Has it ever been refused?—Yes, I have found so. I think it usually arises in circumstances where there is a counsel on one side and not on the other.

Very likely. Of course it is very difficult to lay down the discretion which magistrates should exercise in this way or that, but if you are there and these things happen I suppose you can protest and, if there is an injustice, you can apply for revision.—Yes, Sir.

You think it is unnecessary that magistrates should record evidence which is not admissible. This is dealing with preliminary enquiries?—With all cases, Sir.

Take preliminary enquiries first. It is possible that a magistrate might record evidence which he thinks is inadmissible or is not sure about, noting the objection made, and no harm is done because objection can be taken at the trial. But do you say that this is the practice when they are trying cases?—Very frequently.

If you take exception to some evidence on the ground that it is not admissible, supposing the magistrate agrees, does he nevertheless write it down?—Very frequently Sir.

What do you say then?—I say that this evidence is inadmissible and then I am not in a position to know whether he has agreed with me or not. It might have some considerable bearing on his mind.

Supposing the man is not defended, does not the magistrate make up his mind about the admissibility of the evidence there and then?—Only in a few cases. The evidence is recorded by the magistrate and he says he would prefer to do so but will consider at a later stage the weight of such evidence.

I follow. You make, in your memorandum, some remarks about the preliminary enquiry. You feel that the accused does not always realise that he is not being tried there and is apt to make embarrassing statements. Mr. Macken has made a suggestion as to a form of words which might be addressed to the accused. Have you seen his memorandum?—No.

What he suggested is this: "Warning to the accused at an Inquiry. . . . "This is not your trial. You are not being tried now. You will be tried later on in another court and before another judge, where all the witnesses you have heard here will be produced and you will be allowed to examine them and ask them questions. You will then be able to make any statement you may wish. If, understanding this, you want to make a statement to me, I will take it down, and it may be used as evidence at your trial."

Is that the sort of explanation which you think should be given by the magistrate holding a preliminary enquiry?—As regards the first part, I think Mr. Macken probably understands the native far better than I. At the same time, I do not agree with the last sentence. It is too technical.

Do you want the accused to make any statement?—From the point of view of a defending counsel I should welcome any sort of thing that would dissuade him to the utmost from making a statement unless he could have the advice of a counsel at the preliminary enquiry.

I can understand that position if he is going to have counsel at his trial. But supposing he does not have counsel at his trial, it may be that by not disclosing his defence at the preliminary enquiry he has not put that court or the High Court or anyone in a position to assist him by questions or in any way.—It seems to me that the point on which advice is most needed is whether you are going to reserve your defence or not. It is probably the most important decision to be taken.

In this imperfect world you cannot get everyone defended at that stage. Don't you think the best course would be to give the accused an opportunity of indicating his defence?—The difficulty I find in persuading the accused when he comes here that I am his friend is so great that I feel it must be 100 per cent. more difficult for a committing magistrate to get into that man's head the fact that he need not make a statement.

He distrusts lawyers.—I think these people do not realise what a lawyer is.

Why is he reluctant to give his confidence?—He probably thinks "Here is another white man wanting to get a statement out of me."

Is a knowledge of the language of great assistance?—Yes, Sir.

Then this difficulty would not apply to the D.C.—I expect so.

Special district courts. You do not approve of the jurisdiction of these courts?—No, Sir.

Have you appeared before them?—No, Sir. I have been in special districts but never actually appeared before a district court.

A district court using extended powers?—No, Sir.

Do counsel often appear before these courts?—Very seldom.

Is that because they are so far from Kampala?—Yes.

Supposing those courts were presided over by a judge, would the Bar go there with more frequency?—I don't think so, Sir. The expense is too great.

Mr. Justice Law: You said, as regards this Bamuta case, that this new municipal law, the Penal Code, had been enacted very recently—1930—and it was your submission that the Secretary of State's opinion did not hold as applied to these new circumstances.—Yes, there was subsequent municipal legislation.

Which affected the Secretary of State's opinion given before.—Yes, it would not be the same.

I suppose it would be competent for you to have applied to the Chief Justice to seek the Secretary of State's opinion again in this matter?—Yes.

As regards inadmissible evidence, it must happen that answers are recorded before it was fully appreciated what is substantially admissible or not?—Yes, that is so.

And whether it has been recorded or not it has been said and heard, but there is no jury to worry about in the subordinate courts.—No.

And the judge is perfectly competent to reject all that, but it might leave an impression?—Yes.

The magistrate's appreciation of the case will come from reading over what he has put down?—Yes.

With regard to these cases in the districts, if a judge had his headquarters at a particular place, perhaps a local Bar would grow up there?—Yes, it might create a movement.

As a matter of fact, perhaps you know, Mbale lawyers have appeared before special district courts nearby.

Mr. MacGregor: A point you have not raised in your memorandum—the question of provocation, in homicide cases chiefly, and the interpretation that you put on the wording of Section 175 of the Penal Code: "The term 'provocation' means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done to an ordinary person, or in the presence of an ordinary person to another person, who is under his immediate care . . . . to deprive him of the power of self-control and to induce him to assault the person by whom the act or insult is done or offered." What is your experience of the interpretation placed on the words "ordinary person" in the courts here?—"Ordinary person" is interpreted far too highly when dealing with the native.

You mean that European standards are applied in such cases?—I would not say anything as sweeping as that, but the tendency is that way.

Is that likely to work substantial injustice in cases here.—I think on the whole yes, in certain cases. Where I, as a defending counsel, have felt the injustice is where the provocation has been as a result of some native marital relations and we are faced

with the time-honoured English cases where the person is not actually married, and that, to my mind, is putting it too high for these people.

Would you agree to this, that if trials of natives for homicide were heard with a jury, then the standard of the ordinary man would be the standard of that jury. The problem for the jury, which I am assuming is a jury of natives, would be as to whether the provocation was enough to the ordinary man—a native—to deprive him of self-control?—I am doubtful as to what value a native jury would be.

I want to know whether you consider the test in such cases is the test of the knowledge and experience of the ordinary British jury and if you would consider it unfair that the test here ought to be the mentality of an ordinary native jury if such a thing existed.—Yes.

Would you look at Section 4 of the Penal Code: "General Rule of Construction of Code. 4. This Code shall be interpreted in accordance with the principles of legal interpretation obtaining in England, and expressions used in it shall be presumed, so far as is consistent with their context, and except as may be otherwise expressly provided, to be used with the meaning attaching to them in English criminal law and shall be construed in accordance therewith."

Have you ever considered whether on the point we have just been discussing that section has a bearing?—I am afraid I regarded the section as rather where one goes to look for decisions either to fill up gaps in the code or explain things.

You would not go so far as to say that it renders it imperative on a judge of the High Court never to go outside the principles of English law and the decisions based on that?—I feel that one must not forget that this is, after all, the code for Uganda and that in Uganda there are many races and all shades of civilisation to which this code will be applied. There must inevitably in these circumstances be a number of different standards. It seems to me to be unfair to require the same standard from the natives when they appear before this court, mere savages in some cases who are entirely out of their element—it is probably the first time they have ever seen a building of this size.

Mr. Justice Law: You regard Section 4 as a sign post where to look for your law?—Yes.

As regards Item H. of your memorandum, admissibility of statements to the police, I have an uneasy feeling that you are not absolutely happy about this.—No, I am not. I felt bound to disassociate myself from the Law Society's memorandum.

As a matter of fact, though, you would like to see the accused taken to a magistrate to make his confession.—Yes. That section of my memorandum would be clearer if I had said "Police Commissioned Officer" instead of "Police Officer." I would not like to see confessions taken by other officers than the senior. I think it is detrimental to the prestige of the police if a commissioned officer cannot take confessions.

So far as the commissioned officer is concerned, the statement only comes to him through an interpreter.—I am visualising the case of the commissioned officer investigating himself.

Mr. Mitchell: You say a good deal about murder trials and the more serious offences, and naturally they are important here where the native population come in contact with the subordinate courts. Supposing the man had been convicted in the subordinate court—a native villager—and supposing that the case has not been revised by the High Court, the record discloses nothing to justify revision, but nevertheless the man convicted wants to set the law in motion, has he any great difficulty in doing so in this country?—I should imagine so.

In addition to these special district courts, the subordinate courts where natives are concerned have very extensive jurisdiction.—Yes.

So that even a second class magistrate can give a sentence of seven years. Do you think this is satisfactory?—No Sir, I cannot regard it as satisfactory. I regard it as faut de mieux.

Supposing it were possible to use professional magistrates disposed about the country in suitable places as a sort of intermediary between low subordinate court jurisdiction and the full High Court jurisdiction, do you think that that would be a satisfactory system?—Yes, that would be a great improvement on the present system.

(Witness then withdrew.)

Mr. C. L. Bruton, Acting Provincial Commissioner, Eastern Province.

Chairman: You are the Acting Provincial Commissioner, Eastern Province?—Yes.

In your note to the Commission Memorandum (No. 17) you raise the question as to whether preliminary enquiries might be abolished in the interests of speed and economy?—That question was raised, Sir, by the District Commissioners at their conference a short time ago in Mbale. All the District Commissioners in the Eastern Province were present except the District Commissioner, Karamoja.

Of course the holding of a preliminary enquiry does mean delay and inconvenience to the witnesses and expenses in bringing them in again?—These preliminary enquiries are only held in very serious cases, murder, homicide and rape.

And if, as you say, you were to hold a trial straight away without any preliminary enquiry, would there not be great difficulty for the accused to know what is the case against him?—That is so, Sir. I may say that the whole of my magisterial experience was under the old Indian Penal Code and since the inception of the new Code I have been District Commissioner of Busoga where the District Commissioner does no court work or acting Provincial Commissioner. I have heard that District Commissioners express a wish to revert to the Indian Penal Code.

The disadvantage of the old system is that the accused is in the dock, hears the evidence bit by bit for the first time as it is produced and until all the evidence for the prosecution has been called he has not even heard what is the case against him; and even then he has not got it in writing and has very little opportunity of thinking of his defence and meeting the allegations against him?—Yes, Sir.

Whereas under the new system if the magistrate thinks there is a prima facie case, before the accused is tried he gets the deposition and he knows no evidence will be called which he has not seen, and probably that does facilitate the preparation of his defence?—Yes, Sir. Of course, it is extremely difficult in a district where there is a District Commissioner and Assistant District Commissioner and nobody else. The A.D.C. must make the police investigation and also take the preliminary trial.

He is in an embarrassing position in the functions which he has to discharge?—Yes, Sir, definitely. When there is a crime in the district the first person to hear of it is the D.C. or A.D.C. and one of them has to decide whether there should be a prosecution and to decide that he has to do a little police investigation. If he decides to prosecute he or his brother officer has to hear the case.

Do they sometimes feel a little embarrassed by this position?—Yes, they must be embarrassed.

Do you like judicial work or would you rather be in a position to concentrate your activities on the other side?—I look upon it really as the most important part of a D.C.'s duty, because the first thing that a D.C. really has to do is to know all about his district and therefore if there is a case of murder, naturally he has to go into the matter as thoroughly and fairly as he possibly can. In fact, I think he should put aside all other work until the case is finished.

I wanted to know, if it was possible to relieve the Administrative Officer of a large part of that work, would you think that a good arrangement?—I am afraid it would mean that they would know far less about their districts.

In some respects they might be able to bother even more, because if they could prosecute without thinking all the time, "One might have to try this man eventually" they might be able to put a little more zip into the prosecution?—There might be a police officer to do this.

In cases where there is no police officer I take it that D.C.s would have to continue trying these cases?—It would not be possible for a judge to go there under present conditions.

Let us suppose that it was possible to relieve the D.C. of the more serious criminal trials, do you think that would make him less interested in his district?—No, certainly not. But it is such an essential happening in a district, the fact that a murder has occurred that he ought to know all about it.

But there is nothing to prevent his knowing all about it. He might know a great deal more about it than if he were going to deal with it judicially?—I think I should be sorry. Though I would like to see D.C.s relieved of all the civil work.

What is the difference? Why not the criminal work?—With regard to civil work, I mean civil work in connection with non-natives. I am referring to the unsophisticated tribes. In a place such as Kampala, for instance, the D.C. could not carry out magisterial duties.

Why?—Because he has so many other duties to perform.

Not because he lacked any competence to perform them?—No, Sir.

Have you, when you have been trying these cases, felt any difficulty from lack of technical legal knowledge with an unsophisticated tribe?—There is always that difficulty with an Administrative Officer without a barrister's training.

You don't think that an unsophisticated tribe should get a lower class of justice than a sophisticated?—No, Sir, definitely not.

Have you ever held a special district court?—I have held a preliminary enquiry.

Revision. Have you found that any embarrassment has been caused you when you have been sitting as a subordinate court by the revisions which take place from the High Court?—None whatever, Sir. My experience has been that they have always been most sympathetic and helpful.

In certain class of cases subordinate courts sit with assessors. Is this system satisfactory?—I think one should naturally endeavour to get the best assessors possible. When I was a D.C., and had to send them in I always tried to get the best type of chief and if possible one with a knowledge of English.

Is there a rota from which they are chosen?—No, Sir, the D.C.. has complete discretion.

You don't think there would be any advantage in having a panel from which assessors could be chosen?—Yes, I think it would assist.

As regards interpretation, do you find difficulty in that respect?—I think there always will be difficulties with so many languages.

You have heard interpretation in the courts of this country. Generally speaking, is it well done?—I should say on the whole it was good.

There has been a suggestion that it should be made obligatory that one of the assessors should be a person speaking English and the language of the accused. Do you think that would be practicable in every case?—No, not in every case.

It would be dangerous to make it a statutory obligation?—Yes, because in certain districts it would not be practicable.

Is there anything else you would like to say?—As far as possible I should like to see cases tried as near the scene of the crime as is practicable. This facilitates the question of witnesses and it affords the judge an opportunity of going to see the actual scene of the crime. My experience is that it is very difficult to get native witnesses to go long distances.

The High Court tries cases as far away as Mbale.—Yes.

What districts in your province are really inaccessible?—The main one in the Eastern Province is Karamoja. You can get to all the other places quite easily.

That is a special district court. Is that the only court you can think of when you say that they ought to try and get nearer the scene of the crime?—I was thinking of D.C.s trying cases, not necessarily murder, but in the subordinate courts.

Mr. Justice Law: How many districts are there in your province?—Six.

And how many districts have not got police officers.—The police officer in Mbale goes over to Bululu and also there is Karamoja. I think it would be fair to include Tororo as a place without a police officer because, although there is a C.I.D. man stationed there, he has to go all over the province.

Mr. Mitchell: In a great number of minor cases as between natives, assaults and petty thefts, etc., very often the only way of dealing with the case is a short imprisonment. I suppose you would agree that the fewer short sentences of imprisonment inflicted the better?—Yes.

If the law permitted the British courts to adjust these cases by compensation in the way of the native courts, would you think that an advantage.—Yes, definitely.

The Nigeria law on the subject is:—

> "117. In Criminal cases the Court may promote reconciliation, and encourage and facilitate the settlement, in an amicable way, of proceedings for assault, or for any other offence of a personal or private nature not amounting to felony and not aggravated in degree, on terms of payment of compensation or other terms approved by the Court, and may thereupon order the proceedings to be stayed."

Yes, I should be definitely in favour of that.

In backward areas you would be very sorry to see the jurisdiction of the D.C.s to try homicide and rape withdrawn?—Yes, but that obviously would not apply to more advanced areas.

Would I be correct in inferring from that that you mean that this jurisdiction of the D.C. is a temporary expedient to deal with circumstances existing in the comparatively early stages of a country's development?—Yes, I suppose it is, although, as I say, I must confess I am old-fashioned and should be very sorry to see things altered. I simply go on the fact that a D.C., by trying murder cases or cases of rape does learn a tremendous amount about his district.

One of the reasons that has been advanced by other people for this arrangement is that the D.C. knows so much more about the people, their language, way of life, etc., than a judge can hope to know. Would you agree that conditions have changed considerably during the last few years owing largely to roads, transport and increases of staff and so on, so that the Administrative Officer is very much less in touch with the people than he was of necessity twenty years ago?—It certainly is becoming increasingly difficult for him to know his

people. I am levelling no criticism whatever against the class of cadet we are getting at the moment, but there is no doubt about it that with motorcars and the absence of the walking safari it is very difficult indeed.

I only asked that because it appears to me that the D.C.. who is an expert in native questions, mentality, etc., is a disappearing factor, and I wondered whether you would agree.—I suppose he is, but one must fight against this and relieve the D.C. of as much rountine work as we can because to know his people is, to my mind, the first essential, and it is becoming increasingly difficult.

Supposing for any reason it was decided to reduce the very extensive powers of the Administrative Officer magistrates. You heard what I said to Mr. Johnson Davies about professional magistrates reasonably disposed over the country and subordinate courts with three divisions of jurisdiction. Would you think that that would have any advantages—though you don't agree with it yourself?—Yes.

Suppose you had someone like a sessions judge intermediate between the High Court and subordinate courts who would be a professional man with no other duties except magisterial duties, would you think this would have its advantages?—Yes, it would. For instance, there would be a sessions judge in each province?

Yes, in order to bring the jurisdiction closer to the people and have it there all the time, rather in the form of assizes.—Yes.

Mr. M. Wilson: You said, I think, in answer to a question that you thought the judicial work was the principal work of an administrative officer. Do you mean to give himself added prestige in the eyes of the native?—Yes, I certainly take that into consideration.

As regards these courts and reducing to some extent the present powers of the District Officer, and especially in the special districts, would they not have sufficient power to endear themselves to the natives under the lower powers accorded to them—particularly having in mind the Nigeria provision which has just been referred to?—Yes, I think that would assist.

I want to put it to you as a layman—you will probably agree with me that the man who knows his job best is the man brought up to that job. One cannot have a legal mind without training and that may take years.—Yes.

You will agree that such years would give a man a balance of mind to enable him to bring out the right points when conducting a case?—Yes.

You would agree that perhaps magistrates in these out districts relieving the District Officers of these weightier cases over which they have power now would probably be a better thing for the administration of justice to the natives and would leave the Administrative Officers freer to devote their time to administration?—What is your definition of administration?

You have seen the running of a shamba. The man deals with all the work of that shamba. He advises what to do. Is not that the biggest part of an Administrative Officer's work?—Seeing that they progress?

Yes.—But there would be no progression unless he could adjudicate there.

You are referring to adjudicating points of law?—Not necessarily: Keeping the peace of the district. To my mind the two jobs are so very similar. A good D.C. is a good judge. It is the same type of man, but, as you say, the barrister has had the legal training.

You say a good D.C. is a good judge. If you think of that from another point of view, a D.C. is human, he has his likes and dislikes. He knows all the people in the district. Do you think he could judge with an unbiased mind? He may like or dislike the various accused before him.—We hope he subordinates that feeling.

Chairman: If in any case a judge had personal knowledge or interest in the case he would not stay and hear it, and, if he did, he would disclose his interest and ask the parties if they had any objection?—Yes, I have known of such a case when the magistrate had a personal interest. It was transferred to me.

Would you agree with this equation, that a good D.C. must be a bad judge and that a good judge must be a bad D.C.?—Certainly not.

There is just one other point—the question of defence in murder cases. I consider that the existing system of briefing advocates for the defence of natives is not altogether satisfactory as it stands. I would like to see an officer of the Crown defending the accused.

We have under consideration proposals which have been made to us for something in the nature of a public defender who would be available in the more serious cases and who would not only be available to appear for the accused in court but would have sufficient time and opportunity to get up his defence and do what we understand by the solicitor's work. You think that that would be to the public good?—Yes, I would like to have my support of that suggestion recorded.

(*Witness withdrew.*)

Mr. C. BRADLEY, Acting Registrar of the High Court, Uganda.

Memorandum (No. 18).

Mr. Macgregor: Mr. Bradley, you are Acting Registrar of the High Court?—Yes.

In that capacity you are charged with the duty of keeping a record of all criminal revision cases that come in?—Yes. I have here the register for 1932.

It contains the last ten of the 1931 cases also. The register shows, I think, that of the 10 cases of 1931 orders were made quashing convictions, ordering a new trial or reducing the sentence?—Yes.

And out of the 106 cases in 1932 similar orders were made in 84 cases?—Yes.

And in 2 cases orders were made increasing the sentences?—Yes.

Chairman: That leaves only 20 cases untouched.

(*Witness then withdrew.*)

Thursday, 27th April, 1933

Mr. F. J. MACKEN.

Chairman: You are a Barrister practising in Uganda?—Yes.

We have read your memorandum (No. 19) carefully. With reference to the first part we think it hardly comes within the scope of our terms of reference although it was very interesting. As for the rest I do not think I need trouble you about some of it at any rate you can explain the points you are making. On page 4 you deal with the exercise by Administrative officers of judicial functions and I think you say that you want to give further particulars of the case you mentioned.—This was a Criminal Case tried at Mubende by the District Commissioner. It was Criminal Sessions Case No. 3 of 1933. The accused was charged with selling certain land registered in his name which had also been made subject to an attachment in a civil suit in the High Court of Uganda.

Charged with selling certain land?—Yes selling certain land and the land was subject to an attachment in the High Court of Uganda. In the file of the District Magistrate, Mr. Steil, there was a letter directed to him as District Commissioner from the Registrar of Titles, Entebbe, which he had received prior to the trial.

Have you got the original?—No Sir. I have got my own file and a copy of the judgment that is all. The letter showed that the Registrar of Titles was corresponding with the Magistrate as District Commissioner in reference to a charge that was going to be tried and was then being inquired into and it contained a definite statement that the accused was guilty of the offence.

Have you got a copy?—I haven't Sir, I am sorry. The file was in the High Court here. Whether it is still with the Registrar I cannot say. It was here because of an appeal that was not proceeded with. I think that is why it was brought down. It was District Court Mubende Cr.C.No. 3 of 1933 and had reference to a case transferred from the District Court, Kampala for trial. In this case we had an argument before Mr. Griffin about bail.

The last thing you told me was that there was a letter and the letter contained a statement that the accused was guilty of an offence. Let us go on with the history of the case now shall we?—The history is simply that the trial took place and the accused was convicted, and my opinion is that the District Commissioner, having had something to do with the investigation of the complaint and having received such a leter there is certainly a possibility that it created prejudice in his mind.

Your complaint is against the system?—Yes, my complaint is not against the official concerned. The point is the linking together of Magisterial and Administrative functions. This is a case in point.

A little further down, Uganda Laws 1928 Page 278 in an appeal from a Native to a British Court the latter must not be presided over by a professional lawyer? That is actually in the law?—Yes that is actually in. There is a provision precluding an appeal to an officer of the judicial department.

I think by law that appeals are not appeals to the District Officer in his executive capacity but they are appeals to a Subordinate Court and it is the case that if that Court is presided over by a professional lawyer he is not allowed to hear the appeal.—That is the position, sir.

There is no question here about an appeal not going to a Court but going to an executive authority. The object of the rule is to see that when it comes to the Court, the Court does not have a professional lawyer presiding. As to getting an Advocate to defend I understand that in point of fact the Court never refuses permission?—I have a case which I can quote to you.

Anyway you query it, but it is your opinion I understand that Advocates should appear as of right?—Yes, Sir, that is so.

Page 4, the right to accused persons . . . . . I do not much like the heading because "unlimited appeal" raises a vista of non-finality in my mind. Will you tell me shortly what it is you want exactly?—The right of accused persons to appeal to the highest court of local jurisdiction, that is the Court of Appeal for Eastern Africa.

Mr. Macken you do not wish an appeal from a subordinate Court to go beyond the High Court?—I do, and it is my opinion that the right if given would not be unduly or unreasonably exercised.

But, Mr. Macken there must be finality somewhere?—We have finality at the highest local Court.

Do you know of any case, where in Criminal Courts there is an appeal to two appeal courts?—No, I do not. The local position is unique.

Would it meet you if there was a right, on a very important matter of an appeal with the sanction of the Attorney General from the High Court to the Court of Appeal for Eastern Africa?—I do not go so far as you at the moment. While I have every confidence that the Attorney General would use the sanction with fairness I still think it would be desirable that the granting of the sanction itself should carry with it a right of reference to a Court.

On the next page you suggest a method in which appeals should be brought. The case you mention we have already investigated. As regards para. 5 I need not take up much time with that; as I understand you, you desire that statements to the police should not be admitted. Have you any concrete case to which you can refer where this power is abused?—Yes I think I have. The first case I am referring to (I will leave you a copy of the memorandum) is evidence given in C.C.No. 27 of 1930 of the District Court of Jinja. Three police officials repeated in that Court on oath evidence of certain actions taken by them in a Criminal Case which was linked with it, and this evidence shortly shows, two things: it shows that the officials questioned the accused after arrest and recorded his answers to questions, and it disclosed that the same man was apparently three times arrested by three distinct police officials on the same charge and a statement put on the record on each occasion.

But surely the statement was inadmissable?—They should be inadmissable. They were all recorded in the file of the District Magistrate.

The error was the Magistrate's, and your complaint would be against him?—In this case he was acting as a District Judge. Yes, my complaint would be against the District Judge I suppose, but there is clear evidence there on this record that in the Criminal proceedings they did act in this way, that is, they had arrested a man and recorded his statement three times.

Let us assume for a moment that the Courts in this country were subject to the same rules as Courts in England. They would not have admitted statements except where made after caution?—If a statement made to a police official were not to be recorded this statement would never have appeared on the record of any Court.

I am not quite clear whether what you are afraid of in Subordinate Courts in this Country is that they cannot be trusted to keep out inadmissible statements or whether you would say that whether or not these statements were inadmissible under English rules they should not be admitted here at all?—Yes.

I think in this country even if a statement were admissible according to English rules it should not be admitted, taking into account the class of people we are dealing with.

And then you suggest at the bottom of the page the form of caution that should be given to an accused?—It is my experience that natives think at the preliminary enquiry that they are on their trial. They make a preliminary statement which will prejudice them. That is what I have found. May I pray your indulgence on the question of statements to police in this Country. The Police and the prison department are in a single control and in an outside district the police official is also Superintendent of the Prison; so that when a prisoner is remanded he is really remanded in police custody. Once the 24 hours has elapsed he should be in the custody of the Court or prison official and not the police.

I suppose that this is a matter of principle but, in practice, do you find the police abuse the position? —I have a record of a prosecution where a Magistrate has remarked on the fact that certain statements were made to the police after the prisoner had been for days in police custody. It was a charge of murder.

Was that in an out prison?—It was in an out prison.

When you talk about the police custody you mean the custody of the District Officer. Is he the police officer?—The District Officer, or District Magistrate is always in charge of the police in the district but they are internally self controlled. If there was no police official then it would be the District Officer or his assistant. In this case there was a police official and the Magistrate in this case was an officer of the Judicial department. Might I be permitted to read you what the Magistrate actually said:—

> "Accd. II with the exception of the statement he made and which he admits he made, to the Police Officer, ten days after he was received into Police Custody at Lira, has consistently denied, both when questioned by the Chief just after the murder and during his examination before this Court, that he took any part whatsoever in the killing of deceased, though of course he was admittedly what is known in the English Law as an accessory after the fact."

Accused made a statement and admits he made it and he does not say there that the statement was obtained by improper means?—No, but my point is that it was received after 10 days in police custody and it was received from an illiterate African of the District who was probably not very proficient in safeguarding his own interests. On the front of the paper you have a very long statement given to a police official.

It would appear that No. 2 was brought into the police station on the 6th November, 1929. Then we find that on the 16th November he was formally charged and cautioned. Had he been in custody all the time?—Yes, I was not concerned in the case myself, but I presume he was in custody all that time.

I cannot follow what you mean. You cannot get a man before a Court until he is formally charged. It would seem that he was kept under arrest for 10 days?—That seems to illustrate the point of the undesirability of having people in police custody.

Mr. Macken in your experience is it possible to bring an accused before a Court and obtain a remand against him without formally charging him with some offence?—On the production of a First Information Report, which summarises the evidence of the offence, it is quite common to bring an accused before the Court and get him remanded.

He is produced before the Court on the information contained in the charge and he is remanded?—Yes, he is charged.

What I mean is is it possible to go into Court with a person and say "I have suspicions about this fellow would you mind remanding him"?—It would be most irregular if anything of this sort did happen. There must be information.

Would you think it proper for the police to be able to obtain from the Magistrate an order for the accused to be remanded in custody unless and until the accused had been told what the charge against him was?—I should not think it right. The accused should be charged.

In your experience here is that ever done?—I think it is done in outside districts. I would say it is of rare occurrence.

The last thing of all. Appeals . . . You probably agree with me that where there is a provision there should be no deprivation on account of extravagant fees. The only instance you can give me is of an appeal from a Native Court. What about appeals from the subordinate to the High Court and from the High Court to the Court of Appeal for Eastern Africa?—The cost of the copies of the record are very heavy.

So much a folio?—Yes. If the accused makes an affidavit to the effect that he is a person of no means the Court has the right to give him a copy.

It is done?—I have no doubt the Court would do so.

You are suggesting that the cost would prevent an appeal by a poor person?—It does certainly delay proceedings. A man comes to me and says I want to get a copy of the record which may cost £5, £10 or £15. I go into the question of his assets. He says he might be able to pay in six months' time, but he can't pay now. If I take him before the Court he would have to make an affidavit. This means a lot of delay and trouble. Somebody's got to do the work for him, presumably an Advocate.

We will bear it in mind, Mr. Macken?—Thank you, Sir. Thank you very much.

Mr. Justice Law: With regard to this matter of statements to the police, you have seen both sides?—I have.

You were a police officer?—For 15 years.

You feel then that you can give an opinion on the subject?—I do.

What you are talking about is the information report; there is, as you know, the information report and the information?—I mean the information report.

Can you give us any idea how appeals are heard from native Courts by a Subordinate Court where the District Officer acts as Magistrate?—No, I cannot give you particulars of how they are heard. I have never been in attendance at one.

Take the Eastern Province. Do you know whether the record contains a copy of the proceedings before the Native Court? Do you know with regard to the Eastern Province whether the record is kept of the proceedings of the various Courts or only a summary with headings?—I believe it is a summary with headings, not a complete record.

With regard to the Eastern Province, it is somewhat embarrassing, it seems to me, for a District Magistrate to hear an appeal with such scanty material before him?—It would be embarrassing and all the more reason why the evidence should be recorded.

Mr. Mitchell asks a question as to the Luganda word for "trial," as there is no such word in Swahili.—There is a word in Lugandi, i.e., Okuwosa.

Mr. Wilson: Have you experienced any difficulty or many difficulties in misinterpretation by interpreters?—I have seen quite a few instances. In the High Court here at the present moment the interpretation is by no means satisfactory.

Does it lead in many cases to injustice being done? —I think it does. I do not mean deliberate injustice: it is rather a difference of mentality between the questioner and the interpreter.

You make a suggestion here about the Rhodesian system; I presume you mean the Southern Rhodesian system?—Yes, I mean the Southern Rhodesian system.

How long has that system been in force?—I was in Southern Rhodesia for three years and we had then on the bench Magistrates who had been trained in this system.

And then went in for law?—Yes.

Was it efficient?—Yes, quite.

Do you think there is a possibility if higher education were given to the Baganda they would acquire proficiency?—To take up interpretation in an office and then eventually to go on to the bench, yes.

If this is so then there would be no need for Europeans?—I would like Europeans in the interim and that the Baganda should learn from the Europeans rather than from Asiatics. I could take any member of the Commission to my office and show them what the Baganda clerks can be trained to do, conveyancing, accountancy and so on.

Chairman: From your experience do you think that the native understands the distinction between the executive and the judicial?—I think he does.

Take the Baganda system. There is the Katikiro and the Omulamuzi. The first is the Prime Minister, the executive power, and the second is the Judge. Do you think that the Executive, the Katikiro, suffers in his dignity or prestige in the native mind by reason of the fact that accused persons are brought to the Chief Justice?—When you asked me the first part of your question you did not say you were referring to native officials. The relative positions in the native mind of the Katikiro and the Chief Justice have been settled for many years and the people are used to them, but if you like to look up the records you can get from them the correspondence relating to the retirement of the late Omulamuzi of the Baganda Government and you will find quite a lot of discussion on the points you refer to. I do not think there is any great difference between the present Omulumazi and Katikiro, because they are both very mediocre men. The last two were extremely competent men.

Would there be likely to be any danger if some of the District Officers were to lose some of their judicial powers that they would lose prestige with the natives in their district?—I do not think so. That opens up a very wide question. Sometimes it happens that some Europeans think it is necessary to allow some acts of justice to go undone in order to maintain prestige. I think it is a mistake. I do not think the prestige of any man suffers in the mind of an African. On the contrary, it gains if he thinks there is absolute justice in every case. I do not think he would think any the less of the District Officer. He would think more of him.

(*The Witness then withdrew.*)

Friday, 28th April, 1933

The Commission re-assembled at the Law Courts, Kampala, on Friday, 28th April, 1933, at 10 a.m.

His Honour Mr. Justice Abrahams, Chief Justice of Uganda.

Mr. Macgregor: Mr. Abrahams, you are Chief Justice of this territory?—Yes.

And I understand that you have had an opportunity of reading the evidence submitted to us?—Yes, some of it rather hurriedly.

Are there any matters which have been touched upon in the course of that evidence which you would like to make any statement to us about?—I should prefer to answer questions.

May I take you first to the question of special district courts. We have heard that there are 13 special district courts, as against 5 High Court districts and that in fact more serious crime is dealt with in the special district courts than in the High Court?—Yes.

That jurisdiction is over natives I think. Is that a system which you favour?—I thoroughly disapprove of it. I understand, I may be wrong, that the origin of them was to obviate delays in the High Court, although from some of the evidence I have read that makeshift appears to have been erected into a sort of *summum bonum* that it was the most desirable system that could be devised.

And that is a view which you personally do not share?—I have had considerable experience in different parts of Africa and I certainly am not going to admit that the trained man is not the best person to try all cases.

We have been told that about five years ago the High Court went much further afield than it does now?—When I was Attorney-General I prosecuted in as remote places as Kabale, Fort Portal and Masindi. The Eastern circuit existed and one or other of the members of the Law Office went round with the judge of the High Court everywhere that the High Court went.

We have also been told that, with the possible exception of Karamoja, the whole of the protectorate is easily accessible to the High Court?—I understand that is so. I do not know much about the travelling facilities in this country.

Would it in your opinion be possible for the High Court, as now constituted, bearing in mind always the necessity for frequent absences on court of appeal work, to undertake substantially more circuit work?—There would be an accumulation of arrears. At the present moment we are most shockingly congested.

So that this would mean another judge?—We require another judge anyway. I am going down to the Court of Appeal on the 22nd May, I do not know how long I shall be away, possibly three weeks or more. Meanwhile Mr. Gray must be in the Eastern Province and he may be away perhaps 15 days and during that time there will be no one here and the work will be piling up.

Assuming that it were not practicable to increase the strength of the High Court bench would you be in favour of professional magistrates on the lines of the Indian sessions judges in these special districts? Would that be a good thing?—Yes. Two magistrates cost as much as one judge. At any rate I think that more puisne judges would be better.

Assuming that the High Court bench were strengthened in that way would you prefer to see the additional judge stationed at the High Court here or the powers decentralised?—I do not know where he should be. Perhaps at Jinja. But I am not very keen on decentralisation.

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[N.B.—*For passages here omitted, see paragraph 52 of Report.*]

There is one other matter in connection with special district courts that has been mentioned, and that is the proposal that in trials by special district courts the preliminary enquiry should be done away with. It has been put to us that that enquiry not only involves delay, and cost and inconvenience to witnesses, but that it has a further and more deleterious effect of making witnesses tell a different story when they come up to the ultimate trial. That would apply equally to the High Court?—I can see no particular difference between a district court and a High Court in that respect.

Would you agree from the point of view of the accused that the present system of preliminary enquiry followed by an information from which he definitely ascertains the exact nature of the charge against him is very materially to the advantage of the accused?—I think so. I have never heard the subject considered before this Commission came.

I hope you will not imagine that I support all these suggestions because I question you on them?—No. I have in my experience on the Gold Coast seen a number of commitments quashed by the Attorney-General because of insufficient evidence. We were always very vigilant over these informations.

One further point on special district courts. We have been told that by and large a trial by an experienced Administrative Officer is more likely to produce substantial justice than trial by a High Court judge, for the reason that not only does a native feel more at home before an officer whom he knows but the officer himself has a far greater knowledge of native law and custom and of native mentality and is therefore better able to appreciate just what weight ought to be attached to what any of the witnesses say?—My own opinion is that it is very difficult to administer justice by means of catchwords. I am not going to accept an assumption that every District Officer knows all there is to be known about native mentality and native custom in every district in which he happens to find himself. I am not going to admit that no judge ever knows anything about native mentality and custom. Knowledge of mentality is to a very large extent a personal peculiarity that people have. There are some people, they may be judges or Administrative Officers, who do not necessarily know anything about anybody's mentality. I would like to amplify that, assuming axiomatically, as some of the witnesses seem desirous to assume, that every District Officer possesses these qualities in a marked degree. There is another point. To displace a judge, a skilled man in the trial of a case, a man with a knowledge of law, who can weigh evidence and whose profession it is to exercise patience, a man who has no other task but that, to displace that man you would have to prove, in my opinion, that every case or the majority of cases contain all-important questions of native mentality and native custom. My general experience is that most of these cases that come before the High Court do not involve any such questions which are so obstruse that a patient enquiry and a reception of evidence from the people who do know native custom will not give you all you want. There is also this further point. Does it follow by any means that the man on trial in a particular court belongs to that district. I could fantastically conceive of a case in which a magistrate sitting at Fort Portal might be trying a native of Toro for the murder of a Lugwari from the West Nile District. The witnesses might be Baganda, a couple of Europeans, an Indian and an Arab. There is a special district court at Fort Portal presided over by a D.C. Is he on his knowledge of Toro custom and, we will assume, native mentality of some of the districts, the most fitted person to try that case?—These special district courts seem to be so singularly constituted. There is one in Mbarara but not in Masaka. That involves the logical inconsistency that an unqualified person such as myself will sit in Masaka but not in Mbarara. I entirely fail to see where the difference is in these two places. Besides, even in Kampala, the probability is that as regards the murder trials held there, the murders will not all have been committed in the Kampala "urban area". I have tried three since I have been here and one was committed 80 miles outside. I suppose I am not disqualified from trying it.

Your view is that the logical thing to do would be to abolish the High Court entirely?—Certainly, except for trying non-natives and white men, and not even then if the evidence was to be given by unsophisticated natives. It would be desirable then that I should get down from the bench. If the man was a half-caste I do not know where I should be. I tried a half-caste for murder lately and something emerged as to native custom. Naturally I had evidence taken on that point and there were different views given by the native witnesses. One was more educated and better than the others, but I do not know which part of the accused I am to exclude—the Indian or the native. The common sense view of the case was that the man got angry at having his house burnt down.

As regards the jurisdiction of the subordinate courts. Magistrates of the 1st and 2nd class, subject to the obligation in certain cases to sit with assessors, have unlimited powers over natives except for treason, murder and rape.—Yes.

Do you favour that system?—I have never quite known the reason for it. It has existed a long time in Eastern Africa. Justice should be not only blind, but colour blind. I can see no more reason for giving a magistrate extended jurisdiction over natives than for differentiating in the matter between Catholics and Protestants.

In Tanganyika Territory, jurisdiction is very limited. A first class magistrate has jurisdiction up to two years only. Have you ever been able to understand the differentiation in Kenya and Uganda in that regard?—No. Though it may be a little more convenient possibly; natives are less articulate.

Such arguments as there may be in favour of the system would be weakened if there were more judges of the High Court who could travel more extensively?—In West Africa the magistrates' jurisdiction is limited to six months and even in the most remote districts it is never more than 12 months.

Chairman: This jurisdiction is more like the provincial courts in Nigeria?—Yes.

Mr. MacGregor: What are your views on the advantages of the system of confirmation and revision from subordinate courts?—It would be a very dangerous thing indeed to do away with it. In the short time I have been sitting here I have had to interfere in something like a dozen cases. It would be just as dangerous as doing away with appeals.

First let us take appeals from subordinate courts. Are they numerous?—I think they are increasing. They were always fairly numerous.

Do you think that the average native accused is well aware of his right to appeal?—Yes, there are quite a number of appeals out of time. I have had actually two cases in which an appeal had previously been made and dismissed.

I asked this because in the Kenya Code there is an express provision that when a magistrate convicts in a case in which an appeal lies it is his duty to inform the accused of this right, and there is no such provision in the Uganda Code?—It would do no harm if there were such a provision and it would save a good deal of lying on the part of the natives who suggest that they did not know of the right. I understand that when they go to prison here they are asked if they wish to appeal.

Are the costs of appeal prohibitive?—I do not know what they are. There is no great danger that the accused will not be heard in forma pauperis. It is not like the appeals in England. The fee is not very heavy.

The present provision in the code is that he has to pay the ordinary charges for the copies of the judgment or order and the record, etc. Your experience is that there is no difficulty in establishing a case for getting them free?—No, unless the Court for some special reason decides against it.

Mr. Justice Law: As a matter of fact, in the case of the majority of appeals they are in forma pauperis.

Mr. MacGregor: What about appeals from native courts. They lie also to the High Court?—Except in the case of the Baganda courts.

Leaving the Baganda courts out of consideration for a moment?—I do not think the system is any different from what it was when I was Attorney-General.

It is only in the bigger cases that an appeal comes to the High Court?—Yes, that is over five years from Baganda courts, I think, and revision in other cases.

The general question is whether it is desirable to have appeals to the High Court. There is one thing I would like an explanation of. In 1928 there was a proclamation governing appeals from native courts in the Eastern Province with the curious proviso that if the magistrate of the district court is a professional magistrate his jurisdiction is ousted and appeal lies to the district court presided over by the D.C.?—I have a dim recollection of that. There was a row about it.

Can you suggest any substantial reason why the best qualified magistrate should not be allowed to deal with appeals?—So far as the administration was concerned, it was decided that the District Officer should be the appellate authority. The idea was to exclude the judiciary from having anything whatever to do with native courts. What happened was this. Under the former law the professional magistrate was actually the appellate authority. The D.C. in a particular district had confirmed a conviction by the native court. Mr. Gray, as District Magistrate, had visited the native prison. The man had said he wanted to appeal. Mr. Gray heard the appeal and quashed the conviction. The D.C. then complained to the Chief Secretary. The Chief Secretary referred the matter to the Governor. The Governor referred the matter to the Attorney-General. The Attorney-General (myself) said that Mr. Gray was not only empowered to hear that appeal but was even under an obligation to do so. Hence this change that appeals should be heard by Administrative Officers.

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[*N.B.—For passages here omitted see paragraph 249 of Report.*]

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On appeal and revision. The Uganda Codes allow of a revisionary order being made in the case of an order of acquittal. That is a provision that does not exist in the Kenya Code?—Yes.

Do you think that this is reasonable and fair?—As a matter of fact I have been an advocate of appeal against acquittal for that matter. I certainly think so. I always think the public has got its rights as much as the accused person.

If it accepts a revision, I take it there is no reason why it should not accept an appeal also. As regards the Court of Appeal, we have heard a good deal about delays. The Court of Appeal sits quarterly in the different territories, and it has been suggested in Kenya that delays would be minimised if special courts were constituted at more frequent intervals. Conditions in Kenya, i.e., the number of judges of the Supreme Court, would permit of that. We have been told here, on the other hand, that any such appeal would not command the same degree of public confidence as an appeal to a court which is constituted of three chief justices. This would seem to you to be a cogent argument against speedy disposal of appeal?—Personally I don't regard myself necessarily as having any marked abilities over a puisne judge.

Do you think that the constitution of local courts, say, between Kenya and Uganda would be an advantage in minimising delays?—Most certainly. But I am not speaking as a member of the public. If the public have more confidence in a bench composed of three chief justices I have nothing more to say. A chief justice is more likely to be in the dependency a longer time. He may obtain, perhaps, a superiority of judicial experience, etc. But I do not really think it is necessary to require every court of appeal to be staffed by three chief justices. In point of fact, frequently it is not. I have known acting judges sitting on it, for instance here, and certainly in Kenya.

Chairman: In the Gold Coast criminal appeals are taken by a court of the West African Court of Appeal composed of local judges?—Yes, Sir, but the public were beginning to complain. They felt it was a mutual accommodation society. They said it was quite possible that one judge would be rather reluctant to reverse his brother's decision—which was not the case. Just before I left the practice had been set up of borrowing the Chief Justice of Sierra Leone or a judge from Nigeria whenever possible.

Mr. MacGregor: We have been told that the standard of interpretation here is extremely bad and the reason assigned is that interpreters are inadequately paid. I take it that you regard interpretation as a vital part of the administration of justice?—Absolutely.

Would you be in favour of any scheme for the improvement of the standard of interpretation, the building up of a corps of interpreters perhaps?—Decidedly. I think to be a skilled interpreter the man wants to be bi-lingual or almost bi-lingual. Bad interpretation makes the court very restless and possibly impatient. In Zanzibar when I was there as a magistrate we had 100 per cent. or almost 100 per cent. of excellence. The standard is very much lower here except of course Mr. Kirwan, but he would raise any standard. He was born and brought up here.

But he we are told, is seldom available to interpret because of his other duties?—Yes.

What about assessors. Are they in your experience valuable here?—They vary very much. Sometimes they are very good and sometimes very bad.

Would it be a practical proposition in your opinion to have a panel of assessors?—They had one on the Gold Coast which they took from a special jury list. It might be possible. One never seems to know what an assessor is going to do. They sometimes have the most remarkable views. In a case the other day the magistrate appeared to have gone native and the assessors had gone English.

We have been told that one of the painful duties of a judge is to record in longhand every word that is said. There is provision for the Chief Justice to make rules as to the method in which evidence is to be recorded in criminal trials?—There has always been that provision but I do not believe anyone has ever implemented it and I certainly do not intend to do so.

There is nothing in the nature of a judge's note?—There is a note, a verbatim one, a record in narrative form.

Would a really expert shorthand writer be an advantage to the High Court?—If there were 100 per cent. efficiency, yes. But I would be rather sorry for a single shorthand writer. I don't see how it is possible.

There are two now attached to the Supreme Court of Kenya and they relieve each other every 40 minutes?—Even in these verbatim notes of the judge, sometimes he does not get down the ipsissima verba. One's attention wanders—especially when

the interpreter carries on a conversation with the witness.

May I take it that, assuming that the shorthand writers were expert and reliable, you would regard them as of considerable assistance to the High Court?—Yes.

Provocation. The suggestion has been made to us by several witnesses that the wording of Section 175 of the Penal Code which deals with provocation, defining it as " any wrongful act or insult of such a nature as to be likely, when done to an ordinary person . . . . to deprive him of the power of self-control . . . . " is unfair to the native and that the words " ordinary person " should be construed as an ordinary person of the class of life to which the accused belongs?—I think that is a reasonable construction.

It has been suggested to us, on the other hand, that the effect of Section 4 of the Penal Code which provides that the principles of the administration of criminal justice in England shall apply, prevents a court from putting that more benign construction on the words " ordinary person "?—I think that was done designedly. If you look at the Gold Coast definition you will see that it gives the English idea of provocation most elaborately set out. It would be worth the Commission's while to examine those provisions. What is provocation in England is provocation in the Gold Coast. I think the court would be quite justified in measuring the degree or extent of the provocation by the African mind instead of by the English.

In the Gold Coast you have juries in murder trials? Yes.

So that in that case the actual application of these words must be that of the mentality of the jury?—It probably is. Though of course there is the question of corruptability. In India the interpretation is more liberal.

Is it your view that, generally speaking, in the interests of judges the standard of the ordinary man should be an ordinary member of the community to which the accused belongs?—Certainly.

What are your views on the defence of prisoners charged with serious crime. Your system here is that natives charged with murder before the High Court get a dock brief?—Yes, that is so—where it is convenient of course.

And that is limited, of course, to centres to which advocates will go?—An advocate would not go 200 miles for 10 guineas.

And the two changes which the bill now before your legislature makes are, firstly, that the person accused of murder must disclose his defence, and, secondly, that the judge has a discretion as to the fee, which may be up to Shs. 200s.?—Yes.

The proposal has been made to us that the only satisfactory way of having the defence of natives charged with crime undertaken is by the employment of public defenders—officers with legal experience who would have the whole resources of the police and administration at their disposal in the interests of the accused?—The idea of a public defender is not entirely new. It was put forward in England and elsewhere a number of years ago. It is dealt with in a book on criminal justice by Alexander. I think Lord Birkenhead scouted the proposition in an essay. Personally I should be in favour of it, but not more in favour as regards natives than as regards other people.

All accused persons if they cannot undertake the defence at their own cost?—Certainly, though the trouble would be to get a suitable man. I see there have been various suggestions about an Administrative Officer with legal training and a Legal officer with administrative training.

Which side do you think the most important?—Legal training. The officer in question could get administrative knowledge. If you had such a man, to whom would he be responsible? The Native Affairs Department? His administrative side might not be sufficiently developed. On the other hand, I don't know whether you could put him under the Attorney-General. He might regard his legal knowledge as insufficient. I see practical difficulties in the way of this appointment.

Assuming that we got two paragons?—Then I think they ought to be made chief justices immediately.

It has been represented that the most important part of his work would not be the actual presentation of the defence in court but rather the preparation of the defence; the solicitor's side of the work, rather than the barrister's side. Would you agree that there is a good deal that might be done in many cases in the direction of preparing the defence rather than presenting the defence?—I think so. If the accused were not defended I do not know who else would do it.

From the solicitor's side of the work a Government official employed to defend accused persons would probably have greater opportunities of getting up a defence than a private advocate would, and would, perhaps, be a little more disposed to spend time on that defence?—It would be his duty to do so certainly.

This system would be better than the existing system of briefs simply given out on a rota, in all cases committed for trial to the High Court?—Yes, that would be a better system, but I would not restrict it merely to native cases. I do not see any reason why it should be.

There would be no advantage in restricting it to native cases. If such an officer were on circuit with the High Court and a non-native case came, he might just as well be engaged in defending that case as in sitting down doing nothing. And similarly he could act in appeals to the Court of Appeal?—Anything tending to the 100 per cent. excellence of justice is desirable.

On the question of punishments, we have been told that short terms of imprisonment are useless and that the only really effective form of punishment for minor delinquencies is a whipping?—There are some people who always want to take short cuts out of a difficulty. Penology like politics is a matter of opinion.

I take it you would be very sorry to see any retrograde step like that taken?—Most people appear to think that the only object of punishment is deterrent. They appear to have forgotten the preventive side.

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[N.B.—*For passages here omitted, see paragraph* 182 *of Report.*]

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That it is the duty of the court to promote reconciliation?—That is so.

One witness has suggested to us that it would be an advantage in the administration of justice to confer on the court the power to call any person as a witness at any stage in the proceedings?—I am under the impression that that provision exists under the Indian Evidence Act.

The present provision is:—

Section 147, Criminal Procedure Code:—

> " Any court may at any stage of any inquiry, trial or other proceeding under this Code examine any person in attendance though not summoned as a witness, or recall and re-examine any person already examined; and the court shall examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case."

The proposal is to go further and confer on the court, without necessarily consulting any of the parties present, the right to call any witness at any stage of the proceedings?—There is a great deal to be said for it.

Is it not sufficient that the court has the power that it can advise the accused person that it would

be in his interests to subpoena so-and-so, rather than leave it to the court?—It is a great responsibility sometimes to intervene in a defence.

Is not the decision equally great to call a witness without consulting the parties?—Yes. I think it would depend on the circumstances.

The same would be achieved by merely advising either party that in your opinion it would be in his interests to call a certain witness?—Yes.

Confessions to police officers. In that particular regard Uganda differs from the two neighbouring territories in that such confessions are admissible. Have you had time yet to form any opinion as to how the new system is working and whether it is not rather apt to work to the detriment of the accused person?—That system has always existed here.

Mr. Justice Law: Since we had an Evidence Ordinance.

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[N.B.—*For passages here omitted see paragraph 95 of Report.*]

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With regard to the infliction of corporal punishment, under our Code it is provided that sentences of corporal punishment in excess of 12 strokes shall not be carried into effect until confirmed, whereas there is no corresponding provision in the case of, say, 10 strokes. Do you think that this should be brought into line?—I cannot see any difference. A whipping is a whipping.

Ought it to be suspended until confirmed in all cases?—Yes, I think so. In confirmation cases the punishment is appealable. It is a choice of evils.

Mr. MacGregor: There is a possibility or detention for a considerable time in that case, which would not otherwise occur?—Yes.

Mr. Mitchell: When the Chief Justice or one of the judges is absent from the Protectorate to go to the court of appeal, is it the practice here to appoint an acting judge in his place while he is away?—I do not think so. It may have been done once or twice.

Would it be of assistance if that were done?—Yes, undoubtedly.

Are there a sufficient number of Resident Magistrates to make that possible?—I don't think so. We have at the present moment had to request the assistance of the Administration not only to lend us a magistrate but to lend us a Registrar.

As regards the question of Mr. MacGregor about the possibility of having professional magistrates to exercise part of this extended jurisdiction, when you were saying that if you had an extra judge it would meet the case, had you in mind merely replacing the jurisdiction of the special district courts by a judge?—I do not follow.

The subordinate courts also have an extensive jurisdiction. Would one judge in addition to being able to take over the special district court work also be able to take over cases of arson, robbery, etc.?—I should hope so—though I cannot answer offhand.

As regards confirmation and revision as far as it is practicable for appeals to take the place of that form of jurisdiction, is it desirable?—No, I don't think I suggested that. I would not lose that power.

If the aggrieved party appeals and the matter is dealt with by way of appeal, is that not preferable to revision and confirmation?—Revision can work against the accused as well as in his favour.

What I had in mind was that if a case on the face of the record is all right there may be nothing to show a confirming or revising judge that there is any reason for intervention at all?—That is so.

We had a case in Kenya emphasising that point. At any rate, away from the reasonable neighbourhood of Kampala I suppose appeal from confirmation in a subordinate court is very difficult in practice for natives?—Yes, a native does not always know whether he has got a good case.

Sometimes he may have done something, in fact, which does not amount to any offence at all?—Yes.

He might have the greatest difficulty in explaining to the court what he was arguing about, so that his request would really amount to asking the court to look at the record?—Yes. One must peruse it carefully.

If you had professional magistrates—I am thinking of this question of decentralisation—for serious offences, no doubt there are strong arguments, but when you are dealing with subordinate court work and a man perhaps 200 miles from Kampala wants to appeal, would there not be strong arguments for a court so constituted that he could get that appeal heard nearer home?—No, I do not see any advantage in that except for the judge.

One more thing. It has been said by a number of witnesses that in revision and confirmation cases, in addition to interfering on the grounds of illegality and palpable injustice, judges are disposed to alter sentences because they think that another sentence may be better than the one imposed. In the list of revision and confirmation cases which we have had from the Registrar there are a considerable number of cases of comparatively small alterations in the sentences. On the face of it, this list gives some support to the view that these witnesses have been putting up?—It would be rather dangerous to assume anything from that. Besides, if judges have got to please people whose sentences they review, I say good-bye to the authority of the High Court. I resent any such suggestions that a magistrate and a fortiori district officers acting as magistrates have any right to complain of the action of people specially appointed to supervise their cases. This is a case of who is going to judge the judge.

I was only asking whether the general public in these countries have that impression. If you look at the list in case No. 31 a man was fined 30s. and the sentence was reduced to 15s. How, when seeing the record, can one gather what were the judges' reasons for doing this?

Mr. MacGregor: Here is the order which gives the reasons for this change?—In asking me to comment on the actions of a judge of equal jurisdiction to mine, you are putting me in a difficult position. On the question of sentence people have different views. The judge is there for that purpose and his decision must be taken. Personally I am slow to reduce sentences unless I think that they are harsh. The thing must be patently unjust or unfair on the fact of it. Just as a sentence must be grossly inadequate before it is enhanced.

Mr. Mitchell: If it were possible to place at convenient centres in the country professional magistrates there would be this advantage that there would be considerably less need for their sentences and verdicts to be interfered with in confirmation and revision?—I think the subordinate courts, no matter who staffed them, must be under supervision. One must remember that a professional magistrate when he first comes out, perhaps at the age of 30 after five or six years practice at the Bar, has had no practice as a magistrate.

Chairman: But you would hardly expect a lawyer to pass a sentence in excess of his jurisdiction?—It is sometimes difficult in summary procedure to remember these things.

Mr. Mitchell: I suppose the advantage of a professional man is that he makes fewer mistakes?—He ought to. He is not likely to be in a hurry or to lose a complete sense of proportion. I had a case of a man given 10 years for stealing a cash box and throwing it at the owner of the shop from which he stole it when he pursued him. That was a case where obviously the revisionary authority must come in.

What I had in mind was if you have a lay magistrate, mistakes are frequent and it involves revision and delay. I suppose in some cases, owing to

the mistakes of the lay magistrate, a guilty man may end by escaping altogether?—That is so.

If it were possible to use in the more serious cases your professional magistrates it would be an advantage.—Undoubtedly. It boils down to a question of finance. If you have a network of professional magistrates it would be all to the good.

What strikes me is that you have a professional magistrate in a town, a great deal of whose time is taken up in trying very petty police work, and a short distance away a lay magistrate giving people five and ten years' imprisonment?—That can be so. One must agree with the view that professional magistrates should be appointed wherever possible, where funds permit.

Would you also support the view that if it were possible to re-distribute business between the courts to a certain extent so that lay magistrates took the civil work and professional magistrates the more serious work that that would be an advantage?—Certainly.

Mr. M. Wilson: You spoke of whipping as a short cut to justice?—I cannot remember that I said "a short cut to justice". It is generally a short cut out of a difficulty.

If a man is convicted of some crime or fault that does not call for any very heavy sentence is there anything against it?—I am not fond of corporal punishment.

You have it in your Code here?—Yes.

For juveniles, boys up to the age of 16?—Yes.

The idea is to avoid their getting mixed up with the criminal element?—Yes. The modern idea is all against it—avoiding punishment altogether if it is possible. There are places of detention, reformatories, homes and the like.

You said that you did not see any difference between 10 and 12 strokes in the matter of confirmation. Would you think it proper to give a whipping to a youth up to, say, 20 years?—I do not know. I have never seen a sentence of flogging inflicted. I do not know how severe it is or what effect it has. Personally I am always reluctant to inflict it.

In connection with the question of native mentality, I suppose you will admit that there is some difference between the mind of the primitive native and that of the European?—Yes.

Does it mean that native law and custom eventuated after centuries among themselves is not a good thing, that we should take it away from them?—They must have some customs.

Is it right to force our law upon a primitive people?—Are you referring to criminal law.

Yes.—I suppose one has to have some sort of criminal law.

Would not their law be better for them?—I suppose if we are going to civilise these people they must have our law. The natives progress very rapidly.

Do you think it is fair to try natives who have not been civilised and who do not know the laws, according to these laws?—I do not know what I am expected to say to that. Very few people at home know their own laws.

You think it is better to get them to understand our law and therefore get qualified magistrates to deal with it?—I do not think the question of qualified magistrates enters into the administration of natives at all. The question is who is the best fitted to administer the law. The administration of justice is a profession like any other profession. Some people are trained to it. They must look forward to promotion by their skill, etc. It is certainly much more desirable to have the skilled man if you can afford to pay for him.

There was a little point Mr. Mitchell referred to as regards decentralisation and the question of appeals. If an appellant cannot afford counsel, is it not desirable that he should be present at the hearing of his appeal in order to say whatever it is he desires to say and in order to see that the appeal is carefully heard and judgment given?—Certainly. I think the appellant ought to have a right to present his appeal in person.

Under the law at present, if he is in cutody he has no right to be present at all. Section 307 of the Criminal Procedure Code is as follows:—

> "(1) On receiving the petition and copy under section 305 the High Court shall peruse the same, and if it considers that there is not sufficient ground for interfering, it may dismiss the appeal summarily:
>
> "Provided that no appeal shall be dismissed unless the appellant (if not in custody) or his advocate has had a reasonable opportunity of being heard in support of the same and provided further that no appeal, where the appellant is in custody, shall be dismissed unless the appellant's advocate (if the court has been notified that he has an advocate) has had such opportunity."

This summary procedure is only resorted to when there is no merit whatever in the appeal at all. It is only a waste of time. I think judges should have discretion in the matter.

When the appeal is heard if the accused has no lawyer, would it not be much easier if there were some system of decentralisation than if the accused had to come into Kampala?—Yes, I think so.

When are they sent to gaol here. As soon as they are sentenced?—I think this is the practice. They come to serve their sentences. They are asked when they come in if they are appealing.

Have you any experience yet as to whether any delays occur in the trials by special district courts?—I have had occasion to ask a magistrate for an explanation. The P.C. of his district emphasised the all-importance of the magisterial work. The accused was committed for trial on the 30th November, 1932, The information from the Attorney-General was received at that court on the 7th January, 1933. That is just about five weeks. On the 13th March the information was served on the accused and the trial was begun on 17th March. There was a note by the magistrate that owing to the fact that he was on safari the whole of February it had not been possible to take the case before them. My questions to the magistrate were: "What were you doing between 7th and 31st January," and, apart from that, "Do you not regard your magisterial work as of paramount importance. If you don't generally regard your magisterial work as of paramount importance, what place do you give to murder trials?"

This was a murder case?—Yes. Of course you may get other delays owing to some difficulty in the trial.

When the information arrived on the 7th January, even if he was not going to try the man, why could not the information be served upon him?—I do not think the information is served until the date of trial is fixed.

One other question. It has been suggested to us by several people that it would be desirable in this country for judges to have power, on conviction of a native for murder, either to pass the death sentence or imprisonment according to the circumstances of the case. Would you welcome that here?—In other words the law would run this way: "Any native who commits murder shall be punished by death or such less punishment as the court thinks fit to inflict." That would be perfectly terrible. It is bad enough to have to come to a conclusion on the facts without having to come to a conclusion on the sentence.

Thank you.

(Witness then withdrew.)

Chairman: I have had a letter from Mr. Bruton enclosing a copy of a letter from the D.C., Teso, and Mr. Bruton sends me this letter because he says that it provides evidence against the opinion which he expressed to the Commission, and he says that in that case he thinks it only fair that we should have the letter.

The letter to which he refers is as follows:—

"The Provincial Commissioner,
Eastern Province, Jinja.

25th April, 1933.
No. 56/33.

"I wish to enquire whether it is possible to get Mr. C. A. Williams gazetted as a first class additional District Magistrate with power to try cases in the Special District Court in order to assist me to deal with criminal cases.

"I find that Special District Court work takes up a great deal of my time—no less than 11 murder and manslaughter cases have either already been tried this year or are now pending trial, and, owing to the reduction in Administrative Staff this year from three to two A.D.O.s, I cannot devote as much time to purely Administrative work as I should like and the District requires.

F. R. KENNEDY,
District Commissioner, Teso."

We are obliged to Mr. Bruton for putting it to us.

Major TREMLETT, Commissioner of Police, Uganda.

Chairman: You are the Commissioner of Police?—Yes, Sir.

It has been suggested to us that the law of this country ought to be altered so as to make inadmissible in any circumstances any confession given to the police or to anyone else other than a magistrate. I should like your views on that. But first of all what instructions have the police got here with regard to the taking of confessions?—The actual instructions laid down for the guidance of police are the Judges' Rules.

In how many districts have you a European police officer?—In 8 districts out of 18 of which the Protectorate consists.

Then in the other 10 on whom do the duties devolve?—By law the D.C. is responsible. In practice the junior A.D.C. performs the duties appertaining to the officer of police.

So far as the European police are concerned, I suppose there is no difficulty in getting them to understand the Judges' Rules?—None whatever, Sir.

When it comes to the question of your askaris, have you ever attempted to get them to understand the Rules?—Every constable is instructed in the training school during his course of training as a recruit in the methods of cautioning suspected parties or persons in custody and also that statements given by such persons must not be obtained by threat or promise.

So far as the police are concerned, do you feel satisfied that these Rules are observed and that confessions are not obtained improperly?—There have been extraordinarily few instances brought to my notice either by my officers or by the courts in which it is alleged that confessions have been extorted or improperly induced.

Before a case comes to trial, you would not see the file in every case?—No, Sir.

But would some European Police Officer or the A.D.O. if he is acting as a police officer see the file before the case comes to trial?—There would be no record of available evidence, what we might call the proof of evidence, in the case of districts where there is no police officer. Where there is a police officer no prosecution is entered on unless the officer of police has given his consent.

If in any case file a responsible police officer finds that there is a confession, would he make it his personal duty before tendering it to see the askari or whoever took the confession and ascertain so far as possible the circumstances under which it was obtained?—Undoubtedly, Sir. In general practice the police officer in charge of the investigation would not put in evidence a statement made by the accused if he could find some alternative means of bringing the evidence before the court.

From your general experience so far as the police are concerned, do you feel that there is any danger in the continuance of the present law?—I should say none, Sir.

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[*N.B.—For passages here omitted see paragraph 218 of Report.*]

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Do you find that in the course of that work done by the chiefs confessions are apt to be extorted?—There are one or two instances in which that has been the case, but I do not think it is general.

You don't find, when you come to arrest one of the 100 that he has been reduced to a state of anxiety to confess to you?—I think there is considerable danger of that being the result of the procedure.

So that as long as that procedure continues, without implying any criticism of the police at all, it may give rise to some danger?—Yes.

Circumstances over which you have no control may be such as to pre-dispose a man to confess to you?—Yes.

As regards the provinces outside Buganda, do the chiefs take the same sort of attitude?—Yes, Sir.

But considering all these things, I understand that you are still of the opinion that on the whole justice is best served by the law as it exists to-day?—I am entirely in agreement.

I want to ask you about a file to which our attention has been drawn.

Criminal Appeal No. 2 of 1929. Rex v. Kapinini.

On November 6th, three accused people were brought to the police station. On November 14th No. 1 was charged. On November 16th No. 2 was charged, and each one after he was charged was cautioned and made a statement.

What puzzles me about that is this. First of all, how is it that they were under arrest from the 1-14th November when nobody was charged at all; and secondly, why was No. 1 charged on one date and No. 2 kept two days longer before he was charged.—It may be that they were not then in custody.

You think that they were brought in and released?—I have not seen this case.

It would certainly not be right if the facts as I have suggested them to you were the true facts?—No, it would not be the right procedure.

Perhaps you will look into it.—Certainly, Sir.

There is only one other question. You say in a note which you gave the Secretary that in one instance you have known of a delay between the

enquiry, trial and date of the execution extending over 14 months. Can you give us further details and send them to us?—I can get the exact particulars and send them to the Secretary.

It would be interesting to trace where the delays occurred.—Perhaps you would like particulars of a few other similar instances?—Thank you.

In Uganda all prisoners sentenced to more than six months are sent down to the central prison. Is that so?—Sentences of more than six months by British courts?

Yes.—Yes, they go to the Uganda Central Prison. This is contingent on their being fit to leave one district and go to another in the opinion of a medical officer.

If a man on conviction appeals, is he transferred to the central gaol before the appeal is dealt with or does he wait in the district gaol until the appeal is settled?—He waits in the prison in which he happens to be at the time of appeal. It is obvious that the man who may be convicted at Kabale and sent for safe custody or for sentence to Luzira prison may not make his appeal in the original station but only after his arrival in Kampala.

But if he is at a place 300 miles away when he makes his appeal, he stays there until it is disposed of?—Yes.

There is one other small point. We have only had one native communication of any account in Uganda, and that is from one Eriasafu Kalisalo who has no complaints against the police except that you oblige every native to take off his footwear on arrest and on remand.—I have never heard of that.

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[N.B.—*For passages here omitted see paragraph 232 of Report.*]

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Mr. M. Wilson: Do you send out orders occasionally for the guidance of police?—Such orders are in Police General Regulations supplemented by Commissioner's circulars which issue very frequently dealing with matters for the guidance and conduct of the police either in his administration in aid of justice or in the general conduct of police towards the public.

I passed some police lines the other day and was told that they were the Kabaka's police. Have you any jurisdiction over them?—None.

And ordinarily, except for the crimes you mentioned such as homicide, you cannot interfere in the Buganda Province?—I cannot interfere.

Thank you.

(*Witness then withdrew.*)

Saturday, 8th April, 1933

The Commission assembled at the Boma, Moshi, Tanganyika, at 9 a.m. on Saturday, 8th April.

Mr. G. F. WEBSTER.

Chairman: You are the Provincial Commissioner Northern Province?—Yes, Sir.

I have got from you some headings on which you would like to make some observations? Will you go through and enlarge upon them?—

(1) *The delay in hearing of High Court Cases and possible effects on evidence.*

This can only apply to cases committed for trial to His Majesty's High Court; as delay—of any length of time—does not otherwise occur. I think it fair to say that a long lapse of time—especially exceeding six months, as it often does—must affect the evidence. The preliminary inquiry by the subordinate court would be completed normally within 15 or 30 days of the offence, the trial by the High Court may be three, six or even nine months after that; it is in this period of delay that the danger lies; to test the soundness of a witness his testimony before the High Court is compared with his depositions at the preliminary inquiry, and the defending advocate, especially in a losing case, will cross examine severely on those lines. It is one thing to explain a sight 15 days after seeing it and entirely different to recall minor incidents nine months later, especially as the witness after his appearance before the subordinate court probably thinks the whole affair is finished with.

Important witnesses are sometimes thoroughly discredited by a defending advocate merely over minor incidents which they cannot remember clearly after nine months, but which were recorded at the preliminary enquiry.

It is not suggested that judges are necessarily impressed by the breakdown on minor points, but it is disturbing to the witness himself and an element of doubt, even on minor points, is dangerous.

(2) *Increased use of powers of extended jurisdiction.*

More judges are urgently needed. If this is not possible, then powers of extended jurisdiction should be granted in many areas, especially the remote ones, to chosen D.O.'s and magistrates.

Magistrates of the Judicial Department are of course generally speaking more competent on the Bench than Administrative Officers, at any rate in civil cases. Their powers should be considerably extended in regard to the value in dispute in civil cases. The trading public suffer considerably from long waits for High Court sessions.

(3) *The use of English as the language of the courts and the use of interpreters.*

Double interpretation is inevitable, but there would be a check on interpretation if, assuming a judge does not know Swahili, one of the assessors is a European with a good knowledge of Swahili.

Administrative Cadets should not be empowered to hear cases until they have passed the Lower Standard Swahili Examination. They are in the hands of any unscrupulous interpreter.

(4) *Native Assessors at trial of natives by the High Court.*

Native assessors are not necessary and are taken little notice of. Chiefs or Elders could be called as witnesses when tribal customs are involved.

(5) *Natives prefer trial by native court to trial by subordinate court. Considerable extension of punitive powers of chosen native courts is recommended.*

(It was decided that this was irrelevant.)

(6) *Award of compensation by subordinate courts in certain native cases.*

Many natives I have talked to are unanimous that there is too much punishment and not enough compensation meted out in subordinate courts, particularly in cases of offences against the person.

(7) *Summary jurisdiction (Section 187, C.P.C.) could safely be considerably extended.*

There is too much time wasted by magistrates of the 1st class in writing out in full quite minor cases. They are senior officers of proved reliability and powers of summary jurisdiction should be considerably extended for them.

I suggest that Section 187 should be amended to provide that the punishments which should be given under these powers should be greater—for instance in Section 187 (2) (a) the penalty should be increased to one year and a fine of Shs. 2,000s.

(8) *Section 255, Penal Code. Suggest Fine of stock as well as imprisonment in stock theft cases.* (It is understood that there is a special ordinance in Kenya for this).

Particularly amongst cattle owning tribes, a heavy stock fine should be possible as well as imprisonment. Experience shows that a greater deterrent is required.

(9) *Police should have powers of search without a warrant.*

Power is needed to search any place where reasonable grounds exist for believing that stolen property exists therein—Section 165 and 166 of the Indian Criminal Procedure Code—without a warrant signed by a magistrate. For instance at police posts, corporals often deal with cattle theft. The post may be 20 to 40 miles away from the Police headquarters and houses are searched for the stolen cattle without a warrant.

That is all I have to say.

As regards delay in the hearing of High Court cases and the number of judges, do you happen to know roughly what the area of Tanganyika is?—About 365,000 square miles.

There is a Chief Justice and two judges normally?—Yes.

Do judges ever come here on circuit?—Yes, they come here about three times a year. Sometimes there are longer gaps, when a judge has, perhaps, been ill.

So that you mean that a person who was committed for trial just after a judge has been would have four months to wait?—Sometimes a crime is committed perhaps three or four weeks before the High Court comes and there has been no time to get the Attorney-General's consent before the trial, so that when the judge comes he cannot take the case.

It might easily be four months, or it might be more than that?—I have known cases where the delay has been considerably more than 4 months, but probably under exceptional circumstances.

That is not quite the total. Supposing a man appeals to the East African Court of Appeal, that might add another three months, so that there might be a period of nine months from the time the man is committed until he is finally disposed of by the court of appeal?—Yes.

As regards the question of extended jurisdiction, jurisdiction of subordinate courts now is two years and £200?—The schedule to the C.P.C. sets out the jurisdiction of the various courts.

It does not depend on the character of the crime? Some crimes are excluded from the jurisdiction of the subordinate courts and are triable by the High Court, for instance murder?—Yes.

If the subordinate court tries for burglary it can only sentence up to two years. If it thinks there ought to be a greater punishment it commits for trial to High Court?—Yes.

You have no Resident Magistrate here?—Yes, there is one for Moshi and Arusha who is also the District Registrar of the High Court. He has no extended jurisdiction.

You can try everything?—I and the D.O. at Mbulu have extended jurisdiction in the district of Mbulu.

Do you like doing criminal judicial work?—Since we have had this code I have not done much of it.

Do you think, generally speaking, Administrative Officers would be glad to be relieved of judicial work?—Yes, I am quite sure of it, particularly the civil work.

I am not thinking of the small work, but the serious crimes. Supposing you were to relieve D.O.'s of that in this province, how many magistrates or judges would you require for the province?—I do not think one could do the whole province. He could if he were relieved of the minor cases.

If you had someone with the powers of the High Court taking over the High Court jurisdiction and some of the more serious crimes which come under the subordinate courts, he could probably do it?—Yes. That would be a great relief and advantage to the service.

For the High Court judges to get round, it must take them a long time—perhaps two or three weeks to get here?—From Dar-es-Salaam here will take three days if the connections suit. In the outside districts like Mbulu during the rains the roads are not passable—but that is a minor detail.

When you say that you think there ought to be extended jurisdiction conferred on magistrates or D.O.'s, if you had your choice would you rather it was conferred upon professional men?—Yes. At present there is one R.M. who divides his time between here and Arusha.

I was contemplating the possibility of the second class subordinate courts taking the minor cases and the professional man applying himself throughout the province to the important cases?—I think that would be very helpful and efficacious.

If that were so, do you see any objection why appeals should not go to the High Court in Dar-es-Salaam and not wait for the East African Court of Appeal?—I think it would improve matters.

As regards interpretation, are there any D.O.'s who would be able to talk all the necessary languages?—No.

So that some interpretation is inevitable?—Yes, in the majority of native cases.

If the court does not understand Swahili it means double interpretation?—Yes.

Have you any interpreters who can interpret direct from the local languages into English?—No, or they are very rare.

The court ought to be very careful before conducting a case in Swahili without a knowledge of one of the languages?—Yes. There can be little check of the interpretation without some knowledge of this kind.

Can you think of a remedy?—The only thing I can think of is that one of the assessors should be a European who knows Swahili well and can inform the court as to whether or not they are getting the correct interpretation.

You are speaking of the High Court?—Yes.

You do not think much of native assessors?—No. I think generally the wrong type of assessor is brought in. If the chief or elders were brought in it might be useful. The panel system of assessors was tried for a year but does not now exist.

If you had a panel of responsible people it would be better?—Yes.

The native in court feels himself in a strange atmosphere and the presence of assessors might help?—Yes, I think so.

But they ought to be carefully chosen and if there were a panel the right people could be chosen?—Yes.

If there were a permanent court sitting here the attendance of suitable assessors could be more easily arranged?—Yes.

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[*N.B.—For passages here omitted see paragraph 182 of Report.*]

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As regards summary jurisdiction. The point is that unless the magistrate tries under section 187 he has to record all the evidence?—Yes, it sometimes takes a lot of time. The purpose of recording that evidence is in case there is an appeal, or if the record is called for on revision.

The full evidence of any case dealt with under this summary procedure would not be available?—I have had no practice myself, but I imagine that the court of appeal would have to hear the evidence in extenso.

Is there a right of appeal in these summary cases?—I think there is a right of appeal on any sentence of over a month or 100s.

If you are going to extend summary jurisdiction and if that means you are not going to record the evidence, that is going to prejudice the question of appeal very much?—Of course the magistrate has to record the gist of the evidence in his judgment and I suppose the High Court would probably hear the evidence in taking the appeal.

Mr. Justice Law: That would not be done at an appeal. They would order a re-trial if they were not satisfied. This proposal of yours for extended jurisdiction, is that to get rid of this labour of recording evidence?—It is such a waste of time for Administrative Officers who have to do everything.

As the witnesses are being examined the magistrate takes down the gist of the evidence in a summary trial.

Otherwise do they take it down verbatim?—Yes, and every witness is cross-examined.

Stock fines. In Kenya there is an automatic penalty of 10 times the value of the stock stolen?—In this part of the world they are inveterate stock thieves so there must be some deterrent. They get two years, but that is no deterrent. I think, however, that 10 times the value is too severe.

The Penal Code seems to read that fine may be awarded?—Yes, for felony or misdemeanour. My point is that there should be something on the lines of Kenya as regards cattle, but I think a fine of stock would be more effective, though 10 times the value is too drastic.

As a matter of fact that would follow because if you impose a very heavy fine on the thief you levy execution on his property. In Kenya the amount of the fine is fixed but here the court has power to impose an unlimited amount as long as it is reasonable?—Yes.

Does it matter whether he pays the fine in kind or out of a bag? A provision that you could levy a fine of stock would not carry you much further?—This is a primitive people and it effects them more if they have to pay out stock. I think the Kenya Ordinance is good only too drastic.

But you favour the imposition of a fixed penalty?—I would favour a fixed penalty of, say, five times the value of the stock stolen. Something must be done here to stop the continual thefts that go on.

It is very prevalent in this district?—Yes, the Masai and Warusha. There is a lot of trouble about it.

Powers of search. When you speak of a corporal, does that mean a native askari?—Yes.

You don't think there would be any danger in giving them power to search without a warrant?—No, I have never heard of any abuse. The police force is very good in this country.

The point is to save time?—Yes. They go in, search a native hut and find the stolen goods. If they had to go, say, 40 miles to get a warrant the opportunity might be lost.

Mr. Justice Law: On this question of compensation. Section 170 of the C.P.C. appears to provide sufficiently for the payment of compensation to any person having loss or injury caused by an offence?—Yes, but magistrates do not seem to act on this.

It only requires to be pointed out to them.

Chairman: Your difficulty is that in awarding compensation, the English principle that a crime is one against the community not against the individual is the principle which is kept in view. You would prefer that the principle of compensation to the individual should dominate?—Yes, although there should be imprisonment, I think there should be compensation to the injured person.

Mr. Justice Law: In other words, you want to see the shauri finished?—I want to see the natives satisfied and without compensation they are not satisfied, even though they may like to see the offender put in prison.

Compensation to cover the loss suffered?—Yes.

In other words the State is satisfied and the owner is satisfied?—Yes, the complainant is satisfied because he gets compensation for loss or hurt and the State is satisfied because there has been a deterrent.

With regard to the fine for stock thefts, actually you say supposing a man steals two head of cattle, if he knows that he is going to have twenty taken as a penalty he will be more careful?—Yes.

If money were taken it would come to the same in the end?—No. It would not impress them to the same extent. The object is to standardise it. If the penalty is too heavy the family would be rather hard hit as it is the young men who steal these things.

About assessors, you think it would be satisfactory if they were carefully selected?—Yes If they were carefully selected the judge might take more notice of them. At present they are ignored by the High Court as men of little importance.

What is the present practice?—The Chief sends somebody in, but it would be better if the Chief himself came. The question is whether they help the judge at all. When I have had assessors I find they always agree with everything I say.

They like to please the court?—I think that is the tendency.

You do explain to them their functions?—Yes, they are always explained to them.

As regards the extension of summary jurisdiction, from Section 187 it is clear that the intention is merely to provide a method of expediting the trials of petty offences, and it seems clear that the intention is to confine it to cases of that nature. In a case of any seriousness it must be desirable that the evidence should be fully recorded.—I think it is a waste of time to take a full record of the trials for petty offences as most probably there will be no appeal. The magistrate who exercises these powers is a magistrate of the first class who may be assumed to be trustworthy.

Do you think the accused gets as good a show under Section 187?—Yes.

You would use this method on the ground of lessening work?—Yes. I think the magistrates may be trusted to use it more extensively as they do in the High Court.

That is not so, except insofar as they may convict on a plea of guilty.

Mr. Mitchell: As regards the question of professional magistrates, I suppose one would say that, however good relations are between the races, that where you have natives, Indians and Europeans, all mixed up together, that is a strong argument for a separation of the functions of judiciary and executive?—Yes.

About witnesses, is it a fact that owing to the delays caused by awaiting High Court trial witnesses in murder cases and serious criminal cases are apt to be put to a good deal of inconvenience and be kept away from their business, etc., for a long time?—Yes.

If an assize occurs in the planting season, apart from what may happen to the accused, the witness may be ruined for the next year?—Yes.

Chairman: That is when the court goes on circuit?—Yes.

If a court were sitting here permanently there would not be the same inconvenience and delay?—No. At the moment we have a case in which there are 13 accused and 200 witnesses and they have all been brought to Arusha.

If you had a permanent court in this area it would go to the scene of the crime?—Yes.

Mr. M. Wilson: Was there a custom here, as there was in Kenya, that the method of dealing with stock thefts was a fine of 10 times the amount of the stock stolen?—No, I have never heard of that here.

The present Kenya Ordinance was based on the existence of this custom. The collection of the fines has not been very successful. It has been left to the P.C. as to whether he thinks the tribe or sub-tribe can find it. So if you had such a fine introduced here you would have to be certain it was collected?—Yes.

But you think a fine in stock would operate more effectively?—Yes.

Mr. Justice Law: As regards the question of interpreters, what is your general opinion about the quality of interpreters?—It is very hard to say as regards the quality of interpreting from Swahili into the tribal language. The native interpreters from English into Swahili are good.

Do you think it would be a good thing to have a cadre of interpreters and set a standard for interpreters before they were accepted and to have them only for that purpose?—Yes, I think that would be a good thing.

How are the witnesses kept when they are brought in when the High Court comes on circuit?—If they have friends they go to them and they have subsistence allowances; if not, they have a hut in the police lines and are given money for food. I had to enquire into that two weeks ago.

Mr. Mitchell: When you said you advocated a fine in stock, you said it might operate harshly on the family. Do you suggest that when a fine is imposed on a man for stock theft and he and his immediate family cannot pay—it should be levied on his tribe or sub-tribe?—No, I would not do that. We have a collective punishment ordinance, but it is not much used.

(Witness then withdrew.)

Mr. H. R. Gilbert.

Chairman: You are the Acting District Officer, Arusha?—Yes.

In your memorandum (No. 20) you propose various amendments to the Criminal Procedure Code. Do you want to enlarge upon any of them?—I do not want to enlarge upon them. Have you any questions you want to ask on them?

I think the suggestions you put forward are really suggestions for amendments to the Code which are really for the people making legislation rather than for us.

As regards Section 12—No power is given under this section to remand in custody a convicted person if it is considered advisable to refuse bail.—My point is, Sir, that if you do not consider it advisable to refuse bail one has no power to place the accused in custody. One cannot put him in gaol.

But if the court does not exercise the power to release him, surely he remains in gaol.—If he elects not to begin his sentence, you cannot put him in gaol.

Mr. Justice Law: I understand this point has been raised by the Attorney-General, Tanganyika.

Chairman: We will not consider this section further. Now section 87.—I think under this section, if a European who lives, say, some 30 miles from the district headquarters, sends in a letter that letter should be treated as a complaint without the necessity for swearing to it; and if the accused does not appear when summoned a warrant of arrest should be allowed, even though the complaint is not made on oath—that is, to save a European coming in three or four times over one complaint.

I do not know how far we are to deal with substantive law. Of course people could go over the C.P.C. and suggest alterations—I have suggested difficulties as they occur every day.

Section 132 (*d*), the trial of several accused together for veterinary, forest or game offences. A number of accused are brought in for the same type of offence, but they have not committed the offences on the same day. If they plead guilty, I think they could all be tried in one act.

If they plead guilty then you want to make out one case file for the lot.—In this territory if they all appear on the same sheet you might be told to try them all again. It has happened.

Section 170 (1) (*b*). This was dealt with by Mr. Webster. Also Section 187 (2) (*a*).

As regards your Miscellaneous headings, No. (1), have you a rule in this country that no statements made to the police are permissible?—Yes. To assist the magistrates and make sure that the statement is entirely voluntary confessions before a magistrate are admissible at the trial. There should be some stated way in which confessions should be taken in order to make them admissible.

Mr. Mitchell: You are thinking of the Indian Criminal Procedure Code?—Under the old code we were given a definite way of taking a confession.

Chairman: Does it matter so long as it is voluntary. Have you ever seen the Judges' Rules—some rules laid down by the judges in England as to what is or is not admissible?—No.

No. 2. I really do not think we can deal with the question of criminal trespass because it is an amendment of the substantive law. But I take it that your difficulty is that at present there is no provision to punish trespass criminally?—Yes.

Nos. 3 and 4 do not come within our terms of reference. Now as regards 5—extended jurisdiction—do you want to add anything?—In some of these outlying districts it is often very difficult to get the accused in in time due to the roads being impassable.

There are, don't you think, some disadvantages in D.O.s having to have these extended powers—people who are not professional lawyers?—Yes, but as all cases are subject to confirmation by the High Court I do not think there is any danger.

Do you think if it was possible to arrange that all cases should be taken by a professional magistrate or someone with the status of a judge, it would be better?—Do you mean a Resident Magistrate?

Yes.—Yes, it would definitely. When the rains come on witnesses may have to walk a long way and they sometimes won't come in.

As a District Officer, you are not pining for more work, but you think something ought to be done to avoid delay in the disposal of cases for trial?—Yes.

Mr. Justice Law: Touching cases of confessions, what procedure do you adopt?—We have been using the Magistrates' Handbook, and I try to adapt that to the mode of taking confessions at the present moment; but that was under the old Code.

Has any objection been taken by the High Court to this?—Not so far.

They are satisfied with it as far as you know?—Yes.

I am a little interested in these trials where all these people are tried in one case. Was it called No. so-and-so?—Yes. Simply because of an error in procedure I had to refund all the fines to the accused which was not good, as they definitely deserved to be punished.

In Uganda we usually allow cases of this kind to be taken in one case file.

Mr. Mitchell: In these mixed areas where you have Europeans, Asiatics and natives, would you agree that it is an added reason for having an independent judiciary altogether for the trial of serious cases?—Yes.

* * * *

[N.B.—*For passages here omitted see paragraph* 182 *of Report.*]

(*Witness then withdrew.*)

Mr. L. S. Greening.

Chairman: You are Acting District Officer, Moshi?—Yes.

I have here the points on which you wish to give evidence.

As regards the delay in the trial of cases by the High Court, is there anything you would like to add?—No, Sir. Mr. Webster's evidence was what I intended to say. The High Court visits here only twice a year; it visited Moshi on the following dates:—

3rd September, 1931.
11th April, 1932.
4th August, 1932.
10th January, 1933.

After visiting Moshi it goes on to Arusha.

You are not criticising the High Court for not visiting Moshi more often and you realise that the difficulty is that there are only three judges?—Yes, it is only that the long delay is bad.

You mean that on the establishment allowed it is not possible for judges to get round more frequently and that is detrimental to the administration of justice here?—Yes.

Supposing you could have someone in your province with the powers of a judge, would he be able to deal promptly with all cases of serious crime?—Yes, Sir. He could do all the High Court work and take on the work of courts having extended jurisdiction.

Do you think, as well as these two categories, he could do some of the more serious crimes at present dealt with by the first class courts?—Yes.

Could some of you relieve him of the petty cases and leave him free to do the more important work?—Yes.