That is why I asked the question.

Q. Why did you not tell anyone before Kiberengi got into trouble? You did not know he was going to get into trouble. — A. I wanted to ascertain where this trouble had come from.

MR JUSTICE CARRE: There is Kiberengi, Mr Wallace?

MR WALLACE: I have information that it is hearsay. It is that he is not in the land of the living. I am not in a position to prove it.

Q. MR JUSTICE CARRE: Was it not your duty, having seen the head of a white man, to tell the chief at once? — A. I was afraid that I might be accused of having killed him.

Q. MR ALLAN: Did you know that the Government were out looking for an European and that an aeroplane had come? — A. I only saw the aeroplane.

Q. And did you see that the aeroplane was doing there? — A. I did because we saw the aeroplane while we were in our village.

Q. The aeroplane kept going backwards and forwards?

Q. MR JUSTICE CARRE: Did you not hear that there were Police, and Europeans and Natives out looking for a European? — A. No; because people came to our compound to circulate.

Q. MR ALLAN: Lomanto and Lesori say that the first time they caught sight of you wanderers you were as far away as that fence out there. — A. We say that is far from here to that bandas.

1001 MR JUSTICE GAMBLE: Wha
accused.

1002 MR WALLACE: That sort

1003.Q. Why do you say it
face was white and

1004.Q. What were the thu
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MR WALLACE: I suppose it w

1006.Q. Were they wearing
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1007.Q. Were they carryin

1008.Q. Do you remember
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1009.Q. And did you pick
Yes.

1010 MR JUSTICE GAMBLE: Wh

1011.Q. How many people d
A. Five.

1012.Q. Three; three; and

1013 MR WALLACE: And what
people I made sec

1014.Q. Under the true?

MR JUSTICE GAMBLE: If there
have been six peo
and Lenori and L

MR ALLAN: No, I be made a
No. A.

1015 MR WALLACE: Did you
told about him?

1016.Q. And you saw Hen

1017 MR ALLAN: At Beaumont
A. Do you mean
1018.Q. At the identifica
You had picked t
parade? — A.
had not seen him



(The Jurors had over the notes which were kept correct and the witness been withdrawn).

PATRICK HAMILTON, JR., PLAINTIFF

affirmed:

EXAMINED BY MR WALLACE.

999 MR WALLACE: You are on Probation? — A. Yes.

999.Q. Do you know Blanks and Quinn? — A. Yes.

999.Q. Do you remember going out on patrol with them a long time ago? — A. Yes.

999 MR JUSTICE GAMBLE: You know Blanks? — A. I know a Bill.

999.MR WALLACE: Why did you go out to look for — A. I went to look for people who shoot.

999.Q. Where did you go? — A. It happen.

999.Q. Did you meet any people that day? — A. Yes.

999.Q. How many — A. Five.

999 MR JUSTICE GAMBLE: Just repeat — A. Lenorm.

999 MR WALLACE: When you saw them what did you do, or what did they do? — A. We went towards the brother and met. They came towards us and we went towards them.

999.Q. Yes. Tell us what happened. — A. Before we met, there are four and two were behind.

999.Q. Where did the three all come? — A. Behind this tree, on the ground behind a tree. (Witness indicated).

MR JUSTICE GAMBLE: How far in that?

MR WALLACE: About 50 yards.

MR JUSTICE GAMBLE: Do you agree, Mr Allan?

MR ALLAN: Yes, about that.

999 MR WALLACE: Three met down and two came towards you. What happened? — A. They continued on to where we have going and we waited to see looking for people. We walked then where they were coming from and they walked from that place. We walked then if they were together with the other three who had met down and they said to me, but we don't know whether they had actually met them.

999 MR JUSTICE GAMBLE: They said they were all of one party?

999 MR WALLACE: The people under the tree. Were they carrying anything — A. The two come. One was carrying the [illegible] of [illegible].

1000.Q. The three who [illegible] under the tree. Were they carrying anything? — A. Yes.

968.Q. Who told you that the name of No. 5 accused was Lirono? — A. I heard.

969.Q. Who from? Where? — A. From women.

970.Q. What women? Lorogishu women? — A. Lesemeto.

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977.Q. And he told you about the women?

MR JUSTICE GAMBLE: Is this evidence?

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978.Q. When Lesemeto came did you ever mention about the European again? — A. Yes. I asked him, "What did those women have on that day?"

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MR JUSTICE GAMBLE: Does his evidence help Lesemeto very much?

MR ALLAN: It is intended to, Your Honour.

MR JUSTICE GAMBLE: Even on the depositions? As far as I have gone the evidence against Lesemeto and Lesori is almost as strong as against the accused.

MR ALLAN: I agree, Your Honour; but at the moment Lesemeto and Lesori are free men.

MR WALLACE: No re-examination, Sir.

(His Honour read over the notes which were found correct and the witness then withdrew).

PARKYABALU OLE LEHGBER

affirmed:

EXAMINED BY MR WALLACE:

985 MR WALLACE: You are an Ndorobo? — A. Yes.

986.Q. Do you know Lemmit and Salem? — A. Yes.

987.Q. Do you remember going out on safari with them a long time ago? — A. Yes.

988 MR JUSTICE GAMBLE: You know Kiswahili? — A. I know a bit.

989.MR WALLACE: What did you go out to look for? — A. I went to look for cattle and sheep.

990.Q. Where did you go? — A. Il Pingman.

991.Q. Did you meet any people that day? — A. Yes.

992.Q. How many? — A. Five.

993 MR JUSTICE GAMBLE: What tribe? — A. Samburu.

994 MR WALLACE: When you saw them what did you do, or what did they do? — A. We went towards one another and met. They came towards us and we went towards them.

995.Q. Yes. Tell us some more. — A. Before we met, three sat down and two came forward.

996.Q. Where did the three sit down? — A. Behind this tree. On the ground behind a tree. (Witness indicates).

MR JUSTICE GAMBLE: How far is that?

MR WALLACE: About 15 yards.

MR JUSTICE GAMBLE: Do you agree, Mr Allan?

MR ALLAN: Yes, about that.

997 MR WALLACE: Three sat down and two came towards you. What next? — A. They enquired as to where we were going and we replied we were looking for cattle. We asked them where they were coming from and they replied from their home. We asked them if they were together with the other three who had sat down and they said Yes. But we don't know whether they had actually met them.

998 MR JUSTICE GAMBLE: They said they were all of one party?

999 MR WALLACE: The people under the tree. Were they carrying anything? — A. The two came. One was carrying the leg of a buck.

1000.Q. The three who remained under the tree. Were they carrying anything? — A. A head.

1001 MR JUSTICE GARDLE: Who was carrying that? — A. Number 5 accused.

1002 MR WALLACE: What sort of a head? — A. A European's head.

1003.Q. Why do you say it was a European's head? — A. The face was white and the hair black.

1004.Q. What were the three men under the tree wearing? — A. They had twisted their shukas round their waists.

1005.Q. How about the two who came towards you? What were they wearing? — A. We did not notice these people who were coming towards us, but our attention was directed to the men who were sitting down.

MR JUSTICE GARDLE: It seems rather odd, Mr Wallace, that they should not notice the people who came right up to them.

MR WALLACE: I suppose it was that they saw the head.

1006.Q. Were they wearing shukas, the people who came towards you? — A. We did not notice their garments properly.

1007.Q. Were they carrying spears? — A. Each one had two.

1008.Q. Do you remember going to Rumuruti Prison and seeing several people in a line? — A. Yes.

1009.Q. And did you pick out anyone out of that crowd? — A. Yes.

1010 MR JUSTICE GARDLE: Which? — A. Nos. 2, 4 and 5 accused.

1011.Q. How many people did you pick out at that parade? — A. Five.

1012.Q. Those three, and who else? — A. Lenemoto and Lesori.

1013 MR WALLACE: And what did you pick them out for? — A. As people I had seen at Il Pingwan.

1014.Q. Under the tree? Is that what you mean? — A. Yes.

MR JUSTICE GARDLE: If these depositions are correct, there must have been six people. "I picked out Nos. 5, 4, 2 and 1, and Lesori and Lenemoto".

MR ALLAN: No. 1 he made a mistake about. He had been told about No. 1.

1015 MR WALLACE: Did you see No. 1 under the tree or were you told about him? — A. I saw him there.

1016.Q. And you saw Nos. 4 and 5 under the tree? — A. Yes.

CROSS-EXAMINED BY MR ALLAN.

1017 MR ALLAN: At Rumuruti you told me you had seen No. 2? — A. Do you mean in the Court?

1018.Q. At the identification parade. You said at Rumuruti that you had picked three men out at the identification parade? — A. I was told that he was there, but I had not seen him there.

1019.Q. Who told you he had been there? -- A. Logoben. I only saw these people one day at Il Pinguan.

1020.Q. That was three years ago? -- A. I think it is.

1021.Q. In Court at Rumuruti you told the Magistrate that it was No. 1 you had been told had been there, not No. 2? -- A. I am not certain about the other two, but I am certain about Nos. 4 and 5.

1022.Q. You have said Logoben told you to pick out No. 2?

MR JUSTICE CARRIE: I don't see what we are getting at. If Logoben told him so-and-so was there - Lolchiale - how did he know who Lolchiale was?

MR ALLAN: Probably the chief was there when he was picked out.

MR JUSTICE CARRIE: The Police say he was not.

1023 MR ALLAN: How was Logoben able to tell you that No. 2 was there? -- A. If the first accused opens his mouth I shall be able to recognise him. I was told that he was also there previously.

1024.Q. What did Logoben say?

MR WALLACE: I object to that, Your Honour.

1025 MR ALLAN: Why did you pick the man with the red blanket out? (i.e. No. 2 accused). -- A. Because I was shown him.

MR JUSTICE CARRIE: You need not labour the point.

1026 MR ALLAN: Before the identification parade you had an interview with Logoben? -- A. Yes. He told me .....

MR WALLACE: I object again.

MR JUSTICE CARRIE: It is not evidence.

1028 MR ALLAN: The question I asked was, did you have a meeting with Logoben before the identification parade? -- A. Yes.

1027.Q. How long before? -- A. I think two days before.

1028.Q. At that meeting did you talk about the European? -- A. No, I did not.

1029.Q. In the lower Court you said that the people under the tree were trying to hide something? -- A. Yes. They were trying to conceal the head in the grass for us not to see.

1030.Q. Lemmoto, did you know him well? -- A. Yes.

1031.Q. He often comes to your Dorobo village? -- A. Yes.

1032.Q. He has a sister who lives there who is a relation of Lismet or Salem's? -- A. Yes; she is married to an Ndorobo.

THE COURT ADJOURNED TO 9-00 a.m. ON 20th NOVEMBER, 1954.

20th NOVEMBER, 1934. 9-30 a.m.

PARIYANALU OLE LENGERE

re-affirmed.

CROSS-EXAMINATION BY MR ALLAN (continued)

1033 MR ALLAN: Do you remember what time of the day it was that you saw these people? — A. 12-30 in the day.

1034.Q. Had the country round about many trees? — A. Yes.

1035.Q. Did you get home to your own village that night? — A. Yes.

Between

1036.Q. /40 the time you saw these accused and when you saw them again at the parade had you seen them? — A. No; I did not see them between the two days.

1037.Q. And you recognised them without any help? — A. Yes.

1038.Q. When you saw them there were their spears? — A. They were holding them in their hands. They sat down with them.

1039.Q. Did they put their spears in the ground or did they lay them down? — A. They laid the spears on the ground.

1040.Q. Lesmeto and Lesori have told us that when they first saw the wanderers - you and your two friends - you were about as far away as the fence there .....

MR JUSTICE GAMBLE: As a matter of fact, Mr Allan, I do not attach a great deal of importance to the distance. After a period of three years you cannot expect too much accuracy as to distances. If it was a question of half a mile or a hundred yards it would be a different thing.

MR ALLAN: Except that, Your Honour, looking at it in this light, recognising anything at 120 yards is different from recognising a thing at 25 yards.

MR JUSTICE GAMBLE: I grant you that. Lesori, the first witness, says he sat there quite close to the fence and they were never nearer to the accused than that distance. And Lesmeto says they were half way across the field here.

MR ALLAN: I will leave it at that, Your Honour.

MR WALLACE: No re-examination.

(His Honour read over his notes which were found correct and the witness then withdrew).

NAXPULE OLE LOGOBEN affirmed:

EXAMINED BY MR WALLACE.

1041 MR WALLACE: I think you were headman or are headman of the Lorogishu section of the Sambaru? — A. Yes.

1042.Q. Do you remember three years ago returning one night from Isiolo? — A. Yes; I remember.

1043.Q. What did you do when you arrived at your manyatta? — A. As I was going round to enter into my hoon I heard some people conversing.

1044.Q. Where were they conversing? — A. Outside the Laibon's house - outside the door.

1045.Q. Is there more than one Laibon in the manyatta? — A. One only.

1046.Q. And his name is Lidiama? — A. Yes.

1047.Q. Is he there now? — A. He has been taken away by the Government.

1048.Q. What did you do when you heard them conversing outside the Laibon's hut? — A. I went there.

1049 MR JUSTICE GAMBLE: What time was this? — A. I don't know what time. It was in the night-time.

1050.MR WALLACE: When you arrived outside the Laibon's hut what happened then? — A. I found eight persons sitting down.

1051.Q. Who were those eight persons? — A. Majero, Lesoiba, Lolchiala, Bari .....

1052 MR JUSTICE GAMBLE: Were all five accused there? — A. All five accused were there.

1053 MR WALLACE: Who were the other three people? — A. Saranga, Lemuruoloi, and the Laibon.

1054.Q. Do you know a man called Cebururia?

MR JUSTICE GAMBLE: That is the same name.

1055 MR WALLACE: What happened? — A. I was the ninth person after my arrival. Then I saw a human head.

1056.Q. What sort of a head? — A. White man.

1057.Q. Lemungu (i.e. European)? — A. Yes.

1058.Q. What else? — A. Private parts.

1059 MR JUSTICE GAMBLE: Of a white man? — A. Yes.

1060 MR WALLACE: What colour hair had the head? — A. Black.

1061.Q. Was it the head of a man who had been recently killed or otherwise? — A. The head was quite fresh. Killed the same day.

1062.Q. Were there two ears? — A. Yes. Nose and two eyes.

1063.Q. Who had the head? Where was it? — A. It was not in the possession of anyone. It was on the ground.

1064.Q. And the private parts? — A. Also on the ground.

1065.Q. Could you see them? — A. Yes, because it was moonlight and I was near it.

1066.Q. Did you have a conversation with the people who were there? — A. Yes.

1067.Q. When did you speak to? — A. Lirono.

1068.Q. Is he here? — A. Yes; No. 6 accused.

1069.Q. What did you say to him? — A. "Who has killed this person?" and he replied "I". Lepoiba then said, "No; it is I".

1070.Q. Is Lepoiba the 4th accused? — A. Yes.

1071.Q. Did you hear how it had happened? — A. Yes, they explained.

1072.Q. Tell us.

1073 MR JUSTICE GAMBLE: Who explained? — A. Lirono. I asked them whether they had found him by himself or with someone else and he said "Alone; with a horse". I asked "How did you kill him?" and he said, "We lay down when we saw him coming and as he came close we jumped towards him and his horse threw him down. We speared him with a spear".

1074.Q. Who speared him? — A. I don't know, because each of the two (Nos. 4 and 6 accused) claimed to have killed him.

1075.Q. Did Lirono say that they lay down and as he came close they jumped up and the horse threw him off? Who speared him? What did Lirono say? — A. Lirono said, "I killed him", and Lepoiba said, "I killed him".

1076.Q. With a spear? — A. Yes.

1077 MR WALLACE: What happened next? — A. The Laibon told them to take those things back to where you got them from. "I am not a tyrannosaurus to eat human flesh". They replied.....

1078 MR JUSTICE GAMBLE: Who replied? — A. Lirono replied they could not return them that night because it was night. Then Lirono dug a hole in the goat manure heap and Lepoiba buried the head and the private parts and covered them up.

1079 MR WALLACE: What else happened outside the Laibon's hut that night? — A. The Laibon produced a horn.

1080 MR JUSTICE GAMBLE: Just a second. Did he produce the horn after you arrived or when? — A. The horn was inside the bag when I arrived. The Laibon had his bag with him. It was near the door but inside and he stretched his hand inside and got it.

1081 MR WALLACE: Would you know that bag? — A. Yes. There it is. (Witness points to Exhibit 5).

1082 MR JUSTICE GAMBLE: Show us the horn. — A. This is the horn. (Exhibit 8).

1083 MR WALLACE: Who took that horn out of the bag? — A. Yes, and walked round behind the accused waving the horn.

1084.Q. All five of the accused? — A. Yes.

1085 [illegible] the horn? — A. Holding it going round.

1036.Q. What is the significance of that? — A. To conceal the matter because it was a bad thing.

1037.Q. That matter? — A. About the head of this European.

1038.Q. Is this horn ceremony gone through whenever there is a bad matter? — A. It is the custom of the Laibon; that is what he does to the people who have done certain things. He goes round and gives them some powder medicine to put on their foreheads.

MR JUSTICE GARLE: Does that matter? There is nothing in the depositions about powder medicine. If there was evidence that the Laibon had used powder medicine, then this witness would be competent to give evidence of powder medicine.

MR WALLACE: My friend must know the case he has to meet. I had an idea there was a mention of powder medicine. If another witness states (it is page 23 of the depositions, Your Honour). It is actually before they go to a fight. It says the Laibon gives them dawa (i.e. medicine) ....

MR JUSTICE GARLE: That evidence again is unsatisfactory. There is nothing on the depositions that the Laibon did give them dawa. I was rather surprised when you opened the case. You said the Laibon gave them powder(?). I can find no evidence on the depositions as to that. I think you might get it a little clearer about the significance of the horn.

1039 MR WALLACE: Is it done in ordinary everyday shauris (matters) or is it in bad matters?

1040 MR JUSTICE GARLE: I think you had better put the question, what is the purpose of walking round with the horn? — A. I am not a Laibon. It is the Laibon's custom. It is only the Laibon himself ....

1041 MR WALLACE: What do you think the Laibon does it for? — A. In order that the Government should not get information about these people.

1042.Q. And would the Laibon walk round with his horn about a person who had just come back from an ordinary shauri? — A. No.

1043.Q. Then I take it that this horn ceremony is only gone through in very bad matters? — A. Yes.

1044.Q. Were the five assaulted all together when he walked round? — A. Yes.

1045.Q. Do you know how many of those moran were out on this occasion? — A. I don't know. I found the five there.

1046.Q. What sort of a night was this? — A. It was moonlight.

1047.Q. And then you saw these parts being buried in goat manure? Was that after the horn ceremony? — A. The goat manure was very close to where this was taking place. It was after.

1048.Q. Did you ever visit the goat manure again? — A. The next evening I visited the goat manure. They had been taken out.

1099.Q. Do you know what happened to the horse? — A. I asked them and Lirapo replied that the horse went away.

1100.Q. Do you know two Samburu called Lesenoto and Lasori? — A. Yes. They are Loroglishu section.

1101.Q. Not a different manyatta from yours? — A. Yes.

1102.Q. Were they there that night? — A. No.

1103 MR JUSTICE GAMBLE: How many Laibons are there in the Loroglishu section? — A. Only one.

1104.Q. How many in the whole Samburu tribe? — A. I only know Likoma.

1105 MR WALLACE: Is he a powerful laibon? — A. Yes.

MR JUSTICE GAMBLE: What have the Government seized him for, Mr Wallace?

MR WALLACE: He was deported to Kenia, one of the reasons being the investigations in this case.

1106.Q. Had the accused got spears there that night? — A. There were ten spears; each had two.

1107.Q. If the Laibon walked round all five accused what inference would you draw from that?

MR JUSTICE GAMBLE: Has he not already told us that some bad shauri had taken place?

1108 MR WALLACE: I want to know if all five had taken part? — A. So that the shauri would not get out. He walked round the whole five.

1109.Q. May I put this question? Would the obvious inference be that all five were connected with the shauri?

1110 MR JUSTICE GAMBLE: I don't think so. It is suggesting to him.

MR WALLACE: Would Your Honour agree to this question: Would the Laibon walk round people who had not been connected?

MR ALLAN: I think that would infer the same thing. I have no doubt the Laibon did not go round any other huts that night.

MR JUSTICE GAMBLE: I take it the Crown's contention is that the five people visited the Laibon. That is not a question of going round huts. However, I think you may leave it, Mr Wallace. It is not fair to ask the question.

MR WALLACE: I don't want to, Your Honour.

1110.Q. In the old days if you were going out on a big shauri what would you do before you went? Before the Government came what would members of the tribe do? — A. It was the Laibon who used to direct the moran when to go. He would sleep and dream, and at a certain place there are cattle, and then he told the moran "You go there". And he gave them medicine.

1111.Q. You know the Government does not like that sort of thing? — A. Yes; since the Government came I know they do not like it.

1112.Q. So if it is done, it is done very secretly. Is that right? — A. Yes, if it is done now it is done secretly.

1113.Q. You all live in the same manyatta - you and the five accused and Sasonga and Sabururia and the Loibon? — A. Yes.

1114.Q. You all did at that time? — A. Yes.

1115.Q. If you found a dead body lying out on the plains would you mutilate it and bring parts of it back? — A. No.

1116.Q. Would it be customary to do so? — A. No.

1117.Q. Have you ever heard of it being done? — A. No, not yet.

1118.Q. Would you be surprised if you heard of it being done? — A. Yes.

1119.Q. What is the first part of a human body that vultures would take for an a carcass? — A. First the eyes of the carcass of an ox or sheep, and then the back (arms). Eyes first.

1120.Q. Who is allowed by custom in the Samburu to wear a ring? — A. A person who has killed another.

1121 MR JUSTICE GAMBLE: No-one else? — A. No-one who has not killed.

1122 MR WALLACE: If you see Samburu women wearing their chukas twisted round their waists, has it any significance? — A. People who go out and come into contact with a lion or rhino or a bull.

1123 MR JUSTICE GAMBLE: What do you mean by coming into contact? — A. As soon as they see that is the thing there, they are coming into action.

1124 MR WALLACE: And if they have succeeded in overcoming the lion, rhino, or bull do they immediately take their chukas down or wait until they leave the scene of action? — A. After going away some far distance then they wear their chukas in the ordinary way.

1125 MR JUSTICE GAMBLE: If they kill the lion or rhino there is no danger. (To Interpreter): He did not say "some far distance". — A. A coward person would go as far from here to the hill after killing, but a brave one would only go as far as the chuka (shoes).

1126 MR WALLACE: The women have lovers. Is that right? — A. Yes; some have, some have not.

1127.Q. Are the accused women? — A. Yes.

1128.Q. Have any of them got lovers? — A. Four.

1129 MR JUSTICE GAMBLE: Which four? Who has not? — A. Number 2.

1130 MR WALLACE: Do you know the name of No. 5's lover? — A. Yes, Lekitome.

1131.Q. Do you know the name of No. 6's lover? — A. Lacharia.

1132.Q. Number 5's lover? — A. Lebanai.

1133.Q. Have you ever heard of a song called the "Kharingoi"? — A. Yes; it is a woman dance. I knew it when I was a woman.

1134.Q. And when is it sung? — A. A woman who has got many cattle. It is sung about his cattle, when he is wealthy.

1135.Q. Is it sung on other occasions? — A. It is also sung to a persons who has killed.

1136 MR JUSTICE GAMBLE: Killed what? — A. Killed some person.

1137 MR WALLACE: You would not be entitled to attend this? — A. No; because the girls who take part in the dance are daughters and they dance with the moran.

1138.Q. How soon after a man being killed do vultures descend? — A. After the people have gone away from the corpse the vultures come. There there are vultures, an hour after people have gone away.

1139.Q. Provided they can see the body? — A. Yes.

1140.Q. If you killed a buck and you did not want the vultures to get on the carcass what could you do?

MR JUSTICE GAMBLE: I am not sure, Mr Wallace, if the witness understood properly. One cannot help knowing of one's own knowledge in the case of game animals very often the vultures are on before one turns one's back. I am not sure whether he understood the question properly.

WITNESS: If a man was killed here and the killer walked as far as the shops, by that time the vultures would descend.

MR JUSTICE GAMBLE: Ten minutes, Mr Allan?

MR ALLAN: I quite agree, Your Honour.

CROSS-EXAMINED BY MR ALLAN.

1141 MR ALLAN: At the time this happened you were headman? — A. Yes.

1142.Q. You are not headman now? — A. No.

1143.Q. Why?

MR WALLACE: This appears to me to be going into character. My friend must realise that I am entitled ..... The relevant section is 154.

MR JUSTICE GAMBLE: I do not know what the question is.

MR WALLACE: The question was: You were headman; you are not headman now. Why?

MR JUSTICE GAMBLE: Section 154 only applies to accused persons.

MR WALLACE (quoting from Criminal Procedure Code, Section 154(6)(b)) "..... He has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establishing his own good character, or has given evidence of his own good character, or the nature

or conduct of the defence is such as to involve imputations on the character of the complainant or the witnesses for the prosecution" .....

MR JUSTICE CAMBLE: It is a matter for the discretion of Mr Allan.

1144 MR ALLAN: Will you tell us why you are not headman now? — A. Government known.

1145.Q. You don't? — A. The Government made me headman and then they deposed me.

1146.Q. Would you know the Leibon if you saw him?

MR WALLACE: The only reason I see why my friend should wish to call him is to make certain identification. I have asked every single question that could be asked that there is one Leibon in the manyatta and his name is Lindumu.

MR JUSTICE CAMBLE: Why do you want the Leibon, Mr Allan?

MR ALLAN: There have been certain allegations made about this Leibon. You will see in the evidence, I am sure, that the Leibon sent these moran.

MR JUSTICE CAMBLE: The witness has said there is one Leibon in my section. I understand the Leibon will be called by the defence. I am satisfied that is the man this witness is referring to.

MR ALLAN: Except, Your Honour, there is a suggestion that this is such a wicked man, he has such tremendous power over all the people that in the sight of him this man will change his evidence.

MR JUSTICE CAMBLE: I see no reason. The Leibon Lindumu is the man this witness is referring to. I have no doubt. When the Leibon is called he will give his name as Lindumu and you can examine him to this effect - has he living in the manyatta three years ago.

1147 MR ALLAN: Do you remember seeing an aeroplane about this time? — A. Yes.

1148.Q. Was that before or after this? — A. I saw the head, and two days after I saw the aeroplane. I saw the aeroplane the third day after seeing the head.

1149.Q. Were you in your own manyatta when you saw it, or were you down at Il Pinguan? — A. I was not at the manyatta when I saw the aeroplane, because I had gone to Marti.

1150.Q. Is Marti far away from your manyatta? — A. It is far from my manyatta.

1151.Q. Which way do you go? Across the Angata Nergoi? - A.Yes.

1152.Q. You pass Il Pinguan? — A. Yes.

1153.Q. So from the time you saw the head until you saw the aeroplane you had passed across Angata Nergoi and you had passed through Il Pinguan? Did you see any people at Il Pinguan? — A. I did not go to Il Pinguan.

1154.Q. I thought you said to get to Merti you cross the Angata Worgoi plain and pass Il Pinguan? — A. Going to Merti you have to go through Il Pinguan, Angata Worgoi ....

MR JUSTICE GAMBLE: There is this place Merti?

(Superintendent Ridgway explains the situation on the map to His Honour).

MR JUSTICE GAMBLE: There is a place called Mordoi on the map. That is apparently the Masai spelling of the place called Merti. The whole area there is Merti.

1155.Q. To get to Merti from your manyatta do you cross the Angata Worgoi? — A. I pass through ..... and then Angata Worgoi. My manyatta is in Merti.

MR JUSTICE GAMBLE: Then obviously he does not cross the Angata Worgoi.

1156 MR ALLAN: When you saw the aeroplane were you near Il Pinguan? — A. No. I was between Sugota Marmar and Sugota Mugie which is the North West side.

1157.Q. When you saw the aeroplane did you make any enquiries what they were looking for? — A. First of all I heard the news of it but I did not see. It was far. I did not enquire where the aeroplane had come from.

1158.Q. Or why it had come? — A. Because we were only two and we were going on duty about locusts.

1159.Q. Before this happened you had been in Isiolo? — A. Yes.

1160.Q. It was on this particular night that you arrived that you saw this happening? — A. Yes.

1161.Q. How many days had you been in Isiolo? — A. I spent ten nights at Isiolo and came to Mikandulo and spent fifteen nights there.

1162.Q. Was it very late at night when you got back? — A. Yes; perhaps 11 or 12 o'clock.

1163.Q. How many people altogether live in the manyatta? — A. It is a big manyatta occupied by many.

1164.Q. How many moran live there in the manyatta? — A. Many moran, but I only found these people there.

1165.Q. Many moran and many wanditu (young girls) live there? — A. Yes.

1166.Q. When you got there you said eight people were sitting down? — A. Yes.

MR JUSTICE GAMBLE: Need we go over all the examination in chief again, Mr Allan? You can ask questions arising naturally in cross-examination, but to do so it is not necessary to reiterate all the evidence that has been taken down.

1167 MR ALLAN: What was the Laibon doing? — A. The Laibon was sitting on a stool.

1168.Q. Did you sit down with them when you arrived? — A. I sat with the two others at one side.

1169.Q. When you saw these things did you not think it was a very bad shenri? — A. Yes.

1170.Q. Why did you not do something about it? Why did you not tell someone? Why did you not go to the Government? — A. I was afraid of the Laibon and the moran and furthermore they were of my section, of my location. No Government came to enquire of it.

1171 MR JUSTICE GAMBLE: Did you not think it your duty, as the Government headman? Here were the remains of a European in your kraal. Was it not your duty to go and report to the Government? — A. I knew it was a bad show, but I was afraid of the Laibon and the moran, and I also thought the Government might kill the whole lot.

1172 MR ALLAN: When did you lose this fear of the Laibon? — A. When the Government came and caught the five moran and the Laibon, then I knew the Government knows about the matter.

1173 MR JUSTICE GAMBLE: Then you told the story? — A. Yes.

1174.Q. In fact, was this death of the European common knowledge among the Loroghisha? It is three years from the time he met his death until the Government caught the moran. Was it common knowledge in the Loroghisha? — A. I only knew about the people who were present that night. I don't know whether the accused had talked to others about it or not.

1175 MR ALLAN: You have talked about a dance called the Mbaringoi? Did you see that dance being danced after this? — A. Yes.

1176.Q. Is not the Mbaringoi dance not simply a dance which is danced when the rains come? — A. It is sung after the rains fall and crops and grass grow.

1177.Q. That is really what the Mbaringoi dance is? — A. It is sung because people have got food; and they praise others also for getting these pleasures.

1178.Q. Do you know a Samburu dance called 'Cisoroto'? — A. Yes.

1179.Q. I think that is a dance when a lion has been killed and all the moran dress up? — A. They sing that on their way returning from after killing the lion.

1180.Q. At the Mbaringoi all the moran and wanditu dance together? — A. Yes.

1181.Q. The suggestion or evidence is that this Mbaringoi dance was danced and these people were praised for killing the European? — A. The Mbaringoi is a very old song. It was sung years ago and it is continued to be sung. People who have killed lions or men are praised during the dancing.

1182.Q. Did you overhear anything of the dancing or the singing? — A. No, because I do not go to moran dances.

1183.Q. You have no knowledge that at this Mbaringoi dance anything was said about these moran?

MR JUSTICE GAMBLE: He said he did not.

1184 MR ALLAN: Did the Laibon seem annoyed with these people for having brought these things? — A. Yes.

1185.Q. He was angry with them and told them to take them back to where they got them? — A. Yes.

1186.Q. Were you surprised at that? — A. Yes.

1187.Q. Were you surprised at the attitude the Laibon was taking up? — A. Yes.

1188.Q. Why? — A. Because he was not pleased; he was afraid.

MR JUSTICE GAMBLE: It was rather too big a thing for the Laibon.

1189 MR ALLAN: In your evidence in the lower Court you said (It is page 81, Your Honour) you said: "I am sure it was on the instructions of the Laibon", and a few lines further down, "I am sure the Laibon must have told them to". — A. That is my opinion.

1190.Q. Even after you saw that the Laibon was displeased with these people for bringing these things? — A. Perhaps the Laibon was afraid of what we had seen.

1191.Q. You said the Sanburu would not touch a dead body. By dead body do you mean a human body or the body of an animal or what? — A. They do not bring a corpse.

1192.Q. Would they touch it? — A. Not unless they had killed it themselves.

1193.Q. If an animal, wild animal, had been killed would the Sanburu touch it? — A. Yes; they would take it for food.

MR JUSTICE GAMBLE: We all know they would.

1194 MR ALLAN: If you saw a man riding on horseback and saw him thrown from his horse and killed would you touch that body? — A. If he was one of our men, Yes, I would go and touch him and see if he was dead and then go and give the news about him.

1195.Q. Do you know Kiberengi? — A. Yes.

1196.Q. And he lived in your manyatta? — A. Yes.

1197.Q. Do you remember Kiberengi being arrested? — A. Yes.

1198.Q. Do you know what he was arrested for? — A. Kiberengi went to report the matter that the people of our manyatta had killed someone.

1199.Q. When Kiberengi was arrested why did you not come forward then? You knew the Government knew then? — A. He was brought back to Karnar and then the matter was gone into and found not true and then he was sent to the Prison.

1200.MR JUSTICE GAMBLE: Why, when Kiberengi was arrested, did you not come forward and tell your story? — A. First Kiberengi told Government only a very short story about it and they put him in Prison. I was afraid also. The Government did not ask me about it.

1201 MR ALLAN: When you saw the head on the ground how was it lying? — A. It was sitting on the neck.

1202.Q. Did you see the teeth? — A. I did not.

1203.Q. You did not touch it? — A. No.

1204.Q. Did you know whether the articles were taken back to where they came from or not? — A. Yes; because when they were ordered to be returned I was present.

MR JUSTICE GAMBLE: He does not know where they were taken.

1205.MR ALLAN: Would you be afraid of the Laibon if he were not in the charge of Government?

1206 MR JUSTICE GAMBLE: Are you afraid of him now? — A. Not now, because he is in the hands of the Government. But I was at the time.

1207 MR ALLAN: You have told us this story about a ring. Do many of the Samburu wear rings? —, A. At the time I was a moran, yes. That was the time when we used to kill one another. But now people do not wear rings; they hide what they have done.

1208.Q. You have never seen any of the accused with a ring? — A. No.

1209.Q. When you were a moran, if there was anyone killed did they ever bring in the head or an arm or other parts to the manyatta? — A. I have never seen.

1210.Q. Is it the Kanturi (i.e. custom or practice). — A. Formerly we used to cut only the private parts and throw it down there. We did not take it home.

1211.Q. Why do you think the accused would do it in this case? — A. My opinion is (I have not been told by anyone) I think it was through the instructions of the Laibon.

1212.Q. At Rumuruti you said that when you arrived that night you were going to the Laibon's hut.

MR JUSTICE GAMBLE: He said he heard talk.

1213 MR ALLAN: Was it the talk that attracted you or did you intend to go? — A. I went to the Laibon's hut on account of the talking I heard because I thought there might be tembo (beer).

THE COURT ADJOURNED FOR 10 MINUTES
AND RESUMED AT 11.20 A.M.

1214.Q. Do you remember when the first hearing was on at Rumuruti? — A. Yes.

1215.Q. During that time were you in the Gaol at Rumuruti? — A. I was in Juma's house; I did not go to Gaol.

1216.Q. Who is Juma? Is he an askari? — A. Someone who works for the Government.

1217.Q. When you were at Rumuruti did you see No. 1 accused? — A. Yes.

1218.Q. Did you speak to him? — A. Yes, after the others spoke to him I spoke to him. After he was taken out of the Court.

1219.Q. What did you speak to him about? — A. I asked him what he had not yet told the D.C.

1220.Q. Why did you ask him that? — A. Because he had been asked his story and he had not told the D.C. the whole.

1221.Q. How did you know about this? — A. I saw him questioned.

1222.Q. After your meeting with the Laibon and these people round about, did you all make up your minds to keep this thing absolutely quiet - not to say anything? — A. Yes.

1223.Q. Can you account for four of the accused immediately going and telling their lovers about it, if this agreement was come to? — A. I don't know. They went and conversed with their girl friends and went home and conversed with their wives.

1224.Q. During all this time you were with the Laibon, Nos. 1, 2 and 3 did not speak at all? — A. Yes, they kept quiet.

1225.Q. In the lower Court you said that subsequently you went out on a safari with Nos. 4 and 5. — A. Yes.

1226.Q. When you were with these people going to Lagodardi you said you wanted to ask them questions. What kept you from asking them questions? — A. I wanted to ask them about the European properly.

1227.Q. Why on that particular occasion? — A. Because I wanted to ascertain from them the colour of the horse in order that I might become a witness for the Government and I wanted to enquire from them where this happened.

1228.Q. Did they not tell you where it happened? — A. They had refused to tell me.

1229.Q. You know Lesemsto and Lesofi? — A. Yes.

1230.Q. Did you ever talk to them about it? — A. No; I have not spoken to them.

MR WALLACE: No re-examination, Your Honour.

(His Honour read over his notes which were found correct and the witness then withdrew).

SAMANGA OLE LADUMA affirmed:

EXAMINED BY MR WALLACE.

1231 MR WALLACE: You are a Samburu, Loroginbu section? — A. Yes.

1232.Q. Do you know these five people - the five accused there? — A. Yes.

1233.Q. Do they live in the same manyatta as you? — A. Yes.

1234.Q. Do you know Logoben? — A. Yes.

1235.Q. Where does he live? — A. In the same manyatta.

1236.Q. Do you know the Laibon? — A. Yes.

1237 MR JUSTICE GAMBLE: What is his name? — A. Lindume.

1238 MR WALLACE: Is there more than one Laibon in the Masyatta? — A. No himself.

1239 MR JUSTICE GAMBLE: How many Laibons are there in the Samburu tribe? — A. There is no other.

1240 MR WALLACE: Is he a powerful man? — A. Yes.

1241.Q. Very powerful? — A. Yes; but he does not direct the fight.

1242.Q. Do you remember about three years ago going along to see the Laibon one night? — A. Yes.

1243.Q. Did you go of your own accord or were you called? — A. No. I accused came to near my home and as I .....

1244 MR JUSTICE GAMBLE: Did he call you? — A. I went round on No. 1 accused's invitation to near the door of the Laibon's house.

1245.Q MR WALLACE: Who was there when you arrived? — A. I found three women and two others; the Laibon and Sabururia.

1246.Q. Were they inside the Laibon's hut or outside? — A. Outside; but near the door of the Laibon's hut.

1247.Q. Was it a dark night? — A. There was a moon.

1248.Q. Any fire? — A. No.

1249.Q. Were they standing up or sitting down when you arrived? — A. They were sitting.

1250.Q. Did anybody else arrive there that night? — A. Logoben arrived just as I sat down.

1251.Q. What happened there that night? — A. I saw a European head.

1252.Q. What colour hair had it got? — A. Black.

1253.Q. Was it the head of a person recently killed or otherwise? — A. It was killed that day.

1254.Q. Were all the parts there: the eyes and nose and ears? — A. Yes, they were all there.

1255.Q. Did you see anything else? — A. And private parts.

1256 MR JUSTICE GAMBLE: European's? — A. Yes.

1257 MR WALLACE: Did you have any conversation there that evening? — A. Yes.

1258.Q. With whom? — A. Lirono.

1259.Q. What did he say? — A. Lirono said, "It is I who killed the European".

1260.Q. Anyone else say anything? — A. Lenolha then said,

1236.Q. Do you know the Laibon? — A. Yes.

1237 MR JUSTICE GAMBLE: What is his name? — A. Lieduma.

1238 MR WALLACE: Is there more than one Laibon in the manyatta? — A. No himself.

1239 MR JUSTICE GAMBLE: How many Laibons are there in the Samburu tribe? — A. There is no other.

1240 MR WALLACE: Is he a powerful man? — A. Yes.

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1256 MR JUSTICE GAMBLE: European's? — A. Yes.

1257 MR WALLACE: Did you have any conversation there that evening? — A. Yes.

1258.Q. With whom? — A. Lirono.

1259.Q. What did he say? — A. Lirono said, "It is I who killed the European".

1260.Q. Anyone else say anything? — A. Lenoiba then said,

"It is I who killed".

1261.Q. Where were the head and private parts? — A. They were on the ground.

1262.Q. Nearer to one person than another? — A. The head near Lirono and the private parts near No. 6.

1263.Q. Were the other three nearby? — A. Yes; they were near.

1264.Q. What happened then? — A. Lirono and No. 4 took the head...

1265 MR JUSTICE GAMBLE: And the private parts? — A. They took the head and private parts.

1266 MR WALLACE: Where did they take them? — A. To the manure heap.

1267.Q. What did they do there? — A. They buried them.

1268.Q. Was the manure heap nearby? — A. It was very near.

1269.Q. Did you know where the European had been killed? — A. I heard only that he was killed at Il Pinguan.

1270.Q. When did you hear say? — A. Lirono.

1271.Q. Did you hear any more about what happened that day at Il Pinguan? — A. Lirono said they went to Il Pinguan and met a European on a horse.

1272.Q. What did they do then? — A. "Myself and Lesoiba lay down in wait. They [illegible] We got up towards them and the horse shied and dropped the beans".

1273 MR JUSTICE GAMBLE: Threw the beans off? — A. Yes. Lirono and Lesoiba speared him.

1274.Q. Where were the other three? Lirono said the others were behind sitting.

MR JUSTICE GAMBLE: The evidence against the first three appears to be considerably less than against Nos. 4 and 5.

MR WALLACE: I agree with you, Sir. They were aiding and abetting.

MR JUSTICE GAMBLE: They are not charged with that.

1275 MR WALLACE: What happened outside the Laibon's hut that night? — A. The Laibon took hold of this horn (Exhibit 2) and went round the five women.

1276.Q. Do you know the significance of that? — A. The Laibon did that in order that the thing they had done might disappear. May not come to light.

1277.Q. Did he walk round you? — A. No; we three old men sat away.

1278.Q. He did not walk round any of you? — A. No.

1279.Q. What happened then? — A. The Laibon told the five women that if the three old men talk anything about this, kill them.

1230.Q. Yes? Go on. — The head remained in the ensure heap for the night; also the private parts. They were afraid to take them away that night. It also remained there during the day because they were afraid to take them during the day.

1231.Q. Where did they want to take it? — A. The Lathes told them to return them to Il Pingusu.

1232 MR JUSTICE GAMBLE: Did they return them eventually? - A. Yes.

1233.Q. Who took them? — A. Lamno, Lesoiba, and Bari.

1234 MR WALLACE: Did you see them take them? — A. I did not see them begin .....

MR JUSTICE GAMBLE: It is not evidence then.

WITNESS: I saw them returning.

1235 MR WALLACE: You saw Nos. 1, 5, and 4?

MR JUSTICE GAMBLE: The whole thing is an assumption, Mr Wallace. The evening disappeared; he saw the three accused coming back and assumed they had taken them.

WITNESS: I saw them returning in the evening of the following day.

1236 MR WALLACE: Were any of the three in the manyatta at all that day? — A. They were there but I do not know at what place.

1237.Q. Do you know whether the remains were left?

MR JUSTICE GAMBLE: He has told us they disappeared.

1238 MR WALLACE: If you saw the corpse of a human being, a European, would you go near it if you had not killed it yourself? — A. No; I would not go close to it.

1239 MR JUSTICE GAMBLE: I think we might put it larger. Any corpse? — A. I would not go near unless I had killed it himself.

1240 MR WALLACE: If it had fallen off a horse and was dead would you go near? — A. If he was in my company I could go and catch hold of him, but not a stranger.

1241.Q. And if you saw the dead body of a human being who had not been killed by you or anyone in your company would you go and mutilate it? — A. No, I would not go near it. I would not cut it.

1242.Q. How soon after a body is lying dead do vultures descend? — A. As soon as the people who had killed him go away the vultures come at once.

1243.Q. And what is the first part of the body they attack? — A. The eyes.

1244.Q. You have a daughter Macharia? — A. Yes.

1245.Q. At this time was she anybody's lover? — A. Yes.

1246.Q. Whose? — A. Lesoiba's.

1497.Q. Do you know two men called Lescante and Lamari? — A. Yes.

1498.Q. Lescante Lamaglaire? — A. Yes.

1499.Q. They do not live in your manyatta? — A. No.

1500.Q. Were they in your manyatta on the night on which this shooot was going on outside the Laibon's hut? — A. No.

1501.Q. Is the manyatta in which they live far from you? — A. It is not far.

1502 MR JUSTICE DAVIES: Was the head you saw intact? No blood on it? — A. On the neck there was blood.

1503.Q. The head was intact? — A. Yes.

1504 MR WALLACE: Did the five women get their sponge with them when they were sitting outside the Laibon's hut? — A. Yes.

1505.Q. How many each? — A. Two each; ten in all.

1506.Q. How many of these sponges were alight? — A. I did not catch hold of the sponge to examine.

CROSS-EXAMINED BY MR ALLAN.

1507 MR ALLAN: You say No. 1 accused called you. Why did he call you? — A. I came out of the sheep hut and saw him. I said, "What is it?" and he replied, and then I said, "What is it?" and he said, "Let us go and see".

1508.Q. See what? — A. He told me to go and see, and as I got down I saw the head.

1509.Q. Do you remember that time this was - early in the night or late? — A. It was not very late in the night. Some people may have gone to bed; some people not.

1510.Q. Had you been at the manyatta all that day? — A. Yes.

1511.Q. And the day before? — A. Yes.

1512.Q. Did you see the women leave the manyatta on this day? — A. I did not see them.

1513.Q. You did not see any of them that day until night? — A. I did not see them during the day; I saw them at night.

1514.Q. Do you know Il Pinguan? — A. Yes.

1515.Q. That night when all this talking was going on I think you have said that Lirumo said they killed at Il-Pinguan? — A. Yes.

1516.Q. Everybody heard that? — A. I heard, because he told me.

1517.Q. Whenever questioning him, were you asking questions? — A. I asked him. It was I who asked.

1518.Q. You started on the whole conversation with Lirumo - no one else spoke? — A. I don't know who had spoken to him before I arrived, but after my arrival I spoke to him.

1520.Q. Then Lengoi arrived. Did he ask any questions? — A. I did not hear him asking because I went and sat aside because I was frightened.

1520.Q. Do you know the Laibon well? — A. Yes.

1521.Q. What do you mean when you say that the Laibon does not direct the fight? — A. Because I have not seen him directing or ordering any big fight.

1522.Q. So as far as you know there were no previous arrangements about this? — A. I don't know of any previous arrangements.

1523.Q. When you saw the head of the brave did you realise it was a very bad thing? — A. I considered it to be a bad thing because I saw it was a white man's head and I considered my own children and that they would all die.

1524.Q. MR JUSTICE OWEN: Did you know whose head it was? — A. No.

1525 MR ALLAN: Did you not consult with Lengoi and Saburuni as to what you would do about this chief? — A. We only said, "What shall we do? It is a bad affair".

THE COURT ADJOURNED TO 2 p.m.

CROSS EXAMINATION OF SAMANGA OLE LADUMA (continued)

1526 MR ALLAN: Does your daughter Lemaria live with you? — A. Yes.

1527.Q. Do you remember my European coming to see her? — A. I do not know.

MR ALLAN: I think I am correct in saying Mr Elliott took a statement from the girl Lemaria.

1528.Q. You say you saw nothing of the European policeman coming? — A. I don't know of any other European except Bwana Hamadi. (i.e. Superintendent Ridgway).

1529.Q. I am talking about shortly after you saw these things at the Laibon's.

MR JUSTICE OWEN: What exactly does this lead to, Mr Allan? Lemaria is coming as a witness herself.

MR ALLAN: I wish to get whether this witness did not talk with his daughter.

1530.Q. Did you ever talk to your daughter about this? — A. I told her to say anything she knows about it.

1531.Q. When was this? — A. When we came to Ramuruti when this thing came out.

1532.Q. You never talked to her before you came to Ramuruti, from the time you came to Samburu saw these things until you came to Ramuruti recently you never spoke to your daughter about this? — A. No, I did not, because nobody came to enquire.

1533.Q. Have you attended any of these dances? Do you know the Kharingoi dance? — A. Yes.

1534.Q. Did you ever attend any of these dances?

MR JUSTICE GAMBLE: This is a young people's dance; the elders would not be allowed.

MR ALLAN: There is the singing at the dance.

1535.Q. Have you ever overheard what they have been singing about?

1536 MR JUSTICE GAMBLE: Have you been to any dance? — A. I do not go near.

1537 MR ALLAN: If you saw an European riding a horse out here and he was thrown off and he lay still would you go to see him? — A. If I am his boy, yes. If not, I will not.

1538.Q. Did the people of your sanyatta know Mr Powys, the man whomsoever killed? — A. No. No-one knew him.

1539.Q. Do you know of any reason why the accused should kill that bearer? — A. I do not know. I am not a Sultan and I am not a Laibon.

1540.Q. If the accused killed anyone is it their duty to tell the Laibon or the Sultan?

MR JUSTICE GAMBLE: How do you mean their duty, Mr Allan?

1541 MR ALLAN: Could they report it? — A. They would not tell the Sultan, the headman, because they would be afraid he would report the matter.

1542.Q. When you were sitting round the Laibon's hut was anything said about having met Lemuneto and Lenori? — A. I did not hear.

1543.Q. Or about Nandarobo? — A. I did not hear.

1544.Q. Anything said about Kiberongi that night? — A. I did not hear.

1545.Q. Do you know how Kiberongi got to know about this? — A. I do not know where Kiberongi got the news from. He was not there outside the Laibon's house.

1546.Q. You have picked out that horn. Do you know what the big horn means? — A. Several Sanburu have got this kind of horn. They use it as a bugle.

1547.Q. You are quite sure there were no marks of blood anywhere on the head except the neck? — A. Yes.

1548 MR JUSTICE GAMBLE: The head was undamaged? — A. Yes.

MR WALLACE: No re-examination.

(His Honour read over his notes which were found correct and the witness then withdrew).

BABURURIA OIB LADUMA affirmed:

EXAMINED BY MR WALLACE.

1549 MR WALLACE: You are Lorogishu Samburu? — A. Yes.

1550.Q. You know the five accused? — A. Yes.

1551.Q. Do they live in the same manyatta as you? — A. Yes.

1552.Q. You know Logoboo? — A. Yes.

1553.Q. Samanga? — A. Yes.

1554.Q. The Laibon? — A. Yes.

1555.Q. What is his name? — A. Lindumo.

1556.Q. Does he live in your manyatta? — A. Yes.

1557 MR JUSTICE GAMBLE: How many Laibons are there in the Samburu? — A. Lindumo.

1558.Q. Is he a Samburu born? — A. Yes.

1559 MR WALLACE: Is he a very powerful Laibon? — A. Yes.

1560.Q. Where do Samanga, Logoboo and the Laibon live? In the same manyatta as you? — A. In one manyatta.

1561.Q. Do you remember about three years ago going out to the Laibon's one night? — A. Yes.

1562.Q. Who was there when you arrived? — A. Logoboo, and Laduma, and the five accused.

1563 MR JUSTICE GAMBLE: Anybody else? — A. And Samanga.

1564.Q. Were they all there when you arrived? — A. I was the first to arrive. Samanga came before Logoboo.

MR JUSTICE GAMBLE: The evidence of this witness before the alleged occurrence I do not wish you to put, Mr Wallace, because I cannot draw the inference you want me to draw.

MR WALLACE: I don't mind so much, Your Honour, about drawing the inference that this was a preparation ceremony, but I want to get all five together.

1565.Q. Prior to this day had you seen the five moran? — A. Yes.

1566.Q. Where did you see them and what did you see them doing? — A. I saw them on three occasions, conversing with the Laibon. On three days.

1567.Q. Where did they converse with him? — A. Outside the manyatta, under a tree.

1568.Q. Did you see anything else happen? — A. Yes; the fourth day I saw them going to the bush.

1569.Q. The whole five of them? — A. The whole five.

1570.Q. Were they armed? — A. Yes.

1571.Q. What with? — A. Ten spears.

MR JUSTICE GAMBLE: There is nothing in that. A Samburu never goes out without his spears.

1572 MR WALLACE: When did you see them again? — A. I saw them returning.

1573 MR JUSTICE GAMBLE: That was at the meeting at night? — A. They spent the night away and returned the following day.

1574 MR WALLACE: What time the following day? — A. Night-time.

1575 MR JUSTICE GAMBLE: Was that the night you went to the Laibon's — A. Yes.

1576 MR WALLACE: They were away for two days, a day and night and until the following evening. Is that right? — A. Yes.

1577.Q. You are quite certain they were not in the manyatta during that time? — A. Yes.

1578.Q. What happened outside the Laibon's hut that night? — A. The head was brought and placed on the ground.

1579 MR JUSTICE GAMBLE: Who brought the head? — A. Lirono.

1580 MR WALLACE: What sort of a head?

MR JUSTICE GAMBLE: It might shorten the proceedings - I do not know what the defence is. Will one point be a denial that this meeting ever took place?

MR ALLAN: It will, Your Honour.

1581 MR WALLACE: What sort of a head was it? — A. A European.

1582.Q. What colour hair? — A. Black.

1583.Q. Did you see anything else? — A. Private parts.

1584.Q. Who had those? — A. Lesoiba, No. 4. Also of a European.

1585.Q. Before we leave the head. Was it damaged in any way? — A. I did not notice any wound on the head.

1586.Q. Were the eyes and nose and ears intact? — A. Yes.

1587.Q. Was it the head of a person who had been freshly killed or otherwise? — A. Freshly killed.

1588 MR JUSTICE GAMBLE: Was there any bruising on the face? — A. No.

1589 MR WALLACE: Any blood? — A. Only round the neck.

1590.Q. Did you have a conversation with these accused that night? — A. Yes.

1591.Q. What happened? What did they say? — A. I spoke to Lirono enquiring "What is this?" and he replied "A Mzungu"

1592 MR JUSTICE GAMBLE: Anything else? — A. Lirono said, "This is the head of a European I killed at Il Pinguan", and Lesoiba also claimed to have killed him.

1593 MR WALLACE: All five accused were there at that time? - A. Yes.

1394.Q. Sitting down near one another? — A. Yes.

1395.Q. Did No. 4 and No. 5 tell you any more about the killing? — A. Accused No. 5 said they met the deceased on a horse and Lirono said that he was on a horse and I killed him.

1396 MR JUSTICE GAMBLE: Sitting on the horse? — A. He was thrown down by the horse. Lirono said "I have killed", and Lesoiba said .....

1397.Q. Killed with what? — A. With a spear.

1398.Q. What did Lesoiba say? — A. Lesoiba also said, "I killed with a spear".

1399.Q. Did they say anything about the other three? — A. I did not speak to the other three and the other two did not tell me anything about the other three.

1400 MR WALLACE: If five moran went out to kill how many would do the killing?

MR JUSTICE GAMBLE: Is that a fair question?

MR WALLACE: It is on the depositions?

MR JUSTICE GAMBLE: Things very often get on to the depositions which do not get into the trial.

MR WALLACE: From his experience.

MR JUSTICE GAMBLE: I do not like the question.

MR WALLACE: As Your Honour pleases.

1401.Q. What became of the head and private parts? — A. It was removed by Lesoiba and buried in the manure.

1402.Q. Near the Laibon's hut? — A. Yes.

1403.Q. What happened outside the hut that night? — A. After burying the head and private parts the Laibon brought out a horn and walked round the accused.

1404.Q. What horn? — A. The small horn (Exhibit B).

1405.Q. Who walked round whom? — A. Round the five moran.

1406.Q. Do you know the significance of that? — A. So that it would not be discovered that these moran had killed.

1407.Q. Did he walk round you or Samanga or Logoboo? — A. No.

1408.Q. Did the head and private parts remain in the manure heap, do you know? — A. No; they did not remain.

1409.Q. Do you know where they were taken to, or what? — A. The Laibon told him to take it away; he did not need human flesh.

1410.Q. And do you know whether in fact these things were taken away? — A. They were taken.

1411.Q. Did you see who took them? — A. Lirono and Lesoiba.

1412.Q. Where did they take them? — A. I do not know.

1413.Q. Do you know if they left the manyatta where you saw them taking these things? — A. Yes.

1414.Q. Were the accused, Nos. 4 and 5, away for long, do you know? — A. I did not see them returning.

1415 MR JUSTICE GAMBLE: What time did they go off with the head and private parts? — A. Early in the morning.

1416 MR WALLACE: Do you know when they returned? — A. I did not see them returning.

1417.Q. Were they in the manyatta that day? — A. Yes.

1418.Q. If Senburu moran found the dead body of a human being would they touch it? — A. No.

1419.Q. Unless it had been killed by one of their party? — A. The man who had done the killing is the only person who could touch it.

1420.Q. Would Senburu moran mutilate a body which had not been killed by one of their party?

MR JUSTICE GAMBLE: Is not that involved in the last question? If they would not touch it, they would not mutilate it.

CROSS-EXAMINED BY MR ALLAN.

1421 MR ALLAN: Do the Senburu put out the bodies of the dying to die in the bush? — A. No; it is taken out after death.

1422.Q. When you say that a Senburu would not touch a dead body you mean a dead body which has not been thrown out?

1423 MR JUSTICE GAMBLE: Put it this way: How do you reconcile the statement that a Senburu would not touch a dead body found on the road, but they would to put one out from the village? — A. A Senburu would not touch a different tribe.

1424.Q. Would a Lorogishu Senburu carry out the corpse of an Elbushigishu Senburu? — A. No; the other section would not touch the body.

1425 MR ALLAN: Supposing you had a visit from a man from another section and he died in your manyatta, who would remove him? — A. Their relatives would come and take him away.

1426.Q. From wherever he was?

MR JUSTICE GAMBLE: I think this line of cross-examination is getting rather hypothetical, Mr Allan.

1427 MR ALLAN: You said that you saw two of them five leaving in the morning, Nos. 4 and 5. Did the other three remain in the manyatta all that day? At the time the parts were taken back? — A. Yes.

1428.Q. You did not see Nos. 4 and 5 return. Did you see them again that day anywhere? — A. I saw them at night, but I did not see them returning.

1429.Q. Did the Laibon seem very displeased with the accused? — A. He was angry; he did not want the head to be brought.

1430.Q. When the accused were with the Laibon, who did the questioning, who asked all the questions of Nos. 4 and 6 about the killing? — A. I saw questioning. All three of us.

1431.Q. Did you see the five accused go away together before these things were brought in? — A. Yes.

1432.Q. What time in the morning? — A. It was some time after sunrise. I don't know the time.

1433.Q. The day before that had they been in the canyatta? — A. Yes.

1434.Q. Do you know what they did that day?

MR JUSTICE GAMBLE: What are you getting at, Mr Allan?

MR ALLAN: These three days conversations, Your Honour.

MR JUSTICE GAMBLE: Why not ask him directly did he go to the Laibon that day. A Native does not know what you are trying to get at. It is always easier to ask a direct question.

1435 MR ALLAN: Did you see them go to the Laibon the day before they set out? — A. Yes.

1436.Q. When they went to the Laibon what happened after that? What did they do? — A. I did not see what they did. I only saw them going to the Laibon.

1437.Q. After they went to the Laibon what did they do? — A. I saw them go to the Laibon and in the morning I saw them going away.

1438.Q. You have said that the Laibon is powerful. How do you mean that he is powerful? What does he do to make himself powerful?

MR JUSTICE GAMBLE: He is the only Laibon they have, Mr Allan.

WITNESS: He cannot order people to go to fight, but those under him he can do something to them.

1439 MR JUSTICE GAMBLE: Are most people rather afraid of the Laibon? — A. If the Laibon speaks people are afraid.

1440 MR ALLAN: Have you ever discussed this matter with anyone? — A. Only to the Europeans.

1441.Q. Why? — A. Because no-one asked me.

1442.Q. Did you see an aeroplane? — A. I did not see.

1443.Q. Do you know Kiberengi? — A. Yes.

1444 MR JUSTICE GAMBLE: Where is Kiberengi now? — A. I have never seen him after the Government took him away.

1445 MR ALLAN: You know why the Government took him away? —

A. Yes, I knew. Because he complained some people had killed. The Serekali (Government) came to our manyatta. I was not at home when the Government arrived; I got the news in the evening.

MR JUSTICE GAMBLE: That is all hearsay.

1446 MR ALLAN: When you knew about Kiberengi you never volunteered any assistance to the Serekali? — A. I was waiting a bit, and in the meantime after Kiberengi made a complaint he was sent to prison. Kiberengi said a few words, and nobody asked me.

1447.Q. You and Lengiben and Samanga were present at the ceremony. Did you never talk it over amongst yourselves? — A. We did not, because we were considering if we talk we will die. We thought the Government would kill us on account of the killing of the Europeans.

1448.Q. Do you think that other people in the manyatta knew about this besides yourselves? — A. I do not know if others knew except those that were there.

1449.Q. Were you at the manyatta the day after these people came back after taking the head away? — A. Yes, I was there.

RE-EXAMINED BY MR WALLACE.

1450 MR WALLACE: Kiberengi was not outside the Laibon's hut that night? — A. No.

(His Honour read over his notes which were found correct and the witness then withdrew).

MAGHARIA D/O LADUMA affirmed:

EXAMINED BY MR WALLACE.

1451 MR WALLACE: You are the daughter of Samanga? — A. Yes.

1452.Q. Do you know these accused? — A. Yes.

1453.Q. Do you live in the same manyatta? — A. Yes.

1454.Q. Do you remember a long time ago, three years ago, seeing an aeroplane? — A. Yes.

1455.Q. Did you get a lover at that time? — A. Yes.

1456.Q. Who? — A. Lesolba.

1457.Q. A night or two before the aeroplane do you remember having a conversation with him? — A. Yes.

1458 MR JUSTICE GAMBLE: You were living with him? — A. Yes.

1459 MR WALLACE: Tell us that conversation. — A. Lesolba said, "I have killed a European".

1460.Q. Did he say how? — A. He said he had killed him at Il Piagumo with a spear.

1461.Q. Was he alone at the killing? — A. He said there

were five altogether, but he and Lirumo had done the killing. He named the names of the others.

1463 MR JUSTICE GAMBLE: Who else was there? — A. Lirumo, No. 2, No. 1, No. 3 [illegible]

1465 MR WALLACE: Are these the five people he mentioned? The five in Court now? — A. Yes.

1464.Q. Did he tell you any more about the spearing? — A. No.

1465.Q. Did he say where they had met the European?

MR JUSTICE GAMBLE: Il Pinguan.

1466 MR WALLACE: Do you know whether there was anyone with the European? — A. He was alone with a horse.

1467.Q. Had he been living with you the two days previous to this conversation? — A. Yes. We slept together two nights before he told me.

1468.Q. When did you gather the killing had taken place? How long before he told you? — A. He was away for one night.

1469.Q. Do you know what time of the day he left? — A. After sunrise in the morning.

1470.Q. Do you know whether he went alone or not? — A. He went with the others because the others were the only ones at home at the time.

1471 MR JUSTICE GAMBLE: Did all five go together? — A. Yes.

1472 MR WALLACE: Have you ever danced the Mbaringoi? — A. Yes.

1473.Q. Is there a song too? Do you make up songs? — A. Yes.

1474.Q. Do you attend the dances? — A. Yes.

1475.Q. Did you attend them after this conversation with No. 4? — A. Yes.

1476.Q. Do you remember any song which was sung there? Do you remember the words? — A. Yes. It was sung to each one about his cattle.

1477.Q. What were the words of the song?

1478.MR JUSTICE GAMBLE: Was there anything sung at the dance relative to this company? — A. Yes.

1479.Q. What? — A. Vultures had fallen on Il Pinguan.

1480.Q. What else? — A. And have eaten a man whose reputation extended even to Nairobi.

1481 MR WALLACE: Before you had this conversation with Longiba did you ever hear that song sung at the Mbaringoi? — A. No.

1482.Q. Were the five accused present at this dance, at the Mbaringoi? — A. Yes.

1483.Q. At the first dance at which this song was sung was

anyone else present? — A. Four wanditu and the five accused.

1484.Q. What was the idea of this song? Was it a song of praise or what? (The witness did not answer the question).

1485.Q. What were the names of the other wanditu of the women here? — A. Mdogaroo.

1486.Q. Whose lover is she? — A. Bari, the first accused.

1487.Q. Who else? — A. Lahassi, No. 5's lover.

1488.Q. Who else? — A. Editosas, Lirono's lover.

1489.Q. And you and the other three girls joined together and sang the song? — A. Yes.

1490.Q. And were you present praising them all for a big deed they had done? — A. They themselves were praising themselves. We were not.

CROSS EXAMINED BY MR ALLAN.

1491 MR ALLAN: The night No. 4 came back from the safari did you sleep with him that night? — A. Yes.

1492.Q. Was that two nights before you saw the aeroplane? — A. Yes.

1493.Q. That night he came home, did he tell you about this? — A. Not on that night.

1494.Q. When these people came back there were the rest of the women of the manyatta? — A. They were at home when these returned and on their arrival they sang that song Mbaringoi.

1495.Q. What I want to know is, how many women were in the manyatta and how many wanditu?

MR JUSTICE GAMBLE: It is an impossible question to answer. It is a numerous manyatta. There might be 60 or 70 or 100 wanditu.

MR ALLAN: That is what I want to get at.

WITNESS: There are the only women in our manyatta.

MR JUSTICE GAMBLE: I do not think she is correct.

1496 MR ALLAN: How many wanditu are there in the manyatta? — A. We four only.

1497.Q. At these Mbaringoi dances that you have at your manyatta there are always these five and the four wanditu, and that is all? — A. Yes.

1498 MR JUSTICE GAMBLE: Just nine of you? — A. Yes.

1499 MR ALLAN: If there are no other women in the manyatta why did you say at Kumrui that it was only the five accused who were present?

MR JUSTICE GAMBLE: It is an awfully difficult question to get over.

MR ALLAN: I did understand there were quite a considerable number of people in this manyatta, and if this Kharingoi dance was danced and this song sung the moran were entitled to attend and this song was heard. That is what I am trying to get at.

MR JUSTICE GAMBLE: How would that affect the case?

MR ALLAN: It would affect the case so far as this tremendous secrecy which the elders say .....

MR JUSTICE GAMBLE: I don't think it was so secret as the elders would have you believe.

1500 MR ALLAN: After the return from this safari how many days was it before you held the dance? — A. The following morning we started to sing.

1501.Q. And you kept on singing all day? — A. Yes; we did not start singing in the morning, we sang singing in the afternoon.

MR JUSTICE GAMBLE: Even ourselves with our civilisation ..... Could you remember if you danced three years ago on a certain night?

MR ALLAN: I certainly could not. It is a remarkable thing about the depositions, what wonderful memories they have.

1502.Q. Did you know about the death of the European before you saw the aeroplane or afterwards? — A. I do not remember.

1503.Q. Is that the first time you had seen an aeroplane? — A. Yes.

1504.Q. Did you ask anybody any questions about it? — A. I did not enquire.

MR WALLACE: No re-examination.

1505 MR JUSTICE GAMBLE: When Lesoibe told you that the European was on a horse did he say to was speared on a horse or how? — A. He did not tell me and I did not ask him.

MR ALLAN: Your Honour, I omitted to ask a question. This is the girl who saw Mr Elliott and Mr Elliott said he took a statement from her. Would Your Honour be good enough to ask her?

1506 MR JUSTICE GAMBLE: Did you make a statement to the Bruno Police?

MR WALLACE: He was not in uniform, Your Honour. I don't know whether she will understand.

MR JUSTICE GAMBLE: It seems to me a matter of no importance so far as I can see.

(His Honour read over his notes which were found correct and the witness then withdrew).

THE COURT ADJOURNED TO 9-30 a.m. ON THE 30th NOVEMBER, 1934.

30th NOVEMBER, 1934. 1-50 p.m.

LABASSI D/O LOGULWA affirmed:

EXAMINED BY MR WALLACE.

1507 MR WALLACE: Do you know these five people here? — A. Yes.

1508.Q. Do you know Logobon? — A. Yes.

1509.Q. Semango? — A. Yes.

1510.Q. The Lolbos? — A. Yes.

1511.Q. What is his name? — A. Lichuma.

1512.Q. Do they all live in the same compotta as you? — A. Yes.

1513.Q. Do you know accused No. 5 well? — A. Yes.

1514.Q. Was he your lover? — A. Yes.

1515 MR JUSTICE GAMBLE: Was or is? — A. He is still my lover.

1516 MR WALLACE: Do you remember about three years ago the five came coming back from safari? — A. Yes. I don't know how many moons ago.

1517.Q. Did you have a conversation with your lover soon after that? — A. Yes.

1518.Q. Tell His Honour all about it. — A. He said that Lirono and No. 4 had killed a European.

1519.Q. Did he say where? — A. At Il Pingnan.

MR JUSTICE GAMBLE: Is that evidence against these two? — MR WALLACE: A. I don't suppose it is, Your Honour.

MR JUSTICE GAMBLE: What is the value of it at all then? So long as it is clearly understood that what he said about four and five accused is not evidence against them unless he incriminates himself equally, and according to the deposition he has not done so. According to the deposition he said Nos. 4 and 5 had killed, but that he was present. That is not incriminating himself.

MR WALLACE: If Your Honour pleases.

1520.Q. Do you know anything more about it? — A. No; I was only told that.

1521.Q. Do you know a dance called the Mbaringol? — A. Yes.

1522.Q. They sing at this dance, do they not? — A. Yes; with the corah.

1523.Q. After No. 3 told you about this was the Mbaringol sung? — A. It had been sung before.

1524.Q. Was it sung after you heard this? — A. It was sung about a European afterwards, but formerly it was not sung.

1525.Q. What was going about the European afterwards? — A. Vultures came down at Il Pingnan and had eaten a European respected in Nairobi.

1526.Q. Who was present at the dance? — A. All the accused.

1527 MR JUSTICE GAMBLE: No other woman? — A. Yes.

1528.Q. How many girls? — A. Four.

1529 MR WALLACE: Who were they? — A. Myself, Nechoria, Kditoxna, and Kdagaroo.

1530.Q. Were you praising the five women? — A.

MR JUSTICE GAMBLE: That is rather leading.

CROSS-EXAMINED BY MR ALLAN.

1531 MR ALLAN: How many women live in your manyatta? — A. Only the five accused.

1532.Q. How many wanditu? — A. Four, including two neighbours.

1533.Q. Are they in the same manyatta?

MR JUSTICE GAMBLE: I think the interpretation is going entirely wrong there.

1534.Q. How many girls live in the manyatta? — A. Three.

1535.Q. And one girl lives there? — A. In another manyatta near ours.

1536 MR ALLAN: Are these manyattas in the one boma?

MR JUSTICE GAMBLE: You cannot have more than one manyatta in a boma. Manyatta and boma for the purpose of the Samburu are the same thing.

MR ALLAN: Your Honour indicated that there were probably 50 or 60 in one manyatta.

MR JUSTICE GAMBLE: Samburu manyattas are portable houses built of sticks inside the manyatta. There are no bomas so called.

1537 MR ALLAN: How many people altogether live in the manyatta? — A. Many; I don't know how many.

1538.Q. The dance took place in the manyatta? — A. Yes.

1539 MR JUSTICE GAMBLE: Inside the fence? — A. Yes.

1540 MR ALLAN: When the five accused and the four wanditu were holding this dance did other people come and look on? — A. Old men do not come and married women do not come. Only the moran and wanditu.

1541 MR JUSTICE GAMBLE: The dance consisted of nine people only? — A. Yes.

1542 MR ALLAN: Do you know what an aeroplane is? — A. I saw it one day.

1543.Q. When? — A. During those days.

1564.Q. Can you remember whether it was before or after the dance that you saw it? — A. Before the ngoma (dance) was sung.

1565.Q. You say you attended this Mbaringoi dance before and after. What do they usually sing about at the Mbaringoi dance? — A. Cattle belonging to the moran.

1566.Q. Anything else do they sing about? — A. Only cattle.

1567.Q. You have never heard them except at this one dance sing about anything else except cattle? — A. Only cattle.

1568.Q. You have said you know Logoboon. Have you ever talked to him about this before you came here? — A. No.

1569.Q. Do you know Kiberengi? — A. I know him when we are prosecuted or judged by one bwana. I know him.

1570.Q. Do you remember two Europeans coming to ask about this? — A. Yes, I saw.

1571 MR JUSTICE GAMBLE: Did they question you? — A. Yes.

MR JUSTICE GAMBLE: This must have been quite recently.

ALLAN:

1572 MR WALLACE: What did you tell them then? — A. I did not tell them anything.

1573 MR JUSTICE GAMBLE: You did what you knew? — A. Yes.

ALLAN:

1574 MR WALLACE: Why did you do that? — A. That that time Logoboon was the headman and he refused to say anything so we refused.

1575.Q. It was Logoboon who told you not to say anything? — A. No. He did not tell us that, but we did not hear Logoboon being called.

MR JUSTICE GAMBLE: What she means is that until the headman disclosed the facts they were not going to disclose the facts. That is what I understand.

ALLAN:

1576 MR WALLACE: Did Logoboon say that he was not going to say anything and therefore you should say nothing? — A. Yes.

MR WALLACE: No re-examination, Your Honour.

(His Honour read over his notes which were found correct and the witness then withdrew).

EDITOBAS D/O LOKOBOLA affirmed:

EXAMINED BY MR WALLACE.

1577 MR WALLACE: Do you know these five people over there? — A. Yes.

1578.Q. Do you know Logoboon? — A. Yes.

1579.Q. And the Loibon? — A. Yes.

1580 MR JUSTICE GAMBLE: What is his name? — A. Lindume.

1581 MR WALLACE: Do you all live in the same manyatta? — A. No.

1582.Q. You live in a different manyatta from them? — A. Not near.

1583.Q. How far away? — A. Roughly a day's march.

1584.Q. Did you ever see an aeroplane a long time ago? — A. I do not know.

1585.Q. Lirono is a lover of yours? — A. Yes.

1586.Q. Did you ever hear about this shauri about a European being killed? — A. Yes.

1587.Q. Who told you about that? — A. Lirono.

1588.Q. What did he tell you? — A. "I killed a European with No. 6".

1589.Q. Did he say how many were in the party? — A. He said their were five. He named their names.

1590.Q. Who were they? — A. The five accused.

1591.Q. Did he tell you any more about it? — A. No.

1592 MR JUSTICE GAMBLE: Did he tell you where it was? — A. At Il Pinguan.

1593.Q. Did he tell you how it was done? — A. No; he did not explain how they had killed.

1594 MR WALLACE: Since you had that conversation with Lirono have you ever attended the Mbaringoi? — A. I have not heard the Mbaringoi sung because I do not live near them.

CROSS-EXAMINED BY MR ALLAN.

1595 MR ALLAN: What Mbaringoi have you not heard sung? — A. I know the first Mbaringoi. I only know the old Mbaringoi.

MR JUSTICE GAMBLE: That is only hearsay. If she has not attended the Mbaringoi about the European shauri could only have been told about it.

1596 MR ALLAN: Did No. 5 accused come to your manyatta every night? — A. He does not come every night. He comes sometimes.

1597.Q. Do you mean not or then, when he told you this? — A. Whenever he felt like it.

1598.Q. You said in the lower Court that you have not seen No. 5 at a dance since he told you about this? — A. I have not seen him.

1599.Q. Did you hear about the killing of a European before Lirono told you? — A. No.

1600.Q. Did the people in your manyatta know about the European being killed? — A. No, they did not hear.

1601.Q. Before Lirono toldyou about this had he been away? This is said to be a day's march off, Your Honour, and if Lirono was there ..... There is nothing to identify the date with this witness. It might have been

[illegible]

a week or a month after, and I am trying to get from this witness when she first heard the news. She says she heard it first from Lirono. She now says she did not hear it in the village.

MR JUSTICE GAMBLE: But what is she going to date the news from?

MR ALLAN: I was trying to fix it by whether the news had ever got to the village.

MR JUSTICE GAMBLE: She said it did not.

1602 MR ALLAN: Do you know Logoben? — A. I know him. He is a Loroglum elder.

1603.Q. Did he ever come to your manyatta? — A. No.

1604 MR JUSTICE GAMBLE: Are you Loroglum? — A. Yes.

1605 MR ALLAN: Have you ever spoken to Logoben about this? — A. No.

MR WALLACE: No re-examination.

(His Honour read over his notes which were found correct and the witness then withdrew).

H.P.A.G.A.R.O.O. D/O L.U.G.O.L.U.A affirmed:

EXAMINED BY MR WALLACE.

1607 MR WALLACE: Do you know these five people here? — A. Yes.

1608.Q. Logoben? — A. Yes.

1608.Q. The Laibon? — A. Yes.

1609.Q. What is his name? — A. Lieduma.

1610.Q. Do you all live in the same manyatta? — A. Yes.

1611.Q. Did you see an aeroplane a long time ago? — A. Yes; a long time ago.

1612.Q. At that time were you No. 1 accused's lover? — A. Yes.

1613.Q. Do you remember having a conversation with him about that time? — A. I was not at home when I saw the aeroplane.

1614.Q. Where were you? — A. The accused was not at home.

1615.Q. How long had he left before you saw the aeroplane? — A. He was away for a day. He had been away for a day.

1616.Q. Have you heard about this shauri about the European that happened about that time? A European was killed? — A. Yes.

1617.Q. Who told you about it? — A. Laduma.

1618 MR JUSTICE GAMBLE: The Laibon? — A. Bori Laduma, the first accused.

1619 MR WALLACE: Did he tell you about it before you saw the aeroplane or afterwards? — A. After I saw the aeroplane.

1620.Q. What did he tell you?

MR JUSTICE GAMBLE: There again, Mr Wallace, he does not incriminate himself equally with the remainder.

MR WALLACE: I respectfully agree, it is not evidence against the rest. It is evidence against himself only.

1621.Q. What did he tell you? — A. "We found someone and two persons killed him, Lirono and Loseiba. He was a European".

1622 MR JUSTICE GAMBLE: Who is "we"? — A. All the five accused.

1623 MR WALLACE: How do you know that? Did he tell you? — A. Yes.

1624.Q. Did he say how the European was killed and where they killed him? — A. That Lirono and Loseiba stabbed him at the same time.

1625 MR JUSTICE GAMBLE: In what part of the country? — A. At Il Pingnan.

MR JUSTICE GAMBLE: This will only be evidence against the first accused.

MR WALLACE: If Your Honour pleases.

1626.Q. Did he tell you whether the European was alone or with other people or what? — A. He was alone.

1627.Q. Was he driving a motor-car or walking, or what? — A. He was on a horse.

CROSS-EXAMINED BY MR ALLAN.

1628 MR ALLAN: Had No. 1 accused been away from the manyatta before the aeroplane came?

MR JUSTICE GAMBLE: She said so.

1629 MR ALLAN: Was it the day the aeroplane came that No. 1 accused was away?

MR JUSTICE GAMBLE: I attach no importance to these days after an interval of three years. It is quite impossible to tie a witness down after three years.

MR ALLAN: Your Honour, they have spoken to days .....

MR JUSTICE GAMBLE: This witness did not. You can ask the question but I cannot attach a great deal of importance to time after such a long period.

1630 MR ALLAN: The day before you saw the aeroplane did No. 1 stay with you? — A. Yes.

1631.Q. And you are quite sure that it was after you had seen the aeroplane that No. 1 accused gave you this information? — A. Yes.

1632.Q. Was there a lot of talk in the manyatta about the aeroplane? — A. Yes.

1633.Q. Did you find out what the aeroplane was doing there? —

A. No; because we did not know what the aeroplane was there for.

1634.Q. How many women live in the manyatta? — A. These five only.

1635.Q. How many wenditu? — A. Four.

1636.Q. They are yourself, Kacharia, Lebassi. Who is the other one? — A. Nditosas's manyatta is near.

1637.Q. Nditosas has told us she lives a day's march off.

MR JUSTICE GAMBLE (to Interpreter): You want to be careful there. A saburu does not regard a day's march as whole sana (i.e. a very long way).

WITNESS: Two hours march.

1638 MR JUSTICE GAMBLE: Saburu manyattas are constantly moving in search of grass. Are you talking of three years ago or now? — A. Two hours.

1639 MR ALLAN: Do you remember two Europeans coming to the manyatta about that time? — A. Yes.

MR JUSTICE GAMBLE: When was this, Mr Allan?

MR ALLAN: After seeing the aeroplane.

1640.Q. Did they ask you anything? — A. Yes.

1641.Q. What were the Europeans asking you questions about? — A. They were asking us about this European you are asking us now.

1642 MR JUSTICE GAMBLE: About the European who was killed? — A. Yes.

1643 MR ALLAN: And did you tell them anything? — A. I did not tell him because I was not prosecuted.

1644 MR JUSTICE GAMBLE: Did you hide what you knew? — A. I did not tell them.

1645 MR ALLAN: Why are you telling this today and you did not tell the Europeans then? — A. Because our headman had not spoken, and now he has.

1646 MR JUSTICE GAMBLE: Logoboo? — A. He was headman then.

1647 MR ALLAN: Did Logoboo know that you knew about this? — A. I do not know.

1648.Q. Did Logoboo tell you not to say anything? — A. Yes; at the time he told us not to say anything.

1649.Q. And Logoboo has told you .....

MR JUSTICE GAMBLE: You must not put the words into her mouth.

1650 MR WALLACE: This is all hearsay.

MR JUSTICE GAMBLE: You have had Logoboo in the witness-box and you did not ask him about this.

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