

Privy Council Appeal No. 82 of 1914.

Thomas Harrison Odonkor - - - *Appellant,*

v.

Konor Emmanuel Mate Kole and others - *Respondents.*

FROM

THE SUPREME COURT OF THE GOLD COAST COLONY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 8TH JULY 1915.

Present at the Hearing :

LORD DUNEDIN.

LORD SUMNER.

LORD SHAW.

SIR EDMUND BARTON.

[*Delivered by* LORD DUNEDIN.]

The plaintiff in this case sought a declaration of his right to act as Chief of Kpong and alternatively for 2,000*l.* as damages for wrongful removal from that office and position. He summoned five Native Chiefs as defendants, they being the persons who had deposed him.

The defendants appeared, and, producing a certificate by the Secretary for Native Affairs in the Gold Coast Colony, which declared that the plaintiff had been deposed from his office as Chief of Kpong according to native custom, and that such deposition had been confirmed by the Governor of the Colony, craved the dismissal of the suit. Counter affidavits were lodged on both sides, and after argument thereon the Judge dismissed the suit, but granted leave to appeal. The appeal was taken to the Full Court of the Supreme Court of the Gold Coast Colony, and was dismissed. The appeal is now taken to this Board.

By Section 4 (1) of the Chief's Ordinance, 1904, it is provided :—

“ Any head chief or chief deposed from his office in accordance with native custom, and whose deposition shall be confirmed by the Governor by writing under his hand, shall be deemed in all Courts of the Colony to have been lawfully deposed.”

Their Lordships have no doubt that the Judge of first instance was entitled to dismiss this suit upon production of a defence which was instantly verified, and which was a complete answer to the suit.

The plaintiff's Counsel put his arguments under two heads : He said, first, that the plaintiff had been irregularly deposed, and craved to be allowed to prove this allegation. Now, the plaintiff could only be irregularly deposed if he was not deposed according to native custom, and if there were no sections of the statute as already and after quoted, an averment that he was not deposed according to native custom would be relevant to go to proof. Section 4 (1) has been already quoted. Section 7 of the same Ordinance is as follows :—

“ A statement signed by the Secretary for Native Affairs declaring that any head chief or chief has been elected and installed or deposed shall, without proof of signature, be conclusive evidence that the election and installation or deposition of such head chief or chief, as the case may be, was in accordance with native custom and has been confirmed by the Governor.”

In other words the legislature has thought fit to take away from the Courts any power of enquiry into such a matter. If the plaintiff was irregularly deposed his remedy lay in opposing the confirmation before the Governor.

The plaintiff's Counsel said, in the second place, that the plaintiff was a person to whom the Ordinance did not apply. Now the Ordinance, after defining “ head chief ” as a ruler not subordinate in jurisdiction to any other ruler, goes on to define “ chief ” as a ruler subordinate

in his jurisdiction to a head chief. The Court had before them the affidavits of both parties, from which it appeared that the plaintiff did not deny that he was appointed by the predecessor of one of the defendant chiefs, that he had exercised jurisdiction as a ruler, held a court and taken fees. Indeed, it is the deprivation of his office and the loss of further fees that he complains of. It seems, therefore, idle to contend that he was not a ruler, and the Court which had an inherent jurisdiction so to find held that he was one under the Statute. Whether he was subordinate, as seems probable, to the chief who appointed him or not, matters not. If he was, he was a subordinate chief, if he was not, he would only then be a head chief, and equally subject to the Ordinance.

Their Lordships will, therefore, humbly advise His Majesty to dismiss the appeal with costs.

In the Privy Council.

THOMAS HARRISON ODONKOR

v.

KONOR EMMANUEL MATE KOLE
AND OTHERS.

DELIVERED BY LORD DUNEDIN.

LONDON
PRINTED BY EYRE AND SPOTLISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1915.