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21, 1950

UNIVERSITY OF LONDON
No. 56 of 1948. C.1.
28MAR1951
INSTITUTE OF ADVANCED
LEGAL STUDIES

In the Privy Council.

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

BETWEEN

Dr. F. V. NANKA-BRUCE of Accra, as Head and Representative
of the Family of Okai Tiseh, late of Accra (Plaintiff) - - *Appellant*

AND

TETTEY GBEKE as Representative of all others the Members of
the Atukpai Family of Accra, and **A. A. ALLOTEY**, of Accra
(Defendants) - - - - - *Respondents*

RECORD OF PROCEEDINGS.

A. L. BRYDEN & CO.,
CRAIG'S COURT HOUSE, CRAIG'S COURT,
25 WHITEHALL,
LONDON, S.W.1,
Solicitors for the Appellant.

SYDNEY REDFERN & CO.,
1 GRAY'S INN SQUARE,
GRAY'S INN, LONDON, W.C.1,
Solicitors for the Respondents.

21, 1950

31151

No. 56 of 1948.

In the Privy Council.

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

UNIVERSITY OF LONDON
WG1.
15 JUL 1953
INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

DR. F. V. NANKA-BRUCE of Accra, as Head and Representative
of the Family of Okai Tiseh, late of Accra (Plaintiff) - - *Appellant*

AND

TETTEY GBEKE as Representative of all others the Members
of the Atukpai Family of Accra, and A. A. ALLOTEY of
Accra (Defendants) - - - - - *Respondents*

RECORD OF PROCEEDINGS

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In the Privy Council.

ON APPEAL

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

BETWEEN

DR. F. V. NANKA-BRUCE of Accra, as Head and
Representative of the Family of Okai Tiseh, late
of Accra (Plaintiff) - - - - - *Appellant*

10

AND

TETTEY GBEKE as Representative of all others
the Members of the Atukpai Family of Accra,
and A. A. ALLOTEY of Accra (Defendants) - *Respondents*

RECORD OF PROCEEDINGS

No. 1.

CIVIL SUMMONS (Suit No. 102/42).

*In the
Native
Tribunal.*

IN THE TRIBUNAL OF THE PARAMOUNT CHIEF OF THE GA
STATE, EASTERN PROVINCE, GOLD COAST COLONY.

No. 1.
Civil
Summons
(Suit No.
102/42),
24th March
1942.

20 Between DR. F. V. NANKA-BRUCE of Accra, as Head
and Representative of the Family of Okai
Tiseh late of Accra - - - - - Plaintiff

and

TETTEY GBEKE as representative of all others
the members of the Atukpai Family of Accra,
and A. A. ALLOTEY both of Accra - - - - - Defendants.

To—Tettey Gbeke and A. A. Allotey of Accra.

You are hereby commanded to attend this Tribunal at Accra on
Wednesday, the 15th day of April, 1942, at 8.30 o'clock a.m. to answer a
Suit by Dr. F. V. Nanka-Bruce of Accra against you.

30 The Plaintiff's claim is for a declaration that all that land situate
between Avenor and Akalade Villages, Accra, bounded on the North by
lands of Tetteh Azau and Okai Gbeke respectively, on the South by land
of Awulu and others, on the East by land of Norteye and Akaladi, and
on the West by Odaw or Odor Stream is the property of the Family of
Okai Tiseh of which the Plaintiff is the head.

*In the
Native
Tribunal.*

The Plaintiff further claims an Injunction restraining the Defendants their servants and agents from trespassing on or erecting buildings on the said land or interfering with the Plaintiff's Title thereto.

No. 1.
Civil
Summons
(Suit No.
102/42),
24th March
1942,
continued.

Issued at Accra the 24th day of March, 1942.

Sum claimed	Declaration of Title.
Tribunal Fee	£1 5 0
Mileage and Service	0 2 0
Compliment & Drink	- - -
Total	<u>£1 7 0</u>

(Sgd.) Tackie Obile, 10
Ga Manche.

*In the
Provincial
Commissioner's
Court.*

No. 2.

NOTICE OF MOTION on behalf of Plaintiff for Transfer of Case to the Supreme Court.

**IN THE PROVINCIAL COMMISSIONER'S COURT OF THE
EASTERN PROVINCE.**
A.D. 1942.

No. 2.
Notice of
Motion on
behalf of
Plaintiff
for Transfer
of case to
the
Supreme
Court,
2nd April
1942.

Suit No. 102/42.

Between Dr. F. V. NANKA-BRUCE of Accra, as Head
and Representative of the Family of Okai
Tiseh, late of Accra - - - - Plaintiff 20

and

TETTEY GBEKE as representative of all others
the members of the Atukpai Family of Accra,
and A. A. ALLOTEY of Accra - - Defendants.

MOTION ON NOTICE by James Henley Coussey of Counsel for the Plaintiff herein for an Order stopping the hearing of the above-named civil cause now pending before the Tribunal of the Paramount Chief of the Ga State and for the transfer of the same to the Divisional Court, Accra, and for such further Order or Orders as to this Court may seem fit.

TO BE MOVED on Wednesday, the 15th day of April, 1942, at 30
8.30 a.m. or so soon thereafter as to this Court may seem fit.

Dated at Accra the 2nd day of April, 1942.

J. Henley Coussey,
Solicitor for Plaintiff.

Filed 6.4.42.

T. M. K.,
Regr.

To The Registrar, The Court of the C.E.P., Koforidua, and

To the above-named Defendants, Tettey Gbeke as representative of all others the Members of the Atukpai Family of Accra, and A. A. Allotey, both of Accra, their Solicitor or Agent, Accra.

*In the
Provincial
Commissioner's
Court.*

Upon the 10th day of April, 1942, copies of this Motion and Affidavit were served by me on Tettey Gbeke and A. A. Allotey. This I did by serving copies of the said Motion and Affidavit on the said Tettey Gbeke and A. A. Allotey personally at Accra.

No. 2.
Notice of
Motion on
behalf of
Plaintiff
for Transfer
of case to
the
Supreme
Court,
2nd April
1942,
continued.

N. A. Badger,
Bailiff.

10

No. 3.

AFFIDAVIT of Dr. F. V. Nanka-Bruce.

(Title as No. 2.)

No. 3.
Affidavit of
Dr. F. V.
Nanka-
Bruce,
2nd April
1942.

I, FREDERICK VICTOR NANKA-BRUCE, M.B., B.Sc., of Liverpool House, James Town, Accra, a Medical Practitioner, hereby make oath and say :—

1. That I am the Plaintiff herein.

2. That on or about the 23rd day of March 1942, I, in my representative capacity as described in this suit, caused a Writ of Summons to issue against the Defendants in the Tribunal of the Paramount Chief of the Ga State.

3. That the said Writ of Summons is worded as follows :—

“ The Plaintiff’s claim is for a Declaration that All that land situate between Avenor and Akalade Villages, Accra, bounded on the North by lands of Tetteh Azau and Okai Gbeke respectively, on the South by land of Awulu and others, on the East by lands of Norteye and Akaladi and on the West by Odaw or Odor Stream is the property of the family of Okai Tiseh of which the Plaintiff is the head.

30 “ The Plaintiff further claims an Injunction restraining the Defendants their servants and agents from trespassing on or erecting buildings on the said land or interfering with the Plaintiff’s title thereto.”

4. That in a suit intituled Tetteh Kwei Molai (for himself and as representative of other members of the Korle Webii of Accra) Plaintiff and Emma C. Bruce, Dr. F. V. Nanka-Bruce and Tetteh Koblah, Defendants the Writ of Summons wherein was dated the 21st day of January, 1928, commenced and determined in the Divisional Court, Accra, I was the 2nd Defendant.

*In the
Provincial
Commissioner's
Court.*

5. That the said suit was for a declaration of title and the same was heard and determined by His Honour J. M. St. John Yates, J.

6. That the land the subject-matter of that suit is the same land claimed herein.

No. 3.
Affidavit of
Dr. F. V.
Nanka-
Bruce,
2nd April
1942,
continued.

7. That the Plaintiff in that suit was non-suited with costs. I crave leave to refer to the proceedings in the said suit.

8. The then Ga Manche, Tackie Yaoboi, who gave evidence in the said suit referred to above stated that the land in dispute is Ga land and that it has been given by the Gas to the Korle Priest to take care of for the Gas and that the Paramount Chief of the Gas as such has interest in the 10 land and that the Korle Webii were only caretakers thereof.

9. That another witness, Yaotey Kwami, a brother of the said Ga Manche Tackie Yaoboi claimed the land in question as belonging to the Ga Manche's Stool.

10. That the Atukpai family are of the Gbese quarter which is under the Ga Stool.

11. That in view of the foregoing the Tribunal of the Ga State would be and are interested in the said land and would not try the case fairly so I make this affidavit in support of application on my behalf for the hearing of this suit to be stopped before the Tribunal of the Paramount 20 Chief of the Ga State and for the same to be transferred to the Divisional Court, Accra, for hearing and determination.

Sworn by the Deponent at Accra this } F. V. Nanka-Bruce, M.B.
2nd day of April, 1942 } (Edin.).

Before me,

Robert A. Bannerman,
Commissioner for Oaths.

No. 4.

AFFIDAVIT of Tettey Gbeke, 1st Defendant.

(Title as No. 2)

In the
Provincial
Commissioner's
Court.

I, TETTEY GBEKE, Dsasetse of Otuopai, as representative of all others the Members of the Otuopai Stool of Accra and A. A. Allotoy also of Accra, Defendants herein, make oath and say as follows :—

No. 4.
Affidavit of
Tettey
Gbeke, 1st
Defendant,
11th April
1942.

1. That as the Defendants in the abovenamed case we have been served with copy of the Plaintiff's Affidavit in support of his application for transfer.

10 2. That the land in dispute is within the jurisdiction of the Ga Mantse's Tribunal, and the parties are all subjects of the Ga Mantse's Stool.

3. That the Ga Mantse's Stool is not a party to the suit herein.

4. That the parties in the case referred to in paragraph 4 of the Plaintiff's affidavit are not the same as the parties in the suit herein.

5. That I am advised and honestly believe that the fact that a land case was heard and determined by the Divisional Court, is no reason for transferring another case connected with the same land from the Tribunal to the Divisional Court.

20 6. That I am advised and honestly believe that the fact that a land in dispute is a Stool land does not oust the Tribunal of the particular Stool from jurisdiction to hear and determine that dispute.

7. That I am advised and honestly believe that the affidavit of the Plaintiff herein does not disclose any reason upon which this Honourable Court could transfer the case from the Tribunal. And I make this affidavit in opposition to the Motion herein.

Sworn at Accra this 11th day of April, }
1942, in the presence of :— } Nii Tettey Gbeke II.

Before me,

30 V. L. Buckle,
Commissioner for Oaths.

Filed 13.4.42.

T. M. K.

Registrar.

*In the
Provincial
Commissioner's
Court.*

No. 5.

ORDER of Provincial Commissioner, transferring Case to Supreme Court.

(Title as No. 2)

No. 5.
Order of
Provincial
Commissioner,
transferring
case to
Supreme
Court,
15th April
1942.

MOTION ON NOTICE by James Henley Coussey of Counsel for the Plaintiff herein for an Order stopping the hearing of the abovenamed civil cause now pending before the Tribunal of the Paramount Chief of the Ga State and for the transfer of the same to the Divisional Court, Accra, and for such further Order or Orders as to this Court may seem fit.

Affidavit in support filed 6.4.42.

Affidavit in opposition filed 13.4.42.

10

Mr. Coussey for Plaintiff-Applicant.

Mr. Ollennu for Defendant-Opposers.

Both affidavits read.

Mr. Coussey heard.

Points out that the law requires that the case be instituted in a Native Tribunal.

Mr. Ollennu heard.

Court.

It is admitted by both Counsel that the area of land which now forms the subject of this dispute is the same as that which was before the Divisional Court in 1928 in the suit entitled *Tetteh Molai versus Emma C. Bruce and Others*, but now appears as *F. V. Nanka-Bruce versus Tettey Gbeke*. From extracts quoted by Counsel for Applicant from the record in the case *Molai versus Bruce*, I am satisfied that the Ga Stool has an interest. This being so I consider that the interests of both parties will be saved best by transferring the suit to the Divisional Court. I therefore order that the hearing or further hearing of the action now pending before the Tribunal of the Ga Manche be stopped and that it be transferred to the Divisional Court, Eastern Province, for hearing and determination.

Costs assessed at £4 13s. 6d. allowed to Applicant.

30

E. A. Burner,
Ag. Deputy Prov. Commissioner.

No. 6.

NOTICE OF MOTION on behalf of Plaintiff for an Order for Interim Injunction.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN PROVINCE, DIVISIONAL COURT—ACCRA.

*In the
Supreme
Court
of the Gold
Coast.*

Between Dr. F. V. NANKA-BRUCE of Accra, as Head
and Representative of the Family of Okai
Tiseh, late of Accra - - Plaintiff

No. 6.
Notice of
Motion or
behalf of
Plaintiff for
an Order for
Interim
Injunction,
27th May
1942.

and

10 TETTEY GBEKE as Representative of all
others the Members of the Atukpai Family
of Accra, and A. A. ALLOTEY, both of
Accra - - - - Defendants.

MOTION ON NOTICE by James Henley Coussey of Counsel for the Plaintiff herein for an Order for Interim Injunction restraining the Defendants their and each of their respective heirs alienees servants workmen and others from entering upon and/or otherwise working or building upon the land, the subject-matter of this suit pending the hearing and determination of the said suit.

20 TO BE MOVED on Tuesday the 2nd day of June, 1942, at 8.30 a.m.
or so soon thereafter as Counsel can be heard.

Dated at Accra the 27th day of May, 1942.

J. Henley Coussey,
Solicitor for Plaintiff.

To The Registrar,
Divisional Court, Accra,

and

To the above-named Defendants,
Tettey Gbeke and A. A. Allotey,
Both of Accra.

30

Filed 29.5.42.

F.B.,

for R.D.C.

Upon the 29th day of May, 1942, 2 copies of this Motion Paper with annexed affidavit were served by me upon A. A. Allotey and Tettey Gbeke personally at Accra.

E. Cofie Tagoe,

Bailiff.

*In the
Supreme
Court
of the Gold
Coast.*

No. 7.

AFFIDAVIT of Dr. F. V. Nanka-Bruce.

(Title as No. 6.)

No. 7.
Affidavit of
Dr. F. V.
Nanka-
Bruce,
28th May
1942.

I, FREDERICK VICTOR NANKA-BRUCE, M.B., B.Sc., of Liverpool House, James Town, Accra, Medical Practitioner, hereby make oath and say :—

1. That I am the Plaintiff in the above-named case which has been transferred from the Highest Native Tribunal of the Ga State to this Honourable Court.

2. That I have been to inspect the said land and found that a building is being erected thereon by an alienee or purchaser from the Defendants or one of them. 10

3. I am informed and I verily believe that the Defendant Tettey Gbeke or his predecessor in title purported to have sold the land in dispute herein or a portion thereof to the 2nd Defendant A. A. Allotey.

4. I am informed and I verily believe that the said 2nd Defendant A. A. Allotey has authorised a third party unknown to me to put up or erect a building on a portion of the said land, which building is now in the course of erection.

5. In order that the land may be preserved in its original condition and that such third party may not unnecessarily waste his money, time and energy, I make this affidavit in support of application for an Injunction restraining the Defendants or either of them or anybody claiming through them from dealing with or otherwise interfering with the said land by erecting or authorising to erect any buildings thereon or otherwise using the said land pending the hearing and determination of the said suit. 20

Sworn at Accra the 28th day of May, } F. V. Nanka-Bruce,
1942. } M.B. (Edin.).

Before me,

Robert A. Bannerman,
Commissioner for Oaths.

30

No. 8.

AFFIDAVIT of Tettey Gbeke.

(Title as No. 6.)

*In the
Supreme
Court
of the Gold
Coast.*

No 8.
Affidavit of
Tettey
Gbeke,
1st June
1942.

I, TETTEY GBEKE of Accra, make oath and say as follows :—

1. That I am the Dsasetse of Otuopai, representing all others the members of the Otuopai Stool of Accra, the first Defendants herein.

2. That to the best of my knowledge and belief the said Otuopai Stool sometime ago sold a portion of the land in dispute to Mr. A. A. Allotey the second Defendant herein, and that the said Otuopai Stool
10 no more claims title to that particular portion.

3. That I am informed and verily believe that Otuopai people have occupied the land in dispute for over One hundred (100) years.

4. That to the best of my knowledge and belief the said Otuopai people have more than five villages on the said land ; one of the villages Kokomlemle has over thirty (30) houses.

5. That I am informed and verily believe that the said Otuopai people have been cultivating the said land for several years and that apart from seasonal crops, they have large number of fruit trees like mango and cashew trees growing on the said land.

20 6. That I am informed and verily believe that the Otuopai people have graveyards on the said land for the use of the villagers and also for the burial of important persons connected with the said Stool.

7. That we oppose any injunction restraining or limiting our user of the said land. AND I make this affidavit in opposition to the Motion herein.

Sworn at Accra this 1st day of June, } Tettey Gbeke II.
1942, in the presence of :—

Before me,

V. L. Buckle,
Commissioner for Oaths.

30

*In the
Supreme
Court
of the Gold
Coast.*

No. 8a.

COURT NOTES.

(Title as No. 6.)

No. 8A.
Court
Notes,
2nd June
1942.

2nd June, 1942.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN PROVINCE, held at Victoriaborg, Accra, on Tuesday, the 2nd day of June, 1942, before His Honour Sir Philip Bertie Petrides, C.J.

Dr. NANKA-BRUCE

V.

TETTEY GBEKE.

10

Coussey for applicant for interim injunction.

Dove and Ollennu with him for 1st Defendant.

Coussey asks for adjournment to 9th June, 1942.

Dove says that his client is interested.

Order.

Adjourned to 9th June: applicant to be at leave to file another motion.

P. B. P.

No. 9.
Notice of
Motion on
behalf of
the Plaintiff
for an
Order
restraining
Defendants
for
alienating
land in
dispute,
3rd June
1942.

No. 9.

NOTICE OF MOTION on behalf of the Plaintiff for an Order restraining Defendants for alienating Land in dispute. 20

(Title as No. 6.)

PLEASE TAKE NOTICE that at the hearing of the MOTION for Interim Injunction herein on the 9th day of June, 1942, the Plaintiff by his Counsel, JAMES HENLEY COUSSEY, will apply further as part of the Interim Injunction prayed for an ORDER against the Defendants and each of them to be restrained from alienating the land in dispute herein or any part thereof pending determination of this suit.

Dated at Accra the 3rd day of June, 1942.

J. Henley Coussey,

30

Solicitor for Plaintiff.

The Registrar, Divisional Court, Accra, and

To the abovenamed Defendants, Tettey Gbeke as Representative of all other the Members of the Atukpai Family of Accra, and A. A. Allotey, both of Accra, Their Solicitor or Agent.

No. 10.

AFFIDAVIT of Dr. F. V. Nanka-Bruce.

(Title as No. 6.)

*In the
Supreme
Court
of the Gold
Coast.*

I, FREDERICK VICTOR NANKA-BRUCE of Accra, Medical Practitioner,
hereby make oath and say as follows :—

No. 10.
Affidavit of
Dr. F. V.
Nanka-
Bruce,
3rd June
1942.

1. I am the Plaintiff in the above-named suit in which I claim a
declaration of title to and injunction against the Defendants in respect of
land situate between Avenor and Akalade villages and bounded as set
forth in the Writ of Summons on the North by lands of Tetteh Azau and
10 Okai Gbeke respectively on the South by land of Awulu and others on the
East by lands of Norteye and Akalade and on the West by Odaw or Odor
Stream.

2. The land above described has been in the possession and occupation
of the family of the late Okai Tiseh of which I am now Head and
Representative since before the Awuna War of 1869.

3. It is untrue that the Atukpai family or people have been in
occupation of the land in dispute or any part thereof for over one hundred
years or at all. They have no villages thereon, nor grave or other marks of
occupation or use thereof. The land in dispute herein is known as Avenor
20 land. It is quite distinct from Kokomlemle land.

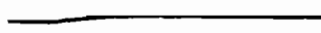
4. I have reasons to believe that if the first Defendant is not
restrained, he may alienate portions of the said land in dispute to other
persons and that would cause multiplicity of suits and he is now actually
negotiating to sell portions thereof to persons unknown to me.

5. The claim of the Atukpai people to my land has only recently been
put forward. In the years 1927 and 1928, when the Korley Webii of
Accra litigated with me over the identical land, no claim was put forward
by the Atukpai family to the said land and several members of the said
family then gave evidence in support of the claim of the Korley Webii.
30

Sworn by the Deponent at Accra this } F. V. Nanka-Bruce, M.B.
3rd day of June, 1942. } (Edin.)

Before me,

Robert A. Bannerman,
Commissioner for Oaths.



*In the
Supreme
Court
of the Gold
Coast.*

No. 11.

AFFIDAVIT of Tettey Gbeke.

(Title as No. 6.)

No. 11.
Affidavit of
Tettey
Gbeke,
8th June
1942.

I, NII TETTEY GBEKE the first Defendant herein make oath and say :—

1. I have read the Motion on Notice herein and affidavit of the Plaintiff in support, filed on the 3rd day of June, 1942.

2. The members of the Atukpai Stool represented by me are occupying Atukpai land which lies on the eastern side of the main road from Accra to Nsawam and have been occupying it for over 100 years. 10

3. The land so occupied by the members of the Atukpai Stool contains several villages with buildings and farms upon them.

4. In November, 1941, I, acting on behalf of the members of the Atukpai Stool let a portion of the said Atukpai land to the Military Authorities in Accra.

5. I deny that members of the family of the late Okai Tiseh have ever occupied any portion of the said Atukpai Stool lands.

6. The members of the Atukpai Stool were not concerned in the litigation between the Plaintiff and Korle Webii and were not informed of that litigation either by the Plaintiff or Defendant in that case. 20

7. I am opposed to an injunction being granted against this case.

Sworn at Victoriaborg, Accra, this } Nii Tettey Gbeke II.
8th day of June, 1942.

Before me.

K. O. Quansah,
Commissioner for Oaths.

No. 12.

AFFIDAVIT of A. A. Allotey, 2nd Defendant.

(Title as No. 6.)

In the
Supreme
Court
of the Gold
Coast.

I, ABRAHAM ADOTEI ALLOTEY of Accra, Trader and Auctioneer,
make oath and say as follows:—

No. 12.
Affidavit of
A. A.
Allotey,
2nd
Defendant,
8th June
1942.

1. That I am the second Defendant in the above suit.
2. That the land on which the building is being erected is known as late J. H. Adams' land and that the Plaintiff's caretaker Tetteh Cobblah admitted this in evidence in the suit of *Tetteh Kwei Molai & Others vs. Dr. Bruce & Others* sometime in 1928.

3. That after the death of my uncle J. H. Adams I became the Head of his Family and the land then came under my charge.

4. That about four (4) years ago the Atukpai Stool attempted to take the land from me when to save litigation I had to give them drink to confirm my family title thereto.

5. That my late uncle J. H. Adams had been in possession and occupation of the land which was his and I continued to be in possession and occupation till now.

6. That the portion now being built on was a portion of J. H. Adams' family property and sold by me to the person building it for the use of the Military.

7. That I am informed and verily believe that the Military Authorities have taken charge of the whole area and that it was arranged to build this house for them to hire.

8. That I am therefore opposing the injunction to enable the builder to complete the work in time for the Military Authorities to hire to prosecute the war.

Sworn at Accra this 8th day of June, }
1942 } A. A. Allotey.

30 Before me,

Robert A. Bannerman,
Commissioner for Oaths.

Upon the 8th day of June, 1942, a copy of this Affidavit was served by me upon Dr. Nanka-Bruce, the Plaintiff herein, personally at Accra.

E. C. Tagoe,

Bailiff.

No. 13.
COURT NOTES.

9th June, 1942.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN PROVINCE, held at Victoriaborg, Accra, on Tuesday, the 9th day of June, 1942, before His Honour Sir Philip Bertie Petrides, C.J.

BRUCE

V.

GBEKE and ALLOTEY.

Coussey for Motion.

10

Ollennu (Dove with him) for 1st Defendant, and

Akiwumi for No. 2.

Coussey :—

Matter before Court last Tuesday when Court gave leave to amend motion. On affidavit there is some confusion as to land. We say it is called "Avenor." Defendants say it is called "Kokomlemle." They say they have graves on the land. We ask Court to protect land pending the hearing of this suit. Defendants state that they have been alienating portion of land. Military have taken possession of part with their permission.

20

(Court deals with other matters while parties consult.)

Later :—

I have a plan produced by Defendant in action *Tetteh Kwei Molai v Dr. Bruce and Bruce*. We were Defendants. Plaintiffs non-suited. Some of members of family now claiming gave evidence in support of Plaintiff's claim.

Dove :—

Now that we see plan we say that part of land on right of road to Nsawam belongs to us—has been handed over to Military by Agreement of 4th November, 1941. We therefore can't do anything.

30

Akiwumi :—

We say that portion acquired by us has been handed over to Military. We alienated a portion which has also been taken over by Military.

Coussey :—

We don't admit that Military are occupying any part of land in dispute. Before Motion dealt with, I ask that plan be ordered and that Defendant should show on that plan what has been let to Military.

Paragraph 4 of A. A. Allotey's affidavit shows conflict between 1st and 2nd Defendants till drink is given.

I ask that application be adjourned till plan made. We will prepare 40 plan and will ask Defendants to show surveyor part let to Military.

Dove states that his clients will attend the survey.

Akiwumi states that his client will attend the survey.

Order in the Action :

That a plan be prepared by the Plaintiff at his cost in first instance. Notice to be given to the Defendants so that they may attend survey.

Motion :

Dove asks for costs of Motion.

Order on Motion :

Motion to stand adjourned till plan ready.

Order :

10 Motion and action to be listed for mention on the 11th August.

P. B. P.

*In the
Supreme
Court
of the Gold
Coast.*

No. 13.
Court Notes
9th June
1942,
continued.

No. 14.

OPENING STATEMENT by Mr. J. H. Coussey, Counsel for Plaintiff.

22nd October, 1942.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN PROVINCE, held at Victoriaborg, Accra, on Thursday, the 22nd day of October, 1942, before His Honour Mr. Justice C. A. G. Lane.

Dr. NANKA-BRUCE, as representative of Okai Tiseh Family

vs.

20 TETTEY GBEKE, as representative of Atukpai Family

and

A. A. ALLOTEY.

Coussey—Hutton-Mills not appearing as Counsel as he is subpoenaed as witness.

Whitaker with Coussey for Plaintiff.

Dove for Defendant (1st).

Akiwumi for 2nd Defendant.

Coussey :—

Plaintiff's claim (stops)—

30 *Dove* intervenes to say he has not seen copy of plan.

(Plan sent to Court 17.9.42 and (interlocutory) application for injunction not yet decided and suggests adjournment.)

Coussey asks to go on—Defendants know of the plan and coached the survey.

Dove—Interlocutory injunction should be disposed of.

No. 14.
Opening
Statement
by Mr. J. H.
Coussey,
Counsel for
Plaintiff,
22nd
October
1942.

*In the
Supreme
Court
of the Gold
Coast.*

No. 14.
Opening
Statement
by Mr. J. H.
Coussey,
Counsel for
Plaintiff,
22nd
October
1942,
continued.

Coussey asked to continue his opening.

He continues :—

Claim is for declaration of title in respect of land, and injunction against them restraining their interference with land and from entering thereon and disturbing Plaintiff in his rights. Plaintiff sues as head and representative of family of Okai Tiseh, who died some time in 1860's; his English name was Thomas Tracey Tagoe. Tracey was corrupted into Tiseh and he was popularly known as Okai Tiseh. He was "Shippi," an important post in Ga organ: duty in war to distribute ammunition to fighting men and to marshal them under Okoshe Mantse. He was of 10
Gbese quarter of Accra: one of 6 quarters of Accra having stools and forming what is called Ga Manshi or federation. Gbese quarter has a stool. Land behind Accra was some 100 years ago, thick forest land; whilst various quarters had lands parcelled out to them in immediate vicinity of Accra for the early settlements; the large area of land behind Accra was dense forest and it devolved upon Korle Webii (Korle family) who were in charge of Korle lagoon, and also a hunting family, to look after and be caretakers of the lands outside Accra. Korle Webii supplied for their family the Korle priest who is head of family, and it was within his powers to grant lands outside Accra to individuals from time to time; 20
one Nii Addu a former Korle priest some time in 1860's or late 1850's certainly long before the Awuna War (a fixed date) granted land now claimed by Plaintiffs to Okai Tiseh. It was the fashion in those days for prominent men to own slaves or domestics, and Okai Tiseh had a number of slaves who worked on the land, and occupied it for him; principal slave was Kabadi; grant by Nii Addu to Okai Tiseh was not by deed—made orally; there is evidence still available that Kabadi farmed this land and that Kabadi actually built a swish compound house on it which was harbourage of himself and others of Okai Tiseh's household, who visited land from time to time; land is about 3 miles outside Accra now. 30

Kabadi died about 1880. After his death, land used by members of Okai Tiseh's family; later, however, when descendants of Okai Tiseh became educated people, who did not farm, a caretaker—Tetteh Koblah—was put in charge. Evidence will be given of acts of user such as cutting mangoes and cashews, showing dominion over the land. Up to 1926 land was well outside building area. Accra gradually crept northward and Korle Webii who had by their predecessor granted land to Plaintiff's predecessor turned their eyes to land and commenced proceedings in Ga Mantse's Tribunal (transferred to this Court) in endeavour to get land back from Plaintiff and others. 40

Claim was that land had been abandoned by Plaintiff's slave Kabadi or that he had been driven off the land for non-payment of tolls.

Yates, J.—1928—in a considered judgment found against Korle Webii on both these issues and non-suited Plaintiffs; no appeal; and throughout no suggestion by present Defendant or his predecessors that land in dispute belonged to Atukpai family.

Hutton-Mills, Plaintiff's nephew, on two occasions, put pillars on land to demarcate boundaries; they were removed by unknown persons. Later he removed a trespasser off the land.

1st Defendant is sued as representative of Atukpai family ; recently Atukpais have mentioned an Atukpai stool ; they may have a family-stool which is stool of Tete Churu, but they are not a stool of Accra within Ga Mashie (federation) with lands attached to stool. The Atukpai family springs from house of Tete Churu of Gbese quarter. Plaintiff and predecessor were of that quarter. As Gbese, they may own individual farms or small groups of them may own settlements scattered over Ga lands, but any such small pockets or colonies do not stamp whole area of land as Atukpai land as Defendants now contend. Tete Churu's family do not own land in dispute.

About March, 1942, it was brought to notice of Plaintiff that 2nd Defendant had begun building on part of the land. When challenged he said he derived title from Atukpai stool. Action then instituted.

In June last Plaintiff applied for interim injunction against Defendants ; owing to nature of affidavits filed, particularly a statement by Defendants that they had granted by lease this land to Military authorities, plan was ordered ; application for injunction adjourned, with liberty to apply. Judge said costs to be settled in the suit. Survey made showing whole area claimed and described in writ. Defendants laid claim to land on right side of road going to Achimota. That has narrowed issue considerably. In view of early hearing, Plaintiff did not apply to have application for interim injunction re-listed, particularly as 2nd Defendant did not proceed further with his building, and he does not now press the application.

*In the
Supreme
Court
of the Gold
Coast.*

No. 14.
Opening
Statement
by Mr. J. H.
Coussey,
Counsel for
Plaintiff,
22nd
October
1942,
continued.

No. 15.

OPENING STATEMENT of Mr. F. Dove, Counsel for 1st Defendant.

22.10.1942.

Dove :—

Injunction : asks that Motion be struck out with costs to 1st Defendant.

Portion claimed by Plaintiff is very small portion of area belonging to 1st Defendant—see plan. Application useless as far as 1st Defendant is concerned, as it was stated that no fear of alienation by 1st Defendants : until plan made possibly my friend did not realise extent of land which his client claimed.

Asks for costs of application.

Re claim for declaration of title : Land is attached to Atukpai stool. Atukpai is section of Gbese which is division of Ga State. People of Atukpai stool have been in occupation of area claimed for more than 100 years and have several villages on land : one being very close to area claimed by Plaintiff : just after Katamensu War—1820's—we say 1822. (Cemetery where prominent people buried not in area claimed, but near it.)

Original grant to Atukpai stool made by Ga Mantse, Nii Tackie Komey about 100 years ago, and Atukpai people in occupation of land

No. 15.
Opening
Statement
of Mr. F.
Dove,
Counsel
for 1st
Defendant,
22nd
October
1942.

*In the
Supreme
Court
of the Gold
Coast.*

No. 15.
Opening
Statement
of Mr. F.
Dove,
Counsel for
1st
Defendant,
22nd
October
1942,
continued.

ever since. Atukpai people stool not party to case tried in 1928 between *Tetteh Kwei Molai for Korle Webii vs. Bruce and Others*. Atukpai stool did not know of the action and not affected.

At that time they were in possession of their land. Atukpai stool about 35 years ago gave to J. H. Adams the land now claimed by 2nd Defendant: native gift. In more recent years when Adams succeeded by 2nd Defendant, Atukpai stool gave 2nd Defendant a conveyance.

Another portion given by Atukpai stool to Amache Oku and Aba Dienswa has succeeded to that portion.

Another portion given to Ochame Kwaku who was succeeded by Nii 10 Tackie Yaoboi, ex-Ga Mantse, who is now on the land.

Another portion to Ante, over 30 years ago. Another to Kwartei, 35 years ago: there are remains of ruined village and a new village by a relative.

About 2 years ago another given by conveyance to Ajete Sowa who has buildings on land. Deny Plaintiffs ever had any pillars on our land.

1st Defendant not able to say if Plaintiff is head of Okai Tiseh family.

Re Korle Webii and title alleged: if Ga stool gave 1st Defendant's family title, Korle Webii priest not entitled to grant to anyone else: grant invalid so far as right hand side of Achimota Road is concerned—we 20 aren't concerned with left side.

Other parties interested. We parted with our interests to those parties: it's for those parties to look after themselves.

This case should not be determined without those parties being made parties. Cap. 4, Order 3, Rule 5.

Coussey :—

We have only bare pleadings to say these portions have been alienated: they say "given": if it's true, it doesn't mean divesting of title.

Dove :—

I say we have divested ourselves of title by native gift: no written 30 conveyance except in one case—Allotey's.

Coussey :—

So-called gift does not affect our right to claim declaration of title against 1st Defendant. Unless divesting of title by deed, legal title is still in 1st Defendant. Ante's land is outside.

Dove :—

It is inside.

Order—

I do not propose to join those people on this allegation, at any rate, at this stage.

No. 16.

OPENING STATEMENT of Mr. A. M. Akiwumi, Counsel for 2nd Defendant.

*In the
Supreme
Court
of the Gold
Coast.*

22.10.1942.

Akiwumi for 2nd Defendant :—

I adopt Dove's argument re costs on abandonment of Motion for injunction.

Defence—

(1) Plaintiff is not head of Okai Tiseh family. Not proper person to institute suit in capacity in which he has done.

10 (2) Land in dispute never belonged to Okai Tiseh : never occupied by him or anybody for him.

(3) Land in dispute originally belonged to Atukpai Stool who gave portion demarcated as 2nd Defendant's to J. H. Adams, deceased, between 1900 and 1903. Adams occupied land, had his pillars on it, and demarcated it by planting sisal on 2 sides—North and South sides—to knowledge of Tetteh Kobla—then caretaker for Plaintiff.

Adams died in 1931—succeeded by 2nd Defendant : succession by native custom : 2nd Defendant is Adams' nephew. He applied to Atukpai Stool : given grant in writing in confirmation of Adams' title.

20 Since then 2nd Defendant has sold a good part of the land to :—

- (1) Gbese Mantse by Deed of Gift.
- (2) C. S. Acolatse (Conveyance—sale).
- (3) D. S. Quarcoopome do
- (4) N. S. Allotey do
- (5) E. O. Lamptey do
- (6) Herbert Nettey do
- (7) S. Sackey do
- (8) Adaii do
- (9) Jerome Kwashi do

30 All executed long before this action was instituted. Last was one given to N. S. Allotey who is the person who began building—i.e. not the 2nd Defendant.

The balance which 2nd Defendant has left is partly in area in dispute and partly outside it.

Plaintiff not entitled to relief sought.

(Court asks Coussey if he wishes to argue re question of joining alleged purchasers.)

Coussey—

40 We wrote to 2nd Defendant about building. He didn't say he had sold the land and was therefore not interested in it : he said he had derived title from Atukpai stool : can't say if alleged dispositions are genuine. When he swore to affidavit to oppose interim injunction—paragraph 5—he said he continued to be in possession of the land up to now. The deeds not produced. *Not registered.* If Defendants seek to join the parties they have had ample time to do so. Parties haven't applied.

Order—

I do not propose to take any steps to join them, certainly at present, on this mere allegation.

No. 16.
Opening
Statement
of Mr. A. M.
Akiwumi,
Counsel
for 2nd
Defendant,
22nd
October
1942.

*In the
Supreme
Court
of the Gold
Coast.*

PLAINTIFF'S EVIDENCE.

No. 17.

K. Armah Kwantreng.

22.10.1942.

*Plaintiff's
Evidence.* *Coussey* calls :—

KWAMLA ARMAH KWANTRENG, 1st Witness for Plaintiff, sworn :—

No. 17.
K. Armah
Kwantreng,
22nd
October
1942.
Examina-
tion in
Chief.

Examination-in-Chief :—

Licensed Surveyor practising for many years ; made the survey of land in dispute in this suit ; received written instructions from Plaintiff's solicitor re survey. I received instructions from Defendants, but not 10 written. I informed parties before commencing survey. Both sides attended : for Plaintiff, a very old man—Tetteh something—Tetteh Kobla—assisted by Asafoatse Annan Tagoe and his brother. Don't know what his initials are. He is a surveyor. For 1st Defendant, Mr. Aryee attended (identified) and several others assisting him. I don't know their names. 2nd Defendant in person came and gave directions as to how his claim should be shown in plan.

On behalf of 1st Defendant, in respect of the large area which they claim, I gathered that they had had a survey made of that large area. They brought me a plan of the large area. I transposed on to my plan 20 the plan of that large area. I did not survey the large area. I surveyed the claim of the Defendants : as shown on my plan, signed by me. (Tendered—Exhibit 1.)

Exhibit
" 1."

On my plan, where there is any conflict between the claims of the 2 parties, I have put a plea for Plaintiff's statement and a plea for Defendants'.

The dates on plan were copied from the plan of the Defendants.

Land claimed by Plaintiffs on left of road is grass with mangoes : close to the stream Odor ; in abnormal rainy season the stream overflows banks and comes very near to road. 30

On right of road it is very good building site : rises gradually from road towards east : crest of rise is well behind land in dispute.

Defendants informed me that they had leased whole area in dispute (red area) to Army. Aryee told me this—representing 1st Defendant. He produced no documents. I didn't ask for such document. I had instructions to ask for such documents ; but I took his word that Defendant had given large area including red area to Army.

Can't remember any other portions pointed out as having been sold, except 2nd Defendant's claim—i.e. within land in dispute—about 400' × 400'. 40

2nd Defendant told me he had sold bits to other people. I can't remember if he showed me. He pointed to where building was being erected and told me he had sold that portion to somebody. He didn't ask me to demarcate any part of the purple area as having been sold to other people.

" New building " at top of 2nd Defendant's claim : walls not completed : many cement blocks lying about. At time of the survey, work was recent.

I have lived in Accra all my life and seen developments of Accra during last 30 years. Township of Adabraka dates from some time back. Pipe-borne water supply to Accra in 1912. Adabraka laid out, I can't remember date, though I took part in survey: in Government service: it was after pipe-borne water supply. Building had not begun then, at Adabraka.

10 Mile 3 post just beyond area in dispute. I remember when Nsawam Road was not motor road—about 1900. Long before last war. (By consent, about 1908 or 1909 first cars in this country). It was a footpath—a hammock road. Three cemeteries appear on my plan. I went to the one near Klu village.

Re Akrade Village: I discovered that the position shown in Defendants' old plan was not correct; it should be as shown in red—not as shown "Akrade 1893."

Cross-examined Dove :—

Akrade as shown in red is standing now: as shown in red is its proper position: was not shown any ruins of an old village: Akrade as shown by me is not a new one: some roofs had been removed, as I understood at request of Army.

20 Portion on left of Nsawam Road has many mango trees and cashew trees: not so many in portion on right side. At tree marked in red in red area, referring to my field book, there are other mango trees and cashew trees there in that neighbourhood.

Defendants took me there to point out what they said was the only mango tree belonging to the Plaintiff there. Aryee showed me this. Can't remember if it was pointed out to me by Plaintiff as the only mango tree claimed by him. Plaintiff didn't point out any mango trees on eastern side. There are a fair number of mango and cashew on right side. Plaintiff did not claim any, except possibly this one which I am not sure about.

30 Tetteh Kobla, old man, assisted by Asafoatse Tagoe and his brother, showed me Plaintiff's boundary. Tetteh Kobla showed them. When I first went there he had some difficulty in pointing out. I wanted him to cut his boundary—because first day he was confused—before I commenced survey. It was scant and low bush. The following day there was a line cut on 3 sides, road being fourth. Some parts were not cut because Army had cleared, but you could trace from cutting.

40 I started from motor road in south-west corner: went easterly: then northerly direction: then westerly direction: to road: following the cutting all the time—the line that I was shown. It saved me time to have it done this way.

2nd Defendant told me where partly built house was—he had sold piece of land to somebody.

Where "Kwartei Bricklayer" appears, there were ruins. I asked who was owner. 1st Defendant's representative said their ancestor had given the land to Kwartei, and so did Plaintiff's representative. I understood each side to say they allowed Kwartei to live there.

Re building described as Yeboa and Sowa: Plaintiff's representative said it belonged to Yeboa and Defendant's representative said to Sowa.

*In the
Supreme
Court
of the Gold
Coast.*

*Plaintiff's
Evidence.*

No. 17.
K. Armah
Kwantreng,
22nd
October
1942,
Examina-
tion in
Chief,
continued.
Cross-
examina-
tion.

*In the
Supreme
Court
of the Gold
Coast.*

*Plaintiff's
Evidence.*

No. 17.
K. Armah
Kwantreng,
22nd
October
1942,
Cross-
examina-
tion,
continued.

Re building described as Nyami Yeabro—a ruin. Tetteh Kobla gave me that name as owner. Defendant's representative said it belonged to Norkai.

I saw no sisal plants, planted as if to mark boundary. I saw sisal plants but not to mark boundary. I saw some marking southern end of Allotey's claim. Not on northern boundary.

Cross-examined Akiwumi :—

I did not see sisal on northern boundary of 2nd Defendant's claim, marking that boundary. The new building is right on that boundary. I saw no sisal plantation on that boundary. 2nd Defendant did not point out anything to me. He gave me a piece of paper describing length and width of his land and showed me 2 points on the road side marking end of his claim. I worked it out from that. He did not stay to see survey. He showed me 2 points on roadside and went away. One point is marked with pillar : he said he had 600 feet from there by 400 feet. The paper I returned to him. I think so. I can't remember if it was a plan on tracing paper. I am surprised if he says he has not got it. I have all my other papers here. I sent it back. The paper was a plan showing land divided into building plots ; don't remember if it had names written on it. It was impossible to show these plots on my plan according to the scale : it was too small. It could not be shown. The ruined buildings are not drawn to scale. 2nd Defendant asked me to survey the area he claimed : he did not ask me to show the details. 10 20

He told me he had sold the portion where new building was. He said he had sold other portions of land. I can't remember details. The area was shown as divided into building plots : there were numbers. I can't say if there were names.

When 2nd Defendant pointed out his land as I have stated and went away in presence of other people, he had taken me out there in his car with Asere Teiko. He went away saying he had a case in Court. He handed me the paper, and showed the 2 points and went away. The 2 points he showed me were there : he showed me south-west corner of his plot—and told me to take 600 feet along the road and that was what I did. I saw sisal plants at south-west corner : don't know how old they were. I don't remember seeing sisal on northern boundary of his plot. Tetteh Kobla I think was there when 2nd Defendant pointed out his plot : the representatives of both sides were there. When he showed me his plot, Tetteh Kobla objected to his claim, saying 2nd Defendant was trying to encroach on to Plaintiff's claim : in other words the 2nd Defendant was not entitled to all the land he claimed. I don't remember seeing him there when I was surveying claim. 2nd Defendant had gone when Tetteh Kobla said this. Tetteh Kobla was in the crowd and he objected. 30 40

Re-examination.

Re-examined :—

On first day of survey, Tetteh Kobla seemed confused about boundaries. I started survey on 20th July, 1942, after rainy season : land was just drying : grass high. At south-east corner of red area ant-hill was shown me by Plaintiff's representative—ditto—at north east—ditto—at north-west corner. Ntome trees pointed out : these are used locally for marking boundaries. 2 Ntome trees pointed out to me : one in particular at point where north-east corner of Plaintiff's claim not in dispute meets Nsawam Road. 50

No. 18.

Tetteh Kobla.

22.10.1942.

TETTEH KOBLA, Pagan (very old—about 90 years old). 2nd Witness
for Plaintiff, sworn

Examination-in-Chief :—

I come from Okuwe quarter of Accra, viz : Gbese. I live at Avenor
now : headman there. Avenor village is under Gbese Stool : have been
headman there since 1896 (Prempeh's War). Tete Azau was headman
10 before me. Was living at Mayara (Manyala ?) before I came to Avenor.
I knew Okai Tiseh personally. When I was young, there was a Korle
Webii priest, head of family, Nii Adu. Okai Tiseh had land near Avenor,
about 400 yards away (indicates). Between Avenor and Okai Tiseh's
land there was the Odor Stream.

Okai Tiseh belonged to Anegi house of Gbese : an important house in
Gbese. Okai Tiseh's position in Gbese was " Shippi " of Asafo Company.
Okai Tiseh was connected with Korle Priest. Okai Tiseh's daughter
married Nii Adu's brother. When I was called to Avenor from Mayara,
Kadabi and his brothers were working on Okai Tiseh's land near Avenor.
20 Kadabi's brothers were Nyami Yabro, Denyadi, Adienaja ; there were
others. I can't remember their names : one was Kofi Toe, who had
peculiar ears. These were Okai Tiseh's slaves ; they farmed on the land.
Kadabi made a village on the land and they lived there : built on land near
the hill : up the hill from the road, across the road from my side.

Adjourned till 8.30 tomorrow.

C. A. G. L.

23rd October, 1942.

Coussey (Whitaker with him) for Plaintiff.

Dove for Defendant 1.

30 *Akiwumi* for Defendant 2.

TETTEH KOBLA, Sworn (Continued). 2nd Witness for Plaintiff.

Examination-in-Chief, contd :

People who farmed on the land with Kadabi I gave yesterday, and said
Kadabi farmed on the land. The road then was not as it is now. It
was footpath : these people farmed on both sides. In rainy season they
planted corn on the lower side near Odor and planted cassava on hill
(N.B. eastern side), also okrah, groundnuts and vegetables. I was farming
to the north at Tesano where Police Training Depot is now on land
belonging to my uncle Ayai, who was connected with Korle Webii. I
40 knew one Kwartei who built house on site of Kadabi's ruined house :
on ruins of Kadabi's house. He lived there about 2 years and went away.
Kwartei was from Christiansborg and lived in Gbese. He was not
connected with Kadabi or Okai Tiseh. He was bricklayer : when out
of work he came to live there : he came through Molai, the Korle Priest.
Nobody else lived in Kadabi's house. A fetish woman called Nole lived
on hill not far away : she came from Atukpai and remained on land. She
was my brother's wife. When she became a fetish woman my brother

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Coast.*

*Plaintiff's
Evidence.*

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Tetteh
Kobla,
22nd and
23rd
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1942.
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tion in
Chief.

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Court
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*Plaintiff's
Evidence.*

No. 18.
Tetteh
Kobla,
22nd and
23rd
October
1942,
Examina-
tion in
Chief,
continued.

built village for her at place called Akrade : i.e. further on beyond where Kwartei and Kadabi lived. My brother who was married to Norle, was Botoku.

When Ga people returned from first Awuna war, at that time Okai Tiseh died. I was then a small boy. Kadabi died after the Glover War (1874). After Kadabi's death, Awula Akoshia was then in charge of the land. When Okai Tiseh died he was succeeded by Awula Akoshia his niece (Mrs. Hutton-Mills—Counsel agree). Christiana succeeded Okai Tiseh. I made a mistake—Awula Akoshia was Christiana's daughter.

Kadabi looked after land when Okai Tiseh died. Okai Tiseh had 2 10 brothers ; one died early ; the other was Adu Tagoe ; saw him on the land : used to come there to visit his " children " : Nyami Yarbro—Benyadi—Kofi Toe—Adenaja—Nyortabeng—who were farming the land. Okai Tiseh's father lived just opposite the Gbese Mantse in Accra : they were of same family. Okai Tiseh's father was Tego Churu. Gbese Mantse was Ayikai Churu.

There were mango trees on the land and cashews. I looked after the mangoes : trees on both sides of land. Awula Akoshia (Mrs. Hutton-Mills) appointed me to look after the land, after Ga people returned from Ashanti War (1896). I don't know exact year. When mangoes were ripe 20 I plucked them and sold them and gave her an account. She sent people to the land from time to time, viz. : Ssenseyi, Ono-Prapranya. They used to take foodstuffs from Kadabi to her. After Awula Akoshia's death her sister Awula Akua employed me to look after land—she is sister of Dr. Nanka-Bruce.

About 16 years ago, Korle Webii had case against Dr. Bruce, Awula Akua and another. I gave evidence. Korle Priest also sued me as defendant : case was about this same land. Before that case I knew boundaries of Okai Tiseh's land which I was looking after.

Neighbouring owners were Tete Kwami, Ajete, Okai Gbeke, Tete 30 Azau—these were adjoining and had common boundary with him.

Looking towards Achimota, away from Accra, Tete Kwami's land is facing you near Lutterodt's land. Okai Gbeke's land is going up the hill where Taylor now has built. Tete Azau's land is on bush side (North side) near Odor stream. Ajete's land is behind Akrade village.

Coming from Accra towards Okai Tiseh's land you meet Tete Kwami's land before you come to Okai Tiseh's land. I accompanied the surveyor Kwantreng when he surveyed and showed him the boundaries.

I know Atukpais claim this land as theirs. When the Europeans began to buy land, the Atukpais said they were going to take the land and if 40 Europeans wanted it they would sell it to them and not only the Korle Webii (Onomroko people) should chop it all.

None of Atukpai people have ever been on this piece of land. Atukpai people are Tete Churu's people, under Gbese stool.

Cross-
examina-
tion.

Cross-examined Dove :—

I was related to Kadabi. I and he are in one line. I am a nephew of Oraka : not son of a slave of Okai Tiseh. I am relative of Okai Tiseh—am from Gbese. Tete Churu died before I was born. I am one of oldest

of the house. I am invited to ceremony of sprinkling food for the gods (Homowo). Tete Churu's people come to me and join me and we go together to sprinkle food. Tete Churu used to go with the guns—with Ga Army : but he was not a leader in time of war. The Abola people are the first, and the Gbese follow, with Tete Churu's people. Don't know of former Ga Mantse granting lands to Tete Churu. Atukpai people have a stool. As to Atukpai people having land near, I don't know.

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*Plaintiff's
Evidence.*

Know Akrade village : it is an Atukpai village : know Kokomlemle village : it is an Atukpai village : both on right side of road looking north.

No. 18.

10 Akrade is quite near land we are claiming : ditto—Kokomlemle. As Atukpai people live there, then it is their land. Have always known them to be in those villages.

Tetteh
Kobla,
22nd and
23rd
October
1912,
Cross-
examina-
tion,
continued.

I knew J. H. Adams—an educated man—now dead. When I went to live on West of Odor stream, I knew Adams—he had land there but he never farmed there before. He was known as Okaija. He had a pillar there. I asked and was told it belonged to him. I asked someone who could read to read the name on the pillar. They told me it was Okaija's. Saw 2 pillars—near the street—i.e. by the road : understood he was claiming land between 2 pillars on right side looking towards Achimota. (N.B.—On
20 eastern side.)

(By consent, copy of Writ in case *Tetteh Kwei Molai vs. Bruce. Bruce and Tetteh Kobla*, put in—Exhibit “ A ”.)

Exhibit
“ A.”

That was about 16 years ago. I am not sure of year. Did not know how long Adams was claiming the land. Don't know how long it was that I knew of his claim before this case was brought.

Land claimed by Adams included some of land claimed by Okai Tiseh's people. I knew there was a pillar before case came on but I did not know he was claiming it. I have forgotten if I said I knew Adams' land. I said, “ It is not part of Defendants' land (i.e. Bruce's land) but
30 bounds it.” The Defendants were Dr. Bruce, his sister, and myself.

Tete Kwami is not the same as Tete Churu : he is related to Tete Churu. Tete Kwami was an Atukpai man and had his portion of Atukpai land. I showed Tete Kwami's land to the surveyor. It is near Kokomlemle village. Between our land and Accra—not near Lutterodt's land, which was called Kpehe, where the market is. On the right side of road on land which we claim, there are many mango trees. We claim these as belonging to the Plaintiff. Some of the mangoes have died : two big ones belong to the Plaintiff.

I mentioned people who farmed on Kadabi's land—there were 6.
40 They did not all farm on left side of road between road and stream : they farmed on both sides—all. I showed surveyor where they farmed on right side.

When Kwartei built on Kadabi's ruined house site, Kadabi was dead. Kadabi had left the place and built another house at Avenor on left side of road. When Kadabi left the spot nobody went and lived there, of his own people.

After Kadabi died and after Christiana had died, I was appointed by Awula Akoshia to look after the land. I was the next person after Kadabi to look after the land. I did not live in Kadabi's hut on right of

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No. 18.
Tetteh
Kobla,
22nd and
23rd
October
1942,
Cross-
examina-
tion,
continued.

land. I lived in my own village where I was living before, at Avenor. When Kwartei built there, I did nothing.

Re house of Nyami Yarbrow shown by surveyor, the young men cutting the line showed him this. Surveyor told me to have boundary line cut on 3 sides. When line was cut I did not go with surveyor because of my bad feet. I sent young men with surveyor. Any information which he got, he got from them.

Examined Court :—

The young men were Annan, Ayite and Okai.

Cross-examination, contd. :—

10

The land originally was Ga land. After bombardment of Christiansborg, Lutterodt was first person who asked for land on that side from Gas. (N.B.—This refers to another property.) Dr. Bruce's ancestors got the land from the Ga people. Kadabi got no title for himself.

In the former case as to my saying "Yaotey Kwami's land was originally farmed by my uncle Kweku"—I did not say I saw Kweku farming there 30 years ago. I had no uncle called Kweku. Did not say that Yaotey came on land after Kweku; or that "There has been no protest"; or that I was not in charge of land on right side of road. Should I say so when I planted mangoes on both sides of the road on the land? I did say that I took charge of land on left side of road, because I was told that Awula Akua (Emma Bruce) owned it. I did say "Kadabi acquired the land by custom because he went and fought for the Gas." (Not pressed by Dove.) I did say Kadabi became possessed of the land because he settled on it. 20

(Copy of Evidence of Tetteh Kobla in case *Tetteh Kwei Molai vs. Bruce & Others*, put in—Exhibit "B.")

Exhibit
"B."

Cross-examined Akiwumi :—

Okai Tiseh's father was known as Teiko Churu. Kadabi was Teiko Churu's slave: and so were the other six that I mentioned were slaves of Okai Tiseh. Kadabi was looking after Teiko Churu's land: the same land that the Plaintiffs claim. It was Teiko Churu's family land. Present head of Teiko Churu's family is Asere Teiko. Okai Tiseh was "Shippi" of Gbese: no "Shippi" stool: know of no stool attached to "Shippi's" office. Present "Shippi," I don't know who is now. Okai Tiseh was succeeded as "Shippi" by his half-brother Okai Jere. I am a member of Okai Tiseh's family. Asere Teiko is present head of families of Teiko Churu and Okai Tiseh. Asere Teiko is in charge of both family properties. Knew land claimed by Adams. I did not see that he planted sisal by the pillars on Northern and Southern boundaries. Some 17 years ago before the civil case referred to, I used to see Adams come to the land. He was a Gbese man, so no one prevented him from coming there. Any Gbese man could come there. I know 2nd Defendant: I call him my son. He is a Gbese man. The day the surveyor came, I did not see 2nd Defendant. 30 40

Examina-
tion by
Court.

Examined Court :—

When surveyor came I walked with him and showed him 2 points where Kadabi's land and Tete Kwami's land was. I sat down by side of road. They went on as I could not walk more. Tete Kwami's land is on

South side of Kadabi's land, i.e. land in dispute. I showed him also Lutterodt's boundary as I call him my son. I didn't see him the day the Surveyor came.

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of the Gold
Coast.*

Re-examined :—

I haven't shown the land to anybody. I know Amarah Kwantreng, the surveyor. I showed him the 2 points on the road. Awula Akua was with me that day, and the young men I have named.

*Plaintiff's
Evidence.*

10 Re Kwartei, the bricklayer, when he built I did nothing. I didn't object because he was only a farmer (squatting on the land) and not claiming ownership.

No. 18.

Tetteh
Kobla,
22nd and
23rd

Don't know anyone called Ayi Kinijinu. I knew Okunye Mansa, Kwartei's wife: first husband belonged to Okai Tiseh's family, i.e. Asere Teiko. His name was Ayeku Jine.

October
1942,
continued.
Re-examin-
ation.

20 The ruin shown to surveyor as belonging to Nyami Yarbro, I didn't show it to surveyor. It was ruins of Kadabi's house—not Nyami Yarbro's. Kwartei built near Kadabi's ruins, so there were 2 lots of ruins near each other. There was nobody called Nyami Yarbro who had a house near there. I remember Nyami Yarbro and knew him. He farmed on right side of road where water-pipe is now: on right side of road opposite the water-pipe, which goes to Avenor village from junction. He had a farm on left of water-pipe leading to Avenor from the road.

I was told that I was born one year before the Krobo War. I went to the Glover War in black uniform: that was first war I went to.

Re Adams and the pillars: I never saw him farm there: he never lived there.

Adjourned till 8.30 on Monday.

C. A. G. L.

No. 19.

Krokor Akoshia.

30 26th October, 1942.

Coussey (Whitaker with him) for Plaintiff.

Dove for 1st Defendant.

Akiwumi for 2nd Defendant.

KROKOR AKOSHIA, Pagan (Old woman, aged about 65), 3rd Witness for Plaintiff, sworn :—

Examination-in-chief :—

No. 19.
Krokor
Akoshia,
26th
October
1942.

40 Live Accra in Asere quarter—born in Oku We in Gbese quarter. Tetteh Kobla is my brother: my mother's sister's son (cousin). I was brought up by his mother. As a young girl I lived at Oku We. When a little older I lived at Mayera. From there we came to Avenor. I lived there with Tetteh Kobla, his mother and father: the mother was Ode Anna. I knew people living near there: Tetteh Azau, we lived with him

Examina-
tion in
Chief.

*In the
Supreme
Court
of the Gold
Coast.*

*Plaintiff's
Evidence.*

No. 19.
Krokor
Akoshia,
26th
October
1942,
Examina-
tion in
Chief,
continued.

when we came from Mayera ; Kadabi, Lamptey, and Kadabi's brothers, viz. Nyami Yarbrow and 3 others : can't remember the others' names. Kadabi and the other brothers are sons of Okai Tiseh. I was told they were his sons. They built on piece of land on right side from Accra, and made farms. The place was known as Kadabi's junction. Afterwards my brother built a village there and it was called Akrade. Nyami Yarbrow farmed on the land, and the others too—then they were planting cassava only : have forgotten names of the other brothers. (Okai Tego produced.) Witness says :—I know this man : his name is Okai. His father was one of those who lived on the land. I cannot remember the father's name. 10 The father was Okai Tiseh's son (sic) real son. My father who built Akrade village was Botoku, who was a fetish man : his wife's name was Norley. Botoku came from Oku We quarter. Norley from Atukpai. Norley was fetish woman. Botoku was formerly living at Avenor village. When Norley became a fetish woman, he trained her in fetish. He built Akrade village for her. Know place where Kadabi had his house on hill near Tete Kwamin who also had a village : but Kadabi was there before Tete Kwamin built his village. My house is on the land at present at Avenor near Odor. Kadabi and his brothers had mango trees and cashew trees. Lately I went to the land and found there was one extra big cashew tree 20 where people on the road used to rest, which had been cut down. Kadabi used to pick the cashew nuts and bring them to my mother and mother gave them to me to sell : when I was young girl. I did this for more than 3 years and then I became engaged. In those years, no Atukpai people were farming on the land. Tete Kwamin was then farming at Tesano (where Police Training Depot is).

Know Kpehe—known as Lutterodt's Village. When Lutterodt came he lodged with us before he made his village. Tesano is on Achimota side of Lutterodt's village. Kadabi and his brothers farmed on the hill beyond the big cashew tree which was near road. They had different 30 plots of cultivation scattered about. I was engaged and married and went to Fanti with my husband ; was away a long time. When I returned from Fanti, there had been a big fire at Oku We and I went to live Asere ; used to go to Avenor. Kadabi had died while I was away at Fanti. When I returned I did not see anyone living on Kadabi's land. I only saw the trees. Person in charge of trees for Awula Akua was Tetteh Kobla.

I knew Okai Tiseh's family house in Gbese ; knew his descendants there ; Awula Akua's elder sister who died was Awula Akoshia ; their mother was Awula Christiana, who was Okai Tiseh's mother's daughter, i.e. his sister by same mother. Their house in Gbese was called Aneji. 40 Awula Christiana owned another house in Gbese which is still there ; she had pigs and fowls and ducks and turkeys there.

Asafoatse Annan I know, and his mother : we used to call her Okailey Nye, and Obitisa. (N.B.—These are nicknames.) Don't remember her real name. Awula Akoshia and Awula Akua used to tell her to go and pick the mangoes on the land and she used to go ; now dead. Rev. Reindorf's father was my uncle. He had land beyond Lutterodt's, looking from the road on right side ; called Kabiawe.

Cross-
examina-
tion.

Cross-examined Dove :—

I don't know that about 15 years ago case in this Court between 50 Tetteh Kwei Molai and Emma Bruce, Dr. Bruce and Tettah Kobla. I was

not here and do not know of the case. Don't remember anything about such a case. Didn't give evidence for Bruces in that case. I do not know the present office of the Secretariat near the Race Course. My name is Krokor Akoshia; lived at Avenor 15 or 16 years before I was married. I and Tetteh Kobla came from Mayera together to Avenor, before we founded the village. Tetteh Kobla's father, Okuche, founded the village.

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Court
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Coast.*

*Plaintiff's
Evidence.*

There is a path leading from the main road to Avenor; beginning where water-pipe leading to Avenor is taken off. I knew one Okaija or
10 Adams from Gbese. When I was living at Avenor I did not know he had land at this place. Recently they said he had land there, but I do not know; recently when they were having a case they said this. When we came to Court for this case they said this. Tettah Kobla told me this three days ago that it was said in Court that Adams had land there. I do not know anything about it. Those who are living there now I don't know. Don't know about it now; if he died about 11 years ago.

No. 19.
Krokor
Akoshia,
26th
October
1942,
Cross-
examina-
tion,
continued.

Kadabi farmed on right side of land before Tete Kwamin came. Tetteh Kwamin's village was on Kpehe side: between Kokomlemle village and Akrade village he farmed. He founded Akrade village and
20 farmed there as well. That is where his village was. He had 2 houses, i.e. 2 huts and a kitchen; quite close together. I do not know if he had any other buildings on right of road. Kadabi lived on those 2 huts till I left for Fanti: his brother lived there after him: he later went to Dorm and died there. The brother Nyami Yeabro and his father Adu lived at his village. Adu was there before I left for Fanti. The 2 huts and the kitchen had not been there for a long time. The ruins of the place were there when I came from Fanti, but since then people have built on the site. I don't know them. I have seen houses there lately but I don't
30 know the people—behind where he built. Whitemen also have built there. There are buildings also where the 2 huts and kitchen were. When I left for Fanti, Kadabi had made a small farm for beans on left side of path to Avenor: he had farmed on right side before, i.e. on right side of the footpath leading from main road to the stream and Avenor village. Kadabi farmed there and between Akrade and Kokomlemle. After I had gone to Fanti I don't know if he farmed anywhere else.

Kadabi had a small hut at Avenor where he had a small farm: someone else lived in it afterwards. Did not know of survey in recent months. I was not asked to go and show anything to the surveyor. Don't know anyone called Ama Dienswa of Atukpai at Avenor. Akwete I know:
40 my relative. I don't know Ama Dienswa.

Don't know Ayi Kwami as having lived on the land. Alupabenya I knew: who was a woman slave of Okai Tiseh, and mother of Asafoatse Annan. Asere Teiko, an old man, I know: he lives in Aneji house.

Okai Tiseh and Christiana were brother and sister by same mother. Okai Tiseh's mother was called Pra: the father I don't know. Mammy Prah was mother of Okai Tiseh and of Dede. Dede was mother of Christiana. Mammy Prah was not mother of Christiana. Dede married a European and Christiana was the child. I know 2nd Defendant. I call him my son: don't know if he has land in area in question.

*In the
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Court
of the Gold
Coast.*

*Plaintiff's
Evidence.*

No. 19.
Krokor
Akoshia,
26th
October
1942,
continued.
Re-examina-
tion.
Examina-
tion by
Court.

Re-examined :—

Kadabi built 2 huts and kitchen on right side of road that was on hill: Avenor side is lower: now houses have been built on Kadabi's site. I saw new buildings recently: when I was going to Avenor, when I was on main road.

As to Kadabi farming between Kokomlemle and Akrade, I do not know if Kadabi farmed on land belonging to other people.

Examined Court :—

Kadabi and his brothers farmed on right hand side of road on the hill after you passed Tete Kwami for a bit. Tete Kwami was on the 10
Accra side. There was plenty of land there and they scattered their farms about over a good deal of country.

No. 20.
Asafoatse
Annan
Tagoe alias
Henry
George
Annan
Tagoe,
26th
October
1942.
Examina-
tion in
Chief.

No. 20.

Asafoatse Annan Tagoe alias Henry Tagoe.

26.10.1942.

ASAFOATSE ANNAN TAGOE, also called HENRY GEORGE ANNAN TAGOE, 4th Witness for Plaintiff, sworn :—

Examination-in-chief :—

I am a Goldsmith. My father was Adu Tagoe, whose niece was Christiana, the mother of Dr. Bruce. Okai Tiseh was Adu Tagoe's elder 20
brother. Okailinye was my mother, also called Alupabenya and Ajuafiu. Okai Tiseh was my uncle: my father was his full brother. I know land in dispute in this case. When I was 14 my father used to take me there: then Kadabi was living there. After his death I still used to go with my father and Nyami Yarbrow was there and Adienaja, who used to go and farm there and come back to Accra—and Nyortabeng who did ditto—and Kofi Tue, and others—whose names I can't remember. My father farmed there too: my father used to go there regularly to see these people.

We used to stay at Kadabi's village which was on right side—from 30
Accra—near where Taylor has now built a house.

In the rainy season these people farmed on the hill side: in dry season on lower side of road towards Odaw stream.

Have been to the land recently. I could show on the land where the different farms were. There were shifting cultivation: one year they would farm in one place and next year in another. I went with surveyor to make survey the second time. Boundaries as shown on plan. Tetteh Kobla had pointed out the boundaries to me before, and he told me to show the surveyor the same boundaries. I did so with A. B. Tagoe and Okai. The places where the people I have mentioned had farmed, were 40
shown to me to show to the surveyor.

I showed him Okai Tiseh's land which these people had been farming.

The first survey was about 16 years ago : a case was brought in Court about this land, because we had had survey made. Tetteh Kobla was strong then and he pointed out the boundaries himself. The other day on the second survey (August 1942) he wasn't strong enough to walk and show the boundaries. I showed surveyor the same boundaries as he had shown surveyor 16 years earlier. Boundaries which I pointed out to surveyor from Odor, on South, from an old palm tree, across the road (Accra-Nsawam) towards Akrade, just short of Akrade village, you meet
 10 an ant-hill : on that side there is a boundary with Teiko Akosoku : from ant-hill boundary goes towards Taylor's building : along that boundary, it was all grass 16 years ago : there were the ruins of villages there : from Akrade direction you first come to ruins of village of my aunt Mansa's husband Kwartei : after that Nyami Yarbros ruins : after that Kadabi's ruins : then you turn : before you turn, at the corner, there is a large ant-hill : after this point you go towards the main road, till you reach the road : boundary strikes road : Okai Gbeke's land is to the North of it there : at the point there is a tree called Blohuntso, a shady tree which people sit under ; then you cross the road and boundary goes towards
 20 North and there is an Ntome tree, which marks boundary between Okai Tiseh's land and Azau's land, boundary runs to Odor.

16 years ago when Tetteh Kobla showed me boundaries, there was the palm tree on the South corner which has since been cut down : the ant-hill (on the South-eastern corner) had been levelled away but the ants have started making another ant-heap. At the other corner the ant-hill has been cut away but there is still an ant-hill, part of it about 4 feet high (indicates). At Kadabi's ruined house there was a cashew tree which has been entirely removed and a new building has been put there. On the middle of the land, a building has been started ; the large cashew
 30 tree which was known as "Kadabi's Junction," has been removed. I knew Adams, called Okaidja : he gave us to understand that Korle Webii had given him some land near Teiko Akosoku's boundary and we said, "Even if it is so you have encroached on our land." That brought about the case 16 years ago. Because of that we had land surveyed and Tetteh Kwei Molai sued us.

Adams claimed to have a grant from Korle Webii. The Atukpai didn't claim any of the land at the time. After my father's death I continued going to the land with my mother, to pick mangoes. We used to take the mangoes to Awura Akoshia (Mrs. Hutton-Mills)—I went as
 40 lately as last Christmas to pick mangoes ; before the women used to get cassava for the pigs. Christiana had pigs in Accra : the servants from Accra used to go to the land to get cassava for the pigs—for many years. My mother now dead : she gave evidence in the case 16 years ago. I know how the land came into Okai Tiseh's family.

Dove—

Hearsay : not suggested that he is in line of succession : not suggested that he was alive when grant made.

Coussey—

Member of family can give traditional history of family lands to
 50 corroborate the tradition given by the successor. Evidence of hearsay

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*Plaintiff's
 Evidence.*

No. 20.
 Asafoatse
 Annan
 Tagoe alias
 Henry
 George
 Annan
 Tagoe,
 26th
 October
 1942,
 Examination
 in
 Chief,
continued.

Argument
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is relaxed to admit traditional evidence of any member having an interest who may give tradition *quantum valebat*. If only successor allowed there would be no corroboration.

Dove—

*Plaintiff's
Evidence.*

Must be in line of succession, not every distant connection. Presumed that people in line would be told.

No. 20.
Asafoatse
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Tagoe alias
Henry
George
Annan
Tagoe,
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October
1942,
Examina-
tion in
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continued.
Cross-
examina-
tion.

In reply to Court—Coussey :—

He has an interest in the family land in that he can't be turned off it though he is not in line of succession.

Court asks Coussey to leave that point and meanwhile quote authority 10 on it.

Examination, contd. :

Kwartei married my aunt Mansa. They made a small one roomed hut : lived for short time : after the other case was started he went to Dorm and left the place.

Cross-examined :—

I knew nothing of this land till I was taken there by my father when I was 14 : long before the Yaa Asantewa War. I was born in 1882. I was 14 : I don't know year of Yaa Asantewa War. Not in Accra then : don't know if Dr. Bruce went with Government to the war. When I went there with my father, aged 14 ; Christiana was not dead. She was wife of late Alex Bruce. Alex Bruce lived with Kwarte Kai, but I don't know if he married her as second wife. The case *Tetteh Kwei Molai vs. Bruce and Others*, I attended : at the Old Court House, the present Secretariat, I think : I have forgotten where it was : it was the other Court House before this building : it may be so. The last witness gave evidence, I believe. I was not there each day : she used to go to the Court and my mother I know gave evidence. I can't say if last witness gave evidence.

In that case the Bruces said they were successors of Nii Okai Tiseh : they were heads of the family entitled to succeed : they said they had 30 succeeded Okai Tiseh.

Apart from surveyor's visits, and showing of boundaries for that, I don't know of any demarcation when Okai Tiseh acquired the land. I was not there when it was given to him. My mother showed me the boundary and Tetteh Kobla too ; both together.

Re pillars of Adams, I saw them, and I say Adams had encroached on our land.

I know sisal : 16 years ago there was no sisal there : after it they planted sisal on different points on the land : it was not to show boundaries : don't know who planted it. In last 16 years have seen farms on the land 40 on right side of road. Tetteh Kobla used to give out land to people to farm there : Lawyer Tommy Hutton-Mills also made farms there. About 16 years ago he put his watchman there—don't know his name—and told him to cultivate. When Hutton-Mills was making his building the watchman was there : watching the materials while he was building : not building on the land in question. The land has gone back to bush. Hutton-Mills was building for 2 years : the watchman was farming there

for that time. I know Ayi (Aryee) (Defendant's representative). He has no farm there that I have seen. When I went with surveyor we cut line through a farm; with growing crops: don't know if it was Ayi's. Saw many farms on the land on right side of road. Don't know whose they are. I didn't know whose they were. I didn't ask. Tetteh Kobla is in charge: he has children who are farming. I can't read: can only sign my name. There are many mango trees on the land as claimed by Plaintiff: can't explain why only one mango tree appears on plan.

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*Plaintiff's
Evidence.*

10 Ruins of houses—Nyami Yarbros—When I used to go as being with father we used to have food there—so I knew of this myself: also Kwartei's: he was husband of my aunt Mansa.

No. 20.
Asafoatse
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Tagoe alias
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Annan
Tagoe,
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continued.

20 The new building is on site of Kadabi's old house: a European-type house. We tried to find out the owner. Defendants told us it was Yeboah who built it. We guessed it was Yeboah. There were European soldiers in the house. Defendants' people and we both thought it was Yeboah's building: after we had argued about it for some time another young man told us it was Sowah's. Kadabi farmed in different places. I don't know if he ever had a farm between Akrade and Kokomlemle. I know the water-pipe on the left side of main road and the pipe going to Avenor village. Kadabi and his brothers farmed on right and left of it.

16 years ago when the other case was going on, Tetteh Kobla was the caretaker: he knew more about the land than I.

Cross-examined Akiwumi :—

30 Know Asere Teiko who lives in Aneji house. Tetteh Kobla wasn't confused when the surveyor came: his nephews began arguing with him why he was going to show boundary: and that confused him. He was upset by his nephews' argument. Surveyor told him to have boundary cut and he would come back next day. Surveyor went away. I said nothing. Tetteh Kobla pointed out the boundaries to be cut. Tetteh Kobla didn't go with them. He said we were to cut line straight from road ditch to anthill. After the line was cut he went and looked at the boundary line: he walked along the boundary line all the way. When we were cutting the boundary, Ayi went with us. That day 2nd Defendant didn't stay—he went back with the surveyor in his car: he didn't wait to see the boundary cut. 2nd Defendant gave surveyor a plan of his land. I saw it. I heard him point out the 2 points which he claimed, on the road to the surveyor. I didn't hear him say that as Ayi knew his boundaries, Ayi would show him the rest. Next day when surveyor came, 2nd Defendant showed him something as his boundary and we didn't agree
40 and there was a quarrel.

Adjourned till 8.30 tomorrow.

C. A. G. L.

27th October, 1942.

Whitaker :—

Question of evidence of tradition raised in course of last witness's evidence is not to be pursued.

No re-examination of last witness.

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No. 21.
Okai Tagoe.

OKAI TAGOE, pagan (age about 55), 5th Witness for Plaintiff, sworn :—

*Plaintiff's
Evidence.*

Examination-in-Chief :—

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Okai Tagoe,
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tion in
Chief.

Live Accra—watchman. Know last witness. I am older than he. I was born before Accra old Ga Cemetery at Derby Avenue was made. My father was Adienaja. In his lifetime he lived at Lona (Ussher Town) : tin-smith : and farmed at Kadabi's village. Okai Tiseh was his master : he was servant (slave ?). I didn't know Kadabi. I knew he had a house in his village on Nsawam Road—going from Accra on right side of road. I slept there. My father farmed on that side of the road. I used to go with my father to the farm : he farmed on left of road and planted mango trees. Besides him Nyami Yarbro, Benyadi, Yeribia (he had another name which I can't remember), Kofi Tue, Nii Adu, also farmed there. My father used to go and farm and return to Accra. Knew Adjua Fiu—mother of last witness. I saw her at Kadabi's village : she used to come to dig cassava on my father's farm, and to pick mangoes. Kroko Akoshia I know. I knew her at Avenor. She used to sell things on the road-side—mangoes and cashew nuts. Tetteh Kobla used to come to the land in my father's time but he never farmed. After my father's death I never went there again, so I can't say more about him. Didn't know Kwartei, a bricklayer. When the surveyor came I was present and helped him—about 3 weeks ago—I helped to cut the line. Tetteh Kobla showed the boundaries to Asafoatse Annan (last witness) and Ayete Tagoe. We started on right side of road towards hill to an ant-hill. Then we turned towards Kadabi's huts and towards another anthill, then we turned again towards the main road towards Nsawam. By the road there I saw 3 Ntome trees : only one was on the boundary. Then we went towards Odor stream : then we went back from place where we started, and cut line to Odor stream.

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*Cross-
examina-
tion.*

Cross-examined Dove :—

Am related to last witness : my cousin. His mother and my father were cousins. They were called cousins but were slaves of the same man, of Okai Tiseh, not Teiko Churu : was told about Kadabi's house by my father. Kadabi died before I grew up. Can't say how much older I am than last witness. Have heard of the Glover War. Don't know if I was born before it or after. I knew Awura Akoshia : she was older than I. Dr. Nanka-Bruce is older than I. I never myself farmed on land in question. My father lived in Accra and slept there. We used to sleep occasionally at the farm, in Kadabi's house. Nyami Yarbro lived in a house near by. Kadabi's house was empty : it was empty when we slept in it. I knew Adams. Don't know if he had land on the land in question. Nobody told me he had land there. Tetteh Kobla didn't take us and show us the boundaries. Tetteh Kobla came and stood and said, " You must cut along the track I have previously shown you ". That's all he said to last witness. I and others cut line : viz. last witness, Ayite, myself, and Ayi and that man (indicates) (Kojo Ade). They followed us. I and one other man—whose name I don't know—cut the actual line : last witness and Ayite showed us

40

the boundary. Ayi was there when we were cutting boundary : when surveyor went along boundary he was there. The Ntome tree is on the far end (Nsawam end) of boundary. We came to an ant-hill before turning towards Kadabi's hut. Nyami Yarbro's hut was not very near Kadabi's : (indicates about 45 feet).

I don't know of a case between Tettch Kwei Molai and the Bruces. I was not in town when it was heard. I don't know if there was such a case. I never heard of it.

10 The farms which were made by Kofi Tue and others that I mentioned were between Kokomlemle and Akrade villages. I know them both. The 2 villages are still there.

Examined Court :—

Cutting line we passed through cassava farms. Ayi said we were cutting down his cassava : he made a fuss about it : line didn't go through anyone else's farms.

Cross-examined Akiwumi :—

20 I didn't see 2nd Defendant at all there : saw surveyor arrive : not 2nd Defendant ; didn't see 2nd Defendant with him : know 2nd Defendant very well. Don't know Adams' land, or that 2nd Defendant is claiming land there.

*Re-examined :—*Nil.

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No. 21.

Okai Tagoe,
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1942,

Cross-

examina-

tion,

continued.

Examina-

tion by

Court.

Cross-

examina-

tion.

No. 22.

Emma C. Hutton-Mills.

EMMA CHRISTIANA HUTTON-MILLS, 6th Witness for Plaintiff,
sworn.

Examination-in-Chief :—

30 Formerly Bruce. Surviving sister of Plaintiff, Dr. Nanka-Bruce. Mother's name, Christiana Bruce : before her marriage she was Randolph. Her mother was Aranie Dadaye (Dede) who had a brother Okai Tiseh. I am a member of Okai Tiseh's family according to Ga Native Custom. My mother was his successor by native custom : her successor was Florence Hutton-Mills, my elder sister : she is dead. Dr. Nanka-Bruce succeeded on her death. Okai Tiseh had brothers : Ama and Adu : Ama did not live long. Adu's full name was Adu Tagoe, who had children Asafoatse Tagoe (4th witness) and Ayite Tagoe (known as Albert Daniel Tagoe). I know land in dispute in this case : it belongs to Okai Tiseh. I was told about the land by my aunt Jessie Tagoe—also Adjua Fiu, mother of Plaintiff's 4th witness.

40 My sister Florence succeeded my mother. Tetteh Kobla also told me about the land. My sister Florence told me also : she was considerably older than myself.

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continued.

In mother's life I lived at Aneji house, Ussher Town, Gbese quarter, with my aunt Jessie Tagoe. 12 years old when my mother died. Up to time of her death people used to go from our house to land in dispute—women—Adjua Fiu, Be-esa, Baafo, Grace, Maoshi; and men: Adienaja, Nortabeng, Kofi Tue, Benyadi, Nyami Yarbro. My mother then living with my father at James Town. These people were farming there and they used to bring cassava back to the house to feed pigs at Lutterodt Street house, viz. Christiana house—my mother's pigs. The women were my mother's servants, and men were Okai Tiseh's servants.

Okai Tiseh got land from Korle Priest Adu. Adu's brother Mensa 10 Afetor married Semi Seyi who was a slave of Okai Tiseh. Land is at Avenor. Kadabi I knew: he farmed on the land. I know the land: didn't go there when I was young. I was away from Accra for some time. When I came back I lived in James Town. My mother was then dead. My sister Florence was head of family and in charge of the land. When she was in charge her people used to go to land and bring back mangoes, cassava and cashew nuts. Tetteh Kobla was in charge of the land at Avenor. He used to visit my sister Florence. Tetteh Kobla has been in charge of the land since death of Adu, Okai Tiseh's brother.

My sister Florence died 1923. Up to time of her death she regularly 20 received things from land and would send servants to pick mangoes. She sometimes went to the land herself. After her death she was succeeded by Dr. Nanka-Bruce my elder brother. Adjua Fiu, wife of Adu, Okai Tiseh's brother, kept in touch with the land. When Tetteh Kobla sold the mangoes, he used to send money to me, sometimes he gave it to Adjua Fiu to bring to me. A few years after death of Florence, reports were made to me of encroachments on the land, by Tetteh Kobla. We went to the land. Tetteh Kobla showed the boundaries. I told Dr. Bruce of the reports and he gave me money which I used to buy gin, and sent to Tetteh Kobla to tell him to give it to the neighbours and inform them we were 30 going to cut boundaries. After that we went to the land with Plaintiff's 4th Witness and Ayite Tagoe and Adjua Fiu; to Tetteh Kobla first at Avenor: he and Adjua Fiu started to show boundaries, as the people did not turn up. They started cutting the boundaries. I sat at road side under mango tree. Did not go round boundaries.

Tetteh Kwei Molai next day swore an oath and killed a sheep and sent to tell Tetteh Kobla i.e. he sued us in Ga Court for trespass on the land: case was transferred to this Court and heard in 1928.

In that case some of the Avenor neighbours sided with Tetteh Kwei Molai—i.e. the people that we had invited. 40

None of Atukpai family claimed the land as theirs.

I know Kroko Akoshia, Plaintiff's 3rd witness, who lived at Avenor: she used to sell things—fruit &c.—for Kadabi when he was there. I knew Kadabi: he used to visit me at Aneji house.

In the case in 1928, Adams and some of the Atukpai people gave evidence for the Korle priest. He didn't claim that a portion of our land was his.

When we went to look at the boundaries we saw a pillar, but not near our land, on right side of road not in our land—some yards from our

land in Accra direction near Kokomlemle. After the 1928 case, T. Hutton-Mills sent a watchman to cultivate a part. (A nephew of Dr. Bruce.) After that I received certain information: informed Dr. Bruce: he instructed Whitaker—notice published—notice placarded on land—this was copy of notice—Exhibit “ 2 ”—dated 1938—Copies posted on land, where they are building a house now in the middle of the land. Plaintiff’s 4th witness took the notices and Ayite Tagoe.

In the Supreme Court of the Gold Coast.

Plaintiff’s Evidence.

Atukpai family didn’t make any claim to land after this: first heard of it when we saw they were building and started this action.

No. 22. Emma C.

10 I knew Nii Tetteh Churu (Samuel Addy), head of Atukpai family, who died few years ago. When he was head of the Atukpai family he never claimed the land for his family. He gave evidence in 1928 case as Mankralo of Gbese. Called by the Plaintiff in that case for Korle Webii family in connection with application to transfer case to this Court.

Hutton-Mills, 27th October 1942, Examination in Chief, *continued.*

My mother was from Gbese quarter. I have lived in Gbese. Never heard of stool of Atukpai or of Ajase Che of Atukpai.

This is Auctioneer’s Notice—Exhibit “ 3 ”—on which Exhibit “ 2 ” was based.

Exhibit “ 2.”

Exhibit “ 3.”

Examined Court :—

20 We don’t claim any land to West of Odor Stream, where Avenor village is.

Examination by Court,

Cross-examined Dove :—

Cross-examination.

First time I ever went to the land was *not* the time I went for Tetteh Kobla to show the boundaries. First time was long before this first dispute. I can’t say the year. Tetteh Kobla was then the caretaker. He was then living in Avenor village. I myself have never been round the boundaries of the land. We called it Tiseh’s land: and also Kadabi Nmanmasha. Not known as Avenor to me. I knew Kadabi personally. I was about 10 years old when he died. He died 2 years before my mother.

30 People who brought produce to my aunt, sister &c. only told me they brought them from the land: they were sent to fetch produce from the land: Tetteh Kobla was living at Avenor: we went there, walking across the land to get there: path from stand-pipe by road to Avenor village. No other village there. You go to “ Kadabi Village ” before you go to Avenor. Have been to Kadabi village: it was there before Avenor village: a different village. Odor stream is their boundary—between Kadabi’s village and Avenor. Going from the stand-pipe you go to Kadabi village first before you reach Avenor village. I have never known any other villages there except those two.

40 Re Exhibit “ 2,” I caused it to be printed and published.

Re this copy of “ Gold Coast Independent ” of 13th February, 1937—Notice by Tetteh Churu—Head of Atukpai with reference to land—Kadabi Nmanmasha is not mentioned there.

Lutterodt’s land is mentioned as one boundary, and Nsawam-Accra Road as another.—Exhibit “ C.” I don’t know what land it refers to.

Exhibit “ C.”

Re Notices of 16th June, 1923 and 7th July, 1923, in Gold Coast Independent—produced—Exhibits “ D1 ” & “ D2 ”: they are signed by T. Hutton-Mills Jr. for Adams in respect of a plot at Kokomlemle:

Exhibits “ D.1 and D.2.”

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with measurements : Kokomlemle is on right and left sides before you reach Avenor : i.e. there are houses on each side of the road.

I saw one pillar of Adams on road side : not two. Pillar was not on our land. (N.B.—About 200 feet away.) Didn't bother to enquire what Adams was claiming. Tetteh Kobla didn't tell us that Adams was claiming a bit of our land as far as nearly opposite the stand-pipe.

Exhibit " D " is about 4 years before Writ Exhibit " A " in *Tetteh Kwei Molai's* case. I attended hearing of that case. I was there when Tetteh Kobla gave evidence. I heard him say he knew Adams' land : and " this is not part of Defendants' land but bounds it." I heard him say this. He was speaking the truth : he was claiming land on the Kokomlemle side of ours. 10

Cross-examined Akiwumi :—

Dr. Bruce is head of Tiseh family : became head after death of my sister Florence : family made him head—viz. Asafoatse Tagoe and his brother—Adu's children—and my sister's children—and Tiseh's grandchildren : that's all. Tetteh Kobla knows the family history and is member of family. Asere Teiko is not head of the family. Tetteh Kobla is wrong. Okai Ojenye was half-brother of Okai Tiseh (different fathers). Asere Teiko is not member of Tiseh family. Teiko Churu was father of Okai Tiseh, Dede, Ama and Adu. Their mother was a slave of Teiko Churu, named Na Pra. Don't know if she was captured in Katamanso War. 20

Okai Tiseh belonged to his father's family. I can't say if it was because his mother was a slave and had no relations. I only know she was an Ashanti woman. She had a brother called Bwati. Don't know if he was a slave of Teiko Churu. Don't agree that as Okai Tiseh belonged to his father's family, whatever he had would go to that family : what he had went to my grandmother. Okai Tiseh had his own property : it was not Teiko Churu's property.

Kadabi belonged to Okai Tiseh not to Teiko Churu. I know more of the family history than Tetteh Kobla : he is a distant relative : he is much older than I. 30

I know a man called Akwei and J. T. Ammah. Ammah's father was half-brother to Okai Tiseh. Akwei's father was first cousin to Okai Gbeke. They all belong to same family as Okai Tiseh. In the 1928 case I heard Adjua Fiu give evidence : don't remember if she said, " I knew Kadabi—he was Okai Tiseh's father's slave." I don't deny it. Adjua Fiu was older than I.

Re-examination. *Re-examined Coussey :—*

Okai Tiseh has his own property as distinct from Teiko Churu's property. This land was Okai Tiseh's own property. J. T. Ammah's father was Okai Gbeke : whose name appears on plan as owning land North of ours : no connection between Okai Gbeke and Defendant Tettey Gbeke. What is called Okai Gbeke's land is now J. T. Ammah's. Taylor is there. 40

Okai Ojenye was adopted by Okai Kor, sister of Teiko Churu, and given name of Okai Ojenye (or Ojele).

The ruin of Kadabi's house—I know this. It is on right side of road going from Accra.

Examined Court :—

Tetteh Kobla lives at Avenor which we don't claim but looks after our land and gave it out to other people.

Adjourned till 8.30 tomorrow.

C. A. G. L.

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No. 23.

Thos. Hutton-Mills.

10 28.10.1942.

THOMAS HUTTON-MILLS, 7th Witness for Plaintiff, sworn :—

Examination-in-chief :—

Barrister-at-Law, practising at this Bar. Plaintiff is my uncle. Mrs. Florence Hutton-Mills was my mother : she was called Awula Akoshia : elder sister of my aunt Mrs. Emma Hutton-Mills : sister of Plaintiff. Know land in dispute. As far as I remember I first went on land when case *Tetteh Kwei Molai vs. Bruce & Others* came on : it started in Tribunal under title of *Ankra Kobla & Others vs. Emma Bruce and Tetteh Kobla*. After its transfer it was substituted as *Tetteh Kwei Molai vs. Bruce and Others* in Divisional Court. My younger brother, Alex Hutton-Mills conducted defence : shortly after he was appointed District Magistrate, and was stationed at Winneba and Sekondi and Cape Coast until his death. Myself have been practising in Kumasi since 1934.

When first action taken at Tribunal before hearing in Divisional Court, my late brother Alex Hutton-Mills went with me to land : that was first time I had been there : there we met old man Tetteh Kobla from Avenor. I knew he had been caretaker for Dr. Bruce's family.

After judgment I used to go to the land : paid visits, when I started building at corner of Ring Road. I acquired land in Ring Road in 1936 : this land in question is not far away : i.e. on next ridge. In 1938 when my building was almost completed I stayed in outhouses to watch workmen about 2 months. I had a watchman with me called Mensa whom I had brought from Kumasi. He had nothing to do after building finished. I decided to put him on the land which was overgrown with grass—especially land on right-hand side.

In 1938—about September—I took him there and told him to put up a hut in middle of land on right-hand side where some sisal was growing : it seems a firm piece of land : he had moveable shed—made of poles. I went with him and we fixed shed there : a moveable wooden hut with roof of tarpaulin : it is now behind my house : suitable for watchman. I told him to burn off the grass. I hired some 10 labourers. Next day I went

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with him and we set fire to grass. It took us about 10 days to burn grass on right-hand side : another 10 days to clear the place : he began planting cassava—I told him to—near the hut. He stayed there. I was still living in outhouses in Ring Road about 6 weeks, then went back to Kumasi. Later I received a telephone message at Kumasi from my watchman and came to Accra and asked him about it : he had moved from there : had been forced to move, not done by Atukpai people.

When I went first to land as far as I remember I noticed ruins of a mud house on hill and at another place towards Taylor's building, i.e. 2 mud ruins. Taylor began to build I think in 1937. Before that no substantial building in vicinity. While Taylor was building I often went to him and he to me. 10

I think in 1939 or 1940 after I had finished my building I came to Accra and was walking across the land by a footpath to go to Taylor's. I noticed a new building had been begun. I asked Taylor whose it was, as it was within land shown to me by Tetteh Kobla as belonging to Bruce's family. In consequence of what he said I interviewed late Yeboa known as Nortei : was not satisfied with what he told me, and went to see Building Inspector at Municipal Office to see who was building there. Couldn't trace that anyone called Yeboa or Nortei was building there. 20

Knew late J. H. Adams—died June or July 1923. Notices (" D 1 " and " D 2 ") were published by me at his instructions as his Solicitor. I was only acting as his Solicitor. Had not seen the land then. Didn't speak to any member of Bruce family.

Cross-
examina-
tion.

Cross-examined Dove :—

In June and July 1923 I knew Dr. Bruce's family of which I am a member had a piece of land at Avenor : knew it was at Avenor—place called Avenor : didn't know land itself but had been told land was at Avenor. I knew Avenor village at that time. Travelled often along the road and knew the land was near road. 30

Had no idea at all where Adams' land was: in relation to Kokomlemle : at time didn't know where Kokomlemle was. Wasn't anxious to know then where Adams' land was. Up to that time had never been on land claimed by Bruce. When I went on land first in 1938 didn't see any pillars marked J.H.A. I went in car to Avenor village. I don't know Kokomlemle : picked up Tetteh Kobla in my car, took him to main road : left car and walked along footpath on right side till we saw the sisal ; there I stood with Tetteh Kobla and he showed me the land. Didn't walk up the road. Didn't notice pillar by side of road near where standpipe is. I saw the 10-foot pillar marking Municipal Boundary, that time. Later on when I went to land after my man had been driven off I noticed 4 fresh pillars on the hill—not by the road. My man was about where " new building " is marked on plan : he had cleared right up to Northern boundary towards Taylor's building. 40

One Kwei acting in his own right (according to his letter) as having purchased land, turned my man out : about 1940. I told Dr. Bruce and my aunt what had happened. Land Bruce family claims is called Nü Okai Tiseh's land.

I know of Government layout in respect of this piece of land. I saw a big scale map on wall at Lands Department : don't remember number of layout. This small scale plan shown to me may be the same : the heading "Kokomlemle Layout" and the note in red "Atukpai Stool Lands" I didn't see on the plan which I saw at Municipal Office. Don't know if Plaintiff had anything to do with this layout. I saw the layout between 1939 and 1940—told Plaintiff about it. Mr. Stacpoole showed me layout (Commissioner of Lands). Never seen this Notice—Exhibit "C." Have heard of a man called Samuel Addy but didn't know him or that
 10 he was Tetteh Churu, or concerned with Atukpai.

When I took my man there in 1938 to put up hut, clear and plant—that is all I did at time : thereafter I went on land from time to time.

Cross-examined Akiwumi : Nil.

Re-examined :—

Re Exhibit "C"—reading it as an ordinary man I would expect to find land behind Lunatic Asylum near European Hospital which is 2-3 miles from our piece of land.

In the Supreme Court of the Gold Coast.

Plaintiff's Evidence.

No. 23.

Thos. Hutton-Mills, 28th October 1942, Cross-examination,

continued.

Re-examination.

No. 24.

Martin W. Jacobson.

20 MARTIN WILLIAM JACOBSON, 8th Witness for Plaintiff (65 years of age). Sworn in Ga.

Examination-in-Chief :—

Live at Gbese, member of Korle Webii family : one of principal members of the family : one of those who deal with family land : know lands owned by family. I join in making grants of land for family : have been joining in making grants for 46 years. My name is recorded as one of those authorised to sign grants in Chiefs' List at Lands Department. I know Atukpai family. I am well acquainted with plans of land near Accra.

30 *Examined Court* :—

I can't read and write. Can sign name.

Examination, contd. :—

Can't read at all. If names are called out I know where they are. This plan shows Nsawam Road—and

(After objection by Dove and argument, question allowed.)

I know Kadabi land : and land in valley called Ring Road, where extension of Ring Road is going to run. The land between these points belongs to Korle Webii : some grants have been made out of it.

40 In Christiansborg direction Korle Webii land extends from Printing Office to Malam Futa's village where water-tanks are : this was sold by

No. 24. Martin W. Jacobson, 28th October 1942. Examination in Chief.

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No. 24.
Martin W.
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tion in
Chief.
continued.

Korle Webii to Government : land on East of that belongs to Osu people. In direction of Osu we made grant to Odoi Kwao Family.

I know Kokomlemle : our family have granted land there. Kokomlemle is Korle Webii land. Grants made to (1) Tettah Churu Asafo who first built village there : grant made by Numo Adu, the Korle Priest : grantee Tetteh Churu Asato was Numo Adu's nephew. Tetteh Churu Asato was of Onomroko family of Gbese and belonged to Korle Webii family : who successor of Tetteh Churu Asato is, I don't know.

(2) Tete Broni, belonging to Atukpai quarter.

(3) Obo, belonging to Atukpai.

(4) Tete Kwami, ditto.

(5) Nii Klu, ditto.

(6) Okai Kor Churu, from Gbese, from Mantse's house : a sister of Mantse Amah : land granted to her I know.

At Kokomlemle itself more land was granted to Atukpai than other people—on hill-side. That did not make whole land Atukpai stool family land. I know Akrade. It was founded thus : a woman Nole from Christiansborg, connected with Atukpai, whose husband was Botoku, made a swish hut for her there. Place grew. Botoku came from Okuwe, another Gbese quarter.

I know land from Akrade to Nsawam Road, and then on to Odor Stream, and then on to Avenor village : know where Taylor has built : land between where Taylor has built, and Akrade and Odor stream, our family granted to Okai Tiseh : one Teiko Okosoku was also given land there.

Grant made by Okai Tiseh. I have been told that Okai Tiseh asked Numo Adu for the land and it was granted. Have been told where Okai Tiseh came from : that he was one of elders of Gbese : from house called " Okai Tiseh's " house.

Teiko Akosoku came from Mantse's house in Gbese : not an Atukpai man.

Kadabi, of Okai Tiseh's house, worked on the land : Adienaja, Nyami Yarbro, Nyamesi, also. I knew them all personally. Kadabi was the head of them. Land was called Akrade, when Kadabi was working there.

Don't know of any meeting place of the many paths there.

[sic]

Some time in 1937 action by *Tetteh Kwei Molai vs. Bruce & Others*. Tetteh Kwei Molai was acting Korle Priest and head of our family. Action failed. Heard Atukpai recently claimed the land which was subject of that action. I heard it was about three years ago.

Re (Exhibit " C ") Notice proclaiming that all the land from Lunatic Asylum, bounded on North by Reindorf's land &c. &c.—the claim of Atukpai is not genuine. We granted the land to Numo Adu Ansa.

Korle Webii made grant to Odoi Kwao.

Cross-
examina-
tion.

Cross-examined Dove :—

Tetteh Kwei Molai, acting Korle Priest, is still alive : still acting Korle Priest : never consulted me before he brought the action. I was

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not in Accra then. I was at a village Amamovi near Nsaki, which is far from Accra : near Manhia : near Weja : not as far as Owutu. It takes 9 hours to walk. I spent about 6 months there. Didn't know it was one Ankrah who began action by swearing an oath. I was not consulted about it. I heard when I came back to Accra that Tetteh Kwei Molai had issued writ : did not know it was 1 year and 4 months from time of issue of writ to decision of case. I heard of it after judgment, when I came from my village. I had not heard of it when it was pending.

10 My name is in Chiefs' List in lands department : that shows I am somebody.

Re case pending in Ga Mantse's Tribunal between Atukpai people and Ashrifie, I was not called as witness by Ashrifie : gave no evidence in the case. Acting Korle Priest gave evidence. I was not there. As to declaration by Korle Webii about their land at Nsawam Road : I have seen this paper before : it belongs to Korle Webii : it was missing : we searched for it and it could not be found. I don't know where this came from. There are some papers in the Ga Mantse's Tribunal. I know Gaskin, Registrar of the Ga Mantse's Tribunal. In the hearing of the case he came when sent for. He was in the office. (Joseph Gaskin produced and identified.)

20 This paper was put in evidence by Tetteh Kwei Molai in the Tribunal and it disappeared and could not be found. There were several pages with a plan attached. Tetteh Kwei Molai said in Tribunal that plan attached to this paper was lost. (By consent, put in—Exhibit "E.") Tribunal ordered Plan to be prepared according to the description of land in document, but when it was made the Manche objected to it : the Ga Manche. Simpson, surveyor, made the plan. Manche asked Simpson if he had asked both sides to be present at survey, and he said No, so the plan was objected to : not accepted. The case is still undecided. Simpson didn't take plan away : he left it at Tribunal and was paid for it.

Korle Webii gave land to Okai Tiseh and Teiko Okosoku. I know the lands granted. I was not present. I was told about it. Lands on both sides of Nsawam Road. Okai Tiseh's on both sides of the then path. Teiko Okosoku on left side only.

I knew J. H. Adams : had land there. He was asked by my uncle Nii Ayi Kwami to fix pillars there. When he fixed pillars, they stayed there a long time : when he saw my uncle died he took the land. Ayi Kwami was not Adams' uncle. Ayi Kwami was my mother's brother.

40 In time of Smyly, C.J., Adams brought his document here and it was refused. It was after that that 2nd Defendant got a document for the land from Atukpai.

As I have no money, Adams' land has gone to somebody else and I say nothing about it : it ought to be mine but it didn't come to me.

Land which Korle Webii gave to Okai Tiseh abutted on land of Ayi Kwami taken by Adams.

Re boundaries of Okai Tiseh's land bounded by Ayi Kwami's land : there is a man called Anteh between Okai Tiseh's land and Ayi Kwami's land : behind Taylor's land, towards the road.

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tion,
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Exhibit
"E."

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Evidence.*

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tion,
continued.
Re-examin-
ation.
Exhibit
"4."

Land of Okai Tiseh and Ayi Kwami abut each other at one point on the road : near the pillar that was on the road.

Pillars put by Adams were big : they have been dug out : 2 pillars on roadside—one nearer to Accra than the other. The pillar on the Accra side was where Okai Tiseh's boundary and Ayi Kwami's land abutted.

Cross-examined Akiwumi :—

I can only sign my name : can't do more. In case *Reynolds & Son vs. Lincoln Kojo*, I don't remember giving evidence and reading and interpreting a document before Sawrey Cookson, J.

Re-examined :—

This is a document granting land. Korle Webii family granted lease of land to Roman Catholic Mission near site of New Ring Road. I see my signature to it. It was more than 2 years ago. Others who joined with me in granting were Ayite Ollego, Tetteh Kwei Molai, Gbese Mantse (Nii Ayi Bonte) and some others. (Tendered—Exhibit "4.")

Re Ashrifie case, Korle Webii say it is their land and Atukpai claim as theirs, near Roman Catholic Mission land, near main road ; near to Kokomlemle, then to Accra.

Re Exhibit "E," it describes only part of Korle Webii lands—the lands near Lutterodt. In those days Atukpai had not troubled us as to the lands near Kokomlemle. We had a case against Atukpai in connection with Government acquisition and they lost.

10

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Nii Ayi
Ansa,
28th
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1942.
Examina-
tion in
Chief.

No. 25.

Nii Ayi Ansa.

28.10.1942.

NII AYI ANSA, Pagan, 9th Witness for Plaintiff, sworn :—

Examination-in-chief :—

Belong to Asere Division in Accra : am on Asere Stool. There is another Asere Manche : one recognised by Government and one for the people, whom the people recognise. The people recognise me. I perform more custom. When there was no Manche (on death of D. P. Hammond, Manche), I was acting for 8 years. As an elder of Asere, I know history of Ga Stool. First stool in Ga confederation is Asere : the elder stool. Ga Manche is taken from Abola quarter at present time. Abola quarter has a stool now. It sprang from Tackie Komey : he was first man on Abola stool. Tackie Komey came from Sakumo family. Tackie Komey was given 2 posts : (1) to lead Ga people to war, (2) to act in absence of Sakumo Priest. In time of Tackie Komey there was not a Paramount Manche of all Ga. He had no power and title over all Ga lands.

I knew Korle Webii family : in Ga State their position was that they were hunting people looking after Korle lagoon and worshipping the Korle lagoon and called "Onamroko," meaning in Twi "fighting as they went."

30

Was born in Manche house and brought up there and I know affairs of Ga people.

Ga lands are in charge of Asere and Sempe people. Aseres were one of first people who came to Ga and Sempes too: the original Ga people. Tradition is that they came from Tete Tutu down the Niger to Benin and up to the Coast to Ga: and found no local inhabitants settled here.

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10 Early Ga immigrants after arrival at site of present Accra; Priest Nii Tete settled here and fished and the rest led by Ayi Kushi went to bush and hunted, settling at Ayawasu. Everyone knows that place, called Okakwe Hill, 11 miles from Accra. They were there for number of years; after that during time of Manche Okaikwe—who came after Ayi Kushi, who returned to Benin—at any rate was seen going away from the Gas. Ayite succeeded him, then Ama, then Ayi Okai Mampong, who was noted for riding in first go-cart, then his son Okaikwe (who was minor and his mother acted as Regent); they spent 5 generations at Ayawasu before coming back to Accra. When they came back to site of present Accra, the Ga consisted of the Asere—all the immigrants to Accra were Asere.

20 When they came to Accra, land round all belonged to Asere and Sempe people. Korle Webii were of the Asere when they came to Accra: were given power to look after the Ga lands extending to Ayawasu and abutting with Osu people: including lands on right side of present Nsawam Road; land lying on left side of present road were looked after by Asere. Point of division is hill known as Tetra where present Government cemetery is; where the Chiefs' cemetery is: it comes down to Agbogbloshi where small Railway Station was and where Accra Brewery now stands.

Know Atukpai people. They never had a stool of a quarter of Accra. Atukpai were merged with Gbese stool: they had a family stool.

30 Know custom of land tenure: it is customary for a stool to grant land to an individual: if it is done, after his death his family takes the land. If after his death family do not cultivate the land but keep a caretaker there, the family do not lose their right. If after several generations the family become educated people and while they do not cultivate land they receive the produce of it, they do not lose their rights. Even if they do not cultivate the land at all, people from another family can't take the land away from them.

40 Atukpai family used to farm on land near Accra: some of the places they farmed were on right side of Nsawam Road. Atukpai and Gbese (i.e. people from other Gbese quarters) farmed on right side of road. Fact of their farming there does not turn it into Atukpai stool land.

Cross-examined Dove:—

The history I stated dates from 300 years ago. Asere were head of Gas: the first to come to Accra: had a Manche Nii Ayi Kushi. Asere were head of the Gas for 5 generations. I mentioned only Asere and Sempe as regards land: all the other quarters in Accra sprang out of Asere. There was no Abola quarter when they first came to Accra. Seven quarters were made in Accra. It was long after the first 5 generations that the 7 quarters came into existence by splitting up,

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including Abola. They became Abola, Asere, Gbese, Otubluhum, Sempe, Akumaije, and Alata. They were all originally Asere people : they broke up into 7 quarters after wars at different times. The Sakumo Fetish appointed Tackie Komey from Sakumo family as Manche and he was taken to Abola. Tackie Komey was the first Ga Manche and a stool was given to him. Then the 7 quarters were in existence, and each quarter has a stool.

I am Asere man : Asere Manche is recognised by Government : his name is Albert Kwao Thompson : his stool name is Asere Atyite II : he is not sitting on the stool. There is no other stool in Asere quarter except the one recognised by Government, i.e. as Asere stool. There are subordinate stools in the quarter. 10

Only Asere and Sempe (quarter) stools have lands attached to them : the other 5 have not : these were not given lands : the lands were all belonging to the Asere and Sempe stools : the other 5 quarters were only given some of these lands to occupy : they were given lands to build upon : they were allowed to farm on Ga stool lands. Any Ga man can grow food on Ga lands but if he wants to found a village he must ask permission. Formerly it wasn't necessary to ask permission to farm to grow food. Now it is necessary to ask permission to farm. About 20 40 years ago it became necessary when litigation started.

In former times it was necessary to get permission when you wanted to found a village : if the land belonged to Asere people you had to ask Asere stool : if to Korle Webii you had to ask them. Formerly there were Asere and Sempe lands and Korle Webii also. When we were at Ayawasu, Korle Webii got lands from Aseres : they were hunters and were in charge of the lands on right side of road. They were Aseres at that time. When the 7 quarters came into existence, they joined Gbese and came under Gbese Manche.

In former times when a person wanted to found a village it was necessary to go on land and show the place proposed. If it was Asere land the Asere Manche would send a representative to show you the boundaries. We had no tapes &c. to mark boundaries. The man would say he wanted to make a village near e.g. a certain tree, and the Chief's representative would say Yes : the man would build his huts and proceed to farm in different spots round. If Korle Webii gave permission to found a village, the land would become his property if he gave rum. If a man simply farmed where he chose the land did not become his property. Ga cultivation is shifting. If Ga man planted a mango or cashew tree, if he had permission to build and paid rum, it would belong to him : not otherwise. If he farmed some distance from the village the tree would belong to him but the land would not. 30 40

Tackie Komey, the first Ga Manche, I only heard about him. Tete Churu of Atukpai, I also only heard of him. He was living at time that Tackie Komey was Ga Manche. He went to wars with Tackie Komey—to 2 wars. Never heard he was given some Ga land after the wars. Some of Atukpai people used to farm on right of present Nsawam Road.

Know villages of Akrade and Kokomlemle : both are Gbese villages : most of the people there are Gbese people. There are many houses at Kokomlemle : 10-15 houses at Akrade. Have seen them from distance : 50 can see them from road.

Atukpais are Gbese people. Never asked who the people are there exactly (at the 2 villages) but I know they are Gbese. Never heard that Tete Churu founded the 2 villages. Only know that Kwabanya belonged to Tete Churu; beyond Dorm station. Don't know who founded the villages: only know they were Gbese people.

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By Ga custom a slave belongs to his master's family, whether man or woman. If a man marries his slave, the children belong to his family; but if he lives with her and does not marry her by custom, the children are the woman's. There are many instances of living with a female slave
10 without marriage: it is not the case that the purchase price for the slave counts as dowry. If the owner lives with his own female slave the children are his family: if the children are by some other man, then the master of the slave claims the children.

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tion,
continued.

Cross-examined Akiwumi :—

Any property acquired by offspring of man and his female slave becomes property of the man's family. When the child dies (i.e. child of such a union) all his property becomes his father's family property. If a man succeeds to property of his uncle, when the man dies, his children will not succeed to the property. Tackie Komey was leader of the tribe in his
20 time but not Paramount Chief as now recognised: every year we renew the Chief's power.

Re-examined :—

Re-examin-
ation.

He was known as Abola Manche; not the paramount Chief. Every year his power was renewed: by Priest attached to Asere stool; who renews his strength. Token of renewal each year was a cap made of antelope skin, placed on his head: antelope has to come from Danchera. Asere land belonging to Nii Ayite: which is beyond Ayawasu, between Ayawasu and Weija. The abola stool has no lands near Kokomlemle: between Kokomlemle and Osu boundary it has no land. Between Accra
30 and Dorm it has no land.

No. 26.

Dr. F. V. Nanka-Bruce.

FREDERICK VICTOR NANKA-BRUCE, 10th Witness for Plaintiff,
sworn :—

Examination-in-Chief :—

Plaintiff in this suit, suing on behalf of myself and representative of Okai Tiseh family. Am Medical Practitioner. By native customary law am head and successor of Okai Tiseh. Okai Tiseh was our grandmother Aranye Dede's brother: my mother succeeded Okai Tiseh: being his
40 niece (in female line). Florence Hutton-Mills succeeded my mother. I became head of family after her death.

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Members who made me head were Emma Hutton-Mills, Thomas Hutton-Mills, Dr. Hutton-Mills, Mrs. Whitaker (children of Florence Hutton-Mills) and Dr. T. Mensa Annan, son of late Evelyn Annan (another of our sisters). Most of these were in England at time of Florence's death. They returned to Accra and the election took place after their return.

Nii Adu's descendants, another branch of family (Nii Adu being brother of Okai Tiseh) viz. Asafoatse Annan Tagoe, and Ayite Tagoe (= Daniel A. Tagoe) also joined. And descendants of slaves who stuck to our family after Emancipation Ordinance, 1874.

Okai Tiseh was "Shippi" of Gbese quarter: i.e. Captain of the 10 captains in the military formation of those days—of house of Aneji.

Okai Tiseh had his own stool: a family stool. Between 1926-28 there was action in this Court about the land in dispute here. I knew the land before that action. I was between 13-14 when I first knew the land. I went with playmate called Tete, brother of Asafoatse Annan. I knew it was Okai Tiseh's family land.

I spent many years studying abroad: returned and practised at Accra and Dodowa. I am and have been a very busy man: not had much time to concern myself about land matters. When 1926 case came on I didn't know as much as I do now about family history of the land. 20 When I went on the land I saw many slaves of Okai Tiseh on the land, viz. Kabadi, Nyami Yarbrow, Adienaja. I knew them personally. When they were in Accra they lived at a place—a compound—called Lona, made for them by Okai Tiseh in Gbese quarter. Government acquired the plot from us, and planted ornamental shrubs in front of present Bombay Bazaar and other Indian shops. At that time our mother had house in Lutterodt Street, next to Lona, viz. Christiana House in Lutterodt Street which still stands.

Servants used to go backwards and forward between house and the land: mother had pigs in Accra and produce brought in to feed pigs: 30 constant communication. Kadabi was chief of domestics and outstanding character: big, lofty man. What was known as "Kadabi Mamasha" was on Okai Tiseh's land. "Mamasha" means meeting place or resting place for travellers.

Since case in 1926, I inquired more about history of the land. Was told Okai Tiseh obtained grant of land from Korle Webii at time when Nii Adu was Priest, for his slaves to work on it for him. Land situates at Avenor on both sides of Nsawam Road. On Northern side it has boundary running with Okai Gbeke and Azau. I understand Antah claims land there: on South we have boundary with Okosoku and Okankochu; on 40 Eastern side Akrade Hills: on Western side the Odor Stream.

Adu Tagoe, brother of Okai Tiseh, lived at Avenor and cultivated the land: survived Okai Tiseh. In ordinary course of native customary law he would have succeeded Okai Tiseh. My aunt Jessie Okakor Tagoe told me that Nii Adu Tagoe was a bit eccentric and the family passed him over and handed Okai Tiseh's properties to my mother Christiana Bruce. My grandmother died long before.

I know Tetteh Kobla: in connection with land: while my sister Florence was alive. My mother died in 1892. Kadabi as far as I can remember died about 1 year before my mother. Adu Tagoe lived at 50

Avenor : on land in dispute. My sister Florence introduced me to Tetteh Kobla as her caretaker. I was then living with my sister Florence at Temple House in Accra, James Town. For last 40 years I and my sisters have been living in James Town : our property in Gbese quarter was burnt down in big fire at Accra. I used to see Tetteh Kobla occasionally at Temple House when he would bring mangoes and cashew nuts to my sister Florence ; they were very friendly.

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10 In 1900 I was stationed in Kumasi with Governor Hodgson : after 1900 rising I went to Europe to study medicine, and had not been very much concerned with lands until we were sued in 1926. After death of Florence, I left matters connected with land to my sister Emma : she was in touch with Tetteh Kobla.

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In 1926 Emma made reports to me re the land. I gave her money to buy rum to take to Tetteh Kobla. After that an oath was sworn upon my sister Emma and Tetteh Kobla by Ankrah Kobla who I understood was stepson of Azau, one of our neighbours on Northern side : it was an oath in respect of Northern boundary.

20 Application made to transfer the case from Tribunal to Court. Ankrah Kobla and others resisted application : in support of their objection, in Provincial Commissioner's Court at Adjabeng, in connection with applica- tion, Samuel Addy gave evidence on the issue. His other name was Tete Churu : the immediate predecessor of first Defendant, Tete Gbeke.

(*Coussey* tenders copy of evidence—Samuel Addy is now dead.

Ruling as
to
Evidence

Dove objects to copy of evidence tendered—irrelevant—not to be introduced to contradict interest or to prove title.

Akiwumi joins in objection.

30 *Coussey* : If a man knows that litigation is going on concerning a matter in which he claims to have an interest and does not take steps to protect that interest or if he knows that case concerning his interest is going on and he does not claim any interest, he is estopped.

It is very relevant. Samuel Addy must have known what the cause was about when he was called to help resist the application.

Admissible on question of conduct amounting to estoppel in pais.

Dove : Before Counsel can argue that Samuel Addy gave evidence, Your Honour should have the Writ in that case before you.

Coussey : It was started by oath.

Order—After further argument, admitted—Exhibit “5.”)

Exhibit
“5.”

40 *Examination, contd.* :—

I knew Samuel Addy very well. He died few years ago : was my patient, was very old : the Notice Exhibit “C” purporting to be his in 1937. His state of health was precarious ; not able to go about, but he was quite sensible. When 1926 case started in Court it lasted about 3 weeks : aroused considerable interest in Accra. It started in Court on 8th February, 1928 : concluded by addresses on 8th and 9th May : Judgment on 11th May, 1928. After the judgment, land was left in care of Tetteh Kobla. I got a copy of Plan of Government Layout of land that we

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Exhibit
"6."

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claimed, and other lands in neighbourhood, in connection with town planning scheme. Dr. Annan got it for me 1937 or 1938. This is layout for our land between Odor and the Hill. Tendered.

Taylor had just started to build. That focussed attention on the area. As soon as Taylor's building went up, people saw money in the land and scramble started. There had been no such interest in the land before.

There was no pipe-borne water or electric light then. My intention was to parcel out the land among members of family, so that they could build when they had the money. That was my object in getting the layout. During 1926 case I had known of and seen the ruins on the land— 10
Kadabi's, Nyami Yarbros.

Dove objects to Plan tendered—It has no references—no proof of its origin.

Coussey :—My witness's evidence that he got it from Lands Department sufficient.

Order :—Admitted—Exhibit "6".

Examination, contd. :—

Since 1928 case I have not been farming on the land : it has lost agricultural value—soil—etc. It would mean spending money for nothing : meant to wait till building got near and then parcel out to family to build on. 20

After Taylor had put up his building, I first heard the Atukpais were claiming land. I took a walk round there once and saw somebody putting up pillars and I ordered them to be removed : some friends were with me. One evening, one Okai Addy came to my house with 2 friends saying they had come from Elders of Atukpai and gave me a message. After that they gave permission to somebody to build on the land. I instructed my Solicitor to write to them, and this action was begun.

Cross-
examina-
tion

Cross-examined Dove :—

I was made head of Okai Tiseh family about 1923 or 1924 : that was a few years before the case *T. K. Molai vs. Bruce & Others*. When I was made head, I knew before it was Okai Tiseh's land, but they did not give me the history. When I gave evidence in previous case I didn't know history of case. I inquired about the history long before this present case. I became interested after the previous case. According to native custom when person is made head, he is usually acquainted with history of property, etc. It was not done. I know Plaintiff's witness, Krokor Akoshia : think she gave evidence in *Tetteh Kwei Molai vs. Bruce and Others*. It was known as Okai Tiseh's land. Kadabi had a hut on it. They called the place where he built, and round it, Kadabi-Mang (= Land).

Have heard that custom was that if a Ga man wanted to build a village 30 he had to get permission and show the place to Chief's representative : but if he merely wanted to farm he could do so without permission.

Re Nyami Yarbros and others who had huts on our family land, I was not told that anybody gave them permission to build there. I was not told that anybody was sent on behalf of the Korle Webii to point out to Okai Tiseh or his representative the boundaries of the land which he was allowed to use.

Re boundaries of the land which we claim, we rely on Tetteh Kobla, and what Adjua Fiu (mother of Asafoatse Annan Tagoe) told her sons and my sister.

Re Exhibit "6," no connection between me and any Government department re the town planning layout. Government did not approach me and I did not approach them.

Examined Court :—

Any town planning scheme would naturally affect value of land which we claimed.

10 *Cross-examination, contd.* :—

Government don't make specific inquiries of land-owners until they want to acquire some land. If you go and make inquiries they tell you whether or not you are in the layout.

Cross-examined Akiwumi :—

So far as this land is concerned, Tetteh Kobla would know more than I. Kadabi was not slave of Okai Tiseh's father. My mother told me they were Okai Tiseh's own slaves : she was very fond of them. If Tetteh Kobla and Adjua Fiu said that Kadabi was Okai Tiseh's father's slave they would be wrong. They would not be more reliable than my mother and my aunt
20 Jessie Okarkor who is dead.

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In 1928 case we claimed land (self and sister) as successors to Okai Tiseh's family. Our family is small and we are most of the family. We claimed as successors to Okai Tiseh—(not as head of family).

Re opening statement of our Counsel in that case that we claimed possession through our caretaker Tetteh Kobla by virtue of a grant to our predecessor by Tackie Tawia, the Ga Manche, our grant was from Korle Webii—not from Tackie Tawia. Also his statement that Tetteh Kobla had been our caretaker : that is so.

30 We were claiming as representatives of Okai Tiseh family. (Tenders
Opening Statement of Counsel on both sides in that case—Exhibit "F"
—Pages 2 to 6.) "F."

Teiko Churu was father of Okai Tiseh who belonged to his father's family. His brothers and sisters belonged to his father's family, as well as his own family. I say he had his own family. Okai Tiseh's mother, Na Pra (wife of Teiko Churu) did not belong to Teiko Churu's family—she was not a slave, but an Ashanti woman. You have been misinformed. I know what family Na Pra belonged to. My sister does too. (Emma Hutton-Mills' evidence, p. 457—read.) My sister must be correct. If
40 Okai Tiseh belonged to Teiko Churu's family, deny that anything he had would be property of Teiko Churu's family. When Okai Tiseh died, my mother succeeded and inherited. My mother was niece of Okai Tiseh. She could succeed to his estate. If you say I can't, as her son, succeed to the estate, I don't know to what Ga custom you refer. I can be head of Okai Tiseh's family and succeed.

Don't know if Okai Tiseh had another child called Okai Ojenye, as well as Dede, Ama and Adu. Okai Ojenye was not by Na Pra in any case. Don't know if he had such a son. Never heard of Okai Kofi, or if he was

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brother of Teiko Churu : heard of Okai Adubai in Aneji family. Aneji house is family house now in Gbese : family house of Teiko Churu. Never head of Okai Shibbi : know Asere Teiko. Nobody has made him head of Teiko Churu family to my knowledge : he is an important member of the family. He makes and pays all the expenses of the Teiko Churu's family and Aneji house for funerals, etc. He is not a member of Okai Tiseh family. Tetteh Kobla is not a member of the Okai Tiseh family : he may be a distant relative.

I have never claimed to be head of Teiko Churu family. Asere Teiko I know. I don't know his family at all. He introduced himself to me as important man in the Aneji house. Don't know C. O. Aryee, surveyor. I have heard of Ayi Jeke : don't know if father of C. O. Aryee. 10

Okai Tiseh had a separate house of his own which was destroyed by fire.

Ayi Jeke is not a member of my family. Know J. T. Armah : don't know who his father was : doesn't belong to my family. Don't know if J. T. Armah had sisters and brothers : don't belong to my family.

I don't belong to Teiko Churu family : I belong to Okai Tiseh family. I don't belong to Aneji house. If Okai Tiseh family are connected with Aneji house, then we must belong to Aneji house. I don't know what family Aneji house belongs to (meaning the inmates constituting Aneji house). 20

Not true I tried to put up a building on Aneji house land : it was on Okai Tiseh's land where his original house had been, and we have the land now. We had a case which we won and are in possession now : we haven't rebuilt. It was not building that was opposed.

Some people in Aneji quarter wanted to lease the land to a Syrian and we successfully opposed them. Adjuah Fiu was slave of Na Pra : she belonged to Okai Tiseh family : with us all the time : don't know about Teiko Churu family. Na Pra did not belong to Teiko Churu family. Okai Tiseh belonged to his mother's family : his family would merge in his mother's family. Then I am representing Na Pra's family. 30

I say I was properly appointed head of Okai Tiseh's family. I say Okai Tiseh broke away from Teiko Churu's family. I deny that Na Pra was a slave of Teiko Churu, and say Na Pra was captured in one of Ashanti's wars and came down with her family and Teiko Churu married her.

Okai Tiseh grew up, worked, made money and founded a separate family : built a house. I say his family became a separate entity when he grew up—built a separate house, etc.

I am a Ga man. I do not know much about Ga custom. I say that according to Ga custom if a man belongs to a family in his youth, when he grows up and has property of his own, he can found a family of his own. 40

Kadabi lived on this land and farmed there : where he lived, etc., was not Teiko Churu's : not Teiko Churu who put Kadabi on this land.

In 1928, Gbese Manche and others gave evidence : don't agree that Gbese Manche was in position to know more about the land that I. I may have said so in evidence, but I meant the land generally in that area. If you say so I agree : but that is what I meant. Don't agree that ex-Ga Manche would know more than I about this land. Don't remember

saying, "Korle Webii are not owners of Avenor land but Gbese people are".

(Dr. Bruce's evidence tendered—Exhibit "G"—pages 140–141.)

Knew late Adams. He said he had land at Kokomlemle: don't know myself if he had any land.

Examined Court :—

I knew he was claiming part of our land and actually encroached on our land (putting a pillar there): he had his pillar removed. It gave rise to action in 1926 and 1928. He joined the other people.

10 *Re-examined* :—

After incident of the pillar I gave my sister money for rum to have our boundary cut. Between the period that I heard of the pillars and cutting of the boundary, Adams had done nothing more than put his pillars there.

In the 1926/28 case which became *Tetteh Kwei Molai vs. Bruce and Others*, Adams gave evidence in support of Tetteh Kwei Molai.

Okai Tiseh built house, married, and founded family as distinct from Teiko Churu family. He acquired the land after he was grown up, and founded his own family.

20 Members of the larger Teiko Churu family have never had anything to do with this land. Asere Teiko never had anything to do with it: never claimed it as part of property of Teiko Churu or Aneji family.

Asere Teiko joined people who claimed from me. Site of Okai Tiseh's house burnt down: people were the Aneji people: the Teiko Churu branch: heard in Ga Manche's Tribunal. Judgment was in my favour. The case took 3–4 months in Tribunal.

Adjuah Fiu was a slave of Na Pra: she married Nii Adu Tagoe, brother of Okai Tiseh. Adu Tagoe would have succeeded Okai Tiseh if family had not passed him over for eccentricity.

Coussey :—

30 Subject to putting in evidence copy of Writ of Summons in Oath Case of *Ankrah and Others vs. Tetteh Kobla* (it is being copied), that is Plaintiff's case.

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Exhibit
"G."

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tion by
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Re-examin-
ation.

Plaintiff's
case closed.

1st DEFENDANT'S EVIDENCE.

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Mohamed T. T. K. Aryee.

MOHAMED TAYRU THOMAS KWAKU ARYEE, 1st Witness for
1st Defendant, sworn :—

Examination-in-chief :—

40 (Mohamedan)—Live Accra, belong to Atukpai quarter, in Gbese. Represent 1st Defendant in this case. 1st Defendant is employed in S.C.O.A., Accra, and cannot get away. I am Linguist to Atukpai Stool.

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Atukpai has a stool. My linguist's stick is here. 1st Defendant is "Djasetse" (Head of Stool family) looking after the Stool. Nobody on stool now. Have been directed to represent Djasetse in this case.

There is a stool in Gbese: Ayite Adjin III is the present Gbese Manche. The other quarters in Gbese which have stools besides Atukpai, one is Kwaku-Fitri-We: that is only one I know.

I know history of Atukpai Stool. Founder was Nii Tete Churu, belonging to Gbese quarter: he was Mankrado. He led the Ga people to wars in old times. Nii Tackie Komey was the Ga Manche at time (as mentioned by Nii Ayi Ansa). According to tradition, as I know it, 10 he was not the first Ga Manche: there had been others before him. About one year after Katamanso War—about 1826—Nii Tete Churu and Afi Wulomo (Priest) Wuru Kwami went to Gbese Manche, Nii Krobo Saki, and asked him to take them to Ga Manche. He did so and they asked him to give them a portion of the Ga land to establish villages and farms for his people. Ga Manche agreed and told his elders and Numo Ayite Bwafo, then Korle Priest, to go and pour a libation and deliver the land to Tete Churu: latter gave 1 sheep, 1 piece cloth, 1 demi-john of rum, and Kohadu (= £5 10/- in Ga). Land was blessed to Tete Churu, on the land itself, at Kokomlemle; what is called Kokomlemle now. 20

The Ga Manche's linguist Alimu went to do this. Numo Ayite Bwafo (Korle Priest) was there; also Kwami from Atukpai, and Gbese Manche himself, and Tete Churu, and others too; also Ayi Fio, an elder from Ga Manche and Amu Fotoku from Abola. I remember that I was told this.

I was told they gave the land bounded on North by Blakpagon, on South by Fanofa (Ofanofa) Valley up to Krajiabu, where there was a hyena's hole behind the European Hospital: on East by Osu people's boundary: the Osu people were there then: on West by Old Kwabenya Road and Gbese Stool lands. Kwabenya Road was a footpath and is 30 now the Accra-Nsawam Road. Blakpagon was what is now Lutterodt Village.

Tete Churu went on the land and established Kokomlemle village. This is the plan which I gave to Surveyor Kwantreng which he used as basis of Plan Exhibit "1"—(Tendered).—

Coussey: I object—not proved by Surveyor who made it—serves no purpose.

Order: Not admitted.

Examination, contd.:—

Kwantreng did not survey the Atukpai land before he drew 40 Exhibit "1."

Tetteh Churu also started Akrade Village in his lifetime. His people made farms and planted mangoes and cashews which are there to-day.

I first knew the land when I was 20. I was born in Akrade Village. I did not get to know the history of the land till I was about 20: was born in the house of Okonfo Nole, my aunt. Okonfor means fetish woman. Grew up there. There are many houses in Akrade: houses of Atukpai people—about 5 houses altogether belonging to Tete Obu, Hadi, Yaya, Akuyea and Mansa. Akuyea was my mother. Nole lived in same

compound: i.e. the 2 houses were joined together. The other people lived with their families. Kokomlemle village: there were about 8 houses when I first noticed things: belonging to Atukpai people; knew them personally. I knew Nii Tete Kwami: Tete Blacksmith: Afiye: Dede: Amaya: Ajamkroba (a woman): Bulu Takru. The women had husbands: had their families there.

10 Tete Kwami was caretaker of Kokomlemle land, the Atukpai land, the land which had been given them. When small, was told by others that he had been appointed caretaker by Tetteh Churu. The person on Atukpai stool when I was small was Nii Oboni. Tete Kwami was under Nii Oboni.

Next person on stool after Tetteh Churu was Ade Kobla; then Tete Obiaha; then Ade, then Tete Oboni; then late Samuel Addy acted, until his death. After him, nobody has yet been appointed. Tettey Gbeke, 1st Defendant, is now acting.

20 I am 48 years old. Since I grew up I have seen Atukpai people farming near Kokomlemle and Akrade. They were farming all over the land. Since I grew up, Atukpai people have been farming in the area claimed by Plaintiff. My grandfather Nii Obo, an elder of Akrade, I remember was farming at place just to East of tree marked in red on the Plan (where "New Building" appears): that was when I was a small boy; also Kwartei, near trees and ruins shown on East boundary of the land.

30 Adjete, brother of Nii Obo, was farming in the area marked purple near where the Municipal boundary line appears. Those are the 3 I saw farming there in those days. They used to shift their cultivation, planted cassava, mango and cashew trees. I call that farming because the trees were planted from seed. They also planted corn and groundnuts. All are dead now. I knew of nobody else farming in area claimed. I myself have a farm in the area. Tete and Ante farmed there. Kojo, Okuche Amma: only I and Ade have farms there now: the others had farms there before. Their mango trees are there. My farm now is in South-east corner of area claimed. (Indicates on Plan near the figures "600'")—Inside red line. Ade's farm is between my farm and Akrade running up the boundary as claimed by Plaintiff. (Witness marks the 2 farms in pencil on the Plaintiff's copy of plan.) (N.B.—He shows 2 patches in South-west corner and middle west part of red area as his own and one patch in South-east corner as Ade's.) On the piece of land on the right of road now claimed by Plaintiff there are now no other farms.

40 I know Avenor village. Since I grew up I have never seen any Avenor people farm there, except Aba Dainswa, who inherited Okuche Ama's: she lived at Avenor, and farmed on land in dispute. Okuche Ama was an Atukpai man. Aba Dainswa is not connected with Plaintiff's family. When I was small boy there were mango and cashew trees on the land. I got to know that they were planted by Atukpai people. I have no trees of my own on the land.

50 Re mango trees as marked by surveyor, there are many more on land claimed than are marked: Ditto—cashews. All the time Surveyor Kwantreng was on the land I was with him. The Plaintiff's representative only claimed one mango tree and showed it to surveyor, viz. Asafoatse Anna. Nobody said anything about the others. I claimed the other

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trees, telling the surveyor who they were. He wrote down the names : did not see what he had written. The names of the owners of the trees I gave him were :—Aba Dainswa, Tete Obo, Ade, Teiko Abosokum, Kwartei, and Ante. Asafoatse Annan was present when I gave the names. He did not contradict me.

Know 2nd Defendant : he claims part of the land. I am looking after land claimed by 2nd Defendant for about 5 years. I live just opposite the land on left side of Main Road, in house owned by Quarthey near the culvert : been there about 12 years.

First day, surveyor went and asked that line be cut—I was there. 10
I did not go with them to cut line. When surveyor came second time I accompanied him to make survey. Line went through my farm : I told surveyor. Ade too was there and quarrelled with Asafoatse Annan and Okai Tagoe. I and Ade quarrelled with them. They did not claim the farms as their own.

Re Oath Case in 1926 by Ankrah against Bruce and Others, I did not hear about it at the time, or about Bruce and others being summoned in Divisional Court in 1927 by Tetteh Kwei Molai : have heard since. In 1926 and 1927 I was working at Asamankese with Union Trading Company as storekeeper—about 52 miles from Accra. Never told that 20
Atukpais took any part in that case.

There were pillars on the road marking what was formerly Adams' land, now 2nd Defendant's. Six or 7 years ago the Atukpais removed the pillars : there were 4 pillars : resulted in dispute between 2nd Defendant and Atukpai people. 2nd Defendant started proceedings in Manche's Tribunal. On recommendation of Manche, matter went to arbitration and settled. Atukpais accepted 2nd Defendant's title.

I knew Tetteh Kobla : knew him for many years. I have never seen him on the land on right side of road, i.e. land in dispute. Never seen him farming there or collecting mangoes or cashews. Didn't know 30
Adjua Fiu. Krokor Akoshia I never knew : never seen her before I saw her in Court.

Ruins of huts shown by surveyor : There were no ruins there when we went there. There was a small building which the Plaintiff's people Asafoatse Annan said was Yaboa's. I said it was Adjete Soa's. There are no ruins there at all. How surveyor came to mark the ruins, I do not know. I have never seen any ruins there all my life. Adjete Soa bought the land from Atukpai stool. There is a ruin where Nyami Yarbro's ruin is marked. I know it as a house lived in by one Norkai, sister of Kwartei : she left : it became ruined. I never knew Nyami Yarbro. 40
There is a ruin where Kwartei's ruin is shown. I saw him living there in my youth. I was told his father lived there before. There is a ruin now. That is the Kwartei who farmed there in my youth. All these years, nobody else has lived in the 2 huts. If anybody had lived there in my time I would have known. When I was at Asamankese, I was there not quite 3 years. That is the longest I have been away from the land.

Re man put on the land by Hutton-Mills—I saw no portable hut there : the man came, began to clear the place. I asked who sent him : he said Mr. Mills. I told him he couldn't come here again and should 50

call Mr. Mills. He went away ; came back, with 3 stalks which were lying on ground : asked why he was putting them : I told him he would see fire if he didn't go. He took the stalks away and put them on the main road. He did not come back.

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Cross-examined Akiwumi :—

Know 2nd Defendant has sold the land he claims to another person. I know it myself. He authorised me to act for him in selling small plots. I myself sold 3 plots on his behalf and got commission.

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10 One is D. S. Quarcoopome—others, Jerome Quarshie, and a man now at Takoradi—Hammond. I know cement block building on western corner of 2nd Defendant's portion put up by another man called Allotey : not put up by 2nd Defendant. These 3 portions are in area claimed by Plaintiffs.

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tion.

When 2nd Defendant was there first day with surveyor he told him he had sold a part of his land. What 2nd Defendant has left is less than that shown in plan.

Further Examined Dove, by consent of Court :—

20 This copy of Layout, Government planning scheme, represents Atukpai land at Kokomlemlé. There has been correspondence between Government and Tettey Gbese, acting for Atukpai, in connection with the layout.

Further
Examina-
tion in
Chief.

*Coussey :—*Copies are irrelevant. Government is not a party to these proceedings : fact of offers by Atukpai to Government does not bind the Plaintiffs. We dealt with them too.

*Dove :—*I say it is relevant, in face of the Plaintiff's evidence that he had not corresponded with Government.

*Order :—*Correspondence not admitted.

Examination contd. :—

30 This plan was sent to Tettey Gbeke by Government through District Commissioner and Manche—Exhibit " H."

Exhibit
" H."

Cross-Examined :—

I lived in Accra to attend Government School.
Adjourned till Monday at 8.30.

Cross-
examina-
tion,
continued.

C.A.G.L.,
J.

2nd November, 1942.

40 While I was attending school in Accra I lived at Akrade and came into Accra every day. Did not live in house that was burnt down recently, near market, with my mother. My mother had no house near there, and she did not live there. I had no house—my mother had none—in Atukpai quarter.

As to our house being acquired by Government and our removing to house near Post Office, my mother built a house near the Post Office, after Government acquired region of Pagan Road. I did not live in the house near Post Office. I used to go there. I built a house for myself

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in Adabraka near Ribeiro's, and I lived there till house was sold. I used to go to my mother's house at Akrade and had food every day: about one-quarter mile from my house at Adabraka to Akrade: had no wife in my house at Adabraka: did this for about 5 years. Married in about 1927 at Holy Trinity Church: then storekeeper for U.T.C. working in Accra near Horse Road. If in October 1928 U.T.C. transferred me to Asamankese, I can't remember.

In this case I represent Tettey Gbeke, the 1st Defendant. He is working in S.C.O.A.—they won't allow him to come to Court to get away. He came to Court to swear 2 affidavits: it was only a small time. 10

Last March a case in Ga Manche's Tribunal about a part of the land: *Ashrifie & Another vs. Golightly and Tettey Gbeke*. It went on long time and judgment still reserved. Tettey Gbeke gave evidence. S.C.O.A. threatened to sack him if he spent any more time in Court proceedings.

My evidence is evidence of Atukpai stool; what I have been told about Atukpai matters; during last 2 years when I was made linguist; not made linguist because I am eloquent. Never represented Atukpai people in any previous case in Court or Tribunal: this is first case in which I represented them. I have been told the previous history of cases connected with this land. 20

Land inside green boundary on plan is called Kokomlemle land of Atukpai stool. Don't know if it has ever been called anything else. Have been told about origin of Atukpai people. Have not read "Reindorf's History of Gold Coast and Ashanti." I have read a little and have forgotten some of it. Atukpais were not originally Twi people living at foot of hills, Berekusu, Agatu hills. Deny they were Twis originally.

Deny that when first Gas went to Ayawasu, the Atukpais had communications with them and had connections with them.

As to the first Gas meeting with Atukpais and then together coming home with Aseres to Accra, deny it. Obo is an Atukpai name: not a Twi name. 30

Deny that Atukpais were first called Oboama people. Oboama is an Atukpai name: they had no leader called Oboama. Heard about first Manche Okaidja of Gbese, but not heard tradition about him. Not heard that there was a leader Oboama of Atukpai in his time.

Admit that Atukpai people first lived in Asere quarter known as Boima. Doesn't suggest to me that they came down from hill with Aseres.

It is correct that Korle Webii lived in Asere at Sakumocho-shishi—(under Sakumo tree). 40

Okaija did not remove Atukpai people from Gbese.

I don't think Reindorf's history is reliable: there are several mistakes. Reindorf being a mulatto, did not go properly into certain customs.

(Passage quoted from page 108.) This is incorrect statement of Atukpai origin.

They lived at Boima in Asere quarter first: deny they were Twi people. Atukpais are not fetish priests of Gas. (Nai—Sakumo—and Korle.) They "form family" with Nai Priest. They are not the Nai Priest themselves. Korle Webii worship Korle Lagoon: one of national fetishes of

Ga people. Nai fetish looks after the sea. In former times the Nai priest took dues of every vessel coming into Accra: collected tolls from fishermen.

Sakumo priest had charge of the river which broadens out into lagoon.

Korle Webii and Onomroko people are all one: am related to them paternally.

Originally there were no Kings in this part of Africa. There were Priests who were rulers, and instructed people how to worship fetish. Ga Manche was originally a priest: that is why he does not wear ornaments
 10 when he goes out, and appears in garb of a simple priest. Time came when priest could not appear in public: he stayed in the grove, and second party was appointed to rule and appear on his behalf.

When a priest dies—e.g. Sakumo—Ga Manche goes to sleep in priest's house till new priest appointed.

The Nai priest was here when Ga people came. I do not know about Korle and Sakumo. Priests have always worshipped the lagoon.

Re page 115 Reindorf: I agree with what he says that land belonged to priest: especially Nai. Nai priest owned all Ga lands originally,
 20 because he was there when Gas came. Nai does not worship Korle or Sakumo.

Much has changed. Any land that Korle or Sakumo may own must have been given them by Nai priest and Ga Manche.

Reference a case in 1916, *Djane Nukpa and Others per J. Afutu Kote vs. Tettey Addy*, in Gbese Tribunal: I don't know about it. I was a school-boy then. I have been told about that case. Kote's family had a case against Tettey Addy about mango trees on East of Kokomlemle. Tettey Addy is the same as Samuel Addy. J. Afutu Kote was one of elders of Korle Webii: don't know if he is the man that Jacobson (witness) spoke of removing when he was very ill.

30 Don't know that Tettey Addy in that case called the land in dispute Obohung. It was Tettey Addy's private case, not in representative capacity. Atukpais do not call the land Obohung.

Don't know Akwando Hill. I don't know that Tettey Addy claimed land from Okaishie (near present Railway Station, Accra) to Akwando Hill for the Atukpai people when he was representing. He was not Mankrado then.

I heard that judgment was given against Tettey Addy in the case. Heard that Gbese Manche said it was no good cutting down fruit trees, i.e. mango trees, and for that reason judgment was given against him.
 40 know if he paid the costs.

In 1931 Government acquired some land behind European Hospital: was told about that: Atukpais put in claim for £30,000. Didn't claim whole land being acquired, only a portion: I understood.

As to their claiming from Castle and Klotey Lagoon along beach to a point near Ussher Fort, down Station Road to Nsawam Road as far as Aburi Hills, then back to Castle, I don't know that.

That when we went with surveyor to land, Atukpai finally claimed the black triangle on this plan (shown to witness), I don't know this. I heard it. I don't know that Atukpais' claim finally reduced to small triangle

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continued.*

behind European Hospital. I don't know what their claim was. I have been told that Government has acquired a part of the Atukpais' land, but don't know what part the Atukpais claimed.

(Re quotation from page 16 of Judgment in that case): I agree it was held that Atukpais had made out no case for compensation.

Boundary of Atukpai land with Osu is the hyena's hole, near the present quarry, i.e. where the quarry is was our land before. We claimed this land as against Odoi Kwao family who claimed that they had been granted this area by the Korle Webii: so I have been told. They succeeded as against us for compensation. 10

Re "The J. P. Cofie's Plantation" in the Plan, Exhibit "1." I don't know if this should be "J. R. Cofie." Don't know if he brought an action against Malam Futa and J. A. Mensah of Atukpai family in 1936. Malam Futa is an Hausa who has a large settlement on the hill to East of land in dispute.

Never heard of the case mentioned, in Ga Manche's Tribunal. Don't know if execution is still pending. Cofie was given a piece of the land by Atukpais. I was never called in to the case and never heard of it.

In December 1940, Tettey Gbeke brought action against Odoi Kwao family claiming land on which Odoi Kwao had trespassed: case pending: 20 land is strip of land running along parallel with Eastern (green) boundary of Atukpai land, as shown in Exhibit "1." (N.B.—Marks in pencil on Plan, Exhibit "1," line through "Mango M. Kofi—Atukpai Nortey's Mango Plantation"—"Point 205°.")

On 22nd December, 1941, we offered whole of this area marked green to Government for town-planning layout and were about to enter into a Deed of Covenant. Document was actually prepared. If Korle Webii and Odoi Kwao families petitioned Commissioner of Lands I don't know. We have executed the document with Government. We and Korle Webii and Odoi Kwao people met in District Commissioner's Office. Korle 30 Webii and Odoi Kwao people claimed the land as theirs. We said we had already executed a document to Government for this land for layout and so we were not going to sign any document with the two families.

I see this man (identifies Nikoilai Kotey). He was there for Odoi Kwao. He produced some judgment to the District Commissioner.

The Commissioner of Lands never brought to our notice that a petition had been sent to Government about the land by Korle Webii and Odoi Kwao.

Meeting at District Commissioner's Office was because District Commissioner invited us. There we met the others: not in consequence 40 of petition; no petition read to us. Since the meeting, we have signed no deed to Government.

Have been living in house opposite the land about 12 years; been there all the time. Left Accra to go to Asamankese about January, 1928. I was in Accra at time of case Bruce and Tetteh Kwei Molai. I was living at Adabraka and going to Akrade to have food with my mother; heard nothing of the case.

About 3 years ago went to Saltpond for a Military Commission for 2 days. Apart from that I have been in Accra all the time. In 1936 I

was living in the house opposite throughout whole year. As to whether some time in November 1936 a portion of the land just above "New Building" in the Plan (Exhibit "1") was advertised for sale in case *Darku Mante v. T. K. Molai*, I don't know. Did not hear of it. A Notice of Sale was not posted on house where I was living. I did not see it. Deny that Sheriff's Officer put notice on land; don't know of it; didn't know of sale by N. J. Nuno, or bell rung. Mr. Kwei of the Customs told me about 6 months ago that he had some land on land in dispute; first time I heard of it. I "walked him out." I said if he bought any
 10 land there he had done so at his risk. He told me he had bought it as Tetteh Kwei Molai's land. I don't know that Kwei disturbed Hutton-Mills' caretaker. Kwei put nothing on the land. Deny he put 4 pillars. We Atukpais did not knock down his pillars.

I was born in Akrade; not born and didn't live in Accra. Deny I only became interested in Atukpai affairs recently. My mother is Akuyea; father Kwaku Aryee. Norley's mother was Akuyea; my mother was Akuyea; Norley's mother was Akuyea, was not married to Tete Botchey; Tete Botchey was Norley's brother. My mother's name was not Kordai. I am 48.

20 The date 1893 for Akrade was given to the surveyor by the Elders. Was born 1894.

Akrade and Kokomlemle were both founded by Tetteh Churu in the same year; so I was told.

(Mr. Akiwumi is called away to West African Court of Appeal. Case adjourned to tomorrow at 8.30.)

C.A.G.L.

3rd November, 1942.

I was a storekeeper in Accra about 4 years before I was transferred to Asamankese. Where I worked for Union Trading Company was in
 30 Horse Road, and for Millers in Cow Lane, near Horse Road, behind Station Road near Bartholomew's Cinema, in middle of town; all the time I was living Adabraka. I went out daily to my mother to Akrade to have food.

Never saw Kadabi's ruins; never been told of Kadabi on land in dispute. Norley was related to me. Her husband was Botoku, who came from Okuwe; a close relative of Tetteh Kobla. Say never heard of Kadabi or his ruins on the land; heard of Nyami Yarbro; told by Tetteh Kobla's wife; did not hear of Adenaja. Tetteh Kobla's wife told me about Nyami Yarbro's mango tree on left side. Don't know if
 40 Norley had sister named Norkai. Did not hear of her in connection with Nyami Yarbro. I farmed in south-western part of plot claimed by both Plaintiffs and Allotey; in the area claimed by Adams.

2nd Defendant says Adams was granted land there by Korle Webii. He brought an action in Ga Tribunal against Tettey Gbeke about the land in this case. It was started about 2½ years ago; don't dispute it was in 1939; it ended in an arbitration; deny judgment given in favour of 2nd Defendant. After the arbitration we got together; he recognised land in question as Atukpai stool land and we gave him a conveyance.

Even from time of Adams we were trying to take the land away.
 50 We had been trying about 15 years. I think before 1928. Have been

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tion,
continued.

farming on the land for about the past 12 years. Deny we Atukpais had been consistently trying to frighten people off the land. Taylor bought land where he has built from Mr. Marbell; don't know Marbell said he had title from Korle Webii; he claimed it from Atukpai. Taylor asked Marbell to sue us in Ga Manche's Tribunal and he did. We got judgment. When Marbell sold to Taylor, we Atukpais disturbed Taylor. I say Marbell sued us in Tribunal. Marbell and his predecessors had been on land a long time. I don't know if it was 50 years.

We took steps. I reported to Elders when I saw him digging foundations. We claimed against Taylor. Taylor, not because he wished to get on with building and to avoid trouble, but on order of Ga Court, he had to pay us the price of the land, having already paid Marbell. 10

We placed Salifu on the land (vide plan): not our watchman. He asked permission to stay there and make an Hausa Village. We granted him a very large piece of land by Deed of Gift. He does not intimidate people on our behalf; don't know if he has been before Magistrate for threatening people on the land. Not heard about it. He did not intimidate Roman Catholic Mission people: don't know this: or that he has done so to Principal and Vice-Principal of Accra Academy.

Dr. Bruce Jnr. is starting a Hospital near the "D" in words 20
"Scattered Mango Trees" in plan: don't know if Salifu has been intimidating him. He was for many years messenger in Attorney-General's Office: a big man: tall and thin. Don't know if he has been coming into conflict with Odoi Kwao. He gave him the land because he was a stranger and wanted somewhere to live.

Northern boundary is village of Carl Reindorf and Kpehe. Blakpagon is as shown in green on plan = N. Boundary. Don't say Atukpais granted Kpehe to Lutterodt. It was not Korle Webii. It was Ga Manche: don't suggest Atukpais granted Reindorf his land (called Kabiawe). We had nothing to do with it. 30

The hill Blakpagon runs South of green line. I don't want to change what I said about Atukpais having nothing to do with grant to Reindorf. Ga Manche asked Atukpai people—then he gave that portion of land to Reindorf and we did not interfere. I say it is true. Don't know if it was granted by deed: was told by my Elders: by Bani Kwasi, the former Djasetse.

Our land ran to the top of the hill Blakpagon. "Blakpa" is name of a big tree. Two Blakpa trees are shown on plan, south-east of Reindorf's bit. I understood formerly there were a lot of Blakpa trees on the hill.

Examined Court:—

Carl Reindorf's land is not claimed by us. 40

We do not claim Kpehe, Lutterodt's Village, as our land. Malam Adabraka's Village &c. is ours. He asked for a piece of land to build a Hausa village. We allowed him to build there 2 years ago. We have not given him a Deed of Gift.

Tetty Gbeke said in Tribunal "the abuttals of this land so given
"were on North by Owra Bein (Lutterodt's land) and Rev. Reindorf's
"properties; on South by Valley Fanofar and Lomo Ansa; on East
"by Osu land; on West by Kwabenya Road = (Nsawam Road)." I agree
with it. 50

The green boundary is correct because Reindorf is an Atukpai man and so is Lutterodt. Valley of Ofanofa is same as green (i.e. Southern) boundary: the present earth drain before it was made a drain was stream running into Korle Lagoon: called Mamobi. Deny that we have crept southwards, and that we have gradually claimed more in that direction as far as behind houses of Lamiley-Tse Kwao and others. Where drain is, is not our valley, or the Ofanofa Valley. Our land goes to the top of the valley; where the green line is now.

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10 (Tendered Judgment in Acquisition Case with Plan, entitled
"In Matter of Land acquired in Accra for European Residential
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tion,
continued.

In that case Atukpais boiled down their claim to triangle marked black. If Court said we had no land in the area claimed, I don't know the land.

The plan that we handed to Surveyor Kwantreng I had directed him to make: before I became linguist: I had no position at the time in the family. Re portion marked green in S.E. corner of Exhibit "1."

Exhibit
"7."

20 In the Acquisition Case, I think we claimed up to road leading to
Farrar Avenue to East of present green line and to East and North of houses
marked as Guinea Lodge, Thelma Lodge, &c.

I can explain this by saying that land of Odoi Kwao was given by Atukpais to Odoi Kwao: At time of acquisition we did not "take notice well." We did not know our boundary at that time; and we claimed land which we were not entitled to; because we had not found the pillars; afterwards we found the boundary.

30 Odoi Kwao family, represented in that case, said they had been
granted land by Korle Webii. Odoi Kwao had been dead not quite
60 years. He knew who gave him the land. It would be within living
memory who gave Odoi Kwao family the land. "Echuru" in Ga means
"red": not "Churu." "Churu" means a red person: Tetteh Churu
was a red man, a mulatto. He lived at time of Katamansu War: not
founder of Atukpai family. There had been people before him on stool.
In 1826 family of Nii Tetteh Churu was a big family: not much smaller
than it is now.

The large tract was granted to Tetteh Churu. I said Elders said Akrade was founded in 1893: and Akrade and Kokomlemle were founded in the same year. The first place Atukpais went to on this land was Kokomlemle.

Re-examined Dove:—

Re-examin-
ation.

40 I did not attend Court when Court was investigating claims to land
at time of Government acquisition, personally. On Atukpai's stool then
was Samuel Addy, acting. I was told that Odoi Kwao family claimed in
opposition to us, i.e. people shown as holding land on East of our green line
in Exhibit "1."

Re case pending in Ga Tribunal between Odoi Kwao and Atukpai Stool: there is case: we were attending Tribunal in case of Ashrifie and Golightly vs. Tettey Gbeke, when we came to hear of dispute between Odoi Kwao and Agbeti Family. Tettey Gbeke and I were both there.

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ation,
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Exhibit
"J."

Exhibit
"K."

We then sued Odoi Kwao and Agbeti people in Ga Tribunal re land to West of our (green) line—(East of line running through "Mango N. Kofi"—"Nortey's Mango Plantation"—and figure 205°).

Reference case in 1916 in Gbese Tribunal—*Djane Nukpa & Ors. vs. Tote Addy*: representative of Atukpai Stool then was Nii Tete Oboni. I have a copy of the judgment. (Judgment referred to and quoted.)

(Tenders Judgment in that case—Exh. "J.")

Judgment refers to land from Okaishi to Akwando. It is not part of Atukpai land. Okaishi is in Accra town near Northcroft (?) Road.

Re Taylor's land. Taylor and Marbell sued Atukpai Stool: latter 10 contested the claim: have copy of proceedings. (Tenders copy—*Coussey* objects: inadmissible.)

After argument—Admitted—Exhibit "K."

Re Reindorf's Land. When Ga Manche granted land to Tetteh Churu, Reindorf was not in existence, nor was Lutterodt. The boundary then was Blakpagon: many years afterwards Reindorf acquired his land and Lutterodt his land. Atukpais joined in grant to Reindorf. (N.B.—This was suggested to witness by Dove before Court could stop him.)

Dimensions of Reindorf's land are shown in the plan—from plan made by one Aryee. I do not know where Aryee got the dimensions from. 20 (N.B.—This is a surveyor named Aryee.)

Salifu got land from Atukpais to make an Hausa village (Zongo), and Mama got land from Atukpais to make an Hausa village (Zongo): we also gave some land to Lagos people: see plan.

Hausa settlements are common in Accra area. Malam Futa's village is another Hausa village. Malam Futa asked the Gbese Manche for a piece of land for a village. We got to know afterwards: we did not know at the time. On advice of Gbese Manche we allowed them to build there. It is a very big village: it has been there 5–6 years. Nobody has disturbed them there. 30

Examina-
tion by
Court.

Examined Court:—

Deed of Gift has been granted to Salifu. No Deed of Gift yet to others.

Re-examina-
tion,
continued.

Re-examination, cont.:—

I heard the Academy people were thinking of disturbing them: we haven't. The Lagosian people have not been disturbed.

At time of grant to Atukpai, no defined boundary except the Kwabenya Road (the old road now Nsawam Road). The other boundaries have been defined. I was told in case *Ashrifie vs. Nii Tettey Gbeke*: that is still pending. Okoe Aryee, a surveyor, defined them: plan made. Another case pending also. Surveyor Simpson made the plan: he was 40 ordered to do so, in *Ashrifie* case: defining boundaries claimed by Atukpais: Aryee had done it previously.

I did not know Kadabi or his house. Nobody showed me his ruins. I never heard of him. I heard of Nyami Yarbro: didn't know him: didn't hear of any hut on the land or of farms on the land.

When Adams claimed a piece of land, Atukpais did not go to Court : dispute continued after Adams' death : went to Gbese Manche's Tribunal : settled by arbitration : both parties satisfied : about 4 years ago.

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Examined Court :—

The boundary marked in green on Exhibit "1" was copied by Armah Kwantreng from plan made by Aryee and it had been shown to Aryee as boundary of land claimed by the Atukpais by the Elders. I was told they were Nii Addy and Tete Addy and Tete Adidi. I do not know what year this was.

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tion by
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10 *Cross-examined Coussey through Court :—*

I do not know Akwando as the name of the land (marked green) at all. This Summons in case of *Tetty Gbeke vs. Nortey and Anyetei* in Ga Tribunal mentions this land as Akwando land. (Tendered—Exhibit "8".)

*Cross-
examina-
tion through
Court.*

In 1916 it was called Obohng. A person can call his property anything he likes. (Exhibit "J") : I did not see or obtain copy of the proceedings in that case : only the judgment.

*Exhibit
"8."*

No. 28.

Akwa Mensa Fiu.

20 **AKWA MENSA FIU, Pagan, 2nd Witness for 1st Defendant, sworn :—**

Examination-in-Chief :—

I live in Accra and am Nai Priest—I have been Nai Priest 3 years since last August. Our fetish has a stool—the first stool in Ga, in Accra. Nai Priest is senior priest in Ga : and over all the Priests and Manches. According to tradition the Nai Stool was at Amugina in Accra when the Gas first came. Amugina is small open space near Ussher Fort. When Gas first came the Nai Priest was in charge of the lands. There were people called Boi Tono's people here before the Gas, of Nai family. Since Railway started, Nai Priest handed the Ga lands over to other priests to look after, and if any matter arises they inform the Nai Priest. The other priests are Gbese Manche, Ga Manche, Korle Priest (Wulomo). Reason why Korle Priest had charge of the lands was because he was the chief hunter and had custody of the forests for the Manche and whenever he went out and saw anything happening he would come and report to Manche. The Ga lands which I call Gbese lands are attached to Gbese stool and in charge of Gbese Manche, Ga Manche and Korle Priest. Nii Tetteh Churu also is (was ?) in charge : he is one of them. He came from Boi Tono's family. Boi Tono was chief linguist for Nai priesthood, holding the linguist stick, &c. I now hold : 360 years ago. Boi Tono was member of Nai Wulomo family : this was before the Gas came here.

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tion in
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tion in
Chief,
continued.

Have heard of Ga Manche Tackie Komey : he was the Manche at time of Katamansu War. Nii Tetteh Churu was alive and went with him to the Katamansu war, and Krobo Saki, who was then Gbese Manche.

The Gbese Manche asked for land for Tetteh Churu : asked Tackie Komey and latter informed Nai Priest who agreed that land should be given him : because of his part in the war. Tetteh Churu gave rum which was taken via Gbese Manche and Tackie Komey to Nai Priest and he was taken to Kokomlemle near Ofanofa.

Adjourned till 8.30 tomorrow.

C.A.G.L. 10

4th November, 1942.

According to tradition, Nai Priest deputed somebody who went with them to land : who went and came back and reported what had happened to Nai Priest : the representative was Linguist Kwamina. Amma Osimpang represented the Ga Manche, as I was told ; also that Gbese Manche deputed somebody : was told what land was given to Tete Churu, i.e. from Ofanofa through Kokomlemle along Kwabenya old road where main road is now to the Market (Kpehe). That place was called View (or Lutterodt) village : not far from Odor stream : on to Blakpa Hill, to Oraka Village (Reindorf) ; from there to the Christiansborg people's boundary ; thence 20 on to back of Asylum, thence to Ofanofa. I was told this immediately after being made Nai Priest. Before I was made Nai Priest I did know that Atukpi people were occupying that land. Formerly Nai Priest had charge of all the lands : since Railway started people all wanted to improve their own sons' position and had many affairs : so Nai Priest handed over all Ga lands to Korle Webii : if any person wanted any land he had to ask the Korle Webii, who should inform the Ga and Gbese Manches and Nai Priest. The land had already been given to Tete Churu before the Railway started : before the new arrangement came into force : it was a long time ago. 30

Korle Webii could not give land to anyone without consent of Manches and Nai Priest.

Cross-
examina-
tion.

Cross-examined Akiwumi :—

I live near Aneji House in Gbese quarter : next door have been told that founder of the house was Na Kokwei Asasi : I am trying to remember the name of the next : Yes, Teiko Churu ; her brother came and lived with her : he had children. I was told that Na Pra was not Teiko Churu's own daughter : present head of family that I know of is Asere Teiko.

Cross-examined Coussey :—

40

I can't read or write. My father's name was Yaote, who came from Akotia Kogwali, not from Atukpai : (repeats this) : Yaote is from Nai Priest house : not an Atukpai name. Father not alive. I have not recently joined Atukpai Union : they come from Boi Tono's family : my family. I don't know if Atukpais have lately formed a union. I am Priest of Nai : Nai god is the sea. Korle Webii worship Korle lagoon. There are three Sakumo lagoons : one at Tema (near Prampram) : one about 3 miles to West of Accra along coast—the other is in Fanti.

When I was made Nai Priest I was told whole history of the Nai god and anything connected with it. That Ga people came to this place from Benin and region of Niger : I have not been told that. Was told that Nai came from the sea and settled here. By Ga tradition it is said that Ga people came from sea. All I know is what I was told—that Nai came from the sea. He had already come and settled here when Gas came. Don't agree that Nai and Gas arrived at same time from the sea. I wasn't told that. Land was here : there were no people here when Nai came. When the Gas came and found Nai here, they were called " Ga Mashì," i.e. the original immigrants. " Ga Kweshì " or " Ga Kpeshì " means Lantejangwe people. Don't agree that Ga Kpeshì are the original inhabitants, before Ga Mashì came.

10 Ga Kpeshì are Lantejangwe family—an Asere family : their fetish is " Dantoo." At Homowo time, it being a " small person " they put " Dantoo " (the God's effigy) in front. Through Dantoo the family announce the new year to the Gas. They came from Asere. They plant corn before any of the others. After Dantoo, Sakumo plants next, then Korle, lastly Nai. The small boys have to go before the big man : the small people have to go first. Sakumo fetish is a small boy. Sakumo was not the oracle for whole Ga : he was Asafoatse for Nai. When a leader of Gas to go into battle, was appointed, viz. Tackie Komey, Sakumo appointed him. Tackie Komey came from Sakumo house.

I don't agree that before Nai arrived here, the Sakumo lagoon, Kore lagoon—the sea and the land, were all there.

Nai came here before the Korle lagoon was there, before the water was there. (Repeats it.) Ditto Sakumo. The sea was there. He came out of the sea.

Nai made the Korle lagoon come there : it is his daughter : also the Sakumo.

30 I don't answer this to forestall question whether there were people here before Nai worshipping the lagoons. Deny there were original people here doing this : not Ga Kpeshì. Nor people worshipping Sakumo. Ga immigrants did not make Nai fetish their national fetish because Nai came with them. Nai was here before they came.

Examined Court :—

The person called Nai worshipped the sea. Nai was the only person here before the Gas : there were no others. He appeared as a human being from the sea.

Cross-examination, contd. :—

40 Korle lagoon as it is now is much smaller than it used to be 25 years ago : it used to stretch round Accra much more. Several streams flowed into it : one is Odaw, one Mamobi. Each year when it is full or about to burst its banks, it is the Korle Webii who go to dance before cutting takes place : it is their work. Nai priest does not have anything to do with it : he looks after the sea.

When I was elected I was told the traditions, by the people in attendance on the fetish : not all in one day : they put me in a room. They told me as much as they could : did tell me Atukpai had their own

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*1st
Defendant's
Evidence.*

No. 28.

Akwa
Mensa Fiu,
4th
November
1942,
Cross-
examina-
tion,
continued.

*Examina-
tion by
Court.*

*Cross-
examina-
tion,
continued.*

*In the
Supreme
Court
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land at Kwabenya. I heard it ; but have not been to see it. The *stick I hold was given to Nai by the Danes.

I was told Nai came from sea 360 years ago and brought a stick which he struck on the ground.

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Defendant's
Evidence.*

This dress that I wear is the dress that the Nai priest always wore. The same dress.

In early days Portuguese were here. I don't know they were Roman Catholics. Have not heard that the dress was copied from the early Roman Catholics.

No. 28.
Akwa
Mensa Fiu,
4th
November
1942,
Cross-
examina-
tion,
continued.

The Nai Wulomo came out of sea dressed like this. Tete Churu, in 10 Tackie Komey's time, was made a Chief over Atukpais, so I was told. Atukpais had a Chief before. Kwami was first Manche : born of a man called Bokai in Boi Tono's family.

Have heard of first Manche Okaija : he reigned many years before Tackie Komey. Never had Reindorf's history read to me—or seen it before.

(*Coussey* quotes Reindorf, p. 108.)

Dove objects to cross-examination from this book.

Order :—Allowed.)

*N.B.—(It is dated 1734 ; the inscription on the stick).

Cross-examination resumed :—

20

If it says that Okaija removed Oloma's people called Atukpai from Asere to Gbese, I was not told that. Don't know that Atukpai family lived in Asere ; deny it : I say they never did. Boi Tono's stick is the one I hold. Atukpais were formerly called Boina, called Atukpai from the war. Boina was not an Asere. Boinas did not live at Shwawomona in Asere that I heard. Never knew Carl Reindorf. I was born at time of Acera fire. Don't know that he died about 1918. Don't know that if he had not become a Christian he could have become Nai priest. Don't know what position in family of Atukpai Aryee who gave evidence (as Defendant's 1st Witness) holds. I was only called to give evidence. I 30 was never informed that he was linguist. No Atukpai linguist has ever been introduced to me.

I know Kokomlemle myself : have never stayed there, but have passed along road. I went there to bury former Nai priest at Kokomlemle. Manche Okaija is buried there. Gbese people asked Atukpais for permission to bury Okaija there, I was told, by my elders.

There are people from other quarters buried at Kokomlemle. They always ask Atukpai—so I had heard.

Korle Webii were given charge of lagoon and lands through which rivers flowed into lagoon—except those previously taken away. 40

“Kokomlemle” is a fetish but I have not been told what it means, or what fetish it is. As the Atukpais are there they worship it. Don't agree it was Korle Webii fetish : it is a stone under the ground. I have seen it.

Re-examination :—

Nil.

No. 29.

F. H. S. Simpson.

FRANK HERMANN SHANG SIMPSON, 3rd Witness for 1st Defendant, sworn :—

Examination-in-chief :—

10 Licensed Surveyor living Accra. In early part of 1942, I received instructions from Ga Manche Tribunal to locate certain land. (28th April, 1942, signed by Registrar of Ga Tribunal.) I carried out the instructions. It was in suit *Ashrifie vs. Golightly*. This is plan I made 28th May, 1942. After making plan I appeared as witness in Tribunal and gave evidence and tendered plan. It was made to best of my knowledge, skill and ability. (Tendered by Dove.)

Coussey : Not relevant. I cross-examined Aryee as to his testimony in that suit. The parties in that suit were different : claim in respect of different area : plan for purposes of that suit by person who is not surveyor appointed by this Court in this suit, is not relevant.

20 *Dove* : Case was referred to in examination of plaintiff's witness Jacobson by my friend. Plan there refers to a portion of the land claimed by Atukpai and explains the land referred to in Exhibit " E."

Court : After looking at plan in question I feel in doubt whether it is relevant, but having admitted Exhibit " E " I will admit this plan.

Marked and admitted Exhibit " L " (Plan) (Letter) " L1."

Examined Court :—

I marked off on Topo plan the land described in letter of instructions.

Cross-examination—Nil.

In the Supreme Court of the Gold Coast.

1st Defendant's Evidence.

No. 29. F. H. S. Simpson, 4th November 1942.

Examination in Chief.

Exhibit " L." Exhibit " L1."

Examination by Court.

No. 30.

George Adjin Tettey.

30

GEORGE ADJIN TETTEY, 4th Witness for 1st Defendant, sworn on Bible, in Ga :—

Examination-in-chief :—

Live Ussher Town, Accra, Councillor, Ga Manche's Tribunal. Know something of Ga tradition, as told me by my grandmother, Adaku Ayite Bwafu, and the present Ga Manche. Grandmother is dead. Ga Manche put on Stool about 1902 : was destooled in 1918 and re-ensooled 1932. Grandmother was connected with Korle Webii : she was daughter of Korle Priest, Ayite Bwafu.

40 I know land on right hand side of Nsawam Road from Ofanofa to Lutterodt's village and the owners of land on that side : it belongs to

No. 30. George Adjin Tettey, 4th, 5th and 9th November 1942.

Examination in Chief.

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*1st
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No. 30.
George
Adjin
Tettey,
4th, 5th
and 9th
November
1942,
Examina-
tion in
Chief,
continued.

Atukpais. Know it because some time ago when a matter happened, I was made a sort of linguist to Korle Priest and I had to go with him : was given to understand by Korle people that land had belonged to them and they sold some of the land and leased some. Sold some to Konowa, father of Principal of Accra Academy : 5 or 6 years ago : and leased some to Accra Academy : 8 or 9 years ago. Atukpai people rose up against the people to whom we had leased. Samuel Addy, successor of Tete Churu, acting Head of Atukpai ; I was representing the Korle Webii and inquired into matter. I represented them because Elders of Korle Webii met and elected me to do so in all matters concerning the lands : 10 first they did it verbally. I insisted on written authority. They gave me a paper. I haven't it here but can produce it later.

(Witness withdrawn to fetch paper and appear to-morrow.)

(Evidence continued on page 74.)

No. 31.
S. Komey
Tetteh,
4th
November
1942.
Examina-
tion in
Chief.

No. 31.

Samuel Komey Tetteh.

SAMUEL KOMEY TETTEH, 5th Witness for 1st Defendant, sworn on Bible, in Ga :—

Examination-in-chief :—

Live in Accra in Gbese quarter—Linguist of Gbese Manche for last 20 14 years. Informed of Gbese Stool tradition and Ga tradition. Know Atukpai people's present head is Tettey Gbeke (1st Defendant), who is Jaseche for the Mankrado. I was told that Tete Churu was founder of Atukpai Stool, and that they have land outside Accra. I know where land is : from Ofanofa to Lutterodt's Village, forming boundary with Carl Reindorf at Blakpa Hill ; to place called Klajjiabu : that is all I know. Have been there once : was told that Atukpais had land there. My grandfather Ayi Kwei who begot late Gbese Manche, Ayi Bonte. Ayi Kwei was brother of my grandmother, Mansa. He was my grand-uncle : he told me : at time that Gbese people were making cemetery at Kokomlemle. He said they went to war, and afterwards when they came 30 back Tete Churu asked for land and land was given to them—the land I have described. I know Kokomlemle and have been there many times : also Akrade, which is near by : both villages inhabited by Tete Churu's people, Atukpais. Both quite large villages. Kokomlemle is the larger. On land granted to Tete Churu, there is a cemetery that I know of, made by Gbese, between Kokomlemle and Akrade. Now the Gbese do not bury people there. Before they used to bury there. Now it is in Municipal Boundary and they are not allowed to bury there. Have heard that some Gbese people buried there, i.e. first Gbese Manche Okaija, and Manche 40 Okaija the immediate predecessor of Ayi Bonte ; and Nai Priest called Numo Anya ; and one of the Gbese elders Akote ; Adama Chantang also, another Gbese elder, and others. I was present at burial of them all from

Okaija onwards. Buried on Atukpai land. All Atukpais are Gbese people. Nai Priest was buried there because he lived in Gbese and is head priest. Place made there to bury royal people. Don't bury everybody there: only important people.

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Cross-examined Akiwumi :—

Knew late Adams. He had piece of land on right side of Nsawam Road. His 2 pillars were shown to me with his initials on them: on road side. The motor road went through the land. I saw one pillar on right and another on left.

*1st
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10 As to Teiko Churu, all I heard was that he was one of elders of Okai Tiseh house.

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S. Komey
Tetteh,
4th
November
1942,
Examina-
tion in
Chief,
continued.
Cross-
examina-
tion.*

Cross-examined Coussey :—

I am here to give evidence as linguist of Gbese Stool. Have shown my subpoena to present Gbese Manche. I am speaking for Gbese Stool. I am not here for the Manche. I show my summons to Manche so that he should know where I have gone. I knew land before I came to Court about which I was to give evidence. Know it on right side of Nsawam Road near Avenor village.

20 Did not discuss anything with Manche; nothing about evidence which his predecessor gave in the land; I don't know of: When Ayi Bonte the Manche gave evidence in case *Tetteh Kwei Molai vs. Bruce and Others*, I was then the linguist: have been linguist 14 years. Have not heard what he said in that case.

(Quotation from page 54 of Record in case (*Tettey Molai vs. Bruce & Others*.)

I can't go against what he said: he is the Manche. Sometimes I may know more than Manche: sometimes he may know more than I; 14 years ago I should know more than he about the land as my grandfather told me.

(Quotation— page — As to Ga custom about Tenure of land.)

30 "If Court gave a declaration . . . themselves."

I don't quite agree with him. I learnt some custom from Ayi Bote (or Ayi Bonte)—some custom about land tenure—not very much.

40 There is no doubt about it that if Korle Webii got land from Gbese Stool they would be entitled to it. I don't regard this land as Korle Webii land. They were caretakers—different to owners. They are not caretakers as it was given to Atukpai. Don't suggest it was given to Atukpais in last 14 years ago. I say it was given long ago. He gave that evidence because there had been a dispute between him and Atukpai people. Know about that dispute. There was a dispute between Manche and his own people who wanted to destool him: the Atukpai people were among those who wanted to destool him: matter between them was settled recently. 14 years ago Atukpais were watching his actions very carefully.

5th November, 1942.

I produce subpoena in this case. I was subpoenaed as Gbese Manche Ochame (Linguist). Have not brought my stick. Custom is that if Stool or Manche is subpoenaed I should appear with stick to represent

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5th
November
1942,
Cross-
examina-
tion,
continued.
Exhibit
"9."

him : custom does not allow me to bring the stick in circumstances. Want my evidence to be taken as Linguist from Gbese Manche as I said yesterday.

(*Coussey* quotes further from page 57 of Record in case (*Tetteh Kwei Molai vs. Bruce and Others*).)

(*Coussey* undertakes to put in the Record later.)

" They need not . . . fruit."

I would agree with Manche if the land had not been given to Atukpai people already and if Korle Webii had been caretakers of whole land.

(*Coussey* tenders evidence of Ayi Bonte—pages 54–58 of Record 10 —Exhibit "9".)

Deny that during lifetime of Ayi Bonte Gbese Stool maintained that Korle Webii had complete control of the land but that Gbese Stool should be informed of any grants of land by Korle Webii—before or after grant. It was not only after Ayi Bonte (when Acting Manche was Ayikai Teiko) about 1940, that the Gbese Stool took attitude that they were necessary parties with Korle Webii to any grant ; that anyone who wanted land must first get approval of Gbese Stool before Korle Webii could grant : that is what I was told : it was in force before Ayi Bonte's death.

I gave evidence in August 1940 in this Court in case *G. D. Laryea vs. R. C. Kwao*, re plot of land on left of road near road—far from Kokomlemle, in circle of Ring Road. 20

I say Korle Webii were caretakers of land on right side of Ring Road going towards Nsawam ; including all land near Odaw on right and left sides of Nsawam Road. I myself never have witnessed grants to various people on right side of road by Korle Webii. I only witnessed the grant to Kwao.

(Quotation from evidence of this witness in case *Laryea vs. Kwao*—page 18) :—

" I have gone . . . road." 30

I said this.

I witnessed grant to Malam Futa with consent of Manche. Korle Webii informed the Manche and I was deputed to go with them. Korle Webii granted the land after informing Manche. Odoi Kwao's family joined in that grant : they went with us : they were part-owners in the land.

As linguist of Gbese I know Odoi Kwao say they got grant of their land from Korle Webii. Some time ago Odoi Kwao granted part of the land which they had had from Korle Webii to Rev. Appiah. I witnessed the document but did not go to the land. I don't know where land is. 40 They read the document which said it was on right side of Nsawam Road. Acting Korle Priest, Nii Tetteh Kwei Molai, witnessed document. Don't know if he did so because his ancestors had granted the land to Odoi Kwao who were grantors now. Yes, that is why.

Gbese Manche &c. were witnessing though there had been a grant in ancient times by Korle Webii to Odoi Kwao.

Re long lease to Roman Catholic Mission by Korle Webii, I know it was brought to Gbese Manche to execute—land on right side of Nsawam Road.

Don't know that Korle priest granted some land to Akiwumi on right side of road. I heard of it but don't know where land is. Have heard it is near Salifu's (identified) site.

In *Laryea vs. Kwao*, Acting Manche gave evidence after me. I was not present. I gave evidence and went away from Court as we had some work to do at home. He said, I heard, that Korle Webii were caretakers of land for Gbese Stool.

If he said this Court stands on Gbese land, I agree. If he said when Government acquired land for this Court, Korle Webii Priest claimed the money and Gbese Manche supported him, that I don't know.

(*Coussey* is not tendering record—*Laryea vs. Kwao*.)

Agree that Korle Webii are caretakers of lands for Gbese Stool. Nai Priest is the father; after it is done, he has to be informed. (Alters it.) If a thing is going to be done, he has to be informed.

Nai Priest, I have been told, is the sea priest.

In case "*Odonkor & Another vs. Allotey and Other and Nartey &c.*", I said "Nai Priest (Sea Priest) is not in charge of Gbese Stool lands"; but he has to be informed if anything is to be done.

By Gbese Stool lands I meant the lands of which Korle Webii are caretakers.

I knew late Adams: he was Gbese Stool clerk in time of Ayi Bonte.

Re-examined Dove :—

I said that Manche Ayi Bonte gave evidence in "*Tetteh Kwei Molai vs. Bruce & Ors.*", because there was a dispute between him and the Atukpais. Ayi Bonte knew of the grant of land to Atukpais. The Acting Manche Ayikai Teiko who followed him, knew of it: don't know if Ayikai Teiko had dispute with Atukpai about this land.

Once a grant had been made to Atukpai the Korle Webii had no further interest in it. Land in dispute in *Laryea vs. Kwao* was not part of the land in dispute: it does not "come there."

At time of grant to Malam Futa I went there; that land forms part of what they are claiming now. I didn't know at the time. I had never been with Atukpais round the land which they claim, prior to this.

Re land granted to Rev. Appiah I did not go on to the land. I did not know if it was part of land claimed by Atukpai.

Re lease of land to Roman Catholic Mission. I did not know where the land was, but I was present when it was executed. I have not heard the Roman Catholic Mission has been driven away.

I don't know where land granted to Akiwumi is. I said I had heard it was near Salifu's and did not know the land.

Korle Webii have no right to part with any land without Gbese Manche's authority.

Nai Priest is the father. Re these Gbese lands and granting of any land—I have not witnessed any document executed by Gbese Manche where Ga Manche was present.

(*Dove* tenders evidence of Akoshia Kroko (or Kroko Akoshia) at pages 80–81 of record of *T. K. Molai vs. Bruce & Ors.*—Exhibit "M".)

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1st Defendant's Evidence.

No. 31. S. Komey Tetteh, 5th November 1942, Cross-examination, continued.

Re-examination.

Exhibit "M."

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Evidence.

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Adjin
Tettey,
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1942,
Cross
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tion,
continued.

No. 30 (continued).
George Adjin Tettey.

(Continued from page 70.)

5.11.1942.

GEORGE ADJIN TETTEY, 4th Witness for 1st Defendant, sworn.

Continues evidence of yesterday :—

In dispute re land I was deputed to represent Korle Webii. This is paper they gave me, which I had asked for before I acted.

(Dove :—It is not stamped and I do not wish to tender it.)

(Witness is asked by Dove to refer to document and reads the date 26th February.)

(N.B.—He appears to be literate.)

10

Examination continued :—

It was between 1932 and 1933. The names of the people who deputed me were Adaku Ayite Bwafu, Tetteh Kwei Molai, Ag. Korle Priest, Na Boche, Martin William Jacobson, Tete Okai, Samuel Saki, Tete Kojo, Ofoli, Kofloko, Kai, Mrs. Buckle and others.

They authorised me to deal with Korle Webii lands ; to grant or sell ; if any dispute arose I was to go into it, in cases in Court or Tribunal. Because there was a dispute about our " Dormi " lands starting from Police Depot and going northwards, to outskirts of Kwabenya town.

20

I sold, leased and granted some lands to different people ; the Atukpai people objected, viz. Tettey Gbeke (1st Defendant). They said land had been granted to them in old times and so Korle Webii had no right to make grants. I knew the land belonged to us and so I took action against some people in Ga Tribunal.

My grandmother told me that land had been given long ago to Atukpai. When Atukpais raised objection to my making grants, I consulted my grandmother and she gave me this information. I believed her and was satisfied. I told Korle Webii elders of this : they did not agree. I withdrew from their affairs. I did not tell them : if they sent for me I did not go.

30

My signature appears on Exhibit " 4 "—it is one of the grants that led to my enquiries.

Cross-examined Akiwumi :—

Knew late Adams and heard that he had lands in land in dispute. Don't know the piece. Heard it was on right side of road near Avenor. Knew he had the land during his lifetime : heard over 10 years ago that he had land there, long before he died.

Cross-examined Coussey :—

The Power of Attorney which Korle Webii gave me was about our family land—" Dorm " and " Tessano," our family land for which Manche gave us a document. It was family land which I knew. Given about that particular portion of land because there was a dispute about it : dispute about Dorm land between Tetteh Kwaku and Tetteh Kojo.

40

Tetteh Kwaku claimed in that case as successor of Tete Peko and Reverend Karl Reindorf and as Head of Onomroko-Adang family ; that

Cross-
examina-
tion.

family is not one of the branches of Korle Webii family. That is why there is a dispute which is still unsettled. I do not admit that Tetteh Kwaku is a member of Korle Webii family.

Tetteh Kwaku got judgment against Tetteh Kojo about Dorm lands. I do not agree. There was no appeal. The parent branches of Korle Webii were afraid that Tetteh Kwaku after getting judgment would take Dorm land as his own property, and so they gave me Power of Attorney to protect family interests as regards Dorm and Tessano lands. At that time no dispute about Kokomlemle or Akwando lands. When I went with it
10 palaver started. The document related only to Dorm and Tessano lands.

(Argument as to tendering document—

Dove :—I am entitled to ask witness to refer to document as to date to identify, without tendering it. My friend cannot cross-examine on its contents without putting it in, as he is now doing.

Coussey :—Roscoe—p. 447. Witness may be allowed to refresh memory from document without it being put in (as far as my friend is concerned).

Wrotterby on Examination of Witness, pp. 68, 69.

Our Rules—Order 6 Rule 5.

20 Position is that Defendant could refresh memory without document going in. I could cross-examine on contents of document without putting it in evidence.

Dove :—Writings referred to in authority are writings by the witness. This is not case here. My friend is trying to get contents of this document on record without putting it in.

Court :—I think Mr. Dove was entitled to ask witness to refresh his memory as to the date without tendering the document.

30 Mr. Coussey must put in the document because of the references to its contents on other points (viz. Dorm and Tessano lands) otherwise I shall have to exclude that evidence. Refers to Taylor on Evidence—para. 1413, p. 965).

Coussey tenders it and undertakes to pay penalty—Exhibit “10.”)

Witness proceeds :—

Dorm and Tessano were mentioned and others also. (He reads the document.) Clauses 5 and 6 gave me power to deal with any other matters or lands that family had right to. Clauses 5 and 6 gave me more power, beyond the Dorm and Tessano matter.

40 In Tetteh Kwaku matter he gave land to somebody at Dorm. I tried to stop him by a native injunction. He brought an action against me in Ga Tribunal. It was still pending when he died. I was acting on behalf of Korle Webii.

As a member of Korle Webii I joined in conveyance to Akiwumi. I was the principal in money paid to me. That land is near Salifu's site. I and other Korle Webii members joined in executing deed. We sold to Akiwumi about 4–6 years ago.

I was one of executing parties for Korle Webii in grant to Alex Konuah : his land is near land of Dr. Bruce Jnr. I joined in conveyance

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Adjin
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November
1942,

Cross-
examina-
tion,
continued.

Ruling as to
Evidence.

Exhibit
“10.”

Cross-
examina-
tion,
continued.

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Cross-
examina-
tion,
continued.

to Dr. Bruce Jnr. Sale was about 2 years ago. Also in sale to Halm Addo, for Korle Webii : not long after grant to Academy, 9-10 years ago. I joined in sale by Korle Webii to Academy ; also in lease to Roman Catholic Mission. Korle Webii also sold portion to Crabbe. I joined in that. Those conveyances range from 10 years to 2 years ago. I acted as one of conveying family—Korle Webii. Up to 2 years ago, I honestly believed we had right to convey.

Have no quarrel with Korle Webii : only I was afraid of how things were going and I withdrew. Deny that they were dissatisfied with my conduct re the sales, money, and so on, and kicked me out : deny it. The Ga people knew good people and bad people. Korle Webii asked me to return the Power of Attorney as there was a case pending in Tribunal. I did not do so. The Korle Priest complained to Police. I showed document to Police. The Police told them to go away, saying it was civil matter. After that I left Korle Webii and became Councillor in Ga Tribunal. I was born such. My father is the King maker. I know Kokomlemle, as former Korle Webii. I knew Tete Kwami ; don't know if he was a native of Senyabereku who came to Atukpai to stay. I knew him as an Atukpai man when I grew up. He lived at Kokomlemle village and farmed near Tessano (or Tessang). Korle Webii do not call this land, from Ofanofa to Tessano, Akwando. What we call Akwando land is in the middle of the land. I can't show Akwando land on Plan, Exhibit " 1." Where the Academy is there is a valley, that is Akwando. Academy is near Salifu's site. Where young Dr. Bruce is, is Akwando ; ditto Akiwumi. That is only part of it. 10

Tetteh Churu I knew : don't know him by name Tetteh Ashatu ; did not know the Tetteh Churu who lived at Kokomlemle. I heard of Nii Tetteh Churu in old times. I have not heard of one of that name in recent times at Kokomlemle. A woman called Ayelenye Anna, I did not know of. I heard of a Nii Adu, a Priest, who was brother of my grandmother. That Nii Adu in a fit of temper destroyed the pigs of Kojo Ayi, I heard ; and case tried at Ussher Fort : because Chiefs of Ga were afraid to try him, he being such a big man, and it was tried by Europeans : judgment given against Nii Adu. Heard he was imprisoned till money was forthcoming. I never heard it was provided by Ayelenye Anna and others. But I heard that whole of Ga Chiefs contributed and paid it off and he was released. He was detained until the money was found. I was a Warder in Prison, and apprenticed shoemaker. 30

I have never been told that it was after Ayelenye Anna paid the money that Nii Adu and Korle Webii granted a portion of Kokomlemle land to Ayelenye Anna. I know one Vanderpuye had a house at Kokomlemle on left side. Building there now. Don't know if he is descendant of Tetteh Churu Ashatu. I have a list or genealogical tree of most of the Korle Webii, the principals, but Okai Vanderpuye is not among them. I know Kokomlemle and some of the inhabitants. Some come from Atukpai : others do not. Did not know of Tetteh Churu Ashatu of Okaishi. 40

I used to travel about a lot. Have only settled for 22 years in Accra, so I do not know much about it. Never heard of Tetteh Churu Ashatu of Okaishi. Only heard of the original Tetteh Churu. I do not know Okoche Kobla. I know an old woman Okakor Churu who was of Gbese 50

quarter : don't know of the quarter she came from : she is dead : don't know if she was from Atukpai or not. I heard of her. She was sister of Manche Ama and was of royal house.

Ama was before Manche Ayi Bonte. Manche Ama was not from Atukpai : it may be that Okai Churu did not come from Atukpai. Their quarter was Manche Blohum. We lived in Ade Akwa house.

As you go into Kokomlemle there are large foundations belonging to J. T. Morton : don't know who granted land to J. T. Morton. Only recently I began to inquire into Korle Webii affairs, so I do not know who
10 granted to J. T. Morton.

I knew old Afutu Kotey : one of heads of Korle Webii family : don't know if he is buried at Kokomlemle : was not in Accra when he died. He does not appear in my list. He was not one of the family. People can attach themselves to the family, Onomroko, which is the original name of Korle Webii, without being born in the family. He was an outstanding man who worked well for Korle Webii. Have not been told where he was buried.

9th November, 1942.

Coussey for Plaintiff (Whitaker with him).

20 *Dove* for Defendant 1, and also to-day on behalf of Akiwumi for Defendant 2 —Akiwumi being absent. (He appears later.)

Korle priest before acting priest was Ayite Tawia. Before him was acting Priest Annan Bibio. Tete Fiu was before Annan Bibio. Have not been told where Tete Fiu buried : told all Korle Webii buried at Dorm. Don't know if he was buried at Kokomlemle. In late times they have been burying all their elders of Gbese—including Korle Webii—there. Don't know if Ayite Tawia was buried there. I was at Sekondi when he died. He may be buried there. I have not asked. Don't know if Annan Bibio buried there. I never troubled to ask : he may be buried there.

30 Nai Priest is.

Re-examined :—

Nai Priest is connected with Gbese, and Korle Priest too. Atukpai are branch of Gbese. Atukpai stool is Mankrado stool under Gbese Stool. Have been burying Gbese elders for long time at Kokomlemle. About 20 years ; or less. Gbese people can't be buried there without informing Atukpai. Gbese Manche has to send rum to Atukpai stool and inform them it is proposed to bury so and so at Kokomlemle.

Disputes arose when I got my Power of Attorney to deal with Korle Webii lands. Made several grants of Korle Webii lands for which I
40 negotiated. In grant to Malam Futa, Gbese Manche and Korle Webii for whom I acted and Odoi Kwao family joined. I don't know if Atukpai people knew of it. I joined in grant to Lawyer Akiwumi. Atukpai did not know at time ; after they got to know of it they went and broke down the pillars ; they objected to grant of their land.

We granted land to Alex Konuah ; the father made the bargain : it was said to be for his son. The Atukpai did not know of grant at time : afterwards they heard and spoilt what he had done on the land, i.e. they objected to grant.

*In the
Supreme
Court
of the Gold
Coast.*

—
1st
*Defendant's
Evidence.*

—
No. 30.
George
Adjin
Tettey,
4th, 5th
and 9th
November
1942,
Cross-
examina-
tion,
continued.

Re-examin-
ation.

*In the
Supreme
Court
of the Gold
Coast.*

*1st
Defendant's
Evidence.*

No. 30.
George
Adjin
Tetty,
4th, 5th
and 9th
November
1942,
Re-examin-
ation,
continued.

The grant to Academy was a lease : Atukpai did not know at time : they objected afterwards. I was given some of the land myself, and they drove me away : also some land granted to Korle Priest, and he was driven away by the Atukpais. Korle Webii also granted to Halm Addo. Atukpais did not know at time, but afterwards objected : ditto with grant to Lawyer Crabbe. After inquiry I came to conclusion that the land did not belong to Korle Webii ; before I had not known. I came to know it belonged to Atukpai and I withdrew from Korle Webii.

Korle Webii had a paper regarding the land ; have seen it many times. This is it—Exhibit " E." When I first saw it the 2 stamps at 10 back were on it (i.e. rubber stamps used by Chiefs). One is that of Manche Okaijah. (N.B. Chaijah, Field Marshall &c.) He was Gbese Manche. It had a plan attached to it which I never saw : so I got another plan.

There was a case about the land which was granted to me. I went to Lands Department and got a plan. I have it. In case Ashrifie and Tetty Gbeke (Defendant 1) I was called as witness.

Re Northern boundary of land, Lutterodt and Reindorf have lands in that area : that part is called Mamobi. There are hills and villages there : some of the hills are called Blakpachu.

(After objection by Coussey, question allowed re grant to 20 Government by Korle Webii.)

After the Earthquake the Government asked the Gbese Manche and the Ga Manche and Elders for some of the land within area now claimed by Atukpai. Ga Manche and elders and Gbese Manche and elders and myself went on the land ; and the Atukpai met us there and objected. Three Government officers were there. I went there representing Korle Webii. This was in 1939. Atukpai said the whole of the land belonged to them, and the Ga Manche and Gbese and Korle Priest had no land there. Government said they did not want any land that there was any dispute about. We all went away. I don't know if Ga Manche or Gbese or Korle 30 Webii have done anything about it. I should have known.

No. 32.
Kofi
Hammond,
9th
November
1942.
Examina-
tion in
Chief.

No. 32.

Kofi Hammond.

KOFI HAMMOND, 6th Witness for 1st Defendant, sworn on Bible, in Ga.

Examination-in-chief :—

Live Christiansborg—Carpenter. Had uncle called Kwartei : my mother was Norkai. Both dead. Am illiterate. Know Kokomlemle on Nsawam Road. Kwartei's father called Taiywa Motu, whom I called grandfather, had some land there. When I was a young boy I used to go to Kokomlemle, i.e. where the stand-pipe is now on left of the road is going to Nsawam, on opposite side of road there is a path going up a hill. We used to follow the path to my grandfather's place, where Taylor has now built a house ; is in the same direction ; my grandfather's house is between where Taylor's house is and Akrade. Grandfather had a hut : 40

told my mother built a hut there, making two. My grandfather had many mango trees there: now they are dead. My mother planted others and some are there now. Grandfather had cashew trees too; and he farmed cassava and groundnuts beans. Mother went there later and planted an onya tree (cotton) and planted cassava &c. and used to sell in market. Kwartei was living at Mangoe behind the Railway Station then: he was a bricklayer. When grandfather died, Kwartei went to live there about time the Railway started. (Agreed about 1906.) He used to farm cassava &c. and planted many mangoes: now he is dead; his mango trees still there. Since mother and uncle died. Mother died lately. I asked Marbell (I was at Sekondi) to find some people to live in the hut and look after it. The other, Kwartei's, had fallen into ruins. I came back from Sekondi about 3 years ago and found that my mother's house was in ruins as someone had removed corrugated iron sheets. About 8 mango trees left. My sister Korle used to go and pick the mangoes. She lived at Kpehe nearby.

I did not know how grandfather got the land where he lived. Did not ask grandfather. My mother told me that grandfather got the land from Atukpai people.

20 *Cross-examined Akiwumi* :—

I knew late Adams. I saw some pillars by the road. My mother told me that they were Adams'—long before she died.

Cross-examined Coussey :—

My mother was Norkai. Kwarter was her brother. He has a son named Tawia living Avenor. Know him. His mother was Okunye Mansa; not known to me as Ayi Kunjina. Don't know she had been married before. Don't know Tetteh Kobla. I have heard of him. Don't know if Ayi Kunjina had been her husband before, or if she afterwards married Kwartei: or if Ayi Kunjina was a slave of Okai Tiseh. Can't say if Kwartei came on the land through this connection.

I have brother called S. C. Hammond. As to Korle Priest having executed conveyance to me as to land North-east of Taylor's building: deed is registered. Land first granted to Ata Tawia, alias Tawia Moto, by Korle priest Annan Bibio as land of the Korle Webii. After death of Ata Tawia, Kwartei and Norkai, succeeded him as regards the land. After Annan Bibio, came Acting Priest Tetteh Kwei Molai; and I and S. C. Hammond as successors of Kwartei and Norkai obtained a deed of conveyance re this land from Tetteh Kwei Molai, who signed as head of Korle Webii. I worked in Prison Department: can't read and write but know North and South on land is between Taylor's building and Akrade Village in a straight line. It is the piece granted to Ata Tawia. The hut where my mother lived is on this piece of land.

About 1 year ago Atukpai did not seize our deed. When we got the deed, I went to Sekondi. I came back and found all the pillars broken. I reported to Korle Priest and he must find out who did it. I inquired without result. Went back to Sekondi, telling my sister Korle to enquire. When I came back and Korle told me she had not found out I went and told Tetteh Kwei Molai. Later my sister gave me certain information, having been there to pick mangoes: this being about 3 years ago. All

*In the
Supreme
Court
of the Gold
Coast.*

—
1st
*Defendant's
Evidence.*

—
No. 32.
Kofi
Hammond,
9th
November
1912,
Examina-
tion in
Chief,
continued.

Cross-
examina-
tion.

*In the
Supreme
Court
of the Gold
Coast.*

*1st
Defendant's
Evidence.*

No. 32.

Kofi
Hammond,
9th
November
1942,
Cross-
examina-
tion,
continued.
Exhibit
" 11."

this time I had the deed in my possession. I told Tetteh Kwei Molai I knew who had broken pillars : that it was Atukpai, viz. Tettey Gbeke.

After that I handed my deed to Tettey Gbeke to show that I had the land. He said he knew my relatives had all lived there, but the deed was not executed by the right person : so that if I relied on it, land would be taken from me. I told Tetteh Kwei Molai. He asked me to wait. I waited for one year without result. Because of what Tettey Gbeke had said I went to Tettey Gbeke and asked for a new document. He gave me a document for smaller area than Tetteh Kwei Molai had granted.

Tettey Gbeke told me I should demand money back from Tetteh Kwei Molai and if he refused I must summon him and he Tettey Gbeke would help me and give witness for me, so I gave him my document which he still has. 10

(Coussey demands production

Dove :—We can produce it later and hope to produce tomorrow.) I have all the receipts at home. This is deed given me by Tettey Gbeke—Exhibit " 11 " (not registered).

Tetteh Kwei Molai's deed to us was about 8 years ago. I registered that document and have the receipt.

The land which Tettey Gbeke conveyed to us does reach as far as the Akrade people's boundary : not up to the village : about 10 yards from the Akrade village rubbish heap. Land granted by Tettey Gbeke is a part of land granted by Tetteh Kwei Molai. Land where we pick mangoes is my grandfather's land : all of which was granted to us by Tetteh Kwei Molai. 20

(Cross-examination to be concluded later when document is produced.)

N.B.—It is now produced by the Defence.

This is it. It is the document they took from me. (Tendered—Exhibit " 12 ".) 30

Exhibit
" 12."

Re-examina-
tion.

Re-examined :—

My mother told me that grandfather got land from Atukpai : that Korle priest Annan Bibio granted it to him. I was told by Tetteh Kwei Molai. I then asked him to give me a paper for the land. The paper says I paid him £1. I gave £5 in all. Only £1 was put in the paper. As to it saying it was with the consent of members of the Agba and their attesting as witnesses, Agba is the power of the whole of the Gbese. 3 people only witnessed, two being sons of T. K. Molai. Kofi Jacobson also signed. When Atukpai learnt I had deed from Tetteh Kwei Molai they objected. They had first broken my pillars. They would not allow me to stay on the land merely on authority of the deed. They had never disturbed me or my relatives before this. I did not see a lawyer when they broke my pillars. 40

When Atukpai said I must have a new paper, I went and got surveyor who made plan. I then went to Mr. Quist and told him all the palaver about the land. He made a paper. Atukpai signed it.

Q. As to passage in document saying " Whereas. . . people of Atukpai . . . grantees " ?

A. My grandfather lived at Owuman Fase. That is what I told the lawyer. I did not say we were Atukpai people. I said we lived at Owuman Fase and went to war with Atukpai people. 50

No. 33.
Aba Deswa.

*In the
Supreme
Court
of the Gold
Coast.*

ABA DESWA (N.B.—called ABA DIENSWA in earlier evidence), Pagan,
7th Witness to the 1st Defendant, Female (age 50 ?), sworn :—

*1st
Defendant's
Evidence.*

10 Live at Avenor—sell tomatoes, etc.—on Nsawam Road there is a
stand-pipe, from which truck goes to Avenor. Opposite it, on right side
of the road, I am always going on to land on that side, to work on my
uncle's land, growing tomatoes, okra, &c., and there are mango trees
there of my uncle's. Have been cultivating there in past years. I left
the land to rest 18 months ago, and have just started again there planting.
Uncle's land called Oko Adi. I know new building now on land—put up
by somebody who bought from 2nd Defendant. Our land formed a
boundary with 2nd Defendant. Atukpais came and said that I had
encroached on 2nd Defendant's land. He summoned me. Atukpais
settled matter between 2nd Defendant and me. I have a common
boundary now with 2nd Defendant. When I first knew land—the Oko
Adi land—it belonged to Oko Adi, my uncle. It was being looked after
by Tete Kwami who was living at Kokomlemle. Nobody was living on the
land itself. My uncle was working on it : he was at Obuasi—the Mines—
20 in Ashanti. He fell and broke his leg. He came back as an invalid and
could not work. My mother and I worked the land. My mother was
Ayele. Before he went to Obuasi my uncle worked on the land and was
living in hut at Avenor. Tete Kwami looked after land. When my
uncle came back my mother went to Tete Kwami with rum. Tete Kwami
was working on the land. My mother took the rum to Tete Kwami and
explained that my uncle had come back and had been working on the
land long before. Tete Kwami was an elder of Atukpai, living at
Kokomlemle. My uncle came from Atukpai.

No. 33.
Aba
Deswa,
9th
November
1942.
Examina-
tion in
Chief.

Examined Court :—

30 As a result of being given rum, Tete Kwami allowed my uncle to
farm the land again.

Examina-
tion by
Court.

Examination continued :—

No trees when uncle first went on the land : one of my children
planted 15 mangoes : some of them died, only 3 remained. They have
been bearing and I picked the fruit. Two years ago one died : now 2 left.
I have cut the branches off, but the roots are there and the trunk is on the
ground now. The other 2 trees are near it. Apart from what I have said
I never heard of any dispute between my uncle and anybody. We had no
other disputes about it. Know Tetteh Koblah who has lived at Avenor
40 many years. Never seen him farming on the land : he has never passed
that way or saluted me. No track through my land.

Examina-
tion in
Chief,
continued.

Cross-examined Akirumi :—

I knew late Adams : he was owner of land claimed by 2nd Defendant.
When I saw the building I asked and was given certain information.
Adams had pillars on the land.

Cross-
examina-
tion.

*In the
Supreme
Court
of the Gold
Coast.*

*1st
Defendant's
Evidence.*

No. 33.

Aba
Deswa,
9th
November
1942,
Cross-
examina-
tion,
continued.

Cross-examined Coussey :—

Since I grew up I knew that the Atukpais had land from Adabraka to Lutterodt's village. Only recently heard they had land at Kwabenya. Some time ago at time of New Year festival, I and my mother went to Kwabenya to sell cloths. I asked my mother whose village it was. She said the Atukpais: that was the first I knew of their land there. We went for festival held at Kwabenya by Atukpais. I don't know if they have festival each year. Oko Adi used to go there before. Sometimes he stayed there about a week and came back: he did not farm there: went there to visit his mother's brothers there who lived there. Avenor 10 village is on Korle Webii's land: lived there since my childhood. At time of Ya Asantewa War (1900) I was living in Accra with my aunt. My father was Akwete Kente: came from Otublohum: he came from Abola quarter. His mother from Otublohum. I was about 5 years old at time of Ya Asantiwa War. (Indicates size.)

I was about 12 when I went to Avenor (indicates). I never heard of Kadabi Nmanmasha where paths met. I do not remember a big cashew tree which was cut down. I often went to other places. I lived at Nsawam for some time, with my father's sister. I returned and stayed at Avenor because my uncle had a bad leg. 20

I know where Taylor's house is. As a girl I used to go in that direction for fuel. No houses at all in those days, in that direction.

On top of the hill long before Taylor's house was built, between Akrade village and the road, where stand-pipe is now, I never saw any houses there. I did not see 3 houses or 1 house. I only saw Akrade. I often went along the path, from where the stand-pipe is to Akrade.

I have a brother Ayi Bonte Ashong. He never told me the Korle Priest had granted him some land. I myself don't know that Tetteh Kwei Molai granted him some land near Adams' land.

Remember Prince of Wales coming to Accra (1925). I was at Avenor 30 then. As to about one year later Awula Akwa and Tetteh Kobla going to land to cut boundaries, I never heard of this, nor did I see it. I have heard of Tete Azau. As I lived in Accra I did not know him. I knew Ankrahu Kobla: did not know Lamptey Kwao.

As to there being a case in Court because the people said Awula Akua had encroached on their land when she cut her boundaries, I know nothing. Heard that they gave evidence for Tetteh Kwei Molai against Dr. Bruce and Awula Akua: did not enquire about it because I was at Mangoase. My uncle had died then. I was his successor. When I went to Mangoase I left Adija Kojo and Tete in charge of the land in my absence. Adija 40 Kojo is the man now in Court. He did not tell me about the case when I came back. I did not hear about the case re Adams' land.

I know that in case of land near Accra when owner is not using it by building &c. it is common for other people to go and cultivate on it. In my case it could not be done because I had fenced my land. Fence can be seen now. If Court goes there, it can be seen by Court.

*Re-examina-
tion.* *Re-examined :—*

Fence made of sisal and cactus, which I planted on all 4 sides: one side got partly burnt in grass fire: 3 sides still there.

No. 34.
Ajete Sowa.

*In the
Supreme
Court
of the Gold
Coast.*

16th November, 1942.

AJETE SOWA, Christian, 8th Witness for 1st Defendant, sworn.

*1st
Defendant's
Evidence.*

Examination-in-chief :—

Live Accra—Carpenter. I know Tettey Gbeke, Defendant 1 of Atukpai. Had dealings with him re land on right side of road to Nsawam. He sold piece of land to me. He said he would not give me a conveyance : told it was Stool land. I come from Pagan Road, Accra : am native of Teshie quarter. I did not buy the land. They gave me the land as Stool land and I gave them rum, about 2½ years ago. It is my land. Have put up building on it—a block building—completed and roofed : people in it. Did not see ruins of any mud building on land before built. Did not know when Surveyor Kwantrang went to land. When I went there I saw nobody called Yeboa there : there was nobody occupying the land. During time I have been there, nobody has disturbed me.

No. 34.
Ajete
Sowa,
16th
November
1942.
Examina-
tion in
Chief.

Cross-examined :—

I first went to the land 2½ years ago : never been there before : did not know land at all before that. Deny seeing any ruins on land given me. If I had seen ruins I would not have accepted it. I am related to Norte Yeboa. My mother was sister of Norte Yeboa. He died short time ago—a wealthy man. I work at Cantonments as carpenter. This is first house I have built. Was quite satisfied to build without having a paper. I applied for the land to 1st Defendant's first witness. I was told that the Atukpais were giving land away cheap. My mother told me : hear mother came from Atukpai : my mother is Atukpai woman.

Cross-
examina-
tion.

Cross-examined Akiwumi :—

Nil.

Re-examined Dove :—

30 Mother told me I could get land there cheap. She has no land there herself.

Re-examin-
ation.

Examined Court :—

My land adjoins Taylor's. No boundaries were shown to me. The measurement given to me was 100' × 75'.

Examina-
tion by
Court.

No. 35.
W. N. Lutterodt.

WALTER NATHAN LUTTERODT, Christian, 9th Witness for 1st Defendant, sworn.

No. 35.
W. N.
Lutterodt,
16th
November
1942.

Examination-in-chief :—

40 Photographer in Accra. Know place called Kpehe, and Lutterodt's village. It is in possession of Lutterodt's family : not the whole of Kpehe—a portion of it. I am a member of family. I know that my great grandfather W. A. Lutterodt was first person to occupy the land. He acquired from the Nujosi people and the Atukpai : so I was told. W. A.

Examina-
tion in
Chief.

*In the
Supreme
Court
of the Gold
Coast.*

*1st
Defendant's
Evidence.*

No. 35.
W. N.
Lutterrodt,
16th
November
1942,
continued.
Ruling as to
Evidence.

Lutterrodt belonged to Atukpai, Ussher Town. I have some papers here, which I got from my father, F. R. C. Lutterrodt: his father was W. A. Lutterrodt, the original owner of our land. I produce letter showing that he lent 180 dollars to Nujosi and Atukpai people by W. A. Lutterrodt dated 1st July, 1865, and 20th September, 1871. (Two dates.)

Coussey objects to question as to what he was told what transaction this related to—viz. land transaction. Paper speaks for itself. No oral evidence can be given to add to contents of document.

Dove :—Entitled to lay foundation for tendering the document 10
80 years old. Allowed to give tradition as to property to explain the document.

Court asks for authority.

Dove first tenders document.

Coussey :—Irrelevant: does not relate to matter in dispute. It is a promissory note promising to repay 180 dollars by a certain date.

Dove argues in support. We can only prove it after lapse of time by producing the document and offering evidence of tradition.

Order :—Admitted—Exhibit " N."

20

Exhibit
" N."

Examina-
tion in
Chief,
continued.

Examination-in-chief, contd. :—

My father told me the history of the land. He said a certain war broke out and the Tackie Tawia and Gbese people were short of money to buy ammunition. So my great grandfather advanced them the money: as they had no money he asked for land in payment. They asked him to say where he wanted land. Atukpai and Nujosi gave a piece of land called Blakpagono to great grandfather. I asked father why it was called Kpehe: he said during time it was given to great grandfather, adjoining villagers used to come there to sell produce: it became a meeting place and was called Kpehe—which means "meeting place." Nobody has 30
ever disputed right of Lutterrodts to that piece. It was not explained to me whose those names were on the paper. I thought they were witnesses.

Cross-
examina-
tion.

Cross-examined Akiwumi :—

Nil.

Coussey is called away to appear in West African Court of Appeal.

Adjourned till 8.30 to-morrow.

17th November, 1942.

Cross-examined by Whitaker :—

I am not Head of Lutterrodt family: one of most junior. Eric 40
Lutterrodt is supposed to be head, but is not. We have no head at present. Lutterrodt family do not meet from time to time that I know of. Not saying this because I am on bad terms with family. Not lately been invited to attend family meetings and refused. At present living in Lutterrodt Hall. Have not put tenants in some rooms. Family did not call me to a meeting because they objected to my putting tenants in. My great

grandfather lent money for ammunition to Atukpai and Nujosi people of Ga. In Exhibit "N" I see nobody purporting to sign for Ga Manche or Abola Manche. I produced document from my custody. I was told land was given to my ancestors in payment. Not told that document made when land given to great grandfather at Kpehe. I did not ask. Don't know and wasn't told why the paper remained in possession of our family after land given in payment. Cannot explain. Cannot say if it is a promissory note which has not been paid. Was told name of my great grandmother: Awula Mary. Not told name of her mother. Don't know if her mother was wife of original Mr. William Lutterodt. Not told of woman called Ayi Kaile. Don't know if she was daughter of Nii Ata, Korle priest. Was not told that because Lutterodt married Ayi Kaile that Nii Ata granted this land to him. Not told of place called Numo Nmona: or that market was moved from there to Kpehe. Or that every Thursday that Nii Ata used to collect tolls from people who came to sell.

Re-examined :—

Nil.

*In the
Supreme
Court
of the Gold
Coast.*

*1st
Defendant's
Evidence.*

No. 35.
W. N.
Lutterodt,
17th
November
1942,
Cross-
examina-
tion,
continued.

No. 36.

Moses Kwao Abbey.

20 17th November, 1942.

MOSES KWAO ABBEY, 10th Witness for 1st Defendant, sworn.

Examination-in-chief :—

Live Accra—Draughtsman in Public Works Department. I am here to represent the Health Engineer who is on leave. I produce Plan of Government Layout, Kokomlemlé—Avenor—Kpehe. I was in the Department when it was made, and knew it was made by Mr. W. R. Sheffield, the Health Engineer. (Tendered—Exhibit "P.")

I have here large-scale plan of the same area as Exhibit "N." It is the same plan on a large scale. From my register of plans, I made note which I refer to which says that plan prepared in 1940. (Not tendered as it is already in in form of "A.")

Don't know how long it took to make the layout: I think 6 weeks. It is an extension to East of Exhibit "P," i.e. it is to East of Road from Kokomlemlé to Kpehe. Engineer did not go on the land; he prepared it from the materials in the office, i.e. contours, &c.

Cross-examined Akiwumi :—

Nil.

Cross-examined Coussey :—

On Exhibit 6 the numbers shown, I do not know what they mean. I should think they indicate house numbers of existing houses. The square marked in pencil in Exhibit "6" represents roughly the land in dispute (red) in Exhibit "1."

Re-examination :—

Nil.

1st Defendant's Case.

No. 36.
Moses
Kwao
Abbey,
17th
November
1942.
Examina-
tion in
Chief.

Exhibit
"P."

Cross-
examina-
tion.

2nd DEFENDANT'S EVIDENCE.

No. 37.

Abraham A. Allotey.

*In the
Supreme
Court
of the Gold
Coast.*

*2nd
Defendant's
Evidence.* ABRAHAM ADOTEI ALLOTEY, 2nd Defendant, sworn.
Examination-in-chief :—

No. 37.
Abraham
A. Allotey,
17th
November
1942.

Examina-
tion in
Chief.

Exhibit
" Q. "

Exhibit
" R. "

Live Accra—Trader and Licensed Auctioneer. Late J. H. Adams was my uncle—died 4/10/31. I succeeded him. Land in dispute, portion said to be his, I succeeded to that. Adams acquired the land in this way : I produce Document of 16th February, 1901, made by Ayi Kwami in favour of Adams—Exhibit " Q. "

10

Adams had pillars on land : they were by the road : with his initials : one day I went there and saw pillars had been removed. Adams had placed them there when I was a boy : they remained there till he died and I succeeded. Pillars removed some time in January, 1939. I was thinking about it when I received letter from Atukpais to say they had removed the pillars. This is it—dated 20/1/39—Exhibit " R. "

I first went to Korle Priest Molai and reported matter : he said he had similar letter, claiming Molai's own land from him. He asked me to wait and join him in suing Atukpais. I did so but after waiting, I sued the Atukpais in Gbese Tribunal. Manche suggested arbitration because we were all Gbese people. I agreed. Matter went to arbitration. At arbitration I told them that my uncle had land from Ayi Kwami who had it from Korle Priest Annan Bibio. Atukpais claimed to have given the land to Ayi Kwami and not the Korle Priest, and as Ayi Kwami was dead they were claiming the land from me. I said I didn't want litigation because my uncle had given some land to the family. The Atukpais said they knew nothing about the conveyance in Exhibit " Q, " because they hadn't witnessed it : so if I wanted to keep the land I must get confirmation from them. I agreed to give them something to confirm the title. I gave them £30. They gave me document 24/10/30—Exhibit " S. " 30
I employed a Surveyor Aryee to cut up my land into small plots in accordance with Government layout : these are the plots as shown in this plan. Exhibit " T. "

Exhibit
" S. "

Exhibit
" T. "

I gave a copy of this to Kwantreng, 1st witness for Plaintiff, to insert in the plan Exhibit " 1 " which he was making. The copy I gave him had a list of names attached to it similar to this. (Tendered and attached to " T. ")

I gave some of the plots to members of family and sold some. Names appear on paper. All I have left is plots Nos. 7 and 18. My remaining interest has gone. Heard nothing until a new building was being put up 40
by one Allotey who bought from me—when Plaintiff sent for me. I went to see him. He said I was building on his land. I told him the position. He said he would see his sister and let me know the result. He later wrote me. I gave to my lawyer for reply, and summons came. This is Plaintiff's letter—Exhibit " U "— and the Reply, Exhibit " V. "

Exhibit
" U. "

Exhibit
" V. "

I had asked Aryee, 1st Defendant's witness, to look after my land as he was living just opposite. During Adams' lifetime there was an attempt

to sell the land : he caused notices, Exhibits "D1" and "D2" to be put up. Don't agree that Plaintiff is entitled to the part of Adams' land that he claims. I had sold most of the plot before this action instituted. I have here and produce 4 Conveyances to various purchasers—some of them are not in Accra—Exhibit "W" (a), (b), (c), (d). I got these from the purchasers.

*In the
Supreme
Court
of the Gold
Coast.*

*2nd
Defendant's
Evidence.*

Cross-examined Dove :—

The Atukpais said they had given the land to Ayi Kwami, before Ayi Kwami gave it to Adams and that Adams had been trying to show that
10 Ayi Kwami got the land from Korle Webii. They would not agree to title to land being claimed through Korle Webii. Korle Webii and Atukpais are both Gbese people. Nii Ayi Bonte was Gbese Manche when the case went to Tribunal. Yao Boi, ex-Ga Manche, sat on the arbitration. Ayi Bonte said he was not on good terms with Atukpais at the time and he suggested Yao Boi as arbitrator : he had some of his own Elders to help him.

No. 37.
Abraham
A. Allotey,
17th
November
1942,
Examina-
tion in
Chief,
continued.
Exhibit
"W"
(a)-(d).

Cross-examined Coussey :—

I first knew my uncle's land at Kokomlemle about 40 years ago. I went there from time to time. I should be about 14. I am 54 now. My uncle said it was Korle people who gave Ayi Kwami the land. Ayi
20 Kwami was my uncle's uncle. Didn't know him myself. But uncle Adams told me that Korle people had given Ayi Kwami the land and in his lifetime he had no reason to disbelieve that. The position of the land has not changed since deed "Q" made. Site has not changed. In 1901 there was the old Aburi Road which was quite different from the old Kwabenya or Nsawam Road. The Aburi Road was a different road. The old Road to Aburi branched off at Kpehe : looking at Exhibit "1," it may be true that the old Aburi Road followed the footpath which appears on the plan to East of Kokomlemle. I can't say. I say that the Aburi Road and Nsawam Road mentioned in Exhibit "Q" were the same as
30 far as Kpehe.

Cross-
examina-
tion.

The Deed says that the Southern boundary was Smith's plot. I can't tell if that is the same as Teiko Okosuko. I know Smith. I don't know if he has any connection with Teiko Okosuko. I can't tell.

In Land Acquisition Case 1933, Adams claimed land as marked in blue—Exhibit "7." He claimed to have got the land from Korle Webii. He succeeded as against the Atukpais. The land was far from this plot. In 1933 my uncle produced a Deed from Odoi Kwao family. I have the document now. I can't point out to you on Exhibit "1" where that
40 land is. I can't read a plan. I am an auctioneer. (After some assistance from Coussey) : I don't read plans. I take clients to show them land. The land concerned in land acquisition is to right of wood valley near Ring Road in Exhibit "1."

Deny that land conveyed to Ayi Kwami adjoined land we had from Odoi Kwao. Not so ; entirely different. I knew where the pillars were during his lifetime. I did not know adjoining owners till his death. I did not know Bekwai on East.

In 1926-28 when Tetteh Kwei Molai was claiming against Dr. Bruce, I know my uncle gave evidence in the case. Dr. Bruce never claimed

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*2nd
Defendant's
Evidence.*

No. 37.
Abraham
A. Allotey,
17th
November
1942,
Cross-
examina-
tion,
continued.
Exhibit
"13."

our land in that case. (Page 46 of Record quoted.) (Pages 46–49 tendered against 2nd Defendant—Exhibit "13.") I say that Dr. Bruce was not claiming land on our side of the road.

I knew the case *T. K. Molai v. Bruce* was going on. I knew the Atukpais had not claimed that land at all. Although they said in their letter Exhibit "R" they had given my uncle notice in 1910. I have not found that notice in my uncle's papers.

I compromised with Atukpais to save litigation: that Deed says consideration was £30, love and affection, and divers other considerations. They said Ayi Kwami was an Atukpai man and that is why they were claiming land from me. I did not know if he was, and I did not enquire. I wanted to avoid litigation. I did not believe their claim, but I wanted to avoid litigation. 10

Land which Ayi Kwami granted to my uncle was not south-east of Kokomlemle: not near Atukpai Nortey's plantation. Two of Adams' pillars were on the road. They are there now. They were removed by Atukpais. When I settled with them they put them back.

There was a line of sisal on North and South boundaries. There is a line on South and part of line on North. Don't agree that there are sisal plants dotted about on the land indiscriminately. There may be, 20 but Adams planted the 2 lines.

The new building by Allotey (who is no relative) is right on western boundary of my land: the plots I sold him, Nos. 14 and 15. I told Dr. Bruce who was building.

I don't know a man called Amegacher. Allotey told me Amegacher was his contractor. I knew you had difficulty in finding the person. If Allotey is building right on extreme boundary, it is no concern of mine.

I gave the particulars to the surveyor so that he could find out if Allotey was building outside the plot I had sold to him.

Re-examination. *Re-examined Akiwumi :—*

30

Land in land acquisition matter was entirely different to this plot here: that land was near to Asylum: this is on Nsawam Road—the Old Aburi Road from Accra. People used the Kwanbenya Road from Accra. People used the Kwabenya Road as far as Kpehe and then branched off. I don't know Teiko Okosoku, but I knew Smith. During uncle's lifetime I had little to do with the land. Smith is dead long ago. I can't say if he really was my uncle's neighbour. I was only a boy then and had little connection with the land.

My uncle was not a party in case *T. K. Molai vs. Bruce*. He was a witness. After judgment in that case Dr. Bruce never disturbed Adams. 40

Case for 2nd Defendant.

No. 38.

ADDRESS of Mr. F. Dove, Counsel for 1st Defendant.

17.11.1942.

Dove addresses :—

Claim to land (description). Plaintiff must satisfy Court he is entitled to declaration before injunction can be granted. Boundaries stated in writ. Looking at Plan—Exhibit “ 1 ”—which was superimposed on plan prepared by Defendant 1, only boundary shown is Odor Stream. Plan doesn't show boundaries as claimed in writ : on left of road. On right
10 of road I don't see Tete Azau or Okai Gbeke on North : don't see Nortey and Akaladi on East or on South.

Plaintiff hasn't adduced any evidence that the persons named own or owned land to N.S. and/or East of land in dispute.

Land is identified on the plan because of line that was cut but hasn't been identified by evidence as described in writ. I say it has not been identified. Plaintiff failed in this.

Plaintiff has failed in evidence showing original title or use or occupation which would justify Court in declaring Plaintiff as owner of land. Judgment in 1928 not produced (?) not admissible.

20 Onus on Plaintiff to show better title than opponent. No evidence of ownership, possession or use and occupation to entitle Plaintiff to verdict.

Plaintiff said to be representative of Okai Tiseh family and Okai Tiseh had acquired from Korle Webii, and that Plaintiff relied on occupation by Kadabi, Nyami Yarbrow &c. and that they built huts on right of road and had farms there.

30 Exhibit “ F ”—Opening of Counsel in *Tetteh Kwei Molai vs. Bruce* (page 3). Title said to be from Ga Manche then : admission that Ga Manche was in position to grant land in that vicinity : this is what we said. Apart from Ga Manche's grant confirmed by Korle Webii, argument was use and occupation by Kadabi and others.

Krokro Akoshia—Plaintiff's witness—said they cultivated between Akrade and Kokomlele. Tetteh Kobla gave very vague evidence as to farming and suggested it was near the ruins : suggested that trees planted.

Summary of evidence of user—very vague as to farming : huts : trees. Note only one mango tree claimed by Plaintiff : though evidence was that there were many trees there. No evidence that those that died belonged to servants of Plaintiff.

40 Amply answered by evidence adduced by Defendant 1. Note cross-examination of Defendant's witnesses by Plaintiff's Counsel as to dispute between Atukpai and others re lands in different parts of their lands.

We say in our old grant only one boundary was defined, viz. Kwabanya Road. At that distant date they would not have taken trouble to define the land with result that you get disputes about boundaries.

Merely by saying that they were defeated in regard to other places, e.g. land acquisition case, it is not established that Atukpais have no land in that area.

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continued.

Atukpais' grant to Salifu—no evidence contradicting it. Ditto—Lagosian site. Ditto—Malam Futa's area.

Conclusively proved that Atukpais have large areas in vicinity: on this basis of general grant to Tete Churu by Gas.

Northern boundary was Blakpagon—and/or Lutterodt and Reindorf's village: ? discrepancy. What they meant was that Lutterodt's boundary made their Northern boundary, because Atukpais joined in grant.

Reindorf's land given him with consent of Atukpai people. We haven't been able to trace conveyance to Reindorf in Registry with concurrence of Atukpai as stated in 1st Defendant's witness's evidence. 10
Plaintiffs haven't produced it. Exhibit "N"—re Lutterodt grant: explained by family tradition, according to Defendants' witness.

Land not valuable in those days—only in these days been valuable. Large areas granted for small sums.

Taylor's plot: Exhibit "K" shows that Taylor and Marbell brought action against the Atukpai people: compounded by payment—Marbell admits he had jumped the land. Atukpais asserted their claim to land in immediate neighbourhood.

Adjin Tettey—Defendants' witness: Korle Webii were dealing in lands that didn't belong to them and when he discovered this he withdrew. 20

Re Exhibit "E"—Declaration of ownership by Korle Webii. Jacobson admitted that it was put in in case in Ga Tribunal which is still pending: plan rejected and is the plan.

In 1898 Korle Webii thought fit to make declaration of their title and interests in land: area is large one: plan prepared by Simpson on Ga Manche's instructions: land in question is well to the North of green area in Exhibit "1."

For years the Korle Webii have been going about selling and claiming lands where they had no land except that in Exhibit "L." This is all they had control of. Why did they make declaration in respect of land 30 if they had control of other lands?

If the area (green) which was just to South of the land referred to was in their control, why was it omitted? They parted with their control of stool lands before this declaration.

Regarded as important document at time because it has Manche's seal. Korle Webii knew that area to South of their land was no longer in their control.

Adjete Sowa—Defendants' witness 8—would not have started building if he had seen ruins. No action was brought against him by Plaintiff who took no steps to find out who had put up the substantial building. 40

Evidence of Aryee: Hammond: and Aba Deswa: of extensive farming and apparently exclusive: Planting of trees still there.

Buildings by Defendant 2's purchasers.

No evidence of dispute by Plaintiffs as to the trees.

Defendant 2: Grant to Ayi Kwami by Atukpai: inherited by Adams and later by Defendant 2. Adams acknowledged Atukpai's claim.

Defendants' 6th witness, Hammond's evidence: shows trickery by Korle Priest: Why did Adjin Tettey withdraw from working for Korle Webii? Because the Korle Webii were tricking people.

Adjourned till 8.30 to-morrow.

C.A.G.L.

18th November, 1942.

Whitaker for Plaintiff—

(Coussey is in Appeal Court).

Dove and Akiwumi as before.

10 *Akiwumi* for Defendant 2 asks leave to tender documents of title to land referred to in 2nd Defendant's evidence (at page 532).

Whitaker—

Plaintiff closed his case. I object. If he had wished to produce the documents, he should have closed case subject to production.

Order—

Not admitted.

Dove continues address:—

20 Re Exhibit "12." Jacobson was one of witnesses to Hammond—Exhibit "4" which he signed: eight people signed Exhibit "4" as against one in Exhibit "12." In 1933. Adjin Tete, 4th Witness for Defendant, was one of signatories. When grants made by Korle Webii, the Atukpais objected: in every instance, and broke pillars.

Exhibit "C." Atukpai published notices re land: Dated 19/1/37 signed by Tetteh Churu.

Whenever we knew of interference with our land, we took steps to object.

30 Exhibit "J" in 1916: Tetteh Churu (Tetteh Addy) head of Atukpais? pages 29-30. Tetteh Addy was not then head of Atukpais, and not on good terms with them: he represented himself as representing Atukpais.. Only inference is that he was acting contrary to instructions of Atukpais because he was not then on good terms.

Evidence of Defendants' Witness 5, Samuel Komey Tetteh: Ayi Bonte's evidence in 1928 case tinged by fact that he was quarrelling with Atukpai. Stool holders however dignified will say anything out of ill-will.

Plaintiff must prove grant strictly including boundaries of properties alleged to be granted.

40 Plaintiff's most important witness was Ayi Ansa—9th witness for Plaintiff (claiming to be Manche): he admitted that in old days grant was to be made as distinct from squatting rights: it was necessary that people should be sent to point out boundaries &c. clearly defined.

Plaintiff admitted he had never been told that anybody had been sent to demarcate land alleged granted to Okai Tiseh. No witness for Plaintiff suggested it had been done: therefore foundation of case is removed.

Clear that shifting cultivation does not give title under the custom. If you want to obtain specific grant there must be some identification of cultivation granted to you. None here.

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Plaintiff's evidence in 1928 case—he knew nothing about the land. About 1924 he had been made head of the family: was not told anything about family property. Information which he acquired casually since 1928 case can't help Court in deciding if property rightly claimed by Plaintiff.

Tetteh Kobla gave no evidence to identify area which was supposed to belong to Okai Tiseh: evidence in 1928—pages 67/68—Exhibit " B " —Page 74 bottom: " I was not in charge of land this side of road (right)."

Kadabi acquired land—because he went to " fight for Gas." He also said that present Plaintiffs were not claiming land of Adams.

In absence of alleged limitations of alleged grant to Plaintiff's pre- 10
decessor, there is nothing which Plaintiff can rely on.

If present Plaintiff is claiming through Kadabi (on ground that Kadabi was slave of Okai Tiseh), what title of Kadabi's has been made out in this case?

All that is shown is, there was shifting cultivation; ruined hut on right side of road.

Apart from evidence of use and occupation: *Tettey Gbeke vs. Odoi Kwao*—still pending: Atukpai brought action to prevent interference with Eastern portion of their land.

Clear definition in case of grant necessary. Cf. evidence of 9th 20
Witness for Plaintiff: Nai Priest, &c.

We have given evidence of grant to Atukpais of large area (green): no evidence disputing alleged grant: only suggested that only in different corners was there dispute.

Re grants to Lutterodt and Reindorf, and their inclusion in green area claimed by Atukpai, it was all part of the area claimed by Atukpai: the grant was made by Manche Bonte and Atukpai did not object: it stands uncontradicted. Granted to Lutterodt because of loan which Atukpai couldn't be paid. (N.B.—Aryee said Atukpai had nothing to do with grant to Reindorf.) Those areas were originally Atukpai areas and Atukpais were parties to grant. 30

Exhibits " E " & " 12 " show Korle Webii had land only to North. Plaintiff fails to prove title: but does all he can to cloud a case of Defendant 1.

Krokor Akoshia, 3rd Witness for Plaintiff, denied giving evidence in 1928: Why? ? Wilful.

Survey: Plaintiff's 1st Witness's evidence unsatisfactory: Tetteh Kobla couldn't show boundaries. Plaintiff's witness told him to have boundaries cut: cut by 4th witness for Plaintiff and 5th witness for Plaintiff. 4th witness for Plaintiff said he had been shown the boundaries in 1926: Tetteh Kobla never said he had done so: afterthought.

In earlier case—1928—Bruces set up defence of ownership as successors 40
to Okai Tiseh.

Based on different title to present claim as head of family. Is it family property—or does it belong to 2 persons—Dr. Bruce and Emma? Inconsistent.

Earlier claim should be taken as correct in relation to present claim as head of family.

Akiwumi asks for adjournment till to-morrow as due before West African Court of Appeal.

Adjourned till 8.30 to-morrow.

No. 39.

ADDRESS of Mr. Akiwumi, Counsel for 2nd Defendant.

19.11.1942.

Akiwumi addresses :—

Associates self with Dove's argument. Discrepancies in Plaintiff's evidence re land : Plaintiff's witnesses agree that Tetteh Kobla was in charge at all material times and knew more about it than anyone. Asere Teiko and others said Tetteh Kobla knew more than they did about land. Tetteh Kobla said nothing of having taken any of them round the land in
10 1926.

Plaintiff's 6th Witness, Emma : " I didn't go round the boundaries."

Tetteh Kobla—Plaintiff's 2nd Witness—said he did not go round with Surveyor, though he was supposed to know all about it. Asere Teiko simply cut boundaries on line shown them 16 years before. Tetteh Kobla never suggested having been round with them at any time.

Compare Tetteh Kobla's description in this case and in 1928 case when he was younger—in this case he described—p. .

Cf. p. 50, "B," p. 52. Kadabi only build and farmed on left of road.

Tetteh Kobla's evidence cannot be relied upon : on question of identi-
20 fication and location of plot that they claim, they have failed.

Plaintiff's 6th Witness—Emma : p. 37 : " You go to Kadabi village before you go to ' Avenor '." (N.B.—Kadabi had a village on left of road, after occupying one on right ?)

Nobody worried about land until Europeans began to buy. Okai Tiseh's people farmed only on left of road. Fact that Kadabi built on right side of road a mud hut does not constitute ownership. Kadabi shifted to left of road and lived there.

Adams : All agree he had land there. Tetteh Kobla—p. 25. Adams' land—bounded Plaintiff's : in 1928 case—p. .

30 Adams in occupation and possession = pillars and sisal. Title Deed —" Q." 2nd Defendant got document from Atukpais because he wanted to avoid trouble. Title Deed—" S." Fact that he wished to make peace with Atukpais does not disregard from his title and possession. He continued title given to Adams from 1901 and has always been in possession.

No one suggested that Kadabi or anyone planted on Adams' plot. Exhibit " D " in 1923 Adams was defending his title to this land : employed T. Hutton-Mills to act for him : and T. Hutton-Mills was member of Plaintiff's family, and he was put on inquiry and must have known it
40 was part of family land.

Exhibits 2 and 3 are notices describing plot to be sold : on South of land it is stated that Adams is neighbour.

Exhibit 12—to Hammond by Molai. Adams described as Southern neighbour. Exhibit " 2," Adams' land abutted Plaintiff's : Purple line is correct and pink one is wrong. Plaintiff's encroaching not the other way about.

2nd Defendant has sold much of the land to persons who aren't parties to the suit : except 2 plots. Plaintiff didn't ask them to be joined.

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[sic]

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1942,
continued.
[sic]

Court asked to make declaration against 2nd Defendant that land which was once his and is no longer, belongs to Plaintiff. Declaration could not affect people to whom land alienated.

2nd Defendant's evidence of alienation stands. Can declaration be made by Court? No.

Is Plaintiff head of family? Is there a family known as Okai Tiseh family? Cf. Tetteh Kobla's evidence. Okai Tiseh was son of woman who had no family: any property he had would go to his father's family—Tieko Churu: on his death family would go to Teiko Churu's family: Head of Teiko Churu's family is Asere Teiko. 10

Plaintiff's 9th Witness—*Ayi Ansa*—Offspring of man and slave woman belongs to father's family: any property of that offspring merges into father's family. Cf. Exhibit "9," page 57 of 1928 case. Ayi Bonte's evidence—(Manche of Gbese)—(all these people are Gbese people)—Asere Teiko is head of family.

Therefore if Okai Tiseh left any property it became property of Teiko Churu's family represented by Asere Teiko. Therefore no such thing as Okai Tiseh's family property, and Plaintiff is out of Court.

Page 165 of Exhibit "9."

Summary :—

Plaintiff's evidence is vague and unreliable as to location of the property they claim: all evidence of tradition is not sufficient to locate it. Tetteh Kobla was vague now and also in the past. Onus on Plaintiff to make out case: fails to prove that it is property of Okai Tiseh family. Tetteh Kobla himself established this for us. 20

Hammond v. Ababio, Renner's Reports, p. 732.

Quarshie v. Plange, 1926/29 Full Court Report, 246.

Coussey will be before West African Court of Appeal to-morrow and will not be able to address. Adjourned till 23rd at 8.30.

C.A.G.L. 30

No. 40.
Address of
Mr.
Coussey,
Counsel for
Plaintiff,
23rd
November
1942.

No. 40.

ADDRESS of Mr. Coussey, Counsel for Plaintiff.

23.11.1942.

Coussey's address :—

Plaintiff claims as Head and Representative of Family of Okai Tiseh to declaration of title and injunction restraining Defendants &c.

Land in dispute in Exhibit "1." Admitted land of little agricultural value, but has building value because of development. Immediate cause is that Plaintiff saw building begun in middle of land. Boundaries claimed by reference to evidence—Tetteh Kobla's evidence: 40

North: Tete Azau near Odor (left of road) and Okai Gbeke where Taylor is (on right).

South : Awulu—means Okosoku.

Tetteh Kobla speaks of Tete Kwami who is Okosoku—
Refers to page of Exhibit "B" : near bottom : p. .
Therefore Tete Kwami is the same as Okosoku's land.

East : Nortey and Akrade : Akrade = Village. Nortey : we
were told person building at North-east corner was Nortey : we
knew Nortey had land from Korle Priest.

Defendants' witness Adjete Sowa—p. 83—Norte = Norte
Yeboa.

10 *West* : We gave Odor stream but as that on left of road is not
in dispute, the road is the pertinent boundary.

Re boundaries : Dr. Bruce stated boundaries. Tetteh Kobla did not
go round and show boundaries to surveyor. In last case he did so with
Annan Teiko and others, and cut boundaries : they are the boundaries
cut and shown to surveyor in this case. Tetteh Kobla's evidence in conflict
on one point. He first said Tete Kwami had land on North : then on
South. He said he showed boundary to surveyor = points on road where
Southern boundary crossed road and indicated North point where red
earth is. Tete Kwami did farm on North at Tessano. Compare Adjin
20 Tettey's evidence.

Page 137 of Exhibit "B"—Kadabi's land was bounded by Anteh's
land.

Amma appeared on plan. (Where did information come from ?)

Annan Tagoe shown boundaries by Tetteh Kobla and Adjua Fiu :
she was wife of Adu Tagoe : brother of Okai Tiseh. (N.B.—Her evidence
in old case not tendered.)

30 *Headship and representative of Okai Tiseh Family* : 2nd Defendant's
plea that he is not : 1926 Emma went to survey and demarcate. Dr. Bruce
did not go but Tetteh Kwei Molai joined him as Defendant with Tetteh
Kobla and Emma. Tetteh Kwei Molai seeking declaration against them
that land belonged to Korle Webii. Clear recognition that judgment
against him necessary to bind Okai Tiseh family.

2nd Defendant relies upon "snap" answers from Tetteh Kobla and
Nai Priest. No other evidence to support plea. To support it, is evidence
of Bruce and Emma.

Defendant did not call Asere Teiko : afraid to do so because
judgment in Ga Manche's Tribunal when Okai Tiseh's land in Gbese
quarter litigated over ; and held that Plaintiff was proper successor and
families were owners of land.

40 Distinction between inheritance of land through female side and
what was acquired by personal position of Okai Tiseh.

2nd Defendant content to create cloud of doubt on to Plaintiff's case.
1st Defendant could not say if Bruce was head of family or not.

Grant to Okai Tiseh : Evidence of Tetteh Kobla, Emma and Bruce
of grant by Nii Adu, Priest of Korle Webii, to Okai Tiseh : consideration
being that Nii Adu's brother married a daughter of Okai Tiseh = Senseye =
really a slave.

Land very cheap—there for asking. Korle Priest granted to Oshipi
out of favour. We don't say consideration was rum, &c. We say it was

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in consideration of Priest brother having married a member of Okai Tiseh's family.

Extent of Grant : Land not granted them with definite boundaries. We have 2 milestones, viz., ruin of Nyami Yarbrow on North-eastern side. Site of Kadabi's ruins on North-east. Odor Stream on West. Evidence that Kadabi made small hut on North-east.

Tetteh Kobla's evidence in Exhibit " B," page 135, re Kadabi's hut on right of road. In this suit p. 136. Kadabi left hut on right and lived at Avenor : when cross-examined, stated he looked after both sides : planted mangoes. 10

People farmed on left side. Very swampy on left side 60 years ago because of heavier rains. People would farm on drier land in rains. They would plant near stream in dry season.

We say the stream on West and hill on East were limits. Slaves farmed all the area within limits of crest of ridge and Odor Stream.

? They farmed for themselves. No. Tetteh Kobla said Okai Tiseh asked for the land and Kadabi did not get land for himself—tradition handed down to Bruce and sister.

After death of Okai Tiseh's brother, Adu went to land and exercised rights of ownership : after him Christiana did so—because of evidence of constant communication between house at Accra and the land—slaves going to get foodstuffs. After her, Florence, who appointed Tetteh Kobla. Corroborated by Krokro Akoshia : mangoes picked when no further farming took place—up to 1926–28 action and present action. After her, Emma : caretaker on land : exercised rights without interference in accordance with tradition handed down. On doctrine of continuity, presumption is that Okai Tiseh down to Bruce exercised as owners. 20

1926 *Case* : Plaintiff heard of threatened trespass by Adams having put a pillar on the land and a threatened grant of some land on left of road : between 1923 and 1926—delay in litigating : Emma and Tetteh Kobla went to land, sending rum, exercising rights of ownership by measuring. Neighbours would not join because Tetteh Kwei Molai (Priest) intended to squeeze family out of land ; got neighbouring owners to join forces with him, and enlisted J. H. Adams in endeavour to take land back. 30

Cf. Exhibit " 13 "—p. 175—Evidence of Adams : he joined in action because his papers had been torn down by Tetteh Kobla ? This gave rise to 1926–28 action.

Cf. Exhibit " F "—page 133—Tetteh Kwei Molai's Counsel : "Ancestor of Emma Bruce obtained permission to squat on the land." We say it was more—it was a grant as owner. 40

Connection with Okai Tiseh family cannot be otherwise explained. If it were merely permission to Okai Tiseh to squat, Korle Webii would have resumed possession. But we say acts of ownership throughout constitute ownership.

Nonsuit of Plaintiff in that case. After that case there was calm except for 2 incidents : a part of the land was attached in execution against Tetteh Kwei Molai : ? Allowed judgment to go against him in Magistrate's Court, and land attached. We suggest to get his own back on present Plaintiffs. Piece of land advertised for sale. Atukpais not in the field : did not protest. 50

In 1937—Exhibit 3. Tetteh Kwei Molai had mortgaged part of land and allowed it to be sold for some reason. Plaintiffs sold—published Exhibit 2—Warning. No sale resulted. Atukpais made no claim or protest.

Tetteh Kobla's evidence of user is corroborated by Krokor Akoshia : she denied giving evidence in 1928 case : incorrect. Exhibit " M "—Memory of old person. Tetteh Kobla very clear—but Krokor Akoshia not so. ? She said Kadabi farmed between Kokomlemle and Akrade. Probably she is not very clear in mind.

10 Exhibit " 9 "—Ayi Bonte—page 165. Rights of occupation. Plaintiff's 9th witness—Nii Ayi Ansa—Ditto.

40–50 years members of Bruce family have been abroad or followed pursuits which don't take them to the land and merely kept old caretaker.

Atukpais suddenly came along and put in claim.

20 *Miller vs. Kwayisi*—W.A.C.A., p. 7, Vol. I. Evidence of ownership, p. 10. This would be a strong case for the Korle Webii people if they were involved in this case : they aren't here concerned : we are concerned with the Atukpais who are bare trespassers who have made no claims until 1937–38 when they started working it out.

At time of 1926 case, 1st Defendant's 1st witness says he was daily going from Adabraka to Akrade to have food and kept store in Accra : knew nothing of 1926 case. Any farming Atukpais have done by reason of 1st Defendant's 1st witness having been there on left of road—and ditto by Aba Deswa without our knowledge—this does not set up adverse title against us. Insufficient to defeat claim to declaration of title.

Kwami Adu vs. Posi Kuma—3 W.A.C.A.—240. Mere use and occupation cannot oust title.

30 Our caretaker is very old : they may have farmed there without our knowledge : does not defeat our title.

Their plea is grant from Nii Tackie Komey, 1st Ga Manche : involved inquiry into whole green land because they say the pink area is merely part of their land. Plea is in conflict with case they subsequently set up : they are bound by their pleading.

40 They alleged grant direct from Tackie Komey, Manche : not through Korle Priest : they said Korle Priest could not make subsequent grant. That was still their case when Tetteh Kobla gave evidence. But in later stages after Nii Ayi Ansa's evidence that Korle Webii were clearly caretakers : the Ga Manche had no control over the lands : Abola stool had no lands. 1st Defendant's 1st witness trimmed his sails accordingly. Evidence cannot be believed : too circumstantial altogether as to events of 100 years ago.

2nd witness for 1st Defendant : Nai Priest allowed land to be granted : i.e. different to 1st Defendant's story.

Defendant's 1st witness stated Kokomlemle and Akrade founded in same year : he said it twice.

If the land was granted to Tete Churu in 1827 what were he and his people doing till 1893 ?

1 D/W—Owana people = Atukpai.

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They were originally in Asere quarter in Accra.

Tetteh Churu was a mulatto—had land at Kwabenya—p. 63—Reindorf's history (authority of Full Court in Waterworks Case). Court may refer to Reindorf's historical record. Tetteh Churu had land at Kwabenya. Is it likely that they had this other big grant : no user for 69 years.

Some Atukpais have lived at Kokomlemle and Akrade as well as people from other quarters. This does not turn the area into an Atukpai area.

Other conflicts between pleading and evidence. 10

? 1st Defendant stool gave Adams land 35 years ago : refuted by Exhibit " Q " which granted Adams land—by Ayi Kwami—in 1901.

They stated that 1st Defendant stool gave Kwartei portion 35 years ago : refuted by Exhibit " 12 " = grant by Korle Priest 1833 and Tetteh Kwei Molai as Acting Korle Priest, in 1933, to Hammond. Not till 1941—Exhibit " 11 "—that Atukpai stool purported to grant to Hammond (not registered).

1st Defendant's 1st witness said Atukpais did not grant to Lutterodt. First said Atukpais had nothing to do with Reindorf's grant : in re-examination he said Atukpais were consulted. 20

Sufficient to say that 1st Witness for 1st Defendant admits that re land East of Kokomlemle, there was an action in 1916. Exhibit " J " ?

Tete Addy found guilty of cutting trees on land. If it had been Atukpai land, this could not have been : ? he wasn't at unity with Atukpais in claiming land.

In 1926 case, Addy swore affidavit objecting to transfer of case. We did not offer this as an estoppel because Defendants' case falls of its own weight.

Yode Kwao v. Kwasi Coker—1 W.A.C.A. p. 167—where person stands aside and watches own right to be litigated by others—not pleading estoppel but very strong presumption against that person. (=Acquiescence.) 30

Plaintiff's 8th Witness : Martin Jacobson : Speaks of grant by Korle Webii to Okai Tiseh—gives 3 material points.

Defendants' 4th Witness—Adjin Tettey—renegade from Korle Webii : turned against them : joined in conveyances to Akiwumi and others.

He had Power of Attorney to deal with family land at Dorm and Tessano—Exhibit " 10." Korle Webii were dissatisfied and sought to get Power of Attorney back.

Korle Priests buried at Kokomlemle with permission of Atukpais. They have land of their own : Why should they ask permission to bury 40 in Atukpai land ? Presumption is that it is Korle Webii land where Atukpais allowed to live.

Atukpais' grant to Salifu, &c., &c.—all in endeavour to create title. They put the larger area in issue.

Kpehe—Lutterodt's Village.

Defendants' 1st Witness didn't suggest this granted by Atukpai. Later they got in touch with witness. Lutterodt—junior member.

Document produced—Exhibit “ N ” purports to be evidence of grant of land : a Promissory Note. If it were a grant, Ga Manche would have assigned some token.

Exhibit “ 1 ” shows Lutterodt Village 1880. Date taken by Plaintiff’s 1st witness from plan made by Okoe Aryee for Defendants : therefore date 1880 comes from Defendants.

Promissory Note by 2 small quarters owing their liability—not Ga liability. Nothing but a promise to pay in 3 weeks.

10 Custody : If debt paid off, document would not be in Lutterodt’s possession. Evidence of tradition by this witness is nonsense.

Reindorf : Defendants’ 1st witness said boundary went right North of Reindorf : later boundary said to be as set out in Exhibit “ C.” Exhibit “ C ” is insufficient description. It was after 1933 when Court had held that Atukpais had no land in that area. (European Residential Area judgment.) It also held they had no land on Osu side : notwithstanding the Notice claimed boundary with Christiansborg people on East. The Eastern boundary (green) is in *conflict* with Atukpai case in 1933 Acquisition Case. They now run boundary to North of the existing houses on Farrar Avenue.

20 Exhibit “ E.” Korle Webii made declaration of land in Dorm and Tessano—claiming as owners in fee simple not land of which they were caretakers under Ga origin.

Defendant 2’s case :

30 Submit Adams was in great measure cause of 1926 case. He had obtained Deed of Gift from Ayi Kwami, his uncle, who was a Korle Webii. He himself said he was a member of Korle Webii—Exhibit “ 13.” Adams joined forces with Tetteh Kwei Molai. The intention to try to get land back from Bruce had been in train some time. Compare “ D1,” “ D2 ”—Notices in 1923. Discrepancies between Notices and Deed, Exhibit “ Q ” in description of boundary : measurements in deed 600’ × 400’—in Notice another 450’ is added to East-West measurement.

Accra-Nsawam Road was formerly Accra-Kwabenya Road. Compare Exhibit “ L.” Aburi Road is the one that now forks to right from Cantonments. We say that in 1901 before proper road built it forked from the old road in North-eastern direction from point West of European Hospital and East of Kokomlemle : along old footpath.

40 Evidence is that when Adams put his Notice on the land—and pillars—they were knocked down. No evidence of user by Adams. Tetteh Kobla, page 71 of Exhibit “ B.” Tetteh Kobla was referring to land he claimed.

In Exhibit “ S ” at much pains to labour that Aburi Road and present Nsawam Road are the same.

We were taken by surprise by contents of Exhibit “ Q.” He would not have produced “ Q ” if we had not forced them to. Plea of 2nd Defendant was Atukpai grant in 1903. “ Q ” is in conflict with plea. Then we saw for the first time that boundaries were not as in Notices—“ D1 ”, “ D2.” We might have called rebutting evidence : it would have delayed trial at late stage.

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Such conflict between Deed and Notices and Defendant 2 is so unsatisfactory as to any of his boundaries that his unsupported statement that Aburi Road and Nsawam Road are the same is outweighed by discrepancy, i.e. Akraide Village which is not mentioned in Exhibit "Q."

? Sisal marking boundary—not seen by surveyor. Suspicion re taking away old grant and giving Defendant 2 a new one : demanding extra £30.

Defendant 2 appealed to Tetteh Kwei Molai who was old and slow to move and knew Exhibit "Q" was doubtful: and was willing to submit to Atukpais' demands.

Exhibit "12"—6th Witness for Defendants—Kofi Hammond : 10
Grant by Korle Webii : it recites exactly case of 1st Plaintiff practically the same—shows that by Ga custom when grant made without deed it materialises by use into ownership sufficient to support deed of gift from Korle Webii for nominal consideration £1. Priests receive drink accounting for the extra £4 : custom—e.g. recital in lease to Roman Catholic Mission.

His description would bring it very near (or on part of) Plaintiff's land. New Deed, Exhibit "11" (Grant by Atukpais) places it just outside. We say Atukpais had no right to grant.

8th Witness for Defendants—No Deed : but Counsel opened to say he had. Clearly 1st Defendant encouraged 8th Witness for Defendants 20 to obliterate evidence of Kadabi's occupation.

3rd Witness for Plaintiff said Kadabi's house was where white man has now built. As to 2nd Defendant's case that we are not entitled to declaration in respect of the portions sold to people. He has put in 4 Deeds but has not identified the several plots in relation to the land. He admits he still retains portion of the land.

We are entitled to declaration in respect of whole area. Effect of declaration of title would not be conclusive against those to whom he says he has sold. As against 2nd Defendant we are not disentitled to declaration : he finds it too hot to hold and disposes it to other people. 30

Declaratory decree—we would work it out later as regards individually named if they don't conform to declaratory decree.

As against 1st and 2nd Defendants who have no title :—

(1) 1st Defendant has not title—

(2) 2nd Defendant who bases himself on 1st Defendant's title which is lacking.

We have shown a better right than either of Defendants. Not concerned here with Korle Webii who might say, "You are bound to give us something in drink" : that has been decided.

Defendants have invaded our rights : entitled to declaration against 40 them.

Injunction restraining them from dealing with land.

Lokko vs. Kontrofi, 2 Renner, p. 452—Principle as to ownership.

Mention to-morrow at 8.30 for arrangement for Court to visit site.

C.A.G.L.

No. 41.
COURT NOTES.

24th November, 1942.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN PROVINCE, held at Victoriaborg, Accra, on Tuesday, the 24th day of November, 1942, before His Honour Mr. Justice C. A. G. Lane.

DR. BRUCE

v.

TETTEY GBEKE & ALLOTEY.

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10 *Coussey* and *Akiwumi* :—

Agreed that Court will visit land on Thursday, 26th, at 4.30.

Coussey quotes Re Head of Family putting caretaker in charge of land —

Judgment of Deane, C.J.—Transferred Case 5/31—*Tetteh Quarcoo* vs. *Tetteh Codjoe*.

Judgment reserved on notice.

C.A.G.L.,
J.

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JUDGMENT.

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20 *Judgment* :—

This action relates to a small piece of land about 3 miles to the North of Accra on the Accra-Nsawam Road in what are now the suburbs of the town. Up to fairly recent times it had little value, being regarded as agricultural land of no great merit, but in late years as the town has spread in that direction it has acquired value for building purposes: when a layout for suburban development in this area was prepared by Government a new interest in this and adjoining pieces of land was shown.

The action was started in the Paramount Tribunal and transferred to this Court.

30 The Writ describes the Plaintiff as head and representative of the family of the late Okai Tiseh: in it he claims against (1) Tettey Gbeke as representative of the Atukpai family, and (2) A. A. Allotey personally—

(A) A declaration that all that land situate between Avenor and Akrade villages, Accra, bounded on the North by the lands of Tetteh Azau and Okai Gbeke respectively: on the South by the land of Awulu and others: on the East by the land of Nortei and Akrade: on the West by the Odor Stream, is the property of the family of Okai Tiseh of which the Plaintiff is the head, and

40 (B) An Injunction restraining the Defendants from trespassing on the land or erecting buildings on it or interfering with his title.

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There was a Motion for an interim injunction, filed by the Plaintiff, but no order was made upon it. A survey and plan of the land claimed by the Plaintiff were made at the order of the Court. The Plan is Exhibit "1."

The Plaintiff's claim in the writ embraces land on either side of the Accra-Nsawam Road. His claim is edged grey in Exhibit "1." The Defendants are not resisting the claim to the land on the left of this road, and lying between it and the Odor stream, so that in respect of that portion the Plaintiff must succeed.

The portion edged pink in Exhibit "1" on the right of the road is 10 the land in dispute. The 1st Defendant claims that it belonged to the Atukpai stool; that a portion of it (edged purple) was granted to the 2nd Defendant by that stool and that the remainder is still attached to the stool.

It is the portion edged pink therefore that is in issue in this case. As regards the boundaries set out in the writ the plan is not helpful. The evidence as to the boundaries will be considered later.

There were no written pleadings.

The Plaintiff's case is that he is head of the family of Okai Tiseh, who died some time in the 1860's, and who was "Oshipi" or head captain 20 of the Ga fighting men, and who belonged to the Gbese quarter of Accra in the Ga federation of tribes; that Okai Tiseh founded a separate family with possessions and a house of its own; that Okai Tiseh, whose female slave married a relative of Adu, the Korle priest, received from the latter a verbally made grant of the land in question some time in the 1850's or 60's; that the Korle priest as head of the Korle Webii, who also belonged to the Gbese quarter of Ga, had power to grant lands to individuals, the Korle Webii being caretakers of lands, which included this area, for the Gbese stool under the Ga federation; that Okai Tiseh's slaves, Kadabi and others, occupied the land for him; that Kadabi built a mud hut 30 on the land, and that he and others lived and farmed there; that Kadabi died about 1880, and after this the land was used by members of Okai Tiseh's family; that later a caretaker Tetteh Kobla (who is still alive and gave evidence in this case) was put in charge for the members of the family who were by then educated people with other interests; that acts of user such as plucking mangoes and cashews have continued up to present times, showing dominion over the land; that no interference with their rights took place until 1926 when the acting Korle Priest, Tetteh Kwei Molai, sued the present Plaintiff claiming title to the land, in which he was non-suited, by a judgment of this Court 40 delivered in 1928; that in 1938 there was interference by the removal from the land of a watchman employed by Mr. T. Hutton-Mills, one of Okai Tiseh's family, by somebody; and again by the beginning of the erection of a modern building on that part of the land claimed by the Plaintiff, which is also claimed by the 2nd Defendant. This precipitated the action.

The Plaintiff pleads that the Atukpai family, while they may have a family stool, have no recognised stool under the Ga federation and own no lands attached to such stool. They spring from Tetteh Churu of Gbese quarter; as Gbese people they may own individual farms, or small 50

groups of them may have settlements upon Ga lands but any such settlements or farms do not stamp the area which they claim as Atukpai stool land, and they have no claim to the land in dispute.

The Plaintiff's case in short is that his ancestor obtained a judgment of the land conferring ownership ; it was not a mere permission to squat ; if it had been the Korle Webii would have resumed possession ; rights of possession and ownership have been exercised by the Plaintiff's family and ancestors throughout ; until about 1937 the 1st Defendant stood by and watched the Atukpais' alleged rights being litigated over. The Plaintiff does not plead estoppel in this regard but says that it raises a strong presumption against the Defendants, and that their case fails of its own merits.

The 1st Defendant's case as stated by Counsel is that the land in dispute formed part of a much larger area granted to the Atukpai people who, it is claimed, have a stool of their own, by the Ga Manche, Teki Komi, over 100 years ago ; that the Atukpai had been in possession and occupation of it for over 100 years ; that the Atukpai stool granted to Adams, the predecessor in title of the 2nd Defendant, a portion of the land about 35 years ago ; and made grants of other portions to other people ; that any grant to Okai Tiseh of the land edged pink was invalid in face of the grant by the Ga Manche ; that the Atukpai have villages near the land claimed, one of which they founded as long ago as about 1822 ; that as regards the action started in 1926 and finished in 1928, wherein the Acting Korle Priest was non-suited in his claim to the land against Dr. Bruce, the Atukpai people did not know of it and were not affected by it. The 1st Defendant cannot say whether or not the Plaintiff is head of the Okai Tiseh family ; no formal application to join the persons who are alleged to have received grants from the 1st Defendant is before the Court.

The 1st Defendant in effect says that the large area edged green in Exhibit " 1 " originally was Atukpai stool land and that out of it certain grants were made by his stool and that of the portion edged pink (claimed by the Plaintiff) they still own all except the plot granted by them to Adams and now belonging to the 2nd Defendant, and apparently also plots granted to Hammond and Aba Deswa. They resist the Plaintiff's claim on this ground.

The 2nd Defendant's case is that :—

(1) the Plaintiff is not the head of the Okai Tiseh family and not the proper person to institute the action in the capacity in which he has done so :

(2) the land in dispute never belonged to Okai Tiseh and was never occupied by him or by anyone for him :

(3) the land belonged to the Atukpai stool who granted a portion to the late J. H. Adams between 1900 and 1903 ; that Adams occupied it, put pillars on it and demarcated it by planting sisal on the northern and southern boundaries to the knowledge of the Plaintiff's caretaker, Tetteh Kobla ; that on Adam's death in 1931 the 2nd Defendant inherited from him ; that he applied to the Atukpai stool who gave him a conveyance in confirmation of Adams' title ; that the 2nd Defendant's portion has been divided into residential plots and 9 of the plots granted to various people,

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the 2nd Defendant retaining only a small piece, part of which is in the land claimed by the Plaintiff and part outside it; one of the grantees, one N. S. Allotey, has begun building on the land claimed by the Plaintiff.

There was no formal application to join these alleged grantees before the action came up for trial.

By his pleading the 2nd Defendant based his title on that of the Atukpai stool.

In evidence however it transpired that Adams' title was derived from a grant to him by one Ayi Kwami, his uncle, in 1901, who was himself a member of the Korle Webii, and that the land was said at the time to be Korle Webii land on which tolls were paid. And that it was only in 1939 that the 2nd Defendant obtained a conveyance from the 1st Defendant's stool. 10

Before considering these claims it is as well to set out the history of the litigation in 1926-28, as much of the evidence in that case has been put in evidence here and it is of importance in assessing the value of that given now. A claim to this land was made in a suit entitled *Ankrah & Others vs. Tetteh Kobla* in the Ga Paramount Tribunal: it was transferred to the Divisional Court and by leave was discontinued and the action of *Tetteh Kwei Molai vs. Emma C. Bruce and Tetteh Kobla* was commenced. Tetteh Kwei Molai was acting Korle priest, head of the Korle Webii: Emma C. Bruce is a sister of the Plaintiff in this present suit and is now Mrs. Emma Hutton-Mills, and one of the Okai Tiseh family; Tetteh Kobla was and is the caretaker of the Plaintiff's family on the land they claim. Tetteh Kwei Molai was non-suited in that action: he was claiming a declaration of title for the Korle Webii against the present Plaintiff and his family. In 1926 Emma was looking after the land for the family. Tetteh Kobla as caretaker reported encroachment by Adams on the land: Emma visited the land after reporting to her brother, Dr. Bruce, as the alleged head of the family, and after getting money from him for "rum," which she sent to Tetteh Kobla with instructions to give to the neighbours and to inform them that they intended to demarcate the family land, and to invite them to attend. The neighbours did not attend on this occasion and Emma was present (though she did not herself check the boundaries), while Tetteh Kobla and an old woman Ajua Fiu are said to have showed the boundaries to Anan Tego and Ayite Tego, and cut them. An oath was sworn by Tetteh Kwei Molai and his relative Ankrah began the suit of trespass against Tetteh Kobla which later became the suit in the Divisional Court. Tetteh Kwei Molai's claim on behalf of the Korle Webii was that the Korle Webii owned the land from time immemorial and that the permission granted to Kadabi, an ancestor of the then Defendants (present Plaintiff) to squat and cultivate conferred no title, Kadabi having been removed long before the action. The then Defendants (i.e. the present Plaintiff and his relatives) pleaded an absolute grant from the then Ga Manche, confirmed by the Korle priest as caretaker for the Ga stool, to Okai Tiseh, together with occupation by the latter's people and subsequent acts of ownership. As I have said, Tetteh Kwei Molai was non-suited: there was no appeal: the Atukpai made no claim to the land: although Samuel Addy, who was head of the Atukpai then, in the 1926 proceedings 30 40 50

gave evidence, when application was made for the transfer of the suit from the Ga Manche's Tribunal. His evidence had no bearing on the history or title of the land and was merely in connection with the merits of the application to transfer, but it showed that his family were willing to stand by and see litigation proceed as to a piece of land which they are claiming now to be theirs. He was then supporting the party who was claiming for the Korle Webii against the present Plaintiff (who is now seeking to establish his title through the Korle Webii) whereas now the Atukpai family are seeking to controvert a title to this land through the Korle Webii, and incidentally any claim by the Korle Webii to adjoining land.

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The Defendants put in issue the alleged title of the Atukpai to the larger area edged green of which the pink area is said to be part. I must say at once that they entirely failed to convince me as to that title. I will deal with that later.

The Plaintiff must succeed on the strength of his own title and not on the weakness of the Defendants. Let us therefore look into the Plaintiff's case; and consider the evidence of—

- (1) the grant.
- (2) the extent of any such grant i.e. its boundaries.
- (3) use and occupation by the Plaintiff's family.
- (4) the Plaintiff's right to sue.

Evidence of tradition on which the case is largely built is necessarily unsatisfactory: memories are fallible and tinged with sympathy one way or the other. Native law and custom appear to be flexible and variable. Evidence of tradition therefore needs corroboration of some kind before it can be relied on.

I think there is no doubt that at the relevant time, 80 or 90 years ago, the land was forest and that the Korle Webii, whose head was their priest, were in charge of it under the Gbese Stool under the Ga federation; that in practice the Korle priest made dispositions of land; that land was of no value except for cultivation and that Gbese people were entitled to go and settle on the land and cultivate, sometimes with the approval of the Korle priest; but that not in all cases was this done. The Korle people appear to have collected tolls in some cases from squatters: there is no evidence that they did so in regard to this land. The parties here were all Gbese people.

Evidence of an absolute grant by the Korle priest Adu to Okai Tiseh is lacking. Dr. Bruce's evidence of a grant is merely what he was told not earlier than 1926: he had never inquired before the 1926 case began. Emma's evidence of a grant is what she says she was told by her aunt Jessie Tego and an old slave woman Ajua Fiu (both are now dead) and Tetteh Kobla. Ajua Fiu gave evidence in the 1928 case but her evidence was not tendered here. Tetteh Kobla is the main witness for the Plaintiff: he gave evidence in the 1928 case and in this. He is very old and infirm, but his faculties seemed good considering his age and his memory better than one would have expected. His connection with the land was as follows (I shall deal with this later at length): Kadabi, a slave of Okai Tiseh (he is also described as a slave of Okai Tiseh's father Teiko Churu) first lived on the land and cultivated there with other slaves of the family:

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Kadabi built a hut on the hill, on the pink portion, and farmed there, later moving to Avenor village on the left of the road and farming on the left of the road and on the right also : Kadabi was caretaker of the land on both sides claimed by the Okai Tiseh family : he died about 1880 : Tetteh Kobla came to live at Avenor before this : he was away for a time and returned later to find Kadabi away or dead and one Adabu looking after the land : he was made caretaker about 1896 by Mrs. Florence Hutton-Mills, an elder sister of Dr. Bruce who, according to the Plaintiff's case, had then succeeded to the family property : he has been caretaker ever since. Tetteh Kobla has had a personal knowledge of the land since before 1880 10 and is therefore the best evidence available. He is a Gbese man and a relative of Okai Tiseh. He gave no evidence of an absolute grant to Okai Tiseh.

On this point his statement amounted to this : when he first knew the land Kadabi and other slaves of Okai Tiseh were farming there, Kadabi living on the right of the road and later moving : the fruits of the soil were regularly sent to the Okai Tiseh family represented first by Mrs. Christiana Bruce, then by Mrs. Florence Hutton-Mills her daughter, who lived in Accra. Nothing was done to perfect the title until Adams' encroachment was seen about 1923. Then Emma Bruce (now Hutton-Mills) instructed 20 him to notify the neighbours and declare the boundaries, and clear them. This he did, showing them to Emma, Anan Tego and others.

I therefore say that on Tetteh Kobla's evidence, together with what other evidence is available, there is no clear evidence of a direct grant to Okai Tiseh : merely evidence of permission to him for his slaves to squat on the land, that the slaves did so, and that members of the family visited the land, that the fruits of the soil were taken to the Plaintiff's family and rights of ownership exercised. Their rights were sought to be confirmed by Emma and Tetteh Kobla sending rum to the neighbours, and inviting them to be present when they marked their boundaries. The neighbours 30 did not attend. They successfully upheld their rights in the 1926-28 case so far as the Korle Webii were concerned, the Atukpai not intervening. In 1937 when a piece of this land was advertised for sale as belonging to Tetteh Kwei Molai, they protested and the sale was abandoned. The Atukpai still had made no claim. When building was seen to be going on on the land in March 1942, on the part claimed by Defendant 2, this action was brought.

It seems clear, therefore, that the Plaintiff's family have consistently exercised rights of ownership in respect of some of the land if not all : as to what that land amounted to I will discuss later. The evidence will 40 show I think that their assertion of rights to the right of the road was never made until 1926 and that between the time when Kadabi lived on that portion, farmed, and went away, and the assertion of rights in 1926, there is a very lengthy gap or period of time when this educated family took no interest in the land at all and took no steps that can be traced.

(2). As to the extent of the land and its boundaries : there is certainly a vagueness on this point. Tetteh Kobla's evidence is the lynch-pin of the case : he is vague and inconsistent. It seemed clear that in old days boundaries were not by any means strictly laid down, certainly not in the case of a squatting right in forest land. At most a person who intended 50 to build and farm on a piece of farm land would indicate to the authority

(in this instance the Korle priest) where he wanted to do this and if the latter agreed, the squatter would proceed to build and farm more or less at his own will. This is what seems to have happened. Okai Tiseh got permission for his or his father's slaves to squat there; Kadabi built on the right of the road and farmed there for a time: it is clear that he and other slaves farmed consistently on the left of this road: the evidence as to their farming on the right is conflicting.

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10 Some of the slaves did not live on the land but visited their farms from the family house in Accra, while others including Kadabi and Nyami Yarbro had huts there, the latter it seems on the left. Kadabi certainly moved later to Avenor. The land between the road and the river is generally speaking better farming land and there are more mango trees there. The land claimed by Emma in 1926, from what she was told by Tetteh Kobla and other old persons, was the land that had been originally farmed by the slaves. Their cultivation had been shifting. These are the boundaries which Tetteh Kobla pointed out in 1926 to Emma and Anan Tego and which were said to have been defined; these are the same which were pointed out to the surveyor and appear as pink edging in Exhibit "1." Anan Tego pointed them out to the surveyor in 1942.

20 Let us examine Tetteh Kobla's evidence as to boundaries, for it all depends on him. In the 1928 case he said that the lands he measured were those farmed by Kadabi, Nyami Yarbro and Benyadi; he described the land as Yartey's and Tetteh Kwei Molai's on the right, and Lamptey's, Kofi Vanderpuye's, Adenaja's, Nyotaben's, Nyami Yarbro's and Benyadi's on the left. There is conflicting evidence that some of the latter also farmed on the right.

30 In this case he said that adjoining owners were Tete Kwami (apparently on South of the pink area, but he contradicted himself for he also said Tete Kwami was to the North): Ajete (apparently on South-East or East); Okai Gbeke (apparently on North-East); and Tete Azau (apparently on the left of the road, to North-West of pink area). He could not explain coherently to the surveyor on the spot although I have seen for myself that one could point out nearly all the salient points from a spot on the main road. His oral evidence therefore does not help greatly. But there is evidence of the boundary that he showed on the spot in 1926; the evidence of Emma, Ana Tego and Okai Tego as well as Tetteh Kobla's own. The line was taken on the East and North-East corner very near to some old ruins which I saw myself and which were apparently the ruins of houses built by Kwatei, Kadabi and possibly
40 Nyami Yarbro. The Plaintiff's case as to boundaries must therefore be said to rest on the boundaries pointed out in 1926 by Tetteh Kobla. Incidentally there is evidence that at that time he asserted that Adams' land came up to the Okai Tiseh land but no further. Tetteh Kobla appeared to me to be a fair witness and not one who was trying to make out a specious case for the Plaintiff; although he is of the Plaintiff's family he did not seem biased.

50 I can find no evidence identifying "Awulu and others" whose land was said in the writ to be to the South; nor evidence identifying Okai Gbeke's on the North; to the North of the pink land Taylor would seem to be the adjoining owner. The description of "Nortei" and "Akrade" on the East does not coincide with Tetteh Kobla's evidence. Allowing

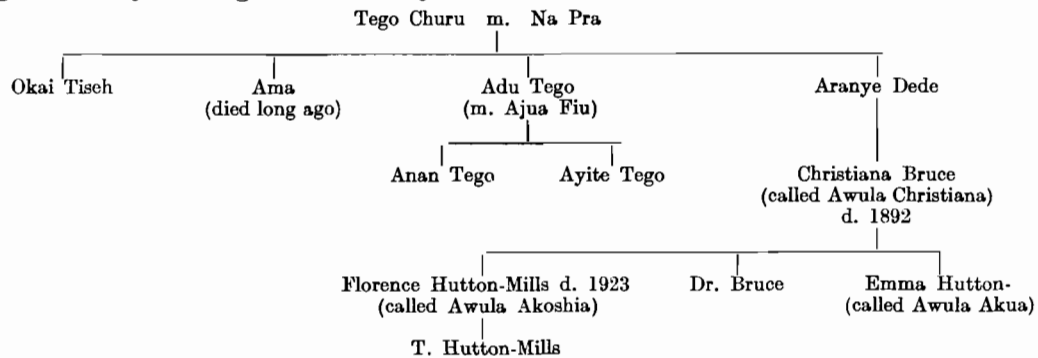
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for his advanced years, Tetteh Kobla's evidence seems unsatisfactory and does not suffice in my opinion to establish the Plaintiff's case so far as the boundaries are concerned. One is left with the impression that the line he showed in 1926 was fixed arbitrarily by him and lacked confirmation by the neighbours or any other persons interested.

(3) As to use and occupation, I have already dealt with this to some extent. Farming by Kadabi and other slaves is established. Also the picking of mangoes for many year by Tetteh Kobla or people under his directions and accounting by him for these to the Plaintiff's relatives. Did this include land on both sides of the road? The question of succession 10 arises here and it may be as well to define the evidence for the Plaintiff on that point: it is said, and I think established, that the line was as follows:—

Tego Churu by a slave woman Na Pra begat Okai Tiseh, Ama (who died without any effect on this matter), Adu Tego (who married a slave woman Ajua Fiu), and who later lived at Avenor village and begat Anan Tego and Ayite Tego and Aranye Dede. The tree is as follows:—



According to the evidence Okai Tiseh founded his own family with property of his own: his brother Adu Tego was not elected to succeed him as head because of eccentricity: his niece Christiana Bruce was his successor; she looked after the land, and exercised rights of ownership 30 by supervision of the slaves and dependents who worked it and brought produce to her from it. On her death Florence succeeded and did the same: on her death in 1923 Dr. Bruce was chosen head of the family and succeeded to the family property. Emma however took steps on his behalf to preserve the family rights, being more interested in the property than Dr. Bruce who up to 1926 had very little acquaintance with the subject. There is evidence, as I have said, that when she noticed encroachment by Adams, Emma took the steps already described. In 1938 Mr. Thomas Hutton-Mills exercised ownership by putting a watchman on the land with instructions to clear part of it. His man was removed 40 by somebody unknown.

Tetteh Kobla's evidence was not free from ambiguity on the point of use and occupation and needs to be considered in detail. The following are extracts from what he said in the 1928 case: that Kadabi was Okai Tiseh's slave; Kadabi's land after his death was farmed by Ashong without disturbance for 40 years: it would belong to Ashong if it was not claimed by the owner (Emma), but as she claimed it it was hers: by Ga custom a person farming the land could only acquire the right to the fruits of the trees he planted, not the land itself: he himself never

took charge of the land on the right; only that on the left, because he was told that Emma owned it: Kadabi acquired the land by custom because he fought for the Gas; by settling on it: by Ga custom a Ga citizen could acquire land by this means but not a stranger (apparently Kadabi himself was not a Ga): Emma was claiming the land as Kadabi's niece, not as descendant of Okai Tiseh: Kadabi had a hut on the hill on the right which he left to live in Avenor village: when he himself (Tetteh Kobla) went away from the land and came back Kadabi was dead and Adabu was looking after the land: When Kadabi died he
 10 (Tetteh Kobla) was given the land to look after.

In this case he said: Kadabi and the other slaves of Okai Tiseh farmed on the right: as well as the left: Adu Tego, Okai Tiseh's brother, used to come to the land (he lived at Avenor): Plaintiff's family had mangoes on both sides which were picked and used as theirs: Kwartei built on the site of Kadabi's ruined site on the right, as he was a Gbese man no one interfered with him. After Kadabi's death and Christiana's death he (Tetteh Kobla) was next caretaker and continued to live at Avenor: Dr. Bruce's ancestors got the land from the Ga people: Kadabi was Tego Churu's (Okai Tiseh's father's) slave and so were the other
 20 6 people named as Okai Tiseh's slaves: Kadabi was looking after Tego Churu's family land, the land claimed here: Asere Tego is the present head of the family: there was no stool attached to the Oshipi (the position occupied by Okai Tiseh): Asere Tego is in charge of the family property: Adams came to the land 17 years before the 1926-28 case, a Gbese man, so nobody interfered with him: he (Tetteh Kobla) had seen one pillar of Adams, but no sisal: Adams' land abutted on the Plaintiff's land: Nyami Yarbro had no hut on the hill on the right: he farmed on the left of the road near the water pipe.

I give these extracts at some length to show the inconsistencies. I
 30 have considered this evidence very carefully and my conclusion is that it is insufficient to discharge the onus that is on the Plaintiff. The evidence of the other witnesses to the effect that Okai Tiseh's dependents lived and farmed on the land edged pink cannot avail in face of the discrepancies in Tetteh Kobla's evidence. I consider that the Plaintiff's case of use and occupation fails. Without it he establish title for according to the evidence of tradition e.g. Ayi Bonte (Exhibit " 9 ") on the 1928 case, mere squatting does not confer title. No clear case even of squatting on the pink area has been made out. For it would seem that after Kadabi's hut and farm on the right was given up, the Plaintiff's family dependents farmed on the
 40 left and there is nothing satisfactory to show that the caretaker exercised even nominal supervision in the pink area.

(4) We now come to the Plaintiff's right to sue as head and representative of the Okai Tiseh family. He himself and others of the family gave evidence in support of his plea, that Okai Tiseh formed a separate family with property. Tetteh Kobla's evidence was to the contrary. As he is apparently the eldest of the family his evidence is entitled to a good deal of weight. It seems that as Okai Tiseh was the son of a woman of no family, any property he had would go to his father's family (Tego Churu) of which the present head is Asere Tego. It is true that Asere
 50 Tego was not called by the Defendants to assert any claim. But it cannot be said that the Plaintiff has made out this part of his case so as to discharge the onus of proof.

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It is not necessary to consider the Defendants' case at length since the Plaintiff has not established his case. It is sufficient to say that the Atukpai would appear to me to have no claim to the pink-edged land ; they stood aside and watched their alleged interest being litigated and made no claim until 1937 or 1938. Their claim seems to me to be entirely bogus and there is no satisfactory evidence of a grant by the Ga Manche Teki Komi as they claim. The fact that Atukpai people live in the adjoining villages—Akrade and Kokomlemle—does not prove their title to this land. There were discrepancies in their claim : they began by saying it was a direct grant from Teki Komi, later they altered it to say it was made with the approval of the Korle Priest (this had never been suggested in the 1926–28 case), and later a witness, the Nai priest, said it was made with the permission of the then Nai priest. The evidence was that the founder of Akrade village, Tete Churu, an Atukpai man, was given the grant in 1827 : but that the village he lived in (Akrade) was founded in 1893. The grant to Kwartei was shown to have been made by the Korle priest, while the Defendants' case was that it was made by the Atukpai 35 years ago. Clearly the Atukpai only made the conveyance to Hammond (Kwartei's successor) for purposes of their own in 1941. It is not registered. 10

There was a discrepancy as to the northern boundary of the larger green area : it was claimed as theirs ; but it is clear that Lutterodt and Reindorf had grants many years ago out of this area, and apparently not from the Atukpai. A number of other grants purporting to have been made by the Atukpai in the green area were brought in issue. Although they do not affect this case, I may say that I was not at all impressed with their validity. 20

As regards the 2nd Defendant's case it is only necessary to say that the Plaintiff has failed to establish his case against him. But I cannot see that 2nd Defendant's title through the Atukpai could have held water if the Plaintiff's claim had been established. In the 1928 case Adams claimed title from the Korle priest : it is clear that Adams had asserted title to the land long ago and had marked his boundaries with pillars and sisal plants on the Northern and Southern boundaries. The sisal has spread but it can be seen where the original plants were. 30

So far as the pink-edged area is concerned, probably with the exception of Hammond's portion (in respect of which there is a grant from the Korle priest), title would seem to remain in the Gbese stool, and their caretakers the Korle Webii. This however is not directly in issue and is merely an expression of opinion. 40

The Plaintiff is non-suited and the action dismissed with costs, as regards his claim to the portion on the right of the road.

Costs of the application for the interim injunction are granted to the Defendants.

Counsel's costs assessed at 85 guineas for each Defendant : Remainder to be taxed.

(Sgd.) C. A. G. Lane,
Judge.

1st December, 1942.

Counsel :—

Mr. J. H. Coussey for Plaintiff.

Mr. F. Dove (with him Mr. N. A. Ollennu) for 1st Defendant.

Mr. A. M. Akiwumi for 2nd Defendant.

50

No. 43.
GROUNDS OF APPEAL.

FORM II.

IN THE WEST AFRICAN COURT OF APPEAL.

Between DR. F. V. NANKA-BRUCE of Accra &c.

Appellant

and

TETTEY GBEKE &c. of Accra and A. A.

ALLOTEY of Accra

Respondents.

*In the
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No. 43.
Grounds of
Appeal,
29th March
1943.

10 THE APPELLANT, being dissatisfied with the Judgment of the Divisional Court, Accra, on the 1st day of December, 1942, and having obtained final leave to appeal therefrom dated the 23rd day of March, 1943, hereby appeals to the West African Court of Appeal upon the grounds hereinafter set forth.

GROUNDS OF APPEAL.

1. The Judgment of the learned Trial Judge was against the weight of evidence.

2. The Judgment was wrong in law, in that the learned Trial Judge failed to exercise his discretion judicially by non-suiting the Plaintiff instead of giving judgment for him, in view of his findings on the 20 accomplished facts relating to the following matters:—

(i) The Grant.

(ii) The extent of any such grant, i.e. its boundaries.

(iii) The use and occupation by Plaintiff's family.

(iv) The Plaintiff's right to sue.

3. The learned Trial Judge misdirected himself in law on the question of Tradition, in holding that there was a mere right of squatting on the land and not an absolute grant of the said land by the Gbese Stool and the Korle Webii to the Plaintiff's ancestor, Okai Tiseh—BECAUSE the learned Trial Judge found *inter alia*, and as a fact, that—

30 (A) "Okai Tiseh got permission for his or his father's slaves to squat there."

(B) "Kadabi built on the right of the road and farmed there for a time etc."

(C) "The land claimed by Emma in 1926 . . . was the land that had been originally farmed by the slaves."

(D) "Their cultivation has been shifting."

As to Use and Occupation, the learned Trial Judge found that—

(E) "Farming by Kadabi and other slaves is established etc. etc."

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(F) “ Mr. Thomas Hutton-Mills exercised ownership . . . on
“ the land etc.”

(G) “ It seems clear that the Plaintiff’s family have consistently
“ exercised rights of ownership in respect of some of the land . . . ”

(H) “ They (Plaintiff’s family) upheld their rights in the
“ 1926–28 case so far as the Korle Webii were concerned.”

(I) “ The Korle people appeared to have collected tolls in some
“ cases from squatters ; there is no evidence that they (Korle
“ Webii) did so in regard to this land.”

4. That according to the Ga law of Succession, the learned Trial 10
Judge was wrong in holding that “ the Plaintiff had failed to show that he
“ is the Head and the proper Representative of Okai Tiseh’s family and
“ that Asere Teiko is the Head and the proper person to sue.”

5. The Judgment of the learned Trial Judge was otherwise erroneous
and contrary to law.

6. The learned Trial Judge having found against the Defendants was
wrong in law in exercising his discretion by awarding them costs against
the Plaintiff.

7. The learned Trial Judge, in view of the Judgment of the
Divisional Court given in the 1926–28 case in favour of the Plaintiff as 20
against the Korle Webii (the Plaintiff’s ancestor’s grantors) in respect of
the same land, the subject-matter of the above suit, should not have
non-suited the Plaintiff and dismissed the action with costs as regards the
Plaintiff’s claim to the portion of the land on the right of the road shown
within the pink-edged area on the Plan.

Dated this 29th day of March, 1943.

T. Hutton-Mills,

Counsel for Appellant.

The Registrar, Divisional Court, Accra, and To Tettey Gbeke &c. and
A. A. Allotey, the above-named Respondents, their Solicitors or 30
Agents, Accra.

No. 44.

COURT NOTES of Arguments.

IN THE WEST AFRICAN COURT OF APPEAL.

Gold Coast Session, held at Victoriaborg, Accra, on
Thursday, the 24th day of February, 1944.

*In the
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No. 44.
Court
Notes of
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24th, 25th
and 28th
February
1944.

Before

Their Honours Sir Donald Kingdon, C.J. Nigeria (President),
Sir George Graham Paul, C.J. Sierra Leone and
Alfred Noel Doorly, Ag. C.J. Gold Coast.

10 Civil Appeal.

Dr. F. V. NANKA-BRUCE of Accra as Head
and Representative of the Family of
Okai Tiseh, late of Accra - - - Plaintiff-Appellant

versus

TETTEY GBEKE as Representative of all
others the members of the Atukpai family
of Accra, and A. A. ALLOTEY of Accra Defendants-Respondents.

Appeal from Judgment of Lane, J., dated 1st December, 1942.

E. C. Quist (with him T. Hutton-Mills) for Appellant.

20 Frans Dove for 1st Respondent (with him N. A. Ollennu).

A. M. Akiwumi for 2nd Respondent.

Quist :—

Judgment—pages - .

Grounds of Appeal—pages 111–112 and Amended Grounds 5.

Writ page 1.

Grounds 1, 2 and 3 together.

I submit that the Judge's conclusions on which he based his decision are inconsistent with his own findings of fact and also against the weight of evidence.

30 *First as to the grant* : See page 36—Emma Hutton-Mills. Pages 42–43—Jacobson. That is important evidence by a member of grantor family but Judge ignored it. Page 44, paragraph 4. Very pertinent evidence by a person who ought to know family tradition.

Evidence of Appellant page 49.

Page 26 Tetteh Kobla.

I submit that in the circumstances of grant (made in 1850's or 60's) we could not give better evidence of this. The tradition is supported by circumstances.

See Judgment pages 102, 103.

40 See evidence of Kobla, pages 23, 24.

Judge found use and occupation by Plaintiff without payment of tolls, that supports Plaintiff's case. Even if they were squatters the exercise of acts of ownership, use and dominion over the land would ripen

For
Appellant.

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into ownership good against all the world but the true owner or the true grantor. And both sides claim through the Korle Webii. (Dove says this not so.) And we succeeded against the Korle Webii in the 1928 action, who we said had granted it to us and they were trying to take it from us. They are the true grantors. See 13 Halsbury (1st Edn.), p. 441, paragraph 615.

(Court : but this is governed by Native Law and Custom—not English law.)

See page 105 Judgment. (Court refers to judgment in 1926 case.) Agreed the land in dispute is the same as now. (Dove disputes this.) 10 See page 6. (Dove : at that time there was no plan to enable people to know.) See also pages 24–25.

Court : Any cross-examination as to that? *Dove*—See page 25.

The Respondents put in openings, evidence and argument in the 1926 case—How could they do it if the land is not the same? (Dove : Part of the land—yes—not all—The part claimed by Adams now by Allotey was not in dispute in first action—the rest of the land was so far as I can tell.)

See Jacobson's evidence, page 43. Bruce's evidence, pages 48, . Plaintiffs claim land on both sides of road under one grant. Judge found 20 we must succeed as regards the left side. How can he say it was good on the left and not good on the right. I submit the evidence was such as should have satisfied the Judge and should satisfy anybody.

As to second point—the area and boundaries :

I submit there was sufficient evidence to identify the land. A Court only refuses to grant a declaration of title when the land cannot be identified.

Exhibit 1 definitely demarcates the land.

See also evidence of Kobla, pages 24–27.

Tagoe's evidence pages 34–35, Jacobson page . Sufficient identifi- 30 cation. Bruce's evidence page 48.

(A short adjournment.)

(Sgd.) Donald Kingdon,
President.

24th Feb. 1944.

Quist continues :—

Third Point : Use and occupation pages . C/f. page .
See evidence of Emma pages . Togoe's evidence pages . Akoshia's
evidence pages . Bruce page .

Fourthly : *Plaintiff's right to sue, and Ground 4*—See page . See 40
Dove's opening page 89.

On Judge's own findings and own table Bruce is the proper person to sue as head.

Judge's view that property went to Tego Churu's family is against decision in the Courts (resting on slavery). See evidence pages .
I admit his answers in cross-examination contradict his evidence-in-chief,

but he was an old man of 90 and words were put into his mouth in cross-examination.

See evidence of Emma Hutton-Mills pages 33, 35, 39.

Bruce's evidence pages 47-53.

There is abundant evidence that Okai Tiseh founded his own family and that can be done according to Ga custom. *Larkai v. Amorkor*, 1 W.A.C.A. p. 323 at 330. Griffith's Digest column 59—Ga custom.

I submit Judge was misled by Akiwumi's submissions pages 93-94. Authorities are against proposition that property goes to father's family.

10

Adjournment till 25th instant.

(Sgd.) Donald Kingdon,

President.

24th February, 1944.

25th February, 1944.

Quist continues :—

If it is alleged that by native custom when a man marries a slave woman his property on his death goes to his family and not to his descendants by her, I submit that that is based on slavery and will not be recognised by these Courts.

20

See page 47.

By ordinary custom when a man dies his property goes to his uterine brothers and sister. A woman's property goes to her children. So Okai Tiseh's property would go to Na Pra's other children.

Sarbah's Fanti Customary Laws (1st Ed.) p. 255/6 : paragraph 10 : paragraph 13 (2nd Ed. p. 274).

(C.J. Sierra Leone draws attention to evidence of Nii Ayi Ansah p. 47.)

Dampney v. Affram, 1 W.A.C.A., 12-14.

30

(In answer to C.J. Sierra Leone)—Okai Tiseh died in 1880. (Note : Slavery Abolition Act was 1883. Gold Coast Emancipation Ordinance 1874.)

In this case the property of Okai Tiseh went to his brothers and sisters it never went to his uncles and aunts, so there was no question of the 1883 Act having to have retrospective effect to affect the succession.

40

See page —The Ga Manche's Tribunal has decided in favour of the Appellants that they had a right to Okai Tiseh's land and not Okai Tiseh's uncles and aunts. See page line . Refers to two separate plots. Land the subject-matter of this suit has never been claimed but the house still on the land was claimed by them and they lost and the land is now in hands of Appellants. By the Judgment in Tribunal Appellant has established that Okai Tiseh founded a separate family.

In 1926-28 Korle Webii were claiming a declaration of title to the land, if the Teiko Churu family had a claim, Korle Webii would have known and brought them in, but they did not. Korle Webii wanted a declaration to bind claimants to property ; if Teiko Churu had rights a declaration against Okai Tiseh would not bind Teiko Churu. That is very significant.

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There is evidence that Tiseh was a "Shippi." If he was of no family or a slave, he would not have risen to that position. He was a Ga man and subject to Ga Native Law and as a Shippi his property would descend according to Ga Law. *Lutterodt v. Anangfio* (1915) D. & F. 11-16 page 78.

There is ample evidence that Dr. Bruce was made head of the family. Pages 35, 36, 38, 47, 48, 50, 52. Ground 5 (a) largely covered.

Judge says Asere Tego (head of Aneji family) was not called and has not made any claim, but 2nd Defendant has set up this plea that property is in Asere Tego against Appellants, whilst he himself does not claim under that right. 10

(C.J. Sierra Leone refers to .) See .

(C.J. Sierra Leone—That is not strictly a plea of Jus Tertii.)

I submit Judge could not give alleged rights of Teiko Churu family as reason for non-suiting. Defendants did not plead that. Defendant (p.) claimed through the Atukpai Stool. Judge so found (p.) and found against that claim. *Glenwood Lumber Co. v. Phillips*, L.R., A.C. 1904, p. 405 at 410. If the party cannot set it up the Court cannot apply it. I won't labour that point.

5 (b). See page . The principle is applicable only to cases of possession. Where Plaintiff admits he is out of possession and Defendant 20 is in possession. This is English Law, the maxim only applies as I have said.

24 Halsbury (1st Ed.) page 328 paragraph 609.

Here the facts are different. Judge found acts of occupation and use and exercise of dominion in favour of Plaintiffs—which show that they were in possession. It was not shown that Atukpai people are or ever have been in possession. See page and —Their case entirely bogus. So 1st Defendant will be defeated on that principle. Plaintiff only has to show possession or that he is entitled to possession and then he should succeed. He is entitled to succeed against all the world except the true 30 owner. 13 Halsbury (1st Ed.) page 441 at paragraph 615. As to 2nd Defendant it appears from the plan that he is in possession of part of the property. See page . Where two persons allege possession—the one with no title is in law a wrongdoer, a trespasser and in law is not viewed as being in possession. Clerk and Lindsell on Torts (8th Ed.) page 303.

Of 2nd Defendant and Plaintiff the one who can show title is the person regarded by law as being in possession. 2nd Defendant's title has been rejected by Court at page 110.

As to Plaintiff's case we submit that there is abundant evidence of possession—of acts of ownership. 40

I submit that by evidence of tradition and evidence of possession and acts of ownership and by effects of Judgment of 1928 which operates on merits, and from finding of Judge that Defendants have no title, the title of Appellants was established to such an extent as would justify Court to grant declaration sought.

If Judge non-suits Plaintiffs and then says Defendants have no title, and the Plaintiffs whom he non-suits have got a judgment against alleged true owners—to whom does the land go? Is it no man's land?

Appellants are I submit entitled to a declaration and Judgment of non-suit was wrong.

As to phraseology of judgment—Non-suit and dismissal—it appears inconsistent.

Ground 7 covered.

Ground 6.—Costs are in discretion of Court, but here where Judge definitely finds against Defendants that they have no title, even if he non-suits Plaintiffs he should not have mulcted Appellants in costs. Judge found case was provoked by Defendants i.e. 1st Defendant gave conveyance to 2nd Defendant and 2nd Defendant parcelled land out to others. See page 103 top. It was conduct of Defendants which compelled Plaintiffs to institute action. (Court refers to *Larkai v. Amorkor (supra)* page 328.) That is on all fours. I submit that on its authority we should not be mulcted in costs.

(In answer to C.J. Sierra Leone) Judgment of Hall, J. (Ex. 7) relates to land within the green area in this case. Atukpai's claimed and got nothing. But they did not claim much showing their present claim is bogus.

I submit Appellant is entitled to the declaration he seeks.

20 (A short adjournment.) On resumption :—

Dove for 1st Respondent :—

Grounds 1, 2, and 3 and 4. Quist has submitted that Judge was wrong on certain findings. I submit he was wrong on others.

Judge found Appellant had failed to establish his case, was not entitled to make any other findings—any such were *obiter dicta* relating to Defendants and third parties. They could not operate as *res judicata* against us. Most of the findings against Defendants are clearly wrong. See Surveyor's evidence pages 20 and 22—definite evidence of occupation by somebody claiming through 2nd Defendant. See pages 70–82—shows Atukpai's in occupation of the land before and at the time of the trial.

Page , paragraph 3. Page —witness for Plaintiff. Page . Plaintiff relied on Kobla's evidence. See pages / . We say evidence for Plaintiff did not affect right side of road. No neighbour to land claimed by Plaintiff was ever called to support Plaintiff's claim.

Emma Bruce tried to collect them but nobody came.

Judge said he was not satisfied with Plaintiff's case so far as the boundaries are concerned.

I submit that Judge was right in his conclusions at page 108.

40 *As to Plaintiff's right to sue :* Judge did not decide that Appellant lost land which they claimed originally belonged to Okai Tiseh. Even if Judge had found he had a right to sue, he would still have non-suited.

See opening by Coussey page 16. Okai Tiseh died in 1860's. Long before Emancipation Ordinance and Slavery Abolition Ordinance. He was a member of his father's family and any property he had would be the property of his father's family. See evidence of Emma page 38.

In 1860 there was no Supreme Court and no Legislature.

(C.J. Sierra Leone points to Supreme Court Ordinance 1853.) See Cap. 92 (1874).

*In the
West
African
Court of
Appeal.*

No. 44.
Court
Notes of
Arguments,
24th, 25th
and 28th
February
1944,
continued.

For First
Respondent

*In the
West
African
Court of
Appeal.*

No. 44.
Court
Notes of
Arguments,
24th, 25th
and 28th
February
1944,
continued.

Plaintiff's claim probably originated through Kadabi. The head of the family of Tego Churu never claimed the property so it was probably never the property of Okai Tiseh. There was nothing to prevent Supreme Court from deciding that proper person to claim in respect of Okai Tiseh's property is head of Tego Churu's family.

See evidence of Gbese Manche 165 at .

The onus was on Appellant to establish his right to sue. Not on Defendants to prove the contrary. Cases quoted by Quist have no application. They happened in recent years since abolition of slavery. *Amba v. Libra* F.C. 26-29 at page 244. 10

Adjourned till 28th instant.

(Sgd.) Donald Kingdon,
President.

28th February, 1944.

Dove continues—

Appellant did not know much about the land in question. See pages 48-52, in 1928 he had been head of family for about 5 years.

Page Evidence of Emma Hutton-Mills.

Page Tetteh Kobla.

In case of *Molai v. Bruce* page Exhibit F (1928) present Plaintiff 20 did not defend as head of Okai Tiseh family see page . Emma and he were acting then as though they were joint owners or successors to the property. If he claimed as head of the family—the defence would have been different. This must have influenced the learned Judge as to absence of right to sue.

Right to sue does not affect ownership of the land. Judge made separate findings on the different points. Even if Judge had found Appellant was right person to sue, he would nevertheless have non-suited on the other grounds. See Judgment pages 109-110 last paragraph. I submit this is only opinion of the Judge and *obiter dicta*. 30

Ground 6.—I submit Judge found against Appellants on all four matters. This appeal as to costs is only in relation to one of the four matters.

This case differs from *Larkai v. Amorkor* (*supra*) in that respect.

(Graham Paul, C.J. Sierra Leone points out that in *Larkai's* case the Appeal Court changed the judgment from dismissal to non-suit, so the question of costs in the event of a non-suit had not been considered by the lower Court. Here the lower Court had non-suited and exercised its discretion.)

Plaintiff has brought us into Court, by the ordinary rule of law we 40 are entitled to our costs. No misconduct suggested.

Allotey (2nd Defendant) *v. Tetteh Gbeke* (1st Defendant) in Gbese Tribunal in 1928.

See page .

Ground 7—covered.

Akiwumi for 2nd Respondent.

I associate myself with Dove's argument. I wish to draw attention to certain points in the evidence. The Appellant knows nothing of the land himself. His sister also knows nothing of the land herself. Other points are repetitions.

(A short adjournment.)

On resumption :—

Quist in reply—

As to findings page I submit Judge was competent to make that
10 finding. He made a distinct finding about the pink area in dispute. The title to that area was in issue. He held Defendants had "no claim to the pink edged land." As to the large area the Judge only considered it as he was entitled to in arriving at a decision as regards the pink area.

There is no cross appeal.

(In answer to C.J., Sierra Leone): I do not suggest that the finding as regards the pink area operates as *res judicata* to estop Defendants claiming title to the pink area. Re surveyor's evidence page 20—"right side" but not shown to be land in dispute.

See evidence of Kobla page 26—planted mangoes "on both sides of
20 the road on the land."

See pages 153, , Exhibits 2 and 3—Atukpais made no claim. See evidence of Aryee—page 56, line . Page 65, line 1—2nd Defendant's own evidence.

As to boundaries—See page 24, finding of Judge paragraph 2. See writ page 1 and evidence of Kobla page 24, line 30, p. . Ankrade is referred to on plan and Odor Stream. Bruce's evidence page 48. Jacobson page , line . Test is, Can the land be identified? Judge does not say it cannot.

Karama v. Aselemi, 4 W.A.C.A., p. 150 at 152.

30 There was no allegation that the property went to Okai Tiseh's father's family. On the contrary there is evidence that property went to Okai Tiseh's sister—his brother being passed over. It decended through his sister to the Appellants.

There are three outstanding facts to be considered :—The Tego Churu family are Gbeses. They were never made parties to the 1926/28 case; see evidence page 38—established that Okai Tiseh's family was a separate entity owning its own property.

See page 26. Shows Asere Teiko was available.

(Dove says it was a different Asere Teiko—a man now in Court—This
40 appears to be the case.)

Quist—I concede that—but it cannot be denied that Asere Teiko is alive and was in Accra and could have been called and was not.

As to right to sue—I submit we proved that abundantly. If they disputed that, they would have called Asere Teiko.

As to 1926/28 case and Plaintiff not defending it as head of family, writ shows they were sued as individuals and they defended in the capacity

*In the
West
African
Court of
Appeal.*

No. 44.
Court
Notes of
Arguments,
24th, 25th
and 28th
February
1944,
continued.
For Second
Respondent
Reply for
Appellant.

In the West African Court of Appeal. in which they were sued. But see page . They defended through their "ancestor" Okai Tiseh.

As to Costs: I submit that the principle on which Appeal Court decided in *Larkai's* case applies to this case. The circumstances are practically the same.

No. 44.
Court
Notes of
Arguments,
24th, 25th
and 28th
February
1944,
continued.

Judgment reserved.

(Sgd.) Donald Kingdon,
President.

28th February, 1944.

No. 45.
Judgment,
Kingdon,
C.J.,
Nigeria,
7th March
1944.

No. 45.
JUDGMENT.

10

7th March, 1944.

IN THE WEST AFRICAN COURT OF APPEAL, Gold Coast Session, held at Victoriaborg, Accra, on Tuesday the 7th day of March, 1944 : before THEIR HONOURS SIR DONALD KINGDON, C.J. Nigeria (President), SIR GEORGE GRAHAM PAUL, C.J. Sierra Leone and ALFRED NOEL DOORLY, Ag. C.J. Gold Coast.

Dr. F. V. NANKA-BRUCE of Accra, as head and Representative of the Family of Okai Tiseh, Late of Accra - Plaintiff-Appellant 20

versus

TETTEY GBEKE as Representative of all others the members of the Atukpai Family of Accra, and A. A. ALLOTEY of Accra Defendants-Respondents.

JUDGMENT

Read by the President.

The Plaintiff-Appellant filed the following claim in the Tribunal of the Paramount Chief of the Ga State :—

“ The Plaintiff's claim is for a declaration that all that land
“ situate between Avenor and Akalade Villages, Accra, bounded 30
“ on the North by lands of Tetteh Azau and Okai Gbeke respectively,
“ on the South by land of Awulu and others, on the East by land
“ of Norteye and Akaladi, and on the West by Odaw or Odor
“ Stream is the property of the Family of Okai Tiseh of which the
“ Plaintiff is the head.

“ The Plaintiff further claims an Injunction restraining the
“ Defendants their servants and agents from trespassing on or
“ erecting buildings on the said land or interfering with the
“ Plaintiff's Title thereto.”

The suit was transferred to the Divisional Court of the Eastern Province for hearing and determination. There were no pleadings, but on the case coming on for hearing Plaintiff's Counsel opened his case stating that Plaintiff sued as head and representative of the family of Okai Tiseh who died in the 1860's, and was of the Gbese quarter of Accra, one of the six quarters having stools; that the land which the Plaintiff now claims was granted orally some time in the late 1850's or 1860's to Okai Tiseh by one Nii Addu, the then Korle Priest, who had power to grant land outside Accra to individuals since he was the head of the Korle Webii, or Korle family who were caretakers of the land outside Accra. The land so claimed is shown edged brown on the plan figuring in the case as Exhibit 1; it is about three miles from Accra on the Accra-Nsawam Road and on each side of the road. The Defendants did not join issue in regard to the area west of the road, they made no claim to that, but they disputed the Plaintiff's right to any of the land claimed east of the road, the 1st Defendant alleging it to be part of a much larger area shown edged green on Exhibit 1, all of which belonged to the Atukpai family, and the 2nd Defendant claiming the portion edged blue in Exhibit 1 (which partly but not wholly overlaps the Plaintiff's claim) by virtue of a grant from the Atukpai stool to one J. H. Adams to whom he is successor.

The area in dispute is edged pink in Exhibit 1.

Continuing his opening Counsel for Plaintiff alleged that one Kadabi, a slave of Okai Tiseh, farmed the land claimed and built a "swish" house on it. On Kadabi's death about 1880, the land was used for a time for farming by members of Okai Tiseh's family, and later a caretaker, named Tetteh Kobla, was put in charge. In 1926 the Korle Webii tried to get the land back from the Okai Tiseh family then represented by the present Plaintiff's sister Emma, the Plaintiff himself and Tetteh Koblak as caretaker. They instituted a suit in the Ga Mantse's Tribunal which was transferred to the Divisional Court, Accra and tried by Yates, J. who by his judgment given in 1928 non-suited the Plaintiff, Tetteh Kwei Molai, claiming for himself and as the Representative of other members of the Korle Webii. It is common ground that the area of land in dispute in that case covered the area in dispute in the present case, and Plaintiff's Counsel alleged that throughout the 1926-28 case neither the present 1st Defendant nor his predecessors suggested that the land in dispute belonged to the Atukpai family. In addition Plaintiff's Counsel alleged acts of ownership.

The defence put up by the Defendants in their opening was that the land was attached to the Atukpai stool which is a section of Gbese which is a division of Ga State; the original grant was made by the then Ga Mantse, Nii Tackie Komey, about 100 years ago to the Atukpai stool and the Atukpai people had been in occupation ever since; that they were not a party to the 1926-28 case and did not know of it; that about 35 years ago the Atukpai stool gave to J. H. Adams the area now claimed by 2nd Defendant as Adams' successor; the second Defendant further alleged that the Plaintiff was not the head of the Okai Tiseh family and was not the right person to sue, and that the land in dispute never belonged to Okai Tiseh, and was never occupied by him or anybody for him.

The learned trial Judge held, in effect, that the Atukpai had no claim to the land in dispute and consequently the 2nd Defendant's claim

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No. 45.
Judgment,
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1944,
continued.

was also bad. We agree with that finding. But on the principle that the Plaintiff must succeed on the strength of his own title and not on the weakness of the Defendants' the Judge considered the Plaintiff's case with great care and at considerable length under four headings, viz.:—

“ (1) the grant.

“ (2) the extent of any such grant i.e. its boundaries.

“ (3) use and occupation by the Plaintiff's family.

“ (4) the Plaintiff's right to sue.”

As to the grant he held :—

“ That on Tetteh Kobla's evidence, together with what other 10
“ evidence is available, there is no clear evidence of a direct grant
“ to Okai Tiseh : merely evidence of permission to him for his
“ slaves to squat on the land, that the slaves did so, and that
“ members of the family visited the land, that the fruits of the soil
“ were taken to the Plaintiff's family and rights of ownership
“ exercised.”

As to the boundaries, after saying “ Tetteh Kobla's evidence is the
“ lynch-pin of the case ” the learned trial Judge held :—

“ Allowing for his advanced years, Tetteh Kobla's evidence
“ seems unsatisfactory and does not suffice in my opinion to 20
“ establish the Plaintiff's case so far as the boundaries are
“ concerned.”

Upon the question of use and occupation the learned trial Judge's
finding was :—

“ I consider that the Plaintiff's case of use and occupation
“ fails.”

As regards the Plaintiff's right to sue he said :—

“ It cannot be said that the Plaintiff has made out this part
“ of his case so as to discharge the onus of proof.”

He then gave his decision in the following terms :—

“ The Plaintiff is non-suited and the action dismissed with
“ costs, as regards his claim to the portion on the right of the road.”

That appears to us to be inconsistent, and we are of opinion that on his
findings the learned Trial Judge should have merely non-suited the
Plaintiff with costs, as regards his claim to the portion on the right (i.e. to
the East) of the road and should not have included the words dismissing
the action.

The appeal to this Court is mainly on the facts, though in his grounds
of appeal the Appellant disguises this by allegations of error in law and
misdirection. In coming to this Court the Plaintiff is attempting a 40
difficult task and inviting this Court to take a heavy responsibility, namely
to override the learned trial Judge's findings that he was not satisfied
that the Plaintiff had proved his case and to say that the evidence is so
strong for the Plaintiff that the Judge ought to have been satisfied and
given judgment for the Plaintiff. The evidence would require to be very
strong indeed to justify our taking that course without having had the
advantage of seeing and hearing the witnesses. It is sufficient to say
that having listened to the full and able argument of Appellant's Counsel

and having examined the whole of the evidence with great care we think that there was ample evidence to justify the learned trial Judge in all his findings and in his refusal to be satisfied that the Plaintiff had made out a good case for the declaration and other relief sought. The appeal must accordingly fail.

*In the
West
African
Court of
Appeal.*

10 One ground of appeal attacks the award of costs to the Respondents in the lower Court, the Appellant suggesting that this case is on all fours with the case of *Larkai v. Amorkor* (1 W.A.C.A. p. 323) in which this Court disallowed the Defendants' costs. But the cases are not quite on all fours. In *Larkai v. Amorkor* the lower Court had not exercised any discretion in the matter of costs, but here the lower Court has exercised its discretion and decided to allow costs to the Defendants. We find no sufficient ground for interfering with the manner in which that discretion was exercised.

No. 45.
Judgment,
Kingdon,
C.J.,
Nigeria,
7th March
1944,
continued.

It is ordered that the judgment of the Court below be amended by deleting therefrom the words "and the action dismissed." Subject to this amendment the appeal is dismissed with costs assessed at £72.12.6 in favour of the 1st Respondent and at £72.12.6 in favour of the 2nd Respondent.

20

7th March, 1944.

(Sgd.) Donald Kingdon,

President.

(Sgd.) G. Graham Paul,

Chief Justice, Sierra Leone.

(Sgd.) A. N. Doorly,

Ag. Chief Justice, Gold Coast.

Counsel :

Mr. E. C. Quist (with him Mr. T. Hutton-Mills) for Appellant.

Mr. Frans Dove (with him Mr. N. A. Ollennu) for 1st Respondent.

Mr. A. M. Akiwumi for 2nd Respondent.

*In the
West
African
Court of
Appeal.*

No. 46.

CERTIFICATE of the Order of the West African Court of Appeal.

**CERTIFICATE OF THE ORDER OF THE COURT IN THE WEST
AFRICAN COURT OF APPEAL.**

No. 46.
Certificate
of the
Order of
the West
African
Court of
Appeal,
7th March
1944.

Appeal from the Judgment of Lane, J. of the Divisional Court of the Eastern Province, Accra, dated the 1st day of December, 1942.

DR. F. V. NANKA-BRUCE of Accra, as Head and
Representative of the Family of Okai Tiseh, late of
Accra - - - - - Appellant

versus

10

TETTEH GBEKE as Representative of all others the
members of the Atukpai Family of Accra, and A. A.
ALLOTEY of Accra - - - Respondents.

This appeal coming on for hearing on the 24th, 25th and 28th days of February and the 7th day of March, 1944, before Kingdon, C.J. Nigeria (President), Graham Paul, C.J. Sierra Leone and Doorly, Ag. C.J. Gold Coast, in the presence of Mr. E. C. Quist (with him Mr. T. Hutton-Mills) for the Appellant, Mr. Frans Dove (with him Mr. N. A. Ollennu) for the first Respondent and Mr. A. M. Akiwumi for the second Respondent

I HEREBY CERTIFY that a Judgment was given as follows :— 20

It is ordered that the judgment of the Court below be amended by deleting therefrom the words "and the action dismissed." Subject to this amendment the appeal is dismissed with costs assessed at £72 12s. 6d. in favour of the 1st Respondent and at £72 12s. 6d. in favour of the 2nd Respondent.

The Court below to carry out.

Given under my hand and the seal of the Court this 7th day of March, 1944.

(L.S.)

(Sgd.) Donald Kingdon,
President.



No. 47.

ORDER Granting Final Leave to Appeal to His Majesty in Council.

*In the
West
African
Court of
Appeal.*

31st January 1945.

IN THE WEST AFRICAN COURT OF APPEAL, Gold Coast Session held at Victoriaborg, Accra on Wednesday the 31st day of January, 1945, before THEIR HONOURS SIR WALTER HARRAGIN, C.J., Gold Coast (Presiding), ALFRED NOEL DOORLY and LESLIE ERNEST VIVIAN M'CARNEY, JJ., Gold Coast.

No. 47.
Order
Granting
Final
Leave to
Appeal to
H.M. in
Council,
31st
January
1945.

10 DR. F. V. NANKA-BRUCE of Accra as Head and Representative of the family of Okai Tiseh late of Accra
Appellant to Privy Council

V.

TETTEY GBEKE as Representative of all others the members of the Atukpai Family of Accra and A. A. ALLOTEY of Accra

Respondents to the Privy Council.

Motion on notice for and on behalf of the Appellant herein for an order for final leave to appeal to Privy Council.

Mr. Hutton-Mills for Appellant.

20 Final leave to appeal to Privy Council granted.

ORDER IN COUNCIL restoring Appeal.

AT THE COURT AT BUCKINGHAM PALACE

The 26th day of November, 1948

Present

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

MR. ISAACS

LORD CHAMBERLAIN

MR. STRAUSS

*In the
Privy
Council.*No. 48
Order in
Council
restoring
Appeal,
26th
November
1948.

Whereas there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 15th day of November 1948 in the words following, viz. :—

“ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Appellant in the matter of an Appeal from the West African Court of Appeal (Gold Coast Session) between Dr. F. V. Nanka Bruce of Accra as Head and Representative of the Family of Okai Tiseh late of Accra (Plaintiff-Appellant) and Tettey Gbeke as Representative of all others the members of the Atukpai Family of Accra and A. A. Allotey of Accra (Defendants-Respondents) setting forth : that this is a 20
Petition praying that an Appeal to Your Majesty in Council from a Judgment of the Court of Appeal brought by the Petitioner and which under Rule 34 stands dismissed for non-prosecution should be restored : that on the 24th March 1942 the Appellant (as Plaintiff) by Civil Summons instituted Suit No. 102 of 1942 in the Native Tribunal of the Paramount Chief of the Ga State Eastern Province Gold Coast Colony against the Respondents (as Defendants) : that he claimed (1) a declaration that all that land situate between Avenor and Akalade villages in the District of Accra bounded on the north by the lands of Tetteh Azau and 30
Okai Gbeke respectively on the south by the land of Awulu and others on the east by land of Norteye and Akaladi and on the west by Odaw or Ador stream is the property of the Family of Okai Tiseh of which he is the head (2) an injunction restraining the Defendants their servants and agents from trespassing or erecting buildings on the said land or interfering with his title thereto : and reciting the course of the litigation down to the Judgment of the Court of Appeal of the 7th March 1944 : that on the 31st January 1945 an Order granting final leave to appeal to Your Majesty in Council was made by the Court of Appeal : that on or about the 25th May 1945 the 40
Manuscript Record in the case was received in the Privy Council Office London and the Appeal was registered as Privy Council Appeal No. 42 of 1945 : that appearance was entered by the Appellant's Solicitors on the 1st June 1945 and by the first Respondent's Solicitors on the 4th June 1945 : that no appearance has ever been entered on behalf of the second Respondent : that

after delays due largely to the post war staff difficulties of the Appellant's Solicitors on the 10th June 1947 the Appellant's local legal adviser was given an estimate of the cost of conducting the Appeal including the estimate of £304 for printing the Record : that at the same time he was informed that the printing was a pressing matter : that on the 3rd July 1947 a request was made for a remittance of £400 so that the printing might be put in hand but no reply was received : that on the 9th January 1948 the Appellant's Solicitors wrote to the Appellant himself and asked for a remittance which would cover the cost of printing the Record : that on the 1st March 1948 the Registrar of the Privy Council wrote to the Appellant's Solicitors and called for an explanation of the delay by the 1st April 1948 failing which the Appeal would stand dismissed for non-prosecution : that on the 6th March 1948 the Appellant's Solicitors wrote to the Appellant and his local adviser asking for the matter to be attended to by a remittance to cover the cost of printing but no reply was received : that on the 2nd April 1948 the Appellant's Solicitors sent a cable to the Appellant again asking for funds for printing : that on the 5th April 1948 the Registrar dismissed the Appeal for non-prosecution and this came to the knowledge of the Appellant's Solicitors on the 6th April 1948 on which day a cable despatched the previous day was received from the Appellant by his Solicitors stating that he was that day remitting on account of fees a sum of £200 which sum arrived a few days later : And humbly praying Your Majesty in Council that his Appeal may be restored :

“ THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel, on both sides Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the West African Court of Appeal dated the 7th day of March 1944 (1) upon depositing in the Registry of the Privy Council the sum of £400 as security for costs (2) upon the footing that the Petitioner waives all claims whatsoever to rents and profits down to the date of the final decision in this matter however far back they may go and (3) upon the footing that within twenty-one days of the amount of the Respondents' costs of this application as between solicitor and client being ascertained the Petitioner shall pay such costs.”

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of the Gold Coast for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E. C. E. LEADBITTER.

*In the
Privy
Council.*

No. 48.
Order in
Council
restoring
Appeal,
26th
November
1948,
continued.

1st
Defendant's
Exhibit.

1st DEFENDANT'S EXHIBIT.

" N. "

PROMISSORY NOTE to Lutterodt.

N.
Promissory
Note to
Lutterodt,
20th
September
1871.

WE undersigned Chiefs from Noojorso and Atipai of Bessequarter do hereby bind ourself to pay to Mr. W. A. Lutterodt the sum of One hundred and eighty Dollars or in Cowries at three Heads and half per the Dollar from the Amount lent from him on the 1st July 1865 *in three Weeks*, from date say on the 11th October this year :—

Accra 20th September 1871.

(Sgd.) W. A. Lutterodt,

Junior.

(Sgd.) Gerhart L. Lutterodt
Coffy Amoding His X Mark
John Owoo His X Mark
Okoy His X Mark
Peter Meyer His X Mark
Tatthey Kanye His X Mark

Agai Sowarh His X Mark
Agvette Owoo His X Mark
Tatta Otjo His X Mark
Obuamang Dinz His X Mark
Tatthey Bekle His X Mark
Northe His X Mark

10

1st DEFENDANT'S EXHIBIT.

" E. "

DECLARATION.

E.
Declaration
10th
September
1898.

20

TO ALL TO WHOM THESE PRESENTS MAY COME We the undersigned the representatives of the Onamunorkr people of Ussher Town Accra Gold Coast Colony West Coast of Africa send greeting—

WHEREAS we the said Onamunorkr people are the absolute owners in fee simple of all the lands and landed property set out and delineated on the plan hereto attached and herein described and known as Korley and having inherited the same from our Ancestors who and ourselves have been in undisturbed and undisputed possession from time immemorial

AND WHEREAS we are desirous of protecting our said land by registering the same in the Public Record of this Colony

30

NOW WE DO BY THESE PRESENTS DECLARE and made known to all to whom it may come that we the Onamunorkor people by the right and title mentioned are the owners in fee simple of all that piece or parcel of land situate at Accra in the aforesaid Colony and bounded on the North by lands belonging to Mr. Hansen, Laye, and Kate Omle and the villages known as Onyatia and Ashongman bounded on the South by lands belonging to King Tackie Tawia and Lutterodt and in the village known as Mukose and the market known as Kpehe bounded on the West by the Road leading to Ofarkor and the villages known as Ofakor and Ashare bounded on the East by lands belonging to Revd. 40 Reindorf and Soda and the village known as Kotobabi and Onyatia.

IN WITNESS Whereof we have hereunto set our hands and seals this 10th day of September in the year of our Lord One thousand eight hundred and ninety eight.

1st
Defendant's
Exhibit.

E.
Declaration
10th
September
1898,
continued.

		Their	
	Ashong Kattai	X	L.S.
	Ammah Kodjoe	X	L.S.
	Priest Tetteh	X	L.S.
	James Okai	X	L.S.
	Hunter Mensa	X	L.S.
10	Tetteh Quaye		
	Ofoli	X	L.S.
		marks	
	John Anum	L.S.	
		his	
	William Okai	X	
		mark	
		his	
	? Aryee	X	
		mark	L.S.
20	Witnesses :—		
	?		

2nd DEFENDANT'S EXHIBIT.

“ Q. ”

2nd
Defendant's
Exhibit.

GRANT by Ayi Quarmin to Adams.

TO ALL TO WHOM THESE PRESENTS SHALL COME, old AYI QUARMIN of Gbese Ussher Town Accra sends greeting

Q.
Grant by
Ayi
Quarmin
to Adams,
16th
February
1901.

WHEREAS the said Ayi Quarmin is desirous of making such gift or disposition in favour of his nephew JOSEPH HENRY ADAMS as is hereinafter contained

30 NOW THESE PRESENTS WITNESSETH that in consideration of natural love and affection and for the sum of Twenty pounds (£20) paid by the said Joseph Henry Adams to the said Ayi Quarmin receipt whereof the said Ayi Quarmin acknowledges And for divers other causes and considerations the said Ayi Quarmin doth hereby absolutely give and make over unto the said Joseph Henry Adams ALL THAT piece or parcel of land situate at Aburi Road and commonly known as Kokomlemle and measuring on the West six hundred feet on the East six hundred feet on the North four hundred feet and on the South four hundred feet and bounded on the West by Aburi Road on the East by
40 Borkueh's land on the North by Ayi Quarmin's land and on the South by John A. Smith's land which said piece or parcel is more particularly described and delineated in the plan hereunder TO HOLD the same unto the said Joseph Henry Adams for his own absolute use and benefit and as his separate estate and property free from the control interference and engagements of the said Ayi Quarmin And in order to give full effect to the gift or disposition hereinbefore contained in case and so far as the same may not in law be capable of operating according to its tenor the said Ayi Quarmin doth hereby declare that he and his executors

2nd
Defendant's
Exhibit.

and administrators will stand possessed of the said piece or parcel of land hereinbefore mentioned IN TRUST for the said Joseph Henry Adams for his absolute use and benefit and as his separate estate and property as aforesaid

Q.

Grant by
Ayi
Quarmin
to Adams,
16th
February
1901,
continued.

PROVIDED ALWAYS that the said Ayi Quarmin shall not be answerable for the loss or destruction of or any damage which may happen to the said piece or parcel of land or any part thereof.

IN WITNESS whereof the said parties to these presents have hereunto set their hands and seals the 16th day of February 1901.

SIGNED SEALED and DELIVERED
by the said parties to these presents
in our presence and after the same
has been read over and interpreted in
the Ga language by Edward Arblo to
the said Ayi Quarmin who seemed
perfectly to understand the same
before executing this deed.

His
Ayi Quarmin X
Mark L.S.
(Sgd.) J. Henry Adams
L.S.

10

Witnesses :—

(Sgd.) R. M. Lamptey
(Sgd.) John A. Smith
(Sgd.) Henry O. Benson
Daniel Nettey His X Mark

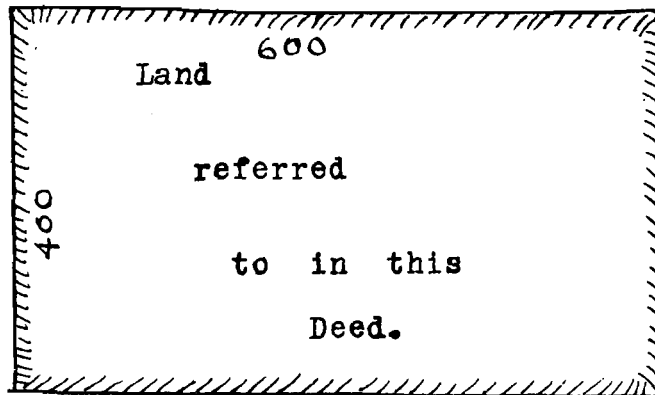
20

Witness to marks :—

(Sgd.) E. M. Arblo.

Endorsed Certificate that instrument is chargeable with a duty of ten shillings.

OLD AYI KWARMIN'S LAND



JOHN A. SMITH'S LAND

ABURI ROAD

1st DEFENDANT'S EXHIBIT.

"J."

JUDGMENT in Nukpa v. Addy.

Exhibit "J," pp. 29-30.

Rendered by Deft. in *re Molai v. Abla Kotey & ors.* admitted and marked Ex. "C."

1st
Defendant's
Exhibit.

J.
Judgment
in *Nukpa v.*
Addy,
5th June
1916.

(Intld.) A.O.

Monday 22nd 1916.

DJARNIE NUKPA and Others per J. AFUTU KOTey Plaintiff

10

V.

TETTEH ADDY - - - Defendant.

Plaintiffs claim £25 damages for trespass on the plaintiffs' property situate at Akwandoh.

* * * * *

5th June 1916.

DJARNIE NUKPA and Other per J. AFUTU KOTey Plaintiff

V.

TETTEH ADDY Defendant.

JUDGMENT.

Plaintiff sued defendant for committing trespass on their land situate
20 at Akwamdoh. Defendant denied having committed trespass on the land.
The case was heard and plaintiffs stated their case through James Afutu
Cotey. Defendant cross-examined plaintiffs. In consequence of defen-
dant's question the land in dispute was ordered to be viewed by repre-
sentatives of the Tribunal and from whose report the Tribunal concluded
that defendant has indeed committed the trespass. Defendant stated that
from Okaishie to the Akwandoh hill belongs to the people of Auokpai whom
he is representing but this statement is not admitted because of his not
being in unity with them. The Tribunal decided that defendant has no
right to the mango and cashew trees planted by him in the place of those
30 which he wilfully disobeyed, but that he has right to dig up the cassada
planted by him and not to replant it. Plaintiffs requested that defendant
should pay rent for the land on which the mango trees which he bought
from those farming on the land are standing. In answer to this request
the Tribunal suggested to the defendant to see plaintiffs at home and to
arrange with them. Both parties agree to the suggestion.

Tribunal considering the whole matter came to conclusion that
defendant is guilty of trespass on plaintiffs' land and so councillors
returned Judgment against defendant with costs :—

1st
Defendant's
Exhibit.
—
J.
Judgment
in *Nukpa v.*
Addy,
5th June
1916,
continued.

Summons and subpoena £2 3s. Hearing fee 20s. consul- tation fee 20s. and Abene 20s.	£5 3 0
Ayilo (chalking & viewing land) 20s.	1 4 0
Tetteh Quarcoo 2 days' attendance 10s. Quarcoopome 10s. and J. A. Cotey 10s.	1 10 0
Rum allowed plaintiffs' witnesses in lieu of attendance	0 6 0
	£8 3 0

His
X
Mark 10

(Sgd.) Ayi Bonte
Gbese Mantse.

(Sgd.) J. H. Adams,
Stool Clerk.

Certified true copy
S. C. Sackey
Registrar—Gbese Tribunal.

Certified true copy
Registrar—Ga Mantse Tribunal.

PLAINTIFF'S EXHIBIT.

“ D.1.”

20

“ INDEPENDENT ” INSERTION.

Exhibit D1.

p. 432—Gold Coast Independent June 16, 1923.

NOTICE.

Notice is hereby given that all that piece or parcel of land situate lying and being at Kokomlemle Accra in the Eastern Province of the Gold Coast Colony and bounded on the North by Ayi Kwamin and Kwatei's properties measuring 450 feet more or less on the South by Teiko Akosoku's farm and mango trees measuring 450 feet more or less on the East by Tettey Agbo's land and Akrade's village measuring 600 feet more or less and the West by Accra-Kibbi Road measuring 600 feet more or less is the bona fide property of Mr. J. H. Adams of Gbese Ussher Town Accra aforesaid. And I hereby give further Notice that legal proceedings will be taken against any person or persons Company or Companies, Corporation or Corporations, his her or their Agent or Agents for entering and committing trespass on the said piece or parcel of land.

Dated at Yahoam Chambers, Accra the 7th day of June, 1923.

T. Hutton-Mills, Jnr.,
Solicitor for Mr. J. H. Adams.

Plaintiff's
Exhibit.
—
D.1.
“ Inde-
pendent ”
Insertion,
16th June
1923.

" D.2. "

" INDEPENDENT " INSERTION.

p. 499—Gold Coast Independent July 7, 1923.

*(Identical with Exhibit D1.)**Plaintiff's
Exhibit.*D.2.
" Inde-
pendent "
Insertion,
7th July
1923.**PLAINTIFF'S EXHIBIT.**

No. 5.

EVIDENCE of Addy in Ankrah v. Cobblah.

17.6.1926.

No. 5.
Evidence
of Addy in
*Ankrah v.
Cobblah,*
17th June
1926.

10 IN THE SUPREME COURT OF THE GOLD COAST COLONY, Eastern
Province, held at Adjabeng Lodge, Accra, on Thursday the 17th day
of June, 1926, before HIS WORSHIP W. J. A. JONES, Acting
Commissioner of the Eastern Province.

ANKRAH and Others

Vs.

TETTEH COBBLAH & EMMA C. BRUCE.

* * * * *

SAMUEL ADDEY alias TETTEH sworn on Bible, Acting Mankrado in
the Gbese Tribunal.

20 The Manche must be present at the hearing of a case at the completion
of the evidence the Councillors retire and subsequently inform the Manche
of their decision. If the Manche is not pleased with the verdict, he tells
the Elders and they retire for further consultation. The Councillors have
not the power to deliver a verdict with which the Manche does not agree.
. . . Mr. A. Hutton-Mills . . . The Ga Manche has the right to put
questions to any of the parties through a linguist. He has the right to
punish witnesses who in his opinion have been guilty of perjury.
Mr. Hutton-Mills refers to the Enquiry under the Public Lands Ordinance
held by His Honour the Chief Justice on the 24th July, 1918 in which His
Honour dealing with the same point as is at issue in this present case
30 observed " that it would be contrary to justice, equity and good conscience
that a man should be a judge in his own cause."

In view of the unsatisfactory and unconvincing evidence of the two
expert witnesses called on behalf of Ankrah and others and of the opinion
of His Honour the Chief Justice quoted above, I order that the further
hearing of the action before the Tribunal of the Ga Manche be stopped and
the case transferred to the Court which in this instance would appear to be
the Divisional Court.

(Sgd.) W. J. A. Jones,

Ag. C.E.P.

1st
Defendant's
Exhibit.

1st DEFENDANT'S EXHIBIT.

"A."

WRIT OF SUMMONS in Molai v. Bruce & Ors.

A.
Writ of
Summons
in Molai v.
Bruce & Ors
21st
January
1927.

No. 25

Suit No. 25/1927.

No. 30—Writ of Summons.

IN THE SUPREME COURT OF THE GOLD COAST COLONY,
Eastern Province, Divisional Court holden at Victoriaborg, Accra.

Between TETTEH KWEI MOLAI for himself and as
the Representative of other Members of the
Korle Webii - - - - - Plaintiff 10

and

EMMA C. BRUCE, DR. F. V. NANKA-BRUCE
and TETTEH KOBLAH - Defendants.

To : Emma C. Bruce, Dr. F. V. Nanka-Bruce and Tetteh Koblah, all
of Accra.

You are hereby commanded in His Majesty's name to attend before
this Court at Victoriaborg, Accra, on Wednesday the 3rd day of August,
1927, at 8.30 o'clock in the forenoon, then and there to answer a Suit by
Tetteh Kwei Molai for himself and as the Representative of other members
of the Korle Webii of Accra against you. 20

The Plaintiff claims a declaration against the Defendants that
All that piece or parcel of land situate on both sides of the Accra-Nsawam
Road near Avenor and Kokomlemle villages bounded on all sides by lands
belonging to the Korle Webii and extending from Odor Djor on the
South West in a Northerly direction to land in the occupation of one
Ofosu Quartey and thence in an easterly direction across the said
Accra-Nsawam Road to Anteh's Ruins near Kpehe otherwise Lutterodt's
village thence in a Southerly direction to land belonging to J. H. Adams
and thence in a Westerly direction to the said Odor Djor, forms a portion
of the lands belonging to the Korle Webii and not the property of the 30
defendants.

Issued at Victoriaborg, Accra, the 21st day of January, 1927.

Sum claimed	..	Judicial Relief
Court fees	..	£3 0 0
Bailiff's fees	..	- 3 -
		<hr/>
Total	..	£3 3 0
		<hr/> <hr/>

(Sgd.) Crampton Smyly,
Chief Justice



2nd DEFENDANT'S EXHIBIT.

" F. "

OPENING OF COUNSEL in Molai v. Bruce.

Exhibit F—pp. 2-6.

8.2.1928.

TETTEH KWEI MOLAI

- Plaintiff

v.

EMMA C. BRUCE and Ors. - -

Defendants.

2nd
Defendant's
Exhibit.F.
Opening of
Counsel in
Molai v.
Bruce,
8th
February
1928.

10 CLAIM—Declaration that certain lands are the property of Plaintiff—
continued from page 64.

Mr. Papafio opens :—

Case originally before the Ga Manche's Tribunal under the name of *Ankrah and others v. Tetteh Cobblah* which was removed to this Court by Order of Commissioner, Eastern Province (Mr. Jones). This case discontinued by leave of the Court and present action substituted therefor.

20 Plaintiff is head of an Accra family known as the Korle Webii, which family owns a large tract of land to the North of Accra of which the land, the subject of this action forms a part. A few months prior to action before Native Tribunal, Defendant Emma C. Bruce went upon the land, and with the aid of Defendant Tetteh Cobblah took measurement of the portion claimed in this action. Upon enquiry it was ascertained the Defendants claimed to be the owners of the land and the action before the Native Tribunal was instituted. Plaintiffs claim the land to be theirs from time immemorial and about 30-50 years back an ancestor of Emma C. Bruce obtained permission to squat on the land. At this time strict permission to squat was not necessary in the case of cultivation, and this act of squatting was of a purely agricultural nature and no buildings were erected by Defendant Emma C. Bruce. By native custom acts of cultivation only do not constitute ownership for however long a time.

30 About 30 years ago this ancestor, the original squatter, was removed from the land. At the time this man was on the land there were others squatting on the land by permission of the family, viz. Ankrah, Lamptey Adome Tetteh, Yaotey Kwami, J. H. Adams and others. These people were all squatting on the land at the same time. Some of them built temporary houses and mud huts, and paid toll, but in no case did this squatting confer any title to the freehold. The action is for a declaration that Plaintiff is entitled to this plot of land as against the Defendants. Plaintiff will prove that that at no time did Defendants or their ancestors become owners of land the subject of this action.

40 Mr. Alexander Hutton-Mills opens the Defence :—

The Defendant F. V. Nanka-Bruce is a Medical Practitioner of this Colony and brother of Defendant Emma C. Bruce, a trader of Accra. The Defendant Tetteh Cobblah is and has been caretaker of the 2 first-named Defendants on the land, the subject of this claim.

Defendants submit that better particulars should be furnished by the Plaintiff of the members of the Korle Webii family that he represents.

2nd
Defendant's
Exhibit.

F.

Opening of
Counsel in
Molai v.
Bruce,
8th
February
1928,
continued.

The Defendants plead they are now in possession through their caretaker, Tetteh Cobblah, and that prior to the first Awuna War (1866) they had been in possession by virtue of a grant through the Ga Manche, Tackie Tawiah, confirmed by a predecessor of the present Plaintiff and undisputed by other predecessors of the present Plaintiff.

The Defendants deny that they have ever been removed from this plot of land. The Defendants will prove that the grant was absolute and unqualified, and it will be submitted on behalf of Defendants that, even if assuming the contention of the Plaintiff were correct, that the grant conferred only rights of squatting, that the Plaintiff is estopped from seeking a declaration which would entitle him to nullify the grant of his predecessor and further that for the Court to uphold such a contention would be inequitable. It will be submitted that the Plaintiff cannot derogate from the grant of his predecessor, and that the grant conferred ownership according to native custom and native law. 10

The Plaintiff's predecessor, Adu, was Korle Priest and a grant was made to an ancestor Okai Tiseh of the Defendant Emma Bruce and Nanka Bruce who was Oshipi of Gbese Quarter, during the time of Manche Tackie Tawiah.

The Defendants' ancestors founded villages on the land and planted 20 corn, cassava, mangoes and cassava trees, some of which are still on the land. These acts were done by one Kadade and others, who were followers of Okai Tiseh. These acts were done after the land which was then forest land had been cleared by Kadade and the other followers of Tiseh.

Sometime in 1926 it came to Defendants' knowledge that a building which is not on the land was being erected by persons to whom the Plaintiff had sold a portion of the land. The Defendants notified the persons building that they were the owners of the said land, and this led to the action of *Ankraah and others v. Tetteh Cobblah* referred to by Plaintiff's Counsel. Acts of ownership have been exercised by Defendants in respect 30 of the land and the fruits and foodstuffs thereon to the knowledge of the Plaintiffs without opposition.

It will be submitted that conveyance in respect of this land have been executed by the Plaintiff since the original grant to the Defendants and that those persons are not now Plaintiffs before this Court. The Defendants say they have been and are owners of the said land.

Mr. Papafio submits that Defendants are not entitled to particulars asked for at this stage. They must get the names by cross-examination. Quotes Cap. 7, Order 3, Rule 3, page 62, Vol. I—same rule is in English practice—Order XVI, Rule 9—also Defendants could have applied for 40 interrogatories under Chapter 7, Order 22, Rule 1, page 73.

Mr. A. Hutton-Mills :—

Every Defendant is entitled to know who the Plaintiffs are, and this is clearly shewn by Order 3, Rule 1—submits means although person may sue in representative capacity, Defendants are entitled to know whom he represents, although the names do not appear on the writ—that the application is not frivolous appears from the latter part of Defendants' opening. If names are not disclosed what is to prevent a person coming forward, if case is given in favour of Defendants, and saying I was not represented by Plaintiff at the trial and part of the land is mine. 50

In Reply :—

Rule 1 is not applicable. It is not disputed that Plaintiff is the proper person to represent the family.

I rule that further particulars are unnecessary.

By Consent a further plea is put in on behalf of Defendants.

The Defendants deny that Lamptey Kwao and others or their ancestors were on the land with their ancestors or built huts as alleged or at all.

*2nd
Defendant's
Exhibit.*

F.
Opening of
Counsel in
*Molai v.
Bruce,*
8th
February
1928,
continued.

1st DEFENDANT'S EXHIBIT.

“ B. ”

PROCEEDINGS in Molai v. Bruce.

*1st
Defendant's
Exhibit.*

B.
Proceedings
in *Molai v.
Bruce,*
30th March
1928.

10

30.3.1928.

TETTEH COBBLAH, sworn on Bible :—

Farmer, living at Avenor. I have lived there since 1875. I know Emma C. Bruce and Dr. Nanka-Bruce—they are my relatives. I know Tetteh Kwei Molai—he also is my relative. I am older than he is. I know Ankrah Cobblah. I am older than he. I taught him to plant cassava. I am older than all the witnesses. My father's name was Kweku Afram. I lived with my father at Mayara, when I came back from fighting in the Glover War—I was a carrier. Through Ayi, the lamp-bearer of the then Korle Priest, Adoo, we obtained permission to settle at Avenor. My father built a house, and one Kweku lives there now. I am living in the house I built at Avenor. When we first went to Avenor, there was one house there owned by Tetteh Azore, my uncle. Kadabi also had his house there. We met Tetteh Azore at Avenor. I met Ankrah there. I know Tetteh Azore's land well. Kadabi was farming—he was a slave of Okai Tiseh—a Grunshie—I know the Akrade Hill. Kadabi lived on the right side of the road going to Nsawam—on the side of Akrade Hill. He farmed in the Odor Valley. He farmed next to Tetteh Azore. I knew Adanajah and Nyortaben, Nyameyeabro and Benyadi—they farmed together with Kadabi. They used to come from Accra and farm—on these lands they used to farm. There were mango trees. They planted corn, cassava, and groundnuts. The people who had boundaries where Kadabi used to farm were :—Going from Accra on left side of the road you first came to Bidjah's land, then Yartey Kojo's land, then Teiko Akosoko, then Nyamiyeabro's farm, then Kadabi's farm, then Tetteh Azore's land, then my father's land. Back from this road on the same side, behind Bidjah's land, is the land of Ashong Kweku, then Gunshies. I don't know who they were. I know Asantse Afadi lay to West of Kadabi. West of his was Oti. The Odor stream crosses Ashong Kweku's land, then Afadi, then Adanajah, Kadabi, Tetteh Azore, Ofosu Quartey. Now Adom Tetteh looks after Teiko Akosoku's land. Ankrah Cobblah after Tetteh Azore's

20

30

40

1st
Defendant's
Exhibit.

B.

Proceedings
in *Molai v.*
Bruce,
30th March
1928,
continued.

land. I know the extent of Azore and Adome Tetteh's lands. I and Emma C. Bruce measured certain lands at Avenor. Those are her lands we measured. We did not touch on Adome Tetteh's land, or Tetteh Azore's land. The land we measured used to be farmed by Kadabi and his brothers. I have seen a cement block building being erected at Avenor. It is built upon the land Nyamiyeabro farmed. His daughter Larley is still alive. Before Emma C. Bruce measured her land she gave me rum to give to the villagers. I told them that the mango trees I am caring for Kadabi, this lady is coming to see about the land and she is the owner. There were present Ayitey, Ankrah Cobblah, Bekwai and others. They suggested we should go and see the land. We went. I showed them the land farmed by Kadabi, Adanajah, Nyamiyeabro and Benyade's land. I have looked after Kadabi's land since 1891. Emma C. Bruce's sister appointed me. (The late Mrs. Hutton-Mills.) I have plucked the mangoes on this land ever since then for the Defendant Bruce. Kadabi also went to the Glover War. At times in the old days I used to go to Mayara and return. I also went to the Kroo Coast for 9 months and returned. This was about 1880. Kadabi was there when I left he was not there when I came back. I was told he was dead. My mother, Odianna, told me. Kadabi had a hut on Akrade Hill—he left that—he built a house on Ga land to the West of the Odor stream—not on the land he farmed. I knew Adaba.

Adjourned for a date to be fixed.

(Sgd.) St. John Yates,
J.

4th May, 1928.

IN THE SUPREME COURT OF THE GOLD COAST COLONY, Eastern Province, held at Victoriaborg, Accra, on Friday, the 4th day of May, 1928, before HIS HONOUR MR. JUSTICE JOSEPH MERVYN ST. JOHN YATES.

TETTEH KWEI MOLAI

V.

EMMA C. BRUCE et al.

From page 300.

TETTEH COBBLAH returns to box for further examination-in-chief :—

When I came back and Kadabi was dead, Adabu was looking after his land—he is dead now. When he died, Kadabi's land was given me by the late Mrs. Hutton-Mills to look after. I have been living at Avenor ever since. The late Mrs. Hutton-Mills and Dr. Nanka-Bruce were brother and sister. Since Mrs. Hutton-Mills' death I have given the mangoes plucked from the trees to Emma C. Bruce. Ankrah Cobblah and Plaintiff's other witnesses knew I had these mangoes plucked—they have always known it.

No one has ever attempted to stop me. Apart from mango trees there is nothing else on the land now. Since I have lived at Avenor, I have never been asked to pay tribute. No one has asked me to tell her to pay tribute. I have never known anyone to be removed from the Avenor lands. I have no quarrel with any of the witnesses who have been

called—they are all my good friends. If I thought Emma Bruce wanted me to measure lands that did not belong to her I would not have done so.

1st
Defendant's
Exhibit.

Cross-examined :—

I do not deny that this land is Ga land. I do not deny the Korle Webii are caretakers of this particular land for the Ga stool. Recently, permission must be obtained for people to farm there—formerly this was not so. The practice crept in after the Ashanti War—1896. I swear this is true. There was a plan prepared when this practice started.

B.
Proceedings
in *Molai v.*
Bruce,
30th March
1928,
continued.

The Korle Webii people had it—I never saw it. I originally lived at
10 Mayara with my father. I obtained permission from my uncle Ayai to settle on Avenor land. Ayai was an elder of the Korle Webii Stool. Ayai was the person from whom permission was obtained. This was before the Ashanti War—1896. There are several people on this land who have not got permission from the Korle Webii. Prior to 1896 it was the custom to obtain permission from the Korle Webii to settle on these lands. What I meant about this practice coming in after 1896 only referred to sales of land. The land farmed by Adome Tetteh belonged to his uncle Tetteh Kwamin and descended through one Teikoe to Adome Tetteh.

Defendants do not claim Adome Tetteh's land. I know J. H. Adams'
20 land. This is not part of the Defendants' land but bounds it. I know Yartey Kwamin's land. This is part of Defendants' land. The Defendants' uncle Kadabi farmed it and had a mango tree upon it. This land is on the right hand side of the road going to Nsawam. This is the land Kadabi settled upon before he removed nearer the Ododjo stream. I know Tetteh Kwei Molai's land. This is included in Kadabi's land (Defendants). I know Anteh's land. Kadabi's land bounded with Anteh's land. It does not belong to Defendants. The lands on right side of the road claimed by Defendants are Yartey's lands and Tetteh Kwei Molai's land.

Kadabi built his hut higher up the hill and further away from the road.
30 Kadabi did not build on land claimed by Plaintiffs. There is a cashew tree on Yartey Kwamin's land planted by Kadabi. There is another on Tetteh Kwei Molai's land. I knew Okai Tiseh personally. I have never seen him on the lands claimed by Defendants. I was quite young boy when he died. I was about 7 when he died. I was too young to know if he got permission to settle on the land.

Q. Do you know how Kadabi entered upon the lands of Yartey and Tetteh Kwei Molai ?

A. Before I came from Mayara he was there, so I do not know.

I was there when he moved nearer the Ododjo stream. He built
40 another house on the West side of the Ododjo stream i.e. across. He did not abandon the lands of Yartey and Tetteh Kwei Molai—he still farmed them—he also farmed near the Ododjo stream. I don't know if he obtained permission.

He was not turned off. The land he farmed near the Ododjo stream is now farmed by Lantey—this is the Defendants' land. My brother Kofi Vanderpuye also farm part of land Kadabi farmed near the Ododjo stream. Apart from Lantey's and Kofi Vanderpuye's land, Kadabi farmed no other land on left side of Nsawam road. I know the land farmed
50 of it, but his land bounded with it. Tetteh Azore's land does not belong

1st
Defendant's
Exhibit.

B.
Proceedings
in *Molai v.*
Bruce,
30th March
1928,
continued.

to Defendants. Defendants own Yartey's land and Tetteh Kwei Molai's land on right side of road, and Lantey's and Kofi Vanderpuye's land on left side of the road. This is all the land I know they claim in this district.

The land farmed by Kofi Vanderpuye lies between Lantey's land and Tetteh Azore's land. Adanajah farmed land belonging to Kadabi. The Defendants claim this land.

Nyortaben farmed land belonging to Kadabi and bounding with Adanajah's land. Defendants claim this land. Nyamiyeabro farmed land belonging to Kadabi. This land is claimed by Defendants. Benyade farmed land of Kadabi. Defendants claim this portion too. Kadabi, 10
Adanajah, Nyortaben, Nyamiyeabro and Benyade all farmed lands bounded on North by Tetteh Azore and south by Adome Tetteh. This land is now all farmed by Lantey and Kofi Vanderpuye, and is the Defendants' land on left side of the road.

Kadabi used to go and come between Mayara and this hut by the Ododjo stream. He farmed at Mayara in the dry season, and by the Ododjo stream during the rains. It is untrue that when he went to Mayara he never returned. When I came back from the bights I was not told he had gone to Mayara and had not returned. I gave evidence before the Native Tribunal. I said, "When Kadabi went to Mayara he 20
left his land in charge of Adabu." He came back later and Adabu then gave him back the land. Adabu is dead—he died I don't remember when. When Adabu came back from Mayara, Adabu went away and did not return. I knew Lantey's father Ashong. He came there after Kadabi died. This is 40 or 50 years ago. Ashong came and settled on Kadabi's land on left side of the road. By Kadabi's land I mean the land occupied by Kadabi and his brothers. Ashong farmed there till his death and Lantey succeeded. Lantey was born in Accra and brought to this land. He was born when Ashong was farming this land. Up to now Ashong and Lantey have farmed this land continuously. Lantey started to 30
build a concrete house on this land about 5 years ago. I said 6 before the Tribunal and that is 2 years ago. When Emma Bruce came on the land, I knew her land as I plucked her mangoes. I knew these lands were Defendants as Emma Bruce is Kadabi's niece. This is the only ground I know of upon which Defendants claim. Emma Bruce did not say she claimed these lands as they originally belonged to Okai Tiseh. Emma Bruce was born when Kadabi farmed the land, and Kadabi was slave to Okai Tiseh. Kadabi farmed for Okai Tiseh. (I was 6 when he died.) How do you know? The mother of the late Mrs. Hutton-Mills was Okai Tiseh's niece. (I used to see him (Kadabi) coming from Okai Tiseh's 40
house and go to the land and return.) Before the Native Tribunal I said, "Before coming they (Bekwai and others) said they would like to see the land second accused claimed before they drink. I went with them and they asked me (Botoku Kwaku speaking) Do you mean all this land has been given to second accused. I said we are here first and when she comes we will know what to give and what not to give."

Q. If you know his land, why did you say this?

A. I knew it, but the people said it was too much to give.

I said when Kadabi died, Ashong came and settled on the land, and if no one claimed it, it would belong to Ashong, but as the owner has 50
come, we will speak to her and ask her permission to farm. During the

40 years or more Ashong farmed this land he was never disturbed in his possession.

Q. By Ga custom can a man ever acquire more than the fruits of the trees he plants?

A. He cannot acquire the land—only the fruits and the timber if he cuts the tree down.

I have lands at Mayara. I have given permission to plant trees upon it. The tenants never can acquire the land by this means. Permission to plant trees does not carry ownership with it.

10 *Right side of road*: Yartey Kwamin's land was originally farmed by my uncle Kweku. I saw Kweku farming there 30 years ago. After him Yartey came on the land. There has been no protest. Tetteh Kwei Molai has to my knowledge farmed this land for more than 30 years without protest.

I have told Molai, Why did you give your land to Terkoh Akosoku. He said he had given it to him.

I said nothing more. This is the land that Kadabi planted cashew tree upon. I never told the Defendants about it. I was not in charge of the land on this side of the road. I took charge of the land on the
20 left side of the road because I was told Emma Bruce owned it. Kadabi acquired the land by custom because he went and fought for the Gas. He went and fought for the Gas *after* he acquired this land. He acquired the land by settling upon it. By Ga custom a Ga citizen can acquire land by these means but not a stranger.

Re-examined—

My land at Mayara is family land—it is not attached to the Korle Webii Stool—it is attached to the Akwapim Stool. The Akwapims are not Gas. The lands occupied by Lantey and Vanderpuye: these lands are between Adome Tetteh's and Azore's land—they front on the Nsawam
30 road. Vanderpuye farms part and Lantey the other part—they do not farm the whole of Kadabi's land on the left side of the road—they farm by the stream. They have not farmed by the road side. Vanderpuye and Lantey have planted mangoes. Vanderpuye went on to the land with my permission he is my cousin—

Objected to—

(i) does not arise out of cross-examination—

(ii) Vanderpuye was not asked anything about this.

Mr. Hutton-Mills in reply—

40 (1) Vanderpuye was, and in reply said he was gifted with the land—

(2) does arise from this—Vanderpuye farmed on Kadabi's land.

Relevant as to how it came into his possession.

I rule question is admissible.

I gave Vanderpuye permission after I was put in charge by Defendants. I did not tell the Defendants I had done so. Lantey came to be on the

1st
Defendant's
Exhibit.

—
B.

Proceedings
in *Molai v.*
Bruce,
30th March
1928,
continued.

1st land as Adanajah pawned his mangoe trees to Lantey's mother for 30/-
 Defendant's which was paid. Lantey came on the land after the pawning of the trees.
 Exhibit. The trees were pawned in Ashong's lifetime. Ashong was then living on
 his own land. I plucked the mangoes from the same land as is farmed
 by Lantey and Vanderpuye.

B.
 Proceedings
 in *Molai v.*
Bruce,
 30th March
 1928,
 continued.

Through the Court: I gave Vanderpuye permission 15 or 16 years
 ago. I don't know if he got permission from the Korle Webii. I know
 he did not.

Adjourned till to-morrow at 8.30 a.m.

(Sgd.) St. John Yates, 10
 J.

G.
 Evidence of
 Dr. Bruce
 in *Molai v.*
Bruce,
 7th May
 1928.

1st DEFENDANT'S EXHIBIT.

“ G. ”

EVIDENCE of Dr. Bruce in *Molai v. Bruce.*

Exhibit “ G. ”

7th May, 1928.

IN THE SUPREME COURT OF THE GOLD COAST COLONY,
 Eastern Province, held at Victoriaborg, Accra, on Monday, the
 7th day of May, 1928, before His Honour Mr. Justice JOSEPH
 MERVYN ST. JOHN YATES.

20

TETTEH KWEI MOLAI

v.

EMMA C. BRUCE et al.

FREDERICK VICTOR NANKA-BRUCE, sworn on Bible :—

M.B., B.Ch., Edin.—practising in this Colony. I live in Accra.
 I know Emma C. Bruce—she is my sister. I knew the late Mrs. Hutton-
 Mills—she was my sister. I am a Defendant in this action. I did not
 know Okai Tiseh—he was Oshipi of the Gbese Quarter—i.e. Head of the
 Captains. I knew Kadabi—he was Okai Tiseh's slave. I knew Adanajah,
 Nyamiyeabro, Nyortaben—Benyade also. They were all slaves. When 30
 I knew Kadabi he was farming at Avenor, on left side of road—he was
 living there. I don't know how he came to live on this land. I know
 Tetteh Cobblah—he lives at Avenor. My sister Mrs. Hutton-Mills put
 him in charge of certain lands at Avenor—this was over 20 years ago.
 This was the family land farmed by Kadabi and his countrymen. The
 land belonged to Okai Tiseh. I don't know how he came possessed of it.
 I am Okai Tiseh's great nephew. I was in the Ashanti Rebellion (1901).
 I knew the land at Avenor at that time. Kadabi, I think, died at Accra.
 I never heard of Kadabi being turned off the land. Tetteh Cobblah has

always plucked the mangoes and gave them to Mrs. Hutton-Mills, and on her death Emma C. Bruce has had the profits of the trees. The Korle Webii are not the owners of Avenor land so far as I know. The Gbese people are.

*1st
Defendant's
Exhibit.*

Cross-examined—

I include the lands upon which Kadabi farmed. The Gbese Manche is in a better position than I am to know the owners of this land, so would the Ga Manche. When Kadabi died I was about 8 or 10, and at that age I was not much interested in ownership of land. I can't say if Kadabi
10 died at Mayara. I don't know the boundaries of this land. I have been on the land. I was on it about half an hour.

G.
Evidence of
Dr. Bruce
in *Molai v.
Bruce*,
7th May
1928,
continued.

Case for Defence closed.

Adjourned till to-morrow for addresses.

(Sgd.) St. John Yates,
J.

2nd DEFENDANT'S EXHIBIT.

" W D."

CONVEYANCE by Adams to Lamptey.

*2nd
Defendant's
Exhibit.*

2108/29.

20 No. 672/1931.

W D.
Conveyance
by
Adams to
Lamptey,
26th April
1929.

THIS INDENTURE made the 26th day of April One thousand nine hundred and twenty-nine Between JOSEPH HENRY ADAMS of Ussher Town Accra in the Eastern Province of the Gold Coast Colony British West Africa (hereinafter called the Donor which expression shall where the context so admits include his heirs executors administrators and successors) of the one part and EMMANUEL ODARTEY LAMPTEY also of Ussher Town Accra in the Province of the Colony aforesaid (hereinafter called the Donee which expression shall where the context so admits include his heirs executors administrators and successors) of the other part Whereas the
30 Donor is seised in fee simple in possession of the land and hereditaments hereinafter described And whereas the said Donor being desirous or making provision for the said Donee Now this Indenture witnesseth that in consideration of the sum of (£5) Five pounds and for the natural love and affection which the Donor hath for the Donee who is the grandson of the Donor and for other valuable consideration he the Donor doth hereby grant and convey unto the said Donee his heirs and successors All that piece or parcel of land situate lying and being at Kokomlemley—Accra and bounded on the North by J. H. Adams' property and measuring (100' 0") one hundred feet more or less on the South by J. H. Adams'

2nd
Defendant's
Exhibit.

W D.
Conveyance
by
Adams to
Lampsey,
26th April
1929,
continued.

property and measuring (100' 0") one hundred feet more or less on the East by J. H. Adams' property and measuring (100' 0") one hundred feet more or less and on the West by Accra-Nsawam Road and measuring (100' 0") one hundred feet more or less or howsoever otherwise the same may be known bounded or described and particularly delineated in the plan drawn hereunder and therein edged pink (*Together with all rights etc. And all the estate etc.*) To have and to hold the said hereditaments and premises unto and to the use of the Donee his heirs executors administrators and successors And the Donor doth hereby for himself his heirs executors administrators and successors covenant (*for good right to convey for quiet enjoyment and for further assurance*). 10

In witness whereof the parties have hereunto set their hands and seal the day and year first above written.

Signed Sealed and Delivered by the said
Joseph Henry Adams (Donor) in
the presence of the undersigned
witnesses :—

(sgd.) J. H. Adams L.S.

his
Tetteh Kwei Molai X
mark

20

(Sgd.) A. A. Allotey.

his
Thomas Okynetey Ofolikwei X
mark

(Sgd.) E. M. Ashong.

Signed Sealed and Delivered by the said
Emmanuel Odartey Lampsey (Donee)
in the presence of the undersigned
witnesses :—

(Sgd.) E. Odartey Lampsey
L.S.

(Sgd.) R. M. Lampsey.

30

(Sgd.) ?

Witness to marks

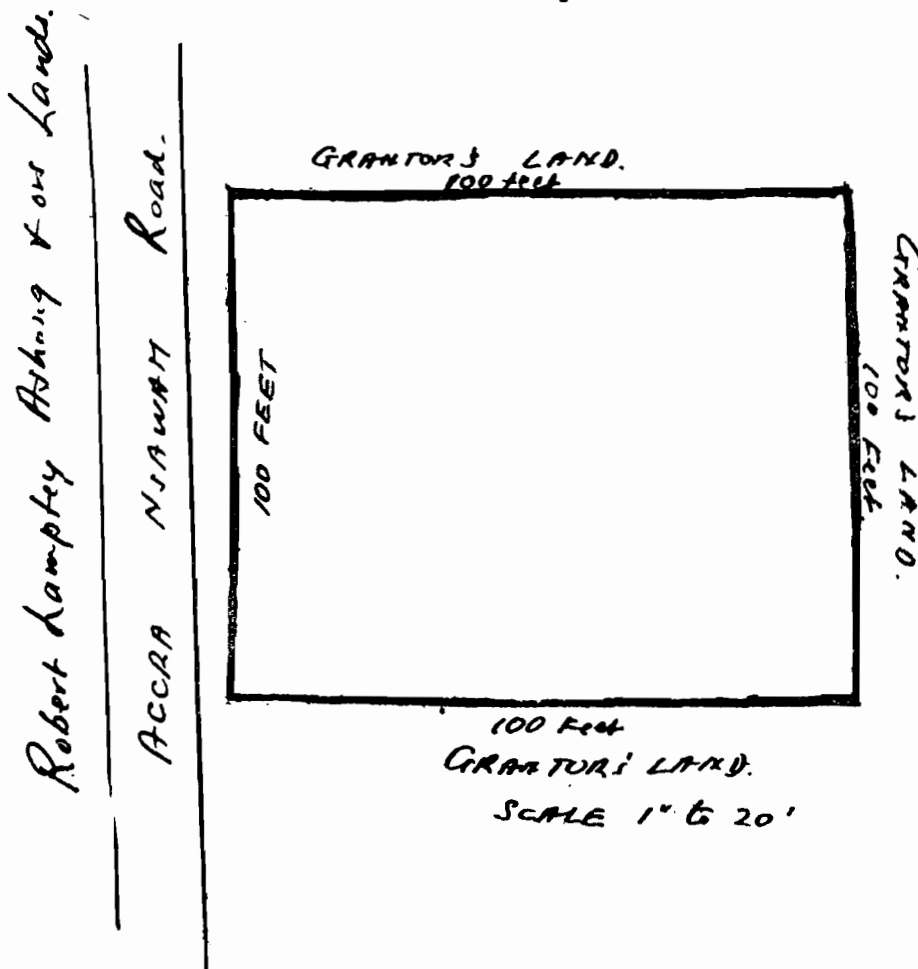
(Sgd.) J. W. ?

Endorsed certificate that this instrument is chargeable with a duty of One pound.

PROPERTY OF E. O. LAMPTEY,
Situated at Kokomlemle,
Accra.

1st
Defendant's
Exhibit.

W D.
Conveyance
by
Adams to
Lamprey,
26th April
1929,
continued.



PLAINTIFF'S EXHIBIT.

No. 7.

Plaintiff's
Exhibit.

**EXTRACTS FROM JUDGMENT IN LAND ACQUISITION EUROPEAN RESIDENTIAL
AREA with Plan.**

No. 7.
Extracts
from
Judgment
in Land
acquisition
European
Residential
Area with
Plan,
11th
February
1931.

11th February, 1931.

10 IN THE SUPREME COURT OF THE GOLD COAST COLONY, Eastern
Province, held at Victoriaborg, Accra, on Wednesday the 11th day of
February, 1931, before HIS HONOUR MR. JUSTICE ROGER EVANS
HALL.

No. 1/1930.

IN THE MATTER of Land at Accra acquired for European
Residential Area Extension—Plan No. Z.177

and

IN THE MATTER of the Public Lands Ordinance.

JUDGMENT.

This matter comes before the Court under Section 6 of the Public
20 Lands Ordinance (Chapter 142).

Plaintiff's Exhibit.

No. 7.
Extracts from Judgment in Land acquisition European Residential Area with Plan, 11th February 1931, continued.

In the Gold Coast Gazette No. 36 of 1929 dated May 11th of that year at page 964 "First Notice" of acquisition of the land in question was published, signed by the Colonial Secretary and dated 25th April, 1929. A certificate of title for the aforesaid land was signed by the Chief Justice on 11th June, 1929, under Section 9 of the aforesaid Ordinance.

* * * * *

As a result of the publication in the Gazette already referred to and service on possible claimants in accordance with the terms of the aforesaid Ordinance the following claims were lodged :—

* * * * *

XII. Mr. Sawyerr as Solicitor for Nee Tetteh Tchru and the people of Atukpai by letter dated 10th January, 1931, claimed the 10 area acquired and asked for compensation therefor the sum of £30,000.

* * * * *

P.H.E.—Public Health Engineer.

Exhibit "C" i.e. Plan No. Y.177 prepared by the Government shows the various claims. The areas claimed by the different claimants were in many cases incorrect and Mr. Jamieson, P.H.E., has given in evidence the correct areas which are as follows :—

I. Osu Stool	246.5 acres	
II. J. H. Adams	17.32 acres	
III. Thompson Moir & Galloway	5.51 acres	
IV. Odoi Kwao Family	82.0 acres	20
V. Nicholson	1.78 acres	
VI. Executors of Sackey	8.82 acres	
VII. and IX. Alice Nettey & Tibboh (I will explain this later)	318.0 acres	
VIII. Chief Nelson	18.7 acres	
X. Lawrence Family	29.3 acres	
XI. Labadi Stool	351.27 acres	
XII. Atukpais	21.34 acres	
XIII. Sarbah Shipi	318.0 acres	

* * * * *

In the present case I have to deal with an unwieldy body of 30 13 Claimants. After much discussion with Counsel the Claimants were arranged as follows :—

Applicants.—Osu Stool, Nicholson, Executors of Sackey, Odoi Kwao Family, Messrs. Thompson Moir & Galloway, and Adams.

Opposers.—E. B. Tibboh, Alice Nettey, Chief Nelson, Lawrence Family, Labadi Stool. The Atukpais and Sarbah Shipi—(the two last named were added when they came in after the case as to title had commenced). This was a convenient course to adopt because the Applicants between them covered the whole area without opposing one another, whilst Nicholson and the Executors of Sackey depended on the Osu Stool for success. Of 40 course it was always understood that the Opposers, where necessary, were entitled to cross-examine and oppose generally a Co-Opposer's claim. If any other arrangement had been made it seems to me that this matter might be dragged on for ever what with appeals and cross appeals, etc.

* * * * *

All these arrangements and withdrawals have cleared the air considerably so that (in the first instance at any rate) I have only to consider :—

Plaintiff's Exhibit.

(A) As regards the eastern portion of the acquisition the claims of the Osu and Labadi Stools.

(B) As regards the north-western portion of the acquisition the claims of Labadi Stool and the Odoi Kwao Family.

(c) As regards the south-western corner the claim of the Atukpais.

No. 7.
Extracts from Judgment in Land acquisition European Residential Area with Plan 11th February 1931, *continued.*

* * * * *

10 The acquired area is bounded on the North by land acquired by Government for Government House Site in 1914, on the South by Government land on which is situate the European Hospital, the Lunatic Asylum and a large quarry, on the East partly by plots owned by Mercantile Firms with frontage on the Dodowah Road, and partly the Dodowah road itself, and on the West by open land. As will be seen from Exhibit " C " the plots owned by the firms from a narrow strip along the Dodowah Road.

* * * * *

20 Having taken this preliminary, and, I fear, very lengthy survey of the circumstances of this acquisition, I will now proceed to deal with the cases of the claimants in detail, and I will first deal with the case for the Atukpais.

I may say at once that in my view the Atukpais have entirely failed to make out any case for compensation.

Their claim is shown on Exhibit " C " by a black dotted line running in a straight line across the South-West corner of the acquisition. They were unable to show any occupation by way of farms etc. whilst the area claimed by them is covered with farms claimed by other people. On inspection I asked these claimants to show any distinguishing features on their alleged boundary but they showed me nothing.

30 It may well be that these claimants have farms etc. to the West of the present acquisition but with that I am not concerned in the present case. The oral evidence led on their behalf carried me nowhere in their favour, but rather the reverse, when the quarry which can be seen *to the East of their boundary* on Exhibit " C " was claimed by them, and further when they said they had not taken proper steps to find out who was making this enormous hole in their land. I hold therefore that the Atukpais have failed to substantiate their claim.

* * * * *

40 There only remains the troublesome question of costs. There will of course be no costs of the valuation proceedings. The proceedings as to title lasted 21 days including the day of inspection.

* * * * *

Taking the western part of the acquisition, Tibboh's case was withdrawn against the Odoi Kwao Family without costs and 4 days' costs must be deducted. Labadi Stool must therefore pay Odoi Kwao Family 17 days' costs plus general costs of witnesses etc. Adams, Nelson, and

Plaintiff's Exhibit.

No. 7.
Extracts from Judgment in Land acquisition European Residential Area with Plan, 11th February 1931, continued.

Lawrence Family are not paying or receiving costs as between themselves. Their enemies otherwise were Labadi and the Atukpais. Their respective cases lasted in all roughly 5 days. Add 2 days for cross-examination inter se. Total 7 days. Balance 14 days. Of these days I think Labadi should pay 10 days plus $\frac{3}{4}$ general costs, and the Atukpais 4 days plus $\frac{1}{4}$ general costs to each of these claimants. (The Atukpais took a very small part in the proceedings.)

(Sgd.) R. E. Hall,
Judge.

* * * * *

PLAN (land acquired for European Residential Area Extension) is separately reproduced. 10

PLAINTIFF'S EXHIBIT.

No. 10.

POWER OF ATTORNEY of Tettey.

No. 10.
Power of Attorney of Tettey, 26th January 1933.

KNOW ALL MEN BY THESE PRESENTS that we Adaku Ayitey-Buafo Tetteh Kwei-Molai, Acting Korle Priest, Na Botchway, Evelyn Buckman, Martin William Jacobson, Owusu, Onya, William Tetteh-Okai, Amoaku, Tettey-Kojo, Samuel Cudjoe Sackey, Ofoley, Ofrokor, Kai, Fofoe, Okomfo Aku, Okomfo Ayeley, Dadaye, Okai Tokota, Akoley, Adjua Bri, Dedei Korle, Ayelenye, Annan Nabi Dei, Affiah Bi Akunyea, Kweley, Ardey, and Ayertey Okai being the principal and accredited members of the Ayai-Pekoh family of Onorminorkor in the Gbese Quarter of Ussher Town Accra in the Eastern Province of the Gold Coast Colony British West Africa hereby nominate constitute and appoint George Adjin Tettey of Accra also an accredited member of our said family to be our Attorney Agent and Legal Representative for the following purposes and every of these :—

1. To consult and secure the services of a Lawyer or Lawyers and instruct such Lawyer or Lawyers to issue Writs in the Law Courts or issue Writs himself before any Native Tribunal or Tribunals for and on our behalf for or concerning our family land situate at Tesanor and Dome in the Province and Colony aforesaid the plan of which premises we herewith hand to our said Attorney. 30

2. To litigate for and on behalf of ourselves and the rest of our entire family with any person or persons Company Firm Corporation or trespassers in or about our said family land situate at Tesanor or Dome aforesaid and to do all such lawful acts deeds and things as he shall think fit and expedient.

3. For the purpose of defraying all expenses lawfully incurred in connection with our said land our said Attorney shall have the liberty to negotiate sell and dispose of portions of our said land with the consent concurrence and approval of the principal members of the family such as Adaku Ayitey-Buafo, Na Botchway and the Acting Korle Priest and to render account to the family accordingly. 40

4. The family however reserve the power to William Tetteh-Okai, Tettey Kojo, and Samuel Cudjoe Sackey to question and invite our said Attorney to a meeting for accounts when it shall appear to them that irregularities seem to occur in the discharge of the duties entrusted to our said Attorney.

5. To sign all documents and other paper writings appertaining to Court process requiring our personal signatures or marks and generally for 50

and on behalf of the family to do all such lawful acts deeds and things as to him shall deem fit and expedient.

Plaintiff's Exhibit.

6. That this our Attorney shall continue to act in the capacity herein specified until all such matters and things requisite and necessary required to be done in or about our said family land had been done and finally determined notwithstanding any incidents changes or deaths that may hereafter arise among the signatories to these presents or in our said family.

No. 10.
Power of Attorney of Tettey, 26th January 1933,
continued.

7. These presents shall not be revoked by any one or more members of the family acting solely or on behalf of himself or certain sections of our family until the above conditions are fully and finally complied with and determined and further that these Presents shall only be revokeable by the family acting jointly and severally as a whole and after due completion of all matters in or about our said family land.

8. And Whatever the said George Adjin Tettey shall lawfully do or cause to be done in the premises the said principal members of our family hereby agree to ratify and confirm.

IN WITNESS whereof we have hereunto set out hands and Seals this 26th day of January 1933.

20

	Their
Adaku Ayitey-Buafo	X
Tetteh-Kwei Molai	X
Na Botchway	X
	marks.

SIGNED SEALED MARKED and DELIVERED by the within named Adaku Ayitey-Buafo, Tetteh-Kwei Molai, Na Botchway, Evelyn V. E. Buckman, Martin William Jacobson, Owusu, Onya, William Tetteh-Okai, Amoaku, Tettey-Kojo, Samuel Cudjoe Sackey, Ofoley, Ofrokor, Kai, Fofoe, Okomfo Aku, Okomfo Ayeley, Dadaye, Okai Tokota, Adjua Bri, Dedei Korle, Ayelenye Annan Nabi Dei, Affiah Bi Akuyea, Koeley, Ardey, Akoley, and Ayertey Okai after the contents of the foregoing have been read over interpreted and explained to them in the Ga language by Peter Otto Van der Puije and they seemed perfectly to understand the same before signing and making their marks hereto in the presence of the undersigned witnesses

30

Evelyn V. E. Buckman	
Martin Jacobson	
	Their
Owusu	X
Onya	X
W. T. Okai	
Amoaku	X
Tettey Kojo	X
Sam C. Sackey	
Ofoley	X
Ofrokor	X
Kai	X
Fofoe	X
Okomfo Aku	X
Okomfo Ayeley	X
Dadaye	X
Okai Tokota	X
Akoley	X
Ayertey Okai	X
Adjua Bri	X
Dedei Korle	X
Ayelenye Annan Nabi Dei	
Affiah Bi Akuyea	X
Koeley	X
Ardey	X

40

Marks.

50

P. O. Vander Puije.
J. G. Vander Puije.
J. E. Vander Puije.

*Plaintiff's
Exhibit.*

No. 10.

Power of
Attorney of
Tetty,
26th
January
1933,
continued.

In accordance with Section 18 of Cap. 179 I certify that in the opinion of the Commissioners of Stamps this instrument is chargeable with a duty of Ten Shillings.

Penalty of £5 has been paid vide Treasury RV. 568 of 31/12/42.

(Sgd.) ?

Commissioner of Stamps.

Commissioner of Stamps Office

Accra. 31st December, 1942.

*2nd
Defendant's
Exhibit.*

W C.

Conveyance
by
Allotey to
Alice
Adams,
27th May
1933.

2nd DEFENDANT'S EXHIBIT.

" WC."

CONVEYANCE by Allotey to Alice Adams.

1791/33.

THIS INDENTURE made the 27th day of May in the year of Our Lord One thousand Nine-hundred and thirty three (1933) Between ABRAHAM ADOTEI ALLOTEY of Ussher Town Accra in the Eastern Province of the Gold Coast Colony heir and personal representative of Joseph Henry Adams (deceased) who died at Accra on or about the 4th day of October 1931 (hereinafter called the Grantor which expression where the context so admits shall include his heirs personal representatives and assigns) of the one part And ALICE ADAMS also of Ussher Town Accra in the 20 Province and Colony aforesaid wife of Joseph Henry Adams (deceased) aforesaid (hereinafter called the Grantee which expression where the context so admits shall include her heirs personal representatives and assigns) of the other part Whereas during the life time of the deceased person hereinbefore referred to and before witnesses asserted that after his death the Grantee his wife be given ex gratia out of his estate a sum equivalent to Two hundred and fifty pounds (£250) And whereas the said Joseph Henry Adams has died and at the time of his death he was possessed of certain lands and hereditaments And whereas the Grantor being the personal representative of the deceased person has found the 30 estate could not pay such money by reason of insufficiency of funds And whereas the Grantor has agreed with the Grantee to grant to her by way of substitute the hereditaments and premises described and intended to be hereby conveyed out of the lands and hereditaments belonging to Joseph Henry Adams (deceased) in manner following Now this Indenture witnesseth that in pursuance of the said agreement and in consideration of the premises the Grantor doth hereby grant and convey unto the Grantee her heirs personal representatives and assigns All that piece or parcel of land situate lying and being at Kokomlemle in the Province and Colony aforesaid and bounded on the North by 40 property belonging to Patience Okarley Adams measuring One hundred and fifty feet (150') more or less on the South by property belonging to

10

the Grantor measuring one hundred and fifty feet (150') more or less on the East by property belonging to the Grantor measuring one hundred feet (100') more or less and on the West by property belonging to E. O. Lamptey and measuring one hundred feet (100') more or less or howsoever otherwise the same may be bounded known or described and is delineated on the Plan hereto attached and thereon edged Pink (*Together with all ways etc. and all the estate etc.*) To have and to hold the said hereditaments hereby granted or expressed so to be unto and to the use of the Grantee her heirs personal representatives and assigns in fee simple And the

10 Grantor doth hereby for himself his heirs personal representatives and assigns covenant with the Grantee her heirs personal representatives and assigns (*For good right to grant, For quiet enjoyment Free from incumbrances And for further assurance*) In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

2nd
Defendant's
Exhibit.
W C.
Conveyance
by
Allotey to
Alice
Adams.
27th May
1933,
continued.

Signed Sealed and Delivered by the said)
Abraham Adotei Allotey in the) (Sgd.) A. A. Allotey
presence of :—)

L.S.

20 Wm. Ayitey Adjin his
X
mark

(Sgd.) George D. Laryea.

30 Marked Sealed and Delivered by the
said Alice Adams after the contents of
this Indenture had been read over
and interpreted to her in the Ga
language by James Okai Kotey when
she seemed perfectly to understand the
same before making her mark thereto
in the presence of :—

Alice Adams her
X
mark
L.S.

(Sgd.) James Okai Kotey

(Sgd.) John Jos Ocquaye

(Sgd.) ?

Witness to mark

(Sgd.) G. A. Adjin.

Endorsed Certificate that instrument is chargeable with a duty of Two pounds ten shillings.

2nd
Defendant's
Evidence.

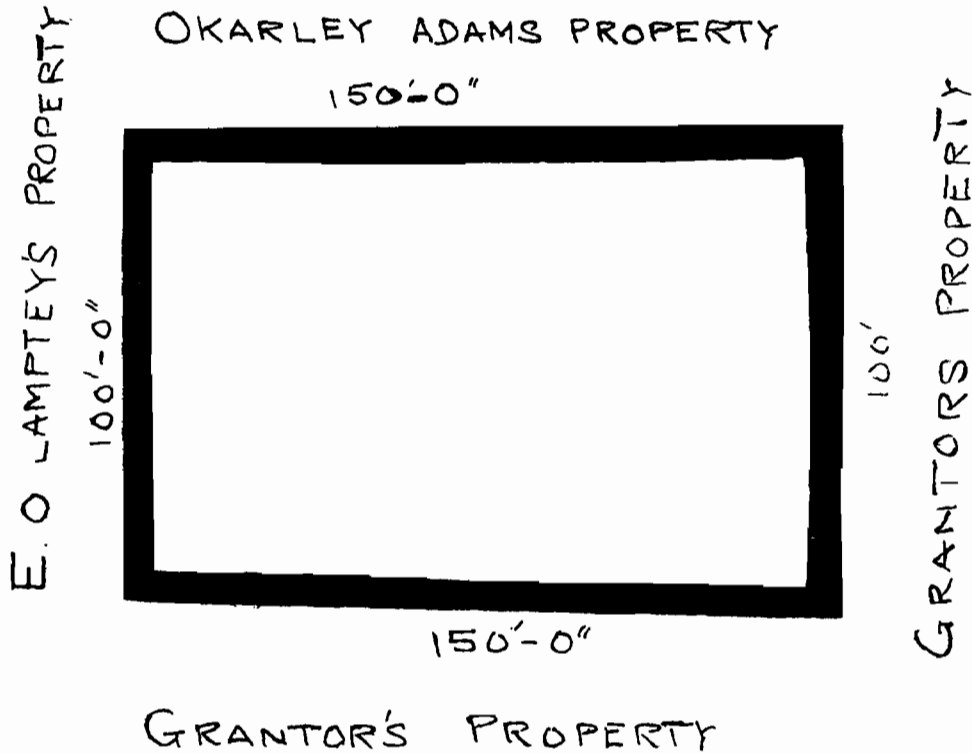
Plan shewing property of
Madam Alice Adams

Situated on the East of Nsawam Road

Kokomlemle Accra.

Scale 30"

WC.
Conveyance
by
Allotey to
Alice
Adams,
27th May
1933,
continued.



PLAINTIFF'S EXHIBIT.

No. 12.

CONVEYANCE by Molai to Hammond.

Plaintiff's
Exhibit.

No. 12.

Conveyance
by Molai to
Hammond,
31st May
1933.

Deeds Registry
No. 365/1933.

THIS INDENTURE made the 31st day of May One thousand nine hundred and thirty-three (1933) Between TETTEH QUAYE MOLAI of Accra Gold Coast Colony as acting Korle Priest with the consent of the members of the Agbarh which consent is hereby testified by some of them subscribing their names to these presents as witnesses (hereinafter called the Donor which expression where the context so admits shall include his heirs successors and assigns) of the one part And ROBERT KOFI HAMMOND of Christiansborg in the Colony aforesaid as head of Tawiah Motu's family (hereinafter called the Donee which expression where the context so admits shall include his successors and assigns) Whereas in or about the year 1833 Nee Numo Annan as Korle Priest with the consent of the Agbarh made a free voluntary and absolute gift of the land and hereditaments hereinafter

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described and intended hereby to be conveyed in favour of the Donee's grandfather Tawiah Motu late of Accra deceased And whereas the said Tawiah Motu possessed occupied and enjoyed the said land as his freehold property without any interruption or disturbance till his death in the year 1894 And whereas the Donee's mother Norkai as successor of the said Tawiah Motu and the head of his family possessed occupied and enjoyed the said land without interruption or disturbance until her death in the year 1920 And whereas the Donee as successor of the said Norkai and head of Tawiah Motu's family has been in undisturbed possession and occupation of the said land since the death of the said Norkai and has now requested the Donor and the Donor has agreed to execute a deed of gift of the said land and hereditaments in favour of the Donee as head of the family of Tawiah Motu Now this Indenture witnesseth that in pursuance of the said agreement and in consideration of the premises and of the sum of one pound (£1) now paid to the Donor by the Donee (the receipt whereof the Donor hereby acknowledges) and for divers other good causes and considerations the Donor as beneficial owner and acting Korle Priest doth hereby grant and convey unto the Donee as head of the family of Tawiah Motu All that piece or parcel of land situate North of Akladi Village East of Accra-Nsawam Road near Avenaw Accra aforesaid and bounded on the North by land belonging to Korley Webii and measuring five hundred and fifty feet (550') more or less on the South by land belonging to J. H. Adams and Korley Webii and measuring five hundred and seventy-six feet (576') more or less on the East by land belonging to Korley Webii and measuring three hundred and forty-six feet (346') more or less and on the West by land belonging to Okoe and Tetteh Quaye Molai and measuring three hundred and forty feet (340') more or less howsoever otherwise the same may be known bounded described or distinguished and is more particularly delineated on the accompanying plan edged red (*Together with the appurtenances etc. And the estate etc.*) To have and to hold the said land and hereditaments unto and to the use of the Donee as head of the family of Tawiah Motu in fee simple And the Donor for himself his heirs successors and assigns doth hereby covenant with the Donee his successors and assigns (*For good right to grant for quiet enjoyment free from incumbrances And for further assurance*).

Plaintiff's Exhibit.
 No. 12.
 Conveyance by Molai to Hammond, 31st May 1933, *continued.*

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

40 Signed Sealed Marked and Delivered by the said Tetteh Quaye Molai after the foregoing had been read over interpreted and explained to him in the Ga language by Albert M. Pappoe and he seemed perfectly to understand the same before making his mark thereto in the presence of

Nee Tetteh Kwei Molai

His
X
Mark

L.S.

Writer and witness to mark

(Sgd.) A. M. Pappoe
 (Sgd.) E. A. Pappoe
 (Sgd.) Martin W. Jacobson.

Plaintiff's Exhibit. Signed Sealed and Delivered by the said } (Sgd.) R. K. Hammond L.S.
 of Robert Kofi Hammond in the presence }
 No. 10. of
 Conveyance (Sgd.) ?
 by Molai to (Sgd.) J. T. Quartey.
 Hammond, (Sgd.) H. T. Quartey.
 31st May
 1933,
continued.

Endorsed Certificate that instrument is chargeable with a duty of one pound.

Gold Coast Land Registry
Registered as No. 365/1933

10

(Sgd.) J. F. St. A. Fawcett,
Registrar of Deeds.

PLAN IS SEPARATE DOCUMENT.

1st Defendant's Exhibit.
C.
"Independent" Insertion,
19th January 1937.

1st DEFENDANT'S EXHIBIT.

"C."

"INDEPENDENT" INSERTION.

TO ALL WHOM IT MAY CONCERN.
ATUKPAI LANDS.

PLEASE TAKE NOTICE that all that piece or parcel of land situate and lying behind the Lunatic Asylum, and bounded on the North by Karl Randolph's and late Lutterodt's properties on the South by Lomo Anseh's property on the East by Christiansborg boundary and on the West by the Accra-Nsawam road is the property of the Atukpai people and anyone buying any portion of the above land from any other person than the Head of the Atukpai Quarter does so at his or her own risk.

his
Nee Tetteh Churu X
mark
Head of Atukpai.

Accra 19th January 1937.

30

Witness to mark.
E. A. Okraku.

PLAINTIFF'S EXHIBIT.**No. 3.****AUCTION NOTICE.**

A. C. Quartey is instructed to sell by Public Auction without reserve on the spot, at Avenor Accra on Tuesday the 26th day of July, 1938 at 4 o'clock p.m. precisely the undermentioned namely :—

10 All that piece or parcel of land situate, lying and being at Avenor Accra and bounded on the North by Tetteh Quaye Molai's property measuring 140 feet more or less on the South by J. H. Adam's property measuring 120 feet more or less on the East by Madam Ayeley's property measuring 156 feet more or less and on the West by Nsawam-Kibbi Road measuring 213 feet more or less Known as the Property of Tackie Yaoboi Ex Ga Manche and Akoshia Yaokor both of Accra.

The sale is at the instance of Mr. Joseph Nassar of Accra under a Deed of mortgage dated 13th April, 1937.

CONDITIONS OF SALE.[*Not printed.*]

20 "Kafodidi Mart,"
Ussher Town, Accra.
11th July, 1938.

A. C. Quartey,
Licensed Auctioneer, Debts Collector
and General Negotiator.

PLAINTIFF'S EXHIBIT.**No. 2.****NOTICE to Joseph Nassar.****NOTICE.**

To Joseph Nassar of Accra
And all whom it may concern :

30 WHEREAS a portion of all that piece or parcel of land situate at AVENOR ACCRA the property of the family of the late NEE OKAI TSEI advertised to be sold by public auction by A. C. Quartey Licensed Auctioneer at the instance of Hoseph Nassar of Accra on the 26th day of July 1938 is not the property of Ex-Ga Mantse Tackie Yaoboi and does not form part of any of his property which he purported to have mortgaged to Hoseph Nassar.

Now the said Joseph Nassar and all persons attending such Auction are hereby notified and warned that the said piece or parcel of land is the property of the family of late Nee Okai Tesei by a judgment of the Divisional Court, Accra and that whosoever shall attempt to sell or purchase the same does so at his, her or their risk and peril.

Dated at Accra, the 23rd day of July, 1938.

40

T. J. Whitaker,
Solicitor for the family of Nee Okai Tesei.

Plaintiff's Exhibit.

No. 3.
Auction
Notice,
11th July
1938.

No. 2.
Notice to
Joseph
Nassar,
23rd July
1938.

1st
Defendant's
Exhibit.

1st DEFENDANT'S EXHIBIT.

" K. "

PROCEEDINGS in Taylor v. Churu.

K.
Proceedings
in Taylor v.
Churu,
22nd
September
1938.

IN THE TRIBUNAL OF THE PARAMOUNT CHIEF OF THE GA STATE (Eastern Province) Gold Coast. Held at Accra on Thursday the 22nd day of September, 1938 before NII TACKIE OBILE, Ga Mantse (President NII HENRY NUNOO, Ag. Abola Mantse), councillors J. A. B. AMMAH, TETTEH OGBU, ASAFOATSE AHELEH, AHELEH NUKPA, JOHNSON ABBEY, J. AMAR BOI and Linguists N. T. AMMAH and C. D. ADDO.

10

Record taken by Ashaley Okoe.

Suit No. 659/38.

THEO TAYLOR & WM. BOTCHWAY MARBELL - Plaintiffs

versus

NII TETTEH CHURU alias ADJABENG TETTEH,
KOFI AKOTO, ADDYTSE KOJO, ADDY,
KWAKU PEO & TETTEH ASHA - Defendants.

The Plaintiffs claim from the defendants the sum of £100 damages for trespass committed by the Defendants on the Plaintiffs' land commonly known and called " Marbell's land " situate, lying and being at Agotin, 20 near Aveno, Accra. The trespass complained of being the Defendants without the consent of the Plaintiffs unlawfully entered into the land above described and put thereon customary Injunction (" Bleo ") restraining the 1st Plaintiff's workmen from completing the erection of his building.

Parties present.

Defendant plead not liable.

The 2nd Plaintiff applies that the Tribunal do allow the above case to be referred to Nii Owoo for arbitration and amicable settlement.

Mr. Taylor disagrees.

1st Defendant speaking in behalf of the other Defendants said they 30 agree but will return if dissatisfied with the decision there.

*By Trib. :—*This case is adjourned till to-day week in the meantime this case is referred to arbitration before Nii Owoo.

(Intld.) J.R.A.O.,

Rec.

See page 516.

IN THE TRIBUNAL OF THE PARAMOUNT CHIEF OF THE GA STATE, Eastern Province, Gold Coast, held at Accra on Friday the 14th day of October, 1938, before NII TACKIE OBILE, Ga Mantse (President), NII HENRY NUNOO, Ag. Abola Mantse, Councillors J. A. B. AMMAH, ASAFOATSE AHELEH, AHELEH NUKPA, JOHNSON ABBEY, J. AMAR BOI and Linguists N. T. AMMAH and C. D. ADDO.

1st
Defendant's
Exhibit.

K.
Proceedings
in *Taylor v.*
Churu,
22nd
September
1938,
continued.

Record taken by A. Q. Hammond, Registrar.

THEO TAYLOR & ANO.

10

versus

NII TETTEH CHURU & ORS.

From page 453.

Plaintiff present.

1st, 3rd, 5th and 6th Defendants present. 2nd Plaintiff absent.

Note.—1st Defendant states that he is appearing for himself and on behalf of 2nd and 4th Defendants owing to their indisposition.

Adj. later for the 2nd Plaintiff to appear.

See next page.

(Intd.) A.Q.H.

20

Reg.

THEO TAYLOR & ANO.

versus

NII TETTEH CHURU & ORS.

From preceding page.

Parties present.

Note.—The Plts. state that they are to give their statements separately. The 1st Plaintiff sworn on Bible states :—

I am Theodore Taylor, a merchant residing at Accra.

Adj. to ten minutes.

30

(Intld.) A.Q.H.

Reg.

See page 577.

IN THE TRIBUNAL OF THE PARAMOUNT CHIEF OF THE GA STATE, Eastern Province, Gold Coast, held at Accra on Thursday the 3rd day of November, 1938, before NII TACKIE OBILE, Ga Mantse (President), NII HENRY NUNOO, Ag. Abola Mantse, Councillors J. A. B. AMMAH, ASAFOATSE AHELEH, AHELEH NUKPA, JOHNSON ABBEY, J. AMAR BOI and Linguists C. D. ADDO and N. T. AMMAH.

40 Record taken by J. R. Ashaley Okoe.

THEO TAYLOR & ANO.

versus

NII TETTEH CHURU & ORS.

From page 517.

Parties present.

Note.—2nd Plaintiff states that he realises and admits that he stole the land and sold it to the 1st Plaintiff. Mr. Taylor also states that in

1st Defendant's Exhibit. the circumstances he is prepared to abide by whatever ameliorative measures the Tribunal may deem necessary.

Note.—Tribunal asks for the reduction.

K.
Proceedings
in *Taylor v.*
Churu,
22nd
September
1938,
continued.

Note.—Defendants agree that they are in a position to accept the £70 agreed upon at the arbitration before Nii Owoo and would be prepared to make a considerable reduction as the case is now before the Tribunal.

Note.—Defendants are prepared to accept £60 and to leave the land for 1st Plaintiff's use.

Note.—Tribunal directs Mr. Taylor to pay £20.

Note.—2nd Plaintiff is ordered to refund the £40 he has falsely collected from Mr. Taylor already to be added to the £20 for delivery to the Defendants. 10

Note.—2nd Plaintiff asks for two weeks to make this refund.
Case adj. till 17/11/38.

(Intld.) J.R.A.O.

Rec.

IN THE TRIBUNAL OF THE PARAMOUNT CHIEF OF THE GA STATE, Eastern Province, Gold Coast, held at Accra on Tuesday the 6th day of December, 1938, before NII TACKIE OBILE (President), NII HENRY NUNOO, Ag. Abola Mantse, Councillors 20 J. A. B. AMMAH, AHELEH NUKPA, JOHNSON ABBEY, J. AMAR BOI, DJAWAHTSE and Linguists C. D. ADDO and AFETOR.

THEO TAYLOR & ANO.

versus

NII TETTEH CHURU & ORS.

From page 577.

Parties present.

Mr. Taylor states that he is prepared to pay £60 by himself if 2nd Plaintiff can not afford to return the £40, and to collect that later. 30

2nd Plaintiff Marbell states he had already admitted his guilt of theft and could not deny. Knew that land was not his when he sold it. He has no reason to shift from that decision and was prepared to serve any penalty Tribunal might inflict in respect of this confession.

Mr. Taylor asks if 2nd Plaintiff could Mortgage his village to him for the £40 he was giving in his behalf. 2nd Plaintiff Marbell refuses. Adds land not his and had that knowledge in mind before his sale to Taylor.

Mr. Taylor lodges the £60 with Tribunal.

Adj. till Thursday.

(Intld.) J.R.A.O. 40

Rec.

Plaintiff's Exhibit.

PLAINTIFF'S EXHIBIT.

No. 4.

INDENTURE between Nii Molai &c. and Bishop Porter.

No. 4.
Indenture
between
Nii Molai,
&c., and
Bishop
Porter,
30th
September
1939.

Deeds Registry
No. 922/1939.

Gold Coast
Stamp Duties
One Pound

Gold Coast
Stamp Duties
One Pound

Gold Coast
Stamp Duties
Ten Shillings

Original.
4651/39

THIS INDENTURE made the 30th day of September One thousand 10
 nine hundred and thirty-nine (1939) Between THE KORLE-WE OR KORLE
 FAMILY of Gbese, Ussher Town Accra per its lawful Representatives
 NII TETTEH KWEI MOLAI, Acting Korle Wulomo (Priest), NII AYI BONTE,
 Gbese Manche, GEORGE ADJIN TETTEY, MARTIN WILLIAM JACOBSON,
 TETTEH KWEI ONYA and AYITEY OGBLEKU all of Ussher Town, Accra
 aforesaid (hereinafter called the Lessors which expression where the
 context so requires or admits shall include the Reversioner for the time
 being immediately expectant upon the term hereby created) of the one
 part and THE RIGHT REVEREND WILLIAM THOMAS PORTER, Bishop 20
 Apostolic of the Roman Catholic Mission of the Gold Coast (hereinafter
 called the Lessee which expression where the context so requires or admits
 shall include his successors in office and assigns) of the other part
 Whereas the Lessors have agreed with the Lessee to grant and do hereby
 grant unto him All that piece or parcel of land the boundaries whereof
 are more specifically described in the Schedule hereto for the term of
 ninety-nine (99) years from the first day of October One thousand nine
 hundred and thirty-nine (1939) at the rent and subject to the covenants
 and conditions hereinafter contained Now this Indenture witnesseth
 that in consideration of the yearly rents and covenants on the part of
 the Lessee hereinafter reserved and contained and the sum of One hundred 30
 and thirty pounds (£130) being One hundred pounds (£100) earnest money
 and field and execution fees Thirty pounds (£30) paid by the Lessee before
 the execution of these presents (which sum the Lessors do hereby
 acknowledge and from the same do hereby release the Lessee) the Lessors
 do hereby grant and demise unto the Lessee All that piece or parcel of
 land situate lying and being at Akwandor, Kokomlemle, Accra aforesaid
 which said land is more particularly described in the Schedule hereto and
 delineated on the Plan attached to the end of these presents To hold
 the said land hereby demised or expressed so to be unto the said Lessee
 for the term of Ninety-nine (99) years from the first day of October One 40
 thousand nine hundred and thirty-nine (1939) Yielding and paying to
 the said Lessors the rent of Fifteen pounds (£15) per annum by yearly
 payments in advance the first payment whereof is to be made on the
 execution hereof Provided also that the said Lessee shall have the right
 to assign underlet or otherwise deal with the same without the consent
 or licence of the Lessors for that purpose being had and obtained And
 provided always that the said Lessee shall have the right to terminate
 these presents at any time upon giving to the Lessors Six (6) calendar
 months' notice in writing of his intention so to do or paying to them
 Six (6) calendar months' rent in lieu of such Notice (*Here follow covenants* 50

by the Lessee and the Lessor including the following :—) The Lessors hereby covenant with the Lessee that in the event of the Lessors being unable owing to the claim of a third party or otherwise to give the Lessee possession and quiet enjoyment of the demised premises in accordance with the foregoing covenants within a period of One (1) year of the date of these presents the Lessors will by Deed demise to the Lessee other land of the Lessors within the limits of Accra of extent equal to that hereby demised and in all respects equally suitable for the Lessee's purposes as a Mission Station for Schools, Church and Residence on the same terms and conditions as are herein contained and will do all acts and execute all Deeds necessary for demising such premises to the Lessee.

Plaintiff's Exhibit.
 No. 4.
 Indenture between Nii Molai, &c., and Bishop Porter, 30th September 1939, continued.

The Schedule above referred to.

All that piece or parcel of land situate lying and being at Akwador, Kokomlemle, Accra aforesaid and containing by admeasurement On the North side seven hundred and sixty feet (760' 0") more or less On the South side seven hundred and sixty feet (760' 0") more or less On the East side seven hundred and eighty feet (780' 0") more or less and On the West side nine hundred feet (900' 0") more or less and bounded on the North by a Proposed Road On the South by a Proposed Road On the East by a Proposed Road and Two (2) Government Pillars marking the intersection of the Proposed Ring Road and On the West by a Proposed Road and Two (2) Government Pillars G.C.G.E.P. 14/30/105 and G.C.G.E.P. 14/30/107 marking the intersection of the said Proposed Ring Road or howsoever otherwise the same may be bounded known described or distinguished and are for clearness but not for limitation delineated on the Plan hereto annexed such Plan being taken from Gold Coast Survey Plan C.27.

In witness whereof the parties have hereunto set their hands and seals the day and year first above written.

30 Signed Marked and Sealed and Delivered by the said Nii Tetteh Kwei Molai, Acting Korle Wulomo (Priest), Nii Ayi Bonte, Gbese Manche, George Adjin Tettey, Martin William Jacobson, Tetteh Kwei Onya and Ayitey Ogbleku after this Indenture had been read over, interpreted and explained to the said Nii Tetteh Kwei Molai, Acting Korle Wulomo (Priest), Nii Ayi Bonte, Gbese Manche, George Adjin Tettey, Martin William Jacobson, Tetteh Kwei Onya and Ayitey Ogbleku in the Ga Language by Henry Curdueth Plange-Cudjoe of Accra when they expressed themselves perfectly to understand the same before executing it in the presence of

		Their	
Tetteh Kwei Molai	x	L.S.	
Ag. Korle Wulomo Priest	x	L.S.	
Ayi Bonte (Gbese Manche)	x	L.S.	
		marks	
Sgd. George Adjin Tettey		L.S.	
„ Martin W. Jacobson		L.S.	
		Their	
Tetteh Kwei Onya	x	L.S.	
Ayitey Ogbleku	x	L.S.	
		marks	

(Sgd.) H. C. Plange-Cudjoe
 Law Clerk, Accra.

Plaintiff's Exhibit.
 No. 4.
 Indenture between Nii Molai, &c., and Bishop Porter,
 30th September 1939,
continued.

(Sgd.) T. B. Tetteh
 „ G. W. B. Okai
 „ ?
 „ Geo. T. Hyde
 „ G. C. Okai Arma
 „ ?

I approve the foregoing Lease.

(Sgd.) Tackie Oblie,
 Ga Manche.

Signed Sealed and Delivered by The
 Right Reverend William Thomas
 Porter for and on behalf of the Roman
 Catholic Mission of the Gold Coast in
 the presence of

(Sgd.) W. Porter
 L.S.
 Bishop & Vicar
 Apostolic.

10

(Sgd.) J. Fisher
 „ J. C. F. Nadospe.

Endorsed with certificate as to stamp duty, receipt for £130 earnest and other monies on execution of lease and £15 rent paid 2nd October 1940.

Endorsed with certificate of registration in the Gold Coast Land Registry as No. 922/1939 on the 20th October 1939.

20

**PLAN ANNEXED TO THIS LEASE IS REPRODUCED AS
 A SEPARATE DOCUMENT.**

2nd DEFENDANT'S EXHIBIT.

"S."

CONVEYANCE by Gbeke to Allotey.

Gold Coast
One Pound
Stamp Duties.

4892/39.

2nd
Defendant's
Exhibit.

S.
Conveyance
by Gbeke to
Allotey,
24th
October
1939.

THIS INDENTURE made the 24th day of October One Thousand Nine hundred and Thirty-nine (1939) Between NII TETTEY GBEKE II Atukpai
10 Djase Tse of Accra in the Eastern Province of the Gold Coast Colony West Africa (hereinafter called the Donor which expression where the context so admits shall include his heirs successors Personal Representatives and Assigns) of the one part with the consent and approval of his Stool Family Councillors and Elders whose consent approval and concurrence in accordance with Native Law and Custom is requisite and necessary for the valid grant alienation or disposal of the Stool property hereby granted and conveyed as attested hereunder and ABRAHAM ADOTEI ALLOTEY also of Accra aforesaid (hereinafter called the Donee which
20 expression where the context so admits shall include his heirs successors Personal Representatives and Assigns) of the other part Whereas by a Deed of Gift dated the 16th day of February One Thousand Nine hundred and one (1901) and made between Ayi Quarmin and Joseph Henry Adams both of Accra and deceased the said Ayi Quarmin purported to convey the hereditaments and premises herein contained to the said Joseph Henry Adams And whereas the said Joseph Henry Adams died intestate on or about the 4th day of October One Thousand Nine Hundred and Thirty-one (1931) and the Donee according to Native Custom became his successor and Head of the Family and was granted Letters of Administration of the estate of the said Joseph Henry Adams by the Divisional Court
30 Accra on the 10th day of December One Thousand Nine Hundred and Thirty-one (1931) by reason of the Donee being the lawful nephew heir and next of kin And whereas the said Ayi Quarmin had no right power or title to grant the said hereditaments and premises to the said Joseph Henry Adams And whereas the Donor as the Head and Djase Tse of Atukpai Accra is seized in fee simple in possession of the hereditaments and premises hereinafter contained and is the proper person with the approval and consent of his Councillors and Elders of Atukpai is the proper person to deal with alienate or part with the said hereditaments and premises which belongs to Atukpai Stool And whereas the Donor
40 is desirous of making such gift or disposition in favour of the Donee And whereas the Donor in order to give effect to such his desire and determination has agreed Together with his Councillors and elders to grant and convey unto the Donee the said hereditaments and premises herein contained in manner hereinafter appearing Now this Indenture witnesseth that in pursuance of the said Agreement and in consideration of the sum of Thirty pounds (£30) paid by the Donee to the Donor (the receipt whereof the Donor doth hereby acknowledge) and of the Natural Love and Affection and for divers other good causes and consideration the said Donor as beneficial owner and being the Djase Tse of Atukpai
50 doth hereby absolutely grant and convey unto the Donee his heirs successors Personal Representatives and Assigns All that piece or parcel

2nd
Defendant's
Exhibit.
S.
Conveyance
by Gbeke to
Allotey,
24th
October
1939,
continued.

of land situate at Aburi Road now Accra-Nsawam lorry road and commonly known as Koko-Mle-Mle and bounded on the North by Atukpai Stool land measuring Four hundred feet (400') more or less on the South by Atukpai Stool land measuring Four hundred feet (400') more or less on the East by Atukpai Stool land measuring Six hundred feet (600') more or less and on the West by Aburi Road now known as Accra-Nsawam Lorry Road and measuring Six hundred feet (600') more or less which said property is more particularly delineated on the Plan attached to these presents (*Together with all rights etc. And all the estate etc.*) To have and to hold the same unto and to the use of the Donee his heirs 10 successors Personal Representatives and Assigns for ever and the Donor for himself his heirs successors Personal Representatives and Assigns doth hereby covenant with the Donee (*For good right to convey Free from incumbrances For quiet enjoyment And for further assurance*) In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

Signed Sealed and Delivered by the said } (Sgd.) Tettey Gbeke
Nii Tettey Gbeke II the Djase Tse of } (Djase Tse)
Atukpai Stool in the presence of :— } (L.S.)

(Sgd.) ?

20

	Their	
James Nortei Yabuah	X	
Thomas Thompson Aryee	X	
Tetteh Hagen Amartei	X	
Yaya Tetteh	X	
Eml. Tetteh Addy	X	
Tetteh Oboe Addy	X	
(Sgd.) ? Tetteh		
(Sgd.) J. Adjetey Okai		
Antie Codjoe Addy	X	30
Thomas Ansah	X	

Marks

(Sgd.) ? Aryee
Witness to signature and marks.

Signed Sealed and Delivered by the said } (Sgd.) A. A. Allotey
Abraham Adotei Allotey in the } L.S.
presence of :—

	Their	
Joseph Mensah Larbi	X	
Ammahfio Tackie	X	
Ammah Tagoe	X	40

marks

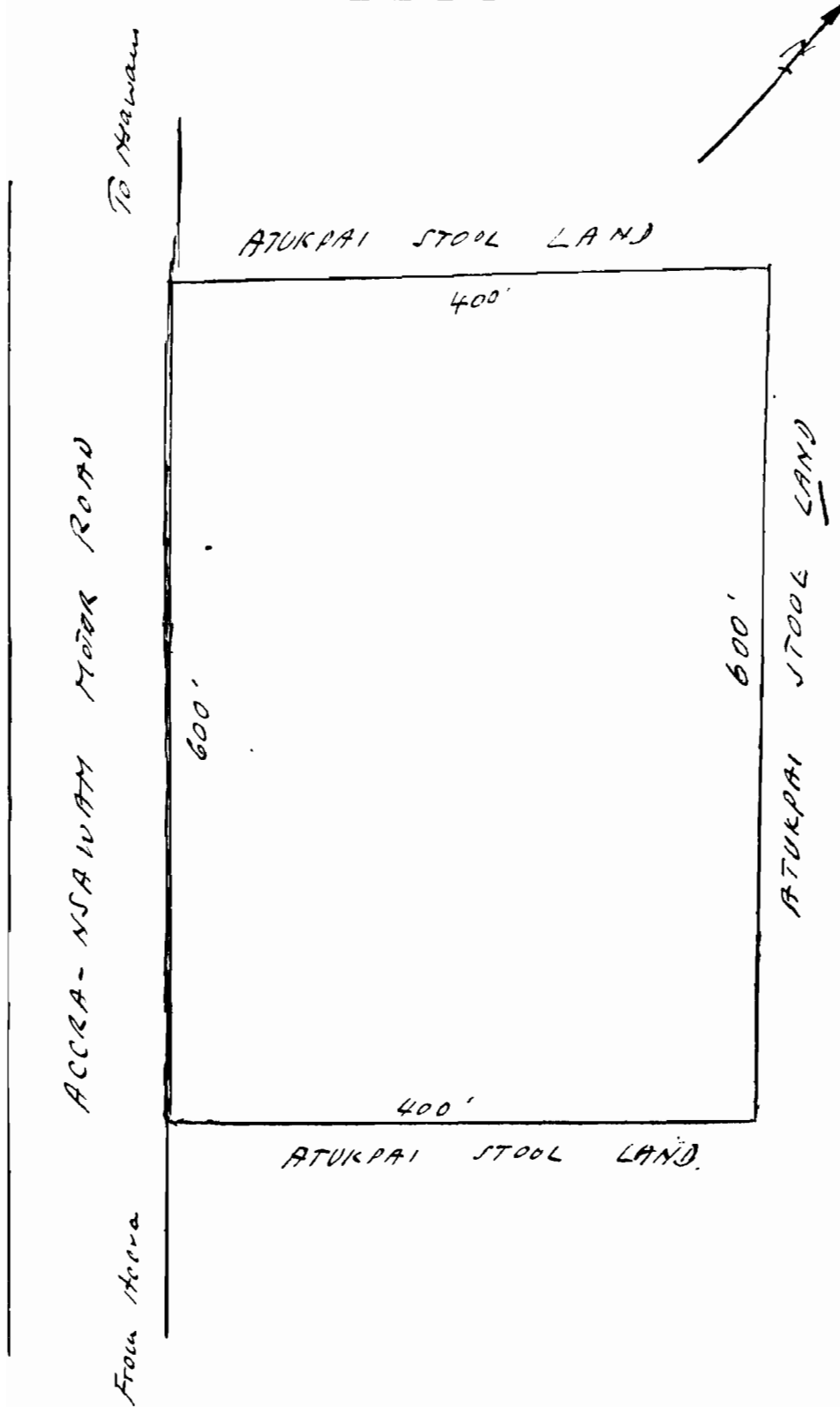
(Sgd.) Okai Koinkrah ?
(Sgd.) N. A. Tackie
(Sgd.) ?
Witness to signature & marks
(Sgd.) ? Aryee.

Endorsed Certificate that instrument is chargeable with a duty of One pound.

Plan of land herein referred to
shown edged pink
Scale 1:1250'

2nd
Defendant's
Exhibit.

S.
Conveyance
by Gbeke to
Allotey,
24th
October
1939,
continued.



*Plaintiff's
Exhibit.*

PLAINTIFF'S EXHIBIT.

No. 8.

WRIT OF SUMMONS in Gbeke v. Nii Nortey.

851/40.

No. 8.
Writ of
Summons
in *Gbeke v.
Nii Nortey*,
3rd
December
1940.

Civil Summons.

IN THE TRIBUNAL OF THE PARAMOUNT CHIEF OF THE GA STATE, Gold Coast Colony.

NII TETTEY GBEKE II Dsasetse of Otuopai for and on behalf of the Otuopai Stool - Plaintiffs

and

10

NII ADUMUAH NORTEY as head of Nortey Agbetei family and on behalf of Agbetei of Christiansborg Accra, and NII ANYETEI KWAO ODOITSO ODOI KWAO and JOHANNES MENSAH AMARTEI - Defendants.

To Johannes Mensah.

YOU ARE HEREBY COMMANDED to attend this Tribunal at Accra on Thursday the 16th day of January, 1941, at 8.30 o'clock a.m. to answer a suit by Nii Tettey Gbeke II of Accra against you.

The Plaintiff claims £50 Damages from the defendants jointly and severally for trespass by the defendants on all that piece or parcel of land situate lying and being at Accra near the Cantonments and commonly known as Akowandor and which said land is bounded on the North by Carl Reindorf's property and Osu Stool Lands and late William Lutterodt's land on the South by Lomo Ansah's land on the East by Osu Stool land and on the West by Accra Nsawam Road the property of Otuopai Stool which trespass was committed by the defendants jointly and severally on the said land on or about the 7th day of December, 1940, and for an injunction restraining the defendants jointly and severally their agents servants and workmen from continuing the said trespass and declaration of plaintiff's title to the said piece or parcel of land.

30

Issued at Accra 31st day of December 1940 :

Claim	£50 0 0
Tribunal fee	1 5 0
Mileage & service	5
	<hr/>
	£51 10 0
	<hr/> <hr/>

(Sgd.) Tackie Obile,
Signature of Ga Manche.

TAKE NOTICE :—

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

(Sgd.) E. T. Obilie,
Registrar.

40

No. 9.

EVIDENCE of Nii Ayi Bonte in Molai v. Bruce.

Plaintiff's
Exhibit.

TETTEH KWEI MOLAI et al. - - - - Plaintiffs

V.

EMMA C. BRUCE et al. - - - - Defendants.

Mr. K. Papafio for Plaintiffs.

Mr. A. Hutton-Mills for Defendants.

No. 9.
Evidence
of Nii Ayi
Bonte in
Molai v.
Bruce.
3rd
December
1940.

AYI BONTE, sworn on Fetish :—

Manche of Gbese Quarter of Accra. I have been Manche for 17 years.
 10 I know the Korle Webii family. I know Tetteh Kwei Molai, the head of
 the family—this family have lands. I know the Kokomlemle and Avenor
 lands. They belong to the Korle Webii and Gbese Stools. The Korle
 Webii take care of the lands for the Gbese Stool. I know J. H. Adams—
 he has land there. Yaotey Kwami, Tetteh Kwei Molai, Mensah, Adome
 Tetteh, Lamptey, Kwao, Bekwai, Ankraah—all have lands there. As
 Manche I have heard of Okai Tiseh. I never knew him. I never heard
 he had lands in Avenor or thereabouts. As Manche I should have known.
 If people go to the Korle Webii and ask for land, the Korle Webii can grant
 it to them, but only with my permission. The land would still belong to
 20 the Korle Webii, provided it was not purchased. The Korle Priest
 consulted me before bringing this action and I gave him leave to do so.
 He could bring the action without consulting me—as caretaker—so long
 as he informs me.

I know Tetteh Cobblah—he lives at Avenor. About 8 years ago I
 regarded him as the elder of Avenor, as everyone else died—but he started
 to dispose of Avenor lands wrongfully and the Korle Priest brought him
 before me and I had a case with him and I fined him 30/—, and removed him
 from his position. I never heard that Okai Tiseh had land at Avenor, and
 Tetteh Cobblah knows he had none. By our custom if a man plants tree
 30 on the land, he does not become the owner thereof. I have dealt with
 cases of Ga custom and I know it. If a person squats on land, his
 descendants do not become owners of the land. If that squatter had a
 slave, on the death of his master the slave has no right to the land. I
 did not know Adoo, the late Korle Priest. I never heard he granted land
 to Okai Tiseh. The Ga Manche cannot give away Korle Webii land
 without their consent. If my predecessor gave Okai Tiseh Korle Webii
 land, it would be contrary to custom.

Cross-examined :—

The Korle Webii and the Gbese Stool are joint owners of these lands.
 40 The Korle Webii and Gbese Stools are in common. The Korle Webii have
 a fetish stool on which the Priest sits. It is under the Gbese stool. The
 Korle Webii are not the sole owners of their land. The Korle Webii
 are people from the Gbese quarter and are the same people. They
 have no land apart—they can claim the land from persons, if I
 sanction it. If this Court declared the Korle Webii to be owners of this
 land they could not do what they pleased with it—as they are under me.

Plaintiff's Exhibit. The Gbese Stool has neither sold nor "dashed" these lands to the Korle Webii. The Korle Webii people according to custom can sue and be sued in their own name with my permission, unless the person suing or being sued is a Chief, then I must be joined. I have given permission in writing for this action to be brought. If Government acquired this land, the compensation would come to me and the Stool would share it with Korle Webii. The Korle Webii follow the Ga custom. According to Ga custom sales of land 50 years ago without document were made. Documents, were only granted to "civilized" people. 50 years ago if land was gifted, the process was the same. No paper was given in the case of squatters, 10 as the land does not become his.

No. 9.
Evidence of
Nii Ayi
Bonte in
Molai v.
Bruce,
3rd
December
1940,
continued.

Squatters can acquire ownership by sale, if they come and ask to buy the land—he can acquire ownership in no other way. If a squatter dies on the land, the land reverts to the owner. Descendants of squatters have the right to remain on the land as squatters, but they do not acquire ownership.

'When Manche D. P. Hammond was Manche of Asere, Tackie Obli was Ga Manche. I have acted as Ga Manche. I heard of the case of *Hammond v. Ababio*, Manche of James Town, 1912. I have been told the history of the Gas. I have not heard of Ayi Kuma Tackie. I don't 20 know if he was a Ga Manche. I have never heard that he divided the Ga lands between the Manches of Accra. The Gbese Stool do not look after the Avenor lands for the Ga Manche. The Avenor lands were acquired by the Gbese when they cleared the virgin bush and settled there and cultivated—many years before I was born. I don't know Tetteh Cobblah's father's name. Tetteh Cobblah came from Mayara. It is not true that Tetteh Cobblah's father Tetteh Azore and Ashong were the first settlers in Avenor. If they were, it does not shew the land belonged to them. I do not know the names of the first Gbese settlers. Tetteh Cobblah is much older than I am. I did not mean that because the Gbese cleared 30 the bush and farmed that they became owners of the land. I meant that it became the property of the Gbese Stool. I don't know where they farmed, or who their descendants are. By Ga custom, I could not turn off any of the descendants of the original settlers, provided they behave themselves, but they do not acquire ownership. If this Court gave a declaration that the Korle Webii people were owners of this land, they could not turn descendants of original squatters off if they behaved themselves. The only thing they cannot do is to sell the land. They need not live upon the land, and they can appoint a caretaker to look after gather the crops and fruit. The Defendants are Gbese. They are descendants of 40 Okai Tiseh, who was a Gbese. There is a brass helmet which is always worn at Gbese celebration. The man who wears it goes before me. I don't know if it preceded Okai Tiseh. The helmet belongs to the Okai Odibawehbii—it is worn by them as a mark of distinction. They introduce an Asafo dance called Akonfoda. The Asafo is a company dance. I have never heard that Okai Tiseh was head of the family. Asere Teiko is now head of the family. I know Asafoakye Annan—he is now captain of James Town. He is a Gbese of Okai Tiseh's family. I can't say if he has worn this helmet. I don't know if Okai Tiseh had followers. Asere Teiko has followers. I have never heard of Kadabi. If anyone forcibly 50 tried to take Avenor land, I should be told. I know Adams, Adome

Tetteh and the others have lands at Avenor of my own knowledge. It is to my interest that these lands be declared the property of the Korle Webii. The Korle Webii cannot make a land paper for sale or lease without my permission. They can make out squatting papers. The dispute I had with Tetteh Cobblah was over Avenor land. He permitted a man to mortgage some of the land which did not belong to him. I have had to settle a dispute between 2 persons as to who was the rightful owner of Avenor land—one man's name was Kofi. Korle Webii reported to me that Kofi was claiming portion of Avenor land to make a plan to mortgage it. I found the land belonged to Adams. I do not remember Adams coming to me and telling me George Lutterodt was claiming part of his land. There is no record kept of the lands given out at Avenor, or sold, or squatted upon, and there is no record of boundaries. I leave the question of Avenor lands to the Korle Priest.

Plaintiff's Exhibit.

No. 9.
Evidence of
Nii Ayi
Bonte in
Molai v. Bruce,
3rd
December
1940,
continued.

Re-examined :—

The Korle Webii had a written authority to bring this action—it was about all the Gbese lands. I could identify it if I saw it—this is it. (Tendered for identification—marked “1”.) I was never told Okai Tiseh was an original settler.

Id: “1.”

20

2nd DEFENDANT'S EXHIBIT.

“ W A.”

CONVEYANCE by Allotey to Adjin.

Gold Coast
Ten Shillings
Stamp Duties.

1193/41

2nd Defendant's Exhibit.

W A.
Conveyance
by
Allotey to
Adjin,
29th March
1941.

30

THIS INDENTURE made the 29th day of March One Thousand Nine hundred and Forty-one (1941) Between ABRAHAM ADOTEI ALLOTEY of Accra in the Eastern Province of the Gold Coast Colony (hereinafter called the Vendor which expression where the context so admits shall include his heirs successors Personal Representatives and Assigns) of the one part And JONATHAN AYITEY-ADJIN of Accra in the aforesaid Colony (hereinafter called the Purchaser which expression where the context so admits shall include his heirs successors Personal Representatives and Assigns) of the other part Whereas by an Indenture of Deed of Gift dated the 16th day of February One Thousand Nine hundred and One (1901) and made between Ayi Quarmin and Joseph Henry Adams both late of Accra the said Joseph Henry Adams was during his life time seized in fee simple in possession free from incumbrances of the hereditaments and premises herein contained which is a portion of the entire hereditaments and premises contained in the recited Indenture And whereas the said Joseph Henry Adams died intestate on or about the 4th day of October One Thousand Nine hundred and Thirty-one (1931) and the Vendor

40

2nd
Defendant's
Exhibit.

W A.
Conveyance
by
Allotey to
Adjin,
29th March
1941,
continued.

according to Native Custom became his successor and Head of his Family and was granted Letters of Administration of the estate of the said Joseph Henry Adams by the Divisional Court Accra on the 10th day of December One Thousand Nine hundred and Thirty-one (1931) by reason of the Vendor being the lawful nephew and next of kin and Head of the Family of the said Joseph Henry Adams deceased And whereas in accordance with Native Custom and with the consent of the Principal Members of the Family of the said Joseph Henry Adams deceased the Vendor is vested with all powers to deal with alienate or in anywise deal with the hereditaments and premises comprised herein and contained in the said recited Indenture and in testimony of which the Principal Members of the said Family have hereunder subscribed their names as witnesses And whereas the Vendor has agreed with the Purchaser for the absolute sale to him the Purchaser of the said hereditaments and premises herein contained for the sum of Thirty pounds (£30) in manner hereinafter appearing Now this Indenture witnesseth that in pursuance of the recited Agreement and in consideration of the sum of Thirty pounds (£30) paid by the Purchaser to the Vendor (the receipt whereof the Vendor doth hereby acknowledge) He the said Vendor as beneficial owner and Head of and with the consent of the Principal Members of the Family of Joseph Henry Adams deceased doth hereby grant and convey unto the Purchaser All That Piece Or Parcel of Land situate lying and being at Kokomlemle on the Accra-Nsawam Road Near Accra and bounded on the North by Atukpai Stool land measuring Seventy feet (70' 0") more or less on the South by Proposed Street measuring Ninety-five feet (95' 0") more or less on the East by Vendor's land measuring One hundred and Ten feet (110' 0") more or less and on the West by Vendor's land and measuring Forty-five feet (45' 0") more or less which said piece or parcel of land is more particularly described and delineated on the Plan attached to these presents and known as Plot No. 7 Edged Red (*Together with all rights etc. And the estate etc.*) To have and to hold the same unto and to the use of the Purchaser his heirs successors Personal Representatives and Assigns for ever and the Vendor for himself his heirs successors Personal Representatives and Assigns doth hereby covenant with the Purchaser (*For good right to convey, free from incumbrances, for quiet enjoyment, for further assurance*) In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

Signed Sealed and Delivered by the
said Abraham Adotei Allotey in the
presence of : } (Sgd.) A. A. Allotey
L.S. 40

(Sgd.) G. A. Adjin
(Sgd.) S. V. Osabutey
(Sgd.) N. Ayitey-Adjin
(Sgd.) H. O. Tetteh.

Signed Sealed and Delivered by the
said Jonathan Ayitey Adjin in the
presence of : } (Sgd.) J. Ayitey-Adjin
L.S.

(Sgd.) B. L. Lamptey
(Sgd.) W. A. Adjetye
(Sgd.) J. Netty.

Endorsed Certificate that instrument is chargeable with a duty of Ten shillings.

2nd
Defendant's
Exhibit.

Received from Mr. J. Ayitey Adjin of Accra the sum of Thirty pounds (£30) being the entire purchase price of land situate at Kokomlemle Accra as herein contained.

W A.
Conveyance
by
Allotey to
Adjin,
29th March
1941,
continued

Dated at Accra, this 29th day of March, 1941.

(Sgd.) A. A. Allotey.

Witnesses :—

(Sgd.) S. V. Osabutey

10 (Sgd.) N. Ayitey-Adjin

(Sgd.) H. O. Tetteh.

2nd DEFENDANT'S EXHIBIT.

“ W B.”

INDENTURE between Allotey and Patience Adams.

(This document is partially destroyed.)

W B.
Indenture
between
Allotey and
Patience
Adams,
30th
January
1932.

THIS INDENTURE made the _____ day of January _____ Lord
One Thousand Nine hundred and _____ Between ABRAHAM ADOTEI
ALLOTEY _____ of the Family of _____ Henry Adams late
of Accra in the _____ Province of the Gold Coast Colony
20 deceased (hereinafter called the Donor which expression where the context
so admits shall include his successors and assigns) of the one part and
PATIENCE OKAILEY ADAMS also of Accra aforesaid (hereinafter called
the Donee which expression where the context so admits shall include
her heirs executors administrators and assigns) of the other part Whereas
the Donor is seised in fee simple on behalf of himself and the other members
of the family of the said Joseph Henry Adams deceased aforesaid Whereas
other plots of the land forming part of the Estate of the late Joseph Henry
Adams had been given to other members of the family of which the Donee
is also a member And whereas the Donor has with the consent of the
30 members of the family whose consent and concurrence [*sic*] is necessary
for the valid alienation of the said land and hereditaments And whereas
the Donor is desirous of making a free and voluntary gift and disposition

2nd
Defendant's
Exhibit.

W B.
Indenture
between
Allotey and
Patience
Adams,
30th
January
1932,
continued.

of the said hereditaments in favour of the Donee his natural Cousin
Now this Indenture witnesseth that in consideration of the natural love
and affection which the Donor hath for the Donee and for divers other good
in consideration of the sum of Five Pounds (£5)
paid by the Donee (the receipt whereof the Donor
hereby acknowledges) He the Donor hereby Grant and Convey [*sic*]
unto the Donee All that piece or parcel of land situate laying and being
at Kokomlemle Accra aforesaid and bounded on the North by property
belonging to Ayi Quarmin and measuring One-hundred (100') feet more or
less on the South by property belonging to the Donor and measuring 10
One hundred (100') feet more or less on the East by property belonging to
the Donor and measuring One hundred (100') feet more or less and on the
West by property belonging to the Donor and measuring One hundred (100')
feet more or less

the same are usually held occupied or enjoyed or
reputed as part thereof or appurtenant thereto And all the estate right
title interest claim and demand whatsoever of the Donor into and upon the
same To have and to hold the said hereditaments hereby granted or
expressed so to be unto and to the use of the Donee her heirs executors
administrators and assigns For ever And the Donor doth hereby for 20
himself his heirs executors administrators assigns covenant with the Donee
her heirs executors administrators and assigns That notwithstanding
any act deed or thing by him or by his ancestors done or executed or
knowingly suffered to be done to the contrary He the Donor now has good
right and title to grant the hereditaments hereby granted or expressed so
to be unto and to the use of the Donee her heirs executors administrators
and assigns in manner aforesaid And that the Donee her heirs executors
administrators and assigns shall and may at all times hereafter peaceably
and quietly hold possess occupy and enjoy the said hereditaments without
any And that 30
free from all incumbrances whatsoever or suffered by
the Donor his ancestors or any person or persons lawfully or equitably
claiming as aforesaid And that He the Donor his heirs executors
administrators and assigns shall and will from time to time and at all times
hereafter at the request and cost of the Donee her heirs executors
administrators and assigns do and execute or cause to be done or executed
all such acts deeds and things whatsoever for

In witness whereof the parties
hands and seals the day

set their
above written. 30

Signed sealed and delivered by the within
named Abraham Adotei Allotey in
the presence of }

40
L.S.

his
William Ayitey-Adjin ×
Edward Adams ×
Charles Nettey ×
mark

Signed sealed and delivered by the within
 named Patience Okailey Adams after
 the contents of this Indenture had
 been read over and interpreted to her
 in the Ga language by :—J. Ayitey-
 Adjin when she seemed perfectly to
 understand the same before affixing
 her mark thereto in the presence of :—

her
 ×
 mark

*2nd
 Defendant's
 Exhibit.*

I.S. W B.
 Indenture
 between
 Allotey and
 Patience
 Adams,
 30th
 January
 1932,
continued.

10 H. O. Tetteh
 — Adams
 Joshoh Adams
 illeg.
 illeg.
 illeg.

Witness to marks J. Ayitey-Adjin.

In accordance with section 18 of Cap. 154 is
 Chargeable with a duty of One pound
 Commissioner of Stamps Office. Accra 15.3.1932.

Endorsement on Back of Document.

20 Dated the Day of January 1932.

ABRAHAM ADOTEY ALLOTEY

TO

PATIENCE OKAILEY ADAMS

Deed of Gift.

W. G. Adoi Owoo.
 Solicitor.



*Plaintiff's
Exhibit.*

PLAINTIFF'S EXHIBIT.

No. 11.

CONVEYANCE by Gbeke to Hammond with Plan.

163/42

No. 11.
Con-
veyance by
Gbeke to
Hammond
with Plan,
22nd
November
1941.

THIS INDENTURE made the 22nd day of November One thousand nine hundred and forty-one (1941) Between TETTEY GBEKE II, Headman (Djasetse) of Atukpae Quarter in Accra in the Accra District Eastern Province of the Gold Coast Colony acting for himself and as representing and with the consent of his principal Councillors and Elders and of all other the people of the Stool of the said Headman (Djasetse) of Atukpae Quarter whose consent is by the Native Customary Law and Usages of Atukpae aforesaid necessary for the valid transfer alienation or dealing with tribal lands which consent is testified by some of such Councillors and Elders subscribing their names to the same as witnesses (hereinafter called the Grantor which expression where the context so admits shall include his heirs and successors on the Atukpae Stool) of the one part and ROBERT KOFI HAMMOND of Christiansborg Accra in the Province and Colony aforesaid Head of the family of Tawiah Motu late of Christiansborg Accra aforesaid deceased on behalf of himself and as representing all other the members of the said family of Tawiah Motu (hereinafter called the Grantee which expression where the context so admits shall include his heirs successors and assigns) of the other part Whereas the said Grantee and the members of the said Family of Tawiah Motu are people of the said Stool of Atukpae And whereas the Stool of Atukpae is well seised of and otherwise well entitled to the land and hereditaments described hereunder and with the consent of his Elders and People as aforesaid the Grantor has agreed to grant the same absolutely free of all incumbrances and any family or tribal claims whatsoever to the said Grantee as such Head of the Tawiah Motu Family aforesaid and his heirs and successors Now this Indenture witnesseth that in pursuance of the said agreement and in consideration of the love and affection that the said Headman (Djasetse) and his Elders and People have towards the said Grantee and his people and in further consideration of divers services rendered by the said Tawiah Motu Family to the Atukpae Stool and of the sum of Ten Pounds (£10) paid to the Grantor by the Grantee (the receipt whereof the Grantor doth hereby acknowledge) the Grantor as such Headman (Djasetse) of Atukpae doth hereby grant unto the said Grantee as such head of family as aforesaid his heirs successors and assigns All that piece or parcel of land near Agotim situate lying and being at Kokomlemla aforesaid bounded on the North-East and by a proposed road separating it from Atukpae Stool land and measuring two hundred (200) feet more or less on the South-West by a proposed road separating it from Atukpae Stool land and measuring two hundred (200) feet more or less on the North-West by a proposed road separating it from Atukpae Stool land and measuring two hundred (200) feet more or less and on the South-East by Atukpae Stool land measuring two hundred (200) feet more or less which said piece or parcel of land is more particularly described delineated and coloured pink in the plan hereto attached (*Together with all ways etc. And all the estate etc.*) To have and to hold the land and hereditaments hereby granted or expressed so to be unto and to the use of the said Grantee as such Head of Family as aforesaid his heirs successors and assigns for ever And the said Grantor doth hereby

for himself his heirs and successors on the said Stool of Atukpae and on behalf of the Elders and People of the said Stool covenant with the said Grantee as such Head of Family as aforesaid his heirs successors and assigns (*For good right to grant, For quiet enjoyment free from incumbrances, And for further assurance.*)

Plaintiff's Exhibit.
No. 11.
Conveyance by Gbeke to Hammond with Plan, 22nd November 1941, *continued.*

In Witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

10 Signed by setting his mark hereto Sealed and Delivered by the said Tettey Gbeke II, Headman or Djasetse of of Atukpae Quarter in Accra he being a person not able to read and write after this Indenture had been read over and interpreted to him in the Ga language by of Accra when he seemed perfectly to understand the same in the presence of the principal members of his family

Nii Tettey Gbeke II.

L.S.

Their

20 (Sgd.) E. T. Addy
J. Adjetey Okai
Yaya Tetteh X
Joseph Addy X
Tetteh Oboe Addy X
Robert Okai X
Alfred Addy X
James Mortei Yebuah X
marks

30 Signed sealed and delivered by the within-named Robert Kofi Hammond in the presence of the undermentioned witnesses

(Sgd.) Kofi Hammond

L.S.

(Sgd.) Henry Isaac Quartey.
,, Kwarkai Quartey.

Witness to marks and signatures.

(Sgd.) J. Adjetey Okai.

Endorsed Certificate that Stamp Duty £1 dated 19 January 1942.

40 On the day of 194 at o'clock in the forenoon this instrument was proved before me by the oath of the within-named to have been duly executed by the within-named Tettey Gbeke II, Headman or Djasetse of the Atukpae Quarter.

Given under my hand and official seal.

Registrar Divisional Court, Accra.

PLAN IS SEPARATE DOCUMENT.

*2nd
Defendant's
Exhibit.*

2nd DEFENDANT'S EXHIBIT.

" U. "

LETTER from Plaintiff's Solicitor to Defendant Allotey.

U.
Letter from
Plaintiff's
Solicitor to
Defendant
Allotey,
11th March
1942.

J. Henley Coussey,
Barrister-at-Law.

Accra,
Gold Coast.

11th March, 1942.

A. A. Allotey Esquire,
Licensed Auctioneer,
Accra.

Dear Sir,

10

I am instructed to forward you herewith copy of a letter addressed to Mr. Amuwuda Amegashi requesting him to desist from trespass on land at Avenor, Accra, the property of the family of Nii Okai Tiseh family, of which Dr. F. V. Nanka-Bruce is head and representative.

I am instructed that Mr. Amegashie is on the land by your authority, and I have to ask you to inform me as early as possible from whom you claim to have acquired an interest in the land.

Yours faithfully,

(Sgd.) J. Henley Coussey.

V.

Letter from
Allotey's
Solicitor
to J. H.
Coussey,
Solicitor for
Plaintiff,
13th March
1942.

2nd DEFENDANT'S EXHIBIT.

20

" V. "

LETTER from Allotey's Solicitor to J. H. Coussey, Solicitor for Plaintiff.

A. Molade Akiwumi,
Barrister-at-Law & Solicitor.

P.O. Box No. 3,
Accra.

13th March, 1942.

J. H. Coussey, Esq.,
Barrister-at-Law,
Accra.

In reply to your letter of the 11th instant to my client Mr. A. A. Allotey which was written on behalf of Dr. F. V. Nanka-Bruce I have to 30 inform you that my client acquired an interest in the land from the Elders of the Atupai Stool.

In the circumstance my client does not consider that Mr. Amegashie is trespassing on the land.

Yours faithfully,

(Sgd.) A. M. Akiwumi.

1st. DEFENDANT'S EXHIBIT.

"L" & "L.1."

PLAN AND LETTER OF INSTRUCTION.

PLAN "L" IS SEPARATE DOCUMENT.

Exhibit L.1.

The Registrar's Office,
Ga Mantse's Tribunal,
Ga Mantsewe,
P.O. Box 42,
Accra,

1st
Defendant's
Exhibit.

L & L1.
Plan and
Letter of
Instruction
(Plan
separate
document),
18th April
1942.

10

18th April, 1942.

Sir,

Ashrifie versus Golightly.

By an order of the Tribunal, I have been asked to inform you that you have been appointed by the Tribunal to indicate on the Topo Map the land in the above suit, the boundaries of which are described in a document now in the possession of this Tribunal as follows:—

20

"All that piece or parcel of land bounded on the North by lands belonging to Hansen Laryea and Kate Ameley and the villages known as Onyatia and Ashong Mann; on the South by lands belonging to King Tackie Tawiah and Lutterodt and the villages known as Mukose and the market known as Kpehe; West by the road leading to Ofakoh and the villages known as Ofakoh and Ashalley; East by lands belonging to Rev. Reindorf and Sodja and the villages known as Kotobabi and Onyatia."

(Sgd.) Ashaley Okoe,

Registrar—Ga Mantse's Tribunal.

F. H. S. Simpson Esqre.,
Emmanuel Inn,
Bannerman Road, Accra.

40

Plaintiff's
Exhibit.

No. 13.
Evidence
of Adams,

PLAINTIFF'S EXHIBIT.

No. 13.

EVIDENCE of Adams.

JOSEPH HENRY ADAMS, sworn on Bible :—

I live in Gbese Quarter, Accra—Trader. I am a member of the Korle Webii. Molai is the present head of the family. He is the Korle Priest. I know the land in dispute in this action. It belongs to the Korle Webii as caretakers for the Gbese Stool. The Korle Webii derive the benefits from the land. I do not know if Defendant has any land near here. I don't know if Tetteh Cobblah has any. I have a piece of 10 land in this area. It was gifted to me by my uncle, Ayai Kwami—he got it from Korle Priest, Numo Annan. My uncle was a member of the Korle Webii: it was a portion of the Korle Webii tolls. I pay tribute when I am asked to do so. I have a deed of gift from my uncle dated 16/2/1901, signed by Ayai Kwami. (Tendered.) (Objected to by Mr. A. Hutton-Mills on the ground that the document alleges the property to be situate at Kokomlemle, therefore not identified with the land in dispute. Also a mark of donor or grantor was made and no evidence it was made in anyone's presence, and no evidence as to who made the mark). 20

(Mr. K. Papafio asks witness further questions.)

I was present when document was executed and signed it at the same time—an interpreter—was present it was read over to him and he understood it, and then made his mark—he touched pen.

Exhibit
"A."

I admit the document—Exhibit "A."

Before this document was executed, Ayai Kwami was on the land—he was in possession for a very long time. I have known the land 50 years. At that time I did not know whom it belonged to. I did not know Tetteh Azore. I know Ankrah Cobblah his son. He lives at Avenor.

The following occupy the disputed land, going from Accra on the right of the Kibi road—first myself, 2nd Yaotey Kwamin, Tetteh Kwei Molai, Mensah. On left side coming from Accra, Charles Ado Tetteh, Lamptey Kwao, Ankrah Cobblah, Ofosu Quartey (alias Bekwai). Lamptey's father was on the land a very long time. The other persons I have known to have occupied the land 10 years. 30

In 1920 I had occasion to give public notice about my land. 1923, Mr. T. Hutton-Mills was my Solicitor, and he prepared a notice dated 7th June, declaring I was the owner of the land. (Tendered and given in evidence—Exhibit "B.") Before exhibiting the notice I obtained the consent of the Korle Priest. I had it published in the Gold Coast Independent dated 16th June, 1923, page 432. (Tendered and accepted in evidence—Exhibit "C.") These notices refer to the land in Exhibit "A." 40

Exhibit
"B."

Exhibit
"C."

By the Court :—

Before any Korle Webii lands can be alienated, the Priest must get the consent of the Manche.

Cross-examined—

This land at Avenor of which the Korle Webii are caretakers belongs to both the Korle Webii and the Gbese Stool. The Korle Webii have a

stool subordinate to the Gbese Stool. The Gbese Stool is the senior Stool. These lands are attached to the Korle Webii stool. The Korle Webii are caretakers for all the lands of Gbese to which quarter (the Gbese quarter) they belong, therefore they are owners of the land as well. The Gbese stool is subordinate to the stool of the Ga Manche. The Gbese stool follows Ga custom and Korle Webii follow Ga custom. They have no custom of their own. I am quite sure. If they had a custom—apart from fetish—I would know it. I know of no custom they have, different from the Gas, except as regards fetish. I am 67 next May. I know
 10 Kokomlemle. My land is there. Kokomlemle is reached first from Accra, then Avenor. Avenor is on the left side of the road. Kokomlemle on the right. My land is on the right. I have no land at Avenor. I joined with others to sue Emma C. Bruce in the Ga Manche's Tribunal. It was about the land in dispute. I joined in because Emma C. Bruce claimed across the road. I joined in the action at the instigation of Tetteh Cobblah as Defendant had torn down my papers etc. I have authorised Plaintiff to take action versus Defendant.

Plaintiff's Exhibit.
 No. 13.
 Evidence of Adams, continued.

Adjourned till 8.30 a.m.

(Sgd.) St. John Yates,
 J.

20

28th March, 1928.

IN THE SUPREME COURT OF THE GOLD COAST COLONY, Eastern Province, held at Victoriaborg, Accra, on Wednesday, the 28th day of March, 1928, before HIS HONOUR MR. JUSTICE JOSEPH MERVYN ST. JOHN YATES.

TETTEH KWEI MOLAI (for Korle Webii Family) Plaintiff

v.

EMMA C. BRUCE & Ors. - - - - Defendants.

Mr. K. Papafio for Plaintiff.

30 Mr. A. Hutton-Mills for Defendants.

JOSEPH HENRY ADAMS returns to the box for further cross-examination :—

The land described in Exhibit "A" belonged to the Korle Webii. My uncle informed me it was granted him by the Korle Webii Priest of the time (Annan). I have never seen any conveyance from Annan to my uncle; from what my uncle told me I believed he had permission to go upon this land. The land is now my land but the Korle Webii have power over it. I cannot sell it without the consent of the Korle Webii. All lands in this district have owners who hold it so that it cannot be given
 40 to anyone else, but the Korle Webii have supreme power of it. They were originally given by the Korle Priest free of application. It was not usual to make paper. I had Exhibit "A" made so there should be no mistake made by the Korle Priest in granting my land to anyone else. I have heard of Okai Tiseh. I knew Okaidjah's mother named Okaikor—she is dead. Okaidjah was my brother—same father, different mothers. Okaijah's mother was daughter of Okai Tiseh. Okai Tiseh's mother and Emma

*Plaintiff's
Exhibit.*

No. 13.
Evidence
of Adams,
continued.

[sic]

C. Bruce are related. Emma C. Bruce's mother was cousin to Okaijah's mother. Dr. Nanka-Bruce and Emma C. Bruce have same father and mother. Okai Tiseh was from the Gbese quarter. I don't know when Okai Tiseh died. I knew Numo Adoo was made Priest. I can't remember the year. I do not pay regular tribute, but I have the Korle Webii when they call upon me. If I refused they could turn me off the land, but if I were unable to do so, they would not. According to Ga custom a man must pay tribute whenever called upon to do so. I have not paid tribute for over 5 years. I don't remember what they wanted tribute for on that occasion. There was a fetish custom at that time I believe. My land was in the area of the measurements Defendants took. Up to recently the road was only a footpath. The Government made the tarretted road about 2 years ago. My land has never extended across the road. 10

Okai Tiseh was a man of influence in the Gbese quarter. Tetteh Cobblah has always lived at Avenor ever since I knew him about 28 years. He told me he had always lived there. I have never lived at Avenor. I last went there 2 years ago to see Tetteh Cobblah—it was about this case. I don't know when I went there before that. I don't know how the Avenor people derived their title. I don't know the boundaries of their lands. They live in the village of Avenor—not on the lands I described yesterday. I only know these are their lands by what they said before the Ga Manche's Tribunal. Until then I did not know whom these lands belonged to. I have come to give evidence for them. My only knowledge is what I heard at the Ga Manche's Tribunal. There are mango trees on the land in dispute—they are increasing. People plant mango trees in the Colony. I don't know if the Avenor people sell mangoes off the trees. Tetteh Cobblah comes from Gbese quarter. I do not know his father and his mother. I never asked Tetteh Cobblah to look after my sheep. Tetteh Cobblah asked me why I kept my land with no boundary marks. I had boundary marks placed, and then called him to come and see them, and he did so. Tetteh Cobblah knows my land well. One Kofi of Akrade village tried to take my land from me I took action against him before the Gbese Manche's Tribunal. He claimed it was family property. It was in consequence of this I exposed Exhibits " B " and " C." 20 30

Re-examined :—

I got judgment before the Tribunal. Tetteh Cobblah knew about the case. The notices on my land were affixed for 8 years before defendant pulled them down. Tetteh Cobblah saw them there. The boundary pillars are still there. I have planted sisal between the pillars as a line of demarcation. I told him about this and he went and saw the plants growing. They have been there about 7 years. Tetteh Cobblah said I had done well. I have paid tribute for the purposes of this case. No one has ever informed me that part of my land was given to Okai Tiseh. 40

1st DEFENDANT'S EXHIBIT.

" M. "

EVIDENCE of Akoshia.

Exhibit " M " (pp. 80-81 of " B ").

1st
Defendant's
Exhibit.M.
Evidence of
Akoshia.

KROKOR AKOSHIA, sworn on Fetish :—

Petty trader, Accra. I know Tetteh Cobblah—he is my relative—cousin. I know Avenor. I have lived there. I was brought up at Mayara and lived at Avenor till my marriage. I went to Avenor with Tetteh Cobblah, his father and mother. When we were there, Tetteh
 10 Azore and his wife were living there. Kadabi also. I lived there 6 years. I knew Ankrah Cobblah—he is Tetteh Azore's son. He was then a small boy. Kadabi was farming on the right hand side of the road for about 2 years, then he moved to the back of the Ododjor, and farmed on left side of the road. He farmed with others. I don't remember their names. These people used to come from Accra and farm there.

Cross-examined :—

I know this man Lantey. I did not see him there. His father Ashong used to farm there. I saw Ashong farming there, not close to us. Ashong farmed on the left side of the road. Kadabi farmed near the
 20 village where we lived—Ashong further away. I remember Kadabi's death—it was at Mayara—it was after my first child was born. I have had 9 others. It must be 40 years since Kadabi died.

Re-examined :—

Ashong, Lantey's father, was the husband of my sister. Lantey and his father lived in Accra—Kashie—in Gbese quarter.

Adjourned till 8 a.m. Monday.

(Sgd.) St. John Yates,
J.

Exhibit " T "—*continued.*

Plots Nos.	Present owner.	
1.	E. C. Quarshie	
2.	E. O. Lamptey	
3.	E. L. Addison	
4.	J. H. & C. C. Nettey	
5.	Lawyer Acolatse	
6.	Jos. Sackey	
7.	J. Ayitey-Adjin	
8.	Jos. Sackey	10
9.	Addawoo	
10.	Alice Adams	
11.	D. S. Quarcoopome	
12.	”	
13.	”	
14.	N. A. Allotey †	
15.	” †	
16.	Jos. Sackey	
17.	A. A. Allotey †	
18.	” †	20
19.	N. Ayitey Adjin †	
20.	Patience Adams †	
21.	Benjamin Adams †	
22.	Gabriel Adams.	

In the Privy Council.

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

BETWEEN

Dr. F. V. NANKA-BRUCE of Accra, as Head and Representative
of the Family of Okai Tiseh, late of Accra (Plaintiff) - - *Appellant*

AND

TETTEY GBEKE as Representative of all others the Members of
the Atukpai Family of Accra, and **A. A. ALLOTEY**, of Accra
(Defendants) - - - - - *Respondents*

RECORD OF PROCEEDINGS.

A. L. BRYDEN & CO.,
CRAIG'S COURT HOUSE, CRAIG'S COURT,
25 WHITEHALL,
LONDON, S.W.1,
Solicitors for the Appellant.

SYDNEY REDFERN & CO.,
1 GRAY'S INN SQUARE,
GRAY'S INN, LONDON, W.C.1,
Solicitors for the Respondents.