

MEMORANDUM No. 43—continued.

No. of Case.	Date of Judgment	Court of 1st instance and case No.	Offence.	Sentence.	Order by High Court.	Remarks.
137	22.6.32	39/32 1st Class, Mbulu, E.J.	Murder, Sec. 187 P.C.	Death	Conviction and sentence quashed	Insufficient evidence.
138	35.7.32	83/32 1st Class, Iringa	Failing to report his residence, etc., as ordered, Sec. 299 Cr. P.C.	3 months' I.H.L. subject to Police supervision after release.	Order of being subject to Police supervision quashed.	Order of Police Supervision illegal.
139	5.8.32	70/32 1st Class, North Mara.	1. Stealing cattle, Sec. 255 P.C. 2. Retaining possession of stolen property, Sec. 295 P.C.	2 years' I.H.L. and a fine of 200s., the whole fine to go as compensation to the complainant.	Amount of compensation reduced to 30s.	Compensation excessive.
140	26.8.32	23/32 1st Class, Kigoma	1. Burglary, Sec. 280 and 256 P.C. 2. Attempt to commit burglary, Sec. 380 and 381 P.C.	1. 6 months' I.H.L. on each count; 2. 10 strokes and 1 year I.H.L. on 1st count and 1 year I.H.L. on 2nd count, etc.	Conviction of 2nd accused quashed	Insufficient evidence.
141	2.8.32	73 and 74 of 1932 1st Class, Korogwe.	Trading without licence, Sec. 3(1), Cap. 64 of the Laws.	Fine of 5s. and costs 6s. or 14 days' I.H.L. and to take out a licence of 50s.	Quashed the order to take out a licence	Order to take out licence illegal.
142	13.6.32	24/32 2nd Class, Mbeya	Refusal to obey command of their employer, Sec. 40(g), Cap. 51 of the Laws.	Each fined 7s. or 1 month I.H.L. in default and costs. Fine paid.	Quashed the conviction and sentence, and ordered the refund of fine.	Contracts invalid.
143	31.5.32	21/32 2nd Class, Mbeya	Responsible for the loss of property put under his charge by his master, Sec. 41(1) (d), Cap. 51 of the Laws.	Fine 75s. in default 3 months' I.H.L. and costs. Fine if recovered to be paid to complainant as compensation for the loss incurred by him. 32s. paid, sentence amended to 6 weeks imprisonment in default of balance.	Sentence and conviction quashed and fine to be refunded if paid.	Insufficient evidence.
144	8.7.32	58/32 1st Class, Nzega	Refusing to move cattle to prevent contact with infected rinderpest cattle, Sec. 28, Rules dated 1928, and Sec. 96, Cap. 82 of the Laws.	Fine 20s. each count or 1½ months' I.H.L. in default.	Reduced the term of imprisonment in default of payment of fine to 1 month I.H.L. on each count.	Sentence excessive.
145	22.8.32	73/32 1st Class, North Mara.	1st. Stealing Cattle, Sec. 255; 2nd. Retaining stolen property, Sec. 295 P.C.	20 months' I.H.L.	Quashed the conviction and sentence but without prejudice to a retrial if thought desirable.	Evidence unsatisfactory.
146	3.9.32	33/32 1st Class, Mafia ...	House breaking, Sec. 280 P.C.	3 months' I.H.L. and 20 strokes	Conviction quashed and substituted a conviction for theft under Sec. 252 P.C. and upheld the sentence.	Charge inadequate.
147	11.7.32	147/32 1st Class, Tabora, R.M.	Nos. 1 to 4. Theft of cattle, Sec. 255 P.C. No. 5. Being an accessory after the fact, Sec. 364 P.C.	9 months' I.H.L. each	Convictions and sentences quashed in respect of Nos. 3, 4 and 5.	Insufficient evidence.
148	4.8.32	25/32 1st Class, Muheza	Breach of Sec. 41(1)(e), Cap. 51 of the Laws.	Fine of 50s. in default 3 months' I.H.L. and to return to complete contract after release.	Sentence reduced to 20s. with one month's I.H.L. in default.	Sentence excessive.
149	17.8.32	315/32 1st Class, Mwanza, R.M.	Burglary and stealing, Secs. 280 and 252 P.C.	9 months' I.H.L.	Case referred for further evidence	—

150	26.8.32	29/32 1st Class, Muheza	Breach of Sec. 41(1) (e), Cap. 51 of the Laws.	Fine of 50s. in default 3 months' I.H.L. to complete contract of service after release.	The fine is reduced to 20s. with one month I.H.L. in default.	Sentence excessive.
151	9.9.32	42/32 2nd Class, Tabora	Assault occasioning actual bodily harm, Sec. 229 P.C.	12 months' I.H.L. and 8 lashes	The convictions and sentence are quashed and retrial ordered as from the close of the case for the Prosecution.	Irregularity in trial.
152	24.9.32	10/32 P.C., Lindi, E.J.	Theft, Sec. 252 P.C. and burglary, Sec. 280 P.C.	1. 1 year's I.H.L. 2. 2 years' I.H.L.	Quashed the sentence of 1 year I.H.L. under Sec. 252 P.C. and confirmed the sentence of 2 years' I.H.L. under Sec. 280 P.C.	Trial irregular.
153	5.8.32	17/32 1st Class, Bukoba	Forgery, Sec. 321 P.C.	9 months' I.H.L. from 13.7.32	Conviction and sentence quashed. Retrial ordered.	Trial irregular.
154	18.8.32	20/32 2nd Class, Tanga	Failing to appear at Tax Office, Sec. 11(4), Cap. 63 of the Laws.	1 month I.H.L.	Conviction and sentence quashed	Insufficient evidence.
155	1.10.32	1253/32 1st Class, Dar-es-Salaam, R.M.	House-breaking and stealing, Secs. 280 and 252 P.C.	18 months' I.H.L. and Police supervision for 3 years.	Returned to original Court for proof of further evidence.	Discrepancy in Trial.
156	4.8.32	30/32 1st Class, Mafia	Failing to account for possession of property suspected to be stolen, Sec. 296 P.C.	1 year's I.H.L.	Conviction and sentence quashed and retrial ordered.	Trial irregular.
157	22.9.32	18/32 1st Class, Kasulu	Attempted robbery, Sec. 273 P.C.	2 years' I.H.L. and 10 strokes	Conviction and sentence quashed and retrial ordered.	Trial irregular.
158	5.8.32	44/32 1st Class, Pangani	1st. Theft, Sec. 256 P.C. ; 2nd. Escaping from Lawful custody, Sec. 110 P.C.	1 month I.H.L. in each	Conviction and sentence quashed	Trial irregular.
159	3.10.32	91/32 1st Class, Korogwe	Burglary, Sec. 280 P.C.	1st. 1 year I.H.L. ; 2nd. 6 months' I.H.L.	Conviction altered to one of being in possession of stolen property knowing or having reason to believe it to have been feloniously taken, Sec. 295 P.C. Both accused sentenced to 9 months' I.H.L.	Conviction inappropriate.
160	29.9.32	89/32 1st Class, Korogwe	Being in possession of stolen property, Sec. 295 P.C. (3 charges).	1st. 6 months' I.H.L. ; 2nd. 6 months' I.H.L. ; 3rd. 9 months' I.H.L.	The accused found guilty of retaining stolen property. Sentence in each case to be 6 months' I.H.L., to run consecutively.	Conviction inappropriate.
161	3.10.32	114/32 2nd Class, Morogoro.	Storing cotton in unlicensed store, Sec. 28 Cotton Rules.	Fined 5s. and cotton buying licence suspended for 6 months'.	Order of suspension of cotton buying licence set aside.	Order illegal.
162	22.9.32	109/32 2nd Class, Morogoro.	Failing to erect a notice board displaying charges, Sec. 18 (1) Cotton Rules.	Fined 100s. and licence for cotton buying forfeited.	Quashed the order of forfeiture of buying licence.	Order illegal.
163	22.9.32	20/32 3rd Class, Shinyanga.	Bartering clothing for gum Arabic, contra Pro. Commissioner's Notice No. P/18/43/29 of 8th April, 1932.	Fined 5s. or 8 days' I.H.L. His itinerant traders' licence cancelled.	Quashed the order concerning the accused's Itinerant Traders' Licence.	Order illegal.
164	14.9.32	17/32 1st Class, Mahenge	Arson, Sec. 303 P.C.	Accused incapable of making defence	Record returned to original Court for recording opinion as to unsoundness of mind.	—
165	8.9.32	85/32 2nd Class, Kilosa	Attempted assault, Sec. 360 P.C.	2 months' I.H.L.	Conviction and sentence quashed	No offence disclosed.
166	10.9.32	88/32 2nd Class, Kilosa	Attempted Assault, Sec. 360 P.C.	2 months' I.H.L.	Conviction and sentence quashed	No offence disclosed.
167	17.9.32	86/32 2nd Class, Kilosa	Driving a motor lorry without a licence, Sec. 3 (a) Motor Traffic Ord., Cap. 122 of the Laws.	Fined 5s.	Conviction and sentence quashed. Fine which has been paid to be returned.	No offence disclosed.
168	10.10.32	56/32 1st Class, Tukuyu	Entering dwelling house with intent to commit felony, two counts, Sec. 281 P.C. 2. Theft, Sec. 252 P.C.	1st Count. 1 year's I.H.L. 2nd Count. 6 months' I.H.L. 3rd Count. 6 months' I.H.L.	Convictions and sentences quashed	Misjoinder of charges.

MEMORANDUM No. 43—continued.

No. of Case.	Date of Judgment	Court of 1st instance and Case No.	Offence.	Sentence.	Order by High Court.	Remarks.
169	20.9.32	22/32 3rd Class, Kwimba	Using a motor lorry upon a highway without a licence, Sec. 5, M.T. Ord., Cap. 122 of the Laws.	Fined 5s.	Convictions and sentences quashed without prejudice to a new trial on the same facts.	No offence disclosed.
170	13.9.32	1/32 3rd Class, Korogwe	Unlawfully wounding, Sec. 217 P.C.	8 strokes and bound over to come up for further sentence during the 6 months, (if called upon).	Order binding over the accused quashed	Order illegal.
171	13.10.32	18/32 1st Class, Kondoa	1. Theft; 2. Breaking and entering a building and committing felony therein.	1. 9 months' I.H.L. on each charge; 2. 1 year I.H.L. on each charge.	The convictions and sentences of both accused under Sec. 256 P.C. quashed.	Conviction under Sec. 256 illegal.
172	18.10.32	24/32 1st Class, Kwimba	Doing grievous harm	Accused Nos. 1 and 3 guilty and sentenced to 18 months' I.H.L., No. 2 acquitted.	Sentences of accused Nos. 1 and 3 enhanced to 2 years' I.H.L. to run from date of conviction.	Sentence lenient.
173	24.10.32	1328/32 1st Class, Dar-es-Salaam, R.M.	Driving a motor car on a highway without certificate of competency, Sec. 9 (1) and 22 of M.T. Ord., Cap. 122 of the Laws.	Fine of 30s.	Sentence reduced to a fine of 5s.	Sentence excessive.
174	9.9.32	26/32 3rd Class, Maswa	1. Withholding wages, Sec. 47 (a), Cap. 51 of the Laws. 2. Improperly making out entries on labour card, Sec. 20, Cap. 51 of the Laws.	1. 12s. fine and 12s. compensation; 2. 5s. fine.	Quashed the conviction and sentences. Fine to be refunded.	Conviction illegal.
175	24.9.32	62/32 1st Class, Bagamoyo	Being members of an unlawful assembly, Sec. 71 P.C., and Assault, Sec. 228 P.C.	1. 9 months' I.H.L. 2. 10 strokes. 3. To come for sentence when called upon. 4. Same as No. 3.	Sentence of accused No. 1 reduced to 6 months' imprisonment without hard labour.	Sentence excessive.
176	26.10.32	129/32 3rd Class, Iringa	Stealing, Sec. 252 P.C.	Fine 50s. and 2 months' I.H.L. and further 1 month in default of fine.	Sentence enhanced to 6 months' I.H.L. running from date of conviction.	Sentence light.
177	10.10.32	4/32 3rd Class, Kigoma	Being in possession of stolen property, Sec. 296 P.C.	7 days I.H.L.	Conviction and sentence quashed	Ultra vires.
178	14.10.32	2nd Class, Tanga ...	—	To be repatriated to his country of birth	Order set aside, without prejudice for taking such action as advised.	Order illegal.
179	6.10.32	1/32 3rd Class, Tanga ...	Being in possession of ammunition without a licence, Sec. 13 (1) A. & A. Ord., Cap. 101 of the Laws.	Fine of 80s.	Conviction and sentence quashed	Insufficient evidence.
180	25.10.32	1/32 3rd Class, Bagamoyo	Attempting to smuggle 2 cases of matches Sec. 213 (b) Customs Ord., Cap. 57 of the Laws.	Fine of 50s. or 2 months' I.H.L. The cases to be returned to accused.	Set aside the order for return of cases of matches to accused and declaration of forfeiture of same to His Majesty.	Order illegal.
181	29.10.32	56/32 1st Class, Musoma	Theft in a dwelling house, Sec. 256 (b) P.C.	18 months' I.H.L. and a fine of 300s. or 6 months' I.H.L. in default.	Sentence of imprisonment in default altered to 4 months.	Sentence of imprisonment in default of fine inadequate.
182	6.9.32	14/32 2nd Class, Songea	Absconding from work, Sec. 41 (1) (e), Cap. 51 of the Laws.	4 months' I.H.L.	Conviction and sentence quashed, without prejudice to the trial for advance of money at the commencement of his contract.	Sentence illegal.

183	27.10.32	208/32 1st Class, Tabora, R.M.	Receiving stolen property, Sec. 295 (1) P.C.	Guilty under Sec. 296 P.C. Sentenced to 2 years' I.H.L.	Sentence to run concurrently with sentence in Criminal Case No. 225 of 1932, of Tabora, 1st Class Sub. Court.	Sentence excessive.
184	15.9.32	12/32 1st Class, Songea	Breach of Sec. 11 (2), Cap. 63 of the Laws	6 weeks' I.H.L.	Conviction and sentence quashed	Insufficient evidence.
185	29.10.32	1/32 3rd Class, Kondoa	Moving cattle without a permit, Sec. 13 Diseases of Animals Rules, 1920.	1. 2 months' I.H.L. and fine 100s. ; 2. 1 month's I.H.L. and fine 100s.	The fine of 100s. on 2nd accused remitted. Fine if paid to be refunded.	Magistrate's recommendation.
186	14.11.32	66/32 1st Class, Dodoma, R.M.	Burglary and theft, Sec. 280 P.C.	2 years' and 12 lashes	The sentence of I.H.L. confirmed. The sentence of corporal punishment quashed.	Sentence of corporal punishment illegal.
187	26.6.32	58/32 1st Class North Mara.	Receiving stolen property, Sec. 295 P.C. or stealing cattle, Sec. 255 P.C.	18 months' I.H.L. and 100s. fine. 3 months' I.H.L. in default.	Conviction and sentence quashed. Fine if paid to be refunded.	Insufficient evidence.
188	24.10.32	397/32 1st Class, Mwanza R.M.	Rescuing from lawful custody any other person, Sec. 109 P.C.	6 weeks' I.H.L. and subject to Police supervision for 1 year after release, Sec. 297 Cr. P.C.	Order of subjection to Police supervision quashed.	Order for subjection to police supervision illegal.
189	1.12.32	70/32 1st Class, Rungwe E.J.	Manslaughter, Sec. 188 P.C.	3 years' I.H.L.	Conviction and sentence quashed	Insufficient evidence.
190	20.10.32	47/32 3rd Class, Rungwe	Keeping licensed premises in unsatisfactory condition, Sec. 24, Cap. 49 of the Laws.	Licence forfeited. Not to be renewed for a period of 1 year.	Order for non-renewal of licence for 1 year set aside.	Order illegal.
1	27.1.32	11/31 1st Class, P.C. Lindi, E.J.	Murder, Sec. 187 P.C.	To be hanged by the neck till dead	Conviction of murder quashed, and a finding of manslaughter substituted. Sentenced to 5 years' I.H.L. from date of conviction.	Insufficient evidence for murder.
2	7.3.32	4/31 1st Class, R.M. Mwanza, E.J.	Murder, Sec. 187 P.C.	To be hanged by the neck till dead	Conviction and sentence confirmed	—
3	7.3.32	18/31 1st Class, R.M. Mwanza, E.J.	Murder, Sec. 187 P.C.	To be hanged by the neck till dead	Conviction and sentence confirmed	—
4	26.2.32	14/31 1st Class, R.M. Mwanza, E.J.	Murder, Sec. 187 P.C.	To be hanged by the neck till dead	Conviction and sentence confirmed	—
5	6.4.32	5/32 1st Class P.C., Lindi, E.J.	Murder, Sec. 187 P.C.	To be hanged by the neck till dead	Conviction and sentence confirmed	—
6	16.5.32	74/32 1st Class, Bukoba, E.J.	Murder, Sec. 187 P.C.	To be hanged by the neck till dead	Conviction and sentence confirmed	—
7	30.5.32	28/32 1st Class, Rungwe (At. Tukuyu), E.J.	Murder, Sec. 187 P.C.	To be hanged by the neck till dead	Conviction and sentence confirmed	—
8	16.5.32	87/32 1st Class, Bukoba, E.J.	Murder, Sec. 187 P.C.	To be hanged by the neck till dead	Conviction and sentence quashed. Ordered to be released forthwith.	Insufficient evidence.
9	11.4.32	24/32 1st Class, Mbulu, E.J.	Murder, Sec. 187 P.C.	To be hanged by the neck till dead	Conviction and sentence of both accused confirmed.	—
10	15.6.32	57/32 1st Class, Mbeya, E.J.	Murder, Sec. 187 P.C.	To be hanged by the neck till dead	Conviction and sentence quashed	Insufficient evidence.
11	22.6.32	39/32 1st Class, Mbulu, E.J.	Murder, Sec. 187 P.C.	To be hanged by the neck till dead	Conviction and sentence quashed	Insufficient evidence.
12	5.9.32	9/32 1st Class, P.C., Lindi, E.J.	Murder, Sec. 187 P.C.	To be hanged by the neck till dead	Conviction and sentence confirmed	—

MEMORANDUM No. 44

Submitted by

Mr G. L. JOBLING, CROWN COUNSEL, TANGANYIKA TERRITORY

DEFENCE OF NATIVE ACCUSED.

In considering the question of the defence of native accused in the Courts I submit it is necessary to bear in mind the forces that are already in existence to help towards an acquittal and compare them with those that help to ensure the conviction of the guilty.

The former may be summarised as follows:—

- (1) The lack of means of proper investigation of offences.
- (2) The low standard of interpretation.
- (3) The lack of professionally qualified magistrates.
- (4) The right of appeal on question of fact.
- (5) The indifference of witnesses.
- (6) The realisation of the Appellate Court that native mentality is a factor of almost unknown quantity.

It is not possible to place these causes on order of merit. In cases committed to the High Court for trial the first is the most usual cause of an acquittal, but in appeals for Subordinate Courts (4) and (6) take precedence.

(1) *The lack of means of proper investigation of offences.*—There are three stages when an investigation of a case may be ordered. First, when the offence is reported to the Native Authority, second, when it comes to the knowledge of the District Officer and, third, when the depositions taken in the case are received by the Attorney-General.

The most important is of course the first.

Investigation by a trained person immediately after the committal of an offence would produce evidence that would clear up most of the doubts that come into existence at the hearing of the case in the High Court. At this most important stage we have only a semi-civilised native who is incapable of any proper investigation.

The District Officer's opportunity comes some days—sometimes weeks—later and the probabilities are that the evidence required to corroborate a witness or to corroborate or refute the accused's story has disappeared.

By the time the depositions reach the Attorney-General it is almost impossible to get any real evidence that may have been overlooked in the first instance.

Briefly, there is no machinery for investigation of criminal cases in native districts, and the result is meagre evidence at the trial, ending frequently in the accused's acquittal.

(2) *The low standard of interpretation.*—This operates in favour of an accused in cases committed for trial by the High Court and in appeals from Subordinate Courts to the High Court.

In committed cases a witness's evidence in the High Court will not tally with his deposition taken in the Subordinate Court if there is misinterpretation in either court. Sometimes the discrepancies are substantial and the witness is entirely discredited, but more often they refer to matter of detail and by casting doubt on the reliability of the witness, form one of the factors securing the accused's acquittal.

On the other hand, when an accused alleges that a statement made by him in the lower court was misinterpreted the court cannot exclude consideration of this possibility and in cases of doubt must give the accused the benefit.

As regards Subordinate Court cases misinterpretation tends to make witnesses' statements inconsistent with each other and on appeal to the High Court this often throws the element of doubt into the scale for the benefit of the accused.

(3) *The lack of professionally qualified magistrates.*—Non-professional magistrates whose time is only partly occupied in hearing criminal charges are liable to irregularities in proceedings which necessitate the

quashing of the conviction on appeal or revision. I refer to such irregularities as the magistrate refusing to call a witness for the accused because he has come to the conclusion after enquiry that the evidence of that witness will not help the accused's case.

(4) *The right of appeal on question of fact.*—An appeal amounts to a re-hearing of the case on the record.

All inconsistencies the result of misinterpretation join with those that are real and support the plea that the conviction is against the weight of evidence.

Real inconsistencies in a witness's evidence are frequent if the accused is defended in the lower court for reasons referred to under the next heading.

(5) *The lack of interest in proceedings shown by the majority of native witnesses.*—A native witness usually tells what he thinks to be the truth, but the majority take but little interest in the proceedings. Under cross-examination they quickly tire and can be made to contradict themselves on almost any matter of detail.

An energetic Counsel can obtain inconsistent statements from most witnesses and it is becoming the practice in this Territory for Counsel who can find no ground of defence for their client to seek to obtain by long and detailed cross-examination inconsistent statements from a witness with a view to arguing on appeal that the conviction is against the weight of evidence.

Trials are often dragged out interminably for this purpose and when reduced to writing such inconsistent statements, without the demeanour of the witness and the atmosphere of the court to explain them, usually gain a great deal in importance.

(6) *The realisation by the Appellate Court that native mentality is an uncertain factor in every case.*—The rule that the benefit of any doubt must be given to an accused is a much stronger factor in securing acquittal in this Territory than it is in European countries. In every case here, and particularly in appeals when the demeanour of the witnesses cannot be observed, the knowledge that the workings of the native mentality at times cannot be understood by Europeans has an influence which tends to magnify any doubts arising in the case and to make them "reasonable" when they would not be so in a European country.

There is only one thing that assists the law in obtaining the conviction of guilty persons in this Territory, and that is the general simplicity and truthfulness of the natives themselves. A native who commits an offence expects punishment to follow and is often most anxious to tell the truth.

In his simplicity when first brought before the court he will make statements which incriminate himself or lead to his conviction by corroborating the evidence of the witnesses for the prosecution when no other corroboration is available.

But for such statements and truthfulness a far greater number of guilty persons would be acquitted because of the lack of evidence.

We have then on the one hand an almost total lack of machinery for the proper investigation of crime and the consequent lack of evidence, and on the other hand that lack made good by the unsophisticated nature of the native.

The proportion of persons acquitted to those charged does not, I think, compare unfavourably with the statistics in other countries (see statistics appended hereto). This is, I submit, due to the fact that at present the forces for or against the accused are more or less balanced.

The introduction of modern methods of crime detection in native districts would result in a great increase in convictions. The appointment of a public defender of natives might then be desirable. But under present conditions to appoint a public defender, whose first efforts would be to ensure that natives were safeguarded from incriminating themselves would merely result in a much larger number of guilty persons being let loose in the community.

I submit that under the present system the interests of native accused are adequately safeguarded and justice is as well and truly administered in this Territory as in any other part of the Empire.

Dar es Salaam.
9th May, 1933.

Place and Year.	STATISTICS.		
	Charged.	Convicted.	Acquitted.
High Court—			
Tanganyika, 1930 ...	335	204	131
„ 1931 ...	317	180	137
Sub-Courts—			
Tanganyika, 1930 ...	10,830	8,557	2,273
„ 1931 ...	11,488	9,137	2,351
London (Metropolis)—			
Indictable Offences, 1931.	2,598	2,233	365
London (Metropolis)—			
Summary Jurisdiction.	5,147	3,931	1,216

SUPPLEMENTARY MEMORANDUM SUBMITTED BY MR. G. L. JOBLING

The memorandum submitted by me to the Commission on the 10th instant was prepared at very short notice and is I think liable to misconstruction. I therefore ask that I may be allowed to supplement it as follows:—

1. When submitting the memorandum on the proposal for the creation of Public Defenders I understood that if created their function would be to undertake the defence of illiterate natives accused of capital offences so as to ensure that their interests are protected not only by professional representation at the trial as is the practice at present but also during the preliminary investigation.

2. In order to show more clearly the protection afforded to native accused under the present system I wish to amplify the notes made in my previous memorandum under the various headings, as follows:—

(i) *Lack of means for proper investigation of offences.*—The failure to secure material evidence in practice operates in most cases in favour of the accused, because—

(a) if he is innocent, the version of the facts which he gives at the trial will presumably be at least within the bounds of possibility, and absence of corroboration of it will not deprive him of the benefit of the reasonable doubt; and

(b) if he is guilty, lack of corroboration of the crown witnesses would often result in an acquittal.

(ii) *The low standard of interpretation.*—The indulgence which the courts extend to accused persons and their witnesses in regard to inconsistencies between their evidence at the trial and at the preliminary investigation when it is alleged on their behalf that such inconsistencies are due to misinterpretation, cannot be given to crown witnesses owing to the inflexible rule as to burden of proof in criminal causes.

(iii) *Indifference of native witnesses.*—Owing to the rule that a conviction must rest upon the strength of the case for the prosecution and not upon the weakness of the defence, inconsistencies in matters of detail due to the disposition of native witnesses re-

sulting from fatigue or indifference to return inaccurate and unconsidered replies under cross-examination operates in most cases in favour of the accused.

3. The references in my previous memorandum and in my evidence before the Commission to the incriminating statements frequently made by native accused are I think open to misconstruction. The statements I had in mind are those made voluntarily to the court at the preliminary inquiry after proper warning as provided by law (section 211 of the Criminal Procedure Code). It is a matter of common knowledge amongst those who have had much to do with the unsophisticated native that his first impulse when brought into the presence of authority on a criminal charge is to make a statement. If he is innocent such a statement will prove most valuable to him at his trial; if guilty, most helpful to the proper administration of justice, whether it amounts to a confession or some other version of the facts. Obviously the first duty of defending counsel would be to advise the accused to make no statement at the investigation except such as palpably demonstrates his innocence. My anxiety therefore is in regard to this project that, in a country where evidence against accused persons is notoriously difficult to obtain, this single factor (the native's readiness to speak), arising from the innate proclivity of an untutored mind, should not be eliminated by machinery which is designed to succour the innocent rather than the guilty.

4. I shall not, I hope, be misconstrued as suggesting that accused persons should not receive every possible assistance in presenting their cases to the Court. The point I wish to make is that under the present system innocent persons are amply safeguarded already and that if further weight is to be thrown into the scales in the accused's favour by introducing a factor which might have the effect of weakening the cause of justice we should at the same time make better provision than exists at present for the investigation of crime and the procuring of the evidence necessary to secure conviction of the guilty.

Dar es Salaam,
18th May, 1933.

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