The Star.

JOHANNESBURG, JUNE 2, 1928.

THE LOUIS TRICHARDT CASE

In another column we publish a letter from Mr. Edward A. Rooth, of Louis Trichardt, who "introduces himself," to quote his own words, "as the attorney for the defence in the Roos case." After reading the letter over carefully we are at a loss to understand why Mr. Rooth wrote it. It can do neither himself nor his clients any good, and it throws no further light on the mystery of the death and burial of the unfortunate pioneer. Advised, Mr. Rooth starts with certain imputations against our good faith and other uncomplimentary statements, which would be intelligible if they emanated from a dog-pothouse, but which one does not expect from a reputable lawyer. He implies that our representative at the trial was instructed beforehand to write a misleading report in order to pave the way for our editorial comment and that in both the report and the comment there was a suppression of facts, distortion of statements and the insertion of deliberate falsehoods. Mr. Rooth says further that if the policy of this paper "entails stirring up racial feeling not only between the European inhabitants of this country but also so far as natives are concerned," it is the affair of the directors of the Argus Company and he realises that the editor of The Star is not "personally to blame." "What one does expect," he adds, "from a man in your position is honesty." We would not have considered it worth while giving publicity to these impudent, ignorant and puerile statements were it not that they do throw a revealing sidelight on the mentality of the writer of them.

As regards the trial at Louis Trichardt we will take Mr. Rooth's points in the order in which they are raised in his letter. First, he complains that we stated that the accused "chased" the deceased when "the word 'followed' would have given the correct impression." We commend to Mr. Rooth the old legal phrase "De minimis non curat lex," but since he is so insistent on trifles we would point out that the object of the accused was to catch the deceased and that consequently the "chase" was the more correct term to use. Secondly, we are accused of trying to harrow our readers' feelings by stating that the deceased's body was buried in an antheap whereas it was stated to have been found "lying in an anthear hole with his legs protruding—surely a very different thing from the picture which you have apparently succeeded in impressing on your readers' minds." If the "picture" of the anthear hole and the protruding legs impresses Mr. Rooth more favourably than the other one we have nothing more to say except that there is no accounting for tastes. Thirdly, we are accused of a "deliberate falsehood" in stating that the Crown witness was subjected to a severe cross-examination, and we are further accused of minimising discrepancies in the evidence. As regards the cross-examination we can only say that from the information in our possession we would have been justified in using a stronger word, and as regards the discrepancies we repeat that those reported to us were, in our opinion, of a comparatively minor character and did not necessarily invalidate the material portion of the witness's evidence. If we are correctly informed the particular instance given by Mr. Rooth "from memory" comes distinctly within the category of alleged discrepancies. Fourthly, we are accused of racialism in referring to the challenging of jurymen with English names. We only mentioned the incident because of the suggestion that counsel for the defence doubted the impartiality of those challenged. Five of the six jurymen challenged had English names, and were presumably of British extraction. The sixth, as our correspondent says, was not of British extraction—we understand he is Danish—and the misspelling of his name was due to an error in telegraphic transmission. With reference to the Englishman or Englishmen who were on the jury we may point out that counsel for the defence was under the law only permitted to challenge six jurymen and no more.

Mr. Rooth's remaining statements scarcely call for a detailed reply. We most emphatically declare that the charge should have been one of culpable homicide. We are perfectly aware that accused persons cannot be forced to give evidence on oath. The Crown cannot put them in the witness box, but the defence can and usually does put them there when the evidence so given would clear up a mystery and establish their innocence. We do not know whether the Roos brothers were prepared to give evidence or whether they were advised by counsel not to do so, but their failure to go into the witness box and make a full statement on oath counts heavily against them. With regard to the other evidence, including medical evidence, not forthcoming at the trial, we adhere to the opinions we have previously expressed. All the witnesses should have been called by the prosecution and the failure to do so confirms the widely held view that the case was unduly hurried. The court had been sitting through the week, although Mr. Pirow did not appear until Friday. The court adjourned at midday on Saturday and resumed on Monday morning to spend less than half a day over a murder charge. We do not blame Mr. Pirow or Mr. Rooth for this arrangement; the responsibility rests with the prosecution. But we do say with all possible emphasis that if the deceased had been a European and the accused non-Europeans it is inconceivable that the trial would have been conducted in the same manner or attended by the same result. That is the acid test of the sincerity of all this talk of even-handed justice.

In conclusion, we wish to say that we called attention to the Louis Trichardt case solely from a sense of public duty and because these cases of so-called common assault on natives by Europeans, often involving the death of the native, are becoming numerous. We think that the most effective check will be provided by public opinion rather than by the law. The prosecution in such cases, especially when they occur on farms or in other isolated places, is gravely hampered by the difficulty of obtaining evidence and also by the jury system which, when the members of the jury belong exclusively to one race, is quite unsuitable for the trial of such cases. In the Louis Trichardt trial the jury system did not affect the issue, except perhaps indirectly on the assumption that the Crown preferred to accept an agreed plea of common assault rather than risk a verdict of not guilty on the charge of culpable homicide. There have been many other cases, however, in which the jury system has been directly responsible for a miscarriage of justice, and we sincerely hope that the Prime Minister will consider some modification of the system in cases involving Europeans and natives. The Louis Trichardt tragedy has made a definite appeal to public opinion and to the individual consciences. Most of the letters we received for publication were couched in far stronger terms than would appear from the published text. Our own comment was deliberately restrained and in this respect presents a striking contrast with the tone of the letter written by Mr. Rooth. On this point we are content to leave the public to judge between us. The best reply to the dirty insinuation—more worthy of a mental deficient than of a responsible citizen—that our real motive was to stir up racial strife between Europeans, and between European and natives, is the fact that some of those who have endorsed our attitude and protested most strongly against the conduct of the Roos brothers have been Dutch-speaking South Africans whose patriotism is beyond suspicion. Such matters of conscience and conduct are far removed from any consideration of race, or colour, or creed, or politics. Callous people, whether they act brutally themselves or attempt to gloss over the brutal actions of others, are to be found unfortunately among all classes, in every country. Neither humanity nor inhumanity is sectional or racial. It is a question of instinct and conscience, and we believe that the widespread protests evoked by the Louis Trichardt case are of good augury for the future. So far from having an injurious effect on the mind of the natives they go far to counteract the bad impression produced by such cases and to prove to the non-European population that all the best elements of European opinion in South Africa are in favour of justice being done regardless of a man's position, or race, or colour.

The Star.

JOHANNESBURG, MAY 23, 1928.

"COMMON" ASSAULT

There are several features in the Louis Trichardt case—reported in Monday's Star—which are unsatisfactory from the standpoint of those who think that callous and brutal conduct should be severely punished, irrespective of the victim's position and the colour of his skin. In this particular case two brothers named Roos—who, although arrested on a capital charge, have been out on bail for some considerable time—were charged with the murder of Andries, a native piccanin, it being alleged that the latter ran away from the service of one of the accused, that the brothers chased him in a Cape cart, captured him and beat him with a sjambok as a result of which he died, the body being subsequently found buried in an antheap. The defence, conducted by a distinguished King's Counsel, was that the piccanin was never flogged, but had died of misadventure, "probably heart failure," and that the accused only gave him a "flick or two." The only witness put forward by the Crown was a piccanin, who had run away with Andries and was instrumental later in enabling the police to locate his body. Under the usual sort of searching and severe cross-examination this witness, who, after all, was only a child, departed in certain respects from the statement he had originally made. The discrepancies, as they have been reported to us, were of a minor character and such as might easily have been made in the circumstances by an older witness and a European at that, but in the opinion of the Crown Prosecutor they justified acceptance of the plea of common assault, entered by Mr. Pirow, on behalf of his clients. Mr. Justice Solomon expressed his agreement with this course on the grounds that the piccanin's evidence was unreliable. The judge's only comment on the crime committed by the accused was a mild admonition that "they must not take the law into their hands." He sentenced the elder brother to a fine of £50 or four months' imprisonment and the younger brother to £25 or three months', giving each of them two months within which to pay the fine.

Certain facts were admitted. It was admitted, on behalf of the accused, that they had caught these two native children and tied them to the disselboom of the cart in front of the mules and had driven them thus with a "flick or two" as they ran. It was admitted that one of the piccanins, while being subjected to this treatment, collapsed and died, and that the accused took his body and buried it in the manner described. To the layman this would seem to be a clear case of culpable homicide. The judge apparently thought otherwise. He is reported to have said that "the jury would never have been able to bring in a verdict of guilty of murder or of culpable homicide, unless they were assured of the truth of his (the piccanin's) evidence. Once he had proved, as he had done, to be unreliable they could not have convicted accused on his evidence." Why then convict them at all? It would have been quite in accordance with South African precedent for the jury to have acquitted them. And while on the subject of the jury we would note, in passing, that for some reason best known to himself, every juryman bearing an English name was challenged by counsel for the defence. Is it suggested that English-speaking South Africans are less fair-minded or more biased in considering cases involving Europeans and natives than other members of the community? The composition of the jury, however, was in this instance of no relevance because, as we have said, the defence, notwithstanding the "unreliability" of the single Crown witness, were prepared to plead guilty to common assault. If, in the circumstances described, they were prepared to plead guilty to the charge of common assault we are at a loss to understand the judge's direction to the jury. We were under the impression that, on the admitted facts, the charge should have been one of culpable homicide. It is conceivable and even probable that the jury would have failed to convict. That would have been their responsibility. The duty of the prosecution was to have proceeded with a charge of culpable homicide, regardless of the possible or probable attitude of the jury.

We have referred to the elimination of all jurymen bearing English names. There are other points to be noted in this mysterious and repulsive affair. Even if the Crown witness's evidence had been entirely rejected, why were the accused not called upon to account for the piccanin's death, which, on their own admission, followed upon an illegal action on their part? Assuming that they were not responsible directly or indirectly for the piccanin's death, why were they not asked to state on oath their reason for burying the body secretly and informing no one of what had occurred? Why were various other Crown witnesses, who were to have been called upon to corroborate parts of the piccanin's evidence, not put into the box? Is it not possible that their evidence might have substantiated or to some extent corroborated certain material portions of his story and counterbalanced or explained the discrepancies? There was no medical evidence called as to the condition of the body when found, or whether there were any indications of ill usage. We are very reluctant to seem to criticise the Bench, and especially so distinguished an ornament of it as Mr. Justice Solomon, but his remark that "full justice" had been done is in a sense a challenge. We have only one comment to make. We have made it before and we will continue to make it when occasion arises, because it goes to the root of the administration of justice and of racial relations in this country. If the victim of this "common" assault had been a European child and the accused natives, would the trial have been conducted as this one was, and would the guilty men have been given the option of a fine and two months in which to pay it? It is not as though this Louis Trichardt case were a rare occurrence. Similar offences have become frequent within recent years, and have provoked less public protest than at any time during the past 40 or 50 years.

LOUIS TRICHARDT CASE

STATEMENT BY ATTORNEY FOR DEFENCE

CHILD'S BODY PLACED IN ANT-BEAR HOLE

To the Editor of The Star.

Sir,—Perhaps I should introduce myself as the attorney for the defence in the Roos case.

When I read the report on the Roos case in your issue of the 21st inst., I noticed various discrepancies in the evidence and proceedings generally, but I attributed that to a mistake on the part of the reporter. It would now appear that the case was reported in this particular manner to pave the way for your leading article which appeared in your issue of the 23rd inst.

One realises that you are not personally to blame; you are there to carry out the policy of your paper, and if that entails stirring up racial feeling, not only between the European inhabitants of this country, but also so far as the natives are concerned, that is the affair of your directors and it is not for you to reason why. What one does expect from a man in your position is honesty, and I say that both the report and the leading article have deliberately placed the evidence before the public in an entirely misleading light; facts have been suppressed, statements have been distorted, deliberate falsehoods have been inserted and you have even stooped to juggle with words.

Take for instance the opening paragraph in both articles. There it is alleged that the accused "chased" the deceased in a Cape cart and captured him.

None knows better than you how the meaning of a whole paragraph can be changed by the alteration of a single word, and what you have done is to use the word "chased" when the word "followed" would have given the correct impression. What actually was alleged was that the accused had followed the deceased and the first Crown witness for a distance of some 27 miles and then overtaken them. You have deliberately used the word "chased" and at once conjured up in the minds of a public only too glad to believe the worst a picture of two fugitive piccanins being wildly pursued through the bush by two brutal Europeans.

Then we have your statement that deceased was buried in an antheap. No wonder you have agonised letters from correspondents wondering whether the deceased was dead at the time of burial, and one at once imagines the torture that would follow a burial of that kind with recollections of stories read in childhood of the manner in which victims were tortured by being eaten alive by ants. With very little imagination, the readers' feelings are brought to the required pitch. The antheap theory is a figment of your brain, because neither at the preparatory examination nor at the trial was the word "antheap" mentioned. What the Crown witness said was that the deceased was found lying in an "antheap" hole with his legs protruding—surely a very different thing from the picture which you have appa.ently succeeded in impressing on your readers' minds!

Then you go on to set forth that under the "usual sort of searching and severe cross-examination" the Crown case collapses because of certain "alleged" discrepancies between the evidence given by the Crown witness at the preparatory examination and his story in court.

Why use the word "alleged" if it is not intended to convey the meaning that the discrepancies did not, in fact, exist, or if they did exist were merely a matter of opinion, when not only was your representative in court during the trial, but he actually called at my office after the case and I gave him a list of a num.er of the points in which the Crown witness had departed from his story given at the preparatory examination.

As a matter of fact the discrepancies appeared before the cross-examination ever started. The witness mentioned went into the box at a few minutes to 9 and the Court adjourned at 11 o'clock. The evidence in chief, I think, took up something like an hour and 20 minutes, and the piccanin had been cross-examined for about 30 minutes when it was abundantly clear that he was not speaking the truth, and, although the cross-examination had at that time only been confined to discrepancies in the evidence, an adjournment was asked for to give the witness an opportunity of explaining where he was sitting on the cart when he saw what he alleged that he had seen.

On the piccanin giving the required demonstration at the court door where the cart was awaiting him, it transpired that the back of the cart was some 10 inches or more above his head and that from the position in which he showed himself as having sat during the whole of the journey, it was quite impossible for him to have seen what was taking place in the cart where the deceased was alleged to have been sitting.

As to the severity of the cross-examination, that is another deliberate falsehood contained in your articles. The piccanin was not cross-examined severely; indeed, it was not necessary to do so.

It would take up a good deal of time and space to repeat here what the actual discrepancies were, but let me give you just one sample.

In cross-examination at the preparatory Jack stated that he had, at the time of the alleged assault, received three blows with the sjambok from the accused. (The sjambok produced and alleged to have been used was the butt end of what was once a typical sjambok, was, perhaps, 18 inches long and about an inch and a half in diameter at the thick end and an inch and a quarter in diameter at the thin end.) This answer led to the question, "Had you any marks?" and the reply was to the effect that Jack did not know whether he had marks or not.

At the trial when asked whether he received any blows at the time in question, he replied that he had received two blows and that he had actually shown the marks to the doctor.

Speaking from memory, this was one of the instances where he denied having made a statement attributed to him at the preparatory examination.

Suffice it to say that not only was the story of the thrashing of the piccanin told at the preparatory difficult to believe because it was almost physically impossible to have beaten the piccanin in the position in which he was alleged to have been lying, but the manner of the telling was such as to create only disbelief in any fair mind. According to Jack, the deceased's arm was tied to the crossbar of the cart with a riem, and that three of the men, that the wheel of the cart went over his left leg, that he lay with his legs between the two wheels under the hindquarters of the mule, that he remained in this position all the time he was being beaten and that he was beaten over the legs and stomach.

When the only eye-witness went into the box at the trial to repeat his story he was unable to do so with any degree of consistency. Not only did he contradict his former story on material points, but when asked the reason for these contradictions actually denied that he had ever made the statements which the magistrate had reduced to writing at the preparatory examination.

Then you go on and you make another false statement. You say: "Every juryman bearing an English name was challenged by the counsel for the defence." This is not true, there were other jurors who not only bore English names but actually were Englishmen, on the jury who were not challenged.

In your endeavour to stir up a controversy, regardless of whether you decided feel to the flame of racial feeling, which unfortunately appears to exist, which has been revived during the last 12 months or so, you suppress the fact that of the six jurors who were challenged at least one was Dutch-speaking, although probably of English extraction, and you have actually misspelt one of the names—that of a Danish gentleman—in such a way as to make it appear an English name.

If, as you say, the composition of the jury was of so importance why drag in this aspect of the case, unless you did it deliberately with the intention which I allege?

You make the point that, notwithstanding the unreliability of the Crown witness, the accused were prepared to plead guilty to common assault.

It would have been fairer and more honest of you to explain to your readers that in opening the defence counsel for the defence explained that accused admitted that they had tied the piccanin in front of the cart and had caused him to run a certain distance.

[The admission was mentioned both in the report and in our comments on it.—Ed.]

It is, of course, unnecessary for me to tell you that that is tantamount to a plea of guilty of common assault. But you are careful not to tell your readers this, and you deliberately create the impression that although the Court had expressed the view that the Crown witness was unreliable, yet that in fact he was not.

You complain that it is your impression that on the admitted facts the charge should have been one of culpable homicide.

I do not know what your legal qualifications are, but I cannot believe that you are bona fide when you say you believe that the charge should have been one of culpable homicide.

Let us suppose that the accused had, instead of tying the piccanin to the cart, administered a moderate whipping, and that the piccanin had, during the whipping, died of heart failure, would you still have found the accused guilty of culpable homicide? Surely not.

You go on, like a voice crying in the wilderness, to ask why the accused were not called upon to account for the piccanin's death, why the accused were not asked to station oath their reason for burying the body. Surely you know that an accused person cannot be put in the box by the Crown! Surely you know that every accused person is presumed to be innocent until proved guilty!

Then you inquire why various other Crown witnesses who were to have been called upon to corroborate parts of the piccanin's evidence were not put in the box. So far as I know, there was only one Crown witness who could have given direct evidence at all material to the issue, and his evidence contradicted that of the first Crown witness on material points.

Had you taken the trouble to read a report of the evidence given at the preparatory examination it would have been abundantly clear to you that one of the difficulties of the Crown was the entire lack of evidence apart from the piccanin without any material shown.

There was only one question at issue, and that was—could the witness Jack be believed when he swore that accused had thrashed the deceased to death with a sjambok or could he not? And I think everyone in court came to the conclusion that the piccanin could not be believed, even before his evidence in chief came to an end.

You go on to point out that there was no evidence called as to the condition of the body when found, or whether there were indications of ill usage.

If you had cared to have troubled to accept my offer of a copy of the preparatory examination you would have seen that the medical evidence was to the effect that there were no indications of violence on the body, and that being the case what purpose could it have served to have laboured the point further?

I hope when the question of the publication or non-publication of this letter arises your vaunted sense of justice and fair play will not, for the time being, be dormant.

ED. A. ROOTH.

May 30.

[We reply to this letter in our leading columns.]

To the Editor of The Star.

Sir.—At the opening of the court at Louis Trichardt the Judge was informed that they would not get through all the cases for him to leave by about May 21 unless he held night sittings. The Court did by sitting Tuesday, Wednesday and Friday nights. Thursday there was no Court sitting. Saturday midday the roll was finished. The Judge knew he had to leave by Monday's midday train, to be in time for another case in Johannesburg on Wednesday, May 23. Still there was no Court sitting on the Saturday afternoon, and the Roos brothers case was the only case left on the roll. Mr. Pirow previously arranged with the prosecution to bring the Roos case on as the last case on the roll. I may state that Mr. Pirow arrived here on the Friday, so that he was here in case the Court wanted to proceed with the Roos case on the Saturday afternoon.

The Court must have known that there were several witnesses in the case, and that it could not get through all the witnesses by 1 o'clock that day and as it happened the principal witness was kept in the box until after 11 o'clock, when the Court adjourned for tea, and inspection of the cart, etc. After this it was impossible to call the other five witnesses seeing that the Judge had to catch the 2.30 train, for his next case on the Rand.

Under these circumstances, the impression is that the prosecution rightly or wrongly, neglected its duty, not alone in leaving this important case for the very last, knowing that the Judge had to leave on Monday midday for duty elsewhere, but also for not calling the other important witnesses for the prosecution.

I leave it to you to think whether such procedure is in the true interest of justice.

If one Judge, in the face of the many judges we have, is given more than he can reasonably carry through in the full interest of justice, then surely he should have the power to transfer such a case to the next or nearest circuit sitting, where it can be dealt with on its full merits.

I am giving you this information, seeing that you have interested yourself in the matter on behalf of justice, for which we thank you.

ONE WHO KNOWS.

To the Editor of The Star.

Sir,—One of the astonishing things which was allowed to pass, as far as I know, unnoticed, in the "trial" of the Roos brothers was the fact that the accused admitted certain things (which at the preliminary examination they denied) of which they were accused by the piccanin. The police acted on information given to them by the piccanin. They found the body through evidence from the piccanin. So far the whole of the piccanin's evidence was believed and found to be accurate. The police even found the blanket of the dead piccanin. Who gave them this clue but the piccanin still left alive? Under what possible circumstances could the piccanin's evidence after this be ignored?

NORTHERN DISTRICTS.

To the Editor of The Star.

Sir,—It is with the utmost astonishment that I and several other settlers in this northern area have read the result of the Louis Trichardt case. This is one of a miscarriage of justice of a most marked type. The fair-minded and convincing comments in your leading article of May 26 will be much appreciated by every moderate-minded European in the Union. Why was the presiding judge's venue changed to another sphere when he would have had a somewhat similar case to try at the next circuit (Pietersburg)? This is what many of us cannot understand!

I have just read the letter of H. D. Tyamzashe in your paper. He is wrong about the case of Pelser in the Burghersdorp case. Pelser was never brought to trial. He cold-bloodedly shot a native on his farm close to the town. This was in the 80's. As soon as the rumour got abroad that he was to be arrested a large number of farmers came hurriedly into town in their carts and on horseback, bringing their rifles with them, and it was common talk amongst them that they would not permit Pelser to be taken to gaol. The magistrate, faced with this threat, apparently communicated with Capetown, and the Government took no further steps in the matter. I was resident in Burghersdorp at the time and am sure of my facts. But the Rev. Mr. Don, of Kingwilliamstown, wrote to the Press "that the native's blood cried out to heaven for justice" and averred that Pelser should be tried for murder. Pelser read this letter and ill-advisedly elected to sue the reverend gentleman for criminal libel. The whole of the facts connected with the shooting of the native were brought out in the E.D. Court, and the judge (Sir Jacob Dirk Barry), dismissing the case, remarked that Pelser might consider himself fortunate that he had not been tried in a criminal court.

LOW VELD READER.

PRIME MINISTER'S ATTITUDE

SPEECH IN HOUSE OF ASSEMBLY

During the week the Prime Minister referred to the Louis Trichardt case in the House of Assembly. He dealt with the matter on a question raised by Mr. Marwick on the third reading debate on the Appropriation Bill. A report of what the Premier said appeared in The Star's Parliamentary report in Thursday's issue. Following is Hansard's version of the references made by the Prime Minister, and The Star's report is republished:—

The Prime Minister, replying to references to the Louis Trichardt case made by Mr. Marwick, said:—

The case, if it were true, must be offensive to all of us. I allude to the unfortunate occurrence as alleged of a young kafir who died somewhere in the district of Pietersburg. I don't think, if such a thing really took place, that we can find terms strong enough to express our indignation, and I don't know whether there is a punishment severe enough for one guilty of such a thing. I want to add that the facts mentioned by my hon. friend in no wise justify him in the conclusions to which he has come that the time has arrived for a new system of jurisprudence; in other words, to think of modifying or abandoning the jury system. I agree that it is not entirely a desirable system where we have to do with questions between one race and another, and I have no doubt in time we shall pass to a more satisfactory application of the law in such cases; but the facts in this case do not justify putting the present system in a bad light. The only circumstance on which the hon. member bases his opinion is that the public prosecutor, while the case was proceeding, because of certain evidence or lack of evidence, allowed himself to abandon the charge of murder and change it to assault. That had nothing to do with the judge and jury. I want to point that out in order not to put the system in a bad light.

THE STAR'S REPORT

The Star's report of the above was:—

Replying to Mr. Marwick, who had raised the question of the recent case in the Pietersburg district, where farmers originally charged with the murder of a native youth were finally found guilty of common assault, the Prime Minister said it was an example of cases which, if truly understood, caused no end of surprise within the breast of every decent man. There had certainly been cases of miscarriage of justice, and although he would not say that this was actually such a case, he would say that when these cases occurred it made a man's blood boil. There would be no public meet had enough for a white man who abused his position, but he did not think the particular case the hon. member quoted justified his conclusions. In this case it was the public prosecutor who decided to try to get a conviction on a reduced charge and neither judge nor jury entered the case. The Government had shown that it did not place explicit faith in the jury system in civil matters, and, indeed, it was held that the jury system often made a farce of cases between race and race. (Hear, hear.) Perhaps it would be possible to introduce reform in this matter in the not too far future, although this particular case was certainly not an argument against the jury system.

NATIVE RESOLUTIONS

At a meeting of the Krugstad members of the I.C.U. the following resolutions were passed:

(1) That this meeting whole-heartedly endorses and supports the resolutions passed by the I.C.U. meeting which was held in Johannesburg on May 28, 1926 in connection with the Roos brothers' case at Louis Trichardt.

(2) That it wishes to place on record its appreciation and gratitude to those European lovers of justice who have shown their sympathy towards natives by communicating to the Press their resentment of the judgment delivered in this brutal murder of a native piccanin.

(Continued in next column.)

A CHARGE OF MURDER FAILS

CASE AGAINST TWO FARMERS COLLAPSES

TRAGIC DEATH OF PICCANIN

FINES IMPOSED FOR "COMMON ASSAULT"

FROM OUR OWN REPRESENTATIVE.

LOUIS TRICHARDT, Monday.—Two well-known local farmers appeared before Mr. Justice Solomon and a jury at Zoutpansburg Circuit Court to-day, charged with the murder of a native piccanin

The accused are brothers, named Paul Jacobus Roos and Machiel Petrus Roos.

It was alleged that the piccanin had run away from the service of Michael, that the brothers chased him in a Cape cart and captured him, and beat him with a sjambok, as a result of which he died. The body was later found buried in an antheap.

The case collapsed with dramatic suddenness, after the chief witness, another piccanin, who was present, had undergone a searching cross-examination on alleged discrepancies between his story at the preliminary examination and to-day.

JURYMEN OBJECTED TO.

Advocate O. Pirow, K.C., district representative in the House of Assembly, and Advocate P. Rissik (instructed by Mr. Edward Rooth) appeared for the defence, and Mr. H. C. Heather for the Crown.

The accused took their places in the dock with the utmost complacence, and exchanged smiling greetings with friends in court. The brothers are aged 39 and 21 respectively.

At the outset Mr. Pirow challenged six jurymen—Messrs. Scott, Barker, Lawrence, Gilbert, Smerting and Humphrey.

The Crown Prosecutor having outlined the case against the accused, Mr. Pirow stated that the defence would be that the piccanin was never flogged, but that he died of misadventure, probably heart failure, and that the accused only gave him a "flick or two."

WHY THEY RAN AWAY.

Jack Kanakana, a piccanin, told how he and the dead Andries had been engaged at Louis Trichardt by Machiel Roos to work on the farm for 6s. a month each and food. Witness went to work for Machiel Roos and Andries for the Roos's father.

After working about 20 days on the farm the two piccanins ran away together. They left early, before sunrise, and by midday were near Waterpoort.

The piccanin then told how they were overtaken and caught by the two accused, who came up in a cart drawn by two mules. The Roos's asked them why they had run away, and witness answered that it was because Andries was always being beaten. The accused then tied the piccanins' hands behind their backs.

LASHED AS THEY RAN.

Later they were tied to the boom in front of the cart and slightly in front of the mules, witness by the left wrist and Andries by the right wrist. The accused then got into the cart and drove off. Paul Roos was driving and had a sjambok in his hand, and hit the piccanins as they ran. After running some time Andries fell down.

The witness estimated the distance they had run as about as far as from the court to the railway station—about four miles.

Both the accused got out of the cart. The wheel of the cart was on Andries leg and Andries cried "You's killing me."

BEATEN BY BOTH.

The accused pulled the wheel off his leg, and Paul Roos then took the sjambok and started to beat Andries. Afterwards Machiel took the sjambok and again thrashed Andries, and when he had finished Paul Roos thrashed him again.

All the time Andries was being beaten he was on the ground. While Paul Roos was beating him he was crying aloud, but when Machiel took the sjambok and hit him he was only groaning. The thrashing had been on Andries body, but accused had also hit him on the head.

When they had finished thrashing Andries they picked him up and put him in the cart. Witness also got in the cart and accused drove off.

"Andries was lying in the cart," said witness. "He was groaning, but did not move. He looked as if he was going to die."

Presently they stopped and witness was sent to get some water. When he returned the accused tried to make Andries drink the water, but he could not. The whites of his eyes were showing.

The accused told witness to get back in the cart and they drove on again. Presently the cart stopped again and the accused told witness to get out and to walk on. He did so and the two Roos's remained with the cart and Andries.

Presently the cart caught him up again. Andries was not in the cart, but his jacket and blanket were there. The accused told him that Andries had run away.

After this said the witness they went back to the farm and started working again. Some time later witness ran away when he had been sent to look for donkeys. He came to Louis Trichardt and found his uncle. Next day he went to the police and told them what had happened.

CROSS-EXAMINATION.

The witness was cross-examined at length by Advocate Pirow. He denied strenuously that the two accused had used a light whip and mentioned that a sjambok had been used. He stated that when he and Andries had been tied to the boom of the cart they had to run fast as they could otherwise they would be trampled by the mules.

Asked what accused said to Andries when they struck him, witness replied "They did not speak to him—they struck him to kill him."

The witness was subjected to a searching cross-examination regarding certain alleged discrepancies in the evidence given at the preparatory examination and that given in court to-day. A certain statement on the preparatory examination record he denied having made and others he qualified.

Eventually the Court adjourned in order that witness should demonstrate on a cart which was outside the court how he had seen the alleged flogging of the deceased when he was supposed to be sitting at the back. The judge, counsel and jury went outside to watch the demonstration, but it was found that from the position in which witness said he was sitting it was not possible for him to see what was going on in front of the cart.

A CONSULTATION.

On the resumption of the Court Mr Heather, crown prosecutor, told the judge that he had consulted with Mr Pirow, who was prepared to enter a plea of guilty of common assault on behalf of his clients, and the crown prosecutor said he felt inclined to accept this plea.

"I feel justified in doing this," he

(Continued in column 6.)

(Continued from column 5.)

said, in view of the fact that the chief witness has been rather tied up in cross examination.

Mr Justice Solomon said that there was no doubt that witness had made serious departures from the evidence he gave before the magistrate. The piccanin had been the only witness who saw what took place, and the jury would never have been able to bring in a verdict of guilty of murder or culpable homicide unless they were assured of the truth of his evidence. Once he had grieved, as he had done, to be unreliable, they could not have convicted accused on his evidence.

The accused had admitted having tied deceased up and having given him a few flicks with the whip, so that the judge would have directed the jury to return a verdict of common assault. He thought that as counsel agreed to this course full justice would be done in returning a verdict of common assault. He directed the jury accordingly.

FINES IMPOSED.

After the verdict had been returned the judge addressed the accused and pointed out that they must not take the law into their own hands. He ordered Paul, the elder of the brothers, to pay a fine of £50 within two months or go to gaol for four months. The other brother was fined £20, to be paid within two months or to go to gaol for three months.