

1925

KENYA

C.O.
12487

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DATE

5 February/25

17 MAR 25

Administration of Justice

Comments on case *Dea v Abraham* and has a typed copy of the Judge's note. Discusses question of change of venue, and does not consider legislation is called for

Previous Paper

Lyn 10376

MINUTES

Please see also the incomplete minutes on 10376.

The Governor does not send us the actual minutes by the Chief Justice and the Attorney General. We may assume they contain passages unsuitable for the eyes of the Secretary of State. ~~As~~ As quoted at the end of paragraph 3 of the despatch, the Chief Justice appears to have indulged in a strong protest against ~~the~~ suggestion which has never been made from here.

I do not comment on the legal points raised, but on the question of change of venue it may be remarked that, if they had passed the legislation, now said to be necessary for the purpose, when they got Mr. Harcourt's despatch in 1913 (see paragraph 1 of our confidential despatch of 20th December 1923 on 55363/25), there

would

Subsequent Paper

M. 26060

ould have been no trouble or certainly less than now.
I would, I think, be inconvenient to have all jury trials
in Nairobi, and if this is really the only way out I think
the matter must be left over for the present.

As regards the Judge's notes of evidence I must
leave this to Mr. Justice. It is difficult to reconcile
the opinion of the Judge that the primary cause of
the disturbance was that just before ^{the} beating
(before death) two men were unable to hold the
verdict and
impression remains that the sentence must
be for by the local view that the situation
is a necessary one, though I doubt
of his employment.
The points raised in our despatches arising
in this case, I think, have been answered.
(On separate papers) is still proceeding
on of unauthorised whipping by employers
in our despatch of the 27th of January on

*There is some report on some
regulation of bringing in doctors
a up to date on post molar work
D.
within 11607/24, where it
needed to put the report with
on some speciality. There is no more file
has done. I am only after that
on the arrival of 21323 I got right of it.
It should be done now
6/25 26.3.25*

The illustration in the Indian Code, to which
the Chief Justice refers, deals with murder. We
have never suggested to Kenya that the verdict in this
case ought to have been one of murder. (Curiously
enough I saw some papers only the other day from the
Gold Coast where there was a verdict of murder in
respect of a flogging less severe than this.)

I have nothing whatever to withdraw, and I
adhere to everything I have said about this case.

If we are going to have an English Criminal
Law in Kenya I agree, in view of what is said by the
governor and the Attorney General, that we might well
leave the question of venue alone for the present.

*with the
10/25/25
the 2/2/25*

1/11/25

R. B. Clarke

*I think we can refer ourselves
to meeting as suggested about the Post Molar work.*

Kony

25/3/25

The illustration in the Indian Code, to which the Chief Justice refers us, deals with murder. We have never suggested to Kenya that the verdict in this case ought to have been one of murder. (Curiously enough I saw some papers only the other day from the Gold Coast ^{by Nigeria} where there was a verdict of murder in respect of a flogging less severe than this.)

I have nothing whatever to withdraw, and I adhere to everything I have said about this case.

If we are going to have an English Criminal Law in Kenya I agree, in view of what is said by the Governor and the Attorney General, that we might well leave the question of vengeance alone for the present.

... (and the ... to ... the ...)

1/11/52

As B...

I think we can ...

to ... as suggested about the ...

*W.D.
May 21/52*

Kenny

KENYA.

No. 152.



93 J.

GOVERNMENT HOUSE,
NAIROBI,
KENYA.

5th February, 1925.

Sir,

Gov. 2152/24
I have the honour to acknowledge the receipt of Mr. Thomas' despatch No. 762, of July 18th, 1924, dealing with certain questions relative to the administration of justice in Kenya, which have arisen out of the case of Rex versus Jasper Abraham.

2. I have referred that, ^{despatch} and previous despatches on the subject, to the Chief Justice, who does not think that any useful purpose would be served by further reiteration of the point of view of the Judges who tried the cases referred to. In the case of Rex versus Abraham the Chief Justice agrees that the Jury might have brought in a verdict of culpable homicide not amounting to murder, but it appears to him that their minds were influenced by the fact that, if they did so, they would have to find that the accused had the intention of causing such bodily injuries as would be likely to cause death, or that he had the knowledge that he would be likely, by his acts, to cause death. The latter alternative is, in his view, negatived. The jury's view in the former was, no doubt influenced by the expert medical evidence for the defence.

3. After reading the evidence, the Chief Justice is certainly not of the opinion that the jury's verdict was in the slightest degree perverse. The verdict which Mr. Thomas describes as "very mild" was one of guilty of

an -

RIGHT HONOURABLE
LIEUTENANT COLONEL

L. C. E. S. AMERY, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S. W.

an offence for which the accused could have been sentenced ⁵ ~~to~~ seven years' rigorous imprisonment. In regard to the sentence imposed, the Chief Justice remarks that he might, if he had tried the case himself, have given a more severe sentence, but he adds that he thinks it is a great mistake for the Executive to endeavour to interfere in any way with the administration of justice in suggesting the length of sentence that should be given, and he protests most strongly against the suggestion that justice is not impartially administered between the black and white races, or indeed between any races and persons.

4. With reference to paragraph 4 of the despatch under reference, I have the honour to invite your attention to the provisions of illustration (b) to Section 300 of the Indian Penal Code. I am advised by the Chief Justice that the statement of law contained in that illustration qualifies the provisions of explanations in 1, Section 299.

5. I welcome Mr. Thomas' decision conveyed in paragraph 5 of his despatch, in respect of full shorthand reports. I am transmitting with this despatch, in accordance with his request, a typed copy of the Judges' notes of the evidence in the case now under consideration.

6. With reference to the instructions as to the venue of trials of this nature, the Chief Justice has pointed out that it is, in his opinion, impossible for the Court on its own initiative to fix trials at places inconvenient to the witnesses, in many cases to the accused's advocate, and to itself: further in the Chief Justice's view the Court must have some ground for so acting other than the chance that a jury drawn from the neighbourhood in which the crime was committed might be prejudiced. The principle applicable to the venue of Criminal trials prevailing at home should in

the opinion of the Chief Justice be adhered to in Kenya. He considers that the only satisfactory way of conforming with the spirit of your predecessor's instructions is by definite legislation fixing the venue of all trials by jury at Nairobi, although in principle he does not agree with such a course which has very obvious drawbacks. At the same time, as you will observe from the memorandum by the Attorney General which accompanied a separate despatch forwarding a letter addressed to you by the Kenya Law Society, a recent application by him for a change of venue was refused on the ground that no such order would be made without affidavits that a fair trial could not otherwise be secured. It appears, therefore, that legislation must be introduced to secure the object of your predecessor, but I would again deprecate such action which must inevitably arouse the resentment of the European Community. I trust that in view of these difficulties, you will be disposed to reconsider the instruction and to accept the assurance that the Attorney General will watch cases of this nature carefully and will apply for a change of venue when in his opinion the interests of justice demand.

The Attorney General, however, suggests that the Court was wrong in refusing a change of venue when applied for by the Crown. The English law on ^{the} subject is that the Attorney General is entitled to demand a trial at Bar as of right where the Crown is interested. If he waives the right he is entitled to have the venue changed to any county in which he elects to have the cause tried. (7 Halsbury paragraph 121). By the Kenya Colony Order-in-Council, 1921, the substance of the common law and statutes of general application in force in England is the law here and the

Attorney

Attorney General is of opinion that the principles enunciated in Section 46 of the Crown Suits Act, 1865, apply here. The view now expressed by the Attorney General was not, however, argued fully before the Court on the hearing of the application referred to by him and has, therefore, not been considered by it.

As the Court refused to entertain an application by the Crown for a change of venue it may be thought desirable that legislation should be introduced empowering the Attorney General to demand a change of venue, and it is suggested that if legislation is introduced - though I do not consider that such is necessary at the present time - it should take this form. It should be added that in a subsequent application by the Crown for a change of venue in the same case the application was granted with the consent of the defence.

I have the honour to be,

Sir,

Your most obedient, humble servant,

A. G. G. G.

G O V E R N O R .

*The Hon. Secy to the Govt. of India
Sir Robert G. G. G.*

IN HIS MAJESTY'S SUPREME COURT OF KENYA SITTINGS HELD
AT NAKURU.

Criminal Case No. 73 of 1923.

Hex.....Prosecuter.

versus

- 1. Jasper Abraham
 - 2. Kimesu arap Killel
 - 3. Chema arap Chebule
 - 4. Bariche arap Chumia.
- }.....Accused.

1. 8. 23.

At Nakuru at 8. 55 a.m.

Surety discharged - European Accused has appeared.

3 Native accused present.

Law Solicitor General for Crown.

Hopley for all 4 accused.

Ishmael Ithongo Swahili Interpreter.

Hopley says affair was entirely one transaction.

Jasper Abraham charged under Section 302/114

1st, 2nd and 3rd parts of Section 300.

Abraham pleads not guilty to all 3 counts.

Next charged with having caused death under S. 304 without the intention of causing death or bodily injury sufficient in the ordinary course of nature to cause death but in circumstances that you as a reasonable man must have known that death would be a likely result.

Plea Not guilty.

Next charged with grievous hurt Section 325.

Plea Not guilty.

Next charged with hurt Section 323.

Plea guilty:

2. Juma arap Boren affirmed Lumbwa - Swahili.

Kimesu arap Killel

Section 302 - Plea not guilty

Section 304 - Plea not guilty

Section 325 - Plea not guilty

Section 323 - Plea not guilty.

Chuma arap Chebule pleads not guilty to all charges.

Barichi arap Chumia pleads not guilty to all 4 charges.

(Charges explained to accused who pleaded no guilty in their own words on the advice of their Counsel).

Jury Chosen.

Frederick Dallas Boyce

Angus Alexander Lawrie

Gerald Carew Sladen

Lancelot Robert Walkden

William Henry Gurrson

Harold Tawry Ward

Charles Tennyson Craserwick

William Evans

Nicolas Jacobus Van Rusbough.

Gerald Carew Sladen chosen as foreman.

Jury sworn.

9.30 - 9.45.

Solicitor General opens.

KIBRONO ARAP KIBON, affirmed:-

Herd boy for 1st accused. (Recently about 1½ months ago) at the 1st accused's I was called by 1st accused on a Sunday to hold a man, Kitosh arap Chebule, Arap Chuma, and Arap Killel were also called to hold the man. Those three were called to hold Kitosh ^{down} down. He was to be held to receive some beating as he had ridden a horse without permission. Kitosh was wearing a red blanket - nothing else. He was wearing the blanket when he was held down. He was beaten by 1st accused. He beat him with a reim, Exhibit 1 - holding the knotted end in his hand and beating with the looped end. 5 men were holding him ~~st~~ down:- Arap Chebule, Arap Chuma, Arap Killel, Arap Chemek and myself. The 1st accused beat him until he was tired. He started beating him at 6 p. m. and stopped about 8 p.m. I did not

count the number of times, as I was shivering - thinking the man was going to be killed. Before the deceased fainted Arap Killel had also beaten him. Arap Killel beat him for a short time - not more than 4 strokes I saw 4 strokes given by him. Then 1st accused asked Arap Chuma to beat Kitoah. He gave 4 strokes also. After this Arap Chuma said to the 1st accused that the man was going to die and asked him not to beat him any more. Then 1st accused said that that was his shauri. The 1st accused then asked arap Chebule to beat him. Arap Chebule did not beat him much, as he does not know how to beat. He gave him 3 strokes. Then Kitoah fainted and 1st accused asked for water to be brought. 7 pails were brought. Myself Arap Killel and arap Sugha brought ^{the} water. The 1st accused ^{recovered} poured the water on Kitoah. Kitoah then ~~recovered~~ regained consciousness. After this he was tied with a rope round his wrists and leg and taken to the store. The ropes were

Ex. 2. like Exhibit 2. He was able to walk to the store and he was being held up by Arap Chebule, Arap Killel and Arap Chuma. They were holding the straps by which he was tied, the 1st accused told them to do this, one was holding the rope round his legs and 2 others by the ropes on his hands. When Kitoah recovered consciousness the 1st accused asked him to get up and he was unable to get up, so he was lifted up by the 3 natives accused and myself. The store to which he was brought is about 60 yards from the scene of the beating. He was able to walk well. (the witness describes him as walking slowly) I did not go to the store. I returned when I was close to the Bwana's house. This is all I know.

XXn. The Bwana had been sick in bed for 4 days before this happened and Bwana Muke had been giving orders and keeping the Kanyakanyakeya. The Bwana was walking like a sick man with Exhibit A. the day of ^{the} beating. I was outside the door of the cattle boma when the Bwana directed Kitoah to be called. The Bwana was sitting on the stick Exhibit A.

Ex. A.

near the store. He walks with Exhibit A every day but this day very slowly.

I did not see the Bwana talking to Kitoah before the beating. I was milking. I did not see the Bwana push Kitoah into the store before the beating. The bwana did not tell the 3 native accused to stop beating. They beat only a little. The beating at the cattle shed was all across the buttocks. I heard the Bwana to tell them to beat him only over the buttocks. They, acting on his instructions, beat him only over the buttocks. While arap Chebule was not beating Kitoah the latter fainted. Arap Chebule was not beating him hard. Between every one or 2 strokes the Bwana asked Kitoah who gave him permission to ride his horse. Kitoah did'nt reply but was meaning. Sometime the Bwana dropped the rein waiting for the deceased's reply. In the intervals of throwing on water on the deceased the Bwana would ask "who gave you permission to ride my horse". Kitoah would not reply, but would shake his head. The water was brought before he was tied. The reins were tied after water was poured on him when he recovered consciousness. When he was walking to the store, the reins were held loose (indicates how the reins were held - slackened) The Bwana said he must be tied, so that he could run away. It was quite dark when we moved off to the store. A kitchen boy brought a lamp. I followed until I was opposite the Bwana's house and then returned. The Bwana nearly broke the lamp - nearly fell on it; he was carrying the lamp in the left hand and Exhibit A in the right. He did not change this attitude on the way to the store. The Bwana was walking on the left of Kitoah who was on the left of the others.

I did not go into the store, I have told all I know. I cannot read a watch, but I can tell the hour by my brain.

I have been about one hour in the box (He has actually

been 1 1/2 hours) The beating lasted longer than I have been in this box. During the 3 months prior to the beating I worked for the Bwana. I saw him use Exhibit A. on the day of the beating he carried Exhibit A. as usual. I inferred his illness by reason of his absence. I knew he was at home sick. When Kitoah was shaking his head he was indicating that he refused to speak. When he recovered consciousness he was not asked anything. He shook his head at time before he fainted. He fainted before the water was brought. When the deceased was being taken to the store the Bwana kicked him and also punched him. He was kicked on the back of the head and punched in the small of the back - 2 kicks and 2 punches. Deceased was walking towards the store, fell down and the Bwana kicked him. The ground was slippery on account of rain.

Hepley
by
ission)

The deceased was lying on his left side when the Bwana kicked him. It was sometime before, that the Bwana fell - some 12 paces earlier. Both punches were on the point of the right hip. I did not tell the Magistrate the blows were in the ribs. The deceased got up himself after falling when he was kicked & punched only the reins were held. The reins were not held tight. He got up himself and was not being held up by any one while he was being kicked or punched. The kicking was first and the punching after. The hitting was with the right hand - the hand in which he carried Exhibit A. When hitting him he held the stick and lamp in one hand. The Bwana was wearing yellow boots.

Court.

When Kitoah was being beaten the blanket was removed from the buttocks - pulled ^{up} to the waist. Kitoah lying face downwards.

Read over correct.

Sd/- Joseph Sheridan.

12.15.

Adjourned to 1.30 p.m.
Resumed 1.30 p.m.

Sd/- Joseph Sheridan.

KIBOR ARAP CHEWOK, affirmed:-

Handi, Herd boy for 1st accused. 2 years and 8 months in his employ. I know Kitoah: he is dead. The 1st accused killed him on a Sunday 2 months ago. He was beaten with a rope doubled. My master called me before Kitoah was beaten - to hold Kitoah. Kitoah was already locked in the maize store. When I was called my master was standing in the doorway of the store and Kitoah was leaning against something ⁱⁿ against the store. When my master asked me to hold Kitoah, I held him with one hand. Then the 1st accused called arap Chebule. When he came 1st accused asked Chebule to ask Kitoah who gave him permission to ride the horse. Kitoah did not reply. My master said "lay him down and I will give him some kiboko". He asked me and arap Chebule. We could not lay him down as he was too strong while he was in the maize store. Then Arap Chuma was called by 1st accused. We three took Kitoah outside. We laid him down and the 1st accused told us to hold him fast, as he wanted to beat him. 4 of us held him down. Arap Box held him with us. Arap Chuma was there also - Also Arap Chebule and a witness now outside. Arap Killel came afterwards. After the Bwana had beaten the deceased and got tired he called arap Killel. The Bwana beat deceased with Exhibit 1. I recognise it because it was very hard and became soft with the beating. I saw the beating by the Bwana for a long time. I do not know how many strokes deceased received. He was beaten until we were afraid. The Bwana after beating him called arap Killel and he was asked to beat Kitoah. He complied. I did not count the strokes. Our state of mind - from fear was such as to prevent out counting. I look after 50 cattle. I know there are 5 tens in 50. Deceased received 25 from the Bwana on one buttock and 25 on the other. After counting that far I was afraid to count more.

I turned my head away then. The beating continued. The Bwana continued beating deceased till Bwana Mike came. The Bwana continued beating after I had counted 50 and afterward he called arap Killel. I did not care to look when arap Killel was beating. When Arap Killel was tired 1st accused called arap Chuma. Arap Chuma beat him. I do not know how many strokes the native gave. 1st accused also called arap Chebule: he was called to beat and he did. When arap Chebule was beating the deceased, the deceased fainted and the 1st accused asked Kibrono to bring water. One large pail was brought and thrown on him and he recovered. Then I left. I do not know how many pails were brought. I left with arap Killel when the first pail was brought. Before the deceased fainted I observed the condition of the deceased.

Prior to this Sunday the Bwana was sick. I had finished milking and was going to ask my master what part of a dead cow I could have for meat when I was called. I didn't see him sitting on Exhibit A. Kitosh had not yet come. After I spoke to 1st accused about the cow. I stretched the hide of the cow, Kitosh went to get some fire and while on his way the 1st accused called him, and spoke to him. I saw 1st accused push Kitosh into the store. The door at first was shut, the Bwana opened it with one hand and pushed Kitosh inside. I don't know how many times Arap Killel beat deceased, as I was looking away. Arap Killel gave only a few blows. Before he beat him much, 1st accused told him to leave it and then called another. Arap Chuma also gave a few blows, was told to leave it and arap Chebule was called. He beat a little and then deceased fainted. I do not know how many blows he gave. I remember appearing before the Magistrate. I told him the truth. I told him I couldn't count. (Witness shows that he can count by counting the bars of box). I told the Magistrate Killel got tired beating him and that Arap Chuma beat him a little and then got tired. I was looking

behind when arap Shuma beat deceased. We were much afraid. I knew when the different natives were beating. I did not try to count. Everybody who beat Kitesh beat him across the buttocks - until his flesh was cut. The 3 native accused were instructed to beat on the buttocks only and they did so. I was holding the deceased's right hand. The blows were punctuated with questions as to who had given permission to ride the horse. Kitesh did not reply. The Bwana spoke in Ki-Swahili. I was not sent for water. When water was poured over him and he recovered his senses he was asked who gave him permission to ride the horse. I went away with arap Killel. I don't know if any more water was brought. When Bwana Mike came 1st accused stopped beating and on ^{Bwana} Mike's departure resumed. It was not yet dark when Bwana Mike left. It was getting dark. I left shortly after Bwana Mike left.

When the beating started it was nearly 6 p. m. It was not yet sunset. The sun had set when the water was poured on deceased. One could see about 100 yards.

I can't tell how long I have been in the witness box.

Read over correct.

Sd/- Joseph Sheridan.

KEMBYEGERI ARAP CHEPKOROR, affirmed:-

Lumbwa. Kitchen toto to 1st accused. I know Kitesh: he is dead. 1st accused beat him on a Sunday. I had completed one month at the time of beating. The beating was about a month ago. I saw the deceased being taken to the store at 8 p. m. He was ^{taken} there by the 3 native accused. He was led slowly to the store. 2 were holding him on either shoulder by and one held him by a rope round the wrists like a man who is handcuffed. He went into the store, ~~tried~~ tried to sit down, but 1st accused told him to stand. He could not stand and was lifted up by the 3 native accused. He rocked from side to side and if he staggered against the Bwana, the

Bwana made him go ~~back~~ with his fist. His hands were tied behind his ~~back~~ back when I went away. The 3 native accused had untied his hands in front and tied ^{them} behind. When I left him he was sitting down. After I got back to the kitchen the 1st accused called me and the cook Sefu. The Bwana, myself and Sefu got back to the store and found him untied and sitting on the ground. Sefu suggested the deceased had not been tied tightly enough and the Bwana said he had given instructions not to tie him too tightly. Then the Bwana put the deceased's hands behind him and tied ~~them~~ tightly. The Bwana told us to go and cook our food and ~~to~~ guard the deceased, so that he might not run away. We cooked our food and returned to guard. The deceased was alone when we arrived. It was 9 p.m. when we returned to guard. The store was locked with a padlock during the time we were away at our food. The Bwana came and opened it. We fastened the door inside, and sat down. The deceased was making noise ^{and} at 3 a.m. loosened the rope on his leg. After he ~~had~~ died the Bwana gave me a letter to take to the station and told me it was 4 a.m., so I knew deceased died at 5 a.m. The deceased was lying on the ground asleep but was crying in his sleep. The deceased did not speak at all nor did I speak to him. He was crying the whole night. at 3 a.m. he lay on his side against a sack at nearly 4 a.m. he said " I am dead, I am dead" and died.

Sefu spoke to deceased but I did not hear the reply. Nearing 4 a.m. he spoke to Sefu and died. I said before the deceased did not speak as I could not catch ^{the} reply to Sefu. The 1st accused was sick prior to the Sunday for 4 days in bed. Kitosh was in the centre and sefu and myself on either side. I did not hear first-accused telling the other 3 to tie deceased, so that he might not run away. Sefu told my master the deceased had untied himself 1st

accused said I told him not to tie him too tight. I did not hear the rattling of bottles in the store before the Bwana retired him. I saw Sefu run to the Store. I don't know why he ran. I saw Sefu standing at the windows-~~the~~ was before the re-tying. The Bwana opened the door and we all went in. The Store door had been locked prior to this and Kitosh only in the store. When we got in Kitosh was quite loose and sitting down and was the coat and bags on which the Bwana had put him were on the ground beside him. He was not covered. The Bwana tied him up then with hands behind his back. He tied him with his hands behind his back and further tied him to a post. I was in the kitchen and the Bwana near the store when he called me. I was behind the Bwana and Sefu going to the store. It was after the re-tying the Bwana told us to guard him. The deceased could not sit down, but could lie down. On his right he could come close to a bag ~~in~~ of maize. His hands were tied behind his back and then tied to a post behind. In front his right leg was tied with a rope which was fastened to a post in front. The master then locked the door and we went away to cook our food. Deceased loosened the rope on his right leg by working at it with his left leg. I saw him doing it and told Sefu and Sefu put the rope back again. I noticed deceased working with his left leg at 3 a.m. The Bwana had not tied the leg very tight. It was after Sefu had retied his leg that I noticed deceased working from side to side and saying "I am dying, I am dying". Sefu said who retying it if he didn't do so the Bwana might say he had allowed the deceased to escape. We had our blankets and were sitting down. Sometime we dropped off asleep. When we saw he had died Sefu ~~had~~ untied both ropes and I went to inform the Bwana. The Bwana sent me with a note and said it was there a.m. in the store as the deceased swayed to and fro

and came in contact with the Bwana he knocked his back with the fist of his hand. People were holding him. I did not hear the Bwana say not to tie the deceased too tight. I did not say before the Magistrate that I heard this. At 4 a.m. the Bwana told me to go as quickly as I could to Molo and to bring the letter back if the Police Officer was absent and not returning within a day or two. He said if the Police Officer was not there he would go on horseback to the station to catch the train for Nakuru.

There are 3 doors to the store. I don't know how many windows. There is only one outer door and it can be securely shut with a key. Some of the windows are rotten - bad-panes broken. There were two of us looking after the deceased. In his condition he could not have escaped had he been untied.

It was the Bwana who tied up the deceased for the night as I have already described with his hands tied behind his back to a post and his leg tied to a post in front. The Bwana himself tied him up. Behind he was so tied that his hands were clear of the ground and he was hanging on the rope. In front his leg was tied in such a manner that he could reach the knot with his other foot and work it off. (Witness Illustrates).

Read over correct.

Sd/- Joseph Sheridan.

6 p.m. accused remanded in custody.

Adjourned to 8.30 a.m.

Sd/- Joseph Sheridan.

2.8.23; 8.30.

Court and Bar as before.

SEFU BIN NATHAKOI, sworn:-

Mohammedan, House boy to 1st accused. I know Kitosh. He died on a Sunday about 1 month and 20 days ago. I saw

him die. My master called me and asked if I had finished my food and I said not and he told me when I had finished ~~taxes~~ to go to the store and guard Kitosh. This was at 8.30 p.m. I took my blanket and a lamp and went with the kitchen toto. I found Kitosh was bound. His hands were tied behind his back and his right leg tied. His right leg was tied to a post in front. His tied hands were tied to a post behind. - the hands resting on the ground (witness illustrates). First deceased asked me for some water I gave it to him. He told me he did ^{not} want food. ^{He was not given any food.} He was not offered food. I asked him why the Bwana had beaten him. He replied "the Bwana beat me because I had ridden his horse". He told me if I wanted to speak to him to shout, as he had been beaten much and ^{had} become deaf. About 1 a.m. he asked me to release his leg as he had been beaten much and could not run away. I released his leg. He told me about 2 a.m. that if he had a knife he could kill himself as he had been hurt much with a stick and was worried. I enquired where he felt the pain. He said his ribs hurt him much where he had been kicked with a boot and he did not know if the place was broken. About 4 a.m. he asked me to uncover him as he was sweating much. We felt cold, but he felt hot. I removed the bags down to his waist. About 4 a.m. he said "I want to die". He died at the same time. I sent the kitchen toto to tell the Bwana he was dead.

Before he died I loosened the rope tying his leg about 1 a.m. My master had been in bed for 4 or 5 days before the beating. While he was sick he could not move his hand. All that week he was lying in his bed with high pillows behind him. That week Bwana Mike used to do everything on the farm. Even on Sunday the Bwana had got up late - just in time to give out the posho. The Bwana had white clothes and tennis shoes on. My master told us to look after Kitosh as he thought he was going to run away. I went with arap Chepkorono

to the store. I remained at the window of the store. I saw Kitosh had entered himself and wanted to run through the window. It was not open but I saw bottles falling. These bottles were standing just at the window. It was the sound of the bottles rattling that called my attention to the window. My Bwana then came and went round to the door of the store. I called him and he went inside and tied deceased. The reims with which Kitosh had been tied were lying on the ground. They were lying at the place where he had been tied and Kitosh was at the window. He had been tied with 2 reims. I returned from the window and informed my master that Kitosh wanted to run away. Then I went into the store with the Bwana and Arap Chepkoron. I did not help in tying up Kitosh. I later saw how he was tied when I returned to guard him. I left my master tying up Kitosh. I handed the reims to my master. My master tied the reims to the post at the back of deceased. He asked me to pass the reims for the purpose. I left the store before the tying up was completed. The leg reim was not tied when I left. I did not hand him this reim.

Juror. The deceased did not resist the tying up.

PoWeman. The deceased referred to a fimbe and kick on the ribs.

contd. Arap Chepkoron was on guard with me all the time. He did not sleep. Arap Chepkoron and the deceased and myself were quite close. I shouted loudly to deceased as he asked (to me). We had a lamp with us. After Bwana had tied up Kitosh the (Kitosh) did not untie himself. I subsequently untied his leg. I did not tie him again that night - after the Bwana had tied him. Kitosh attempted to untie his leg and he said he did so as he had been hurt with a stick and could not run away. In attempting to untie it, the rope nearly came off. He

asked me to untie it and I did. I untied the leg and hands at 1 a.m. Kitosh had attempted to untie his leg with his left foot. I started untying his leg first and immediately after his hands. He died at 4 a.m. It was 3 hours before his death that I untied him. At first Arap Chepkoron did not sleep. I started to sleep at 10 p.m. and I awoke at 11 to take up my duty. We kept watch in turn - one slept while the other guarded. Before deceased died I called Arap Chepkoron. He was half-awake before the death. When Kitosh died he was already untied. I was present when the Bwana sent arap Chepkoron to the police. at 9. 30 Bwana asked me to ask Kitosh how he rode the horse and I asked him. He said he had told the Bwana he had ridden the horse but not stolen. I did not see the beating myself (to Court). The Bwana dines at adifferent hours when he has no guests. On this Sunday the Bwana was alone.

The Bwana didn't play tennis that day. He wears tennis shoes on Sundays. He does not work on Sundays. All Saturday he was in bed. On Sunday he got up at 8.30 a.m. He gave ^{out} posho and had not walk far. He used his stick to go round to the store. He used the stick on a/c of sickness. He had to use it as a stool.

Read over correct.

Sd/- Joseph Sheridan.

MICHAEL HUDSON ABRAHAM, sworn:-

Brother of 1st accused. I live at Molo about 1 mile from his place. I recollect the Sunday 10th June of the beating. I saw my brother early at 6.15 to 6.30 a.m. He was not up. I left about 6.45 a.m. the main part of the conversation was trying to keep him in bed that day I had the keys of ~~the~~ his store etc., He said he prepared to have them. I said I could easily do his boys his diary on my return from the station. I wanted to keep him in bed. He said he wanted to have them. I said he would probably

catch hold of a heavy sack of posho or cans or something and he said ^{NO} he would ~~not~~ get the boys to do it; so I gave him the keys. I don't think we had any other conversation then. I knew Kitosh. Before that morning I had spoken about Kitosh - the evening before and previously. On the 9th my brother said Poulton had been to see him that afternoon and had left about $\frac{1}{2}$ hour before my arrival. He said Poulton had said he had been riding to the station on Wednesday 6th with a friend and had seen my brother's mare zig-zagging and couldn't make it out. On getting nearer he noticed a native up on the mare - Kitosh. Before the Saturday afternoon my brother did not know of this incident. My brother was annoyed as no boy is allowed to ride a horse. Kitosh had been seen with a big stick in his hand on this ~~evening~~ occasion when riding. He said he would tear up the boy's ticket as a punishment. He did not appear to lose his head. He adopted no threatening gestures. Kitosh was not there on Saturday. He had gone to the station on an errand. On Sunday dusk I saw my brother again at his house. Powell was with me. My pony is stabled on my brother's farm. I rode up to his house. Round the corner of a shed I saw Kitosh lying down: he was already lying down - lying on his front with two boys in front holding his arms and 2 behind holding his legs. I knew 2 of the boys. Arap Chebule 3rd accused and the witness Arap Chemwok. He was being held down for being beaten. The beating was in process at the time of my arrival. It was dusk - dark enough for me not to be able to recognize 2 of the boys. My brother was beating Kitosh with Exhibit 1. Kitosh was not taking it quite quickly - making a dreadful noise. Kitosh was being asked all the time who had given permission to ride the mare and as soon as Kitosh would say alright Bwana I will tell you the rein was thrown down towards the store door. My brother was in possession of his reason, but was

annoyed at the boys defiance. He knew that he was doing. Kitosh was obstinate. The store door was about 6 or 7 paces away, from the place. The beating would have stopped if the boy had satisfied my brother by answering the question. I was there about 10 or 12 minutes. At intervals Kitosh was making the noise - whenever he got a stroke. At a guess I should say the boy got about 15 to 20 strokes while I was there. I was behind my brother. The strokes were not severe. Exhibit 1 was held from 9 ins to 1 ft: from the knotted end and Kitosh was struck with the looped end. My brother was standing up. My brother weighs 204 to 214 lbs. My brother is a strong man ordinarily. On this occasion he was not. He had been in bed since 6th to 10th suffering from, I thought, heart originally. I sent for a neighbour's wife who had training as a nurse to ascertain whether it was worth while sending for the Doctor. She said she thought it was not his heart but probably the muscles over the heart had been strained. I noticed this condition interfered with my brother's activities in beating the boy. On occasion I saw him twinge and scatch his sides. I think he would have struck border had he not had this twinging. On 11th at 5.45 p.m. my brother walked over to my place a distance of just over a mile to say the boy had died. He had his shooting stick with him. I never saw the body.

My brother had strained himself on 5th in lifting heavy machinery in the fall mill. Between the 5th and the 10th I saw my brother on different occasions and noticed it hurt even to move in bed or lift down a cup. The blows given by my brother were not such as to cut the skin. I might have seen the cuts had the skin been cut. My brother values this mare very much, and she was

believed to be in foal Kitosh was not a syce. While I was there in no sense could the beating be considered severe. I would be surprised if the beating I saw my brother give had out the skins (To Court) All the strokes were given over buttocks. Kitosh was being held down by his legs and hands - the legs being held apart as I have shown to the jury (To Court)

Had the beating been cruel I should have said something. I noticed on one occasion the boy wriggled over and my brother refrained from striking ^{but} he should injure him (to Court. My brotner was standing straight opposite the buttocks (to Court). I was very surprised when I heard the native had died. I never cut any natives rations while I was there. The lighting in the store is good - a window at each end - one on the far side and the near side 2 windows and a door in the middle. Exhibit B is a roughly accurate ground of store. Exhibit C is also a plan of the store - more elaborate. The reim that was used was an old reim - not a hard one - a cream can one it was. The milking usually finishes after 6 p.m. on my brother's farm - sometimes after 7. My brother keeps his rams and bulls in the store between 6.30 and 7 - the rams somewhat earlier. I did not see the rams and bulls about the store that day.

The beating was not cruel or severe. I should say that 6 with the kiboko given by me to a boy on another occasion but more than what I saw on this occasion. I did not hold my boy down when beaten. My brother beat Kitosh on both sides I should say he stepped over the boy for the purpose.

My brother was wearing tennis shoes that day. My brother told me he had talked to the boy before the beating and the boy was obstinate remarking " Well Bwana you give me too much work". The boy could move when

being held down. I heard a noise before I saw what was happening. It was the noise of crossing. It was continued ^{it} I heard/about 10 yards from the corner. Before I arrived on the scene I could say for how long previously the beating was going on. I should say I left the beating about 5 minutes to 7. I don't remember hearing anything when I left the scene of the beating. I gathered the beating was still going on. I had no idea how long the beating would continue. The only thing I knew was the ^{as soon} beating would stop/as the boy answered I think my brother told me on the 9th that he would not touch the boy ^{the} ^{of} for/riding/the mare (To Court) on the Sunday morning I did not gather that my brother was going to beat the boy. On the Wednesday (6th) evening I noticed the mare was dead lame. I rode her on the 11th Monday about 1 to 2 and she was alright.

read over correct.

Sd/- Joseph Sheridan.

WALTER HENDERSON SCOTT. sworn:-

3. E. P. C. Molo. On ~~the~~ morning of 11th about 9 a.m. I received a letter from accused No. 1 Exhibit 3 brought by Arap Chepkoren. I was on the way to Turi on duty and on getting Exhibit 3 returned to Police Station Molo and wired to Supdt. Rice I went to the scene of the beating arriving about 2.30 p.m. I saw accused No. 1 there. I viewed the body. Accused 1 showed me the body in the store next the house. I didn't touch the body at the time. as I was waiting for the doctor. I investigated the case and arrested all 4 accused. About 5.30 p.m. I received a wire from the Superintendent and made an inquest report (Hopley wants report in) . Exhibit 4 is the report. 4 The body was in the store. It was moved during the inquest. About 12 midnight 11th the body was moved on a wagon to Molo Station. I handed it over to Kimuri whom

I now point out. When I went into the store the body was covered with bags and lying on its back with the arms by the side and the legs stretched out. There was a leather belt with a small leather pouch on the body. Inside was his Kipande Exhibit 5 and Shs. 32. I noticed the position of the buildings. I made a rough sketch Exhibit 6. I measured the distances by paces. I examined a mare and found nothing wrong with her after walking her about. The native accused were sent to Molo under escort with askaris. I brought in 1st accused myself.

I made a careful inspection of the body. 1st accused rode in with me to Molo Station and was complaining of pains in ~~the~~^{his} body and feeling weak. 1st accused gave me every assistance. I received his letter about 9 a.m. on 11th and then wired full particulars and asked for doctor. I saw the body again with Supdt. Rice. There ~~was~~^{were} no abrasions visible anywhere about the body. 1st accused wrote Exhibit D. and gave it to me. Powell viewed the body with me. Accused No. 1 accompanied him and myself on the further inspection. He had also come with myself and Powell at the first inspection. The belt had no buckle. With 1st accused's assistance I sewed the body into a sack between 10 and 11 p.m. The body was absolutely stiff in the store. We tied the sacking to a pole at each end - like a hammock. The body was lifted on to the waggon and it bent a bit - doubled up a little bit. The body was laid in the waggon with the pole off. The body went off ^{on} an ox-wagon.

The floor of the wagon was rough wood. Rice also made a careful inspection. I inspected 1st about 2.30 p.m. The store inside was not well lighted. I think there were 4 small windows. The plans exhibited are correct. It is a rough road of 17 miles to Molo Station for 1st accused's

It was a dark night and the guiding of oxen difficult.

Between 8 and 9 p.m. I viewed the body with Superintendent Rice. We had a hurricane lamp.

No mudstains on body when I saw.

Read over correct.

Sd/- Joseph Sheridan.

Adjourned 12.45 for lunch.

2 p.m. Court and Bar as before.

KIMURI ABAP CHEPKKLA, affirmed.-

Nandi, 2nd Grade Constable stationed at Nakuru. I know E.P.C.Scott. I received a body from him one day at 10 p.m. on 11th June. I received it at Molo in 1st accused's store. I brought it to Molo and then to Nakuru. I arrived here at 2.30 p.m. on 12th. I removed the body to hospital. The European Doctor received it. The body was sewn in a blanket when I took it over. I placed it on a cart. The body was lying on its back in the cart. It was very dark. The wagon didn't nearly turn over. The oxen walked slowly. The road was good. I left 1st accused's at 10 p.m. and got to Molo Station at 6 a.m. At Molo we lifted the body and placed it under a tree on the platform - on its back. I caught a goods train at 11 a.m. The boys with me from the farm helped me to take the body off the cart. The native prisoners helped me to put the body into the train. It was placed on its back. It was brought in a closed truck on the board. The platform at Molo has red earth with on it. Hospital boys helped me to remove the body to ^{the} hospital from Nakuru Station. The body was on a stretcher and the boys were ready. It was brought on its back.

The body was sewn in a blanket. The body was in a tarpaulin in the ox wagon. The tarpaulin was left behind with the wagon.

Read over correct.

Sd/- Joseph Sheridan.

FREDERICK LOUIS HENDERSON, sworn :-

District Surgeon Nakuru. In connexion with this case I received the body of a native called Kitesh on 12th June from Kimuru and Capt. Rice. I received the body about 3 p.m. I performed a post mortem on it and made a record of my post mortem observations Exhibit 7. At 3 p.m. on June 12th. I was shewn the body of a native at the mortuary of the native civil hospital. I proceeded to examine the body. I received no other body that day. External examination. Rigor mortis well - marked. No signs of decomposition. Abdomen not distended or swollen. The body was that of a well-built adult native. Tall aged about 30, small black beard. There were 2 cuts with purple bruises round them on the inner side of the lower lip. In my opinion ante mortem wounds near the middle line. There were a few slight superficial abrasion on the inner side of the right wrist, There was a distinct swelling over the right groin. There were numerous horseshoe shape marks with dried blood around them on the outer side of both thighs and buttocks. These marks varied from $\frac{1}{2}$ to 1 in diameter. Both thighs in front appeared to be somewhat swollen in the upper part. At the back both buttocks were discoloured. There was swelling of the tissues over the small of the back. There was swelling of the back of left thigh especially at its upper part.

Internal examination.

Incision of the buttocks showed that fat and muscles were severely bruised. Muscles and fat were congested and haemorrhagic. The same condition was found down the back of the left thigh and there was considerable effusion of blood. The muscles and fat in front of both thighs were bruised and congested with blood down to the middle of the thigh. Considerable amount of blood clot was found in the swelling of the

right groin and down the right spermatic cord. The right testicle was also bruised. A considerable amount of haemorrhage had occurred into the muscles and superficial tissues of the small of the back. The heart was somewhat fatty. Empty of blood. No disease of the valves. Lungs right and left both normal beyond slight post-mortem congestion. The stomach was empty and appeared normal. Intestines both large and small empty and appeared normal. Liver and gall bladder normal. The right kidney normal the left contained a very small cyst. The pancreas appeared normal. The bladder was empty and appeared normal. The spleen slightly enlarged - otherwise normal. Brain normal. Testicles - right slightly bruised otherwise normal I could find no disease that I could certify as the cause of death. The big blood vessels of the chest normal. Period of rigor mortis varies according to climate and what the man was doing. I have never been able to find out when it sets in in this country. It varies from a few hours to 24 hours in my experience. In the case of hunted animals rigor mortis sets in almost immediately. On the Coast I found rigor mortis in a case of disease to set in from 2 to 3 hours. In the highlands say Nairobi I have no definite dates on the subject. I think up here it would be later than at the Coast in a case of disease. In case of a violent death I understand rigor mortis sets in sooner. I should expect to see it commencing in 6 hours and to find it set in by 12 hours. The 2 cuts on the inside of the lower lip appeared to have been caused by teeth marks. It looked as if the marks were caused by his own teeth. In my opinion death was caused by the injuries I found. The injuries were extensive and severe and that being so I was not surprised to find that death had ensued. Death might be caused by shock. In a case of injuries inflicted on a person prior to his death and the

there being ~~being~~ no disease to which death can be attributed according to the principles of medical jurisprudence a doctor should express the opinion that death was due to the violence - having excluded any other possible cause of death. I agree with what Taylor says on the point at P.381 (To Court).

Q. In view of the ^{injuries} inquests disclosed at the post mortem whether or not in your opinion they were imminently dangerous and would in all probability cause death ?

Q. objected to. Objection overruled.

A. I think death would be likely to result.

I consider the life of the person would be endangered by the injuries I saw. Had death not resulted I think both buttocks would have sloughed away and gone gangrenous. I don't think I could have done anything to save the deceased's life had I been called immediately after the injuries had been inflicted. In my opinion both buttocks would have sloughed away. I think the injuries I saw were caused before death. The swelling on the right groin must have been caused by a severe blow. The horse shoe marks I saw could have been inflicted with Exhibit 1 (looped end).

Rigor mortis was well-marked when I saw the body - all over. The whole body was quite stiff. The body was turned over to 10 times. Rigor mortis had not passed off in the arms nor in the neck or head nor at all. There was no staining on the inner circle of the abdominal walls except in one spot and that was where the injury of the groin was. The scrotum was not swollen. I saw no horse shoe mark except what I have said. I saw roughly about 30 horseshoe marks. These must have been abrasion where the dried blood was round the horseshoe marks. I don't know how the body came from Molo.

The skin was not actually torn away. The superficial skin was broken revealing a dark horse shoe shaped black marks. On the thighs there was very little thin blood: it was obvious. - about half a shery glass when fresh or perhaps a liquor glass. I think any person could see it ~~ix~~ if looking for it. I did not notice it immediately although I had been told by Rice the beating was over the buttocks. After a injury there is a naturally recurring phenomenon of repair. In the case of a black eye the repair sets in when the swelling begins to disappear. The back of the buttocks was discoloured - the skin. The incision I made extendd from the middle of the back right down the buttocks and thighs nearly to the knees. There was no discolouration even of the small of the back: it was all below it. I found no discolouration of the skin of the shoulders. There was no effusion of blood in the abdomen except opposite the groin. That would give him a pain as if internal. The post mortem congestion might be due to body lying on its back - most probably was. The congestion I found was due to the filtration of fluids to the lowest lying part of the body. x ost mortem seepage is usually a blood stained fluid which always occurs depen- arts of dy. of The discolouration of prominent part of the buttocks might have been due to post mortem staining. I did not incise the shoulders there, so I don't know if there was any p. m. staining there. Under the skin cutting into all the superficial tissues and the deeper tissues I made incisions and found tissues congested contused and full of blood. The only part I saw p. m. staining was on the prominent part of the buttocks. I did not know how long the man had been dead within hours. Now I ~~remember~~ remember I was told the deceased had died at 4 a.m. on the 11th. There was considerable effusion of blood into the muscles

of the buttocks and thighs and fat and all up and down between the muscles beneath the skin. The only large clot of ~~human~~ blood was I made the incision to ascertain where the effusion began and stopped. I think it was the best place to make incision. I found the effusion to be ante mortem. It might have been advisable to have been an incision into the shoulders but for the incision I made I am certain the effusion was ante mortem. I can't say how long he lived after the beating. I think the most severe injury was that to the groin. The injuries to below the small of the back and tissues were severe and extensive. Apart from the injury to the groin the other injuries as a whole were severe and extensive. None of the horseshoe marks were on a vital part and I can't connect the groin injury with the horse shoe marks. There was no evidence of "repair" such as Counsel referred to earlier. There was much congestion and swelling and haemorrhage - in my opinion ante mortem. I would not except any "repair" in 10 ~~minutes~~ hours. If the man had died immediately there would have been some swelling but not much. I can't say whether laceration of the tissues would have looked more or less severe depending on whether the deceased died immediately or after 10 hours. I don't agree it was difficult to ascertain the difference between ante mortem bleeding and post mortem stains in the circumstances. The sooner after death the examination is made the easier it is to tell the difference. I have done about 5 p.m. here. The post mortem staining of the tissues probably would make the condition of the tissues appear ~~probably~~ really worse than they were at time of death. The effusions were due to ante mortem causes. I saw no marks or ridges running across the buttocks. One might see lines corresponding with those on a floor if a body were on the floor for

10 hours. There was blood and blood fluid at the back of the left thigh - blood and serum and blood stained fluid. In front of both thighs there was bruising and congestion. Congestion does not necessarily suggest that repair goes on. At least there was none in this case for all the congestion, I saw was due to bruising. Congestion is due to injury in first place. Subsequently after a varying period on any of corpuscles is sent in and all the damaged tissues are absorbed and eaten and the congestion goes. Bruising means that blood is in tissues to which it does not belong. A black eye is a blood stain. A clot of blood staining would probably occur in a swollen or congested area and in the black eye case or any case of the sort it always more widespread over that actual injured area. There was no external mark over the groin. The vessels in the groin are very superficial. There is a network of veins near the groin. I presume the blood in the groin came from the surrounding veins but I would not like to say. I could only say the injury in the groin was severe but I could not say how long before or after the beating it took place. The heart had more fat round it than usual. There was no heart disease in the case. I kept no portion of the hurt and examined by the eye only. There was no fat in the muscles fibres. Judging by the colour of the muscles. This could be seen with the naked eye. I did not weigh the heart. The deceased looked like a man in good health; he was well-built (To Court) Weighing would tell if the heart was exceptionally large or small. There was no discolouration of liver and intestines. No odour on opening ~~dissection~~ the abdomen. The stomach was empty except for gas, and so I did not keep it - same with the intestines. The lower intestines was slightly distended with gas. Had there been any contents I would probably have kept them. In the absence of vomiting or diarrhoea I would say the

I would say the deceased did not have food for say 48 hours. I did not weigh the liver. The spleen was enlarged. I did not examine the spinal cord at all. There was no reason to suspect it. Spinal diseases are rare amongst natives. The deceased was well-nurtured. The right testicle was slightly bruised - all one with the injury in the groin. I found no fluid in the sack in which that testicle was contained. The injury to the testicle did not look severe. I didn't look for disease in the testicles but I examined them in the usual way. I should think Exhibit 1 weighs about $\frac{1}{2}$ lb. and is very flexible. I presume that a stroke from a kiboko or stick would be more severe than from Exhibit 1 all depending on the force and power behind it. I roughly guessed 30 marks on the buttocks. No single injury or mark taken by itself on the buttocks was mortal. I don't think the groin injury was mortal. I saw no blows about the head in fact nothing except what I have already stated starvation for 48 hours will not lower vitality necessarily and may be a remedy. It might lower vitality before a beating. Starvation saved many lives where would through stomach or intestines. My post mortem was from 3 to 4.30 starvation reduce^s courage and the power of standing up against injury or disease up to a certain point. I did not examine the blanket in which the body was brought. If there had been blood on the body down likely would have come off on the blanket on the way in. The blood I saw was in my opinion ante mortem. The blood was round the horseshoe mark. There was very little at all. I attached no importance to the blood I saw in assessing the gravity of the injuries. (To Court) I presume the person inflicting the blows must have been opposite the buttocks. It took me 20/30 minutes to write my report. In my opinion the injury to the groin may have been caused by a severe fall. I can't say by what weapon it was caused. It might have been caused in differen

ways. Exhibit 1 might have caused it curing round. I have thought it possible. I can't say the time between this injury and death. Professor Glocister says nothing about flogging at all.

an. From my experience of floggings it is difficult to say what any individual will stand. Some might recover and some not.

I agree what Taylor at p. 381 2 Ed. speaks the prejudice of non-professional persons as to the likelihood of death being caused where no distinctly mortal wound is inflicted.

Haemorrhage is possible up to a few minutes after death. Arterial haemorrhage would require pulsation. I don't think it is possible that a blow struck in lifetime would escape detection internally or externally after death that is one ought to be able to find some conceal bruises very much more than that of non-European. The phenomenon of repair cannot take place after death. Pneumonia endangers human life. I think the injuries on this native endangered human life.

There was nothing on wrist or leg to suggest deceased having been tied up in a brutal manner. The injury to the groin could not have been due to riding on the ~~1st~~ 6th. I don't think the blood clot could have been due to a fall on the 6th.

Flogging if sufficiently violent may cause death through shock. I still consider the injuries on the buttocks were severe and extensive - very severe. I made no blood test. I wish to say that "repair" may set it before the congestion or swelling begins to disappear.

Read over correct.

SD/-, Joseph Sheridan.

6.50 Accused remanded in custody.

SD/-, Joseph Sheridan.

Adjourned to 8.30 a.m. 3rd August.

SD/- Joseph Sheridan.

3.8.24. 8.30 a.m.

Court and Bar as before.

Hopley opens.

GUY FREDERICK LESTER, Sworn :-

Farmer at Songhor. I know the first accused. I was his guest from June 1st to June 5th. On morning of 5th accused and I walked to Mill Abraham's farm to see how the work was getting on. When we arrived there Michael Abraham and Powell were attempting to lift a heavy piece of shafting into position. 1st accused and I went to their assistance and while we were in the act of lifting 1st accused complained he had hurt himself in the left side. He had to sit down on some sacks which were lying in the mills he could give no further assistance in the work there. At about 12 noon we walked slowly back to the house. He was not walking briskly as usual - much slower. He did not show any pain. That night he asked me to rub his back: he seemed to be in pain. On the morning of the 6th I was going back to my farm. 1st accused told to ride his mare "Aconite". 1st accused sent a boy with my blankets to the station and that boy was to lead back the mare. Previous to my departure 1st accused told me he had instructed a boy to lead the mare back from station, but as an additional security he asked to loosen the girths and to cross the stirrups over the saddles. I did this - loosening the girth 3 holes. I told the native to lead back and not ride the mare. 1st accused had not told me to do this.

Abraham did not go to bed the day of the accident. He went to bed as usual at night. I left at 7.30 a.m. next day. 1st accused was up to see me off. I heard 1st accused giving the boy some instructions. About 11 a.m. I got to Molo - leaving Abraham's at 7.30 a.m. The

distance is 17 miles. I trotted the pony. I knew it was in foal. ~~It~~ I was not certain of the state of pregnancy - I think it did no harm to ride it. I don't know how long the boy waited at Molo Station. I told the boy to take hold of the reins and not ride her. I think the boy understood. The boy just said "Ndio". I don't think it would have hurt the mare for one to ride her back carefully.

I rode the mare slowly. I was in a Mounted Corps during the war.

Read over correct.

Sd/- Joseph Sheridan.

ELLEN MARY EDITH LANCE, sworn:-

My husband farms about 5 or 6 miles from 1st accused's. I am a trained hospital nurse from Guys. As a result of a letter from Michael Abraham, I went with my husband to 1st accused's farm. I saw him in bed. He was certainly not well: he was propped up against pillows. He said he was afraid he had strained his heart and was anxious, as his uncle had done the same thing, and had been a long time in bed on account of it. He moved like a person with a stiff trunk and twitched as he moved, as if in pain. I thought he must have strained or torn the muscles between the ribs. I sat there and watched him. This was the day after the accident. I thought the pain would get worse before getting better. He was afraid he had injured his heart. The pain seemed to run about the heart. When I heard of the beating and death, I was surprised that 1st accused was well enough to do it.

I advised him to remain in bed and not to eat much. I told him to do this, to be on the safe side. I did not advise him to send for a doctor. I impressed on him the necessity for absolute rest. I meant him to stay in bed until I saw him again and I intended to see him on the 9th. I do not think it wise of him to have got out of bed on

the 10th, or to have walked about his farm. It would have required great physical exertion to have beaten anybody on the Sunday, and it could only have been done by a man of enormous strength.

Read over correct.

Sd/- Joseph Sheridan.

WILLIAM JAMES WEYMOUTH POULTON, sworn:-

Farmer in Molo, and a neighbour of 1st accused. I remember riding into Molo Station early in June - on 6th June. ~~ix x~~ On the way, I saw in the distance about $\frac{1}{2}$ mile a horse being ridden. It was approaching me and I saw that the rider was riding stupidly. I could see this from the way the mare was going from side to side. When I approached nearer I recognised it was "Aconite", and the boy was carrying a stick and kept on hitting her on the belly. The stick was about 3 ft. long and $\frac{1}{2}$ in. thick. When I saw the mare she was walking. When I came abreast of him I told him to dismount. He scrambled down - he appeared quite a novice. He was using the stirrups when I saw him. On the 9th June, Saturday, I heard 1st accused was ill. I rode over to see him about Saturday afternoon at 3 p.m. I found him in bed. He was lying on his back - pillowed up rather. He explained he had hurt himself. If he moved his sides seemed to catch him. He had tea brought to him and attempted to reach for the cup, got a twinge, and lay back, and I handed him the cup. It was on this occasion I told 1st accused what I had seen on the Wednesday. He was rather angry about it, said he didn't know what he could do with a boy like that, and he thought he would tear up his ticket. After further conversation on different matters, I rode off about 5 p.m.

I saw the boy riding about 4 $\frac{1}{2}$ miles from the station. The pony was walking. I came down to Nakuru that day and -

got back to my farm on the 9th. I am about 8 miles from 1st accused' farm. I knew 1st accused was ill. I knew he was very fond of his mare, and I didn't think he would be pleased at the news. It made him furious at the time. I didn't think he would be so angry as he appeared to be. I didn't go particularly to give him the news. He expressed his annoyance by words. He used strong language. I don't think the boy would have been physically punished had he been there at the time. I don't think 1st accused could have punished him. I don't know if he would had he been able to.

Juror. I can't say there was any indication of the horse having been ridden violently when I saw it.

Court. The mare was stopping now and then, and the boy would hit it with a stick.

Read over and correct.

Sd/- Joseph Sheridan.

JASPER ABRAHAM, sworn:-

Farmer near Molo. 16 miles from there. As far as I am concerned anything the three native accused had to do with this case was done by them only on my orders.

I remember going to my brother's flax mill with Lestor, who was staying with me. He and I, about 10 a.m., on 5th, walked down to my brother's flax factory, where we found my brother and Powell and their boys about to lift a long length of 3 in. steel shafting, to which 10 scutch reins were attached. We went in to give them a hand, and while lifting it into its position in the bearings, I snapped something internally, and had to sit down on some wheat sacks. We stayed there about $\frac{3}{4}$ hour, and then Lestor and I returned to my farm. The pain was not a continuous pain. I never knew when or how it could catch me. I had intervals free from pain at the time. We did very little for the rest of the day. After supper I asked Lestor to rub me

with embrocation, which he did. We turned in early. I had a wakeful night, at intervals, with the catch of the strain. I was up next morning shortly after 9.30 a.m., and sent for the deceased Kitosh. This on 6th. When he arrived I handed Lester's bag and told him he had got to get into Molo Station with it about 10.30 a.m., and warned him that when he had delivered the bag he was to take hold of the mare, lead her home, and on no account to ride her, as she was some 8 months gone in foal. Kitosh left about 6 a.m. and shortly after 7 a.m. Lester followed him. On the early morning of the 6th, on getting up, I felt a more constant pain than I had on the previous day, but once up to see Lester off, I didn't consider there was any object in not doing the ordinary farm work - most of which, in a dairy farm, is over by 10 a.m., so I went out and did it, and after the boys had finished the milking, then put on to their ordinary tasks, I returned to my house feeling even greater pain than I had had in the earlier hour. About 11.30 a.m., I got back into my bed - having previously having sent a chit over to my brother to tell him that I was /"knocked out" completely, and would like him to come and do the dairy and poshoing that evening. He rolled up somewhere about midday - immediately he got the note, and said that so long as I felt this pain he would look after the ordinary running of the farm. He asked me about the pain, and whereas on the Tuesday morning at his mill I felt the pain in the back of my ribs, it had shifted to the front, round about the heart. He stayed 1/2 hr. to 20 mins, went back to his own work, and was apparently more nervous about it than I was, as it subsequently transpired that he had written to Mrs. Lance. She was the best medical advice available in the district. I had my tea about 4.15 that afternoon, and before I had finished tea, Lance and Mrs. Lance came over and the subject was naturally

with embrocation, which he did. We turned in early. I had a wakeful night, at intervals, with the catch of the strain. I was up next morning shortly after 6.30 a.m., and sent for the deceased Kitosh. This on 5th. When he arrived I handed Lester's bag and told him he had got to get into Molo Station with it about 10.30 a.m., and warned him that when he had delivered the bag he was to take hold of the mare, lead her home, and on no account to ride her, as she was some 8 months gone in foal. Kitosh left about 6 a.m. and shortly after 7 a.m. Lester followed him. On the early morning of the 6th, on getting up, I felt a more constant pain than I had on the previous day, but once up to see Lester off, I didn't consider there was any objection to doing the ordinary farm work - most of which, in a dairy farm, is over by 10 a.m., so I went out and did it and after the boys had finished the milking, then put on to their ordinary tasks, I returned to my house feeling even greater pain than I had had in the earlier hour. About 11.30 a.m., I got back into my bed - I had previously having sent a chit over to my brother to tell him that I was /"knocked out" completely, and would like him to come and to the dairy and poshoing that evening. He rolled up somewhere about midday - immediately he got the note, and said that so long as I felt this pain he would look after the ordinary running of the farm. He asked me about the pain, and whereas on the Tuesday morning at his mill I felt the pain in the back of my ribs, it had shifted to the front, round about the heart. He stayed $\frac{1}{2}$ hr. to 20 mins, went back to his own work, and was apparently more nervous about it than I was, as it subsequently transpired that he had written to Mrs. Lance. She was the best medical advice available in the district. I had my tea about 4.15 that afternoon, and before I had finished tea, Lance and Mrs. Lance came over and the subject was naturally

discussed, and they left me about 5.20 a.m. The rest of that week the pain grew more frequent. I had various neighbours to visit me - Poulton being almost the last who came to see me on 9th, at 3 p.m. While he was there he mentioned that on the previous Wednesday afternoon he and a friend were riding along our road to Molo Station, when they observed in the distance a horse coming towards them and zig-zagging about the road. When they came close they saw it was Kitosh riding my mare. Poulton told him to dismount. This naturally made me very angry, and I discussed with Poulton the best way to prevent or punish the natives letting one down in this way, and after some discussion I concluded that the only thing to do in this instance was to tear up his ticket. Poulton left me about 5.30 p.m., and my brother and Powell came over at 6 p.m. the same evening. (On Saturday Kitosh had been sent to Molo Station with the mail - to sleep the night there). I told my brother what Poulton had told me - not at great length, as I had already made up my mind as to the best punishment in the circumstances. My brother left about dusk and the next time I saw him was with Powell about 6 a.m. on Sunday, 10th. I knew my brother was going to an Association Meeting at Molo Station, and that Powell was expecting to go to Nairobi on the evening train. I asked my brother to leave my keys with me, as I knew he would not be back till late and it was my custom to issue posho on Sundays, about 10 a.m., and I didn't want to keep my natives visiting till last at night - seeing it was a Sunday. He said, and also Powell, that they thought it was wrong for me to get up, that the pain was still considerable, but I insisted that if I did what I intended to do carefully and slowly it would not do me any harm. I was naturally rather fed-up lying in bed, so my brother left me my keys and went off with Powell. I lay in bed till

Evid. pp. 41, 42 (35).

about 9.45 a.m. and when I did get up I rather naturally got into easiest and most comfortable clothing. I had - flannels and white rubber shoes. I got to the store about 10.15 a.m. with the aid of Exhibit A, unlocked the store, sat down on my stick and signed the week's tickets. I got a boy to give but the posho. Shortly after I had finished and looked up, a neighbour of mine came over from Lance's, and together we marched through the garden towards the dairy. We came back slowly to the house through another shamba and just sat about the house and garden - had lunch, and talked. Shortly before 2 p.m. went out to see ~~what~~ another garden alongside the house. When we got outside the garden gate Kitosh appeared from Molo with 2 baskets of meals and our mail. I sorted the letters, called out Chepkoron, and sent him with my brother's meat and letters to my brother's. We again marched round the garden for $\frac{1}{2}$ hour, came back to the house, talked and read till tea and sent for Mew's pony. Along the path by which Mews had to travel a couple of young Ayrshire bulls and some imported sheep were grazing. I went along with him to have a look at them. I was still supporting myself on Exhibit A. I think Mews left me about 5.15 a.m., and I stayed very much where I was, looking at the sheep. I was sitting on Exhibit A. till about 6 p.m., I went slowly along to the posho shed. I had one or two little shauris with a syce, and when I got in sight of the door of the posho shed, there was a Moran waiting for me who had not turned up for posho at 10 a.m. I went along and gave him his food, and sat about in front of the open store door. Some 10 minutes later I saw Kitosh pass along the ridge in front of me going towards his house with fire. I called him, and he came towards me, stood about 3 yards away, and I took ~~great~~ great pains to explain to him what Poulton had told me on Saturday - eventually ending up

with the question, "Who gave you permission to ride that mare?". I was sitting down. He did not reply, and I must have asked him 20 or 30 times, until his first retort came in the most impudent manner that he was not a thief. Naturally that annoyed me, but I had quite definitely made up my mind that the tearing up of his ticket would be sufficient punishment. Even at that time it still remained my intention. So I kept my temper and tried once more to persuade the Kitosh to reply to my question and again for some 20/30 times he refused to reply and apparently seeing that I was not going to get "salty" and apparently also seeing I couldn't move for the 2nd time he opened his mouth and most impudently said "You know I am getting much too much work here, you had better let me go home." That made me fly off the handle. I got up, got a hold of him, opened a door in the long building, and pushed the boy in. That needless to say hurt me, and I knew if the boy had offered any resistance I should not have been able to handle him. So I called two Moran who were alongside and told them to get a hold of the boy and put him down. I got hold of a soft clause reim in the posho store near by, and began to beat him. The 2 Moran were unable to throw him down and I had to call 3 more and they put him down. I was naturally still very annoyed. When I started to beat him, he made an enormous row. Even after I had given one or two strokes, I would stop, tell him that if he would just answer ^{my question} nothing more would happen in the way of a hiding. Almost directly after I came round the corner of the building and came up to where it was going on, and they naturally wanted to know what the trouble was, and I told them, and proceeded again to query the Kitosh. Powell and my brother were there for some short period and left for their homes. The process

employed from start to finish was to give Kitosh one or 2 strokes with the reim, stop, and ask him the question, frequently thrown down the reim in front of him to show it was not going to be used, and get nothing in reply. I need hardly say that during the whole time I was beating the boy I had greatly constant pain in back and front and none of my strokes had much keep behind them. That is my impression. Some short time after my brother and Pwell had gone, I reckoned it was not worth a candle my beating the boy and told me of the native accused to catch hold of the strap and beat him. I was naturally fagged and sat down on my stick. I told the natives they were not to hit the Kitosh anywhere except across his buttocks. Killel was obviously not putting anything into his strokes, so I called Chuma to get hold of the reim. He was worse than useless and I turned Chebule on to it. It was while this boy was beating him that Kitosh lay quiet. I can swear he had not fainted. I took Chebule off beating Kitosh, and sent one of them about 300 yards to the old dairy, where there was a big tin of cold water. He brought a bucket of it back and when he gave it to me I threw it over the head and shoulders of Kitosh in small quantities - after each small quantity asking him the same question: - he still refused to reply and I sent a further 2 boys down to the new dairy about 300 yards to get 2 more buckets of cold water. I repeated the operation with no success. Again I sent for 2 more buckets and again met with no success. It was quite obvious to me by that time that I should get nothing out of Kitosh, so I told him to get up - previously having handed out 2 more reims from the store to my boys. They attached one reim to his right wrist and one to each ankle. Kitosh did not get up. I told him my boys to raise him, which they did. I instructed the 3 Moran holding the loose end of the 3 reims

not to pull or keep them tight at all, but simply to hold them loosely in their hands, so that the boy might not be able to escape. When we had gone some 60 or 70 yards Kitosh fell towards his left. The path was a ploughed path and I was on the tomie grass on the left side. Naturally when he barged into me, I slipped and fell. In my left hand I was holding a hurricane lamp and in my right a shooting stick. He fell rather low down on my right leg. When I got up I told Kitosh to get up, which he did. We then walked the remaining 230/240 yards to the house store. When we got to the store I unlocked the door and told the boys to take him in on the right, where I intended to tie him to a post to prevent his escape during the night. My boy said there were black ants there, so I went to the left to another post and told the boys to bring Kitosh to me. When Kitosh got $\frac{1}{2}$ way towards me he sat down and refused to move. After telling him several times to come to me he refused. Eventually I had to box his ears with the open palm to make him come to me. We came and I told one of the boys to tie his two wrists loosely together behind his back and strap them to the post. This was done.- While it was being done, I looked round the store for old coats, sacks and blankets, some of which I put under him, and some covering him. The boy who tied his hands had instructions from me in the store not to tie his hands tight, as my only wish was to prevent his running away during the night. This was done. I sent the boys back to their houses and went to the back door of my own house - called Sefu, told him that I had got the Kitosh tied up in the house store and that so soon as he had brought me my supper, washed up and had his own food; I wanted him and Chepkoran to get hold of these blankets and a lamp and go down to the house store and in turn guard the Kitosh to see that he did not

Evid. pp. 46, 47, 48 (39).

escape. I was keeping him in the store to prevent him being about on the farm. I then went inside my house, sat down along the fire, and noticed that the clock showed 7.30 p.m. 8 to 10 minutes after this before Sefu had brought my supper I had a clattering of bottles in the direction of the house store. I picked up my lamp and went as quickly as I could through the back door towards the house store again. When I got outside my back door I noticed that Sefu had already come from the kitchen with ~~the~~ ^{his} lamp and was standing at the window of the store nearest to my house. I told him to remain there until I could open the door and see what Kitosh was doing. When I got inside I found the Kitosh lying some 2 to 3 yards from where I had tied him with the reims off him and already recovered with rugs, sacks, etc. I told Sefu to come round and also to call Chepkoran and I also told Kitosh to come back to where he had already been tied. I then proceeded to strap him up in the same fashion as originally, but together with his hands behind his back, then tied to the post as Sefu showed the Court yesterday, and intended of the loose end being allowed to lie near Kitosh as it had been, it was tied to a post above him with no strain without length of rope. His right leg was tied to the post in front as Sefu showed and the boy was recovered. We then left the store - leaving the door locked and I returned to my house - Sefu returning to the kitchen. I had my supper and some 25/30 minutes later Sefu and Chepkoran came along to say they were ready to go into the store. I went down and let them in and returned to my bed. The next thing I remember was at nearly 4 a.m. when Chepkoran woke me and told me that Kitosh was dying. Naturally I was flabbergasted, got up and lit my lamp and went straight to the store. When I got there Kitosh was unbound, uncovered on the top part of his body - sitting

up against a sack - facing the opposite way to the way I had left him the night before. It appeared to me when I got there that he was already dead, but I went straight back to the house, got a lot of whiskey, which I tried to pour into his mouth. I stayed with him for some 3 or 4 minutes, but seeing no signs of life I returned to my house and wrote a note to E.P.C. Scott at Molo Station, informing him what had happened, Exhibit 3., and asking him to come out, I got dressed and shortly after 5 a.m. I left for my brother's house. Prior to this immediately on hearing of the death, I sent Chepkoran to the police with Exhibit 3, I told my brother what had happened, and returned to my house to await the arrival of the policeman. I had intended to sack Kitosh on Monday morning. My brother arrived before the police, somewhere about midday, and talking the matter over with him he ~~agreed~~ agreed to go over to Lance's farm as soon as we had lunch to see Mews and ask him if he could come and look after the farm during my absence. At the same time we realised that E.P.C. Scott might not be at Molo and it was thought advisable for my brother to take my keys when he went to Lance's farm in case Chepkoron returned with my note to Scott, and the information that he was not at Molo, as I should then have to leave the farm not later than 4 p.m. so as to arrive at Molo by dusk in order to catch the 10.30 p.m. train to Nakuru to report. However, Scott turned up at 2.30. We sent over for Powell as a witness for the Inquest. I and Powell and Scott were all in the store at the inquest - the light in the store was good enough - the resultant light from 4 windows of 2 ft. 6 square and 3 of 2 ft. 6. I made plans, Exhibits B. and C. It was not a light by which a delicate operation could be performed. It was bright enough to do carpentry. The walls were of cedar logs. It was not at all as bright as the Court Hall, but similar to the stage. Scott wrote the inquest report at the house. I did not hear any

one read out the questions. About 3.30 p.m. Rice turned up and after a short delay we had dinner and again I accompanied Rice and Scott to the Store where the body was lying. When Rice had seen the body he returned to the house and so far as I remember spoke to Scott with the result that Scott and I, went back to where the body was and sewed it up in a blanket - tying one rope round the blanket above the ankle quite loosely and a similar one at the back of the neck - also quite loose. Through the upmost part of these loops we passed a pole and from that time onwards a native askari was left in charge of the body. It was heavy. About midnight it was put on to the wagon, 11.30 to 12. After that we went back to the house and slept. Early next morning Rice left and later on in the morning I and Scott rode into Molo. It is hardly necessary to say that after long day like Monday and a bad strain and 4 days in bed my strain was not improved by riding into Molo. I saw no dry blood on the body nor a cut from which dry blood could come. I saw no abrasion. I was not present at the post-mortem. I was not given an opportunity of being present. I did not ask to be present. I knew a post-mortem was to take place. It is about 320 yards from the shed to the store.

Adjourned to 1.30.

Sd. Joseph Sheridan.

1.30 Court and Bar as before.

JASPER ABRAHAM Contd.,

I stayed in bed till 9.45 on Sunday. I think I came back about 11.30. After lunch I went out about 2 p.m. It was about 2 that I saw Kitooh. I had no conversation with him then. A couple of minutes taking the meal and mails from him. I had the opportunity of asking him then about the mare and but Mews was with me

Evid. pp. 50, 51, 52.

I did not want to have a row in front of him. I was out from about 5 or 6 minutes past ²till 2.30. I then stayed in the house till 4.45. I went out then to look at some sheep. I did not have my watch with me. About 6.10 I issued posho about sunset. It was still quite light. The deceased turned up about 10 minutes later - about 6.20. I could not imagine that Lester or anyone else had given him permission to ride the mare. I wanted Kitosh to say that nobody had given him permission to ride the mare. I still felt annoyed over the incident of the riding. I wanted him to admit the incidence and his having disobeyed instructions. Kitosh was on a contract. I would have dismissed him then and there. I had every intention of tearing up his ticket then and there. I told my father that I would not touch the boy or send him to the court. I had this boy about 5 weeks. He had been employed by me previously - some 18 months previously. He ran away 18 months previously. I took steps to get him back. He was eventually caught about April 1923.

Q. Why should the deceased return to your employment if he had been beaten by you 18 months before.

Q. objected to

General. (Jury excluded).

1911 A.C.B. 47 Rex. v. Ball. Q. Disallowed. Subsequently reasons given. 11. C.S.

Hopley. S. 14 Explanation (1) - too remote.

(No ruling at present - Q. not to go meantime).

ARAP CHEMWOK, Arap Kibron and the 3 native accused held down the deceased. Chemwok has been with me sometime and had been satisfactory. His evidence was not an accurate description of what took place. I don't think he intended to do me any harm - inability to speak the truth or possibly to observe and appreciate facts. I can't say

why Kibron should state what is not correct. I don't know how many times I put the rein across the deceased. I can't swear but I should say between 20 to 25 times. I crossed over the body to give some of them. I stepped over the body. I felt the pain during the beating. It was sufficiently severe to make me hand over the reins to the native accused. I had been beating the deceased a couple of minutes before my brother came. My brother probably saw the beating for 10 or 12 minutes. He saw me beating while he was there. I carried on the beating for a couple of minutes after my brother left. Roughly during the 15 minutes I was beating the boy at intervals. I do not think I gave the boy considerably more than 20 to 25 strokes. Chemwok grossly exaggerates when he says I gave him 25 each side. I did not intend him to feel it severely. I meant to chastise him for his impudent manner to me that evening, and I did chastise. I intended to hurt him. I would have given him only one stroke had he admitted his error in riding the mare. The 2nd and 4th accused would not attempt to put any strength behind their strokes. It was my intention that some strength should be put behind the strokes. The 3rd accused put some strength behind 2 out the 4 strokes he gave. I think Chebule intimated that deceased was having enough. This I think was after he had given a couple of strokes Chebule said he was dying. Deceased was not I think motionless. I think he became motionless after Chebule had given 4 or 5 strokes I thought the man was shamming. I fancy he remained in this condition about 5 minutes. It was overdone. A casual passerby might have been deceived by the sham faint but I don't think anyone present during the whole of the beating would have been so deceived.

(To Court) I should think the 3 natives gave 10 or 11 strokes altogether. The deceased writhed. I should say not as a result of a blow. I have had occasion to flog Nandi and when they have

heard their mistake and know they are going to be beaten they lie down still whereas this Kitosh refused to allow the original 2 boys to put him down and had to have 4 or 5 to hold him down and a good deal of that time he was wriggling. I didn't notice him wriggling either before the blow or on its receipt except on one occasion when the reim was half down. I saw he was turning over and I stopped. The strokes given by the natives occupied roughly 5 minutes. I didn't see that the blows raised the skin. It was part dusk when the beating was finished. I didn't observe anything unusual on the buttocks. It is impossible to imagine a reim striking a boy's buttock and not causing injury. I am certain he didn't faint. The water roused him straight from the start.

He got up after the beating with assistance. I think it had not been raining that day. I can't say why he should have slipped on the path. He stumbled. It might have been a trip over the reim. I should not agree that it was a stumble from exhaustion after (after) 30 strokes during 20 minutes. I looked him up as I did not wish a disobedient impudent, defiant and obstinate boy to be at loose on the farm. I was not furious about him at that stage. I boxed his ears in the store as I was angry at his not getting up. He was able to get up. He did not complain of any pain in the store. I tied him ^{up} in a position that he had to sit down on the place he was beaten - on sacks and blankets. It was about 7.28 when I first tied him up. It was my intention that he should spend the night on that position. This was not cruel. He would have been released after say 9 hours. I could see no external trace of violence when I went to see the body with Scott - no suggestion of blood. Scott, Powell, Rice and myself did not see blood. I don't know if the blood appeared through the Jolting.

When the natives were beating the boy and the water

heard their mistake and know they are going to be beaten they lie down still whereas this Kitosh refused to allow the original 2 boys to put him down and had to have 4 or 5 to hold him down and a good deal of that time he was wriggling. I didn't notice him wriggling either before the blow or on its receipt except on one occasion when the rein was half down. I saw he was turning over and I stopped. The strokes given by the natives occupied roughly 5 minutes I didn't see that the blows raised the skin. It was part dust when the beating was finished. I didn't observe anything unusual on the buttocks. It is impossible to imagine a rein striking a boy's buttock and not causing injury. I am certain he didn't faint. The water roused him straight from the start.

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When the natives were beating the boy and the water

was being thrown the questions were put as usual. I have been here since 1905 and home once and was away during the War.

I poured the water over him to get him to speak. The deceased incoherently said he was not a thief - when he used the expression "thief" Chapkoron brought the lamp during the beating without instructions from anyone. 3 or 4 weeks before the beating I found the mare with 2 greasy hind legs in the stable and I had her kept in. I had not examined the mare when I beat the boy. The beating was not on account of riding the mare.

Read over correct.

Sgd. Joseph Sheridan.

WALTER HENDERSON SCOTT. (recalled by Juror) still on oath). I am quite certain I saw no blood on the body. The buttocks were just a little swollen. There was quite enough light to make the examination. There were various odds and ends on the floor. The walls were of cedar slabs. I wrote my report in the store. The questions were read out. I could'nt say whether the body had or had not been washed. Michael Abraham had the key of the store; we went in by one of the windows.

Read over correct.

Sgd. Joseph Sheridan.

Statements of 3 native accused put in read over and stated to be correct.

Sgd. Joseph Sheridan.

JUMARAP KIPKIRI affirmed:-

Lumbwa. I work for 1st accused as herd boy. I remember Kitosh who is now dead. we used to sleep in the same house. He ~~was~~ died on a Sunday. The last time I saw Kitosh had any food was on Friday night before his death. I left him in the house on Saturday morning and when I came back Kitosh was gone to Molo Station. I found some maize flour in my hut on Sunday evening - 4 small

was being thrown the questions were put as usual. I have been here since 1905 and home once and was away during the War.

I poured the water over him to get him to speak. The deceased incoherently said he was not a thief - when he used the expression "thief" Chepkoron brought the lamp during the beating without instructions from anyone. 3 or 4 weeks before the beating I found the mare with 2 greasy hind legs in the stable and I had her kept in. I had not examined the mare when I beat the boy. The beating was not on account of riding the mare.

Read over correct.

Sgd. Joseph Sheridan.

WALTER HENDERSON SCOTT. (recalled by Juror) still on oath). I am quite certain I saw no blood on the body. The buttocks were just a little swollen. There was quite enough light to make the examination. There were various odds and ends on the floor. The walls were of cedar slabs. I wrote my report in the store. The questions were read out. I could'nt say whether the body had or had not been washed. Michael Abraham had the key of the store; we went in by one of the windows.

Read over correct.

Sgd. Joseph Sheridan.

Statements of 3 native accused put in read over and stated to be correct.

Sgd. Joseph Sheridan.

JUMARAP KIPKIRI affirmed:-

Lumbwa. I work for 1st accused as herd boy. I remember Kitosh who is now dead. We used to sleep in the same house. He ~~was~~ died on a Sunday. The last time I saw Kitosh had any food was on Friday night before his death. I left him in the house on Saturday morning and when I came back Kitosh was gone to Molo Station. I found some maize flour in my hut on Sunday evening - 4 small

tins. There were 4 of us in the hut. That was the food for 4 men. On Saturday we received our posho.

I don't know what day to-day is. Yesterday was the 4th working day. On Saturday and Sunday Kiteeh had no food in our hut.

Read Over Correct.

Sgd. Joseph Sheridan.

EDWIN POWELL, Sworn:-

By Firemaster Nairobi. Towards end of May 28th. I went to stay at Michael Abraham's farm at Molo., 16 miles from Molo. I helped him at his flax factory. On 5th June I remember 1st accused and Lestor coming over and whilst assisting us 1st accused he hurt his back and heart and we had to sit him down on sacks. He sat down for probably an hour and after that he went to the house with Lestor. I advised his brother to keep him in bed. I saw him 2 or 3 times during that week in bed pillowed up. He seemed to be in acute pain. The pain seemed to catch him in the side. Michael Abraham was keeping the keys of his store. On Sunday morning we had the horses brought over at 6 a.m. We called in to see him and I noticed when he reached over for anything above him, the pain seemed to catch him in the back. I went away and came back with Michael Abraham about 6.30 p.m. We off-saddled and walked up to the stores. The walking up would take about 10 minutes. At about 50 ft. distance. I heard 1st accused speaking in rather a forcible voice something about his horse. He spoke in Swahili. I don't understand much Swahili but could catch "farasi" When we crowded the corner I saw a boy on the ground and the accused was striking him with a strap. We didn't say anything at the time. Accused ^{was} lying down 4 boys.- 2 at hands and 2 at feet were holding him down. I saw deceased on the floor and accused striking him with a strap. He would administer a blow and throw the strap away and ask a question.

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Dy. Firemaster Nairobi. Towards end of May 28th.

I went to stay at Michael Abraham's farm at Molo., 16 miles from Molo. I helped him at his Flux Factory. On 5th June I remember 1st accused and Lester coming over and whilst assisting us 1st accused he hurt his back and heart and we had to sit him down on sacks. He sat down for probably an hour and after that he went to the house with Lester. I advised his brother to keep him in bed. I saw him 2 or 3 times during that week in bed pillowed up. He seemed to be in acute pain. The pain seemed to catch him in the side. Michael Abraham was keeping the keys of his store. On Sunday morning we had the horses brought over at 6 a.m. We called in to see him and I noticed when he reached over for anything above him, the pain seemed to catch him in the back. I went away and came back with Michael Abraham about 6.30 p.m. We off-saddled and walked up to the stores. The walking up would take about 10 minutes. At about 50 ft. distance. I heard 1st accused speaking in rather a forcible voice something about his horse. He spoke in Swahili. I don't understand much Swahili but could catch "farasi" When we crowded the corner I saw a boy on the ground and the accused was striking him with a strap. We didn't say anything at the time. Accused ^{was} lying down 4 boys.- 2 at hands and 2 at feet were holding him down. I saw deceased on the floor and accused striking him with a strap. He would administer a blow and throw the strap away and ask a question.

I caught the words ruckee and farasi. We were there about 10 to 12 minutes and left. I could still see 1st accused was in pain - caught at his side. The strokes were being delivered on the buttocks - not hard strokes - not a severe beating in my opinion. I should imagine 10 to 15 strokes were given while I was there. The next morning 1st accused came over to us about 6 a.m. and then he told us the native had died. I was quite dumfounded. Later that day I got a note to come as a witness to the inquest. I came across and went with E.P.C. Scott to view the body in the store. The light was quite a decent light. If this had not white sides the light in the store would be like the light here. The feet of the body were 5 ft. from the window. Scott and I made a careful inspection of the body. Scott had the report and read out each question carefully and we both looked at the body to satisfy Scott and then he would ask me what I thought. Some questions he read over twice. The body was somewhat decomposed and we lit cigarettes. We both examined the body very carefully. The mark across the buttocks was doubtful point with Scott. I said I thought it was the body getting cold on the floor that caused the marks. They correspond with the marks on the boards. I and 1st accused turned the body over. After this Scott wrote the report in the shed. There was no blood. We looked everywhere for it. Scott looked for distinguishing marks. We found an old graze on his skin. I signed the report as a witness. I didn't draw any conclusion as to cause of death. Rice came later in the evening as we were about to take dinner. I didn't go into the store again. I suggested going in, but didn't go. I think accused went with them. Precisely I had suggested to Scott that in England the doctor always comes to view the body. Rice wrote out something after. Scott made his police investigation report in the house. The buttocks appeared to be soft.

I noticed no swelling any place.

I was observing in France for 5 years. There are 4 steps coming up to the Court. I never saw a beating before out here nor in fact anywhere. I can't imagine that there were more than 15 strokes of that, the time was more than 10 to 12 minutes. I saw in the paper that Mr. Abraham had fixed the same time and we probably discovered it. The boy raised his buttocks at time. The ^{boy} appeared to approve of what was going on. I couldn't say if the noise he made indicated pain. When we were leaving the boy shouted out something. I didn't know what it indicated. The beating was a mild beating in my opinion. I got into the store with Scott through the window. There were boxes and bags in it. The light from the window was shining pretty well on to the body. The body had a belt with pouches on it. I examined the contents of pouch with Scott. I didn't wonder to myself what he had died of. The floor was like the Court floor not as many nails. I suggested to Scott that the marks on the body were represented by those on the floor. Scott agreed I didn't think the body had been washed as there was some white stuff on the body. I was surprised not to find any big marks.

I showed Scott how the marks on the body correspond with those on the floor. They couldn't have been made by a strap as they were absolutely parallel.

I can't say how there were no marks on the buttocks. The buttocks were soft. There were about 6 bags over the body - nothing underneath. There was a damp spot under the testicles. I thought it was due to micturation I told the 1st accused not to excite himself. I thought by delivering the blows he would excite himself. He was very angry. I didn't catch Michael Abraham say anything. It was a bad smell I noticed. Perhaps I should not have said decomposition. We took 20/30 minutes over the examination. We got in through a broken window. The door was closed while we were doing

the examination.

Read over correct.

Sgd. Joseph Sheridan.

6.11 p.m.

Adjourned to 8 a.m. on 4th.

Remanded in custody to 4th.

Sgd. Joseph Sheridan.

Court and Bar as before:-
4.8.23., 8 a.m.

ARTHUR JOHN JEX-BLAKE, sworn:-

Doctor practising near Nairobi, M.A., M.D., (Oxon), M.R.C.S. Eng. F.R.C.P. London, 1905 - 1920 on staff of St. George's Hospital, London. I had a great deal of P.M. experience at St. George's. I must have done may 100's of cases of p.m. there also demonstrating to students and staff. I have also done p.m. at other hospitals in London and in France during the War I saw a number of post mortem at the Brompton Hospital 1909-1920. I have seen Dr. Henderson's p.m. Report in the Magistrate's court. There is no mention of p.m. stains in it. I am surprised that in a case of this sort where serious bodily injuries are alleged to have been inflicted no reference to p.m. staining. P.M. stainings are very easily misinterpreted as evidence of violence. A mistake has often been made I am reading Professor Gloucester's Medical Jurisprudence 1902 at page 104. I agree with the part initialled by the Court I can say from Dr. Henderson's report that there was p.m. stainings. There was evidence before the Court that the deceased was beaten only on the buttocks. Dr. Henderson's report gives evidence that blood was found in the small of the back down the backs of both thighs and in front of one thigh. I say that this effusion of blood is mainly due to p.m. staining and not to the beating. All the injuries described by Dr. Henderson were not directly due to the beating in my opinion. The P.M. staining affecting the adjoining parts would at least equally affect the buttocks.

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Read over correct.

Sgd. Joseph Sheridan.

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 adjoining parts would at least equally affect the buttocks.

Some of the effusion must have been due to the beating (To Court). I see no evidence that allowance was made for these post-mortem changes in the report. I think p.m. changes would be very considerable in this case. We know from the evidence of 3 white men that when the body left the farm the amount of swelling and discoloration of the injured part the buttocks was very slight. When the body gets to Nakuru and is examined by Dr.Henderson we found the extensive injuries on the buttocks described by Dr.Henderson. I think if you realise what the body went through between the farm and Nakuru the development of these injuries explains itself. We have it in the evidence that the body was wrapped in a blanket, put on a ground sheet on a rough - floored ox-cart. It was then taken 17 miles over an indifferent road - 30,000 yards. Assuming that the ox-cart gave one jolt every 30 yards that is a 1000 jolt on a hard floor with nothing elastic between the body and floor except a thin blanket. I think it is obvious that such a shaking and jolting must have inflicted serious injuries on the already injured buttocks. It would have inflicted equal injuries on the back of the skull and shoulders. If the shoulders had been incised there would have been p.m. stainings where the weight of body rested and shocks received. The processes of repair. The fact that the man died 10 hours after the flogging shows that that 10 hours were available for repair. Repair sets in very soon after the rest of the injury - few minutes perhaps - not hours. I have seen it set in in a few seconds. If a man is grievously injured repair would set in immediately but not so strongly, I should say there must have been evidence of repair and Dr.Henderson's record shows that there was. In cases of very old people and people reduced by disease, and exhaustion by long disease repair is retarded. I would expect repair in this case in 10 hours - a normal healthy man as regards his tissues - in fact -

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Evid. pp. 62, 63 (51)

in a few minutes. The weal after beating is evidence of repair. It is equally evidence of an injury. Repair since 1700 years ago there have been 4 signs of inflammation heart, redness, pain and swelling and inflammation is the evidence of the attempt of the tissues to repair themselves. The processes of repair exaggerates the signs of injuries received. In this case the large amount of blood found by Dr. Henderson on the buttocks would in part be due to the attempt of the tissues to repair themselves. Above and below the buttocks are the tissues described by Dr. Henderson. They show infiltration with blood. Equally part of that infiltration would represent the attempt of the tissues adjoining the injured spot to repair the damage. the process of repair would do this by increasing the blood round the injury. One sees it in every bruise. I agree that p.m. evidence of bruising may be greater than ante-mortem due to repair before decomposition and p.m. staining. Those 2 factors have gone to increase the apparent severity of the injuries due to the beating. Quite roughly fully half of the damage said to be inflicted by the beating may be deducted and set down to the 2 factors I have mentioned - that is independent of the injuries succeeded by the corpse in transmission from the farm. The shaking in transmission would bring out the horse shoe marks. There was no damage to any vital organ. The injuries actually due to the beating were not sufficient in the ordinary course of nature to cause death nor were they likely to cause death. The beating was only on the buttocks and so not extensive. Judged by its effects it was not severe. It was of the order of severity of say a boy of 16/18 getting a sound flogging. The empty stomach and intestines appeared to me to show that the deceased had no food for 36 to 48 hours. I cannot remember ever to have found the intestines quite empty. Ordinarily food goes through in 36 to 48 hours. The emptiness

has an important bearing on this case. (The man must have been exhausted after coming back from Molo Station with a load. He would be less in a position to stand up against any injury. 2 hours before he died he said if he had a knife he would kill himself. This showed he had the will to die. It meant that he probably could die. I know of cases of patients making up their minds to die and they did die and there was nothing by way of adequate p.m. cause to account for death. Taylor is considered a very good authority. After 48 to 60 hours of starvation the health is not normal. In the case of overfed persons starvation is good within reason. The beating, starvation and the will to die were the cause of death. The heart it appears was somewhat fatty. The weight of heart liver and spleen would have been useful. I have never seen a p.m. case brought ~~before~~ to Court without the weights of the organs. I don't think shock was an adequate cause of death. There was no evidence of shock. The fact that the man got up and walked after the beating might imply that the beating was not very severe (To Jury). Immediately after the beating there was no shock, because the man got up and walked. Shortly before the man died he complained of being hot which excludes shock. In shock the temperature falls steadily. He was also walking about in the store. Walking and sitting down involves the full use of the muscles of the buttocks. If the man could walk and sit down all motioning the buttocks muscles - after the beating - I take it as evidence that the muscles were not seriously injured. if the man had not been flogged I do not think he would have died. The flogging in itself would not have caused death, but in his then condition the flogging accelerated death. In addition there was the will to die. The best thing to be done with the man would have been to put him in bed. In Medical Jurisprudence I have never heard of the will to die - only in practice. If the native

had gone away to his hut and had food and warmth it would have improved his chances. I do not agree that Dr. could not have saved buttocks from sloughing had he been on the spot. The serious damage internally must have shown itself within 10 hours of life, the jolting would have driven off rigor mortis. There cannot have been grave or very severe injury to the muscles of the buttocks if the man got up, walked and set down. The swelling on the groin consisted of a swelling round the spermatic cord with an effusion of blood around it and we are told the testicles had a minute haemorrhage. That excludes a blow on the testicle as the cause of the trouble. The testicle is a serious place to have injured producing great pain, faintness and sickness. A clot of blood of the size found in the groin is not necessarily of great importance - not a haemorrhage dangerous to life. Conceivably this injury to the groin may have been due to an acute disease of the spermatic cord, but I lay no weight on this, I agree with Dr. Henderson that the injury to the groin was very severe - the most severe injury on the deceased. Nearly three years here - home during 5 months of that time. I am a consultant physician. I have conducted no p.m. during past 3 years. I have never p.m. an African - only white men, women and children in England and France. I cannot point to anything inaccurate in the p.m. report. I have referred to omissions. A man biting his lips is consistent with bodily pain, at the moment. In 5 hours in a climate like this rigor mortis sets in. Difficult to say accurately injuries received before death would be evidenced after rigor mortis had set in. P.M. must be conducted in a routine way. It is most important. 1 1/2 hours is a usual time to take. It is very difficult to discriminate between ante-mortem and p.m. haemorrhage. I would not expect t

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find p.m. staining except on the dependent parts of the body. Assuming the body came down on its back any staining on the front of the thigh would be ante mortem. It might be repair. The repair swelling might extend beyond the region of injury. The process of repair does not ^{go} on over death. In a dead body p.m. staining and repair might or might not be distinguished. The deceased in wishing to kill himself with a knife is consistent with pain - also with depression. The depression would be aggravated by starvation. His wish would be due to starvation and the beating. The absence of food trace in his organs was not enough in itself to cause death. The absence of food for 36/48 hours coupled with his long walk would materially reduce his vitality. I should say his vitality was at a low ebb and the beating lowered it still more. Had he had a decent meal I think he would have survived. I think he should have eaten after the beating. I think his disinclination for food was due to the beating and his long starvation. I have never had a case of beating professionally post mortem. Beating tends to exhaustion various degrees. One way of putting a man to death is by beating him very severely. A very severe beating would be by killing the tissues from ~~beating~~ ~~beating~~ and producing gangrene. If the tissues were crushed or destroyed gangrene might occur. The destruction of the tissues from beating would be grievous bodily harm and that is an endangering of life. Exhibit 1 could cause severe injury - grievous bodily hurt. Exhibit 1 weights about 7 ozs. One would have to go on beating a man on the buttocks for $\frac{1}{2}$ hour or 1 hour hundreds of strokes and tremendous laceration. It is hard to kill by beating on the buttocks. Sitting down would not assist or retard to any extent the process of repair. It would tend to increase the pain. The beating contributed to the deafness.

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Evid. pp. 66, 67, 68 (55)

Exhibit 1 would cause a swelling in the groin if it struck the groin. One case get a slight shock which would later develop in to a severe shock preventing locomotion. A temperature would be compatible with exhaustion. If he had this groin clot on Saturday 9th I think it very unlikely that he could have walked in and out of Molo. The clot of blood must have, in my opinion, appeared subsequent to his return from Molo. The clot, I think was not due to p.m. staining (see page). The clot was, I think ante mortem. The ecchymosis to the right testicle was also ante mortem.

The clot suggests an injury. A clot might originate and grow over days. If Exhibit 1 had caused it I should have expected to find a horse shoe mark over the spot.

It is most important that a medical man who has to perform a p.m. should be placed in possession of all the facts relevant to the case before he makes the examination. I understand that Dr. Henderson had no opportunity of seeing the inquest or police report before his p.m. In making the p.m. he did not have proper appliances; he was unable to weigh any of the organs. I think it most important that these defects in the system connected with p.m.'s in this country should be notified.

Read over correct.

Sgd. Joseph Sheridan.

Hopley with permission.

If the body had tumbled over on to its face in transmission this fact might account for the swelling of the thighs referred to by Dr. Henderson. I don't think the point important.

Read over the correct.

Sgd. Joseph Sheridan.

12.30.

Adjourned to 1.30.

Sgd. Joseph Sheridan.

Court and bar as before.

GERALD VICTOR WRIGHT ANDERSON, sworn:-

Practising in Nairobi, L.R.C.S. Eng., M.B.B.S., London. I have treated a fair number of p.m. cases. I have had a large number of cases of starvation under my treatment in the War. I have seen Dr. Henderson's report. There is no mention of p.m. staining. I am surprised at that in this case. In a case of violence without breach of surface it is absolutely essential to establish beforehand between effects arising before death and effects subsequent to death. I agree with what Gloucester says at 104 and 105. There is considerable indirect evidence in the Doctor's report of p.m. staining. There is the condition of the small of the back where no blows were struck. There was blood - stained condition there. In front of the thighs similarly - also at the back of the thighs. What the Dr. describes injuries are largely due to seepage. I don't at all think that all the injuries to the buttocks described by Dr. Henderson ~~in his report~~ were due to beating. I have had an advantage over Dr. Henderson's in hearing the history of the case. Listening to 2 European witnesses who described the body about 9 hours or 10 hours after death, there was no evidence of blood outside. Scars or any great laceration of the buttocks or thighs. Their observations are in accordance with what I would have expected. I also believe that Dr. Henderson saw the scars and blood, but not clotted blood on the buttocks. That is evidence of p.m. changes. The mark of a bruise is more evident after death. I think the p.m. changes would be very considerable in this case. The jolting must have increased the distribution of the blood clot. The muscles are in a state of rigor mortis and any little dropping of the middle of the body would necessarily lacerate the muscles. Repair starts immediately a blow is struck. In 10 hours the repair would be great. I disagree entirely with

GERALD VICTOR WRIGHT ANDERSON, sworn:-

Practising in Nairobi, L.R.C.S. Eng., M.B.B.S., London. I have treated a fair number of p.m. cases. I have had a large number of cases of starvation under my treatment in the War. I have seen Dr. Henderson's report. There is no mention of p.m. staining. I am surprised at that in this case. In a case of violence without breach of surface it is absolutely essential to establish beforehand between effects arising before death and effects subsequent to death. I agree with what Gloucester says at 104 and 105. There is considerable indirect evidence in the Doctor's report of p.m. staining. There is the condition of the small of the back where no blows were struck. There was blood - stained condition there. In front of the thighs similarly - also at the back of the thighs. What the Dr. describes injuries are largely due to seepage. I don't at all think that all the injuries to the buttocks described by Dr. Henderson ~~in hearing the history of the case~~ were due to beating. I have had an advantage over Dr. Henderson's in hearing the history of the case. Listening to 2 European witnesses who described the body about 9 hours or 10 hours after death, there was no evidence of blood outside. Scars or any great laceration of the buttocks or thighs. Their observations are in accordance with what I would have expected. I also believe that Dr. Henderson saw the scars and blood, but not clotted blood on the buttocks. That is evidence of p.m. changes. The mark of a bruise is more evident after death. I think the p.m. changes would be very considerable in this case. The jolting must have increased the distribution of the blood clot. The muscles are in a state of rigor mortis and any little dropping of the middle of the body would necessarily lacerate the muscles. Repair starts immediately a blow is struck. In 10 hours the repair would be great. I disagree entirely with

Dr. Henderson on the point of repair. It sets in at first by the small capillaries increasing 3 or 4 times the size. The injured part feels hot and is swollen. The tissues are more swollen because they have more blood. The processes of repair would have exaggerated the appearance of injuries found by Dr. Henderson. Had he p.m. the man at once he would have been surprised at the little damage. Any doctor would have been surprised seepage and repair have contributed largely to the apparent severity of the bruises. At least half the damage found by Dr. Henderson would be due to seepage and repair and transit of the body. Injuries by the beating were not a sufficient cause of death in the ordinary course of nature. The apparent damage was extensive but not the beating. The cause of death I firmly believe was due to the fact that the native had had no food for 2 days - starvation - the native's attitude of mind before death and 3rd cause the beating. The beating accelerated his death but one has to remember his wish to die. If the boy had eaten food between 4 and 6 on the 10th the boy would have been alive. He would not have lost courage. I have seen such a case myself. A European woman suffering from an ordinary tropical complaint. I had no anxiety as to her condition. She said I don't know why you take so much trouble over me Dr. I have no wish to live and she died 3 weeks later. There was no evidence of shock. I agree with Dr. Jex-Blakes. The blood is a vital organ. A criminal p.m. report should contain the weight of heart, liver, etc., It is hard to judge the condition of the heart without a knowledge of weight and condition of muscular wall. The weight of the liver would have thrown some light on the matter. Exhibit 1 is about 3½ lbs. I would not call the injury to the groin very severe in the sense of causing grave disturbance. I agree that there was evidence of a sound thrashing.

I have seen P.M.s here of natives of this country. I

Evid. pp. 69, 70 (57).

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I have seen 3. Two were murder by ~~knives~~ Knives.

Only three years in practice out here. I think the lip cuts were caused in a struggle. The biting of the lip is compatible, with severe pain. Injuries that do not break the skin oozing out of blood fluid may take place. I think it happened in this case. I accept what Scott said and for the reasons I have given it is consistent within what Dr. Henderson found as regards the buttocks. The seepage is the result of gravitation. The blood stained fluid was being sieved down, more than ordinarily by jolting. The groin blood clot was ante mortem and if the staining on the front of the thighs was in the vicinity of the blood clot it was probably ante mortem. The discolouration of the skin of the buttocks could be due to the beating but it would be very difficult to distinguish between it and seepage. Had there been no beating and the boy had been put in the store and died and Dr. Henderson examined the body at the interval of time he did he would have found seepage at the dependants parts - and a certain amount of damage to the muscles. For Exhibit 1 to cause severe injuries it would have to be applied very frequently. A blow from it would sting. Exhibit 1 would bruise rather than cut. I can only say it is most probable he had not the groin swelling before his return from Molo. It might have easily been caused by Exhibit 1 without leaving any mark - a severe blow or light blow. Exhaustion of the nerve force is shock. The boy was in a state acute starvation. I as a medical man if I had flogged that boy would have given him nourishment. I don't think it made much difference tying him up. The beating would possibly cause death but would not in the ordinary course of nature cause death. A Kavimdo is a bad man to take a beating. I have heard others express that opinion. I have heard my brother say that Kavimdo died in the war where others wouldn't

Evid. pp. 72, 73 (59).

If this boy came to be flogged in a state of acute starvation I would flog him first and feed him afterwards or vice versa. I don't think I would give him 30. I don't think he made up his mind to die till the time he attempted to escape. His being a prisoner may have preyed on his mind. Would the man not lie on his stomach if he had been in much pain? From 8 to 1 he appeared to have no option how he was to lie. From 1 to 4 he appeared to have that option and didn't avail himself of it. I think it would have been better to have allowed him more latitude.

It was a grave omission to leave out p.m. stainings in the report and the body should have been incised where there was no injury.

There are several cases of African natives where a swelling in the groin indicates diseases. Climatice bubo and funicillitis which affects the spermatic cord. The former is very common. I would have expected to find a blood clot in the buttocks area if the beating had been very severe. I am absolutely certain the native could not have walked had he been beaten to the extent the Dr. found him to have been beaten I think a kiboko would be more severe than Exhibit 1.

Read over correct.

Sgd. Joseph Sheridan.

4. p.m.

Remanded to 7th in custody at 9.30 a.m.

Sgd. Joseph Sheridan.

9.10 a.m. 7th August.

Court and Bar as before.

All accused further charged with causing death with the intention of causing such bodily injury as the accused knew was likely to cause the death if the person to whom the harm was caused.

Para 2 of Section 300.

All accused plead not guilty.

Proposal to recall Dr. Henderson.

Objection by Hopley. The jury require to have the Dr. recalled and I allow him to be recalled.

FREDERICK LOUIS HENDERSON (still on oath - recalled)

eman.

I did not proceed to examine the body on the basis of being in possession of information that the body had transmitted from Molo in an ox cart and train. I understood the body had been carefully brought from Molo. It appeared carefully wrapped up in a blanket, tied at both ends with a belt round the middle. I did not take into consideration the distance the body had come. It was after I gave evidence here that I was told the facts of the case. Capt. Rice tells me he informed me of the history of the case. I can't recollect his doing so, except that the body had come from Molo. If Capt. Rice had told me the history of the case I don't think it would have made any difference to my examination. I know the history now. It would make no difference to the conclusions I drew from my examination knowing everything that has taken place I would still give the same evidence. As a rule a written statement is furnished by the police on a printed form. In this particular case Rice states he told me verbally all the facts but I did not receive the police the police Inquest Report. I now see the Police Inquest Report. Had I had that report before me at the time of the p.m. it would not have made any difference to my p.m. examination or the conclusions I drew from it - my evidence would not have been altered. I used the word congestion in my report, Post Mortem staining is a skin superfine skin staining. It is practically never seen on native skins. I have carried out many hundreds of native p.m. in this country, M.R.C.S. England & Lic. R.C.F. London I have never seen p.m. stainings occur and disappear. I do not agree that half the injuries

I saw could be attributed to post mortem staining, repair and the transit of the body. To illustrate I will mention a case I had last Saturday (Hopley objects. Ruling evidence appears to me to be fair and I allow it to continue) A native was shot on the 2nd accidentally through to the head between 12 and 1 p.m. The body was brought down by a Ford Car from Njoro on evening of 3rd and was examined by me on Saturday a.m. at 11.45, 4th. I found the body lying on its back on the mortuary table in my mortuary. I can't say if it was on its back coming down. In view of the present case I made similar incisions and the body as were made on this case - first noting that there was no post-mortem staining anywhere - no bruising laceration or haemorrhage or contusion of the muscles. In case the body had been lying on its side I also incised the muscle of the thighs. The tissues appeared quite uninjured. I was P.M.O. Nandi Expedition in 1906 and I saw a wounded native who subsequently was found to have been shot through and had a shattered thigh. That native ran like a wounded buck for nearly 500 yards. It does seem peculiar that the deceased should have been able to walk 300 yards and get up and sit down during the night on the assumption that he was suffering from shock which I consider was partly responsible for his death. I think he died from shock as a result of the injuries - the flogging. In cases of shock text books say that although the temperature may be ^{sub} normal under the armpit, yet in the native it may be above normal. This is quoted in Choices text book of surgery. I have seen it often that a dying patient complained of heat. They feel they cannot breathe and wish to be thrown off all the bed clothes. Frequently one feels one has fever and on taking the temperature one finds it normal. The injuries depend a great deal on the force with which the blows were given by Exhibit 1. Using moderate force it would require a good

many blows to produce the condition I found. I have seen one blow of a thick kiboko produce gangrene. I had no difficulty in distinguishing between ante mortem bleeding and post mortem changes. Had the body been jolted in coming down there might have been a little more oozing of venous blood. Had there been, it would not have accounted for the bruising of the muscles. The bruising of the muscles was severe. I don't agree that the suspension of the body in my particular portion would have accounted for the tearing of the muscles of the buttocks. I happen to have had experience of this particular kind of injury. 2 boys were severely flogged. It was not 'till some days after that the severity of the injury appeared. The tissues where the injuries were inflicted sloughed - became gangrenous. If tissues are severely injured, so as to be destroyed no repair takes place. If a man's leg is severely pulped - it dies - is thrown off by the body. Some of the venous oozing unclotted blood was possibly due to the jolting. If the beating was I mention it was so severe as to rupture the small minute veins, the oozing from those veins might have occurred in the passage from Molo. There are no big arteries in the buttocks and that is chiefly why they are used for flogging purposes. I was not surprised not to find blood clots in the buttocks area. I would not call the blood an organ. I incised the body wall above and wall below the seat of the injury. Except for the presence of the fluid found on the outside of the thighs. I agree that the state of the body as found by Scott was consistable with the state as found by me. I am also accepting the groin swelling and the lip mark I persist in saying the liqueur glass full of blood was ante mortem: it had dried and clotted on the thighs. The horse shoe shaped marks as time went on would get dried and blanked and contracted as they were exposed to the air. I would have expected

the horse shoe marks to have been visible immediately - seeing the injuries I found. The horse shoe marks would have become more visible on exposure to the air. I cannot explain how Scott did not see the horse-shoe marks. They were on the outer side of the thighs and buttocks. I think the marks should have been found at the time by Scott, but not so well defined. The blood on the buttocks should also have been seen. I found the clot on the groin. It was a severe injury. That injury could not have been caused by disease. I am certain the groin clot was not a climatic bubo. The testicle was bruised and a very small injury to the testicle causes shock. The end of exhibit 1 might have ruptured a vein.

tor by I took an arts degree at Cambridge. After qualifying at Middlesex Hospital I held the post of House Surgeon to Sir John G. Sutton. I also at same hospital was House Physician and Consulting M.O. in charge of out patients and had also Senior post of Resident Medical Officer to Middlesex Hospital. I did a year as a student at Freighlogh in Baden with Prof. Croskey and a year as student with Sir Alex Ogsden in Aberdeen, 19 years next October intending leave home in Kenya. I dont think deceased would have had the strength to struggle with those holding him down had he been starving. On starvation I agree with what Taylor says at Pages 608, 609 and 610 7th Edition initialled by me. I dont think it is possible to estimate injuries by halves. I agree with Husband at P. 97 6th Edition where I have initialled. Husband is a well known authority. Given that Scott says he saw no marks on the body and that he saw no blood I still say without any reasonable doubt the benefit of which the Court tells me to give to the accused that the injuries found were ante mortem. This body was well covered with fat judging from the uninjured portion and I

reported the heart had more fat on it than usual. That is quite incompatible with death from starvation. The man I agree had had no food for 36 to 48 hours. In starvation the first thing that disappears is the fat from the body. I agree that starvation continued reduces vitality, but gives the 2 factors that deceased walked to and from Molo as described and did not have food for 36 to 48 hours prior to the beating - I do not agree that these factors reduced his vitality. I do think they contributed to making him less likely to resist the flogging. I don't call 48 hours without food starvation. I have had trips up to 8000 feet motoring to Gilgil. In short I have left here at 11 a.m. had a very light breakfast and come back at 11 p.m. and had no food 'till a light breakfast the following morning a fast of 19 or 20 hours as a matter of fact I had no desire to eat at all during that period. If I continued fasting for another 24 hours, I would not call it starvation. I do not think the period without food had any effect on the case. I have seen a good many suicides and attempted suicides in this country and surely if a man willed to die suiciding would be what one would expect.

I have no faith in the theory of the will to die or the will not to live. Hundreds of Gathsame cancer cases at my old hospital the Middlesex are continually wishing to die and yet they live. I never heard of the will to die put ~~body~~ forward in a Court before as a cause of death. I saw the body and I saw the injuries produced and I don't know any other way one could judge as to their extent. The thighs when one got beyond the injured area were perfectly normal as regards the fat and the muscles - both front and back.

Opley (by foreman) Capt. Rice showed me no written report of any kind when I made the p.m. A body ought to be inspected as soon as possible after death. The sooner the better. One

gets earlier evidence of various things. The later the inspection is the more difficult it is for the medical man to make up his mind on several points - one being whether there are any p.m. changes. In the shooting case I examined on Saturday there is going to be no change about it. I am not surprised at the absence of reference to p.m. changes in my report. If there had been it would have been put in and should have been put in. I find no p. m. stainings. I dont think there were p.m. staining on the prominent part of buttocks, but I will allow there may have been in judicial floggings all the men have lived in my experience. I never had to give a report before in a fatal beating case where I have had to make a complete p.m. making incisions. In the case of my own fast I had a couple of cups of tea about 6 p.m. and another couple on coming back. It is the second 24 hours fast that tell the tale. 48 hours fast would lower a man's courage. It is sometimes very difficult and sometimes very easy to distinguish between ante mortem bleeding and post mortem changes.

Q. Is it difficult to distinguish between ante mortem bleeding and post mortem changes?

A. I cannot answer a general question of the kind, but all I can say is that in this particular case I had no difficulty.

The difficulty will depend on whether putrifaction has set in. Putrifaction had not set in in this case. At a certain point in putrifaction it becomes difficult. There is no difficulty in distinguishing an ante-mortem blood clot and a post mortem changes say in a muscle or say the brain. The buttocks muscles were torn, lacerated and bruised in this case, I did not examine the blanket at all. I agree with Gloucester at P. 104 and 105, but it has nothing to do with this case. I found

slight hypostasis at the back of the lung - the commonest places to find it. - a spongy organ. I drew attention to p. 105 of Gloucester which I have initialled. The journey in the ox cart might have caused a little oozing of venous blood. A body on a Ford Car is on springs. The body in the ox cart had a more severe journey. It would not have assisted much in bringing about p.m. changes. There may be considerable doubt as to the nandi having been shot in the thigh before he ran the 500 yards. I cant say how long after death the wounds would start "contracting". It is difficult to say when repair sets in. Repair makes a weal mark go away

Read over correct.

Sd. Joseph Sheridan.

1. 5 p.m.

Adjourned to 2.15

Resumed 2.20 p.m.

Called at request of jury

Intd. J. S.

HARRY PATRICK RICE, sworn:-

Asst. Superintendent Police, Nakuru, I saw the body on the night of the 11th at 9.30 p.m. I made a brief examination with the aid of a hurricane lamp. The body was lying on its back covered with blankets. I turned it over: it was absolutely stiff. There were no lacerations, so far as I could observe, but there were certain slight marking on the buttocks. The light was very dim. There was a mark on the right wrist as of tying with a rein. That was the only examination I made then. I gave instructions to have it sewn up in a blanket and I arranged its removal to Molo. I saw no trace of blood on the buttocks. The marks I found on the buttocks were such as I would expect after a beating. The marks were running parallel across the buttocks. There was slight swelling. My object was to get the body away as quickly as possible. My first impression was the

beating was not severe and I was very surprised afterwards at what I saw at the p.m. I observed no swelling in the groin. I did not look for it. At the p.m. before the incisions, the body was stripped and placed on the slab and Dr. Henderson proceeded to examine it - first of all making an external examination. The first thing I saw was the cutting inside the lip. After this I saw the body turned over on its face. It was still stiff and I then saw on either side of the hips in line with the seam of my breeches a number of looped semi-circular marks. The area they covered was about a span on either side. There were small indentations and there appeared to be a very small quantity of dried blood in the loops. Dr. Henderson drew my attention to the marks, but I think I would have seen them myself in broad daylight. Dr. Henderson next made incisions from under the scapular on either side straight down through the buttocks over the thigh until he reached a spot just over the back of the knee. Once he cut through the outer tissues from the small of the back right down the thigh the matter underneath resembled to my mind port wine jelly. The same appearance was on one thigh in front. I have seen about 30 p.m.'s during 17 years as a policeman. The incisions were about 2 ins. at the buttocks and 1 inch at the thigh roughly. I was present during the whole of the p.m. until Dr. Henderson gave instructions to his dresser to prepare the head when I was called away. The case file was behind with Scott and the accused who had not arrived at the time of the P.M. Scott had had to get other evidence on the spot. I left accused's farm before it was light. I gave Dr. Henderson the history of the case as I knew it. I told him how the body came by wagon I did not say it had come on its back. There was an incision from the groin extending round the hip on the right side. I saw the haemorrhage in the right groin. The appearance of the

of the outside of the thigh did not appear to me as bad as the buttocks. The outer skin where horseshoe marks were was a little broken and surfaced in the indentations with dried blood. I did not notice this dried blood at the farm. It was must the same colour as the man's skin.

foreman. The dried blood was in some of the indentations. I saw it nowhere else. The port wine jelly matter was $\frac{1}{2}$ way down the thighs. I saw a lot of the jelly on right front middle thigh. It was more red than Worcester Sauce. The actual marks were on the buttocks and on either side of the thighs. I saw Scott's Report before going into the shed. I think I noticed parallel marks across the buttocks. Scott remarked they looked like those floor boarding. There were other marks besides. I quite believe some were floor marking boards. There were other unevennesses. I fancy they were thinner than a pencil. I cant be quite sure. The moving of the body might have accounted for the other marks. I should find it difficult to believe they were all accounted for by the floor boarding. Dr. Henderson saw neither my report nor Scott's Report before the incisions. The mark on the right wrist was a very faint. I saw no abrasions at Molo nor lacerations. I picked up deceased's hand at Molo and noticed the mark on the wrist. The unevennesses were the same colour as the man's skin. The body when I saw it at the mortuary was undoubtedly more swollen than at Molo and the parallel lines had disappeared. I did not notice anything particularly wrong with the thigh at Molo. I went into the shed to notice if there was anything further to add to Scott's report. I produce my report Exhibit E. (not objected to by Crown) I had read Scott's report before going into the shed. Scott, so far as I know, is a careful Constable.

I would not like to say how many horseshoe marks on the body - some were merged into others I would not like to say

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how many there were. I never saw the dead body of a person flogged to death before.

Read over correct.

Sd. Joseph Sheridan.

Hopley addresses the Jury 3.10 p.m.

Rumour to be excluded - no outside circumstance to be considered - Juries are trustees of facts - The nature of the hurt was it simple or grievous, the intent and Knowledge of the accused, grave and sudden provocation - native accused only technically guilty - only beat on the buttocks - 2 diseases amongst natives - The groin swelling was not due to disease (J.S) - Kitosh riding as if a novice - The existence of latent diseases - To the groin hurt due to beating - saw no mark over groin - no evidence as to when groin mark caused - accused was particular not to have blow struck otherwise than on the buttocks - boys also held Kitosh technically guilty - what was proximate cause of death - what a cused's intention or knowledge - was intention to give Kitosh a sound beating for his disobedience. Beating not extensive - why beat a man on the buttocks with a soft rein, if you intend to kill him - Buttocks very few arteries and place for beating. Intention to give him a severe trouncing - writes to police immediately - assists generally - Tying up of Kitosh - Putting guards on doors - Kitosh attempted to escape - The severity shows the intention and there is the medical evidence - accused not physically able to beat - throwing of water was for purpose of getting an answer - Dr. Henderson roughly counted 30 marks - allegation that beating was for 2 hours - accused had on tennis shoes - Police reports official - native witness could not count natives' strokes, but could count his master's - Turned away after his master had given 50 - beating stopped after Bwana mike left - Arap Chepkoron

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getting up after being slapped showed he had power over his walking muscles Arap Chepkoron and Sefu guarding a "dying man" - Nandi story incorrect - native was perspiring before death, so shock is out of the questions - belief in 1st accused's evidence - walked 320 yards after the beating - Crown thought native had been carried to store - Did body travel the whole way on its back - First annoyance the news of the horse - Secondly the insolence - Evidence of Grott and Rice - Rice saw no blood - Does Rice's evidence corroborate the defence medical evidence - marks of seams on boards - no blood - Mrs. Lance's evidence as to health - Powell a simple, but honest witness supported by other evidence -
- accused was very angry when beating the boy - Dr. Henderson saw the body 38 hours after death - accused's evidence to be believed - Dr. Henderson's evidence that a blow of a kiboko had caused gangrene and the death of a man.

5.30 p.m.

Adjourned to 8 a.m. 8th.

Remanded in custody.

Sd. Joseph Sheridan:

8th
8 a.m.

Court and Bar as before.

Hopley continues.

The time occupied in the beating - No organs kept or weighed - Dr. Henderson did not have Police Reports - numerous horse shoe marks - dried blood not kept - Dr. Henderson says roughly 30 marks - slips had report - thighs somewhat swollen - How much effusion of blood - Stomach and intestines empty - not kept - Reads and criticises Dr. Henderson's evidence - Weight of liver not available - The deceased was an ordinary, strong, fairly healthy native - Dr. Henderson overlooked the hunger theory - European p.m. stainings, a native none - Shock, or exhaustion not mentioned - p.m. stainings on prominent part of buttocks

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Hopley continues.

The time occupied in the beating - No organs kept, or weighed - Dr. Henderson did not have Police Reports - numerous horse shoe marks - dried blood not kept - Dr. Henderson says roughly 30 marks - slips had report - thighs somewhat swollen - How much effusion of blood - Stomach and intestines empty - not kept - Reads and criticises Dr. Henderson's evidence - Weight of liver not available - The deceased was an ordinary, strong, fairly healthy native - Dr. Henderson overlooked the hunger theory - European p.m. stainings, a native none - Shock, or exhaustion not mentioned - p.m. stainings on prominent part of buttocks

- Why was blanket not kept - Dr. Henderson did not see the blood at first - Not a 2nd European witness to Inquest Report - Were the injuries extensive? - Gangrene occurs from outside - No abrasions - Repair sets in immediately - Why would Dr. Henderson not expect repair in 10 hours? Dr. Henderson admitted there was p.m. congestion. - Contrast Henderson's evidence with that of Jex Blake and Anderson - - Emptiness of stomach not considered by Henderson - Kitchen had opportunities of eating and did not - Accused could not know of deceased not having eaten; - he was healthy looking - Case Rex v of Hopley contrasted - Accused did not know deceased was carrying out his duties and yet starving himself Crown Case at first was Kitosh died of shock - Dr. Henderson had not considered the fact of the man walking 320 yards sitting down etc. in considering shock - Exhaustion not mentioned by Dr. Henderson - provocation - while the frenzy lasted.

1.5 p.m.

Adjourned to 2.15 p.m.

2.30

Court and Bar as before.

- everything done on spur of moment and whole passion to the exclusion of reason had sway.

Hopley finishes 2.50.

Law Ag. Solicitor General concludes.

The mare was very much valued - accused received the information on the 9th and was very vexed but resolved only to tear up his ticket. On 10th accused had sufficiently recovered to move round his farm. Accused although he had the knowledge that he should not touch the boy yet he does touch him. Did he not bring about his own anger. He did not lay hands on him immediately. He put him in the shed. He called his assistants to help him. Deliberate preparation. The best evidence of the force of the blows is the powerful

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physique of accused - Slightly inconvenienced. The flogging was not judicial. A double blow inflicted each time. Accused said he intended to hurt deceased. A witness warned accused that deceased was going to die during the beating. Accused took both natives off because they were not putting heap into the strokes. Was the real reason for the water to bring him out of his faint. Next deceased was tied up after being brought to the store. The manner in which he was tied up. Deceased in a state of considerable bodily pain. The weight of his body on the injured part. Intended he should remain for 9 hours there. Was the tying up in the store a dditional cruelty. There must be discrepancies in native evidence. Post mortem report. Is it inconceivable that the thong lapped over and struck the groin. The swelling in the groin could only have been caused by the beating. Metaphysical wish to die. Experts said deceased was suffering from acute starvation - Page 97 Husband 1865 W.R. p.33 Had deceased no meal. No meal between Saturday morning and death. Prosecution cant prove definitely there was no vomiting and no diarrhrea. He may have done.

Finished 4.25 p.m.

I sum up 4.45 p.m.

I conclude at 5.55 p.m.

Jury retire.

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1. What was the cause of death?
 2. Did the accused intend to cause the bodily injury? Sufficient in the ordinary course of nature to cause death?
 3. Did the accused intend to cause such bodily injury as he knew to be likely to cause the death of the person to whom the harm was caused?
 4. Did the accused act in so imminently dangerous a manner that he as a reasonable man must be taken to know that death must in all probability ensue?

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4. Did the accused act in so imminently dangerous a manner that he as a reasonable man must be taken to know that death must in all probability ensue?

5. Without the intention of causing death or bodily injury sufficient in the ordinary course of nature to cause death must be as a reasonable man be taken to know that death was a likely result?

6. Did the accused commit grievous hurt. that is did he endanger human life and did he intend to so endanger human life or must he as a reasonable man be taken to know that human life was likely to be so endangered?

7. Was there grave and sudden provocation?

I warned the Jury all matters of political expedience rank of accused in life etc. to be disregarded. I explained to the Accused the law of abetment in regard to the accused being tried together. I carefully explained the law as to grave and sudden provocation, pointing out that the onus was on the accused. In regard to other points I directed the Jury to give the benefit of the doubt to the Accused where the doubt was of a reasonable character. I asked them to consider whether the evidence of Dr. Henderson should be rejected or modified having regard to the evidence of Doctors Jex-Blake and Anderson. I finally asked Counsel if there was any other point they wished me to put to the Jury and they said there was not.

I conclude 5.55 p.m.

Jury retire at 5.55 p.m.

Foreman returns at 6.40 for a further explanation of grievous hurt. Explained in presence of Counsel.

Jury return at 6.55 p.m.

Jury answer the names.

Jury agreed on this findings.

(A) 1. The injuries inflicted by the accused aggravated by want of nourishment:

2. No.

3. No.

4. No.

5. Without the intention of causing death or bodily injury sufficient in the ordinary course of nature to cause death must be as a reasonable man be taken to know that death was a likely result?

6. Did the accused commit grievous hurt. that is did he endanger human life and did he intend to so endanger human life or must he as a reasonable man be taken to know that human life was likely to be so endangered?

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I conclude 5.55 p.m.

Jury retire at 5.55 p.m.

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(A) 1. The injuries inflicted by the accused aggravated by want of nourishment.

2. No.

3. No.

4. No.

5. No.

6. Yes.

7. No.

The jury find the accused guilty of grievous hurt.

(Judgment)

Criminal Case No. 73 of 1923.

Rex..... Prosecutor.

Versus

- 1. Jasper Abraham.
 - 2. Kimesu Arap Killel,
 - 3. Chuma Arap Chepule.
 - 4. Bariche Arap Chumia.)
- }..... Accused.

J U D G M E N T :-

The Accused have been found guilty of grievous hurt which is an offence of a most serious nature in the circumstances of the case. I sentence Accused No. 1 Jasper Abraham to 2 years R. I. The native accused are only technically guilty. According to the first accused two of them were worse than useless in administering the 3 or 4 strokes they gave. The 3rd native accused gave only 4 or 5. To sentence those 3 natives to further imprisonment would in my opinion be an act of injustice. They acted wholly under the domination of and the instigation of and in fear of the Accused No. 1. I sentence each of the three native Accused to 1 day's R.I. which means they will be released on the rising of the Court. This case is more particularly serious having regard to the previous cases of Watts, Hawkins and Harries. Cases of the kind are I am glad to say rare, regard being had to the comparatively large European population of this country, but it is clear that the lesson which the Courts of this country endeavoured to teach in the cases I have mentioned was not learnt by the Accused.

Sd. Joseph Sheridan.
8/8/23.

The jury have acted with admirable patience during a trying ordeal will be excused from further service for 12 months.

Sd. Joseph Sheridan.
8/8/23.

E. V. W. 12.5.25.

Klein 12/5
Bottomley 13.5.25

C. D.
R 26 MAY
D 20

- C. Acheson
- J. Shuckburgh
- D. Davis
- C. Arnold
- H. Lambert
- J. Robertson-Smith
- Ormsby-Gore
- Amery

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S.o. for Mr. Bottomley's signature.

26 May 1925.

RAFT for conson.

Sir

Dear Denham,

DENHAM, ESQ., C.M.G.

The S. of S. does not propose to make any reply to your despatch No. 162 of the 5th of February regarding the Abraham case, but I am instructed to write to you privately on a point arising out of the criticisms of Dr. Henderson's post-mortem examination of the deceased native.

There is no necessity to enter into the merits of the controversy, but it is clearly desirable that Government Medical Officers who have to undertake post-mortem examinations especially in ^{where} cases which lead to ~~are or may be involved~~ criminal proceedings, should be competent

competent to do the work, and, as far as possible, acquainted with modern methods.

The Colony cannot afford to engage the services of a whole-time autopsist, but the Government can, and *may reasonably be expected* ought, to take steps to ensure that its regular Medical Officers have the opportunity of bringing themselves up to date in this matter. We should therefore be glad if you would talk it over with Gilks, and consider what might be done in the way of instruction during leave to secure this.

Yours sincerely,

(Signed) W. C. BOTTOMLEY