

62, 1948

No. 50 of 1944.

In the Privy Council.

UNIVERSITY OF LONDON
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INSTITUTE OF ADVANCED
LEGAL STUDIES

ON APPEAL
*FROM THE WEST AFRICAN COURT OF APPEAL (GOLD
COAST SESSION).*

4552

BETWEEN

NKWANTAHENE NANA KWAME BOAKYE TROMU II
substituted for NANA ADU KOFI III (on behalf of the
Stool of Nkwanta) (Plaintiff)

Appellant

AND

BECHEMHENE NANA FOSU GYEABUOR II (on behalf of the
Stool of Bechem) (Defendant)

- *Respondent.*

RECORD OF PROCEEDINGS.

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In the Privy Council.

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL GOLD COAST
SESSION.

BETWEEN

NKWANTAHENE NANA KWAME BOAKYE
TROMU II substituted for NANA ADU KOFI
III (on behalf of the Stool of Nkwanta) (Plaintiff) *Appellant*

10

AND

BECHEMHENE NANA FOSU GYEABUOR II (on
behalf of the Stool of Bechem) (Defendant) *Respondent.*

RECORD OF PROCEEDINGS.

In the Asantehene's "B" Court.

No. 1.

CIVIL SUMMONS.

(Sgd.) J. B. PREMPEH

for ASANTEHENE.

*In the
Asante-
hene's
"B"
Court.*

In the Divisional Court of Asantehene, Kumasi.

20 NKWANTAHENE ADU KOFI III Plaintiff

vs.

BECHEMHENE FOSU GYEABUOR II of Bechem Defendant.

To Bechemhene Gyeabuor of Bechem.

You are hereby commanded to appear before this Court at Kumasi,
Ashanti on the 27th day of September 1938, at o'clock, forenoon
to answer a suit against you by Plaintiff.

The Plaintiff claims to show cause as per particulars attached.

Dated at Kumasi Ashanti this 19th day of August 1937.

30	Sum claimed	.	.	.	to show cause
	Summons fee	.	.	.	£1
	Service	2/-
	Mileage	12/6
					<u>£1 14/6</u>

No. i.
Civil
Summons,
19th
August
1937.

*In the
Asante-
hene's
" B "
Court.*

Witness to mark

(Sgd.) William Prempeh
Registrar.

Chief Kwame Amankwatia
President

His
X
mark

No. 1. NOTICE :

Civil
Summons,
19th
August
1937,
continued.

If you do not attend, the Court may give judgment in your absence.

PARTICULARS.

The Defendant to show cause why

(1) he has started farming on Plaintiff's Nkwanta-Kwasu land
without Plaintiff's permission

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and

(2) why he prohibits Plaintiff's tenants (from Gyakye) from
farming thereat.

*Plaintiff's
Evidence.*

No. 2.
Nana Adu
Kofi III,
1st
October
1938.

PLAINTIFF'S EVIDENCE.

No. 2.

Nana Adu Kofi III.

*In the Kumasi Divisional Native Court held at Kumasi, on Saturday, the
1st day of October 1938 before the following Chiefs :—*

Nana KWADJO AGYEKUM—Oyokohene, President
,, AKWASI EDUSEI—Fantihene
,, KOFI AMANKWA—Akyeamehene

20

NKWANTAHENE ADU KOFI III

Plaintiff

vs.

BECHEMHENE FOSU GYEABUOR

Defendant.

Parties present :

Plaintiff : NKWANTAHENE ADU KOFI III swore Great Oath :

Evidence
in Chief.

I have a boundary at Nkwanta-Kwasu land with the Defendant, he has trespassed and farmed my portion. Our boundary is demarcated by a river called Buokrukruwa to another river called Adinkra, thence to Boa, then to Kwasu. I own the right hand side and the Defendant also owns that on the left. The Defendant has trespassed on my portion and gone into mine about one and a half or two miles and made his subjects farm there. I put somebody on a portion of mine called Akyiamoasu and I went to the house and enquired from my elders as to whether they had permitted the Defendant to farm my portion, they said no. Then I made up my mind to write to the Defendant and ask his authority for farming on my portion. I did not write the letter and the man I had permitted to farm

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there came and reported to me that he had been driven by the Defendant. I wrote to ask the Defendant about it and he messaged my Police to say, yes, he drove that man I put there to farm. Then I decided to sue the Defendant for an explanation, hence this action.

That is my case, that portion of the land called Akyiamoasu is mine and not the Defendant's.

Plaintiff xcd. by the Defendant :

10 *Q.* Do you remember that about twenty five years ago my uncle and predecessor called Akwasi Buanpon and your own uncle called Kwame Damte litigated about this same parcel of land Captain Norris made arrangement between them ?

A. Yes I quite remember it and that is why I say you have trespassed on my portion.

Q. Do not you remember that the first of the arrangement is from Obuokrukruwa river to Adinkra river, thence to Boa river and that our boundary terminates at the junction of rivers Boa and Kwasu ?

A. Yes, this is our boundary but you have trespassed on mine.

Q. Do you understand that all the extremities of the river Kwasu is mine ?

20 *A.* No, the left hand side only is yours.

Q. The river Kwasu is fished for me, have you ever claimed anything from it before ?

A. No, I have never claimed anything from it before but it has a reason and that is Government asked me to let your subjects farm or use there freely.

Q. With whom have you boundaries on this parcel of land in dispute ?

A. I have no boundary with anybody there, the whole land is mine.

Q. Do not you remember your own clerk called Gamba went to hunting on the land and he sent me a leg of game as owner of the land ?

30 *A.* I did not see him.

Q. Have I not cottages called Dada, Kyifireafre, Afadiekobro, on this portion of the land, Kofi Brufiekrom, Kojo Banfurkrom on this land ?

A. Yes, I know you have old and new cottages there but it is in respect of the new ones I have sued you.

Q. Do you remember I have a boundary with Bomahene and Esukesi-Dikro there ?

A. No.

No more questions by the Defendant.

40 Plaintiff tenders in evidence copy of notes of Mr. T. E. Fell, Commissioner, W.P.A., dated 17th April 1913 in re Chief of Nkwanta versus Chief of Bechem.

(Document accepted and marked Exhibit " A ".)

Plaintiff xcd. by the Akyeamehene :

Q. Have you and your subjects any farms on this area ?

A. Yes, both we and the people of Bechem.

Q. Under what conditions did the people of Bechem farm there ?

A. They went and farmed there themselves.

Q. Since when did they farm there ?

A. About eight years ago.

50 *Q.* Were they queried by your predecessor ?

A. No.

*In the
Asante-
hene's
" B "
Court.*

*Plaintiff's
Evidence.*

No. 2.
Nana Adu
Kofi III,
1st
October
1938.
Evidence
in Chief,
continued.
Cross-
examina-
tion.

Examina-
tion by
Court.
(By
Akyeame-
hene.)

In the Plaintiff vxd. by Oyokohene.

Asantehene's "B" Court. *Q.* Do you mean to say you have a boundary with the Defendant alone?

A. Yes.

Plaintiff's Evidence.

Q. Since when did Government demarcate the boundary between you?

A. Twenty-five years ago.

No. 2.

Nana Adu Kofi III,

1st October 1938.

Examination by Court, continued. (By Oyokohene.)

Q. Did Government say in the decision that you should permit the Bechem people to farm your portion freely?

A. Yes.

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Q. How many farms had the Bechemhene then?

A. Three farms.

Q. There are now many farms belonging to Bechem people on the land to-day?

A. There are more than twenty.

Q. Do these farms lie where the three old farms are?

A. Yes.

No more questions.

Court adjourns the case to Thursday, the 6th October, 1938, at 8.45 a.m.

Chief Kwadjo Agyekum-
President

His
X
mark

20

Witness to mark
(Sgd.) I. K. Agyeman,
Registrar
1.10.38.

No. 3.

Yaw Poku,
6th October 1938.

No. 3.

Yaw Poku.

Thursday, the 6th day of October, 1938.

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Both parties in Court.

Plaintiff's first witness YAW POKU, Farmer, Sworn Great Oath and Fetish and stated as follows:—

Evidence in Chief.

I know the parcel of land in dispute and the boundary between the Nkwantahene and the Bechemhene which is as follows: From Obuokrukruwa to Adinkram, thence to Boa river, thence to Kwasu river. The left hand side of the river Kwasu is owned by the Defendant while the right hand side towards Bomaa is also owned by the Plaintiff. This boundary was demarcated by Mr. Fell who was the Commissioner stationed at Sunyani some years ago. While the Commissioner was on the land he saw three farms made by the Bechem people on the Plaintiff's side of the land. He pleaded with Plaintiff not to bother those Bechem people but to permit them to farm and hunt for the Defendant, though that portion remained the property of the Plaintiff and the Plaintiff agreed.

Witness vxd. by the Plaintiff:

Q. Do you remember that the Defendant has trespassed and come to my portion called Akyiamoasu and put his people there to farm?

A. Yes, so it is.

No more questions.

Examination in Chief.

Witness xcd. by Defendant :

Q. Do not you remember that the judgment to which you refer says the junction of Kwasu and Boa Aboyehe is the end of Plaintiff's portion of the land ?

A. No, I do not remember that.

Q. With whom has the Plaintiff a boundary at that side ?

A. I do not know that the Plaintiff has a boundary with anybody at that end.

10 Q. There are Brosankro, Tapa, Esuhyia, and others at that end, do you mean to tell the Court that all that area belongs to the Plaintiff ?

A. No, all is not for the Plaintiff.

Q. The Bomaahene collects an annual rent of £100 from the Brosankro people, does the Plaintiff get a share ?

A. No, he receives no share in it.

Q. Do you know that the Bomaahene has a cottage called Bodom at " Awiafutu Agya " ?

A. Yes.

Q. Do you or will you then deny if the Bomaahene states that he has a boundary there with me ?

20 A. Yes, I will deny it.

Q. Name to the Court the names of cottages or valuable properties belonging to the Plaintiff on the Awiafutu land ?

A. I do not know the tradition connected with that portion of the land, I happened to go there only when the boundary was being demarcated by the Commissioner.

Q. Do not you remember that rubber, snails and other valuable things from there were always sent to me ?

A. No, I do not know.

Q. Is Kwasa river not fished for me ?

30 A. I do not know that.

No more questions.

Witness xcd. by Oyokohene :

Q. If you say that Government (the Commissioner) decided that the Defendant's subjects should be allowed to farm and hunt Plaintiff's portion then the Defendant is right in stating that that portion is used for him ?

A. That was what I heard the Commissioner say about three cottages.

Q. Is it these three cottages only the Defendant has gone to and the Plaintiff says he has trespassed ?

40 A. It is a new portion that has been trespassed upon.

Q. How many years ago since the alleged trespass was committed ?

A. About ten years now.

Q. Do you know where the said trespass has been committed ?

A. Yes, I have gone there.

Q. How many farms have been cultivated there ?

A. The farms are many.

Q. Did you go there before or after the issue of this case ?

A. We went there before this case came on.

No more questions.

In the Asante-hene's " B " Court.

Plaintiff's Evidence.

No. 3. Yaw Poku, 6th October 1938, continued. Cross-examination.

Examination by Court. (By Oyokohene.)

No. 4.

Akwasí Amanka.

In the
Asante-
hene's
" B "Court.

Plaintiff's
Evidence.

No. 4.
Akwasí
Amanka,
6th
October
1938.
Evidence
in Chief.

Plaintiff's 2nd witness, AKWASI AMANKWA, Linguist of the Plaintiff,
Swore Great Oath and states as follows :—

I know the boundary between the Plaintiff and the Defendant is,
Obuokrukruwa to Adinkram thence to Boa River and thence to the Kwasu
river.

The Defendant owns the portion on the left hand side as one goes
from Nkwanta and the Plaintiff also owns the right. The Defendant said
he had three cottages at the right hand side. The Plaintiff wanted to
destroy those cottages but the Commissioner advised him to permit the
Bechem people to use their old farms there but if anyone else would make
a new farm or cut timber he must obtain the consent of the Plaintiff. The
Plaintiff is the present Nkwantahene, he told us elders that the Defendant
had caused his portion of the land to be farmed, he wrote to the Defendant,
no reply came and so the Plaintiff came and sued. 10

Witness xxd. by Plaintiff :

Q. Do you remember you and I have gone to see the portion where the
trespass is caused ?

A. You and I passed there but I did not go and view those farms. 20

Q. Did not the Commissioner merely decide that that portion should
only be hunted for the Defendant ?

A. Yes, I have said so.

Q. Do not you remember that all the portion on the right to Bomaa
is mine, I have no boundary with Bomaahene ?

A. Yes, I know that.

No more questions.

Witness xxd. by Defendant :

Q. Did not the decision say that the Plaintiff's portion should end at
Boa and Kwasu junction ? 30

A. He, the Commissioner did not say so.

Q. With whom has the Plaintiff a boundary at the junction of Boa and
Kwasu on the left hand side as you face the West ?

A. I do not know that side.

Q. Kwasu river flows into river Tano and there are many tributes,
do you mean to say all that area is owned by the Plaintiff ?

A. I do not know there.

Q. Do you mean to say that the Plaintiff has no boundary at the end
of that river with anybody ?

A. All is for the Plaintiff. 40

Q. Would you deny if Bomaahene says he has a boundary with me at
Awiafutu ?

A. That would be for the Plaintiff to say.

Q. Who owns Bodom cottage ?

A. Bomaahene.

Q. Bomaahene collects annual tributes there, does the Plaintiff get a
share ?

A. No, because it is agreed that Bomaas should farm freely and
Nkwantas the same.

Examina-
tion in
Chief.

Cross-
examina-
tion.

Q. I have about six villages there where snails and rubber are collected for me, does the Plaintiff get a share ?

A. I know of only three cottages of yours.

Q. Kwasu, has, from time immemorial, been fished for me, is it fished for the Plaintiff too ?

A. No, the Plaintiff did not care.

Q. How many years ago since you discovered that I was farming there ?

A. I do not know it.

10 *No more questions.*

Witness xcd. by Oyokohene :

Q. Do you know if a trespass has really been committed ?

A. Yes, the farms said to have been cultivated are on Plaintiff's land.
No more questions.

In the Asante-hene's "B" Court.

Plaintiff's Evidence.

No. 4.
Akwasi
Amanka,
6th
October
1938.
Cross-examination,
continued.
Examination by
Court.
(By Oyokohene.)

No. 5.

Kofi Tabi.

No. 5.
Kofi Tabi,
6th
October
1938.

Plaintiff's 3rd Witness, **KOFI TABI**, Odikro of Susuansu, Swore Great Oath and stated as follows :—

20 The boundary between the Kkwantahene and the Bechemhene is as follow :—From Obuokrukruwa to Adinkra river thence to Boa river and from Boa river to Kwasu river. The left hand side is for the Bechemhene (Defendant) while the right is the Plaintiff's portion.

Evidence in Chief.

This is all that I know.

Witness xcd. by the Plaintiff :

Q. Did the boundary end at Boa and Kwasu junction or it continued ?

A. The Boundary did not cross the rivers, I did not see it so.

No more questions.

Examination in Chief.

Witness xcd. by Oyokohene :

30 Q. Were you present when the Commissioner went and demarcated the said boundary ?

A. Yes, I was then young.

Q. Have you gone to see the said trespass ?

A. No, I know of the boundary demarcated about thirteen years ago.

No more questions.

Plaintiff has no more witnesses to call.

Examination by Court.
(By Oyokohene.)

DEFENDANT'S EVIDENCE.

No. 6.

Nana Fosu Gyeabuor.

In the
Asante-
hene's
" B "
Court.

Defendant's
Evidence

No. 6.
Nana Fosu
Gyeabuor,
6th
October
1938.
Evidence
in Chief.

Defendant NANA FOSU GYEABUOR, Bechemhene, Swore the Great Oath and states as follows :—

About twenty-five years ago the then District Commissioner by the name of Captain Norris demarcated a boundary between the Plaintiff and me regarding a parcel of land called Awiafutu. The Boundary was and still is as follows : From Obuokrukruwa to a certain river called Adinkra thence to another river called Boa and Kwasu junction. As one stands 10 facing the West, all the left-hand side of the river Kwasu is mine. From the junction of the river towards the West, there is a line drawn from the said junction of the two rivers to a certain place called Ngyabyem Buor Akyi to cross a river called Akyiamoasu on the left, thence to a cottage belonging to Bomaa called Donkotor. The said line runs from a cottage of mine called " Dadi " to another of the same name belonging to Bomaa people, thence it crosses a certain river Awiafutu through the outskirt of a village called Bodom and to a pillar called Atwetwebuosu where I have a boundary with Brosankro. I have the following villages on the land in dispute: Dade, Awiafutu, Abrodowa, Kyifirafere, Afidie, Kobro, Apawuasua, 20 Murufiekrom, Bamfukrom, Buadukrom. From these villages rubber and snails are collected for me and farms have been cultivated there by my subjects. Games killed there are sent to me. The Plaintiff's own clerk called Gambrah went there to hunt and he sent legs of the games he killed to me.

The river Kwasu is always fished for me and the Plaintiff has never litigated with me in connection with anything I get from these places.

The river Kwasu lies on the centre of my land at its junction and if one views the river, then the land in dispute appears to be oblong. Here I have the right to order farms to be cultivated and the Plaintiff alleged 30 that I had trespassed but I had not trespassed, that portion is mine. This is my case.

Defendant xcd. by Plaintiff :

Cross-
examina-
tion.

Q. You made a mention of some lines, were they demarcated as part of the boundary by Government ?

A. It is the decision that says so.

Q. Do not you remember that Akyiamoasu is in my portion and you have trespassed and gone there to farm ?

A. No, I have not trespassed if I have farmed there.

Q. Do not you remember Government decided that I should permit 40 you to hunt where your three cottages were and not that you should farm there.

A. If one faces the West that place is mine, what you are saying is not in the decision made by Government.

Q. Do not you remember you have had made for you about twenty farms on my portion without my knowledge and consent ?

A. No, I have made no farms on your portion.

Q. Do not you remember you have stationed some people to farm my portion and they are farming there now ?

A. I have never gone to your side.
No more questions.

Defendant xxd. by Akyeamehene :

Q. After the junction of Boa and Kwasu rivers have you a boundary with the Plaintiff.

A. No.

Q. After going past that junction, with whom have you a boundary ?

A. With Brosankro.

10 Q. Is it where it is alleged that Government decided that your subjects should farm that this case has arisen ?

A. No.

No more questions.

Defendant xxd. by Oyokohene :

Q. How long now since your subjects began to use the land in dispute ?

A. From time immemorial, about three hundred years ago.

No more questions.

No. 7.

Kofi Fosu.

20 Defendant's 1st Witness, KOFI FOSU, Krontihene of Bomaa, Swore the Great Oath and stated as follows :—

I am the Krontihene of Bomaa, the whole land of Brosankro and Esukeesi belong to Bomaahene, an annual tribute of £100 is paid to the Brosankro people to the Bomaahene in respect of the former using the latter's land. We Bomaas have a boundary with Defendant's people at a place called Atwetwebuor. We have a boundary with the Defendant at Awiafutu, we have a cottage called Dade and the Defendant too has one by that name too and our boundary passes from there to Donkotor. I know the path from Bomaa to Kwasu. The place called Atrofwakrom and Apaapaamu belong to Bomaahene. We of Bomaa have a boundary
30 with the Plaintiff at Donkotor. This is what I know.

Witness xxd. by the Plaintiff :

Q. Do you not remember that I have no boundary anywhere there with the Bomaahene ?

A. No, we have a boundary with you at Donkotor.

Q. Are you representing the Bomaahene or you speak on your own accord ?

A. I am representing the Bomaahene to whom I am the Krontihene.

Q. Do not you remember I have a document showing that the Nkwantahene has no boundary with the Bomaahene ?

40 A. No, we have never made such a document.

Q. Do not you remember that my people have crossed Donkotor, which you say is Bomaa boundary with Nkwanta and farmed ?

A. Yes, I remember that you have farmed our portion but we have not queried you yet.

*In the
Asante-
hene's
" B "
Court.*

*Defendant's
Evidence.*

No. 6.

Nana Fosu
Gyeabuor,
6th

October
1938,

continued.

*Examina-
tion by*

Court.

(By
Akyeame-
hene.)

(By
Oyoko-
hene.)

No. 7.

Kofi Fosu,
6th

October
1938.

*Evidence
in Chief.*

*Examina-
tion in
Chief.*

*In the
Asante-
hene's
" B "
Court.*

Q. Do not you know I have litigated with the Defendant before on this same land ?

A. No, I was not a witness then.

Q. Do you know my boundary with the Defendant ?

A. No.

*Defendant's
Evidence.*

Q. Do not you know that the Bechemhene has trespassed and gone beyond Kwasu and hence I have sued him ?

A. I do not know.

Q. Who founded the Donkotor village ?

A. A certain man from Esukese founded it.

10

*No. 7.
Kofi Fosu,
6th
October
1938.*

No more questions.

*Examina-
tion in
Chief,
continued.*

Witness xrd. by Chief Akwasi Edusei :

Q. Do you say you of Bomaa have a boundary with the Defendant at Awiafutu ?

A. Yes.

No more questions.

*Examina-
tion by
Court.*

*(By
Fantihene.)*

Witness xx. by Oyokohene :

Q. Have you three a common boundary ?

A. No.

No more questions.

20

*(By
Oyoko-
hene.)*

Further hearing adjourned to Tuesday, the 11th instant at 8.45 a.m.

Witness to mark

(sgd.) I. K. Agyeman,
Registrar.

Chief Kwadjo Agyekum
President.

His
X
Mark

6.10.38.

*No. 8.
Kofi Poku,
13th
October
1938.*

**No. 8.
Kofi Poku.**

The 13th day of October, 1938.

Both parties present in Court.

Defendant's 2nd Witness, KOFI POKU, Linguist to Odikro of Kwasu, 30
Sworn and stated as follows :—

*Evidence
in Chief.*

I am a linguist to the Odikro of Kwasu, the parcel of land called Awiafutu is in my care, it is my stool that looks after it for the Defendant in this case. The Defendant has a boundary with the Plaintiff in the West and that is demarcated by as the head of the boundary, the junction of rivers Boa and Kwasu, thence through Nyahiem Buor passing Akya-moasu river to Donkor cottage. From Donkotoe to Awiafutu the Defendant has a boundary with the Bomaahene which is marked by a path and it passes there to Awiafutu river to Atwetwebuoso where the Brosankro meets with the Defendant's portion. Bodom is a deserted 40
village belonging to the Bomaahene there are nine hunters' cottages on the Awiafutu land belonging to the Defendant and those who founded these cottages are the Defendants subjects who hail from Bechem. Whatever

hunters get and send to me, I in turn send it on to the Defendant, he being the owner of that portion of the land. Kwasu is fished for the Defendant. I got three 300 pieces of fish for him last year. This is what I know.

*In the
Asante-
hene's
" B "
Court.*

Witness xrd. by Plaintiff :

Q. Do not you remember that Kwasu was our boundary before Government demarcated the boundary between us?

*Defendant's
Evidence.*

A. No, I do not remember that.

Q. Do not you remember that Government did not demarcate any boundary on the right hand side and that all that side is mine?

*No. 8.
Kofi Poku,
13th
October
1938.*

10 A. No, the boundary there is what I have stated.

Q. Do not you know that the path you refer to leads to Adiasua where the Commissioner entreated me to permit the Bechem or Kwasu People hunt or farm although it is mine?

*Cross-
examina-
tion.*

A. No, I do not remember.

Q. Do not you remember that the Defendant has no portion at Donkotoe which belongs to the Bomaahene and me?

A. No, you, the Defendant and the Bomaahene have your respective portions there.

20 Q. Do not you remember that the Commissioner said that Awiafutu was mine yet I might allow the Bechem people to farm it?

A. No, I do not know that, I have not been told since I was enstooled.

Q. Do not you remember that there were only three cottages on the portion in dispute when the former case was on?

A. I do not know that, what I know is that I at present look after nine cottages there for the Defendant—Bechemhene.

Q. Do not you remember that the cottage called Dada was founded by me when I was a young man and I have my cocoa there now?

A. No.

30 Q. Do not you remember that the Kwasuhene was paying tribute before the Commissioner demarcated the boundary?

A. No.

Q. Do not you remember that I sent to farm Akyiamoasu Agya but the Defendant sent to drive my messengers?

A. Yes, because that portion belongs to him.

Q. Do not you remember that Bomaahene has written to me that that portion is his?

A. I do not know.

Q. Have I not about eight cottages on this parcel of land?

40 A. I do not know if you trespass on the Defendant's portion he would question you.

Q. Have I not about 40 people farming this area in dispute now?

A. I have not seen them, what I witnessed was that portion you sent to farm and your messengers were driven by order of the Defendant.

No more questions.

Witness xrd. by Akyeamehene :

Q. From Boa and Kwasu junction going towards West, where is the Plaintiff's portion?

*Examined
by the
Court.
(By
Akyeame-
hene.)*

A. From there going the Plaintiff owns the right and the Defendant the left up to Donkotoe.

50 No more questions.

In the Asante-hene's "B" Court. *Witness xcd. by Oyokohene :*

Q. Has the Defendant trespassed and gone on Plaintiff's portion of the land ?

A. No, he is on his own portion.

Q. Is it the Defendant who owns the area where the Plaintiff sent to farm ? and the Defendant drove the man farming ?

A. Yes, it belongs to the Defendant.

Q. Do you know the boundary between the parties as far as that land is concerned ?

A. Yes, I know it.

No more questions.

10

Defendant's Evidence.

No. 8.
Kofi Poku,
13th
October
1938.

Examined
by the
Court.
(By
Oyoko-
hene.)

No. 9.

Yaw Asubonten.

Defendant's 3rd Witness, YAW ASUBONTEN, Cocoa Buyer, Sworn and states as follows :—

I hail from Esukesi, I am representing the Odikro of Esukesi village. I was once the Odikro of Esukesi, we at Esukesi live on Dormaahene's land. With regard to the land in dispute, we of Esukesi have a boundary with the Defendant at a place called Awiafutu which is a river. Bomaahene has a cottage there called Bodorn. Bechemhene, the Defendant in this case, has a boundary with Brosankro at Atwetwebuosu, the cottages of Apeapeh belong to the Odikro of Esukesi ; Donkotoe village is also his and it was founded by one Nkyi by order of my uncle, the Odikro of Esukesi. Another village called Atrofwe-krom belongs to the Odikro of Esukesi. Donkotoe is the boundary between the Plaintiff and Esukesi. I have never heard that the Plaintiff has ever collected tribute of any kind from any Bechem people in respect of Awiafutu portion of the land. It is the Dormaahene to whom we of Esukesi give shares of things obtained from where we who live at Esukesi.

30

Cross-
examina-
tion.

Witness xcd. by the Plaintiff :

Q. Do not you remember that presently the village Donkotoe is inhabited by my own people who pluck the cocoa there for me ?

A. No. I do not know it.

Q. Do not you remember that Bomaa and the Nkwanta have no boundary between them ?

A. No, there is a boundary between them, the said boundary was demarcated by Commissioner Pott.

Q. Do not you remember that it had been written that Bomaa people as well as Nkwanta people could farm anywhere they wished ?

A. Yes, but the boundary had then been demarcated.

Q. Did not Dormaahene once write to me suggesting that we should demarcate the boundary between us ?

A. I do not remember it, I have never heard of it before.

No more questions by the Plaintiff.

Defendant has no more witnesses to call.

40

. No. 10.

ORDER FOR VIEW.*In the
Asante-
hene's
"B"
Court.***ORDER BY THE COURT :**

Let the parcel of the land in dispute before this Court be viewed by messengers to be deputed by this Court with a view to finding out as to whether the Defendant has encroached on the Plaintiff's portion of the land. Deputation to file its written report before judgment in the case be delivered.

Let the following be deputed :—

10 Sub-Chief Kojo Nkwantabisa
Kyeame Kwame Buaben
Registrar, Mr. I. K. Agyeman
Surveyor, Mr. F. A. Prempeh and
Kyeame Kwaku Fokuo.

—
No. 10.
Order for
View,
13th
October
1938.

Each of the parties, that is the Plaintiff and the Defendant, to deposit £25 into Court.

Further hearing adjourned to 27th October, 1938.

Witness to mark Chief Kwadjo Agyekum His
(sgd.) I. K. Agyeman President X
20 Registrar. Mark

13.10.38.

No. 11.**COURT NOTES.**

In the Kumasi Divisional Native Court held at Kumasi on Monday, the 28th day of November 1938, before :

No. 11.
Court
Notes,
28th
November
1938.

NANA KWADJO AGYEKUM—Oyokohene, President.

„ AKWASI EDUSEI—Fantihene.

„ KOFI AMANKWA—Akyeamehene.

NKWANTAHENE ADU KOFI Plaintiff

30 *vs.*

BECHEMHENE FOSU GYEABUOR Defendant.

Both parties present.

Messengers of this Court, deputed to view the parcel of land in dispute, submit their written report. Report dated 15th November 1938, submitted and marked as exhibit "B." Report by Mr. F. A. Prempeh.

Plaintiff : I have no questions to ask the messengers concerning the "B." report read. Exhibit

Defendant : I also have no question, the report covers all that happened during the viewing of the land in question and it is in order.

40 *Messengers ord. by Akyeamehene :*

Q. Are you all unanimous in submitting this report ?

A. Yes, we are.

Q. Have you four your persons signed it ?

A. Yes, we have all signed the report.

No more questions.

*In the
Asante-
hene's
" B "*
Court.

No. 12.
Judgment,
28th
November
1938.

**No. 12.
JUDGMENT.**

This is a case in which the Plaintiff, who answers to the name of Adu Kofi III, Nkwantahene, sued the Defendant Fosu Gyeabuor, the Bechemhene as follows: "The Defendant to show cause why (1) he has started farming on Plaintiff's Nkwanta-Kwasu land without Plaintiff's permission and (2) why he prohibits Plaintiff's tenants (from Gyakye) from farming thereat."

The Defendant admitted having forbidden the Plaintiff's said tenants to farm the parcel of land in question, because that area forms part of his, Defendant's, stool land and that there was no reason why the Plaintiff should station people there to farm. Both the Plaintiff and the Defendant subpoenaed their witnesses to give evidence in their favour in proving ownership of the area in dispute. The parties to this case agreed that about twenty-five years ago the predecessors of the Plaintiff and the Defendant litigated over the ownership of a portion of a land adjacent to the one at issue, and the then Commissioner of Western Province of Ashanti heard the case and caused a boundary to be demarcated between them. (See exhibit "A.") According to the proceedings of the case to which reference has been made, the said boundary was demarcated as follows: "The Boundary between Bechem and Nkwanta to be the thalweg of the Obukrukruwa-su to where it joins the Adingkra-su thence to the Boa-su following thalweg of the Boa to the point where the Kosu joins it." Now, according to the evidence adduced by the parties and their respective witnesses, as also the report of the messengers of this Court who were deputed to view the area and report, the area in dispute is outside the confines of the said boundary demarcated by the Commissioner aforesaid: otherwise the present case would be one of the nature of *res judicata*.

The Plaintiff contended that the portion of the land in dispute was his portion because the decision of the case referred to affected that part of the land and added same to his portion. As far as the exhibit "A" is concerned, the demarcation by the Commissioner twenty-five years ago stopped at where the Boa and Kwasu rivers join and did not go beyond and so the question arose, who owned the area beyond the junction of these two rivers. In this connection, the Plaintiff stated that all that portion, about which the previous judgment said nothing, belonged to him and that the Defendant had not a foot of land there, but that the Commissioner, in making his decision, added that the Bechem people who then had farms and hunting camps there should be allowed to use them without paying tribute to Nkwanta. The Defendant also contended that where the Commissioner ruled that the Bechem people should be allowed to use their farms and hunting camps was not within the portion now in dispute and also, that the Plaintiff had no land there and that it was only he, Defendant, and the Bomaahene who owned that portion and have a boundary between them there. The Bomaahene's representative in the person of Kofi Fosu Krontihene of Boma appeared and gave evidence that the people of Boma have a boundary on the area in dispute only with the Defendant and not the Plaintiff. The Plaintiff's witnesses also adduced their evidence to say that the whole tract of the land in dispute belonged to the Plaintiff and that the Defendant owned only the left portion of the river Kwasu but he had no portion on the right hand side.

In order to clarify the doubts surrounding the case, and as seeing is believing, this Court deputed five messengers to view and report the parcel of the land in dispute. In a case, in which land is involved several aspects should be considered and taken into account. The prominent among these aspects are, who is the present occupant of the land, second, who farms the land and third, who collects tribute either in cash or game from the said land.

*In the
Asante-
hene's
" B "*
Court.

No. 12.
Judgment,
28th
November
1938,
continued.

The report exhibit " B " of the messengers sent by this Court disclosed that the portion in dispute has had a long lease of occupation by various
10 Bechem people who have villages all over the land, of the age of about eight or ten years minus paying tribute to anybody and that the Defendant himself has farms on this portion of the land yet he pays nothing to the Plaintiff or anybody. That in the course of their inspection the Plaintiff had no one to say he or she has a boundary with him while in the case of the Defendant the Boma people appeared and testified that they had a boundary with the Defendant. Also that, from the age of the existing villages occupied by the Bechem farmers and hunters, the said villages did not appear to be those erected twenty-five years ago which the Commissioner decided that the Bechem people should be allowed to
20 occupy and to use their farms there. The messengers' report further added that the Plaintiff said, that, it was after the first litigation between his predecessor in office and the predecessor of the Defendant that the people of Bechem flocked on this area now in dispute and farmed but the Plaintiff's predecessor said nothing nor raised any objection and so, it would appear that "silence means consent." As far as the evidence adduced before this Court goes, and on the strength of exhibit " B " this Court is entirely satisfied that if the parcel of the land in question belonged to the Plaintiff as he alleged, his predecessor or even the elders attached to his stool would have prevented the Bechem people from farming it or made
30 a case against the Bechemhene long before this time, and, considering the points explained this Court is satisfied that the parcel of the land in dispute should not belong to the Plaintiff and judgment is therefore given in favour of the Defendant with costs to be taxed.

Oyokohene Kwadjo Agyekum
President

His
X
mark

Witness to mark
(sgd.) I. K. Agyeman
Registrar & Recorder

40 28/11/38.



In the Asantehene's "A" Court.

In the Asantehene's "A" Court.

No. 13.

GROUND OF APPEAL.

In the Asantehene's Court "A", Kumasi.

No. 13.
Grounds of
Appeal,
21st
December
1938.

Nkwantahene Adu Kofi III

Plaintiff-Appellant

versus

Bechemhene Fosu Gyeabuor

Defendant-Respondent.

GROUND OF APPEAL OF APPELLANT.

1. JUDGMENT AGAINST EQUITY.

That the judgment of the Court below was most irregular, in that the Court below did not base its judgment upon the merit of the case, or in other words the facts were closed leaving room for the lies as stated by the Respondent herein. The Judgment as it is has no bearing upon the issue of the case. If the Court below found that I had no land or portion of land at the place, then legally the action ought to have been non-suited. In support of this contention see the issue of the case at page 2 of the Appeal Record. 10

2. THE COURT BELOW MISDIRECTED ITSELF.

The Court below misdirected itself contrary to Exhibit "A." It had no patience to read it carefully in order to grasp the real meaning of it. The Court misinterpreted the Exhibit "A" in a way to suit the sheer defence put up by the Respondent whereas in truth and in fact the inference of Exhibit "A" was and is never like that. I submit therefore that the interpretation made by the Court below is grossly wrong. If Captain Norris who demarcated the boundary had the inference drawn up by the Court below in view, doubtless the word "end" or "stop" would have been used to distinguish the idea now well-cooked up by the Respondent, which idea the Court below was convinced to adopt. 20

Assuming that the demarcation of the boundary between Nkwanta and Bechem ends at the junction of Boa and Kosu as inferred by the Court below, and as a matter of fact, I, as Nkwantahene, having title to all lands there prior to the demarcation and if Capt. Norris's demarcation ends at the junction who is to own the remaining portion of the land there? The Court below ought to have come to the conclusion that the Defendant-Respondent's statement and the evidence of his witnesses were all lies. My humble submission is therefore that the Court below misdirected itself in every degree. 30

3. JUDGMENT AGAINST THE WEIGHT OF EVIDENCE.

That the misdirection of the Court below was highly infused by the cook-up statement and evidence of the Defendant-Respondent and his witnesses. How on Earth can any verbal evidence overthrow a documentary evidence, and which also was misinterpreted to suit the purpose of the Respondent. I still contend that from the junction of Boa and Kosu the boundary continues by the Kosu stream and that I own all lands at the right bank and the Respondent the left bank. This contention is supported by the Exhibit "A" at page 44 and the Notes taken by Commissioner Fell at page 45 of the Appeal Record. In comparison the Respondent's statement at page of the Record is too fabricious. I 40

contend that it is not true at all if he says he owns the portion of the tract of land beyond the junction of the Boa and Kosu. Before Capt. Norris demarcated the boundary, he was satisfied that Kosu had been the boundary between Nkwanta and Bechem, and in demarcating the boundary, Capt. Norris sufficiently stated that Nkwantahene should permit the Bechems to have full use of all farms and hunting huts at present used by them on Nkwanta land without tribute namely, Adesua, Yao Kokwa Esuboi and Awiafutu. These three villages were established by the Bechems on Nkwanta land prior to the demarcation of the boundary between Nkwanta and Bechem and in fact they were and are beyond the junction of Boa and Kosu, so that it is not true if the Respondent contends that the demarcation of the boundary stopped at junction of Boa and Kosu, which contention the messengers who were sent to inspect the boundary based their report and Findings and upon which the Court below gave its judgment.

The Court below failed to grasp the understanding or the purport of Exhibit "A". Assuming that the demarcation stopped at Boa and Kosu junction, what was the necessity of Capt. Norris's order as follows:—
 "The only claim Nkwanta reserves is—if any gold or other mineral is found thereon or a concession of any sort granted" (see page 44 of the Record). This, even, was sufficient proof for the Court below to have realized that the statement and the evidence of the Respondent and his witnesses were unfounded.

In support of this contention, I submit that the distance between the junction of Boa and Kosu to Yao-Kkwakwa-Esuboi is about $1\frac{1}{2}$ (one & half) miles and to Awiafutu about $7\frac{1}{2}$ miles, therefore if the demarcation of Capt. Norris stopped at Boa and Kosu as inferred by the Court below, then there was no necessity of his mentioning the three villages on Nkwanta land being used by the Bechems and which villages were entirely outside the junction of Boa and Kosu. In this connection, Exhibit "A" at page 44 and the Notes of Commissioner Fell at page 45 of the Record clarify every doubt surrounding the case.

4. JUDGMENT WAS WRONG IN LAW AND CUSTOM.

The Court below was wrong in law and custom in holding that "As far as the evidence adduced before this Court goes, and on the strength of Exhibit 'B' this Court is entirely satisfied 'that if the parcel of land in question belonged to the Plaintiff as he alleges, his predecessor or even the elders attached to his stool would have prevented the Bechem people from farming it or made a case against the Bechemhene long before this time.'" It does not matter if I make a case against Bechem or not as far as Exhibit "A" and I think it is only wise if on the face of Exhibit "A" I do not collect tribute from Bechems on my land. The Court failed to realise these vital points, and especially where the Defendant-Respondent in his statement at page 8 of the Record, lines 19 to 21, "And I have the following villages on the land in dispute:—Dade, Awiafutu, Abrodowa, Kyifrafere Afedie, Kopro, Apawuasua, Murufiekrom, Bamfukrom and Boadukrom etc." Here the Court below failed to realize that Awiafutu has been mentioned in Commissioner Fell's Notes at page 45 of the Record, and apart from this Afediekopro as termed by the Respondent, I say is called Adiesua and I have my farms there and nobody there pays any tribute to Bechem, and on the whole nobody pays any tribute in respect of any of the villages to the Respondent.

*In the
Asante-
hene's
"A"
Court.*
—
No. 13.
Grounds of
Appeal,
21st
December
1938,
continued.

In the Asantehene's "A" Court. 5. MESSENGERS' REPORT EXHIBIT " B."

No. 13.
Grounds of
Appeal,
21st
December
1938,
continued.

The messengers' report and findings cannot hold in law and equity. From the report this Honourable Court will see that a sort of Court was held in the bush whereas the messengers were only charged to hold locus in quo and give their report, upon which both I and the Respondent could have an opportunity to cross-examine them as well as the Court, but in this case particularly the messengers held a Court in the bush and examine us and witnesses and gave their finding upon which the Court below gave its judgment.

This, I submit, is contrary to law of equity, and therefore the judgment 10 of the Court below is wrong in law—not in consonance with fairplay.

Messengers deputed to hold locus in quo, who know not about the issue of the case before the Court, cannot go to the bush and constitute a Court and examine both parties and their witnesses and permitting the parties to examine each other contrary to the order of the Court.

I submit seriously that the judgment of the Court below is wrong and should be reversed with costs in my favour.

Dated at Kumasi this 21st day of December 1938.

(Sgd.) Nana Adu Kofi III,

Plaintiff-Appellant. 20

The Registrar,

Asantehene's Court "A"
Kumasi.

And Copy to the above-named Defendant Respondent,
Bechemhene Fosu Gyeabuor.

Writer & witness to signature

Patrick Minta

Registrar, Nkwanta Native Court.

No. 14.

COURT NOTES.

30

No. 14.
Court
Notes,
1st May
1939.

In the Asantehene's Grade " A " Court held at Kumasi on Monday, May 1, 1939, before the Krontihene Nana Yaw Gyanfi II, the Agonahene Nana Kwadjo Apaw, Gyasehene Nana Kofi Kan II, the Kyidomhene Nana Owusu Afriyie II, and the Ankobiahene Nana Kojo Gyanin II.

Nkwanta Adu Kofi III

Plaintiff-Appellant

vs.

Bechemhene Fosu Gyeabuor

Defendant-Respondent

Appeal from the judgment of the Kumasi Divisional Native Court.

Issue :—

The Defendant to show cause why (1) he has started farming on plf's 40 Nkwanta-Kwasu land without Plaintiff's permission and (2) why he prohibits plaintiff's tenants (from Gyakye) from farming thereat.

PLAINTIFF'S EVIDENCE.

No. 15.

Nana Adu Kofi III.

Nkwantahene, Adu Kofi III, s.a.r.b.

*In the
Asante-
hene's
"A"
Court.*

*Plaintiff's
Evidence.*

—
No. 15.
Nana Adu
Kofi III,
1st May
1939.

*Evidence
in Chief.*

The old boundary between Nkwanta and Bechem starts from the river Kosu, thence to Obuokrukruwa river, thence to Adengkra river, thence to Boa river, thence to Adengkra river, thence to Boa river, thence to Kosu river. The area in dispute lies to the South of the junction of the rivers Kosu and Boa. The land on the right hand side of the junction of these two rivers
10 belong to my Stool and that on the left belongs to Bechem Stool. The Respondent has encroached upon the right hand side which belongs to my Stool. The Court below inspected the locus in quo and found that the village Awiafutu which I referred to in my evidence is in my portion of the disputed land, yet it gave judgment against me and hence I have appealed against its judgment to this Court.

Xrd. by Respt.

Q. Do you remember that the boundary laid between Nkwanta and Bechem terminates at the junction of rivers Kosu and Boa and does not go beyond this junction ?

*Cross-
examina-
tion.*

20 A. It goes beyond this junction as far as to the Camp Anwiafutu.

Q. Do you remember that your own witness Tabil Odikro of Susuanso admitted in the Court below in answer to a cross-examination by you that the boundary did not go beyond the junction of the rivers Kosu and Boa ?

A. Yes, but I had my reasons of asking him that question.

Q. Was it not Nkwantahene Kwame Damte your predecessor who mentioned the village Anwiafutu before Commissioner Fell in his evidence ?

A. Yes.

Q. With whom have you boundaries on the disputed land ?

30 A. I have no boundary with anybody. Bomahene is the only Chief with whom I should have boundary, but there is no proper boundary between us.

Q. Do you collect tribute from the tenants on the disputed land ?

A. I collect about £30 to £40 annually from the tenants on it.

Q. Do you know I have about 9 camps on the disputed land, what do you collect from the people living in them ?

40 A. I do not collect anything from them, because of the arrangement made between us by Commissioner Fell. The three camps which were there originally were paying game tribute to me before Commissioner Fell's arrangement.

By Court :

Q. Have you a written agreement between you and Bomahene with respect to his occupation of your land adjoining the disputed area ?

*Examina-
tion by
Court.*

A. Yes.

Q. Are the three camps situate outside the junction of Kosu and Boa or within it ?

A. Outside the junction.

Q. Was the land lying outside this junction included in the dispute ?

A. Yes.

*In the
Asante-
hene's
"A"
Court.*

Q. Why was the boundary made to stop at the junction of Kosu and Boa rivers ?

A. Because Kosu was the original boundary between Nkwanta and Bechem.

*Plaintiff's
Evidence.*

Q. Does the Respondent own a portion of the land lying to the South of the junction of the two rivers ?

A. He owns the land lying to the left of these rivers and I own the land lying to the right of the rivers.

Q. Are the three camps referred to on the left or right side of the junction of the two rivers ?

A. Right.

At this stage the Appeal record was read to the Members of the Court.

10

No. 15.
Nana Adu
Kofi III,
1st May
1939.
Examina-
tion by
Court,
continued.
Interposed
examina-
tion of
Defendant
by Court.
Reading
of Appeal
Record.
Further
examina-
tion of
Plaintiff by
Court.

By Court to Bechemhene—Respondent :

Q. Where are the 9 camps referred to in exhibit " B " situate ?

A. At the South of the junction of the rivers Kwasu and Boa on the right side facing South.

By Court to Appellant :

Q. Where are the original three camps referred to in Mr. Fell's notes taken on 17 April 1913, situate ?

A. To the South of the junction of Kwasu and Boa.

20

Q. Did you point out the 3 camps to the viewers appointed by the Court below to view the disputed area ?

A. Yes.

Q. How did Commissioner Norris know that there were 3 camps situating on the South of the junction of the Rivers Kwosu and Boa, when he did not extend his inspection to that area ?

A. I mentioned them.

TO Fosu Gyeabour—Respondent :

Q. Where are the three camps referred to by Mr. Fell in his notes on 17.4.1913 situate ?

30

A. They are situate at the North of the junction of Kwasu and Boa (right side) facing the stream downward.

Q. Which is larger of the two rivers Kosu and Boa ?

A. Both are large. It is Kosu that flows towards the South of the land after meeting at the junction.

Further hearing adjourned to Thursday the 4th inst.

His
Nana Yaw Gyanfi II
President. X
mark

J. W. K. Appiah
Registrar

40

1/5/39.

DEFENDANT'S EVIDENCE.

No. 16.

Nana Gyeabuor.

The 4th day of May, 1939.

Parties present.

*(For previous examination of this witness see pages 8-9.)**Appellant cross-examined the Respondent :*

10 Q. Do you definitely state that the three camps which were originally on the land prior to the setting up of the boundary by the whiteman are situated on the North of the junction of the streams Boa and Kosu ?

A. I am definite. Facing the river Kosu downward.

Q. Do you know that the camp Awiafutu one of the three camps lies to the South of the junction of the rivers Boa and Kosu ?

A. This village Awiafutu is never my village. You know it yourself.

Q. Do you remember that before the Court " B " you said your boundary with the Bomas is Awiafutu ?

A. Yes, but it is within the area covered by the junction of the two rivers Boa and Kosu. The village Awiafutu is not my land. It forms part of Brosankro land.

20 Q. I put it to you that if Awiafutu is the boundary between you and Boma, then Awiafutu is on your portion of the land ?

A. The Awiafutu referred to by you is not on my land. One crosses the river Grunyah or Awiafutu, before one enters my land.

Q. Going by direction of Bechem, does not one cross Kosu and Awiafutu before one goes to river Achemawusu ?

A. One goes to Achemawusu before one reaches Awiafutu.

Q. You say you are not claiming Awiafutu, how can you then claim Achemawusu ?

A. Achemawusu is part of my land. I am not claiming Awiafutu.

30 Q. Are you not claiming Awiafutu camp or the land on which this camp situates ?

A. I am claiming the portion of Awiafutu land towards Bechem.

Q. I put it to you that it is the land on which Awiafutu situates that Commissioner Norris decided that I should allow you to own your camps there but any gold or concession arising on the land should be enjoyed by me ?

A. No. The Commissioner did not visit this area at all. He only reached the junction of Boa and Kosu and returned.

Q. I put it to you that I have no boundary at all with you on the right side of the junction of the streams Boa and Kosu ?

40 A. All the land to the South of the junction of Kosu and Boa is mine. Your boundary with me terminates at this junction.

Q. How came you by this boundary ?

A. By the boundary fixed by Captain Norris between Bechem and Nkwanta.

Q. Did the Commissioner state definitely in exhibit " A " that my boundary terminates at the junction of the two streams Kosu and Boa ?

A. The decision of Commissioner Norris is definite on this point.

Q. Are not the three camps Awiafutu, Yaw Kwakwa, Asuboi, Ashesua on the South of the junction of these two streams ?

50 A. No. They are on the North of the junction of these two streams.

Cross-examination closed.

*In the
Asante-
hene's
" A "
Court.*

*Defendant's
Evidence.*

No. 16.
Nana
Gyeabuor,
4th May
1939.

Cross-
examina-
tion.

*In the
Asante-
hene's
" A "
Court.*

PLAINTIFF'S EVIDENCE.

No. 17.

Nana Adu Kofi III.

*Plaintiff's
Evidence.*

No. 17.
Nana Adu
Kofi III
4th May
1939.
Further
cross-
examina-
tion.

Adu Kofi III.

Appellant re-examined by Respondent.

(For previous evidence in this Court see No. 15.)

Q. Do you say definitely that you own this land lying to the South of the junction of the two streams Kosu and Boa ?

A. Yes. I own the right side of the stream Kosu.

By COURT to Nkwantahene, Appellant :

10

Further
examina-
tion
by Court.

Q. With whom have you boundary on the right hand side of River Kosu after leaving the junction of the two streams ?

A. I have no boundary with anybody. It is used in common by the Nkwantas and the Bechems.

Q. Have you both no boundary with any other Chief or person ?

A. Beyond the portion which is used by Boma, I do not know with whom the Bomahs bound.

Q. Is it not correct then when the Bomahene's representative bore evidence in the Court below that the Bomahs have boundary with Respondent at Atwetwebuo and Awiafutu ?

20

A. It is not correct.

Adjourned for the locus in quo to be inspected by messengers to be appointed by the Court.

His
Nana Yaw Gyanfi II X
Mark

W/M

J. W. K. Appiah
Registrar.

In the Asantehene's "A" Court.

Okyeame Kwame Asante on oath examined by the Court.

Q. Are the villages Adesua, Yaw Kwakwa Esuboi, Awiafutu and Acheremosua on the upper or lower part of the River Kosu ?

A. They are situated on the lower part of the river i.e. towards the mouth, but from our inspection we find that the statement of the Nkwantahene was not correct, all the villages named by the Bechemhene are on the source of the river Kosu.

No. 18.
Evidence of View :
continued.

By Court.

Evidence of Okyeame Kwame Asante.

As the messengers are not unanimous in their findings—2 for the Appellant and 3 for the Respondent—the Court set aside their report and decides to send a Licensed Surveyor to survey the land and make a Plan thereof. 10

Rejection of Report :
Order for Survey.

Hearing adjourned indefinitely.

Nana Yaw Gyanfi II
P.

His
X
Mark.

W/M

(Sgd) J. W. K. Appiah.
Registrar.

Evidence of Survey.

EVIDENCE OF SURVEY.

20

No. 19.

Ernest S. S. Wood.

No. 19.
Ernest S. S. Wood,
5th August 1940.

In the Asantehene's "A" Court held at Kumasi on Thursday, the 15th day of August, 1940, before the Bekwaihene, the Agonahene, the Kyidomhene, the Gyaschene and the Ankobiahene.

Nkwantahene *vs.* Bechemhene.

Parties present.

Ernest Sylvester Soonde Wood, S.a.r.b.

Evidence in Chief.

I am a Licensed Surveyor. I live in Kumasi.

By order of the Court I made a survey of the land in dispute between the Nkwantahene Adu Kofi, Plaintiff and the Bechemhene Fosu Gyeabuor. 30

I tender the Plan I made.

Exhibit "BI."

Plan tendered, accepted and marked as Exhibit "BI." Copies of the Plan have been given to the parties.

Xcd. by plaintiff.

Examination by Plaintiff.

Q. Did I say that the boundary from Obuokrukruwa to Adinkra and Buom and thence to Kwasu stream is the boundary between me and the Bechemhene or did I say it was my exclusive boundary ?

A. You said it was a boundary fixed between you and the Bechemhene by Capt. Norris. 40

Q. On the plan you have marked certain portion of the land as belonging to Bomahene : who gave you that information ?

A. Bomahene's representative. I have marked on the plan that the area being claimed by Bomahene is also being claimed by you Nkwantahene.

*In the
Asante-
hene's
"A"
Court.*

Xcd. by Defendant.

Q. Did you survey the whole of the disputed area before making the plan thereof?

*Evidence
of Survey.*

A. Yes.

Q. What was the extent of the Nkwantahene's land shown you by him before making the plan?

*No. 19.
Ernest
S. S. Wood,
5th*

10 A. From Buokrukruwa stream to Adinkra stream to Boa stream and to Kwasu stream—all the land to the left of these streams claimed by Nkwantahene.

*August
1940,*

Q. Did the Nkwantahene show you a copy of a judgment given by Capt. Norris in respect of Obuokrukruwa land?

*continued.
Examina-
tion by
Defendant.*

A. Yes.

Q. Did he give you the names of persons with whom he has boundaries?

A. No.

Q. Do you remember I told you I have a boundary with Bomahene on the right hand side?

20 A. Yes.

Q. Do you know the stream Awiafutu?

A. Yes.

Q. Whose boundary is that?

A. You told me it is the boundary between you and Bomahene.

Q. Did you see the village Awiafutu on the land?

A. Yes.

Q. Who claimed the ownership of that village?

A. Nkwantahene said it was for you, but you too disclaimed it. You said it belonged to the Bomahene.

30 Q. In your experience as a Surveyor have you seen a person claiming a large tract of land without his having any boundaries with any other person?

A. Not at all.

Q. Do you remember I pointed out 3 deserted camps to you, Adesua, Yaw Kwakwakrom, or Monkronso and Mbapehia?

A. Yes.

Plf. Re-examines the Witness :

Q. By what did you determine that Mbapehia, and Monkronso are deserted camps?

*Re-examin-
ation by
Plaintiff.*

40 A. Nothing.

Q. Do you remember that Adesua is outside the disputed area?

A. Yes, according to the plan.

By Court :

Q. Are there farms in the disputed area?

A. Yes.

Q. Who own them?

A. Owned by both Nkwanta and Bechem subjects.

Q. Who are the occupant of the villages on the land?

A. Both Nkwanta and Bechem subjects.

*Examina-
tion by
Court.*

50 Q. Where are the three villages referred to by Nkwanta situated?

*In the
Asante-
hene's
" A "Court.*

A. Those named by Bechem are situated on the North and those by Nkwanta are situated on the South of Kwaso.

Q. By what did you determine that the camps named by Nkwanta are deserted camps ?

*Evidence
of Survey.*

A. There are inhabitants and village at Yaw Kwakwa Esuboi. There is a new thatched house at Adesua too. At Achiaemesu too there is only a tree called Sempii that stands there. There is a village there though I did not meet any person there.

No. 19.
Ernest
S. S. Wood,
5th
August
1940.
Examina-
tion by
Court,
continued.

Q. After leaving the last point referred to in Capt. Norris' judgment, did the Nkwantahene mention anything indicating boundary ? 10

A. He only mentioned some kola nuts within the area in dispute.

*Plaintiff's
Evidence.*

PLAINTIFF'S EVIDENCE.

No. 20.

Nana Kofi Adu III.

(For previous evidence of this witness see items 15 and 17, pages 19 and 22.)

Plf. re-examined by Court :

Q. Do you collect tribute from the Bechem subjects farming the disputed land ?

A. No, because according to Capt. Norris they are not to pay tribute in respect of their farms. 20

Adjourned to Monday the 19th August, 1940.

his
Nana Yaw Gyanfi X
Bekwaihene mark

(sgd) J. W. K. Appiah
Registrar.

No. 21.
Judgment,
19th
August
1940.

No. 21.

JUDGMENT.

In the Asantehene " A " Court held at Kumasi on Monday the 19th day of August, 1940, before the Bekwaihene, the Agonahene, the Kyidomhene 30 the Gyasehene and the Ankobiahene :

Nkwantahene *vs.* Bechemhene.

Parties present.

JUDGMENT.

Appeal allowed with costs to be taxed.

This is an appeal from a judgment of the Asantehene's Divisional Court, before which the Appellant sued the Respondent, for trespass on

his land. The Court below, having heard the evidence adduced by both sides, sent to view the locus in quo and upon the report submitted by the viewers it gave judgment for the Defendant and the Plaintiff has appealed from the judgment to this Court.

In the Asantehene's "A" Court.

No. 21.
Judgment,
19th
August
1940,
continued.

This Court also, having heard evidence and read the record of appeal, sent messengers to view the land because of certain points raised by the Appellant in his grounds of appeal. It is regrettable to record however that the viewers sent by this Court were unable to come to an unanimous opinion as to their "finding." The Court therefore, had the land in dispute surveyed by a Licensed Surveyor and the Plan thereof was put in evidence, accepted and marked Exhibit "BI."

According to the Plan (Exhibit "BI") the three villages Adesua, Yaw Kokwa Esuboi and Awiafutu referred to by Nkwanta in the supplement (1) to exhibit "A" as also Acheremosu referred to in supplement (2) by Bechem during the dispute before Mr. Fell, are all in the disputed area.

Whereas according to the boundary fixed between Nkwanta and Bechem, i.e., exhibit "A" it is specifically stated that, "the boundary between Bechem and Nkwanta to be the thalweg of the Obuokrukruwa-su to where it joins the Adinkra-su thence to the Boa-su following the thalweg of the Boa to the point where the Kosu joins it. Bechem people to have full use of all farms and hunting huts at present used by them on Nkwanta land without tribute from any rubber or cocoa grown or manufactured on that land. 2. The only claim Nkwanta reserves is—if any gold or other mineral is found thereon or a concession of any sort granted."

This Court holds that if the disputed area belonged to Bechem stool, the Commissioner would certainly not have embodied in exhibit "A" that Bechem people should have full use of all farms and hunting huts at present used by them, on Nkwanta land. Naturally, Bechem would have raised a protest to this clause in exhibit "A." Though Bechemhene (Respondent) contends that the names of the villages referred to in the supplement (1) are not correct names, the Court finds itself unable to accept this contention, seeing that it cannot safely be accommodated to the names of the villages in supplements (I) and (II) to the Exhibit "A."

In view of the foregoing the Court has no alternative but to allow the appeal and to set aside the judgment of the "B" Court.

his
Yaw Gyanfi II X
Bekwaihene mark
President.

40 W/M
(sgd.) J. W. K. Appiah
Registrar

19/8/40.



*In the
Chief
Commissioners's
Court.*

In the Chief Commissioner's Court.

No. 22.

GROUNDS OF APPEAL.

Judgment of the Asantehene's Court " A " should be reversed on the following grounds.

No. 22.
Grounds of
Appeal,
18th
September
1940.

1. Because the claim discloses no actionable wrong in that, the claim was for action for trespass on Nkwanta-Kwasu land, no evidence in support of that. In other words, the land having been admitted to be, by the Plaintiff's evidence used in common by Nkwantas and Bechems, question of trespass does not arise—and otherwise the Court below 10 should have non-suited the Plaintiff with costs. Failing which, the judgment is inequitable, contrary to law and good conscience, or incompatible with the matters at issue.

2. Because the question of what should be the proper boundary between the parties to guard against any possibility of future redresses, never became one of the essence in the judgment which called for a finding of the Court—and that power which enabled the Court to make a declaration of boundary in this case, or to affix an arbitrary boundary by natural features as did by the decision of Commissioner Norris on Exhibit " A " at page of the proceedings, was not made to validate it. In other 20 words a delimitation of boundary had become one of the issues in the case—so that it would have been proper to include such a delimitation in the judgment and on plan Exhibit " BI." Or otherwise no trespass was committed having admitted the Defendant's rights, uninterrupted possession and use of the land and enjoyment of the proceeds thereof for over three hundred (300) years, are strong evidence of title.

3. Because it having appeared in evidence by Plaintiff's 3rd witness Kofi tabi, Odikro of Susuanso, that the boundary demarcated by the decision of Commissioner Norris on May 22nd, 1913 does not extend beyond or cross the rivers, namely (Kwasu and Boa) which implies that 30 the disputed area has not in anyway been demarcated between the parties. (See Odikro Kofi Tabi's evidence at page 7 of the record) wherein upon question put to him by plaintiff thus:—

" Q. Did the boundary end at Boa and Kwasu junction or — it continued ? "

" A. The boundary did not cross the river, I did not see it so."

It is submitted therefore that a given fact has been put in issue to indicate that the boundary of Commissioner Norris in 1913 on Exhibit " A " do not extend to the area in dispute—so that either of the parties would be justified in law to establish a claim of trespass against the other. In 40 other words, judgment of the " A " Court reversing that of Court " B " was against weight of evidence.

4. Because the plea and evidence led by Defendant and his witnesses, were no testimony of trespass, which would have empowered the Court to decide thereupon. In other words, evidence of Defendant outweighed that of Plaintiff, and benefit of doubt if any should have been given for the Defendant, or the judgment of the Court of issue, namely, Court " B " should have been confirmed. And otherwise the " A " Court was wrong in reversing the equitable judgment of Court " B " against the Defendant, when the whole of the evidence (some of which by Plaintiff's own witnesses) 50 on record are entirely in his favour and none to the contrary.

5. Because the Court "A" throughout the proceedings misconceived and disregarded the evidence of Defendant and his witnesses in tradition, or their evidence of Native Custom, and it came to inconsistent conclusion as to tradition and Native Custom, and there is no finality. In that the "A" Court was wrong in holding:—

*In the
Chief
Commissioner's
Court.*

No. 22.
Grounds of
Appeal,
18th
September
1940,
continued.

10 "That if the disputed area belonged to Bechem Stool, the Commissioner would certainly not have embodied in Exhibit "A" that Bechem people should have full use of all farms and hunting huts at present used by them on Nkwanta land. Naturally Bechem would have raised a protest to this clause in Exhibit 'A.' Though Bechemhene (Respondent) contends that the names of the villages referred to in supplement (1) to the Exhibit 'A' are not correct names, the Court finds itself unable to accept this contention, seeing that it cannot safely be accommodated to the names of the villages in supplements (1) and (2) to the Exhibit 'A.'"

20 And in view of which gave judgment for the Plaintiff with costs. Having in view that Exhibit "A" itself does not stipulate any names of villages in contemplation of its findings, or corroborate those asserted by Nkwantahene the Plaintiff in the course of his testimony, nor names of villages became one of the issues in the case.

30 It is submitted respectfully, that the only points material to the issue and which were to have weighed with the Court, are (A) whether in as much as Plaintiff having admitted on record page 3, that he has no boundary with anybody on the disputed area and that the land is held in common by Nkwantas and Bechems, any trespass could in law be committed by Bechemhene or the Defendant on the land—and if so, whether on the face of the evidence before it, Defendant did commit trespass thereon—as the issue is, and so goes the judgment; And (B) whether in as much as by the evidence of Plaintiff's third witness Odikro Kofi Tabi, that decision of Commissioner Norris on Exhibit "A" did not cross the rivers Boa and Kwasu, there had been any boundary at all between the parties over the disputed area, and if so where lies such boundary—and if there is or not Plaintiff was justified in law, by instituting this action against the Defendant for trespass.

It is further submitted that these material points which should have been weighed and observed by the Court, having escaped from its findings, constitutes the judgment herein to be vindictive, contrary to the principles judicial elements and good conscience.

40 6. That assuming Plaintiff has any cause of action against the Defendant under Exhibit "A," it should have been, to show cause why inasmuch as the decision of Commissioner Norris having at the time not extended from junction of Kwasu and Boa rivers to Donkawtaw, the extremities of that area should not be demarcated by order of Court between them to guard against any committal of trespass.

In other words, Plaintiff fail significantly under his plaint as appeared from writ of summons and particulars. And otherwise action not maintainable by Plaintiff. The only conclusion fatal to the issue, was, that the Court should have non-suited the Plaintiff with costs. Failing which

*In the
Chief
Commissioner's
Court.*

No. 22.
Grounds of
Appeal,
18th
September
1940,
continued.

the judgment, is contrary to reception of inadmissible evidence. Negative and otherwise.

7. Because the claim being one of trespass to Nkwanta-Kwasu land, incorrect names of villages as held by the "A" Court in its judgment appearing at page 27 of the record, is indispensable to maintenance of the same. And otherwise names of villages may come in question, it is not essential to the action. In that, the claim and defence put in by the parties were not a claim of villages, which would have empowered the Court to form opinion with it in coming to the conclusion it did. In other words, the Court was only bound to decide the issue as shown by plaint and plea put in—and otherwise the Asantehene's Court "A" acted *ultra vires* and arbitrarily in the proceeding of the case. 10

8. Because the nature of the suit on the ground of interest and magnitude, was in excess of the decision arrived at. In other words, judgment is ambiguous in law and facts.

9. Because the judgment was partial and unfair in that the Court below based its decision upon presumptive conclusion which were not supported by law, facts and evidence. And otherwise that the judgment was bad in law and facts in that variety of erroneous points herein referred in grounds 1, 2, 3, 4, 5, 6 and 7 were never observed by it. 20

And it is accordingly submitted that:—

(A) The judgment is inequitable, contrary to law and good conscience or incompatible with the matter at issue.

(B) The claim discloses no actionable wrong.

(C) Want of mutuality of boundary between the parties on the plan Exhibit "B" 1.

(D) The Plaintiff did not adduce evidence in support of his claim as appeared from writ of summons and particulars.

(E) The judgment is against weight of evidence.

(F) The absolute ousting of Defendant and his people from land which they have improved and on which they have made villages and farms for a number of years, is repugnant to the rules of equity, natural justice and good conscience. 30

(G) There is no evidence in support of the judgment.

(H) The Defendant-Respondent-Appellant is entitled to judgment on the whole claim of issue before the Court on the face of the evidence led.

(I) The judgment was otherwise erroneous and it should be reversed for Defendant-Respondent now Appellant with costs.

Dated at Kumasi this 18th day of September, 1940. 40

Filed this day of September 1940.

By (sgd.) Fosu Gyeabuor II

Defendant-Respondent-Appellant herein.

Prepared by & witness to signature

(sgd.) George E. W. Quartsin,

Lic. No. 15287/40/Ksi.

Court Road Kumasi, Gratis.

ARGUMENTS ON APPEAL.**No. 23.****Defendant's Argument.****Plaintiff's Argument in reply.****Defendant's Argument in answer.**

In the Chief Commissioner's Court of Ashanti held at Kumasi on Friday 27th day of September, 1940 before His Worship G. P. H. Bewes Esqre., Ag. Asst. Chief Commissioner, appointed to preside over the Chief Commissioner's Court.

*In the
Chief
Commis-
sioner's
Court.*

No. 23.
Arguments
on Appeal:
27th
September
1940.

10

Nkwantahene Adu Kofi III
Plaintiff-Respondent

Vs.

Bechemhene Fosu Gyeabuor II
Defendant-Appellant

From above.

Appellant: FOSU GYEABUOR II states. Before Court "B" the Nkwantahene admitted on page 2 of record that his boundary starts from Buokrukruwa to Adinkra thence to Bua up to Kwasu and he is on the right and I am on the left. That is correct as far as Kwasu. When he
20 went on his land he pointed marks his correctly to the surveyor and it is marked in green on plan Ex. B.1. According to proceedings on page Capt. Norris laid the same boundary up to Kwasu and Bua junction (Ex. A) and under clause 2 of the agreement made before Capt. Norris I had right to cultivate there i.e. on the opposite side of Bua River and Nkwanta claims nothing from me. If Nkwantahene had taken action for trespass against me on that land he would be in the wrong. Page of the proceedings getting towards Donkotor I have a boundary with Bomahene. The Essukesehene who is a Sub-Chief to Boma gave evidence that I have a boundary with him. There is a village called Dada at which
30 I was making a farm and on a/c of this Nkwantahene took action against me.

Defendant's
Argument.

I have three hunting camps on Nkwantahene's land near Norris boundary. On the land in dispute the Nkwantahene pointed out three of my villages to which he gave other names. Dada which he calls Achemwasu, Kwasoaja which he calls Yaw Kwakwasuboi and a third one which is outside the area in dispute. These two villages agree that the names of the villages are those by which I call them. Because of this Court "A" gave judgment against me. It is not true that I have trespassed on his land. The Court did not go through the issue of the case. That is why I appealed. The judgment of the Court "B" is the
40 correct judgment. In demarcating my boundary with Nkwantahene on the east side of the area in dispute I follow from boundary. There are no physical features on the ground other than kola trees, Nyachiabua and Achemwasu.

Respondent ADU KOFI in reply.

Capt. Norris laid the boundary marked in green on Ex. B.1. Kwasu is the boundary between myself and Bechemhene from time immemorial. Bechemhene's land is on the left and mine is on the right from Bua Kwasu junction.

Plaintiff's
Argument
in reply.

In the presence of Capt. Norris and Mr. Fell I mentioned the village
50 Yaw Kwakwasuboi. I also mentioned the village Adeasua. Bechemhene mentioned that one of his villages was called Achemwasu. Those villages

*In the
Chief
Commissioner's
Court.*

No. 23.

Arguments
on Appeal :
27th
September
1940.

Plaintiff's
Argument
in reply,
continued.

I have mentioned are on the right of Kwasu. At that time the Bechemhene had two kola farms on the land. When I said this to Mr. Fell he said he would send Capt. Norris to lay the boundary. Capt. Norris in 1913 laid the boundary to Kwasu River. It was understood that from Bua Kwaso junction the boundary should follow the Kwaso river though Capt. Norris did not actually say so. When Capt. Norris had laid the boundary I told him I would not agree for the Bechem people to make use of those farms and hunting huts on the land in dispute but Capt. Norris said Bechemhene should be allowed free use of them because it is Nkwanta land but if any concession or gold were to be found on the land they were to be given to me. I agreed with the Bechem people & an agreement was drawn and signed by all parties (Ex. A) I claim no bush meat killed by the Bechem people, but it was because Capt. Norris said I should allow the Bechem people to have free use of their farms and hunting huts. I sent one of my servants to cultivate a portion of the land but he was driven away by Bechemhene who claimed that the land belonged to him. So I took action against him to show reason why he had cultivated a portion of the land and when I sent my servant to cultivate a portion for me he had driven him away. I know the land belongs to me. Judgment was given against me in Court " B " because consideration was not given to the villages on the land in dispute. I appealed to Court " A. " In Court " A " I was asked about the villages and where they are situated and I showed that they were towards the south of the land in dispute and on right hand side of Kwasu river. Court " A " sent a Surveyor to survey the land because Bechemhene had said the villages and hunting huts were on the right of Boa towards its source. The Bechemhene showed his boundary as that piece of land marked yellow and red on Ex. B.1 right up to Donkotor. Court " A " found that what Bechemhene was saying was not correct, because the villages mentioned by him by name Mbapeihia, Yaw Kukwakrom, were not the villages mentioned by Capt. Norris. In 1913 no mention was made by Bechemhene of these villages. The villages mentioned by me were also those mentioned by me before Captain Norris and Mr. Fell and were found to be in the correct position. For that reason Court " A " gave judgment in my favour. Because he lives on one side of Kwasu River and I on the other side and he has crossed the Kwaso River to cultivate land on my side without my interruption and when I sent people to cultivate a portion of the land for me he drove them away, then he has broken the agreement between us. If Bomahene gave evidence against me his statements are not correct because I have a document which shows that I have no boundary with him. If Bomahene said my boundary meets with his boundary at Donkotor and that of Bechemhene meets with him at Donkotor, neither of these statements is correct. That is why Court " A " gave judgment in my favour. Myself and Bomahene share the boundary of the Forest Reserve.

Defendant's
Argument
in answer.

FOSU GYEABUOR In reply.

About the Forest Grant, because we are disputing about that piece of land, the grant has not been paid to anybody. On page 2 of proceedings will be found the Nkwantahene's claim. On this claim Nkwanta does not follow the Kwaso towards it south.

Adjourned till Saturday 5th October 1940.

G. P. H. Bewes

Ag. A.C.C.A.

No. 24.
JUDGMENT.

*In the
Chief
Commissioner's
Court.*

In the Chief Commissioner's Court of Ashanti held at Kumasi on Saturday the 5th October, 1940, before His Worship G. P. H. Bewes, Esq. Ag.: Asst.: Chief Commissioner appointed to preside over the Chief Commissioner's Court.

No. 24.
Judgment,
5th
October
1940.

Nkwantahene Adu Kofi III

Plaintiff-Appellant-Respondent

vs.

Bechemhene Fosu Gyeabuor II

Defendant-Respondent-Appellant.

10

JUDGMENT.

This is an appeal from the judgment of the Asantehene's "A" Court given on 19th August 1940 which reversed in favour of the Nkwantahene a judgment of the Kumasi "B" Court on a claim by the Nkwantahene for "the defendant to show cause why (1) he has started farming on plaintiff's Nkwanta-Kwaso land without plaintiff's permission and (2) why he prohibits plaintiff's tenants (from Gyakye) from farming thereat" Both Courts below ordered inspection of the land and the reports of the inspectors form part of the record. Court "A" further ordered a survey to be made and the result is Ex. "B.1." Ex. "A" is a document tendered
20 by the Plaintiff in the "B" Court showing notes of evidence taken before Mr. Fell on 17th April 1913 and an agreement made by the parties before Mr. Norris on 22nd May 1913, presumably as a result of Mr. Fell's enquiry the previous month.

In this case now before the Court the respondent relies to a certain extent on Ex. "A" to support his claim. The appellant on the other hand claims that this agreement did not affect the land on the north side of Kwaso River (Kosu in the agreement), but only that bit north of Boa River. I have formed the opinion from the study of Ex. "A" that the parties were also then disputing about both portions of the land. The
30 claim in that case reads—"Claims lands from where Obuokrukruwa "crosses the Kumasi Road till it joins the Kosu River" and in his statement then the Chief of Nkwanta states "In the olden days of the Kings of "Kumasi Kosu was my boundary—ancestral boundary." It is inconceivable to me that if the parties did not intend that the Kwaso should from its junction with the Bua be the boundary between them that the agreement should have been omitted to say what was the boundary from that point. The Kwaso is a natural feature on the land whereas the boundary which Bechem claims from Boa Kwaso junction has no physical features to mark it. The Bechemhene has told the Court that he followed
40 farm boundaries in making this boundary. Furthermore the then Bechemhene stated that his boundary with Boma is a stream called Grunyah which runs into the Kwaso river near Bosankro and said that "the chief of Nkwanta also has a part there and that we have no settled "boundary with Nkwanta in the bush".

Grunyah River is the same as Awiafutu stream and Acheremosu has been identified as Achemwasu. These are on the western Boundary of the land in dispute.

The Bechemhene now claims a boundary with Boma as Donkotor though this was not mentioned in 1913 and Kofi Fosu Krontihene of Boma,

*In the
Chief
Commissioner's
Court.*

defendant's witness, while confirming a boundary with Bechem, states that Boma has a boundary with Nkwanta at Donkotor and that the three (Boma, Bechem, and Nkwanta) have no common boundary (p. 10 of record).

No. 24.
Judgment,
5th
October
1940,
continued.

Defendant's 3rd witness, Yaw Asubonten of Esukesi, deposes that the plaintiff has a boundary with Esukesi at Donkotor and that Esukesi has a boundary with Bechem at Awiafutu and with Brosankro at Atwetwebosu (Achochobuosu on Ex. " B "). From the evidence of these witnesses it is obvious that the claim of Bechem to land up to Donkotor cannot be maintained.

10

Furthermore the evidence given by the witnesses as to the Boma Bechem Boundary at Awiafutu (Grunyeh) supports the contention that the Commissioner, when making the agreement in 1913, had the whole of this area on the north part of Kosu and Boa in mind, more especially as the then Chief of Bechem said that the Chief of Nkwanta had a part there and there was no settled boundary.

It will be seen that the various inspectors who went on the land were at variance in their opinions and it is clear that both parties have been making use of this land.

I am of the opinion that the agreement Ex. " A " was intended by the parties at the time to apply not only to that area immediately north of Bua river but also that area now in dispute and that the defendant is bound by it.

Appeal is therefore dismissed with costs to respondent to be taxed.

(Sgd.) G. P. H. Bewes,
Ag. : Asst. : Chief Commissioner.

No. 25.

GROUNDS OF APPEAL.

*In the
West
African
Court of
Appeal.*

In the West African Court of Appeal.

Between

Bechemhene Fosu Gyeabuor

Defendant-Appellant

30

and

Nkwantahene Adu Kofi III

Plaintiff-Respondent.

No. 25.
Grounds
of Appeal,
18th
November
1940.

The appellant, being dissatisfied with the judgment of the Chief Commissioner's Court of Ashanti, Kumasi delivered on the 5th day of October 1940, and having obtained Final Leave to appeal therefrom dated the 5th December 1940, hereby appeals to the West African Court of Appeal upon the grounds hereafter set forth.

GROUNDS OF APPEAL.

1. That the judgment of the Chief Commissioner's Court, confirming the judgment of the Asantehene's Court " A ", to the effect that the previous suit between the Predecessors of the parties herein which was decided by Capt. Norris in 1913 as per Record Exhibit " A ", related to and decided the ownership of the identical area now in dispute in this suit

40

in favour of the Plaintiff-Respondent as to estop the Defendant-Appellant from maintaining that the said area in dispute in this suit belongs to his Stool—is Wrong when regard is had to (A) The claim which was before Capt. Norris in 1913, and (B) the consent judgment in that 1913 Suit both of which were clearly limited to land “from where the Obuokrukruwa River crosses the Kumasi Road following the thalweg of the Boa River to the point where the Kosu or Kwasu joins it”—an area outside the one now in dispute in this case.

*In the
West
African
Court of
Appeal.*
—
No. 25.
Grounds
of Appeal,
18th
November
1940,
continued.

2. That the Chief Commissioner’s Court and the Asantehene’s Court
10 “A” both misconstrued and misinterpreted the Record of the 1913 Proceedings Exhibit “A” as relating to the area now in dispute in this Suit—and the judgment of those Courts based on such misconception is wrong.

3. That the judgment of the Chief Commissioner’s Court, confirming the judgment of the Asantehene’s Court “A,” was based on material inadmissible evidence to wit ; the Evidence of certain witnesses, as distinct from the claim and judgment, in the 1913 Proceedings (Exhibit “A”)—and the judgments of the said Courts are wrong.

4. That the Asantehene’s Court “B” carefully considered that
20 issue as to whether or not the 1913 Proceedings Exhibit “A” related to the area now in dispute in this Suit—and from a careful examination of Exhibit “A” and the Report of the Viewers sent to inspect the land, properly decided that question of fact against the Plaintiff Respondent and the decision of the said Asantehene’s Court “B” was wrongly set aside on improper and insufficient grounds by the appellate Asantehene’s Court “A” and the Chief Commissioner’s Court—and the said decision of the Court of 1st instance (Asantehene’s Court “B”) should be restored.

5. That the Plaintiff Respondent did not by his evidence discharge
30 the burden of proof that lay on him, and was not entitled to judgment as decided by the Chief Commissioner’s Court, confirming the Judgment of the Asantehene’s Court “A”.

6. That the judgment of the Chief Commissioner’s Court confirming that of the Asantehene’s Court “A” is wholly against the weight of the evidence.

Dated this 18th day of November, 1940.

(sgd.) K. Adumua Bossman,

Counsel for Appellant.

The Registrar, West African Court of Appeal, Accra, and to the
40 above-named Plaintiff Respondent, Nkwantahene Adu Kofi III, his Solicitor or Agent.

SUPPLEMENTARY GROUNDS OF APPEAL.

(Title as No. 25.)

No. 26.
Supple-
mentary
Grounds of
Appeal,
31st March
1941.

The Appellant, being dissatisfied with the Judgment of the Chief Commissioner's Court of Ashanti, Kumasi, delivered on the 5th day of October, 1940, and having obtained final leave to appeal therefrom dated the 5th December, 1940, hereby appeals to the West African Court of Appeal upon the Supplementary Grounds hereinafter set forth.

SUPPLEMENTARY GROUNDS OF APPEAL.

7. That the Chief Commissioner erroneously treated the Executive Decision embodied in Exhibit "A" as though conforming to the requirements of Section 3 of the Boundary, Land, Tribute and Fishery Disputes (Executive Decisions (Validation) Ordinance Cap. 120) and therefore validated and binding on the parties—when in fact it was not so validated and therefore not binding. 10
8. That the Executive Decision embodied in Exhibit "A" was *not* "given, confirmed, or approved by the Chief Commissioner" nor "officially recorded in a Boundary Book" as prescribed by Section 3 of the Ordinance. 20
9. That Exhibit "A" moreover does not comply with Section 4 of the same Ordinance by which only a copy certified as correct by the Government Officer for the time being in charge of the Boundary Book kept under the Ordinance could be produced and used in the suit.
10. That the Commissioner's judgment based on the misconception as to the legal effect of Exhibit "A" is wrong and should be reversed.

Dated this 31st day of March, 1941.

K. Aduma-Bossman,

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Counsel for Appellant.

To The Registrar, West African Court of Appeal, Accra, and to
The above-named Plaintiff-Respondent, Nkwantahene Adu
Kofi III, His Solicitor or Agent.

No. 27.

ARGUMENTS OF COUNSEL.

*In the
West
African
Court of
Appeal.*

In the West African Court of Appeal, Gold Coast Session, held at Victoriaborg, Accra, on Tuesday, the 27th day of May, 1941 before Their Honours Sir Donald Kingdon, C.J., Nigeria (President), Sir Philip Bertie Petrides, C.J., Gold Coast, and George Graham Paul, C.J., Sierra Leone.

No. 27.
Arguments
of Counsel,
27th May
1941.

Nkwantahene Nana Adu Kofi III Plaintiff-Appellant-
Respondent-Respondent

vs.

10 Bechemhene Nana Fosu Gyeabuor II, Defendant-Respondent-
Appellant-Appellant.

Appeal from Judgment of Acting Assistant Chief Commissioner of Ashanti dated 5th October, 1940.

K. A. Bossman (with him E. Prempeh) for Appellant.

E. O. Asafu-Adjaye for Respondent.

BOSSMAN for Appellant—

Claim page 1 was treated as claim for ownership throughout.

Court " B " found in our favour—page 14

Court " A " page 27 reversed.

20 Chief Commissioner of Ashanti upheld Court " A "—page 34.

Grounds of appeal page 34 and supplementary grounds filed.

Grounds 7-10 first.

See Exhibit " A," pages 44-45.

same parties.

Kwarten v. Kwabi—17th November, 1930.

Grounds 1 and 2—

Court " B " treated Exhibit " A " as a binding judicial decision but held it did not cover the area in dispute—See page 15.

Plaintiff relied on " A."

30 Defendant contended " A " did not affect land beyond junction of
Boa and Kosu.

I submit that that was correct and was wrongly reversed by Court " A " and Chief Commissioner of Ashanti.

On the face of it Exhibit " A " only goes to that point.

That is admitted by Respondent—see page

Plan is " B1."

" A " Court and Chief Commissioner of Ashanti based their decisions entirely on Exhibit " A."

40 Court " B " based their decision on other evidence, occupation and
evidence of boundary owners etc.—see pages 14, 15.

" A " Court's judgment, page 27. Court reversed decision apparently because certain villages mentioned in evidence before Fell, page 45, were located by Plaintiff beyond the junction and within the area in dispute. But they forgot the report of the various viewers who reported that the villages could not be those referred to before Fell—see page That was a finding of fact based on relative evidence by the Trial Tribunal and was not displaced. Even the names were disputed and the people

Bossman
for
Appellant.

*In the
West
African
Court of
Appeal.*

No. 27.

Arguments
of Counsel,
27th May
1941.
Bossman
for
Appellant,
continued.

on the spot gave evidence they were not the same. The viewers in Court " B " so decided and so did the majority of the 5 viewers sent by Court " A." See page 53 (3 to 2 for us). In " B " Court they were unanimous for us—all 5.

" B " viewers' report is at page 46.

" A " Court viewers' findings begin at page 51.

Page 51 viewer makes the same inspection about the villages—page 51 same.

The other 2 pages 52–53 deal with more concrete findings and decide for us. 10

In their judgment Court " A " accepted as facts what the surveyor had put in the map merely to indicate what the Plaintiff had told him.

Chief Commissioner of Ashanti at page 33.

Chief Commissioner of Ashanti reversed " B " Court on the facts without justification.

See page —evidence of exclusive use of Kosu river—confirmed page ..

As to question of boundary with Boma people—the Boma people were in occupation.

The point that Nkwanta took no steps to stop Bechem people going on the land in dispute is a strong one. 20

The viewers accepted our contention that the names given by Nkwanta to places on the land in dispute for the purposes of this dispute.

Court " A " did not entirely rehear de novo, nor did the Chief Commissioner of Ashanti.

I ask Court to restore judgment of " B " Court.

ADJAYE not called upon on Grounds 7–10, but called upon on the other grounds.

Adjaye for
Respondent

ADJAYE for Respondent :—

I shall show that " B " Court had not before it a plan of the area in dispute. 30

I suggest Court " B " did not understand the situation.

I invite attention to the natural features.

Defendants did not dispute that Kosu was the ancestral boundary between us.

See page 45—" Chief of Nkwanta has also a part there ".

That negatives present claim to exclude us.

(A short adjournment.)

On resumption, Adjaye continues :—

In present case Appellant claims a line without any natural features from the junction of the Boa and Kosu to Donkawtaw. According to him there should be a common boundary at Donkawtaw between Bechem, Nkwanta and Boma. 40

In Court " B " he called 2 witnesses and these 2 witnesses merely testify that they had boundaries with Bechem towards the South but not at Donkawtaw. See page 9.

Appellant describes Norris' boundary as of land called Awiafutu—see plan and page 8.

Cf. pages , .

(Graham Paul, C.J., Sierra Leone, draws attention to page).

50

See Chief Commissioner of Ashanti's judgment—pages 33–34—conclusion at ll, 5–10 of page 34 is the only possible one.

Court " B " ignored the evidence given in 1913 on this point. They had no plan and that is how the mistake occurred.

I submit that Court " B " went wrong at pages 14–15.

Nowhere in Court " B's " judgment did they direct their minds to the previous admissions of Defendants.

Court " A " ordered a plan and so were in a better position to judge than Court " B."

10 Chief Commissioner of Ashanti also has a plan before him.

I submit that both these Courts could rightly upset Court " B " since they had the plan.

As to the contention that the villages mentioned in 1913 are all to the North, there is evidence on both sides, and Court " A " was in a position to judge from the evidence and the plan where those villages were situated.

20 Finally I ask Court to uphold judgment of Chief Commissioner of Ashanti because we contended that the Kwasu River was the ancestral boundary. That was not denied, but argument was made that from the junction of the Kosu and Boa, the Boa should form the boundary instead of the Kosu. Towards the South where there are no other rivers than the Kosu there can be no dispute that the Kosu is the boundary.

Boundaries are more often defined by natural features than by arbitrary lines drawn through cocoa farms and that should weigh in supporting the Chief Commissioner of Ashanti's judgment. This boundary cut by Appellant up North is just a line through farms with no natural features. As to Forest Reserve Boundary. If Appellant's story is correct he should be one of the parties to have granted the land to Government. As a matter of fact it was Respondent and Boma who granted the Forest Reserve in 1937.

30 BOSSMAN in reply :—

Adjaye has argued as though onus was on us instead of on Plaintiffs. Their case was that the area around Acheamwasu was theirs, the larger area was only incidentally brought in. The dispute centred round Achemwasu southwards to the River. So far as that went the evidence shattered Plaintiff's case.

It was believed by " B " Court—there was nothing to contradict it.

40 Adjaye has stressed that in 1913 there was an admission against interest. It does not bear that out. It was not evidence—only a statement of case. " There " is quite indefinite. It can't stand up against the evidence in " B " Court and the report of the viewers. How can Plaintiff's case be reconciled with admission that the Kosu is in the exclusive occupation of Defendant.

Adjaye now puts up case that Kosu is ancestral boundary—if so, why rely on Exhibit " A." He fought the case on a wrong basis according to what he says now. He rested in Court " A " and in Chief Commissioner of Ashanti's Court on Agreement " A."

True Court " B " did not have plan—but they understood the case and when the plan came it confirmed Defendant's case and correctness of " B " Court's decision and showed Plaintiff's case to be hopeless.

50 As to the Forest Reserve, see page 32.

*In the
West
African
Court of
Appeal.*

No. 27.
Arguments
of Counsel,
27th May
1941.
Adjaye for
Respondent,
continued.

Bossman
for
Appellant
in Reply.

*In the
West
African
Court of
Appeal.*

(Graham Paul, C.J., Sierra Leone, draws attention to page 53
—Report of Viewers in “A” Court) Akue *v.* Ababio IV, P.C. 1874–1928,
page 71.

Kosu River runs through Bechem land and is not a natural boundary
between Bechem and Nkwanta.

It is far from Nkwanta and gets farther away the farther south
it gets.

I submit that Respondent failed to show that decision of “B” Court
was wrong and that the reversal of the decision of the Trial Court was
unjustified and should not stand. 10

Judgment reserved.

DONALD KINGDON,

President.

27th May, 1941.

No. 27.
Arguments
of Counsel,
27th May
1941.
Bossman
for
Appellant
in Reply,
continued.

No. 28.
Judgment,
3rd June
1941.

No. 28.
JUDGMENT.

3rd June, 1941.

In the West African Court of Appeal, Gold Coast Session, held at
Victoriaborg, Accra, On Tuesday, the 3rd day of June, 1941, before Their
Honours Sir Donald Kingdon, C. J. Nigeria (President), Sir Philip Bertie 20
Petrides, C.J., Gold Coast and George Graham Paul, C.J., Sierra Leone.

Nkwantahene Nana Adu Kofi III,
Plaintiff-Appellant-Respondent

Respondent

Versus

Bechemhene Nana Fosu Gyeabuor II,
Defendant-Respondent-Appellant

Appellant.

JUDGMENT.

It is common ground that this is a dispute between the Nkwantahene
and the Bechemhene as to the ownership of the area of land edged yellow
in the plan Exhibit “B1” which was made for the purpose of the case 30
when it was before the Asantehene’s Divisional Court “A.” The Plaintiff
claims that it is Nkwanta land, and the Defendant that it is Bechem
land.

The original trial Court was the Asantehene’s Divisional Court “B.”
That Court being “satisfied that the parcel of the land in dispute should
“not belong to the Plaintiffs” gave judgment in favour of the Defendant
with costs. On appeal to the Asantehene’s Court “A” that Court
allowed the Appeal and set aside the judgment of the “B” Court. The
Defendant appealed to the Court of the Chief Commissioner of Ashanti,
which dismissed the appeal with costs. The Defendant now appeals to 40
this Court asking for the judgment of the “B” Court to be restored.

There are two points which arise for decision in this case, one is the
effect of Exhibit “A” upon the rights of the parties and the other is
what are the respective rights upon the evidence given.

As to the first point, Exhibit "A" is a record of an executive enquiry held in 1913 by Mr. Fell, Commissioner of the Western Province of Ashanti, into a claim by the Chief of Nkwanta against the Chief of Bechem in which the Chief of Nkwanta claimed "land from where Obuokrukruwa River crosses the Kumasi Road till it joins the Kosu River." The dispute then terminated in an agreement being reached between the parties and signed in the presence of Mr. Norris, Acting District Commissioner, whereby it was agreed—

*In the
West
African
Court of
Appeal.*

No. 28.
Judgment,
3rd June
1941,
continued.

10 " 1. The boundary between Bechem and Nkwanta to be the
" thalweg of the Obuokrukruwa-su to where it joins the Adingkra-su
" thence to the Boa-su following the thalweg of the Boa to the point
" where the Kosu joins it.

" Bechem people to have full use of all farms and hunting
" Huts at present used by them on Nkwanta land without tribute,
" from any rubber or cocoa grown or manufactured on that land.

" 2. The only claim Nkwanta reserves is if any Gold or other
" mineral is found thereon or a concession of any sort granted."

20 On the face of it therefore it is evident that the agreement which
ended the dispute in 1913 related only to the boundary North-East of the
point where the Boa and Kosu rivers meet and did not extend to the
Boundary South-West of the point. The Plaintiff now contends that the
boundary between the parties continues South-West along the Kosu
(or Kwasu) River as shown in the plan and that all land to the North-West
of that river as edged yellow in the plan is for Nkwanta. The Defendant
on the other hand contends that from the point of the confluence of the
Kosu and Boa rivers the boundary goes off almost at right angles in a
North Westerly direction and following the yellow line shown in the plan
eventually rejoins the Kosu River at the South-Western extremity of the
land in dispute, thus giving the whole of the area enclosed within the
30 yellow line to Bechem. The Plaintiff contended in all three lower Courts
that the agreement made in 1913 (Exhibit "A") inclosed the South-
Eastern boundary of the land now in dispute namely that it was the
Kosu River. As to this the "B" Court found "the demarcation by the
" Commissioner twenty five years ago stopped at where the Boa and
" Kwasu rivers join and did not go beyond and so the question arose, who
" owned the area beyond the junction of these two rivers."

On appeal to "A" Court that court based its decision mainly on
inferences to be drawn Exhibit "A." It recorded—

40 " This Court holds that if the disputed area belonged to Bechem
" Stool, the Commissioner would certainly not have embodied in
" Exhibit 'A' that Bechem people should have full use of all
" farms and hunting huts at present used by them on Nkwanta
" land. Naturally, Bechem would have raised a protest to this
" clause in Exhibit 'A.' Though Bechemhene (Respondent) con-
" tends the names of the villages referred to in the (1) are not
" correct names, the Court finds itself unable to accept this con-
" tention, seeing that it cannot safely be accommodated to the
" names of the villages in supplements (1) and (2) to the
" Exhibit 'A.' "

50 On further appeal to the Chief Commissioner of Ashanti's Court the
Acting Assistant Chief Commissioner specifically considered the extent of

*In the
West
African
Court of
Appeal.*

No. 28.
Judgment,
3rd June
1941,
continued.

the boundary with which Exhibit "A" dealt and actually decided the appeal in the following terms:—

"I am of the opinion that the agreement Ex. 'A' was intended
"by the parties at the time to apply not only to that area immed-
"ately north of Bua river but also that area now in dispute and
"that the defendant is bound by it."

We can find no justification for this opinion of the Acting Assistant Chief Commissioner of Ashanti extending the scope of the 1913 agreement beyond what appears on the face of it, nor do we agree with the reasoning of the Asantehene's "A" Court. It is significant that in this Court after Appellant's Counsel has shown the limitations of the 1913 agreement, Counsel for the Respondent had not one word to say in support of the Acting Assistant Chief Commissioner of Ashanti's finding about the agreement. We unhesitatingly uphold the view of the Asantehene's "B" Court that the 1913 agreement stopped at where the Boa and Kosu rivers join. The case then turns on the question of fact as to the ownership of the land upon the evidence given. The members of the "B" Court had not the advantage of having a plan before them, but they sent five messengers to view the land and the messengers were accompanied on the land by the parties and heard what they had to say; there is no reason to suppose that the members of the Court were under any misapprehension as to the area in dispute or the questions in issue. The viewers were unanimously of opinion that "the Plaintiff's claim is not correct." The Court gave full consideration to this report and carefully weighed the other evidence more particularly as to occupation and the testimony of the occupiers of neighbouring land. In a well-reasoned judgment it decided against the Plaintiff. That being so, its judgment should not be reversed unless it can be affirmatively shown to be wrong. So far from this being the case, three out of the five messengers sent by the Asantehene's Court "A" to view the land were in favour of Bechem, and the judgments of both the Asantehene's Court "A" and of the Chief Commissioner of Ashanti's Court are based, not on the relevant evidence given in this case, but on misconceptions of the effect of Exhibit "A." There was ample evidence before the "B" Court to justify its finding, and that finding must be restored.

The appeal is allowed, the judgments of the Asantehene's Court "A" and of the Chief Commissioner's Court, including the order as to costs which, if paid, must be refunded, are set aside; the judgment of the Asantehene's Court "B" is restored with this addendum namely that it is declared that the land in dispute is that shown in Exhibit "B1" in the Asantehene's "A" Court. The Appellant is awarded costs in this Court assessed at £60 5s. 2d. and in the Chief Commissioner of Ashanti's Court and the Asantehene's "A" Court to be taxed.

3rd June, 1941.

(Sgd.) Donald Kingdon,
President.

(Sgd.) Philip B. Petrides,
Chief Justice, Gold Coast.

(Sgd.) G. Graham Paul,
Chief Justice, Sierra Leone.

Counsel:—

Mr. K. Adumua-Bossman (with him Mr. E. Prempeh) for Appellant.
Mr. E. O. Asafu-Adjaye for Respondent.

50

No. 29.

NOTICE OF MOTION for substitution of Nana Kwame Boakye Tromu II.*(Title.)*

Bechemhene Nana Fosu Gyeabuor II.

Def.-Respdt.-Applt.-
Appellant-Respondent.

Motion on Notice by E. O. Asafu-Adjaye of Counsel for and on behalf of the Nkwanta Stool for an Order for the name of Nana Kwame Boakye Tromu II, the present Nkwantahene to be entered on the Record in the
 10 above Appeal as Appellant in place of Nana Adu Kofi III who has been destooled: And/or for any other Order or Orders as to this Honourable Court may seem meet.

Court to be moved at the next sitting of the West African Court of Appeal to be held at Accra in November, 1942, at 8.30 a.m. in the forenoon or as soon thereafter as Counsel for and on behalf of the Appellant can be heard.

Dated at Adontene Chambers, Kumasi, this 31st day of July, 1942.

E. O. A. Adjaye,
Solicitor for Plaintiff-Applt.
Respondent-Respondent-Appellant.

20

The Registrar, West African Court of Appeal, Victoriaborg—Accra and
 To the abovenamed Defendant-Respdt.-Appellant-Appellant-Respdt., Bechemhene Nana Fosu Gyeabuor II, His Agent or Solicitor—Accra.

No. 30.

COURT NOTES OF ORDER for substitution and of Grant of Final Leave to Appeal.

In the West African Court of Appeal, Gold Coast Session, held at Victoriaborg, Accra, on Thursday, the 26th day of November, 1942, before
 30 Their Honours Sir Donald Kingdon, C.J., Nigeria (President), Sir Philip Bertie Petrides, C.J., Gold Coast, and George Graham Paul, C.J., Sierra Leone.

Civil Motion—

Nkwantahene Nana Adu Kofi III,
Plaintiff-Appellant-
Respdt.-Respdt.-Applt.*vs.*Bechemhene Nana Fosu Gyeabuor II,
Defendant-Respondent-
Applt.-Applt.-Respdt.

40

Motion on notice for an order of substitution—
 E. O. A. Adjaye to move—
 K. A. Bossman for Respondent does not oppose.

ORDER granted as prayed.

26th November, 1942.

Donald Kingdon
President.*In the
West
African
Court of
Appeal.*No. 29.
Notice of
Motion for
substitution
of Nana
Kwame
Boakye
Tromu II,
31st July
1942.No. 30.
Court
Notes of
Order for
substitution
and of Grant
of Final
leave to
Appeal,
26th
November
1942.

*In the
West
African
Court of
Appeal.*

No. 30.
Court
Notes of
Order for
substitution
and of Grant
of Final
Leave to
Appeal,
26th
November
1942,
continued.

Exhibits.

*In the
Asante-
hene's
" B "
Court.*

Plaintiff's
Exhibit
A.
Boundary
Agreement
with
Annexure
(District
Commis-
sioner
Fell's Notes
of parties'
Statements)
22nd May
1913
and
17th April
1913.

Application for Final Leave to appeal to the Privy Council—
Same Counsel as in previous Motion—
BOSSMAN does not oppose, but asks for costs of a second appearance
rendered necessary by Appellant's fault.

ADJAYE opposes—the former application fell to the ground when
Respondents succeeded on their application on which they got costs.

ORDER—Final leave granted as prayed.

No order as to costs.

DONALD KINGDON,

President. 10

26th November, 1942.

In the Asantehene's " B " Court.

PLAINTIFF'S EXHIBIT.

A.

**Boundary Agreement with annexure (District Commissioner Fell's
notes of parties' Statements).**

1. The Boundary between Bechem and Nkwanta to be the thalweg
of the Obukruwa-su to where it joins the Adingkra-su thence to the Boa-su
following the thalweg of the Boa to the point where the Kosu joins it.

Bechim people to have full use of all farms and hunting Huts at 20
present used by them on Nkwanta land without tribute from any rubber
or Cocoa grown or manufactured on that Land.

2. The only claim Nkwanta reserves is—if any Gold or other mineral
is found thereon, or a concession of any sort granted.

3. To which the following put their names in Agreement.

Kwami Dampiti (Chief of Nkwanta)	X
Kwasi Amonkwa (Linguist)	X
Kofi Awua (Chief of Susuanso)	X
Atta Kwasi (Elder of Nkwanta)	X
Kwami Ennin (Captain)	X 30
Yao Poko (Linguist)	X
Yaw Bampon (Chief of Bechem)	X
Kwami Danipte (Chief of Nkwanta)	X
Yao Krah (Linguist)	X
Kudjoe Amoskum (Chief of Jimo)	X
Atta Fofia (Captain)	X
Atta Kobina (Captain)	X
Kwame Illensah (Captain)	X

Made before me this 22nd day of May 1913.

(sgd.) Alex. W. Norris, 40
AG. D.C.

Ag. District Commissioner.

Witness to marks,
(Sgd.) F. C. Ankra.

True copy
(sgd.) T. E. Fell
Provincial Commissioner W.P.A.
Western Province Ashanti.

Chief of Nkwanta }
Vers. } Claims land from where Obuokrukrua River crosses
 Chief of Bechem } the Kumasi Road till it joins the Kosu River.

Exhibits.

In the Asante-hene's " B "

Court.

Plaintiff's Exhibit

" A. "

Boundary Agreement with Annexure (District Commissioner

Fell's

Notes of parties' Statements,

17th April 1913.

NKWANTA—Obukrukrua river after crossing the road flows to Adinkra River, then flows to Boa river and then to Kosu river. The land on the right bank is mine given by the Chief Commissioner in 1906. The Boa river joins the Kosu river near to Kosu village : There are three camps on this land :—They are called Adesua, Yao Kokwa Esuboi, Anwiafutu.

10 The last camp was made by Kosu people—long ago—before the rubber trade.

They are Bechem people and made the camp for hunting. I take the leg of the game.

When the Rubber came I did not claim rubber tribute from them. The dispute started with the building of Yao Anto's village. He took plantain trees to plant at his village and Bechem people threw them away.

It was just a few trees near a camp.

Only one camp was occupied by Bechim people. It was on account of this I began to take tribute on rubber.

20 I always took tribute on game.

In the olden days of the Kings of Coomasie Kosu was my boundary--Ancestral Boundary.

So far as Bechim acknowledges this land in mine they can stay there. [sic]

CHIEF OF BECHEM.

In the Ashanti days we met road cleaning at Obuokrukruwa River. This was made the Boundary by the Chief Commissioner. We have a boundary with Bomaa, a stream named Grunyah. It runs into Kosu River near Bosankro.

30 The Chief of Nkwanta has also a part there. We have no settled boundary with Nkwanta in the bush. A camp Acheremosu was built by my grandfather who has a hunter—near Josu River. No tribute has been paid from it. Now Nkwanta has been claiming it.

Adjourned for inspection of land.

(Sgd.) T. E. Fell,

Commissioner W.P.A.

Western Province Ashanti.

17-4-1913.

*Exhibits.**In the
Asante-
hene's
" B "
Court.**B."**Viewer's
Report with
Proceedings
during
View and
Finding,
15th
November
1938.**20th
October
1938.***B.****Viewer's Report.****Proceedings during View and Finding.****REPORT ON LAND BOUNDARY IN DISPUTE.****NKWANTAHENE***vs.***BECHEMHENE.**

The President of the Asantehene's Native Court Grade "B," Nana Oyokohene and the Members of the Court, deputed us, Chief Kojo Nkwantabisa, Head Sword bearer, Kyeame Kwame Buaben, Linguist 10 Kwaku Fokuo of Oyoko Clan, Registrar I. K. Agyeman, and the Asantehene's Land Inspector Mr. F. A. Prempeh, to inspect the above land in dispute and report.

The Deputies left Kumasi on Friday 20th and stayed at Gambra-krom Boaso, a cottage in midway between Bechem and Nkwanta.

Owing to Akwasidae festival etc. we started business on Tuesday the 24th at 10.55 a.m. at 11.30 a.m. Nkwantahene showed us a farm belonging to Bechem farmers. At 11.45 a.m. we came to junction of Boa and Kwasu, Nkwantahene alleges that from that junction, the stream Kwasu is the boundary and that he owns the right bank and Bechemhene the left bank, 20 that is to say, following the thalweg of Kwasu.

We asked Nkwantahene to show us the three camps owned by Bechem people on the right bank of Kwaso said to have been given to Bechem people on Nkwanta land by the Commissioner Western Province Ashanti and also the new farm cultivated by Nkwanta on the right bank of Kwaso which new farm brought the litigation.

BY BECHEMHENE TO NKWANTAHENE.

Q. With whom are you having boundary from this junction to the junction of Kwaso and Tano ?

A. I gave Bomahene land to stay and I am having boundary with 30 Bomahene at the junction of Asukesi and Kwaso, and my land do not reach as far as Tano and Kwaso.

At 1.10 p.m. we reached a certain cottage and Nkwantahene named it Yaw Kwakwa Essubye and this is one of the three cottages granted by Commissioner to Bechem people on Nkwanta land.

Bechemhene denied it and said the cottage was founded by Kofi Achucherbuo and he is being succeeded by Kojo Bamfoo ; Kojo Bamfoo was not there, but later on we came to meet him at Boadu-krom the next village. At 1.40 p.m. we came to a cottage called Boadu-Krom Nkwantahene said one man from Kwasu village under Bechemhene came 40 and built this cottage about seven to eight years ago.

Bechemhene added that one of his sub-chiefs called Boadu abdicated and came and settled there about eight years ago. At 1.55 p.m. we came across a desert farm and Nkwantahene said it is one of the Bisifuo belonging to Bechem people.

At 2.17 p.m. we reached a cottage and Bechemhene said it is called Abrodwar and said the cottage was founded three hundred years ago in the time of King Osei Tutu when he was placed at Bechem.

Nkwantahene said the cottage is called Abrodwar and was founded eight years now.

Bechemhene said the present one is a new site but he went to show us the old site which is close to the river and said it was used as a hunting cottage or camp.

At 3.20 p.m. Nkwantahene showed to us the second Bisifuo which formed part of the old farms of Bechem people on Nkwanta land. Bechemhene said the farm is only ten years old and was ploughed by his own cousin Kobina Chie.

At 3.40 p.m. we reached stream Grunyah and we crossed it and Nkwantahene said it is at this place that Bechemhene said before the Commissioner that twenty-five years ago, that is a boundary between himself and Bomahene, that is, each clear their foot path up to this river.

Bechemhene said the river is the boundary between himself and Bomahene.

At 3.10 p.m. we came to Anwiafutu. Nkwantahene said before the litigation twenty-five years ago, a hunter stayed there to hunt for Bechemhene and this is one of the Bechem camp on Nkwanta land. At present the one farming there was placed by Bomahene. Nkwanta land to farm. Bechemhene said that he is not claiming Anwiafutu and that he has no claim there.

At 5 p.m. we came to a farm which Nkwantahene said it was he who placed a man there to farm and Bechemhene stopped him and he sued Bechemhene—

Bechemhene said the land is his and has a camp called Dada and that his grand-father Atta Kojo brought forth a son called Kwame Dada. Bechemhene said he has got farm in that area and he went so far to say that when he saw that Kkwantahene has placed a man to farm in front of him, he stopped the man from farming.

Nkwantahene said that twenty-five years ago, Bechemhene said the place was called "Achiamoasu"

We closed work on that day and reach home at 8.40 p.m.

On Thursday the 27th Bechemhene took us to view his boundary with Bosankrohene and also his boundary with Bomahene.

At 12.45 p.m. we reached a place called Atwetwebuor stream. The stream is named after stone Atwetwebuor which is founded by the bank of the stream.

Bechemhene alleges that the stream is the boundary between Bosankro and Bechem.

BY NKWANTAHENE :

Q. Who placed this boundary between you and Bosankro ?

A. This boundary dates from the time of King Osei Tutu who said that I should reach stream Atwetwebuorsu.

Q. King Osei Tutu or the Government who made the stream a boundary ?

A. King Osei Tutu made it a boundary, he never bought land from anyone to give to his subject.

Q. Does this boundary run from the source of the stream to its junction with Kwasu or does it break and pass on dry land ?

Exhibits.

*In the
Asante-
hene's
" B "*

Court.

" B."

*Viewer's
Report with
Proceedings
during
View and
Finding,
15th
November
1938,
continued.*

*27th
October
1938.*

Exhibits.

*In the
Asante-
hene's
"B"*

Court.

"B."

Viewer's
Report with
Proceedings
during
View and
Finding,
15th
November
1938,
continued.

A. From this old path to the stream, then the boundary passes on dry ground (land) to Anwiafutu stream. Nkwantahene says he has no boundary with anybody and even the Boma town itself is his and he gave it to Bomahene to live on. Krontihene Kofi Fosu, representative of Bomahene arrived, and said that he was sent by Bomahene to stand on his boundary with Bechemhene and that his boundary with Bechemhene is stream Atwetwebuor thence to Antwiafutu Stream.

BY NKWANTAHENE TO KOFI FOSU :

Q. From Antwiafutu stream where does the boundary run ?

A. To Dada. 10

BY THE DEPUTEES TO NKWANTAHENE :

Q. Who used to collect tribute from the farms on the land ?

A. After the litigation twenty-five years ago Bechemhene placed farms on this land since my predecessor was a sick man so he failed to take up the case and as I have come to occupy the stool I have started this action.

After we have inspected the river and returning Bechemhene said that the land on which we were standing belonged to Kwaku Ben, a native of Bosankro and by his (Bechemhene's) permission, one Yamkanagu placed him there. Kwaku Ben was cultivating too big an area and Bechemhene 20 ordered Yamkanagu to cut a portion and give to him.

The Deputees questioned Kwaku Ben as to whom he pays tribute ?

He answered to Bomahene.

BECHEMHENE QUESTIONED KWAKU BEN :

Q. It is not the Yenkanagu who place you here ?

A. Yes.

Q. For whom did he tell you the land belongs ?

A. To Kwasu people.

Q. Whom do Kwasu people serve ?

A. Kwasu under Bechem. 30

The deputees asked Krontihene Kofi Fosu of Boma whether he admits the allegation made by Nkwantahene that it was Nkwantahene who gave land to Bomahene to live on and that the land where Bomahene is staying actually belongs to Nkwantahene.

Kofi Fosu denied.

Nkwantahene swore the Great Oath that when Bomahene came from Akwamu, it was his ancestors who gave him land to live on which is the present Boma land.

Kofi Fosu responded to the contrary.

Work was closed for the day. 40

29th
October
1938.

On Saturday the 29th we resumed work. We started from the junction of Kwasu and Oda and taking the path leading to Nsuyamiye camp as boundary, we branched on the right and he took us to a place said to be Kofi Dakwakwa camp which is one of the three hunting Camps belonging to Bechem lying on Nkwanta land as ordered by the Commissioner twenty-five years ago.

We saw no building but we saw kola tree and palm trees. It is half a mile on the right of the junction of Kwasu and Boa rivers.

BY NKWANTAHENE TO BECHEMHENE :

Q. Did the Commissioner set this path as boundary or is it your own boundary ?

A. On arriving at the junction of Kwasu and Boa the Commissioner knew that you Nkwanta land is ended, that is why he did not go beyond this junction and this path is perpendicular to the junction of the streams.

Q. Twenty-five years ago when we litigated, did we litigate from Bokukura stream to Kwaso and Oda junction or where we litigated for ?

10 A. We litigated about the area from Bokukura stream following the path to Achiamorsu stream then following the path downward to where Kwaso joins Boa.

Nkwantahene said when the Commissioner set Boa and Kwasu junction as boundary he did not set this your path as boundary.

At 11.20 a.m. Bechemhene showed us a place called Mmampehia ; there is an uprooted Odum tree, and says the owner of the camp was Kojo Annum and said the village has been deserted twenty-five years now because Nkwanta people had been coming to farm there. A man called Kofi Poku was present and he gave evidence that the camp did belong to his father.

Exhibits.
In the
Asante-
hene's
" B "
Court. [sic]
" B."
 Viewer's
 Report with
 Proceedings
 during
 View and
 Finding,
 15th
 November
 1938,
continued.

20 BY NKWANTAHENE :

Q. What do you see to prove that this place was inhabited ?

A. It was not a proper built cottage ; they were hunters camp built with sticks and not with swish.

Nkwantahene denied it.

At 11.50 a.m. Bechemhene brought us to the third camp and said it was called Monkruwusu and the hunter was called Yaw Kokwa.

On Sunday the 30th October 1938, Bechemhene brought us to stream Anwiafutu and Nkwantahene names stream Grunye. Bechemhene said both names are applicable.

30th
 October
 1938.

30 Bechemhene said Bomahene is on the right bank and Bechemhene on the left bank of the stream where both towns clear road to.

Nkwantahene denies the allegation.

At 11.35 a.m. Bechemhene brought us to a site and said it is the site of his old village called Dada.

This was the place that brought about the litigation when Nkwantahene placed somebody there.

At 1 p.m. Bechemhene brought us to a place close to the source of Donkotor stream and said it is the boundary between Bechem, Boma and Nkwanta. Yaw Asubonten representing the Odikro of Asukesi (under Dorma) litigated with Nkwanta before District Commissioner P. A. H. Pott, who placed Donkotor source as Head Boundary between Bechem, Nkwanta and Asukesi, that is Boma.

BY NKWANTAHENE :

Q. Is the stream Donkotor or the village your boundary ?

A. It is the stream and not the village.

Q. Is Nsuyamiye camp yours ?

A. No, the camp was founded by Nkwanta

Exhibits.

—
In the
Asante-
hene's
 [sic] "*B*"
Court.
 —
 "*B.*"

Viewer's
 Report with
 Proceedings
 during
 View and
 Findings,
 15th
 November
 1938,
continued.
 31st
 October
 1938.

Finding.

At 3.15 p.m. Bechemhene brought us to a few piles or rocks the biggest was about 4 feet high and 3½ feet diameter.

Bechemhene alleges that our fetish priest Nyinasuabuo told us that there is a rock in the forest and it is supposed to a rock and any hunter that goes out to hunt must bring bananas and eggs to offer to the rock before he starts hunting.

This instruction was carried on by all hunters and when the hunter is returning with his game, he carries the game to the side of the rock and take the liver and blood and place it on the rock and that the rock is within Bechemhene's Claim. 10

Nkwantahene says he has never known this rock to be a fetish rock ; it has always been known as an ordinary rock and adds that the farm on which the rock lies belongs to his nephew Kwabena Brafie.

Bechemhene contended that the said farm of Kobina Brafie was made a year ago when the litigation started.

Work closed at 3.30 p.m. and left for Kumasi on Monday, 31st October, 1938, at 9 a.m.

FINDING.

In view of the facts embodied in this our report our unanimous opinion is that the Plaintiff's claim is not correct. For the simple reason is that 20 the farms and villages on the right bank of Kwaso as far as two miles from Kwaso at right angle belong to Bechemhene and Nkwantahene was unable to deny that they were not for Bechemhene.

Bomahene also bore witness to Bechemhene that he is having boundary with Bechem and not Nkwanta. Nkwantahehe did not show to us any farm or village that belonged to him in that area, and he had no one to bear witness to support his claim.

	Their	
Head Sword bearer Chief Kojo Nkwantabisa	X	
Asantehene's Linguist Kwame Buaben	X	30
Oyoko Linguist Kwaku Fokuo	X	
Registrar (sgd.) I. K. Agyeman		Marks
Land Inspector (sgd.) F. A. Prempeh		

Witness & Writer to marks.

(sgd.) F. A. Prempeh

15.11.38.

In the Asantehene's "A" Court.

Exhibits.

A.1.

Viewer's Report.

Finding of Kwami Amoaten.

Finding of Kofi Anane.

Joint Finding of Kwamin Asante, Yaw Kwabi and S. T. Abadoo Affainie.

*In the
Asante-
hene's
"A"
Court.*

A.1."

Viewer's
Report,
13th June
1939.

Finding of
Kwami
Amoaten.

FINDINGS.

VIEWS AND OPINION OF LINGUIST KWAMI AMOATEN.

Pointed out to us by Nana Nkwantahene.

10 I saw Yaw Kokwa Asubi, Anwiafutu, Adesua and Acheremosu all on the lower part of the land on river Kosu.

Pointed out to us by Nana Bechemhene :

Adesua, Mbampehia and Mbonkruwuoso all were at the upper part of the land on Kosu river.

All of Bechemhene were not admitted or were disputed by Nkwantahene as not true and correct.

In my opinion I believe those of Nana Nkwantahene to be correct.

His

Kyeame Kwame Amoaten

X

20

Linguist to Asantehene

Mark.

Kumasi Ashanti.

13th June, 1939.

Writer

S. T. Abadoo Afaini, Sr.

Licence No. 15239/Kumasi.

VIEWS AND OPINION OF SWORD BEARER KOFI ANANE.

I also went with the Elders as a member of the Deputation and were sent to see Yaw Kokwa Asuboi, Anwiafutu, Adesua and Acheremosu—

30 I went and saw all these (4) villages on the lower or southern part of the river Kosu pointed out to us by Nana Nkwantahene.

After this Nana Bechemhene also took us Adesua Camp. He took us again to Mbampehia, Mbonkruwuoso, but we were sent to go and inspect Yaw Kokwa Asuboi, Anwiafutu, Adesua and Acheremosu and these villages were on the lower or southern part of the stream—I therefore believe that of Nana Nkwantahene and concur with Kyeame Kwamin Amoaten.

Finding by
Kofi
Anane.

Kofi Anane

His

Sword-Bearer

X

to Asantehene.

Mark

40 Kumasi.

13th June, 1939.

Writer & witness to mark

S. T. Abadoo-Affainie, Snr.

Licence No. 15239/Kumasi.

Exhibits. FINDING :

*In the
Asante-
hene's
"A"
Court.*

"A.1."

*Viewer's
Report,
13th June
1939.*

*Finding of
Kofi Anane,
continued.*

*Joint
Findings of
Kwamin*

Asante,

*Yaw
Kwabi and
S. T.*

*Abadoo
Affainie.*

Nana Nkwanta pointed out to us viz. :

Yaw Kokwa Asuboi, Anwiafutu, Acheremosu and Adesua on the lower or southern part of the land in dispute.

1. Yaw Kokwa Asuboi :—It has been alleged by Kojo Banful that his late uncle Kofi Atwetwebuo or Kofi Darkwa planted cocoa at the place, but he (Kojo Banful) founded or built the cottage and it was there 25 years ago before the Nkwantahene and Bechemhene's land dispute. Bechemhene says it is called Kosu-eja and it is confirmed by the builder. There stand large cocoa trees. As we did not see any river there near by name of Yaw Kokwa neither the name of the builder called Yaw Kokwa we give discredit to Nkwantahene's statement. 10

2. Anwiafutu cottage :—Nana Nkwantahene pointed out a hut in a certain spot as the Anwiafutu.

It was outside the boundary in the portion of Bomahene. Both Bomahene and Bechemhene agree that their boundary is Anwiafutu stream. Bechemhene says the hut is not his. Kofi Atta of Bosankro said it is his. Therefore in our opinion we see that it is not that one alleges to have belonged to Bechemhene.

3. Acheremosu :—There is no hut or camp here now, though Nkwantahene insists that there was a camp called Acheremosu. Bechemhene says no, but a camp that stood here once was called Dada. 20

One Yaw Armu witness for Nkwantahene in answer to a question confirmed this. So question of Acheremosu is in our opinion doubtful but Dada is correct.

4. Adeusa :—Kweku Frimpon of Suatre stated one Osei Kofi told him he made this camp ; and the two of them lived there together. It was called Afedikorbror, it is about twelve years old now. It is on a stream called Asuowin.

Nkwantahene's witness Kojo Fori agrees with this Kwaku Frimpon that he bought his farm for 30s. at this time 12 years ago. In our opinion we doubt that, that place is the Adesua he Nkwantahene alleges. 30

What Bechemhene pointed out to us :—

1. Adesua Camp :—Both two witnesses namely, Kwesi Addai for Nkwantahene and Kwesi Duku for Bechemhene testified that the camp was in existence at the time the boundary was laid 25 years ago. But Kwesi Duku says its name is Nyamiakyire on a stream called Asuadai, whilst Kwesi Addai says its name is called Adesua on a stream called Adesua. Nkwantahene's witness says it was occupied by Nkwantahene's hunters. Whilst Bechemhene's witness says it was occupied by Bechemhene's subjects, but because Nkwantahene was unable to point out any other Adesua on his land we believe that of Bechemhene. 40

2. Mbampehia : Bechemhene pointed out this spot and said everything there to be used as mark of identity has been destroyed save Odum tree which is uprooted and lying down there and a small stream near it otherwise the farmer (Linguist Kwamin Behumi) who planted cocoa had spoilt everything there. Kofi Poku identified the place to us, he says he lived there with his late father called Anoma.

3. Mbonkruwuso :—Bechemhene pointed to a certain place just at the outskirt of Boaso village on a valley which Linguist Kwamin Behumi had ploughed there and cut down everything of mark for identity. This 50

Linguist Kwamin Bechumi also denied having seen any mark there which made him realised that there ever existed before any camp when he was ploughing. We would have believed Nkwantahene's statements and evidence on these last two camps that they were nothing to prove that there ever existed any camps but because Nkwantahene's tenant by name Kwabena Adjei had recently in last year ploughed and cut down 28 trees of kola and Funtumia trees belonging to Bechemhene just near Boa and Kosu junction on the upper part of this land. It is said the last Delegates inspected it at the instance of Bechemhene so we infer from that, these
 10 treatment had been done to the above two camps and therefore we believe the statement of Bechemhene.

Exhibits.
 —
In the Asante-hene's "A" Court.
 —
 A.I.
 Viewer's Report, 13th June 1939.
 Joint Findings of Kwamin Asante, Yaw Kwabi and S. T. Abadoo Affainie, continued.

Finally we are of opinion that the boundary line cut through the land from Kosu and Boa junction was cut by Bechemhene alone without Nkwantahene and it is for Court to decide whether that is correct or not. Of the portion claimed by Bechemhene in The Forst Reserve because he never participated in the granting of same to Government we leave that also to Court for there was no evidence to induce us to give our opinion on same that he has a portion in it or not.

We three undermarked and undersigned are of unanimous opinion
 20 that Bechemhene has the above three cottages beside the Kola and Funtumia trees now felled down aforesaid.

	His
Kwamin Asante	X
Head Linguist to Bekwaihene	Mark
	His
Yaw Kwabi	X
Court Crier, Asantehene's Court.	Mark
(sgd.) S. T. Abadoo Affainie Snr.	
Recorder & witness to above marks.	

30 Kumasi,
 13th June, 1939.

Proceedings during View.

REPORT OF CAMPS ETC. ON LAND IN DISPUTE.

NKWANTAHENE
Versus
 BECHEMHENE.

The Asantehene's Native Court Grade "A," deputed us, Chief Kwamin Amoaten, Linguist, Kofi Anane Sword-Bearer, Yaw Kwabi Court-crier all of Kumasi, Chief Kwami Asante Head Linguist of Bekwai and Mr. S. T. Abaddoo-Affainie Snr., Licensed Letter Writer, Draughtsman
 40 and Builder of Kumasi to inspect camps Cottages, etc., on the land in dispute and report.

The Deputies left Kumasi on Monday the 22nd day of May, 1939, and stayed in the house of one Sakordieh at Boaso village mid-way between Bechem and Nkwanta. 22nd May 1939.

On Tuesday the 23rd (following day) the Nkwantahene and Bechemhene met in our residence when we all left house together and reached the stream Buokrukruwa the starting point of their boundary. Nkwantahene pointed to a rock in a stream and said that was their starting point. He added from there all the land lying on the right bank of
 50 Buokrukruwa belonged to he Nkwantahene and that of the left bank is for Bechemhene. 23rd May 1939.

Exhibits. BY BECHEMHENE TO NKWANTAHENE.

*In the
Asante-
hene's
"A"
Court.*

Q. Where is the starting point of our boundary as you say it starts from this stone in the middle of this river Buokrukruwa what of the top part behind us.

A. We have no other boundary at the upper side or behind us, save from this stream. The track being made or cut goes on stright to the old Hammock Road of foot path which crosses it at our left.

Q. Was nothing said about the land leading to the upper part of this river Buokrukruwa by the whiteman (D.C.) who inspected this land at the same time ?

A. No, Nothing was said about it by the whiteman. I have boundary with Jumohene at Dosuago, we started from a point where a stone called Buokrukruwa was following the course of the waters into its junction with Andinkra stream.

10

BY BECHEMHENE.

He remarked that as Nkwantahene agrees that the right bank is for him (Nkwantahene) and the left Bank is for him (Bechemhene) he had nothing to say against it.

At 10 a.m. we all followed the course of Adinkra stream to its junction with the Boa stream, we left there and arrived home at 12.10 p.m. and finished with that day's work.

May 24, 1939, being an Empire Day and as there was celebration no work was done.

May 25, 1939 : When both Chiefs from Nkwanta and Bechem were present before us, we all left home at 7.45 a.m. and reached Boa and Kosu Asuboi (junction) at 8.45 a.m.

Nkwantahene said he owns all the land on the right hand side (West) and Bechemhene owns that on the left hand side (East) until he meets in boundary with Brosankro at a place called Nsubesu. In the right portion claimed by him are the villages which the Provincial Commissioner Sunyani by name Mr. T. E. Fell arranged that he should allow Bechemhene's subjects who had farmed there to use it freely without paying any tribute to him in respect of.

30

In the former days of the Ashanti Kingdom or before whiteman's advent the boundary between Bechem and Nkwanta was the Kosu (Kwasoo) river.

It was the Government who instead of Kosu river laid a fresh boundary between us by the Boa river, which is our present boundary.

Consequently the villages I named in my depositions at the Court, are all the land on the lower part of this river Kosu, and when we reach there I will point them out to you.

40

BY KYEAME AMOATEN TO NKWANTAHENE :

Q. Is the land of Brosankro on the left or right hand side of Kosu River ?

A. They have their land on the left, but they have access to my land as there is no boundary between Bomahene's land and mine. The Brosankro people are living on Bomahene's land.

Q. Do you collect tribute from Brosankro and Boma people who farm on your land ?

A. No, I do not because they have access as I have said and they can cultivate farms right on this my forest land even through to Nkwanta town without paying any tribute.

BY KYEAME KWAME ASANTE OF BEKWAI :

Q. Do you share with Bomahene tribute he collects from Brosankro people who farm on this land ?

A. If Bomahene collects any tribute from Brosankro people he used it alone. I don't partake in it as there is no boundary between the two of us.

10 Q. So are we to understand, the Government official (Whiteman) who laid the boundary between Nkwanta and Bechem ended his work at this Asuboi (junction of Boa and Kwaso) ?

A. No, he went on further than here, he continued until he reached the villages, I have mentioned in my depositions.

Q. Are you positive that the official (Whiteman) actually went on further through the forest land before us but never stopped here and returned ?

A. I say that the Official (Whiteman) really stopped here and returned but because Nkwantahene said Bechemhene had two hunting
20 camps and one farm with cottage which Bechemhene never disputed but added one by name Acherenosu (Akyeamoasu) the whiteman arranged that Bechemhene's subjects who had those camps and farm there should be allowed free use.

BY BECHEMHENE TO NKWANTAHENE :

Q. Can you explain to the Deputies that Boma Chief collects penny tribute or a tribute from Brosankro farms on the land in dispute ?

A. It may be perhaps he collects tribute from them (Brosankro people).

30 Q. So am I to understand, that if you have no share in any tribute perhaps collects from them then you have no control over the land ?

A. Notwithstanding I have control over the land.

Q. If you say all the right side land is yours where is its end or with whom you have boundary ?

A. I have given answer to such similar question put to me by in the Court.

At this junction Kyeame Kwamin Amoaten asked Nkwantahene to point out the alleged three camps. We left this Asuboi (junction) at 9.45 a.m. and arrived at the alleged Yaw Kokwa Asuboi at 10.20 a.m.

40 Here Nkwantahene said this was the existing village with cocoa trees around it twenty-five (25) years ago, which belonged to Bechemhene's subjects which the whiteman who laid boundary between us arranged that the then Nkwantahene should allow the then Bechemhene's subjects to enjoy it without paying tribute. Before the whiteman laid boundary my elder brother (my predecessor) was collecting a leg of game from every hunter here. His subject Kofi Wusu who is here with us was the Collector.

BY BECHEMHENE TO NKWANTAHENE :

Q. Do you not know that this cottage is called Kosu eja ?

A. No, what I remember is, it was called Yaw Kokwa Asuboi, at the time it was not disputed by your predecessor, and so that name was
50 mentioned in our agreement.

Exhibits.

*In the
Asante-
hene's
" A "*

Court.

" A.1."

Viewer's
Report.

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1939.

Proceedings
during
View,

continued.

Exhibits.

*In the
Asante-
hene's
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Court.*

"A.I."

*Viewer's
Report,
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*Proceeding;
during
View,
continued.*

Q. Do you not remember that from that time until now only my subject by name Kofi Atwetwebuo alias Darkwa was the owner of this cocoa farm and not Yaw Kokwa. I have had no subject by name Yaw Kokwa before nor have I any now and that Kofi Atwetwebuo survived nephew called Kojo Banful who succeeded him is with us here now ?

A. If it was true that it was Kofi Atwetwebuo who owned this cocoa farm twenty-five years ago, why would Yaw Kokwa's name might have been written in the Commissioner's Note or agreement.

Q. Don't you remember that in the said agreement no mention of the name of anything was made beside rubber camps ?

A. I say you have made the three camps on this land, but the last one made long before rubber business was known, but here (this particular camp) was inhabited twenty-five (25) years ago by people continually.

Kyeami Kwamin Amoaten asked who is the owner of this camp or cottage ; when one by name Kwadjo Banful came forward and said he made it long ago, but he could not remember the years. He added his late uncle by name Kofi Darkwa alias Kofi Atwetwebuo first made farm there, but he (Kojo Banful) built the cottage afterwards.

That when he met him alive, he told him the land there belonged Bechemhene. And that he had heard the District Commissioner Sunyani had come to part of the land Boa and Kosu (Asuboi) junction before and laid boundary from Aponapon or Buokrukruwa right down to Asuboi of Boa and Kosu between Nkwanta and Bechem, this happened in his life time and he had built this cottage already. We left for another cottage. At 11.45 a.m. we arrived at a cottage or village by name Baakuniaba when Kyeame Kwamin Amoaten asked to know the owner of the place and the land there belonged to Bechemhene. That the village was founded about (8) eight years ago. He said he cannot define the course of the boundary between the two Chiefs. Another fellow called Yaw Mansuo a native of Bawuror village near Kumasi. He said he paid tributes to Bechemhene.

At 12 p.m. we reached a desert or desolate kola nut old and young trees. Nkwantahene said they were existing before District Commissioner Sunyani laid boundary between Nkwanta and Bechem and it was one Kwadjo Banful of the last cottage when asked by Kyeami Kwamin Asante he said he made it long ago when he was a youngman and now he has begat ten (10) children and he made it before the boundary was laid of course. At 12.40 p.m. we came to a place or cottage called Abrondua from thence we visited the main road from Bechem through Kosu to Asukesi and Boma it was the ancient road and it was diverted by the construction of the old Motor Road. That this site used to be the junction of the old Brosankro road. At this crossing is a small island as a result of Kosu river having divided its waters and converged or met together at the crossing as said by Nkwantahene.

Here Bechemhene said he had nothing to say about the above as both parties never made mention of it in their case. Here Kosu river is close to the cottage Abrudua. When we returned to Abrudua at the request of Bechemhene the present Odekro by name Jona Oppon was called who stated upon our inquiry that he had built and lived that place for about ten (10) years. He was a tenant to Bechemhene and he is a native of Kokofu. That the name of the cottage is Abudua.

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BY BECHEMHENE TO JONAH OPPON OF KOKOFU :

Q. Is it you who named this cottage ?

A. No, I met this place a cottage stead by that name and when I rebuilt it I called it by the old name. But this is the old site.

Nkwantahene also said it was an old camp used by his subjects Kwasi Addai and Kofi Yenyinanyewu (Yenyina-nyewu) who had lived here before and tapped rubber for him.

They are Akordie natives.

KYEAMI KWAMIN AMOATEN TO NKWANTAHENE :

10 *Q.* Was the camp made or built by the aforesaid two men or they came and met it built already and inhabited it ?

A. They built it themselves. There are Kumasi people also here with me who came here with the permission of Bechemhene.

BY BECHEMHENE TO NKWANTAHENE :

Q. Do you remember having admitted before the first Deputies during their inspection that the cottage is mine and it was recorded in the first report ?

A. Yes, I remember that this cottage was made by your consent or order but the old village stead is not on the new site this was built on.

20 BY BECHEMHENE TO NKWANTAHENE :

Q. Is not this cottage or village amongst the three cottages or villages admitted in your statement when at the Court which you mean now to point out to the Deputies ?

A. This is not amongst the three cottages, they are Yaw Kokwa Asuboi, Anwiafutu, Acheremosu, and Adeisua.

Q. Do you not remember when at the Court you said I had three cottages on the low or south part of this land in dispute which you were coming to point out to the Deputies and I said I had three on the upper or north which I will point out when we reach there, and how it is that
30 you have mentioned four instead of three ?

A. In my statement at Court I made mention of. It was also mentioned in the Agreement of 25 years ago.

Q. How far is the distance between this cottage and the old campstead of the Abudua you say ?

A. I cannot say exactly, but it is not long or far from here or it is just near here.

BY BECHEMHENE TO JONAH OPPON :

Q. Where did you meet the old cottage stead before you founded yours ?

40 *A.* It was in this very place.

Q. Can you shew me some points of any existing evidence ?

A. Yes, there is the lime tree on the road side.

Bechemhene then contradicted the statement of Nkwantahene by saying that the new cottage was made on the old site which was founded by him at the time of Otumfuo Osei Tutu or Pimsuo, he added a person was sent as a sacrifice to him by Pimsuo, whom he placed there whose business was to make palm-wine for sacrificial oblations.

That the lime tree was planted by him and the old cottage was first planted (300) three hundred years ago.

Exhibits.

*In the
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hene's
"A"
Court.*

A.1."

Viewer's
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He pointed out to us some old long palm-wine trees at this cottage. We left this place at 1.48 p.m.

At 1.50 p.m. we arrived at a place just near there when Nkwantahene pointed out to us that one kola nut tree standing there and a little heap or mound of earth was the old site which he said belonged to him and it was the place his subjects lived and tapped rubber for him long before the land dispute case between Nkwanta and Bechem happened in which District Commissioner Sunyani came and laid boundary between them.

Bechemhene also said the statement or evidence of Nkwantahene is giving that, that place was also a camp-stead is incorrect, but rather it is the remnant of refuse or dung thrown there by his subjects who lived there as the place is only a few yards away from the present cottage. 10

We left this place.

At 2.20 p.m. we came to a spot where Nkwantahene pointed some old kola-nut trees and said the farm there (which is at present a desert) is one of the old farms existed long before the Nkwanta-Bechem land dispute of 25 years ago. It was among those belonged to Bechemhene's subjects about which it was arranged that they should enjoy same freely without payment for tribute. Bechemhene also said again that it is incorrect story. That when last they were there with the last Deputies, he mentioned to them that the kola-nut trees had been planted about 10 or 11 years ago by his cousin by name Kwabena Kyire nephew of his real father. This cousin of his is now blind at Bechem not able to go anywhere and as a result the farm of the kola-nut trees has been abandoned and so it is over grown with trees for want of care. We saw some plaintain tree inside. 20

NKWANTAHENE TO BECHEMHENE :

I suggest to you that this farm is over 10 or 11 years old, but because the owner is not here I cannot ask him questions in his absence.

We passed on and arrive at a small river by name Anwiafutu or Grunyah this name was admitted by both parties to be correct. Nkwantahene said the river is in the middle of his land. 30

Bechemhene called out one Kofi Forsu who stood up and said he had appeared at Kumasi in the Court at the instance of Bechemhene and given evidence. That the name of the river is Anwiafutu.

BECHEMHENE TO KOFI FORSU, KRONTIHENE OF BOMA :

Q. What is the name of this river ?

A. It is called Anwiafutu.

Q. Which is the boundary between Bechem and Boma ?

A. It is this river, Bechem owns East Bank and Boma owns the West Bank. 40

Q. In which portion is the village-stead or the old deserted village of Boma ?

A. It is in our portion, West of Anwiafutu river or stream.

At 3.35 p.m. we arrived at a place called Anwiafutu.

Nkwantahene said, this cottage is the Anwiafutu I mentioned in my statement or evidence at Kumasi.

BECHEMHENE TO NKWANTAHENE :

Q. Who owns this cottage and land—does it belong to me or have I any interest in this place ? 50

A. The land belongs to me, but as a result of non-existence of boundary line between Boma and Nkwanta Boma people could make any farm on it as they like.

Before it was Bechemhene's hunters who made a camp here. It was mentioned by my predecessor in the land dispute case between Nkwanta and Bechem before the District Commissioner Sunyani. It was mentioned as one of the three camps belonged to Bechemhene made on Nkwanta land. One Atta Kofi of Brosankro was called by Kyeami Kwamin Amoaten who came forward and when asked who owns this place, he said it belonged to Bomahene.

Exhibits.

—
*In the
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hene's
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—
"A.I."

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10 QUESTION BY THE SAME KYEAMI TO HIM :

Q. Do you know the boundary between Nkwanta and Boma ?

A. I don't know.

Kyeami Kwamin Asante of Bekwai asked Atta Kofi if he knew of any farms made by Bechem people on this side of the land, to which he answered :

No Bechem people have farms this side. It was Brosankrohene who gave me permission to cultivate farms on this land.

THE SAME KYEAMI TO ATTA KOFI :

20 *Q.* Are you positive that this cottage was not founded by Bechemhene's subjects ?

A. It was never made by his subjects, no.

Q. Have you ever heard of any boundary between Bechem and Brosankro ?

A. Yes, I know they have boundary at Atwetwebuo right on to the old road. It starts from Atwetwebuo river and ends at its junction with Kosu.

BY KYEAMI AMOATEN TO ATTA KOFI :

Q. Have you ever heard of any other Anwiafutu village beside this?

A. No, I have never heard of any beside this.

30 BY NKWANTAHENE TO ATTA KOFI :

Q. Can you point out on the site any course or track as boundary between Boma and Bechem ?

A. No, I have never followed the whole track but as a headman of Brosankro the whole people or farmers were paying £100 to Bomahene annually, and when Mr. Pitt the District Commissioner at Sunyani came and asked us to construct a road we pointed out to him that he must inform Bomahene to come forward and construct the road himself or forgo the £100 tribute for us to do it ; by this I came to know and heard of the boundary.

40 NKWANTAHENE AGAIN :

Q. Don't you remember that the road you refer to in your statement is at the other side of Nsubesu in the East side of Kosu stream ?

A. It is not correct, it is not near where I am referring.

Q. Do you not remember that when Government asked that this road should be constructed I cut a path from Nkwanta town right on straight to Kosu stream ?

A. I don't know I never saw this path, but I remember we the young-men of Brosankro were at Nkwanta lending hand or help to the construction

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In the
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continued.

of Nkwanta road, and because it was too long to return to our town always by Bechem we cleared or cut this very road and met with Nkwanta some where on some rock after Boma road.

We left this place at 4.25 p.m. and arrived at a spot on Acheremosu stream near the farm of Kwadjo Addo of Gyakyi village at 5.25 p.m. here. Nkwantahene said the forest this side was given away by him to some people to cultivate farms, when Bechemhene came and drove them away from the site and that was the reason for this action or suit.

The cocoa trees standing at about 100 feet more or less from here (where we were standing) were planted by him. 10

That during the dispute of 25 years ago between Nkwanta and Bechem the predecessor of Bechemhene by name Yaw Boampon deceased, mentioned before the District Commissioner Sunyani that he had before that time a cottage (here) at this site.

During that time Government arranged that Bechemhene's subjects should be allowed to hunt for him without paying tribute to Nkwantahene.

He Yaw Boampon deceased mentioned that he had hunter's camp here when Nkwantahene's predecessor also mentioned three in addition to that. Bechemhene said, he suggests to Nkwantahene that this place is called Dada, his grand uncle by name Atta Kojo made this camp. Whilst 20 alive here he begat a male child called Kwamin Dada who is at present (this 25th day of May, 1939, at 5.45 p.m.) with us here. In commemoration of the said uncle he had come and cultivated a cocoa farm on this land.

As he frequents this place he saw other people have come and made farms here and that was the reason he drove them telling them that the named forest here was his.

NKWANTAHENE TO BECHEMHENE :

Q. What is the appellation of this river ?

A. I know that it called Acheremosu stream but the village was not named after it. 30

NKWANTAHENE TO BECHEMHENE :

Q. As we stand here (on Acheremosu stream) looking south where is Anwia futu ?

A. It lies in the south.

Q. So that when you are coming from Bechem do you cross Anwiafutu before you reach Acheremosu ?

A. Because of the main Boma Road we never cross Acheremosu before we come to this place.

The last question was repeated by Nkwantahene but Kycami Kwamin Amoaten said it was useless emphasis is laid on it as same has been asked 40 in the Court and answered to before. We left this place at 7.30 p.m., and arrived home at 9.10 p.m. having finished with the day's work.

There was no work on the 26th May, 1939, as Nkwantahene said he does nothing on every Friday.

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1939.
27th May
1939.
May 27, 1939 : We left our cottage at 8.5 a.m. via Buokrukru and by 9.15 a.m. we got to a cottage by name Kweku Abebresekrom alias Addiepena where Nkwantahene said this cottage was made by his predecessor's son by name Kweku Abebre. Before we came to this cottage aforesaid, Nkwantahene has shewn us a path crossing our course which is cut parallel line an alleged by Bechemhene as boundary line between them. It is 50 cut to north and south points in the middle of this land in dispute.

At this Adiepena cottage is a cocoa farm said to have been grown (5) years ago, but the cottage was made three years ago. There is another cocoa farm planted in 1936 as alleged by Nkwantahene.

BECHEMHENE TO NKWANTAHENE :

Q. How long since this cottage was made ?

A. Three (3) years ago.

Q. Did you bring the former Deputies here and shown them this cottage ?

A. No. I mentioned it to them that I had a cottage here but they refused to inspect it, because then their excuse was that it was night and also Bechemhene was gone before us. I remember mentioned it in my grounds of appeal.

Q. Did you mention it in your statement or used same as question at the Court ?

A. Yes, I remember mentioned that I had about ten (10) cottages on this portion of land in dispute.

BY BECHEMHENE TO NKWANTAHENE :

Q. Is not this cottage only six (6) months old but three (3) years as you say ?

A. I say that it is three (3) years old.

On our way we passed through cocoa farm said to belong to Messrs. Kofi Kyire Osei Yaw and Kwaku Kuma. Nkwantahene said there are two more farms at the end of this one we passed through but we did not see it. He said further that Kofi Kyiri's farm is (1) year old, Osei Yaw's farm three years old, Kwaku Kuma's three years old.

BY BECHEMHENE TO NKWANTAHENE :

Q. Is it not true that when you sued me you brought people here to cultivate these farms ?

A. No, made before then.

We reached a camp of one house called Acheremosu or Kwaku Nyamikrom said by Nkwantahene. He added near here is the cottage-stead of late Kweku Nyami. The present occupier of this camp or cottage is called Kweku Antiedu.

When he was called he said he had built the cottage four (4) years ago, and returned to his native Ampeh and in last year he returned here and started farming.

BY BECHEMHENE TO NKWANTAHENE :

Q. Do you know that I have a deserted camp somewhere here called Kyifreaferi and I made mention of in my statement in the former original case ?

A. I remember he made mention of a camp called Kyifreaferi but I never realised he meant this old cottage of my ancestors.

Nkwantahene recalled Kweku Antiedu and asked him who gave him permission to reside here when he said it was he Nkwantahene and he pays 10/6 annual tribute to him. That was before he was permitted to put down his cutlass and started to plough he paid the sum of £2 (two pounds).

We were at this place at 10.35 a.m. About three (3) minutes' walk after we left the last place we reached some small or handful of few old cocoa trees alleged to be about seven years old. At this site we saw two lime trees.

Exhibits.

*In the
Asante-
hene's
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*"A.I."
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Exhibits.

*In the
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hene's
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"A.1."

Viewer's

*Report,
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1939.*

*Proceedings
during*

*[sic] View,
continued.*

Shortly after here we reached cocoa farm of Akwesie Denteh of Amoaten Gyakyi said to be four (4) years old. There was nothing to prove that this farm is four years old.

At 12 p.m. we got at a cottage called Nsunyamiye. Nkwantahene called one Yaw Armu who came forward and said, he was the headman of the village or cottage. He is a subject of Nkwantahene. That it is eight years or eight times of ploughing time since he settled there (or here the village).

BY NKWANTAHENE TO YAW ARMU :

Q. Do you not know that it is about 40, 50 or 60 people are making or 10 cultivating cocoa farms here with you ?

A. I know of about 20 persons.

Q. Does this member includes or inclusive of Nkwanta people also or only the strangers ?

Answer to the last question : The two together both Nkwanta people and strangers.

Question : Are you positive that the number you give is correct that is not far less if the Nkwanta people are inclusive ?

A. I cannot say it is more than that all are not residing with me here some go further to Peseminkunyakrome. 20.

Q. Ever since you settled here have you paid any tribute to Bechemhene ?

A. No. I am not residing on his land how can I pay tribute to him.

Q. Do you remember that every time I want my tribute from the strangers it is you who as head of them bring them to me ?

A. Yes, I direct the strangers always with their tributes to you (Nkwantahene).

Q. Can you point and produce any of the said strangers ?

A. Yes, here is one called Sam alias Kweku Sarkodie of Archiakrom near Ejusu. 30

Q. With whose permission you settled here and to whom you pay tribute ?

A. To you Nkwantahene.

Question by Recorder : How many times have you paid tribute ?

A. Only once and in last year.

BY BECHEMHENE TO SARKODIE :

Q. Is it not true that you came here only during this land dispute ?

A. No, I came here before.

Q. How long before ?

A. About three years before the dispute started. 40

Q. What were you doing here all the time ?

A. I was ploughing.

Q. How often have you made farms ?

A. I have ploughed three times, but I have made two farms as I was not allowed to plant my farms.

By Recorder : How many times have you paid tribute ?

A. Only once but cash £2 0. 6 was collected from me before I was allowed to make farms.

Q. (1) BY KYEAMI KWAMIN AMOATEN TO YAW ARMU :

You are a native of Nkwanta or subject to Nkwantahene, do you know boundary between Nkwanta and Bechem ? 50

A. Yes, I know, it starts from Boa to Kosu rivers.

(2) *Question* : Was it made by themselves or by Government ?

A. It was made by Sunyani District Commissioner.

(3) *Question* : Do you know of any cottage belonging to Bechemhene in this disputed area ?

A. Yes, I know of Banful-krome, Anwiafutu, Dada near or beside Akyeamoasu (Acheremosu).

At 1.35 p.m. we got to some village called Adeisua or Adesua new founded cottage said to belong to Kwesi Abuagyi, from thence we descended a slope to a spot said by Nkwantahene to be the deserted camp founded by Bechemhene's subjects whom he does not know. Two lime trees, and a kola-nut tree, we also found an old mortar called in Native tongue "Daasiye" it is not in the form of mortars used at home in every town or village in the Gold Coast, but it is a wood cut oblong and a square hole made in it. Its length is about 2' 8" or 32" long lying down there.

By Recorder : It is an old wood but no ordinary person but a trained forest wood worker could give accurate number of its years since it was made. However in my opinion it is not more than ten years if I may conjecture or guess time for it.

20 BY NKWANTAHENE TO KWESI ABUAGYI :

Q. What is your name ?

A. My name is Kwesi Abuagyi. I am a native of Nkwanta. It is about eight years since I started ploughing here.

BY BECHEMHENE TO NKWANTAHENE :

(1) *Question* : Besides this how many camps of mine you have pointed out ?

A. This in addition makes four.

(2) *Q.* Did you not make the Court to understand that you were coming to show three camps or cottages of mine ?

30 A. In my statement I made mention of three when you also mentioned one in addition that is why I am pointing all out.

(3) *Q.* Were all these four (4) camps mentioned during the dispute of 25 years ago or in the present one ?

Answer : Mention was made of during the dispute of 25 years ago. The then Nkwantahene or my predecessor mentioned Adesua, Yaw Kokwa Asuboi and Anwiafutu when Bechemhene also mentioned that of Acheremosu.

(4) *Q.* Would it be a wonder or a surprise to you, if I say this place is not called Adesua-ano but Afedekorbror ?

40 A. No, it is not called Afedekorbror but Adesua and this name was admitted by both parties and same was entered on record by the District Commissioner.

(5) *Q.* Was it pointed out then at the time by my predecessor to your predecessor ?

A. As during 25 years ago the two Chiefs (parties) in dispute then understood themselves that this place was called Adesua-ano it was entered on record.

(6) At this juncture if I would be allowed to bring the person who settled here before and whose mortar (mentioned above) is lying down to
50 give history of this place.

He is allowed and he was called forward one person.

Exhibits.

—
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hene's
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hene's
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My name is Kweku Frimpong a native of Suatre near Sunyani. It is about twelve years now since I settled here with the permission of Bechemhene. I had married a woman at Bechem. She is called Abena Nyinka. I begat children with her. She had a female child before I married her, one of them by name Yaa Annu was married to one Osei Kofi Asuyeboah near Kumasi.

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This Osei Kofi took me to this place and pointed it out to me saying he had founded a hunting camp here. The particular spot he first took me to is further up about (80) eighty feet more or less away from the present spot we stand on.

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When we were leaving here he told upon my inquiry that this stream is called Asuowin.

We left to Bechem when a dispute arose between himself and his wife and as a consequence they parted or their marriage was dissolved, and as he returned here again with shame without his wife he called this place or camp with name of "Midimifedie korbror" that is I have got away with ignomy and that is why this place was called Afediekorbror. He added that he died afterwards when he was taken to his native.

After his death, he alone returned to this place and as the old place or spot or camp had been covered or approached by the cocoa trees we planted near, I moved further to the present camp now pointed out by Nkwantahene, as having existed before (25) twenty-five years ago. In consequence of my being alone there and as I became lonesome I was obliged to give up a cultivation I had made without planting anything inside same save coco-yam. Because I was leaving away entirely I sold my said tilled land to one Kojo Fori of Nkwanta for (20/-) shillings.

I never sold this cocoa farm to him, it belonged to late Osei Kofi and not for myself. The cultivation or farm I made is at the other side up this stream. Kojo Fori is also called forward at the request of Nkwantahene who started saying; he hails from Nkwanta and he sometimes met Kwadjo Frimpon here and when he asked him where he came from he answered he was from Kosu village. He said again one Yaw Armu took him (Frimpon) to Nkwanta to have paid rum to Nkwantahene but because he had no money he abandoned this place and went away.

That this man went to Nkwanta thrice without being able to pay them the rum. On his last visit here he met me, having ploughed all the forest here, therefore he gave me this small cocoa farm for (30/-) thirty shillings and I paid him at Kosu village before or in the presence of his wife whose name I did not know, I also went with two other persons namely Kwesi Fori and Kwabena Mainoon.

40

Nkwantahene here said he would have asked him questions but as he was talking of matters of 25 years ago and as this fellow is talking of affairs or matters of 11 or 12 years ago, in which he said he met Osei Kofi here already and lodged him, and that they both returned to their village when Osei Kofi's wife abandoned him and when they returned here again they called this place Afediekorbror, it is manifest that this place was called Adesua but because of dissolution of the marriage of Osei Kofi and his wife they gave this new name.

*28th May
1939.*

Sunday 28th May, 1939: We left our quarters at 7.10 a.m. for bush via new Buokrukruwa village by the left of this village we branched and walked to some distance and met a small river. We followed its course southwards when Bechemhene halted at a place and pointed out to us that the spot was the alleged site of old camp by name Adesua, where

50

rubber was tapped prior to 25 years ago before the Nkwanta-Bechem dispute. It was founded by one Kwadjo Kunadu a priest to Fetish Buabadro. He lived here practising fetishism and hunting. Evidence that he lived here are the dead kola-nut tree on which rubber tapping chisel has been tried, one mango tree, two lime trees, an old sharpening stone and a piece of broken earthenware. Both the Deputies and Nkwantahene as well as everybody present with us at the time saw all these exhibits pointed out by Bechemhene alleged to have existed there prior to the boundary laid by the District Commissioner Sunyani. That the said late

10 Kunadu was a relative of Odekro Kwesi Duku of Kosu village who was present with us there.

That since the laying of boundary between us by Provincial Commissioner Sunyani all my subjects who were staying here quitted entirely until the present time nobody had lived here again.

BY NKWANTAHENE TO BECHEMHENE.

(1) Q. How is it that during the first case you pointed out certain places to the Deputies minus this and now you have brought me here with the Deputies and pointed this place as it is which of them is correct, the former or this present ?

20 A. When we came last, I pointed out Mbampehia, Mbonkruwosu and certain kola-nut farms, after I intended to have taken them there, but they said you based a point on a paper you held on your hand of some notes of Provincial Commissioner Mr. T. E. Fell, which was immaterial and as they deemed it unimportant I abandoned the idea of bringing them here.

(2) Q. If you say that notes taken by the then District Commissioner before he laid the boundary were immaterial, by what then you came last and pointed out certain spots in connection with land dispute case last ?

30 A. We came accompanied by Mr. Agyeman the Registrar of Asantehene's Divisional Court Grade " B " who was then the recording clerk on the case therefore he knew of the important in the case and he was able to rule on those in his opinion were immaterial points and that was the reason. In support of this I assert, positively that during the hearing of this present appeal case Mr. Appiah the recorder also stressed this point that the paper you held containing the notes were of no concern in this case that it does not testify to make it any important.

(3) Q. If you still say that the notes or the papers containing the proceedings of the Provincial Commissioner by which the former boundary was laid is immaterial then by what are we now bearing on our case ?

40 A. You are the Plaintiff in this case and that is why I am obliged to show you all you want to know in my case or in support of my case.

(4) Q. Don't you remember that it is because of our statements in the Court we were asked each side to point the respective places or spots mentioned by us but not because of my initiative ?

A. As I am a party to this case whatever the Court wants to know from me in support of my case I am bound to.

(5) Q. How is it then that you did at the first instance or in the first case, you were to point out those of yours and you failed to show this to the Deputies ?

50 A. My answer is contained in the former answer of mine.

Exhibits.

—
In the
Asante-
hene's
" A "
Court.

—
" A.1. "

Viewer's
Report,
13th June
1939.

Proceedings [sic]
during
View,
continued.

Exhibits.

*In the
Asante-
hene's
"A"
Court.*

"A.I."

Viewer's
Report,
13th June
1939.
Proceedings
during
View,
continued.

(6) *Q.* Do you then say now that Mr. Agyeman said that the notes were immaterial in the Court and it could be traced in record in this case or he said it privately to you between yourselves ?

A. What I say now is that every Registrar of any Court can either write in his note book or refuse to put down any saying of either Plaintiff or Defendant.

(7) *Q.* If it has been ruled by Messrs. Agyeman and Appiah that those notes were immaterial why is it that we have come here to-day to see to this place ?

A. We have come here as a result of this case which has sprang up 10
out of the Agreement made between us long ago 1913 by Capt. Norris.

(8) *Q.* Don't you remember that Capt. Norris did not write in this Agreement of 25 years ago the name of Adesua, but it was mentioned and it could be traced from the notes of T. E. Fell at Buokrukruwa ?

A. The land was then mine, therefore whatever verification you want from me in support or proof of my case I will show you.

[sic] (10) *Q.* Do you not remember that before late Otumfuo Osei Tutu created you a Chief I was already a Chief on this land ?

A. Know you that Otumfuo Osei Tutu did not buy land from anybody 20
before he gave it away to me. I was his Fetish Priest.

(11) *Q.* Nkwantahene says I suggest to you that those who founded 30
this camp were late Kwamin Himnin and Kofi Fofie. They were accompanied by Kojo Anto and Kwasi Addai. The former two were natives of Akordie and are all dead. Kwamin Himnin was married to my paternal aunt called Yaa Kwadua, and when he want meat to give to his wife as a present he asked and was directed to this spot where he hunted for meat or venison. He further asked and he was given permission when he tapped rubber here. As a practice after any stranger had tapped rubber it was my elder brother Kofi Wusu who always shared with them and took possession of Nkwantahene's portion.

Ultimately this stream he calls now by name of Adesua is otherwise known as Asuadei.

Bechemhene called forward one Kwesi Duku who testified to the following : That his late uncle by name Kwadjo Kunadu a Fetish Priest of Buabadro who was living at Kosu sent Kwabena Nkruma and Kweku Badoo who made a hunting camp here in which they lived and hunted for venison or bush meat for him about twenty years ago ; The present Nkwantahene once while passing to hunt requested his late uncle Kwadjo Kunadu to repair his gun which was out of order and he did it. He there- 40
fore asserted that this camp was made by his brother Kwabena Nkroma and Kweku Badoo before late Yaw Anto and brother founded the deserted village of Buokrukruwa.

BY NKWANTAHENE TO KWESI DUKU :

(1) *Q.* Are you positive that I brought a flint lock gun with me to this place, do you know from what village I came ?

A. Yes you came from Nkwanta.

(2) *Q.* Don't you think that as far back as twenty (20) years ago I was not capable of holding a flint lock gun ?

A. You were capable in those days our elders teach youngmen how to 50
handle gun.

(3) *Q.* I suggest to you that the first firearm I held was a double barrel gun belonged to my elder brother called Kwame Appiah and that if you go to Sunyani it will be proved to you that I have never held a flint lock gun which had been registered there.

A. I cannot see or say any beside the flint-lock gun you brought here aforesaid.

(4) Suggestion :—I am positive that I have never held a flint-lock gun.

BY KYEAMI KWAMIN AMOATEN TO KWESI DUKU :

(1) *Q.* What was the name of the camp ?

10 *A.* Adesua.

(2) *Q.* Who was the owner of this land then ?

A. It belonged to Bechemhene.

BY KYEAMI KWAMIN ASANTE TO KWESI DUKU :

(1) *Q.* Was this camp in existence during the laying of the boundary by the whiteman ?

A. Yes it was.

(2) *Q.* Were you present during the first land dispute case and its consequent boundary laying ?

A. Yes, I was.

20 *Q.* Was this amongst the villages named and said to belong to Bechemhene at the time of the first land dispute between Nkwanta and Bechem which were said by the Government that Nkwantahene should allow Bechemhene's people to use without paying tribute ?

A. Yes, this was one—I am positive.

BY NKWANTAHENE TO KWESI DUKU :

(1) *Q.* If what you are saying is correct can you show the boundary then existent between Nkwanta and Bechem ?

30 *A.* Yes, I could, it started from Buokrukruwa to Adenkra stream, thence through its course to Boa stream which also flows into Kosu junction. In ancient times we cleared roads and each finishes his at the old Buokrukruwa village now a deserted village.

(2) *Q.* If so from where you have stated through whose in the forest the course goes ?

A. I cannot describe that.

40 At this juncture Kwesi Addai of Akordieh village now residing at Buokrukruwa was called forward who stated, he was a young boy when this camp was founded for hunting purposes and afterwards used as a camp for dwelling of those who tapped rubber. Kwamin Himmin and Kofi Forfea of Akordieh founded this camp. Whilst here he felled two palm oil trees and burnt them and afterwards found that the place was far better than where they were, so he had permission from late Kwami Damti and resided there. Afterwards he saw one Kweku Ntwefiriwuo of Jumo village came and lived here for fishing purposes. He was subsequently taken to Akordie and that was all he knew.

BY BECHEMHENE TO KWESI ADDAI :

(1) *Q.* Beside this have you ever founded any other camp ?

A. Yes, I have founded Awhidiesu, I have afterwards lived at Anwiafutu and also a cottage next to Anwiafutu, also at Abrudua, I never

Exhibits.

—
In the
Asante-
hene's
"A"
Court.

—
A.I."

Viewer's
Report,
13th June
1939.
Proceedings
during
View.
continued.

Exhibits.
 ———
In the
Asante-
hene's
"A"
Court.

“A.I.”
 Viewer's
 Report,
 13th June
 1939.
 Proceedings
 during
 View,
continued.
 29th May
 1939.

founded these villages, I was permitted by Kwamin Damti to dwell there and tapped rubber. My uncle's servant who accompanied me, he is called Yeyina-Nwio.

(2) *Q.* What is the name of this camp ?

A. It was Kwamin Himnin who named it Nyami Kyire.

The next one was also called by the same name.

The name of this stream is Asuadai.

We closed work here at 11.10 a.m. Sunday.

Monday, May 29, 1939 : We left home at 8.16 a.m. we halted at the junction of Boa and Kosu rivers when Bechemhene came forward and said here was the last halt or stopping place or point of District Commissioner, Mr. Norris, when he started from Buokrukruwa with laying of boundary line between Nkwanta and Bechem in 1913 or 25 years ago. This Kosu river from this point runs through middle of my land, that, it runs through my land alone until it reaches at Atwetwebuo stream where I have boundary line with Brosankro people. These Brosankro people are living on Bomahene's land and they pay tribute to him. 10

BY NKWANTAHENE TO BECHEMHENE :

(1) *Q.* Does what you say now coincide with what your predecessor said here at 25 years ago ? 20

A. Geographically speaking or in accordance with the situation of this land, you had no land towards south-west part of this Kosu stream beside Bomahene and myself.

(2) *Q.* Consequently are you making me to understand that your predecessor made that known to Government ?

A. You will realise from the Agreement between us that your portion of the land ends at the junction Boa and Kosu.

(3) *Q.* If you say that from this place further on or onward Government had finished with the boundary line between us and I (Nkwantahene) have no more land in the South-West direction then how came (Bechem) you to possess land there ? 30

A. If you go towards south and South-West you will not find anyone there who will bear evidence that you have any land there besides mine. For reference even Otumfuo Asantehene knows of all his boundaries in the North, South, East and West of all his land, if so how possible could it be for anybody to say he has a land without known its boundaries.

BY NKWANTAHENE : I suggest to you if you say that you have boundaries with Brosankro and Boma, they are your meeting places where each side clears his farm roads to and it is because of permission you had from me by Government's intercession ? 40

A. It is incorrect this portion of land had belonged to me from the time 300 years ago Otumfuo Asantehene placed me here. I will show you the respective places Government arranged on your part for me to use without paying tribute.

Q. If you say that you had been created by Otumfuo Osei Tutu 300 years ago and placed on this land don't you know that from ancient time or time immemorial I have lived on this land ?

A. Opimisuo or Otumfuo never purchased a land from you for me to live on. 50

Q. Before the advent of whiteman don't you know that in the time of the Ashanti Kingdom boundary between Nkwanta and Bechem was the Kosu river ?

A. No, it was not.

Q. Which was our boundary ?

A. Buokrukruwa stream.

Q. Don't you remember that 25 years ago, during the dispute between our two predecessors, mine said that your subjects had made a camp at a place called Anwifutu or Grunyeh when the then Bechemhene testified that he cleared a boundary up to that point with Brosankro and the Government never admitted, but said that portion was mine and I should allow your subjects to farm without tribute ?

10 A. During that case there were no depositions taken but it was an Agreement and its finishing point was here.

Q. Did your predecessor agreed upon that Agreement ?

A. He admitted or agreed also I might have taken both Boaso and Buokrukruwa lands.

We left this place at 10.35 a.m. We arrived at Abrudua cottage at 1 p.m. At this cottage, Bechemhene came forward and said this is one of those cottages I named at Kumasi. What he said was referred to Nkwantahene by Kyeami Kwamin Amoaten for his comments.

20 When Nkwantahene said last we all together with them came and all what he had to say was said by both of them.

Again Bechemhene said that when we inspected Adesua yesterday (Sunday) one Kwesi Addai said he and others founded that cottage he further said he had lived on other cottages besides Abrudua but it was not he who founded this Abrudua and this is what I want to know from Nkwantahene if he is satisfied now that Abrudua was made by me as I said and not by him because the same Kwesi Addai he mentioned that he made this cottage had denied having founded it even though he admitted having lived there before.

Explanation to above by Nkwantahene following :—

30 What I am saying is the truth because I said that it was Kwesi Addai and Yenyinanwio who founded this cottage. After his evidence yesterday I never questioned him for you to know that either both of them built the cottage together or that Yenyinanwio first came and he followed him afterwards.

40 At 3.30 p.m. we arrived at a spot which was named by Bechemhene as Atwetwebuo, he further stated that because of his Atwetwebuo this stream near by was named after it. In former days this was the main road from Bechem through Kosu Nyinasua to Brosankro and the rest Teppa and the towns behind same. Further South-West of this place there is a stream called Atwetwebusuo and it is the boundary between Bechem and Brosankro.

Explanation given by Nkwantahene to foregoing :—

That it may be possible that it is your boundary because you are using the land and farming on it, and each of you has to clear a road to a certain points and therefore it is only a farm road boundary between the two of you, as I have said before.

One Kofi Forsu, Krontihene of Boma came forward and was asked if the statement of Bechemhene that this stream is their boundary (between Bechem and Brosankro) was true and he said or answered " it is true."

Exhibits.

*In the
Asante-
hene's
" A "*

Court.

" A.I."

*Viewer's
Report,
13th June
1939.*

*Proceedings
during
View,
continued.*

Exhibits. BY NKWANTAHENE TO KOFI FORSU :

*In the
Asante-
hene's
" A "
Court.*

Q. Have you ever heard that Bechemhene had ever gone to either Nkwantahene or Bomahene and asked for permission that he was going to cultivate palms on their land ?

A. I have never heard of this before.

Q. As you say that Bechemhene owns left or East side of Anwiafutu stream and Bomahene also owns the right or West of this same stream, if anybody say a stranger cultivates or tills farms on its right or West who is to be entitled to tribute from the farmer ?

A. Bomahene is entitled to a tribute on that portion. 10

We broke off business at 4 p.m. and reached home at 6 p.m.

Tuesday, May 30th 1939 : We left home at 9.10 a.m. and arrived at the junction of Boa and Kosu at 11 a.m. via Bechem. 20

As we walked towards North we came to a newly made farm about 300 yards away from the junction of Boa and Kosu where Bechemhene said the said farm belonged to Nkwantahene's subject whose name he did not know. He stated further the place was once an old Kola and Funtumia trees farm belonged to a subject of his by name Kwadjo Banful. That this was one of the farms spoken of in the case of 25 years ago by Bechemhene which Government arranged that Nkwantahene should allow Bechemhene's subjects to continue enjoying fruits of his labours out of it without paying anything at all to him and right was reserved for him or any concession which might accrue from same. 20

He affirmed that he brought the first Deputation here and pointed out to them these kola and Funtumia trees farm.

As you see the kola and Funtumia trees are now felled down you might realise that they are so made to exterminate or vanish any future statement that there existed here any such trees and to disprove its validity or solidity.

This farm is on the right hand side of the foot path we here following. 30

BY NKWANTAHENE TO BECHEMHENE IN RESPONSE OF ABOVE :

That during the dispute of 25 years ago, the said kola trees were standing in the forest here but not in any farm. About three years afterwards one of my former predecessors by name Kwame Damti sent Kwabena Akorie to direct one Yaw Anto of Akordie who was then staying at Buokrukruwa to this place to farm kola trees here ; when he met Kojo Banful who was staying at Yaw Kokwa's cottage having made a kola farm here. He stopped him from continuing making the said farm because he did not offer rum to him. Since then nobody had made a farm here until now. That during the visit or inspection of the last Deputation there was no new farm here as it is now, nor the kola trees had been felled down. 40

They were not cut down by my orders. I know the party who made the present farm here ; he is Kwabena Adjei a stranger—Kwesie Duku of Nkwanta had also made a farm here.

He never felled down kola trees.

Kwesie Duku was called who stated he made a farm here in last year as well as in this year, but he never cut down what was in his farm. " It is true only one kola tree was in his farm or where he tilled but he never cut it down." He added he used to see Kwabena Adjei coming there. He saw him making his farm. He never informed Nkwantahene before that time, that Kwabena Adjei had cut down that kola and Funtumia 50

" A.I."
Viewer's
Report,
13th June
1939.
Proceedings
during
View,
continued.
30th May
1939.

Exhibits.

*In the
Asante-
hene's
"A"
Court.*

"A.I."

*Viewer's
Report,
13th June
1939.
Proceedings
during
View,
continued.*

At 2.10 p.m. we reached a certain cottage called Kofi Murufie-krome as alleged by Bechemhene. He told us this man Kofi Murufie is in prison on his own affair. Nkwantahene here said, when we were given our statements at Kumasi I heard you mentioned in your statement that you have a cottage on this land called Kofi Murufie-krome which you founded after the dispute of 25 years ago.

BY KYEAMI KWAMIN AMOATEN TO BECHEMHENE :

Q. May I ask and know from Bechemhene if the first Delegation were brought to this cottage ?

A. No, they were not brought here but I mentioned it my evidence 10 at Kumasi.

We left this place at 2.40 p.m.

In the cocoa farm of Kyeami Kwami Behumi we were informed by Bechemhene at a certain spot that there stood once a rubber camp before and during the dispute of 25 years ago between them. It was mentioned by his predecessor to the Commissioner that he had a rubber camp on the land of Nkwantahene and this was the place he mentioned. He added that after this dispute Nkwantahene deprived him of the land when the camp was destroyed. One Kojo Anoma of late of Kosu village was residing and tapping rubber here, though he is dead his son by name 20 Kofi Poku is present here with us. I recognised this place by the Odum tree uprooted and lying here. This place is called Mbampehia.

BY NKWANTAHENE TO BECHEMHENE :

Q. Is the Odum tree only your mark of identity or recognizance ?

A. The Odum tree and the small river else everything on it was destroyed by the farmer who made cocoa farm here.

Nkwantahene here suggested to the Deputies that they should call the owner of the farm to say the condition of the place when he started farming.

Kyeami Kwamin Behumi was called forward who testified as 30 following :—

I cultivated this place and planted cocoa in it 8 years ago I hired one Kwamin Achampon who felled the trees in the cultivation. There stood in this farm one "Dandan" tree which he refused to cut down and I had to hire to someone else who charged me 11s. 6d. before he hewed it down. This place was a pure forest I never saw any mark of camp made here before, after having pure cultivated here, one tree standing got uprooted by itself. I never saw anything else here.

BY BECHEMHENE TO KYEAMI KWAMIN BEHUMI :

Q. Are you a linguist to Nkwantahene ?

40

A. I am.

Q. I believe by the time the main Sunyani Road was being made you cultivated this farm ?

A. Yes, after the construction.

Q. I suggest to you that in 1923, the aforesaid road was constructed ?

A. I am not to answer this.

Q. I suggest to you that the time you mentioned is not true ?

A. I started making my farm from the road (14) fourteen years ago, I reached the small river after this by six years.

BY KYEAMI KWAMIN ASANTE TO BECHEMHENE :

50

Q. Is this one of the three villages named in your case ?

A. Yes.

Q. Was the Kofi Poku living here at the time with his late father Kojo Anoma?

A. Yes, he was and that is why he knows this place.

BY KYEAMI KWAMIN AMOATEN TO BECHEMHENE :

Q. So is there no other mark besides these two you have mentioned?

A. Yes so I say, for I will use a deserted camp Dada as a reference.

At 5.5 p.m. when we had got to the suburb of the village Boaso Bechemhene branched with us into the midst or middle of a deserted
10 corn farm. He said here, this is the place called Mbonkruoso. It is recognized by a valley on which we stand. The camp was made on it. It was named Mbonkruoso because of this large valley. This spot is included in the three camps mentioned by my predecessors during the dispute of 25 years ago. About these the District Commissioner made Agreement on it between us in which he said I had right to use them without paying tribute. They the Nkwanta people after the dispute destroyed everything of mark on it as it done to that of kola and Funtumia trees now. It was one Yaw Kokwa who made a camp here at the time and he is since dead.

20 BY NKWANTAHENE TO BECHEMHENE :

Q. Have you finished with all of your camps?

A. The three camps on the upper part of the land you wish me to show you I have finished.

Q. From the alleged Mbampehia camp you shewn us up to here there are about three or four valleys on this land so can you show us any other mark here beside this valley?

A. This is the largest of the valleys the hunter discovered on this area.

Q. Can you show me the very or particular spot?

30 A. The particular spot is where thatch or "sreh" stand there I shewn you last when we came with the first Deputees.

Q. Don't you remember that last you were unable to show us a place where old ashes, broken pots lime trees or mangos trees were on this place?

A. What I described to the first Deputees is what I have said now.

Q. Don't you remember that last when we were on a camp I said it belonged to Yaw Kokwa and you said you have never had a man called Yaw Kwakwa living on your land either at Kosu or Bechem?

40 A. Yes, I said I had no Yaw Kwakwa in my country but I have one Kojo Kokwa who is my drummer, if ever there was anybody by the name of Yaw Kwakwa I would not have disputed.

Q. Are you therefore making me to understand that when we were all there and I mentioned the name of either Yaw Kokwa or Yaw Kwakwa, you explained to me that you had a person by name either Yaw Kokwa or Yaw Kwakwa in any of your towns?

A. I would not explain or I did not explain this I answer only question relevant to this case.

50 Q. Last you said you had nobody by name Yaw Kokwa or Yaw Kwakwa in your district, but said you had people by name Kofi Atwetwebuo or Kofi Darkwa don't you remember?

A. My answer was I had no Yaw Kokwa and I say presently that I have no Yaw Kwakwa.

Exhibits.

—
*In the
Asante-
hene's
"A"
Court.*

—
A.I."
Viewer's
Report,
13th June
1939.
Proceedings
during
View,
continued.

Exhibits.

*In the
Asante-
hene's
"A"*

Court.

"A.I."

*Viewer's
Report,
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Proceedings
during
View,
continued.*

Q. How many valleys are here which made this place to be called Mbonkruwuosu ?

A. The party who named this camp is dead therefore I cannot now be in his place to show what he saw here and called this place by that name.

Q. If you say that this place is called Mbonkruwuosu and the party who made this camp here is dead how can you know that here is called Mbonkruwuosu ?

A. That person had relatives who survived him at his death.

Q. Can you show me any farms belonging to Bechem or Kosu people 10 on the same spots which you have now pointed out to the Deputies and myself which farms the Commissioner arranged that I should allow your subjects to use same without paying tribute ?

A. I have shewn you some to-day. And the three cottages are camps.

Q. How many have you pointed out one or two ?

A. I have pointed out one in which you have caused your subjects to destroy any mark of identity in it.

Q. Can you show me any cocoa farm on the upper part of this land ?

A. At the time we had no cocoa farms beside kola and rubber camps.

Q. Don't you remember that the Commissioner mentioned name of 20 cocoa among other things ?

A. There was none. He mentioned a question of peradventure or future.

Q. Don't you remember that last when we got to a certain cottage called Yaw Kokwa Asuboyeh there stood cocoa trees when Kojo Banful said that, there were cocoa trees standing at the spot at the time of boundary laying between Bechem and Nkwanta 25 years ago ?

A. That place does not belong to you besides the Commissioner did not go there, you are a witness to this.

Q. Don't you remember that twenty-five years ago when the 30 Commissioner was deciding this case my predecessor made mention of the names of Adesua, Yaw Kokwa Asuboi and Anwiafutu when your predecessor also mentioned the name of Acheremosu in addition on which agreement was reached between us and not Yaw Kwakwa Mbonkruwuosu and Mbampehia ?

A. It is not so, I have already shewn you that the notes you hold presently is irrelevant to this case.

Q. If you say that the notes I hold has no bearing on this case, how is it that Nana Bekwaihene and Asanteman should sit down and depute people to come and inspect the cottages mentioned in the notes I hold ? 40

A. The Registrar informed you this and it is always important that inspection need be made before judgment is given in any land case.

BY NKWANTAHENE TO BECHEMHENE :

Q. If you say that the paper in which names of the cottages and camps are written is not important then we are going to inform Asanteman so, the place or spot Mbonkruwuosu you just pointed out to us it is Kyeami Kwamin Behumi who made corn farm here and I wish to the Deputies to call him to show what he saw here when he was making farm here.

Kyeami Kwamin Behumi was accordingly called and he testified as 50 follow :—I tilled a corn farm here, when I started ploughing I evaded

that place because it is valley. But when I came to build a village or house here I ploughed the forest here together with that place.

I felled all the trees around here excepting standing there and I afterwards hired Kosu people who felled the rest of the trees there. All this place was a pure forest and everybody thought I could not have been able to do it. I am standing here talking the truth. I never saw any hut or deserted cottage or village here.

BY BECHEMHENE TO KYEAMI KWAMIN BEHUMI :

Q. Are you linguist to Nkwantahene ?

10 A. Yes, I am.

Q. Did you give evidence before the first Deputies ?

A. No I was not here but at Kumasi on a different affair.

1st June, 1939, Thursday we left home at 8.30 a.m. and arrived at Anwiafutu stream at 11 a.m.

Here Bechemhene said as we sit facing East, he owns the East or left side of the stream and Bomahene also owns the West or right side of the same stream.

When we follow the course of this stream Southward we will get to Atwetwebuo stream which is the boundary between Bechem and Boma.

20 Turning about and looking at our back we follow the upper course or North of the said stream. I have my deserted camp Dada at the right the other Dada which is an old deserted camp is at the left and that is for Bomahene.

At 11.25 a.m. we got to the alleged Dada camp claimed by Bechemhene and belonged to him and it was made by one Atta Kojo his grand uncle, here he said, the boundary line between Bechem and Boma is at our left. the name of this place is disputed by Nkwantahene, he calls Acheremosu.

30 On or about 27th last (May 1939) when we got to a cottage called Onsuyamiye one called Yaw Armu gave evidence and when I enquired of him what is the name of his this camp, he said it is called Dada.

BY NKWANTAHENE TO BECHEMHENE :

Q. May I enquire to know when was this track we are traversing or following made, is it about 25 years ago or recently ?

A. It is an old existing boundary line between Boma and Bechem.

Q. Did you bring the first Deputation through this track we just traversed ?

A. I never brought them on it but because I see that you were not contended with the last decision and you have appealed I am bringing the present deputies through same.

40 Q. Don't you remember that the name of this stream is Acheremosu ?

A. The name of the stream is so, but not the name of the deserted camp.

Q. Do you remember that all the farms we just came through belonged to my subjects ?

A. Yes that is why I drove the people away which had resulted this dispute.

Q. May I understand that you have presently driven away all the twenty people who have farms here or they are owning them still ?

50 A. When I was last justified I summoned or called the whole lot by gong gong some came and saw me but not all.

Exhibits.

*In the
Asante-
hene's
"A"
Court.*

"A.1."

*Viewer's
Report,
13th June
1939.
Proceedings
during
View,
continued.*

*1st June
1939.*

Exhibits.
 —
In the
Asante-
hene's
"A"
Court.
 —
 "A.I."
 Viewer's
 Report,
 13th June
 1939.
 Proceedings
 during
 View,
continued.

Q. Don't you remember that this camp was called Acheremosu which was occupied by your late uncle called Yaw Boapon and it was one of the four cottages which the Commissioner who laid the boundary arranged for your subjects to live on ?

A. No.

Q. Don't you remember that in the dispute of twenty-five years ago your predecessor mentioned that he had a boundary with Bomahene at Anwiafutu and never said he owned any land on this side ?

A. I remember that there were no statement given in the case in which witnesses were called it was a mere enquiry. 10

When we got into a farm belonged to Antoa man who cultivated there with the permission of Asukesi people, Bechemhene said his boundary with Bomahene is at the suburb of this farm on facing North.

That there is a forest reserve beyond and as result he had stopped going further into it with us, on our left or West is all for Bomahene in which are his cottages Sukusukuso, Nkwantabisakrome and Sukwahenekrome and further North you come across river Donkawtaw, then the cottage Donkawtaw is at the West side of the stream. We retracked our course or path north-wards until we reached forest reserve pillar marked F.R.B. Pillar 9. Bechemhene said here that if we were to have continued our track or course it will follow on into the forest reserve and that is why he evaded his course. He said again where we are both the Donkawtaw village and river are on our West inside the Government Forest Reserve. There is a junction of the three boundaries between Boma, Nkwanta and Bechem. 20

BY NKWANTAHENE TO BECHEMHENE :

Q. Do you remember that Government took this forest reserve from Bomahene and myself each of us has copy of its Plan ?

A. I know that everything in connection with the Forest Reserve is always done between Government and Otumfuo Asantehene. 30

Q. Don't you know that I have a letter in connection with it from the Forest Reserve Officer or Forest Conservator ?

A. I don't know. I am not supposed all about your letters.

Q. Don't you know that about (18) eighteen years ago Boma and Nkwanta disputed or contended for that portion at Donkawtaw and an Agreement was reached between us (Boma and Nkwanta) without you ?

A. I don't know.

Q. Did you not see me put that Document in evidence in this appeal case ?

A. It was read and afterwards returned to you. 40

Q. Don't you remember that Bechemhene did not mention in the case of 25 years ago that he had boundary with me at Donkawtaw ?

A. It was not a disputed case at all for it was not an Oath case or a summons case.

Q. As you say that it was not a disputed case if at that time Nkwantahene claimed the land beyond Bechem to Abisiwa boundary would Bechemhene have sat mute for an agreement to have been reached between Nkwanta and Abisiwa ?

A. As you never sued or made any case there would have been no necessity for an agreement to have been reached. 50

Q. Was I among in the cutting of the new track or path you have made ?

A. You cut yours alone and so is mine.

Q. If two farmers till or make a farm together can alone go inside and demarcate his boundary ?

A. This has brought the present dispute.

Q. Was not this track or line made after the dispute had been started ?

A. It is an old track or line but I have recently ploughed or cleared it of the growths.

10 Q. Was the track of boundary line existent already before you ascended Bechem stool ?

A. It was an old track and I have proved it with witnesses.

Q. Do you remember that in the dispute of 25 years ago Bechemhene said he had no boundary with Nkwanta ?

A. Yes he said he had no boundary with Nkwanta at Grunyen until it meets at Donkawtaw.

We finished work on Friday 2nd June and left for Kumasi.

Exhibits.

*In the
Asante-
hene's
"A"*

Court.

A.1."

Viewer's
Report,
13th June
1939.

Proceedings
during
View,
continued.

2nd June
1939.
