

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Oman-
hene F. W. Q. Akuffo and others v. Kwabina
Yerenchi, from the Supreme Court of the Gold
Coast Colony ; delivered the 20th June 1907.*

Present at the Hearing :

LORD ASHBOURNE.

LORD MACNAGHTEN.

LORD COLLINS.

SIR ARTHUR WILSON.

[*Delivered by Lord Ashbourne.*]

This is an Appeal by special leave from a Judgment of the Supreme Court of the Gold Coast Colony in favour of the Plaintiff (the present Respondent), who was not represented by Counsel before their Lordships.

The Appellant Akuffo is the Omanhene, or Head Chief, of a considerable area in the Eastern Province of the Gold Coast Colony, and recognized under the Gold Coast Native Jurisdiction Ordinance, 1883, as exercising jurisdiction over natives within such area in his own tribunals in reference (*inter alia*) to the ownership of lands.

The Respondent is a native, subject to the Omanhene's jurisdiction, the head of whose family was Ahin Kra; and he had a dispute with another native family as to certain land within the Omanhene's jurisdiction. The other claimant "swore the Omanhene's oath" upon the Respondent, which put the Respondent to the choice of leaving the land or of litigating as to his title in the Omanhene's Court. The Omanhene was informed that the oath had been disregarded, and directed the Respondent to be

brought before him by his officials, which was done, and the Respondent was detained in custody for four days. The Respondent does not appear to have been desirous of speedy bail, and his advisers transferred the question in dispute from the Omanhene's Court to the Supreme Court of the Gold Coast Colony, under Section 22 of the Ordinance of 1883.

Under these circumstances the Respondent instituted an action in the above Court against the Appellants (the Omanhene and his officials) for assault and false imprisonment, claiming 500*l.* damages. The defence was in substance that all that had been done was justified by native law and custom, and took place in the reasonable and rightful exercise of the Omanhene's jurisdiction. The case appears to have been strenuously fought, though the Omanhene did not avail himself of the assistance of Counsel. Mr. Justice Smith, who tried the action in the Supreme Court, gave Judgment in the Respondent's favour for 50*l.* and costs.

The Appellants appealed to the Full Court and, according to the Petition upon which special leave to appeal to His Majesty in Council was granted, "the principal ground of appeal was " that the said Judgment was entirely against " the weight of evidence, and the matter most " discussed was whether the message requiring " the Respondent to attend the Omanhene's " Court for disregarding the oath was com- " municated (as native custom requires) to Ahin " Kra, the head of the Respondent's family, or " whether no notice was given to the said Ahin " Kra."

The Chief Justice was strongly in favour of allowing the appeal, but Mr. Justice Smith adhered to the decision he gave at the trial, and in this he was supported by Mr. Justice Purcell.

Their Lordships, after much consideration, have been compelled to yield to the criticism

and arguments of the learned Chief Justice. They cannot, however, refrain from expressing their regret that the Chief Justice, in pronouncing his opinion, should have used language calculated to give pain to a colleague of great experience, who was called upon to try a difficult case under embarrassing circumstances, and who certainly displayed extreme patience and an evident desire to do justice. The fact that the Omanhene dispensed with the aid of Counsel, who might have formulated appropriate requisitions and objections, deprived the learned Judge of an assistance often of great value. The fact that there was also a summons for trespass in addition to the oath procedure about the same time may have led to some confusion. Their Lordships regard all the probabilities as strongly supporting the case of the Appellants, as they cannot see that the Omanhene had any motive, direct or indirect, for departing from the native usages, with which he was familiar, and which there was abundant evidence to show were complied with.

Their Lordships will therefore humbly advise His Majesty that the Appeal ought to be allowed, that the Judgment of the Full Court, dated the 24th July 1905, and the Judgment of Mr. Justice Smith, dated the 20th February 1905, ought to be discharged, and that instead thereof Judgment ought to be entered for the Defendants in the action with costs in both Courts. There will be no order as to costs of this Appeal.

