

IN THE High COURT
AT Nairobi

EAST AFRICA PROTECTORATE.

CRIMINAL CASE NO. 35 1908

accusator

Crown

respondent

James Edward Stocker

of issue

of hearing

Charge

I Certify that this is a true copy of the original.

John H. ...

...

E. G. O'S. Cor A. T. B. Carter Nairobi

Mr. Combe Crow

Mr. Allen - Accused

J. E. Stocker

CHARGE *COH* read over.

Plas Not Guilty.

Charge altered from 330 to 325 on C. A. application.

(Sgd.) A. T. B. Carter

Charged under 325.

Plas Not guilty.

J. R. Fay

Richard M. Geater

S. A. Hawkins

C. A. Hawley

A. E. Standing.

Jury

R. M. Geater - chosen foreman.

JURY SWORN.

Mr. Combe - Opens.

CALLS.

ROBERT SMALL duly sworn states M. R. C. S.

L.R.C.P. Medical Officer East Africa Protectorate Nairobi. In April I was called to accused's house I think Friday April 30th. Asked by him to see cook. I examined cook lying on bed in servants quarters. I found aitchal on back of left upper arm and back. Light flexible stick or kibeke could have done it. Possibly one blow. No other external signs of injury. I considered he was suffering from pneumonia left lung. I prescribed. I did not see deceased again alive. I saw accused about him I think on

Miss P.

Sunday

Evid. pp. 1, 2. (2)

Sunday after. Accused said he was worse and I told him to send him to hospital. I was present when Post mortem was held. Death was caused by suppurative meningitis. Inflammation of membranes covering brain and spinal cord. Inflammation caused by abscess formed round fracture of 6th rib on left side. Neck of rib close to spine attached to shoulder blade. Fracture was recent. Accused's last years were outside date. In August 1914 he was. Not a big man 5. 4 1/2. About 40 years. Dr. Hall performed post mortem. Fracture of rib lower than fracture. No connection between rib and fracture. I should fix fracture at about three weeks outside. ~~Am Am~~ Only an opinion. Fractured end of rib tore the pleura. Abscess formed round lower end of rib. Abscess spread over the abscess. Bacteria spread to the surface of spinal cord and hence meningitis. Meningitis into the abscess of abscess.

Condition of the lungs. Upper lobe of left lung. I do not know lower lobe. I do not think that lung affected. I don't remember. Heart was slightly degenerated. Old vegetation on the mitral valve covered with fibrous deposit. Capsule of one of the kidneys was adherent a sign of old inflammation. Spleen enlarged and soft. Liver enlarged and degenerated. Not a healthy man. Many persons recover completely from a fractured rib. A man in this state would be more liable than a healthy man

Evid. pp. 2, 3. (3)

to suppuration.

TO JURY.

Impossible to say when an abscess may form over a fracture. No abscess need form. May form at once.

Read over correct.

(Sgd.) A. T. *Barter*

GEORGE RUSSELL HAYNES CHELL duly sworn states
M.B.C.S. L.R.C.P. Medical Officer East Africa
Protectorate in charge of Native Hospital
Nairobi. Suliman was admitted to hospital on
May 4th died on May 5th. I held a post mortem
I made a report on ~~the~~ examination report
made next morning. (Report not allowed). Death
due to Septic Meningitis of brain caused by
fractured rib penetrated lung and so caused an
abscess about the seat of fracture. Sixth rib
from top on left side, just under shoulder blade
about one inch from attachment to spinal column.
Not a fracture of old standing. I should say
fracture had been made not more than three weeks
before. No external marks to show how rib had
been fractured - two wheals on left arm and on
back. Not in the neighbourhood of rib. Lower
down. These wheals could not have broken rib.
Blow with first would not break one rib it would
break several. Liver enlarged and fatty.
X X:- I put three weeks as an outside time
not an actual time. Both lungs congested.

Fatty

Evid. pp. 3, 4. (4)

TWSR

Fatty degeneration of the heart. Mitral valve old vegetation recent fibrin deposit. Kidneys old inflammatory trouble capsule of right adherent. Spleen enlarged and soft. Liver enlarged and fatty degeneration. Condition that would make him more liable to succumb and get abscess than healthy man.

RE EX:- Well nourished man of apparent medium height and width.

TO JURY. No idea what actual cause of fracture. Abscess can form with out rib being broken. Impossible in this case that abscess was not caused by fracture. Fracture started abscess in this case.

Read over correct.

(Sgd.) A. T. R. Carter

ahili.

med Interpreter.

MUSTORA BINTI ABDULREHMAN, duly sworn states
 Mohamedan, Sudanese. Widow of Suliman.
 Remember one evening Stocker coming to kitchen at 8 p.m. Suliman was on a bed. Stocker spoke. Asked Suliman if food was ready. Suliman was asked twice and replied "Food is ready" Stocker slapped Suliman with open hand on right cheek. Stocker went out. Stocker returned. Asked cook "What have you been saying?" Cook made no answer Stocker hit with a stick like A a light cane a red one. Struck the cook on right side twice with a stick. Both blows on right side. Then two blows with a fist one on head and one on left side. He hit him hard and he fell down senseless. Deceased fell on stove cement stove. Deceased fall

Evid. pp. 4, 5. (5)

fell sideways out the stove. The blows were violent and deceased fell down. Cook did his work until this evening. After that he could not do his work, in pain the whole night. Remained in bed some days. He went to hospital fourteen days after this happened. I was present when deceased died. I made complaint to Police. I saw Mr. Stocker then he spoke to me "I beat your bwana and if he dies I will send you to your father." Asked me "Will you agree to a post mortem if he dies?". I said "I will not agree".

Cook's boy was present when cook was beaten.

X X:-

Cook was cook to Mr. Stocker at Mwasia. I lived with him there. Stocker at times went on safari. Cook and boys and askari and I went too. We came down to Nairobi two months ago. I do not know how many days we ~~were~~ ^{had been} in Nairobi before the beating - About 10 days. I was not continually fighting with my husband. If persons live together they must quarrel. We had words always. Saliman was a littler taller than me. I remember Akwara's on safari. I had a quarrel with the cook there. Stocker had to send to take a spear from me. I did not want to kill him but myself. I remember Njera. I did not try to kill my husband with a knife - There was a knife in the kitchen and we were in the tent. I did not take the knife. I did ^{have} a quarrel two or three days before left Mwasia but not a big one.

W.H.H.

Evid. pp. 6, 7. (6)

I pushed deceased he not fall down. I went away when I pushed him. I don't know if he fell down. I was outside the house, I did not throw him down a second time on the edge of the verandah. Cooked inside our house at Muring. Cooking place made of clay there not stones. All Kavironda make kitchens of clay. Boy was there and if I had pushed deceased down on the cooking place he would have said so. Boy is here now. We came from Muring to Kisumu. Cook was then well. Quite well. He had a corn. Not wearing a lasso as a bandage round his waist. When he came to Nairobi he was well until Stocker hit him.

On day of trouble Stocker came and asked if dinner was ready. Stocker was out and came to the kitchen immediately he arrived. It was dinner time. Food was quite ready. It is custom to make food ready at 8 p.m. and when called for send it in. When Stocker came in food was ready and cook was lying down waiting for Stocker to come. After Stocker hit cook cook got up. Stocker came back and beat cook again. First time Stocker slapped cook on right cheek and went away. Cook was lying in bed when Stocker struck him. Stocker went back to his bungalow. Cook was not lying in bed because he was sick he was well. Cook said "Dinner was ready - why did you come and beat me I was waiting for you". Boy took in soup and then Stocker came back. Asked what noise was for "What have you been

Evid. pp. 7, 8. (7)

"been saying." twice and then hit him twice with a stick. Hit him twice on right arm and back. Stick followed round to the back. Stick like one produced a only red. After cook was hit he stood there did nothing Stocker hit him with fist on left cheek and left side. Cook fell down on second blow with fist. Fell on stove and then on the floor. Stove is built of stone like a table built of stone and clay. Cook fell down on his right side. After that cook was sick. He fell down senseless. Cook was sick after that. Not able to go about or do his work after. Stocker came and gave him medicine twice. Brought European Doctor. Cook went to hospital fourteen days after he was hit. Cook after never went for a walk except to choo.

RE KY: After we left Mumias Suliman cooked for Stocker. Suliman walked into Kisumu. Suliman cooked at Nairobi until this evening. We were in Nairobi about 10 days before this day. Quarrel with my husband was fewer of five days before we left Mumias.

Read over correct.

(Sgd.) A. T. B. Carter

OSKHO WA MUIKA affirmed Kavirondo.

(Lunch adjournment as no Kavirondo Interpreter.)

I was cook's boy to Stocker at Mumias came with him to Nairobi. I remember Stocker coming into kitchen one night at 8.30 p.m. He came to ask for food. Asked cook if food was ready.

Cook

As bin Agod.
 rmed Kavirondo
 Swahili.
 bin Mohamed
 ill English.

Evid. pp. 8, 9. (8)

Cook said "It is ready". Swana said "why do you answer me lying down" and slapped the cook's thigh. Swana went to his house. Cook said "I have prepared the food" and made a noise saying "I am not a slave". Swana came and beat him. Cook said "I am not a boy to be beaten". A boy took the soup to the house. Swana came with a stick and asked cook "What have you been saying" and hit cook on left arm, and hit him on cheek with fist and cook fell down. Swana only hit cook once and cook fell into the cooking place on his right side. Cook got up and sat on a box near the fire. I stood doing nothing. Last witness sitting there asked me to get water and poured it on the cook. Cook did not work after this went to hospital 14 days from the beating. Thin stick like Exhibit A. Cook had worked up to this evening.

X Xi- Cook's boy at Mumias, used to go on safari. Took cook and cook's wife and me. I know cook and cook's wife. Cook and his wife used to quarrel frequently. Okwara's, cook and woman had a quarrel there. Cook's wife was cooking beans cook threw the beans away. Wife said "Why" so. Woman took a spear and wanted to kill the cook. An askari was sent by Stocker to take spear from her. It was taken from her. Njera, cook and his wife had a ~~xxx~~ fight there on my account. At seven o'clock another boy told me woman had taken knife to kill her husband Cook said "You have in knife and want to kill me"

Evid. pp. 8, 9. (8)

Cook said "It is ready". Swana said "why do you answer me lying down" and slapped the cook's thigh. Swana went to his house. Cook said "I have prepared the food" and made a noise saying "I am not a slave". Swana came and beat him. Cook said "I am not a boy to be beaten". A boy took the soup to the house. Swana came with a stick and asked cook "What have you been saying" and hit cook on left arm, and hit him on cheek with fist and cook fell down. Swana only hit cook once and cook fell into the cooking place on his right side. Cook got up and sat on a box near the fire. I stood doing nothing. Last witness sitting there asked me to get water and poured it on the cook. Cook did not work after this went to hospital 14 days from the beating. Thin stick like Exhibit A. Cook had worked up to this evening.

X X:- Cook's boy at Muvina, used to go on safari. Took cook and cook's wife and me. I know cook and cook's wife. Cook and his wife used to quarrel frequently. Okwara's, cook and woman had a quarrel there. Cook's wife was cooking beans cook threw the beans away. Wife said "Oh" so. Woman took a spear and wanted to kill the cook. An akwari was sent by Stecker to take spear from her. It was taken from her. Njera, cook and his wife had a ~~fight~~ fight there on my account. At seven o'clock another boy told me woman had taken knife to kill her husband. Cook said "You have in knife and want to kill me"

Evid. pp. 9, 10. (9)

I do not know if any one took the knife away. I remember before leaving Muias they had another fight I do not know how many days before. Wife tried to go out with a spear and cook tried to stop her so she threw him on verandah, on the floor. She threw him twice, once on each side of the verandah. I know what cooking stoves are, some where he was thrown down. Safari Muias to Kiamu - Muias went on bicycle first behind and then in front. Cook on the road did not tell me if he was sick or well. I know ^{Jawa} ~~Java~~ River. Cook was behind the safari. He arrived at Kiamu at 9 p.m. I do not know if he had anything round his waist as he had a khamu on. Afterwards at Nairobi he wore a loincloth round his body round his waist tight, about a hand's breadth. I saw him spitting. White spit. Not natural spit. On day of trouble Stocker came home at 8.30 and asked for dinner. Boy took it in. I was present when Stocker came in. Cook was lying on a bed. Stocker asked "Is dinner ready?". Hit her on thigh and said "How is dinner ready when you are lying down". Only hit cook on thigh. Cook then made a noise and said "I am not a slave". Stocker came back and asked what the noise was. Stocker then hit cook with a stick, on arm and back with a stick. Hit him twice and once with a fist. Cook fell down at once. Stocker only hit cook once with fist. Stick Exhibit B. Never saw a stick like A in Stocker's house. Next day cook was sick.

Thru

26.11

Evid. pp. 10, 11. (10)

One day between then and the time he went to hospital he went out. Stecker came and brought his medicines and a Doctor and afterwards sent him to hospital.

RE EX:-

Fight at Mumias about ten days before we left. I saw it myself. The Nairobi incident occurred about 20 days after we came to Nairobi. Stecker did not give cock medicine before this to my knowledge.

Read over correct.

(Sgd.) A. T. B. Carter

Prosecution closes. No examination of accused in Court below.

EXAMINATION OF ACCUSED.

Q. You have heard the evidence given do you wish to say anything to explain it?

A. I wish to give evidence on oath.

I hereby certify that this examination was taken in my presence and hearing and contains a full account of the examination of the accused.

(Sgd.) A. T. B. Carter

(Sgd.) J. E. Stecker

Read over correct.

(Sgd.) A. T. B. Carter

JAMES EDWARD STECKER duly sworn writing Assistant District Commissioner and Class Magistrate East Africa Protectorate, five years in country. Second on list for promotion to District Commissioner.

Recently at Mumias North of Kisumu dressed

Evid. pp. 11, 12. (11)

was my cook - Woman gave evidence was his woman and Okelo' was cook's boy. Duty to go on safari. Went on for three months about. Took cook, woman and boy and askaris. Cook and cook's wife always quarrelled and used to annoy me pretty nearly every camp I remember Akwara's. I was holding a Court in a Bungalow started in kitchen banda - A spear was brought in and a woman was brought before me. I tried to make them agree - woman was hysterical and said she wanted to kill herself with the spear and I had the spear kept in my hat. I don't remember any particular other trouble. I was in Musinga seven days after my return from safari and was in Nairobi the eleventh day after my arrival at Musinga. Quarrel at Musinga can not have been twenty days before we left Musinga.

No quarrel first two days at Musinga. Trouble arose about a week after and three days I reached Nairobi. I reached Nairobi on April 10th I think, trouble was Tuesday April 20th. I had been out visiting in the afternoon. I live in house next to Mr. Isaac's on Protectorate Hill. I came back about 8 p.m. my usual time for dinner went into bungalow. Waited for dinner and after a bit shouted, nobody came. I went out myself went to the kitchen. Cook asleep on a bed to the right of the kitchen door. I think my boy Hanisi was outside Okelo inside. I did not notice the woman. I shouted "Is dinner ready" Ntete said "dinner is ready". Cook did not make any sign.

Hanisi

Evid. pp. 12, 13. (12)

Hamisi shook him - he paid no attention I
 went in and slapped his buttocks and woke him up.
 Open hand. Did not strike him on the cheek.
 I said "What do you mean by lying down when you
 should be cooking the dinner - he said ^{Hamisi} ~~should~~
 "is ready" I said "Are you sick to be lying down
 when talking to your master?" He got up and
 said "I am quite well" I went back to dinner
 room. Soup brought in heard a row in the
 kitchen. I said nothing boy said "Cook is very
 angry with you for hitting him" Hamisi said that.
 I went to the kitchen with cane Exhibit B
 belongs to Sergeant Instructor Quinn who left it
 in my house. Went to kitchen. Cook going about
 making noise. Cook and Wote there. Did not
 notice woman - only fire light. I asked cook
 "why are you making row and how dare you say
 "you are angry with your master". And I hit him
 with the cane on the arm. Left arm. I hit him
 once and the second time I tried to hit him he
 knocked the cane out of my hand. Cane came round
 and hit his back. Then I hit him on left cheek
 with my right fist. Knocked him down. Did not
 strike him in the ribs also. I then went to
 door of the kitchen. Woman came in from outside.
 She said "You have killed my husband". They put
 water on him and he sat up. He was a little
 dazed I did not notice anything the matter - I
 went back and got my dinner all right. I never
 had a small stick like A only red. Cook was ill
 for some days. I visited and thought he had
 cold or malaria. I treated him. After that I
 called

Evid. pp. 13, 14. (13)

called in doctor who said he had pneumonia and eventually ordered him to hospital. I did not know cook was ill from Mumias to Kisumu. He did not cook for me at Kisumu. On day husband died I was at Police Station on duty to see Inspector. Woman was going upstairs. I said "How are you she said" I am all right" I said "How is your husband" she said nothing I went on to Police Station. Mr. Reilly asked me what she wanted. She said "My husband is dead and I am left alone poor" and she said something about my having hit the husband. I said "If you think any act of mine has caused his sickness will you allow a post mortem which will settle all doubt". She said nothing shaking her head crying. I asked her for post mortem as she said boy had been hit by me, and I did not believe blow could have done any harm. Third day I saw cook and asked him "How are you". He said "I am all right as far as you are concerned the sickness I have was what I got before." He said "I have had troubles mine Mumias".

X X:-

Cook a year in my service. I do not as a rule doctor my boys except on safari. As a rule they tell me if they are ill. Cook never liked to as I used to send him to hospital. On this occasion I doctored him myself as I knew he was ill. There are Medical Officers and compounders in Nairobi. Wife objected to his going to hospital and she had a medicine man. I thought first my blow had caused him to be ill. Small
did

did examine him for broken bones. I expected that he would do so. I thought boy might have broken something falling down. I hit him fairly hard with the cane. When he knocked the cane out of my hand I was angry and struck him with violence. Man was not physically strong, *ordinary man*. I had no reason before that day to believe he was unwell. I was told his wife cooked from him. This is from information from my personal boy. Okale was living in my compound. He was my cook's servant. Now is in my pay. I am calling corporal who came from Kisumu Saturday.

Read over correct.

(Sgd.) A. E. B. Cartor

BAWITI BIN HASTAN duly sworn states Swahili
 Mohomedan - Police Corporal Mumias. I remember Stocker at Mumias, went on safari with him remember cook now dead. I knew his woman. Cook and cook's wife quarrelled often on safari. I remember troubles at Akwara's. Woman took spear at Akwara. Quarrel at Njero. Came on safari from Mumias to Kisumu with Stocker. I knew nothing of quarrel between cook and his wife at Mumias. On safari from Kisumu to Mumias Stocker on bicycle. Cook was walking slowly and in the evening he said he was sick. He said "Pain in chest and left side". He did not show me where. Next day Yala to Kisumu he was sick and behind the safari. He was stooping and catching his back. I did not see him wearing anything

Evid. 11, 13, 17. (15)

anything round his body. We waited for him at Old Fishan, as he knew what house to go to. I arrived in Nairobi for this case Saturday June 5th. I had orders a few days ago to come here. * Did not speak to anyone about it at Mum's. TO CHIEF. I went from Yala River to Murias in one day & was very much generally done in two marches.

ice officer told me to go to Murias. He asked me a few questions then told me to go.

W.H.H.

Read over carefully.

(Signed) A. W. Carter

HAMISH MUM - Hamish affixed Boy to Mr. Stocker with him at Murias and on safari. Cook and his wife were not married. Quarrelled every two or three days. Remember a quarrel a day or two before we left for Murias for Nairobi. I did not know as they quarrelled inside the house but O'Keefe told me. Next day cook told me "I fought with my wife and had a pain in the side". Three or four days before leaving Murias we went to Kilimanjaro - Stocker on bicycle. Cook was not in good health. Pain in chest on left side. There were also round his waist (at least twice) tight, about a hand's breadth. I saw him was ill one day in Nairobi - He generally had clothes on. I remember day of trouble. Stocker came home about 8 P.M. Asked for food. I said "I'm ready" - Cook was lying down. Cook was not a fool. Stocker came to door of kitchen was shaking the cook. Stocker came in and slapped cook's buttocks. Open hand. Cook

17.

"Why do you hit me - I have got dinner, if you do not want me I would rather go and work for Rs.2 a month". Stocker had gone to bungalow. Stocker struck him no where else. On this noise Stocker came back, I was not there. I did not follow I ran away I did not see what happened the next day cook was sick. When Stocker went back to kitchen he had stick B. Mr. Quinn's stick. Never saw a stick like A in Stocker's house. From Musias to Kisumu and at Nairobi cook did not cook every day sometimes his wife cooked as husband was sick.

X X.

Master did not know cook was sick. I tell master when I was sick. Other boys tell my master when they are sick.

Read over correct.

(Sgd.) A. T. B. Carter

Adjourn to June 8th.

8. VI. 09.

GEORGE RUSSELL MAYNES CUMMEL recalled by Court.

I found congestion of lungs at post mortem two attacks one round the injury and caused by it, active congestion due to inflammation caused by tear of wound. Other parts of lung passive congestion due to weak action of heart a few hours before death. Congestions of not long standing not before the wound.

Read over correct.

(Sgd.) A. T. B. Carter

Evid. pp. 18, 19. (18)

r. Allen sums up.

Combe replies.

Judge sums up. Head of summing up.

304 A Rash or Negligent act must not be
with intent.

Personal injury consciously and intentionally
caused does not fall within the section.

R v. Nade, arti 7 Mad: W.C. 119

Acquit on this.

Sections 325 & 323

If he broke rib he caused grievous hurt.
If he used means which he ought to have known
were likely to cause grievous hurt he voluntarily
caused grievous hurt.

Evidence - Stockers may be accepted.

Probability of fracture being caused by
Stocker.

April 30 - May 5.	15 days)
April	25 days) 5 days Munias
of		

Can convict on evidence.

(Sgd.) A. T. B. Carter

JURY RETIRE

JURY RETURN.

Not guilty under 304 A.

Not guilty of grievous hurt

Not guilty of hurt.

(Sgd.) A. T. B. Carter

Prisoner acquitted set at liberty.

(Sgd.) A. T. B. Carter

S. VI. 69.

IN THE TOWN MAGISTRATE'S COURT

222

AT NAIROBI.

EAST AFRICA PROTECTORATE.

Law Book

Thro: Police

James Edward Stocker

William Thomas Porter

Town Magistrate

James

do hereby charge you

Edward Stocker

that you on the 21st day of April in Nairobi did cause the death of one Suluman bin Maji by a rash and negligent act punishable under Section 304A of the I.P.C. & within the cognizance of the High Court and I hereby direct that you be tried on the said charge. I further charge you that on or about the 21st April in Nairobi you did voluntarily cause grievous hurt to Suluman bin Maji and thereby committed the offence of VOLUNTARILY CAUSING GRIEVOUS HURT PUNISHABLE

325

of Ordinance of the High Court

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

May 10th

00

19

(Sgd.) W. T. Porter

Town Magistrate

Nairobi.