1923

KENYA

125

5536

Date

SUBJECT

MINUTES

to charges. As a matter of
[illegible] practice charges and
evidence of the jury in
the course of the trial that
the case is not merely one
of conspiracy or acquittal
on the capital charge.

? No objection to alternative
charges

9. The verdict
by the capital charge [illegible]
that [illegible] is good [illegible]
[illegible] "acquitted and discharged"
[illegible] "unthinkable" for
a good deal further than [illegible]
[illegible] years.
by the alternative [illegible]

...ppear necessary for another — (cited)
be more applicable in a case
involving a fourth degree of kinship

~~And~~

On the general question of trial by
jury, I suggest, as I have suggested
before, that the Chief Justice should
be directed to furnish reports on
all jury cases from the Courts of
one of the counties every year in accordance
with the resolution, and kindly ~~[illegible]~~ to
the memory of ~~[illegible]~~ the additional
popularity of the Attorney Gen.

W.C.S. 19.XI.23.

My minute which I dictated to-day
has for some reason been typed separately —
See ~~above~~ below.

H.B.
19/11

Sir J. Masterton Smith

Sir W. Tyrrell's minute below.

This is a revolting case, and, in spite of
the Judge's laboured explanations, it is
clear

clear that nothing approaching justice has been done. If the positions had been reversed and the native had been on trial for a similar offence against the white, who can doubt what would have been his fate ?

We may expect that his sentence will be severely criticised - and rightly so - both in and out of Parliament.

I suggest the following action:-

Acknowledge in open despatch and say that the Secretary of State has read the papers connected with the case with close attention and must approve the abhorrence of a crime which appears to him to affect no extenuating circumstances, and to have received totally inadequate punishment.

Further that he is advised that a verdict of anything less than manslaughter is quite irreconcilable with the facts of the case.

That he fully recognises that cases of this kind are of rare occurrence and that the vast majority of the British settlers in Kenya are as free from any tendency to ill-treat natives as are British settlers in other parts of the World, but that he is also bound to record his opinion that the cases which have occurred have been marked by great brutality and that no sufficient punishment has been meted out to the offender.

That while this position exists the [illegible] cases of this kind are [illegible] cannot be described as [illegible] to safeguard the [illegible] with the institution which is so [illegible] and with the traditions of British justice, but that it is clear that the working

in the special conditions of Kenya requires to be carefully watched, and that the Secretary of State must therefore lay it down as a definite instruction that, should any further cases occur in which a non-native is charged with causing the death of a native, a shorthand report of the trial must be furnished in order that he may be in a better position to judge, with the assistance of his legal advisers, to what extent justice is being impartially administered between the two races.

Then, in a separate confidential despatch, call attention to Lord Harcourt's confidential despatch of the 4th of July,1913, in which he approved of Sir H. Belfield's suggestion that "in cases of this kind the trial should take place in and the Jury be summoned from, a province distant from the neighbourhood in which the crime occurred" and ask why this course was not followed in this case, - then say:-

That, as the Governor is aware, it has been the settled policy for some years past to replace the Indian Codes in force in the Colony by local Ordinances - that this has been done in the case of the Indian Penal Procedure Code, and that the Secretary of State is strongly of opinion that immediate steps should be taken to substitute a local ordinance, based on English Criminal Law, for the Indian Penal Code, and would be glad to learn by telegram that the Governor agrees to an extension of the leave of the Chief Justice and Attorney-General to enable them to prepare a preliminary draft - adding that some excellent models for legislation of this kind exist in other Colonies

and

This is certainly a revolting case, and I agree with Sir Herbert Read that the explanations of the Judge who tried the case are "laboured" and unconvincing. Further I am surprised that the Judge's report on the trial is merely forwarded by the Governor without any observations of his own upon a case which has already become notorious and to which greater publicity will almost certainly be given in the new Parliament.

At the same time I do not think that we should underrate the degree of sentence awarded if (as I understand) two years "rigorous imprisonment" is roughly the equivalent of "hard labour". In my view the most unsatisfactory feature of the case is the failure of the jury to return a verdict equivalent to that of manslaughter, and it passes my comprehension that Mr. Justice Sheridan in his report on the trial should endeavour to justify the jury's verdict of "grievous hurt" on the ground that the jury probably argued that "We cannot say that he should know that it was likely to do more than endanger the life of an ordinary man"!

Another

I could confirm Mr. Read's statement that the Governor has no power to remit any part of the sentence imposed by the Supreme Court.

[illegible]

[illegible] Mr. Read's statement that the Governor has no power to remit any part of the sentence imposed by the Supreme Court.

[illegible] 30/7/23

[illegible] may be supplied to Mr. Harris and Mr. Gillespie, and that it is not anticipated that any considerable extension of their leaves would be required.

That the Secretary of State observes from p.2 of the Judge's report that shortly before Abraham started beating Mitosh, his intention was to take his labour card as a punishment, and thus deprive him of a certain portion of the wages he had earned - that he would clearly have been an illegal act - and that the Secretary of State desires to be informed whether cases of this kind do actually occur, and if so what punishment is awarded.

Draft despatches for consideration on these lines.

If the action proposed above is approved, we shall have to consider the question of further replies to the Aborigines Protection Society (see 1312/22 and minutes on 26078/23) and the African Progress Union (See 46261/23).

[illegible] 30/7/23

[illegible] something to reach the public conscience of the white community in Kenya. It has come at a bad moment for them. The decisions taken by His Majesty's Government last July upon the Indian controversy are based upon the principle of British trusteeship for the African native and even the most extreme advocate of responsible Government among the white settlers in Kenya must appreciate that the kind of thing that has happened in the Akroyd case proves clearly that they are quite unfitted at the present time to be entrusted with the guardianship of the interests of non-European communities.

I understand that Mr. Ormsby-Gore is expected to be back at the Office next Saturday and the Secretary of State early next week. The Secretary of State will probably wish to discuss with us the substance of the despatch to be sent to the Governor. Incidentally the Secretary of State has received from Lord Robert Cecil today a letter enclosing extracts from the Manchester Guardian in which considerable publicity is given both to this case and to a recent case in Southern Rhodesia. As

S/S.

I entirely agree that we must take a strong line in a case like this. We may have to remove Justice Charlesworth if he & we shall need a very strongly worded despatch to the Governor

WCS 31.12.23

I entirely concur with the minute and in my opinion it must clearly be stated the views expressed by Mr Justice Charlesworth are no grounds for removing the Judge.

Please have the two despatches prepared on the lines suggested by Sir H. Read, but is there any reason why shorthand reports should not be taken in all cases where libels have been caused.

D.

Sir H. Read D.J. Masterton-Smith

I now annex the draft on the general question of corporal punishment by employers which I suggested at the end of my second minute of December 14th on the slip attached within this paper.

As regards the question raised in the last paragraph of your minute of December 26th, I am inclined to think that replies to the two Deputies mentioned might wait over for the present. It is to be presumed that the Abraham case will be referred to in Parliament and that the numbered despatches sent to the Governor will be published here as a result (probably in the Official Report). It would not be possible to add anything to what is said in that despatch until we have the Governor's reply to the confidential despatches (already sent and now drafted), and I think that it would be desirable to make our first statement in the House of Commons.

I may add that the Aborigines Protection Society now have a copy of the Native Punishments Commission Report and that we shall probably hear from them on that question.

W.C.S. 31.12.23.

D.J.M. 1/I/24

Lord Salisbury
S/S. I shall be glad if you will kindly see the proposed draft despatch.
D.J.M. 2.1.24

WCS 2.1.24

D.3.1

If all this had happened in this country I have no doubt that the accused would have been charged with murder and I am inclined to think that in law the offence would have amounted to murder.

The law has been stated in this way :- "Where a parent in correcting his child, or a master in correcting a scholar, exceeds the bounds of moderation either in the manner, the instrument or the quantity of punishment, and death ensues, it is manslaughter at the least, and in some cases (according to the circumstances) murder."

There is a reported case where a master corrected his servant, not with a whip, not with an iron bar, and of a school master who corrected the scholar by kicking him in the stomach. In each case there was a conviction for murder. I am not prepared to say, however, that in these days if Abraham had been tried here he would have been convicted of more than manslaughter.

The position in Kenya is governed by the Indian penal code and this is so technical and so incoherent a document that it is very difficult to understand. If anything, it seems to be inclined to limit the offence of murder rather more than does English law. Therefore a fortiori, I am not prepared to say that he should have been convicted of murder in Kenya. But is it possible to justify a verdict of grievous hurt? What are the facts?

It seems to be clear that the boy Kitosh was beaten because he was seen to have ridden a mare in foal. The beating was not due to any idea that he had been cruel to the animal, but was due partly to the fact that he might have injured his master's property, and partly because he was alleged to have been insolent. The only evidence of

of investigation which I can find is that for some time he refused to answer the question as to who gave him permission to ride the mare, and that finally, when he did answer it, all he said was that he was not a thief.

He was beaten by Abraham until he was tired and then, at Abraham's orders, he was beaten by three natives in turn. One of the natives apparently asked Abraham to stop, saying that the boy might die, to which Abraham replied - "Beat him, it is my affair" Eventually the boy became unconscious and Abraham ordered seven buckets of water to be thrown over him. He regained consciousness and his hands and feet were then tied and he was lifted up. He fell down, whereupon Abraham struck him and kicked him in the head. Eventually he was got to a shed; he was given no water to drink; he was given nothing to eat; he was given no opportunity to attend to his injuries. He was tied up firstly by a native and later more tightly by Abraham himself. There he was left, and there he died miserably during the night.

The medical evidence, which should be read with care, is of a distressing nature and seems to me fully to corroborate the story told by the natives both as to the severity of the beating and to the kick in the head. Abraham's brother, in giving evidence, admitted a few part of the beating; that the boy was taking it badly and cried in a dreadful noise. Abraham himself admitted flogging the boy for 30 minutes and said that when he thought he believed that he was shamming. Asked if that was why he ordered water to be poured over him, he said it was simply another method of attack, as having been beaten

beaten for 30 minutes the boy still refused to answer the questions.

In these circumstances I should regard any verdict other than culpable homicide as unthinkable. If there is one thing that is clear it is that the boy died as a result of the beating. The evidence of the doctor who was called for the defence with respect to his not having eaten for some time prior to the flogging does not strike me as of great importance. Even if the flogging merely contributed to a death it would be sufficient to constitute the offence and the real test of the sort of flogging which the boy was subjected to is to be found in the evidence as to the injuries received. A verdict therefore, which ignores the fact that the boy died, and finds the accused guilty merely of grievous hurt, seems to me to be without sense and without logic, and, I feel inclined to add, without honesty.

I have not got any views about corporal punishment for natives, nor any trace of sentimentality on the subject. But looking at this story as calmly and as coldly as you like it seems to me to be a horrible and revolting proceeding.

I come now to the sentence with considerable reluctance. Sentences are so peculiarly a matter of discretion for the Presiding Judge and so admittedly a matter of personal judgment that it is difficult and distasteful to criticise. This sentence has no resemblance to what I should have felt it my duty to impose. The Judge justifies it by a reference to public opinion and to the practice of the Courts in similar cases. By the standards

which he sets himself he seems to be fully justified, but what a commenton public opinion in Kenya and the administration of justice in Kenya is contained in the cases to which he refers.

As regards the remedy, the difficulty I have in supporting with any enthusiasm Mr. Bottomley's suggestion is that I am by no means sure that of all our judges in Kenya the Chief Justice is the least saturated with Kenya tradition. I believe that the only effective check would be a [illegible] revision of these sort of cases for a time by the Secretary of State. Such a [illegible] however, would be useless without a shorthand report of the trial. It will be said, no doubt, that that would involve expense, but I venture to suggest that the administration of justice is the last item upon which to effect petty economies.

A.C.B. 15/11

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H.B. 15/8

Kenya
No. 1048.

GOVERNMENT HOUSE
NAIROBI
KENYA

55333

October 12th, 1927.

My Lord Duke,

With reference to correspondence originally noted, I have the honour to transmit a report on the trial and verdict in the case of Rex versus Abraham and others signed by Mr. Justice Shirkah before whom the case was tried. A copy of the summing up is attached to report.

I have the honour to be,
My Lord Duke,
Your Grace's most devoted
and most obedient servant,

R. T. Coupland

GOVERNOR & COMMANDER-IN-CHIEF

HIS GRACE
THE DUKE OF DEVONSHIRE, K.G., P.C., G.C.M.G., G.C.V.O.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S.W.,

INCLOSURE [illegible]

[illegible]

[illegible] on the [illegible] August [illegible] Sessions of the [illegible] Court. [illegible] from the [illegible] District and three of his native employees [illegible] for trial on a charge of [illegible] a native [illegible].

Having regard to the provisions of the Indian Penal Code and the Local Criminal Procedure Ordinance and further to ensure that the Jury would have no difficulty in following the facts and law involved in the case alternative charges were framed. All four accused were charged with (1) Culpable Homicide (murder), (2) Culpable homicide not amounting to murder (3) Grievous hurt (4) Hurt. It is true that a trial may proceed on a charge of murder and the accused be convicted of the lesser offence of hurt even though no charge of hurt may have been framed against the accused. It is however customary to frame all such charges as the facts on the record of the committing Magistrate appear to warrant and the advantage and fairness of such a course must be apparent. That such a course should be followed in a Jury case is all the more desirable. The different charges having been [illegible], read, explained and agreed by the Acting Solicitor General and Mr. [illegible], Counsel for the Prisoners the case proceeded - a Jury of [illegible] Europeans having been sworn. The case concluded on the night of the [illegible] of August - the Court sitting on occasions [illegible] from [illegible] a.m. until [illegible] and [illegible] p.m. It was approximately between [illegible] and [illegible] p.m. on the [illegible] August when evidence was [illegible]. [illegible] contributed to the length of time occupied by the trial - the first being the not unusual one of double interpretation in the case of Native witnesses, the second the introduction of medical evidence of a highly technical nature for the defence. That this

medical evidence was of considerable benefit to the accused there can be no possible doubt, for it established beyond question that his deceased native had had no food for from 36 to 48 hours prior to his death with the result that his vitality and courage were reduced and the further consequence that he was less able to resist the effects of the beating. That the accused Abraham did not know of the comparatively exhausted condition of the deceased prior to the beating was clear.

The medical evidence for the defence attributed death to three factors (1) the beating (2) the starvation (3) the will to die. The first factor was never disputed by the accused. In fact his attitude from the beginning was one of absolute willingness to shoulder all responsibility for what had happened, so that his native employee should not be held to blame. Upto the Sunday on which the beating took place the deceased had been confined to his bed for seven days as a result of his having strained himself in lifting heavy machinery. He was proved to have suffered much pain and on the Sunday in question he carried a shooting stick to enable him to walk in the grounds near his house. Shortly before he started beating Aitcheh his intention was to tear his labour card as a punishment for the boy having ridden a valuable mare contrary to orders. This act of disobedience had happened some days previously and Abraham had been informed of it on the day prior to the beating. Why he altered his intention in regard to the nature of the punishment to be inflicted on Aitcheh is not clear, but he himself said upto the last moment he preserved his original intention of tearing the labour card. (I should say that by tearing his labour card, he would have destroyed a record of a certain number of days Aitcheh had worked - in other words it was a deduction of wages). Abraham continued that it was only when Aitcheh showed himself insolent in demanding not payment to answer a question as to who had given him permission to ride the mare that he lost control of himself. He said Aitcheh impudently said "You know I am get-

'ting much too much here, you had better let me go home'. In Abraham's own words that made him 'fly off the handle'.

I quite believe that Abraham did lose his self-control and that very fast blows in conjunction with the irritation which his strain caused him no doubt led to his flogging Aitoah harder than he would otherwise have done. How many strokes he administered it is difficult to say. In my experience it must always be so in such cases. Native accounts are exaggerated and the circumstances are not such as to warrant an accurate count. Indeed it is highly improbable that a person administering a flogging would think of counting. Abraham's evidence was that he did not think he gave the boy 'considerably more than 20 to 25 strokes'. It is certain that the three natives counted did not give more than three or four strokes and those they gave at the account of their master. Wherever his evidence touched upon what those natives had done he showed the same anxiety for freeing them, so far as he could, from all blame.

After the beating Aitoah was put in a store where he was tied to a pole by his hands - one foot being tied to a post in front. In addition he was guarded by two boys. The tying-up was not done in a cruel manner, although the fact that it was done at all merits severe condemnation. During the night Aitoah died after, it would seem, having made an attempt to escape.

Considerable argument was directed to this attempt on his part as going to prove that death could not have been due to shock. How as to the conduct of the Jury. If ever I entertained any doubts as to the desirability of having such cases tried by a Jury (and I think most Judges who have officiated in this country at one time or another must have had such doubts) they were removed by the manner in which the Jury in this case conducted themselves. From beginning to end they showed in no uncertain manner the greatest patience in listening to and understanding evidence of a very difficult nature. They were not only trying a fellow-settler but different from the case of Juries

at home, they were subjected to the ordeal of trying a man who came from the same district as themselves and must have been intimately known to many of them. That they fully realised the great and unpleasant responsibility resting on them, I have no doubt nor have I any that they returned a verdict in accordance with their Oaths. The address of Counsel for the Defence lasted for from 7 to 8 hours, the Solicitor General spoke for nearly 4 hours and my Summing-up to the Jury occupied 1½ hours. Unfortunately we do not possess a Court Shorthand note-taker and the Notes of a Judge's Summing-up suffer accordingly. A copy of my Notes is attached.

The main question of fact was whether the Jury believed the evidence of Dr.Masterson, the Doctor who examined the body or the evidence of Dr.Jas-Shaw and Dr.Anderson, the Doctors for the Defence as to the extent and severity of the injuries inflicted. They found that the injuries inflicted by the Accused aggravated by want of nourishment caused death. The Defence had put forward the plea of grave and sudden provocation - Counsel for the Defence contending for at least 2 hours that it was present in the case. I directed the Jury on this point that they had to discount the fact that Abrahim was a hot-tempered man and must look at the case as if it concerned an ordinary average individual not afflicted with a hot temper - in short that no personal idiosyncrasies should be taken into account.

I have no fault to find with the verdict of the Jury. Indeed the distinction between grievous hurt and hurt under the Indian Penal Code is often of such a technical and difficult nature that I would not have blamed them had they returned a verdict of Hurt. To quote from the Judgment of Harris C.J. in the Harries Appeal Case (Criminal Appeal 7 of 1949) 'whether 'hurt is a legal technicality depending on the nature of the 'results accruing from the wounds inflicted'. The difficulties are intensified when the instrument used happens to be an ox

rein which cannot be classed as a lethal weapon. But the jury convicted of the Capital Charge in this case a travesty of justice would have taken place. As the Judge who tried the case I unhesitatingly say that such a verdict was unthinkable and opposed to every authority whether English or Indian I have read. Possibly a verdict of Culpable Homicide not amounting to Murder under Section 304 might not have been unreasonable, but again I say I do not quarrel with their verdict as showing bias in favour of the Accused. In fact of the two I lean towards the verdict which they returned. How the jury reasoned I imagine was something on these lines:-

"We know that the deceased native had not had food for 24 "hours prior to the beating, a fact which was not known to the "Accused. In these circumstances although a reasonable man "should know that the beating was likely to cause the death of "a man in his emaciated state, yet we cannot say that he should "know that it was likely to do more than endanger the life of "an ordinary man, in this instance of a man who had not been "fasting".

The expression "likely to cause death" is used in Section 304 I.P.C. dealing with Culpable Homicide not amounting to Murder, whereas the offence of which Accused was found guilty is referred to as "any hurt which endangers life" in Section 325 I.P.C.

The soundness of their verdict is supported by a decision of Mr. Justice Straight a Criminal Lawyer of the first rank in England before he left for India where as a Judge, of the Allahabad High Court, he adorned the Bench for many years. From the many questions put to me by the Jury on the legal issues I am more than satisfied that they considered their verdict conscientiously. And now I will turn to the question of Sentence. Grievous hurt is an offence punishable under Section 325 of the Indian Penal Code but is punishable with a term which may extend to 7 years and fine.

(6a)

In this case a sentence of 2 years H.L. was imposed, a sentence which appeared to many I considered disputed. The ... Solicitor General speaking to me sometime after the ... said he considered it a fair sentence. Abrahms's case ... tried when feeling was inclined to run high on the European ... settlement question. I particularly directed the Jury ... to allow themselves to be influenced by any question of ... ical expediency - to put out of their heads anything to ... th a political Atmosphere. That they obeyed my direction ... clear. I further directed them to ignore completely the ... of life to which the Accused belonged and to show him the ... consideration, no more and no less, than they would extend ... row Native. This I am satisfied they did. Sentences should ... be vindictive. It was particularly necessary that the ... ence in this instance should not be so. What I aimed at ... that, according to my own view (and the only view a Judge ... consider is his own) I achieved was

[illegible] previously decided cases. Again I will [illegible] from the judgment of Hurth C.J. in the Murray [illegible] we are asked to take into consideration the fact that in [illegible] there was in each of which the verdict was one of simple hurt the punishment inflicted was only a fine". Incidentally I was informed by the acting solicitor General immediately after the trial that the verdict and sentence met with universal approval in sentencing Abraham I had in my mind the fate of other assaulting cases particularly those of Rex v.Kai Kompra (tried by Gordon C.J. at Suva on the 4th December 1933) Rex v.Watta (tried at Suva by Maxwell J. on the 7th September 1934) Rex v. [illegible] (tried by Maxwell J. at Nairobi on the 14th August 1935) Rex v.Harries tried by Agnir at Suva on the 20th September 1940).

I will deal with those cases shortly:-

In the case of Rex Kompra the Accused was found guilty of assault and sentenced to pay a fine of £6.10/- or in default 2 months H.L. he paid the fine. The instrument with which the flogging took place was an ordinary with the knots knotted, the native in this case died, but owing to communications it was impossible to state what he died from. The post body was discovered buried some 15-20 miles from the Accused's home the same month as the beating took place, but from a legal point of view the circumstances were not sufficient to connect the death with the flogging. Prior to the beating the native had been tied up in a hut after being beaten by the Accused and the following morning he beat him again. According to his own account he gave him 10 "blows" and the following morning 5 "blows". In the case of Rex v.Watta which involved charges of [illegible] grievous hurt with dangerous weapon, grievous hurt and [illegible] the jury found the Accused guilty on each and [illegible]

[illegible]

[illegible] not a proper guideline when viewed in the light of previously decided cases. Again I will refer from the judgment of Hurtz C.J. in the Kenneth Allen case where he said "Non-compliance with the rule is plainly cause of concern in cases in which the verdict was one of simple hurt the punishment inflicted was only a fine". Incidentally I was informed by the acting solicitor General incorrectly after the trial that the verdict was improper not with standing the fact in sentencing Accused I had in my mind the rules of other sentencing cases particularly those of Rex v.Tua Kaupea (tried by Sullivan C.J. at Suva on the 4th December 1933) Rex v. Sakiusa (tried at Suva by Maxwell J. on the 4th September 1934) Rex v. Kaupea(tried by Maxwell J. at Suva on the 14th August 1935) Rex v.Narrisa tried by Agnew J. at Suva on the 20th September 1940).

I will deal with these cases shortly:-

In the case of Tua Kaupea the accused was found guilty of murder and sentenced to pay a fine of £5.00/- or in default a further 6 m.i. he put the fine. The instrument with which the flogging took place was an ox whip with two lashes. The motive in this case did not only to demonstrate it was impossible to state what he died from. The dead body was discovered buried some 18-20 miles from the locality from the accounts on the beating took place, but from a legal point of view the circumstances were not sufficient to connect the death with the flogging. Prior to the beating the native had been thrashed in a hut after being beaten up the deceased hit the following morning he went him again according to his own account he gave him to "slight" and then during during a "time". In the case of Rex v.Sakiusa which involved charge of assaulting an officer, [illegible] dangerous weapon, grievous hurt and theft the Jury found the [illegible] guilty on each of the three [illegible]

In the case of Ramiah the accused was convicted of (1) theft by clerk or servant for which the maximum sentence is 7 years and (2) otherwise theft of which ordinary punishment may extend the maximum sentence is 10 years and (3) guilty of theft by public servant. In the first charge he was sentenced to 2 years R.I., on the 2nd charge R.I. for 2 years and he was also charged a fine of Rs.2000/- or 6 months R.I. the sentences of imprisonment were directed to run concurrently. On that in effect the accused was sent to prison for 2 years. I was a member of the court of appeal which dealt with this case and sought. One of the grounds of appeal was the severity of the sentences. The judgment of the court of appeal delivered by the late Mr. Ameresekere J. as he then was stated "Sentences of this nature are not normally imposed by utterly luxurious, selfish wealthy" and the learned judge the sentence imposed by the criminal courts in cases of the sort mentioned have in particular in relation to this crime as having been one of exceptional unscrupulous and corrupt wealthy, warranting exemplary punishment. The sentence in that case was undoubtedly a just sentence but yet even the public opinion at the time that a petition was signed in the petitioner's favour.

Having set up a bogey of the court of appeal in the Ramiah case let brief the previous case I am sentenced the former was of a more criminal character involving as it did systematic acts of torture including the flogging of a pregnant woman.

As for the previous case the jury found him guilty of theft and then I sentenced him to 2 months R.I. There was no inordinate outcry as to the severity of the sentence, the most serious complaint anything be made from stories that the sentence was pronounced by a drunken court with accompanying hilarity and laughter. As in the case of Ramiah an immediate appeal was lodged. Counsel for the appellant arguing inter alia that the sentence was of a savage character.

In the case of Regina the accused was convicted of (1) theft of certain chattels for which the maximum sentence is 7 years and (2) obtaining theft by deception for which the maximum sentence is 10 years and then (3) guilty of theft on which conviction. On the first charge he was sentenced to 2 years i.d., on the 2nd charge 3 m.d. for 2 years and on the 3rd charge 6 time of 2 years/- on 3 months i.d. The sentences of imprisonment were directed to run consecutively, so that in effect the accused was sent to prison for 4 years. I was a member of the court of appeal which heard this case and sought, one of the grounds of appeal was the severity of the sentences. The judgment of the court of appeal delivered by the vice of the accused as "a long continued series of acts dishonesty by strictly speaking, callous unhealthy" and the learned judge the previous records to the criminal offices debits of the 4th defendant lead to principle a sentence to the other as having been one of exceptional unwholesomeness and abnormality, requiring exemplary punishment. The sentence in this case was substantially a just sentence and yet cuts the public opinion at the time that a petition was signed to the attorney-general.

Having set up a practice of the court of appeal in the earlier case not heard the sentence case I am sentiment the former use of a more optional observation involving as it did questionable acts of torture involving the flogging of a pregnant woman.

As for the Barrios case the jury found him guilty of theft and also I sentenced him to 6 months i.d. There was no intimation subject as to the severity of the sentence, the court offices thereof anything by which from which that the sentence was considered by a reserved court with considerable and emphasis. As in the case of Hamilton an indictable appeal was lodged, leading for the appellate practical life, all that the sentence was of a severe character.

In conducting elections I had no concern - in fact exact personal - knowledge of previous election cases, for particular part of conducting them or what any political connections the candidates might exhibit, but if the preference present by me was not with any approval of public opinion it is indeed a shocking state when prosecutors in it are a long time friend & neighbor of a member U.S. in the Supreme Court was appointed against the present that it was wrong, and was prompted with "appointment and encouragement".

In conclusion I wish to say that whatever somewhat a foreseeable importance by the counsel at the trial in assuming responsibility for what the Government has done, I do not think it is attributable by outcome, but on in a prosecution with a reputable and lawyer who has lived up the rules of an attitude of good faith by Government that in proper during which time it has been brought upon with the exception of the time in any meeting in the war. His lawyer is allowed to get the benefit of his with the unfortunate consequences presented, however for what undoubtedly interesting facts the defendants at the time. Another point in his favour is that immediately direct that he took the earliest opportunity of informing the Police and assisting them in their investigations. I mention this point as in the cases I know of where men tried to commit or destroy the only, on as to cause evidence to disappear.

Judge of the Supreme Court.

Art Supreme Court.

In conducting elections I feel an advantage - in most cases personal - knowledge of previous election cases, the particular need of maintaining them my views my political associations the privileges might enhance, and if the profession present to me some part with any approval of public opinion it is indeed a shocking state when the prosecutor is in such a long time silent a profession of a profession R.C. in the Maritime-Eagle and significant opinion on that ground that it was wrongly, and was prejudiced with "appointment and remuneration".

In conclusion I wish to say that previous conduct a favourable impression by the contact of the Chief in carrying responsibility for short-life contracts not known. I do not wish to be criticized by anyone, but as in a profession and with a reputation and honour who has lived up his right of an attribute of good name or fundamentals for in proper testing rights time or that have been only known with the acquaintance of the time to stop working in the war. His tongue to element he got the service of his wife the unfortunate accompaniments therefore, moreover he was unfortunately suffering from the effects of a previous physical time. Another point in his favour is that immediately almost that he took the earliest opportunity of intending the duties and assisting them in their investigations. I mention this point as in two cases I know of where were times to commend or destroy the body, so as to close evidence to Tribunal.

Yours faithfully,

[signature]

Hon. Secretary Local.

In concluding although I had no comments - in such cases judgment - especially of witnesses whether cases, the particular want of evaluating them up what any political consequences the decision might entail if the profession passed by an individual with any approval of public opinion it is indeed a shocking state that prevails in an age & long disciplined & profession of a people U.S. In the Supreme Court was supported opinion was that present that it was enough, not was inconsistent with "requirement and consequences".

In conclusion I wish to say that although personal & professional duplicates by the overlook of the Court in assuming responsibility for what the overwhelming majority of the American people regard as obnoxious by custom. But as to a proposal was with a substantial and because she has lived on the basis of an attitude of mind which is pretty thing to do with the attitude of the Court in the matter. His language is clumsy, he gets the letters of his words the administrative consequences unnecessarily, expressed in the unfortunately suffering from the attitude of a bygone period of the time. Another point in his favour is that immediately allows that he took the sentiment appropriately of interesting the action and entertaining them in their interpretation. I conclude this point as in the course I know of things when there is economic or country the only, as he is quite entitled to discussed.

Judge of the Supreme Court.

Mrs. Justice [illegible]

I rose to 4.45 p.m.

I resumed at 5.00 p.m.

Judge Langdon.

(1) Shall our Lord Queen or Knight?

(2) Did the accused intend to cause the bodily injury
resulted in the ordinary course of nature to cause death?

(3) Did the accused intend to cause such bodily injury
as came to be likely to cause the death of the person to whom
it came to be done?

(4) Did the accused act in an indecently dangerous m
or that he as a reasonable man ought to have to know that
such act is all probability would

(5) Although the intention of causing death or bodily in-
jury sufficient in the ordinary course of nature to cause
as he as a reasonable man to have to know that such
likely results?

(6) Did the accused unlawfully intend, that is
cause grievous bodily harm to the wife Queen Knight
or ought he as a reasonable man to have to know that
likely to be an endangerment?

(7) Was there grave and sudden provocation?

I suppose the Jury all witness of political ma
of accused in life who, to be blameworthy. I
the accused the law of manslaughter is meant to
ing first together. I especially mentioned that
sudden provocation, pointing out that the mo
ment. In regard to other points I directed
a reports of the Court to the accused Queen
reasonable character. I should have to
letter of it. Counsel on behalf of
to the evidence of Andrew Knight
Knight himself. There was no evid
to put to the Jury on any will have
I consider 6.00 p.m.

I rise to 4.00 p.m.

I reassume at 4.20 p.m.

JURY SWORN.

(1) Have you had dinner at Dublin?

(2) Are the accused jointly to answer the verdict against each accused in the ordinary course of nature to answer alone?

(3) Are the accused jointly to answer each verdict against each accused in the ordinary course of nature to answer alone?

(4) Are the accused both in an intellectually dangerous a state of mind as to a reasonable man ought to think to show that they were in all probability mental?

(5) Although the intention of causing death or serious injury sufficient in the ordinary course of nature to cause death as to a reasonable man to think to show that they were in all probability?

(6) Are the accused acting in concert, that is, together jointly to be an attempt?

(7) Has there been any undue pressure?

I suppose the jury all witness of political ma... of accused in life able to be discharged. I... the accused the law of conspiracy to... ing trial together. I especially explained that ... guilty verdicts, pointing out that the ... accused. In regard to other points I directed ... regards of the facts to the accused ... responsible counselors. I think there ... [illegible] ... to the evidence of [illegible] ... I then asked counsel if, there ... to put to the jury ... they will have ...

I commence 4.40 p.m.

Gov 55308 Kenya Confl

20 December 1893

Sir

I have the honour to acknowledge the receipt of your despatch No 1563 of the 18th of October, transmitting a report on the trial and verdict in the case of Rex versus Abraham and others, signed by the judge before whom the case was tried.

2. I have read the papers relating to Rex

DRAFT.

Kenya.
No. 1753.
Governor Crayndon

MINUTE.

Mr. Seal. 15.12.93
Mr. Calder 17.12.93
Mr. Bottomley 17/12/93
Sir C. Lucas 17/12
Sir G. Orbells
Sir H. Rawl 18/XII/93
Sir J. Masterton Smith
Mr. Ormsby-Gore 19.12.93
Duke of Devonshire
20.12.

For cons.

For cons. Have we any enquiries with a view to a pt. The circumstance of the punishment in a point that should be confirmed in any decision in the Confidential despatches.

Ans. 19/2

I have spoken to Mr Calder p.c. 20/12/1893

tried with close attention,

and I must express my

abhorrence of a crime

which appears to me

to offer no extenuating

circumstance which ought to

have received fully adequate punishment.]

~~Further I am advised~~

that I am further

to observe that my legal

advisers, who have

carefully studied the case

reported fully

and, are of opinion

that a verdict of

manslaughter in this case

anything quite

inreconcilable with the

(I should ask C... J
for the fair deposit which
may then be laid on a
Parl. paper. I do not think
it would be wise to publish
a Judge's notes in what
will be a public as
well as Official despatch.
D. 19.12)

Personally I do not
agree with Sir J. Hamilton's
minute. I think that
... in question
acted in a defensible manner
in this case, & that we
should have the courage
to say what we think
that his conduct ought
not to be a bad record
in case of any similar case
& I should like to keep in
the word that are proposed
to be left out

Dec 19.12

Should only have the
words "and ... punished"
when we are despatching
home the record of the trial
I think it will be enough &
will do what Mr X

D. 20. 12

DRAFT.

MINUTE.

Mr.
Mr.
Mr.
Sir C. Dutte.
Sir G. Grindle.
Sir H. Read.
Sir J. Masterton Smith.
Mr. Ormsby-Gore.
Duke of Devonshire.

(I think
(with [redacted] I should wish)
we may have received a re-
despatch from Mr. Ainsworth
& carefully recapitulate

that cases of this kind
have been of rare occurrence
in the history of the Colony,
and that the vast majority
of the British settlers in
Kenya are as free from
any tendency to ill-treat
natives as are British
settlers in any other parts
of the world. I am, however,
bound to record in
my opinion that [redacted] cases
[redacted] have occurred
in Kenya have been
marked by great

DRAFT.

MINUTE.

Mr. (Re-circulation in
Mr. draft, but
Mr. did not go to
Sir C. Davis. Govt.
Sir G. Grindle.
Sir H. Read.
Sir J. Masterton Smith.
Mr. Ormsby-Gore.
Duke of Devonshire.

heart-rending, and that
no sufficient punishment
has been meted out to
the offenders.

5 So long as this
condition of affairs remains,
the jury system can only
be regarded, so far as cases
of this nature are concerned,
as an illusion. I share
the reluctance of my
predecessors to interfere
with an institution which
is so closely bound up
with British traditions
of justice; but it is clear
that the special conditions
of Kenya the working of
the system requires to be
carefully watched.

6 I must therefore
lay it down as a definite
instruction that in any
future Mau Mau cases
involving death in which
a native and a non-native
is charged with
committing or attempting
committing, or being
accessory to the fact of
causing death or bodily harm
to a non-native, a shorthand
report of the trial must
be furnished to me, in
order that I may be in a
better position to judge,
with the assistance of my
legal advisers, to what
extent justice is being

impartially administered
between the two races.

I have ~~the honour to~~
call your attention to
~~the~~ In addition,
it should be the invariable
rule in cases of this kind
that the trial should take
place in ~~a~~ and the jury
be summoned from, a
province distant from
the neighbourhood in which
the crime was committed.

Signed DEVONSHIRE

substantially administered between the two races.

I thereby call your attention to para 3 of [illegible]. In addition, it should be the invariable rule in cases of this kind that the trial should take place in, and the jury be summoned from, a province distant from the neighbourhood in which the crime was committed.

Signed DEVONSHIRE

168

Fo 55363/13 Kenya

DRAFT.

Kenya.
Confidential (2)
Governor Carpenter

MINUTE.

Mr. Read 11/4/13
Mr. Calder 17.12
Mr. Gothard 17/12
Sir C. Orde
Sir H. Read 18/12/13
Sir J. Masterton-Smith
Mr. Ormsby-Gore
Duke of Devonshire 20.12.

2 Sept
for Cossor.

2154/13

(Mr. Calder and Mr. Gothard)
(Sir H. Read, 18/12/13)

8 December 1913

With reference to the correspondence ending with your despatch No 753 of the 7th of November, regarding the case of Rex versus Ahrahman and others, I have to call attention to para 3 of the Duke of Devonshire's Confidential despatch of the 4th of July, 1913, in which he approved Sir H. Read's suggestion that in cases in which persons of British nationality were charged

with criminal Offences.
The Trial should take place
in and the jury be
summoned from a
province distant from the
neighbourhood in which
the crime occurred

2 I have the honor
that you will inform me
of the reasons why this
course was not followed
in the case dealt with
in my despatch under
reference.

3. As you are
aware, it has been the settled
policy for some years
past to replace the
Indian Codes in force in
the Colony by local

Ordinances. This course
has already been taken in
the case of the Indian
Criminal Procedure Code,
and I see no reason why similar
steps should not be taken
with regard to the Penal Code
and the Civil Procedure Code.

DRAFT.

MINUTE.

Mr.
Mr.
Mr.
Mr. C. Elliott
Mr. C. Orlebar
Mr. H. Read
Mr. J. Masterton Smith
Mr. Crosby Gee
Date of Despatch

I would accordingly be glad if you
would telegraph to me
whether I can
agree to an
Ordinance of the kind
and the Attorney General
in order to enable him
to prepare a preliminary
draft.

4. I would add that

DRAFT.

MINUTE.

and that the case should
be sent back to the Court.

Signed DEVONSHIRE

For 55363/23 Kenya

From Governor Kenya for reply

DRAFT.

SECRET.

SIR R. [illegible]
GRANTE.

Secretary. 31 12. 24.

DOWNING STREET,
4 January, 1925.

SIR,

I have the honour to inform you that it has been necessary for me to give attention to the general question of the administration of corporal punishment by employers of native labourers in Kenya.

2. In connection with the case of Jasper Abraham, it does not appear that local opinion has directed itself in any way to the question whether the flogging of the native Kitosh (apart from the character and its result), was in any way improper, and in the report of the Native Punishments Commission

Gen 55363/23 Kenya

C.O. 533/AR

DRAFT.

DOWNING STREET,

Y. December, 1923.

SIR,

I have the honour to inform you that it has been necessary for me to give attention to the general question of the administration of corporal punishment by employers of native labourers in Kenya.

2. In connection with the case of Jasper Abraham, it does not appear that local opinion has directed itself in any way to the question whether the flogging of the native Kitosh (apart from the character and its result), was in any improper, and in the report of the Native Punishments

Commission

...remission there is reference, to which I have already drawn your attention, to the practice of employers giving their men the choice between an official threshing and a trial before the Magistrate.

5. I conclude from these facts that in Kenya there is at all events no strong feeling against the flogging of native employees for faults arising out of their work, and although I should hesitate to draw the further conclusion that recourse is generally had to the corporal punishment of native labourers, I cannot but ~~suppose~~ that in this matter there is a wide distinction between Kenya and any other tropical Colony in which I have held the appointment of White

...administration of corporal punishment by employers to any less degree than would be done in any other country, and that I do not wish, without further enquiry, to direct you to take steps which will prevent such punishment being administered in the future. I accordingly request that you will ~~is necessary to ask you to~~ report to me as soon as possible the extent to which, in your view, the practice exists and the means whereby it can be abolished and its place taken by more regular means of punishing the labourer for his delinquencies.

(Signed) DEVONSHIRE

6. The case of Abraham was aggravated by the brutal character of the implement used for the flogging as well as by the absence of any sufficient reason for corporal punishment. But, I am unable ~~should be reluctant~~ to agree to any standard, whether of instrument or of provocation, being laid down for the guidance of employers in this matter, as it appears to me that by so doing I should be giving a

recognition