

THE NATIVE LAW OF THE SOUTHERN GIKUYU OF BRITISH EAST AFRICA

COUNT TELEKI, a Hungarian, is credited with having been the first European to visit the country of the Gikuyu. Accompanied by Lieutenant von Höhnelt, he made an expedition in 1887 through German East Africa to Taveta and Lake Nyiri, and travelling northward from thence made the discovery of Lakes Rudolf and Stephanie and incidentally visited Gikuyuland, which had been merely skirted by Dr. Fischer and Joseph Thomson.

In 1888 the Imperial British East Africa Company received a royal charter, being reconstituted out of the original British East Africa Association, and in August, 1890, Sir Frederick (then Captain) Lugard left Mombasa for Ngong Bagas in Masailand, with orders to build a Station there for the benefit of the Company's caravans proceeding to Uganda. Finding Ngong a most unsuitable place for the building of a Post, being mere waste land, uninhabited except by passing Masai, as he himself writes in his *Rise of our East African Empire*, he decided to build on the southern extremity of the Gikuyu country, and pitched his first camp on the very spot where a Post was afterwards built by Colonel (then Captain) Eric Smith and subsequently named Fort Smith. Finally a site above the spring of the Dagoreti stream was chosen on which to build a stockade, which thus became the first Company's Station in Gikuyu. This stockade was, however, finally abandoned and was burnt by the Gikuyu, who had no Post at all in their country until Colonel Smith re-occupied the country on behalf of the Company in 1891 and built a stockade afterwards named after him. Subsequent District Superintendents, as they were then called, were Mr.

Purkiss, who died at Kibwezi; Captain Nelson, formerly with Sir Henry Stanley, who died and was buried at Fort Smith; and the late Mr. Francis Hall, who administered the southern Gikuyu country from 1893 to 1899, with two intervals of home leave. Mr. Hall may be said to have been the father of the Gikuyu, for they knew no other administrator for six years except Mr. Ainsworth (subsequently the Sub-Commissioner of the whole Province of which Gikuyu was a District) and those officers who acted for Mr. Hall during his absence.

During those early years from 1893 onwards Mr. Hall taught the Gikuyu the lesson of obedience, and instilled into them an implicit faith in the promises of Government, under which the whole of what is now British East Africa passed by transfer from the Company in 1895. Subsequent officers had good reason to be thankful for the effects of Mr. Hall's sojourn in Gikuyu, owing to which they inherited a comparatively quiet District. He died at Mbiri, Province of Kenya, in March, 1901, whither he had gone to open a new Station among the northern Gikuyu. The Station there, Fort Hall, is named after its founder, whose pioneer work in East Africa was justly described by his Chief as equalled by few. Subsequent administrators of the District may have succeeded, but it was the pioneer who first laid the foundations of Government rule broad and sure.

This short summary of the events which led up to the present occupation of the Gikuyu Highlands by Government will put readers of the Journal into a position to understand to a certain extent the very rapid and recent growth of the tribe as it is known to-day. Over 400 white men, women, and children live in the Southern Gikuyu District (outside Nairobi, the headquarters of the Protectorate and Province), which is estimated to contain about 60,000 natives. The Kenya Province forms a separate country inhabited by Gikuyu under different chiefs and administered by a separate Provincial Commissioner. It comprises, as will be seen from a glance at the map of the East Africa Protectorate, all the Gikuyu country lying to the N.E. of the Thika River, to the E. of the Naivasha Province and around the base of Mount Kenya,

and is made up of four Districts, Fort Hall, Nyeri, Embu, and Meru.

The Southern Gikuyu of whom I write inhabit a small stretch of country occupying an area of about 2,000 square miles in the N.W. corner of the Ukamba Province. The Paramount Chief is Kinyanjui, who from being an obscure youth in early days has risen by his own efforts at the beginning of his career in 1891 and afterwards through the support of Government during the last 10 years to his present position as acknowledged head of the Southern Gikuyu. From being a kind of Station Headman at Fort Smith, he became a District Headman during the years subsequent to 1892, and finally tribal Chief about the beginning of the present century. He is still quite a young man as the Gikuyu count youth.

Regarding the origin of the Gikuyu, Sir Charles Eliot, in "The East Africa Protectorate," says that they are almost certainly a comparatively recent hybrid between the Masai and Bantu stock.

If this is the case, it is strange that the dialect of Gikuyu shows no linguistic affinity with the language spoken by the Masai. It is true that during the last two decades, and probably before, Masai refugees, chiefly women, settled in the Gikuyu country, and the result of their intermarriage with the Gikuyu is shown in some of the types of young Gikuyu seen in East Africa, but the primitive Bantu dialect spoken by the Gikuyu is sufficiently archaic and pure to stand by itself as a proof that the tribe is no hybrid, as are the Swahilis for instance, but one of the most virile families of the Bantu races of East Africa which are found from the Coast to the Rift Valley and on both sides of the Lake Victoria as well as to the north.¹

The Gikuyu themselves say they came from the north and north-east and spread south-westward, buying their land with stock from the Dorobo, or hunter tribe of nomads.

¹ Language itself proves nothing as to the racial affinities of a tribe, as numerous instances are known of people changing their language—*e.g.*, the Hamitic Bahima now use the Bantu speech of the tribes among whom they are settled, though no doubt they have modified it to a certain extent.—ED.

One thing is certain:—their migration in a westerly direction across the Thika and Chania Rivers is of comparatively recent date and in all probability well within the last half century. The date of the Gikuyu settlement around Mount Kenya is a much more difficult question, and no authority has as yet hazarded any suggestion on the point.

The Southern Gikuyu give the following legend to account for their own origin and that of the Kamba and Masai.

"In the beginning the father of our people, named Mumbere, came out of his country and travelled day after day until he came to the sun-rising. Upon his arrival there the sun asked him, 'Where do you come from?' He replied, 'I do not know; I am lost.' Thereupon he asked him, 'Where are you going?' and was answered 'I do not know.' Then the sun said to him, 'Because you have seen where I come from, out of the ocean, which no man is supposed to do—if you do not want to die you must call me *Kigango*. This means 'The most high,' or 'The Great Over-all.' Moreover the sun gave him a strip of meat, telling him to eat a tiny piece each day as he travelled many days' journey toward the sun-setting, and that this would be sufficient food for him until he arrived at the country where he was to dwell. When the food was finished he had arrived at the country of the Mbere, near Mount Kenya.

"There he found a woman, married her, and had born unto him three sons and three daughters. When they grew up, the father called them together, and placing on the ground before them a spear, a bow and arrows, and a cultivating-stick, told them to choose. One chose the spear, and his children became the Okabi, or the Masai tribe; the second chose the bow, and his children became the Kamba; while the third chose the cultivating stick, and his children are the Gikuyu. Afterward, when the Masai wanted vegetable food, they came to the Gikuyu for it, giving them in return sheep and cattle; it is thus we have flocks and herds like the Masai, and also carry spears like them as well as our own swords.

"After Mumbere had lived to a great age, he called his descendants together, telling them to bring him meat and

receive his blessing, as on the second day following he was to die. Accordingly on that day he called the sun by its customary name 'riua' and died."

One word about the spelling of the word "Gikuyu." Dr. Henderson, of the Africa Inland Mission, has pointed out in his unprinted Grammar of the language, the manuscript of which he has kindly allowed me to see, that when a K stands before a Ch, another K, a Th or a T, it takes the softer sound of G. The Ki- and Gi- are practically identical, though the word has hitherto been spelt "Kikuyu."

The following information about the tribe was collected by me last year, and though believed to be correct is liable to the errors to which all such notes are subject.

(1) *Clans of the Gikuyu*.—1. Achera. 2. Anjiru. 3. Agachiku. 4. Aithiageni. 5. Amboi. 6. Agathigia. 6a. Airimu. 7. Angare. 7a. Aithekahunu. 8. Aichakamuyu. 9. Aithaga. 9a. Ambura. 10. Aitherandu. 11. Angui.

If the three clans, Airimu, Aithekahunu, and Ambura are identical with those that precede them under other names, the Gikuyu clans are 11 only in number. If separate there are 14.

A man of the clan of Achera is called "Muchera"; so "Munjiru" and "Muithaga."

Formerly (probably until the European invasion of British East Africa) the first five clans were the most powerful, and were constantly engaged in fighting with one another over property.

They lorded it over the smaller tribes and appear to have bullied them more or less. Blood money owed to the latter was not usually paid by the five "cock" clans.

There are five recognised heads of these clans to-day, but the importance of being chieftain of a clan is not what it was years ago. Some of these men, however, are Government headmen to-day (Kinyanjui is head of the Achera), and have thus a dual standing in the District.

The Agathigia and remaining clans are said never to have had any recognised head, the five big clans being paramount.

The origin and derivation of the names of clans are

unknown for certain. My informants cannot say whether the names come from the first head of the clan or from the ridge or district in which they formerly lived. The first is probably the correct solution and has been endorsed by information given to Europeans other than myself.

(2) *Laws of Succession*.—All the sons inherit their father's property in equal portions after the eldest, who gets the lion's share and must succeed to his father's position unless he is incapable, mentally or physically, in which case any of the sons may be chosen. The eldest son is nominated as successor to his father after circumcision, when he is about to marry. His father calls all the Elders together and makes a big feast, at which meat and native wine are consumed. His son is then formally presented to the Elders as his successor. They have no option but to accept him. The recognised procedure is for them to instruct him as to his future duties and the customs to which he must conform. If, after his father's death, he fails to conduct himself as he should, he can be driven out of his district by the Elders, but the adoption of such an extreme measure is not on record among the Gikuyu whom I have questioned.

If a chief is very old his son may become a "muchiri," an Elder with authority to determine causes in the native Councils, as soon as he has been circumcised and is sufficiently experienced and capable. Previously, however, he attends Councils without taking part in them.

(3) *Criminal Law*.—Offences against human life or injuries to the body:—

Blood money for murder of a male of any age is 100 goats or sheep, the same to be paid to the father of deceased and 10 sheep to the Elders. If his father is dead his brother is the next relative entitled to receive the blood money. If there is no brother living it is paid to the paternal uncle of deceased, and failing him to his maternal uncle. If no near relatives of father or mother are surviving, and deceased had a son, the blood money is paid to him. If the murdered man leaves a widow and children, and the woman marries another husband, their eldest son may, if blood money still remains unpaid for his step-father's death, claim 100 goats or sheep

from the murderer. Fratricide incurs a payment of 50 sheep to the brother of deceased and the usual "ngoima" of five sheep to the Elders. This payment is only made where the man has the same father as his brothers. Where blood money is paid direct to the father of deceased, the uncle, male cousin or nephew on the mother's side of the murdered man generally receives nine goats as a separate payment, if friendly relations are existent between them at the time of deceased's death.

In payment of blood money for murder, besides the 100 goats to the heir and the nine or ten as "ngoima" to the Elders, there is what is called the bull or he-goat for "njigwa migwe," the meaning of this term being evidently unknown, except that this fine is for the spear with which the man was murdered. The weapon is taken away from its owner and broken. The murderer's tribe eat the "njigwa migwe." The Elders, together with the deceased's brother and the murderer, afterwards eat a sheep to avert bad luck from the murderer.

Thirty goats only is the blood money for causing the death of a woman, with three goats extra to the Council of Elders who "sit on" the case. The husband of a married woman is paid these goats, but in the case of the death of a maiden her father.

A murderer invariably wears a "rukwaru" after committing the act, and besides this has also to submit to whatever "kirira" (ceremony or ordinance) may be prescribed by the Elders, such as being shaven, sleeping outside the village a couple of nights, avoiding women, &c.

Compensation for Injuries.

Loss of one eye, 30 goats, and three sheep as Council fees.

Loss of two eyes, 60 goats, and six sheep as Council fees.

Loss of one ear, one goat (female) and a big he-goat for the "Achiri" to eat, of which the injured man gets a shoulder of mutton and a piece of skin to wear on his right wrist as a cure. This is called a "rukwaru."

Loss of two ears, a double payment.

Loss of one tooth, 10 goats and a goat to the Elders.

Loss of two teeth, 20 goats and three goats to the Elders.

Loss of three teeth, 30 goats and three goats to the Elders.

Loss of four teeth, 40 goats and four goats to the Elders.

Loss of one whole finger (or a toe), 30 goats, of which three are given to the Elders and seven returned to the owner.

Loss of one or two joints of a finger, 10 goats and a goat to the Elders.

Loss of a hand or arm cut off at the elbow, 50 goats and six goats to the Elders.

Loss of a foot or part of a leg, 50 goats and six goats to the Elders.

The fracture of a leg or arm which after being set loses part of its former force is compensated for by a payment of 30 goats.

A fractured leg or arm, if it heals well, requires a fine of 10 goats only.

Compensation for the loss of a whole arm or leg is not arranged for among the Gikuyu, as they hold that no man could lose the whole of either member and live.

Minor Injuries.

A wound from a spear or arrow, even though slight, is compensated for by payment of 30 goats and three goats to the Council. A sword wound, however, necessitates the payment of one goat only to the injured man and one goat to the Elders. It is immaterial whether the sword is a "ruhyu rua njora," "a sheath (*i.e.* fighting) sword" or "ruhyu rua ituguta," "cultivating instrument."

If a wound from either of the above, however, disables a member through the severance of a muscle, the compensation due is 30 goats plus three ditto to the Elders.

For a blow from a knobkerry or stick causing the blood to flow a goat is paid by the offender to the Elders, who give a "rukwaru" to the injured man.

A blow from any kind of weapon on any part of the body causing a bone or part of a bone to work out through the skin is compensated for by payment of 10 goats and three goats to the Elders.

If anyone falls into a game-pit and suffers injury either from the fall or from being impaled on spikes on the bottom, the compensation payable by the owner of the pit is 30 goats and three goats to the Elders.

For striking an enceinte woman and causing a miscarriage, 10 goats compensation.

For wounding a domestic animal—a cow or a sheep—a goat is payable. For causing the death of the same, its value in goats.

(4) *Offences against Property*.—Damage to crops is assessed by the Elders who were formerly “fee’d” with a present of “njohi,” the owner of the property receiving goat-skins as compensation. To-day the Elders are paid a “ngoima” by the owner of the stock trespassing.

Stock-thefts.—Formerly, if a thief was caught red-handed, the owner of the stock was allowed to beat him as much as he liked, even to the extreme of endangering his life. To-day if the thief gets away with his animal, and his identity is not discovered until afterwards, he must return the stolen beast with three goats for the Elders to eat.

If the thief has already killed and eaten the animal he must return ten similar ones and one to the Elders. It is not a more heinous offence to steal by night than by day.

The penalty for stealing from a grain-hut is one sheep.

If a woman or uncircumcised boy is guilty of theft, the article must be returned plus three goats as compensation, the Elders eating one.

For stealing honey from a honey-barrel 10 goats, and three sheep for the Elders. For stealing an empty honey-barrel one goat, the barrel to be returned to its owner.

Stealing food from a shamba was punishable formerly by the exaction of six he-goat skins to be paid to the owner of the shamba, and one goat to the Elders. To-day it is Rs. 6/- cash and a sheep for “ngoima.”

Arson.—For burning a dwelling-hut 30 goats must be paid to the owner, and three sheep to the Elders to eat.

For burning an ordinary village containing grain-huts 60 goats are payable, but my informants tell me that if a medicine man's hut is burned 100 goats are paid.

For burning a grain-hut, six skins of a he-goat, and if it contains grain, 10 goats. For burning a sugar-cane plantation compensation is payable according to the assessment of the Elders.

(5) *Offences against Sexual Morality.*—For adultery three goats to be paid and to be eaten by the Elders, including the injured husband. (Elders of the same circumcision age allow one another access to their wives when as guests they stay the night in a village.)

For rape, three goats eaten by the Elders, including the husband or father of the woman. Intercourse resulting in pregnancy, nine goats to the father and three goats to the Elders.

For seduction, three goats if the woman is recovered and returns home to her husband. If she does not do so the full dowry plus natural increase must be returned to her husband by his father-in-law.

The following terms are in use among the Gikuyu in connection with the tribal law and custom :—

Ngoima.—A Court fee paid in the form of sheep and goats to be eaten by the Council of Elders hearing a case.

Ngaita.—Compensation paid to an injured man, generally in the form of a large he-goat, to be eaten by him for the purpose of assisting his recovery.

Rukwaru.—A Court fee paid in the form of a goat or sheep to be eaten by the Council of Elders, a piece of the skin of the shoulder (rukwaru) being presented to the injured party to wear on his wrist as a cure for bodily injury inflicted on him.

(6) *Laws dealing with Offences against Tribal Religion.*—It is not permitted to collect firewood or break off branches within sacred groves where "mugumu" trees grow. To lay axe to the latter is strictly forbidden, nor may the grass be fired within the precincts of a grove. Wild animals which take refuge within the latter must not be molested. I have seen wild colobus monkeys in a Gikuyu grove in the Province of Kenya in which they had taken sanctuary, and witnessed an Elder staying the hand of a young man who was about to throw a knobkerry at a bird flying into the grove.

Sacrilege is expiated by the sacrifice of a goat to the deity at the foot of the "mugumu" tree (the animal to be supplied by the offender), and the pouring of the melted fat on the trunk of the tree. At the ceremony (igongona) the Elders, married women and warriors may attend in the grove. On other occasions Elders only may enter the grove. Women alone must never trespass.

Sacred groves are the scenes of intercession for children, for rain and for fair weather. In the first case the woman may attend the ceremony with her husband and join in the sacrifice of a goat. Intercession for rain may be made by Elders only, and for fine weather a "muithaga" (rain-doctor) is called in by the Elders to exercise his powers at the intercessory sacrifice.

The "mugumu" is a ficus belonging to a sub-section of the genus "Ficus" known as "urortigma."

Members of families make sacrifices—intercessory and expiatory—before "mukuyu" (wild fig) trees.

The Gikuyu do not kill a snake but pour out honey and milk for it to drink, which they say it licks up and then goes its way. If a man causes the death of a snake he must without delay summon the senior Elders in the village and slaughter a sheep, which they eat and cut a "rukwaru" from the skin of its right shoulder for the offender to wear on his right wrist; if this ceremony is neglected he, his wife and his children will die.

Even accidental destruction of snakes must be expiated. The Gikuyu say that snakes are "ngoma," spirits of the departed.

According to one of my informants the Achera and Angare do not fear to kill snakes, but this information has not been corroborated by subsequent enquiries, which point to members of the Anjiru tribe only destroying snakes.

The story goes that a long time ago a Mumboi Gikuyu killed a snake and fell ill at once. Before he could get well he had to sacrifice seven goats under the instructions of a medicine man. Since then the other clans have not killed snakes, although the latter cannot be said to be a totem of the tribe.

If a tree falls across a path near a village it is a bad omen, portending death among the flocks and herds kraaled in the village, if not removed. The head of the village kills a goat and sprinkles the dung from the intestines of the goat on the path. The tree is then removed.

Breaking of Oaths.—Disobedience by individuals to the commination ceremony known as "kuringa thenge" is punished by the exaction of a penalty of two goats; one is killed on a public thoroughfare and the contents of the stomach strewn thereon; the Elders eat the flesh, and the offender puts a "rukwaru" on his right wrist and walks seven times over the spot where the contents of the stomach have been strewn. The dung from the intestines of the second goat is smeared on the head of the offender, which has previously been shaved, his face being rubbed with the raw fat.

Disobedience by several young men to the warning against certain acts repeated several times by the Elders in the above ceremony, was in the old days punished by the confiscation of the goats of the offenders' fathers and by the huts of the family being burnt.

As a general fact the Gikuyu have always in the past considered, and still do so to-day, that a supernatural fate awaits all those who infringe tribal oaths and disobey the prohibitions and warnings contained in the ceremonies known as "kuringa thenge" and "kuringa githathi." They feel therefore that the matter is not in the hands of human beings, neither are the latter concerned in the exaction of penalties for the infringement of the same. Death is held invariably to follow disregard of the curses uttered against a debtor in the "ringa githathi" ceremony, and the same fate to await a perjurer who takes the oath known as "kunyua thakame."

(7) Crimes committed by people of unsound mind must be compounded by their relatives. If no relatives can be found the offender is bound and taken before a medicine-man to be cured if possible. Some cases are incurable. Formerly cases of criminal insanity resulted in death by strangulation on the part of the relatives. A person in liquor is held responsible for his actions in the same way as one sober.

(8) *Civil Law.*—Laws connected with debts :—The liability

for a debt is handed down from father to son. There appears to be no period of limitation whatever. When a debt consists of live stock, the natural increase is included in the repayment. The decision given by one Council of Elders is final, and the case cannot be reopened before the Elders, provided that in the first instance the proper fees were paid and the Elders were men with authority to sit in a council. Formerly (and even to-day according to tribal law) there was no appeal to a Paramount Chief. To-day, if the litigant does not like the decision of the Elders, he takes his case to a Protectorate Court and has to pay fees over again, but this procedure dates from the establishment of Courts presided over by European Magistrates.

In the case of judgment having been given against a poor litigant, six months grace is allowed; the debt in ordinary cases being paid on the eighth day after judgment. Payment is made before the Elders, and native wine (njohi) is provided by the successful claimant.

Judgment against a pauper is executable against his father, brother or son; or failing these, against all the members of his family in equal proportions.

If a native against whom a judgment is given refuses to obey the order of the Council, the Elders who formed the same all appear with a piece of the "muturanguru" or "mutathi" plant in their hands, and after spitting on their impromptu brooms, sweep a public path within sight of the debtor's hut, saying "iroiywo, iroiywo," meaning "may (the goats) be stolen," which ought to have been paid in discharge of the debt. During the ensuing night, the contestant in whose favour judgment has been given may steal the property claimed by him, and after having done so goes and congratulates the Elders on the efficacy of their ceremony.

To-day judgments are generally enforced through Protectorate Courts, owing to Elders not caring to risk trouble from opposition to the execution of their decrees. In the (good?) old days the arbitrament of arms decided the question of claims where a peaceful settlement was impracticable. When the Elders of two districts agreed to settle disputes between their people, they used to meet for a council as they

do to-day in a "kiharo," or open, grassy place near the boundary of the two districts.

(9) *Laws connected with Marriages.*—Wives are invariably bought with live stock. When the Gikuyu first bought their country from the Dorobo hunter tribe, a man could buy a wife with a piece of land. Wives cannot now be bought in this way.

After a suitor has agreed with her father or brother for the purchase of a girl, and she is agreeable, the woman's nearest male relative calls the Elders of his district and the suitor *his* Elders, and they all proceed to the village of the girl's relative for a big feast. The goats payable as the dowry are produced before the feast so that the Elders may count them. This custom is known as "kurachia mburi kwa muthoni." Although the goats demanded by the girl's relative are retained by him, the woman does not go to her husband's village for some months afterwards if she is still quite young. The whole dowry is generally not paid at once but in instalments, of which the first is never less than half the total number agreed upon.

("Kurachia mburi kwa muthoni." "Kurachia" seems to be the word used for buying¹ a wife, and includes the taking of the goats asked for to the owner of the girl and eating of the "ngoima" together. "Kwa muthoni" is to the place of the father-in-law. A more common expression in some parts according to one of my informants is "kurachia muiretu," the girl, rather than "kurachia mburi.")

The father or guardian of a girl may return the goats and refuse his future son-in-law at any time.

If a widow has no brother-in-law younger than her husband and no stepson to marry her at her husband's death, she passes to a man of her own clan. A son inherits his mother at his father's death, but the one who takes her as his wife is generally a brother-in-law or a grown-up son of another wife. A woman cannot be sold twice nor be inherited or

¹ "Buy" is a somewhat misleading word in this connection, as the transaction is not really looked on in the light of a purchase, and (as the rest of the sentence shows) *kurachia* includes the whole ceremony of "plighting the troth." The Gikuyu word for "buy" in the ordinary sense seems to be *kuigwa* (cf. Nyanja *kuigula*) or *kuwira*.—ED.

married by her husband's eldest brother, although in other respects the property of her husband passes to him. A woman follows her father's clan until she is bought, when she adopts that of her husband.

(10) *Inheritance of Property*.—If an Elder is very old and feels that he has not long to live he summons all his male children and the Elders. A sheep is eaten and the children are told before the Elders the property that they will inherit, so that there may be no disputes after his death. The eldest son invariably gets more than the others.

Property cannot be left to any other relative except male children where such exist. Failing them the eldest brother inherits the property. Each son inherits his mother as his own property and also his own sisters, on account of whom he receives the dowries paid by their future husbands. Female children pass like live stock to their father's eldest brother, if they have no brothers by their own father. Widows of a deceased Elder who pass to the latter's brother, on his death go to the nearest relative of the same clan.

Widows retain for life their own plots of land after their husband's death. On their decease their sons inherit their mother's property. The nearest relative of the same clan always inherits property.

If an Elder dies suddenly before dividing his property, the Elders of his clan, in equal numbers with the Elders of other tribes, divide the dead man's property as they think he would have divided it himself. A nephew is the nearest relative after son and brother.

(11) *Disputes as to Ownership of Property*.—These disputes were formerly settled by fighting. Land in Gikuyu was originally bought from Dorobo who used to hunt over it, and if two Gikuyu claimed that they had bought the same garden, and both had paid goats, they fought until one was beaten. To-day a Council of Elders drawn from different districts settle the matter. Five Assessors represent each side. The investigation is held in an open place, and after hearing the evidence of both sides the Elders go to view the place of the disputed boundary.

Elders are authorized to settle all disputes as to property,

and although each side is represented by the same number of assessors, a deadlock on this account never seems to occur, which speaks well for both sides.

(12) *Guardianship of Minors*.—The eldest brother of a deceased man, or failing him the next of kin of his clan, becomes the guardian of a minor. He is allowed to treat the latter's property as his own during the boy's minority. Cattle and their increase, however, must be accounted for, only those used for food, killed for ceremonial purposes, or given to the Elders as Court fees, being excepted. These need not be returned.

A minor comes into his property when he marries. Property is gradually returned by his guardian, probably within twelve months; although it is customary to leave some of the live stock with a guardian for his people to herd for the heir.

When a guardian refuses to hand over property to his ward on the latter coming of age, the young man refers the matter to the Elders.

It is permissible to pass over a brother if you are at enmity with him, and to appoint a near relative of the clan as your son's guardian.

(13) *Accidental Injury*.—The Gikuyu do not discriminate between accidental and intentional injury. Compensation is paid equally in both cases.

(14) *Forms of Oath, Affirmation and Ordeal Customary among the Gikuyu*.—The following are more in the nature of commination services than oaths as the latter word is understood in the English language:—

(1) Kuringa Githathi, literally to strike a piece of iron-stone (?) known as "Githathi," i.e. to swear a solemn oath on a sacred stone.

(2) Ku-nyua muma, literally to drink an oath, i.e. to asseverate.

(3) Ku-ringa thenge, lit. to strike a he-goat and break his legs, and in so doing to utter certain comminatory warnings against offenders who transgress the tribal code.

The "Githathi" (as far as I can make out) is a dark brown or blackish ironstone. It is found in the trans-Tana dis-

tricts of Kenya according to one of my informants, but I have no means of testing his statements. It is pitted in formation and is said to be in the possession of some half score of Gikuyu in this district, including Kinguku wa Gathyu in Chief Kinyanjui's village, Chief Karanja wa Mariti and others. It is generally kept in a cave or hole in the rocks.

Mr. Scouten, of the Africa Inland Mission, is of opinion that "the githathi, while sometimes a stone, is evidently sometimes formed of other material; *i.e.* the different *ithathi* are of various composition. It is difficult to obtain reliable information concerning them."

The ceremony, which is a more serious one than "kuringa thenge," is carried out as follows:—

Two pointed sticks of the "mugeri" are struck into the ground and the "Githathi" is poised between them. The protagonist of the ceremony stands in front of the "githathi" and lays a switch of "mugeri" on the "githathi." He then invokes the vengeance of the latter on the offender, whoever he may be, whether a debtor who will not pay his debts or the seducer of a girl who refuses to pay compensation, or a man who has fraudulently acquired a shamba. The words used are "Arorio ni muma uyu wa githathi," "May he be eaten by this curse (or oath) of githathi." All the Elders of the neighbourhood are present and three goats (given by the man who invokes vengeance on the particular offender) are eaten by them. The oath is taken in a clearing made in the bush, inside a temporary grass booth in which the "githathi" is set up. The oath has to be repeated every day for seven days, meat and other food being consumed by the Elders daily. After seven days the principal actor is shaved, and, a fourth goat having been killed, he wears a "rukwaru." Owing to the fact that after conducting this commination service a man may not have intercourse with women for three months, a litigant generally gets an aged Elder to act in his place, the former providing the goats. These two eat the fourth goat. Finally another goat is taken to a "mundu mugu" (wise man), and the old man spits on the ground before him to indicate the fact that he spues out

the curses which he has invoked on another that they may not return on to his own head.

The offender who is the subject of the commination dies in a few months, unless he at once pays the debt of compensation due and provides the Elders with goats for a feast. My three informants, Gikuyu Elders, have all known men who died after being cursed in the above described way.

(2) Kunyua muma or kunyua thakame (blood).

This oath is ordered to be taken by the Council of Elders when they cannot settle a case. Refusal by a litigant to take it means that the case is given against him. The Gikuyu are somewhat ashamed of their ceremony and will not willingly describe it. There are different forms of the ceremony, of which the following is one. The two litigants sit on the ground opposite to one another with their legs intercrossed. Two portions of a banana stem, each about a foot long, are laid between them, in which a small hollow has been cut out to form a receptacle. In this is placed the blood of a goat, portions of the back of whose poll and heart, eyes and entrails, are cut into bits and kept ready to hand. One of the senior Elders present takes a little of this meat in his fingers, dips it in the blood, touches the Defendant with it and gives it to the Plaintiff to eat. The latter says, "Mburi chiakwa wi nachio; ndorio ni muma uyu utari nachio," literally "Goats mine you are with them; may I be eaten by oath this you not being with them." Defendant is then given bits of meat treated in the same way and says, "Ndiri na mburi chiaku; ndorio ni muma uyu ingiri nachio" (I have not your goats; may I be eaten with this oath if I am with them). Plaintiff then replies: "Tondu wi na mburi chiakwa, wakinya imera ithatu utakuete, ndorio ni muma uyu" (Because you have my goats if you reach three seasons without having died may I be eaten by this oath). To which Defendant answers: "Nie ndakua imera ithatu niukarihwo mburi chiaku ni chiana chiakwa" (I, if I die in three seasons, you shall be repaid your goats by my children).

If the Defendant dies within three seasons he is held to have owed Plaintiff the debt sued for. Otherwise, he did not. If he dies his heir pays the debt.

My informants deny that the Plaintiff pays Defendant the number of goats sued for as penalty for false accusation if Defendant survives.

A similar oath to prove his innocence is required to be taken by any man who is accused of seducing a girl, the particulars of which vary in detail from those described above and are too coarse for reproduction here.

(3) Kuringa thenge.

This ceremony, which consists in breaking the four legs and afterwards fracturing the skull of a goat which has been tied up and laid out on the ground, is performed before a full assembly of all male members of the community. It was frequently carried out in the old days before the Imperial British East Africa Company took over East Africa and when a raid by Masai or Kamba was imminent. The protagonist, who receives his orders from the Elders, is usually a bachelor Elder, one too poor to buy a wife. After everyone is assembled at this ceremony, and gathered in a circle around the principal actor, he squats on his haunches in front of the goat with a stone ready in his right hand. He then pronounces the commination against the person or persons thus denounced. For instance, if the ceremony is to warn young men not to drink "njohi," he says: "Aanake mangirega athuri, aanake mangirega maithe mao, aanake manginyua njohi, marokua ugwo," and suiting the action to the words he breaks the four legs of the goat which have been tied together with string. The meaning of the words is, "Young men, should they refuse to obey the Elders, or their fathers, or should they drink beer, may they die thus." These words are said several times (seven times, according to one of my informants), the skull of the goat being also fractured in the same way. The goat is either left where it is, or else (according to another story) put into a deep pit and covered up with earth.

Other words used in cursing are "Arora ugwo" (May he be lost thus), said as they throw away a stick; and "Aroharagana ugwo" (May he be scattered thus), said as they throw down a handful of sticks. The most common, however, is as above: "Arokua" (first person sing., "Ndokua").

After returning to their villages the young men sing a

kind of chorus, in which they pledge themselves to abide by the orders of the Elders and to take warning by the commination against the disobedient.

If the warning was disobeyed in the old prehistoric days, the goats of the culprit were forfeited and his hut burnt down. To-day milder measures prevail and the Elders fine him a few goats which they eat, and if he still remains obdurate he is reported to the District Commissioner.

Proof of innocence by consenting to have a red-hot knife laid on the tongue is voluntarily entered into by those who consider themselves unjustly accused. The knife is made hot by a "mundu mugo," or medicine man, and the protester first affirms as follows: "Ruhyu runjurage akorwo ndi mwichi" (May the knife kill me if I am a thief), or "Ruhyu runjine akorwo ndi mwichi" (May the knife burn me if I am a thief).

If the tongue is not burnt, the man is innocent. If his tongue is burnt, he pays.

Trial by ordeal of this kind is called "kuchuna kibiu."

Similarly the Gikuyu consent to have "muthaiga" (medicine) and "urogi wa mahuti" (magic grass) put into their eyes as proof of their innocence. If the suspect is a thief his eyes suffer, and he stands confessed as guilty.

(15) *Legal Procedure.—Constitution of Courts.*—Formerly both parties brought a "ndurume" (ram) to the Elders for a small case, two for a larger, and so on up to four. For a debt of ten goats or one cow, the fees are one ram from each party; for a debt of 20 goats or two head of stock, two rams from both litigants. For 40 goats or three head of stock, three sheep. For 50 goats or five head of stock and upwards, four sheep.

The headman of the district is first of all advised by the Plaintiff of the debt for which he wishes to sue Defendant. The former has previously entertained two Elders of his district with "njohi" made from his sugar-cane plantation, and commissioned them to collect his debt from defendant. This commission is called "Kiama." If defendant agrees, they bring back the live stock with them and drink more "njohi" together at plaintiff's village. If defendant re-

pudiates or refuses to pay the debt, the Elders return empty-handed. Two other Elders are then sent to defendant to bring his witnesses and assessors, as many as he pleases, and his sheep for court fees. The place of the session of council is in some open place halfway between the districts of the two litigants. Witnesses—for the plaintiff first and the defendant afterwards—are heard before the sheep is killed. They are kept out of earshot of the council before their evidence is taken. After having heard the evidence the Elders go to an adjoining place to deliberate. After settling the matter and eating meat they return to their original place of sitting. One senior Elder then delivers judgment before the parties, all natives of the vicinity being allowed to be present.

The party against whom judgment is given is allowed two days in which to pay the debt. Two Elders who have previously been entertained by the successful litigant go and fetch the live stock awarded by the judgment of the court. They return with two Elders of the defendant's village, and a goat contributed by the successful litigant is slaughtered and eaten. The affair is then at an end.

The council of Elders, if they fail to agree, can be increased by the addition of other "achiri" called by both parties.

An Elder or Headman of a district can settle single-handed all disputes arising within his own boundaries. As a rule, however, assessors are requisitioned. In the old days one Elder did not settle cases involving more than ten goats. As no claim for compensation ever exceeds 100 goats, this number is the utmost upon which Elders are called to adjudicate.

The amount of cattle stolen or raided has with its natural increase been known to amount to 50, according to one of my informants. In this case the defendant agreed "kuringa githathi" in making affirmation that he had no other stolen stock in his possession besides those he was returning.

Formerly there was no appeal from a council of Elders or from any single Chief, but to-day litigants, if they are not

successful, take their appeals to Courts presided over by Protectorate Magistrates. The fees allowed are those named above; Rs. 4/- is accepted instead of a "ndurume," or ram.

Punishments and penalties—Methods of enforcing same.

Formerly a litigant used to be ordered to increase his court fees for disobedience to an order of the council or delay in obeying its summons. If a Gikuyu refused to appear before a council or defied the Elders, the latter after due consultation raised their "mitirima," or staves, in the air, and cried, "'Ngania ' arokua; Ngai iromuuraga"; "'the person,' may he die; may God kill him." The Elders also cursed him, saying, as they brought their staves down to the earth, "Aroinama o"; "may he bow down thus."

The man cursed will die if he does not placate the Elders with a goat or sheep, in the consumption of which he joins. The Elders spit on the fat of the meat and say: "Ngai iromwenda na muka wake na chiana chiake chiothe matigakue": "May God love him and his wife and all his children that they die not." Taking off the curse is called "Kurogura." The man cursed wears a wristlet of the sheep's skin, and all his family with him.

To-day a man is reported by the Elders to the District Commissioner for disobedience, and not cursed.

In the compilation of the above notes I have had the advice and assistance of Mr. O. H. Scouten, Secretary of the Missions' Gikuyu Language Committee, whose knowledge of the Gikuyu is intimate and extensive.

H. R. TATE,
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