

22, 1952

In the Privy Council.

No. 49 of 1950.

ON APPEAL FROM THE WEST AFRICAN 31390

COURT OF APPEAL  
(GOLD COAST SESSION.)

UNIVERSITY OF LONDON  
W.C.1.  
9 - NOV 1956  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

BETWEEN

KWESI ENIMIL for himself and as representing the people of Bortogina village and CHIEF KOBINA ANGU, Chief of Manso ... (Defendants-Appellants) *Appellants*

AND

KWESI TUAKYI and KOFI ESSON, Successors according to Native Customary Law of KOJO ATTAH, deceased (Plaintiffs-Respondents) *Respondents*

— AND BETWEEN —

KOJO MANKRADU and CHIEF KOBINA ANGU, Chief of Manso ... (Defendants-Appellants) *Appellants*

AND

KWESI TUAKYI and KOFI ESSON, Successors according to Native Customary Law of KOJO ATTAH, deceased (Plaintiffs-Respondents) *Respondents*

— AND BETWEEN —

BUSUMAFI and CHIEF KOBINA ANGU, Chief of Manso (Defendants-Appellants) *Appellants*

AND

KWESI TUAKYI and KOFI ESSON, Successors according to Native Customary Law of KOJO ATTAH, deceased (Plaintiffs-Respondents) *Respondents.*

(CONSOLIDATED)

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# In the Privy Council.

No. 49 of 1950.

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

---

BETWEEN

KWESI ENMIL for himself and as representing the people  
of Bortogina village and CHIEF KOBINA ANGU,  
Chief of Manso ... .. (*Defendants-Appellants*) *Appellants*

AND

KWESI TUAKYI and KOFI ESSON, Successors according  
to Native Customary Law of KOJO ATTAH, deceased  
(*Plaintiffs-Respondents*) *Respondents*

— AND BETWEEN —

KOJO MANKRADU and CHIEF KOBINA ANGU, Chief  
of Manso ... .. (*Defendants-Appellants*) *Appellants*

AND

KWESI TUAKYI and KOFI ESSON, Successors according  
to Native Customary Law of KOJO ATTAH, deceased  
(*Plaintiff-Respondents*) *Respondents*

— AND BETWEEN —

BUSUMAFI and CHIEF KOBINA ANGU, Chief of Manso  
(*Defendants-Appellants*) *Appellants*

AND

KWESI TUAKYI and KOFI ESSON, Successors according  
to Native Customary Law of KOJO ATTAH, deceased  
(*Plaintiffs-Respondents*) *Respondents.*

(CONSOLIDATED)

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# RECORD OF PROCEEDINGS

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In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division.  
Land Court,  
Sekondi.

No. 1.  
Writ of Summons.

Suit No. 27/1946.

IN THE SUPREME COURT OF THE GOLD COAST,  
WESTERN JUDICIAL DIVISION,  
DIVISIONAL COURT HOLDEN AT SEKONDI.

No. 1.  
Writ of  
Summons,  
Suit No. 27  
of 1946.  
21st  
November,  
1946.

Between

(1) KWESI TUAKYI and (2) KOFI ESSON of Konfuaku,  
Successors according to Native Customary Law of  
Kojò Attah—Deceased ... .. *Plaintiffs*

and

KWESI ENIMIL, Headman of Bortogina Village, for himself  
and as representing the People of Bortogina Village ... *Defendant*  
CHIEF KOBINA ANGU of Manso Division, Wassa Fiasi State *Co-Defendant.*

10

Order of Joinder 12/2/47.

To KWESI ENIMIL, Headman of Bortogina Village for himself and as  
representing the People of Bortogina Village—

You are hereby commanded in His Majesty's name to attend  
before this Court at Sekondi on Monday the 2nd day of December, 1946, 20  
at 8.30 o'clock in the forenoon, then and there to answer a suit by Kwesi  
Tuakyi and (2) Kofi Esson &c. of Konfuaku against you.

The Plaintiffs as successors in title according to Native Customary  
Law, claim from the Defendant possession of Bortogina lands at present  
occupied by the Defendant and his people.

(2) The sum of £300 for the use and occupation of the said lands.  
Issued at Sekondi the 21st day of November, 1946.

Sum claimed	...	...	...	...	Judicial Relief		
Court fees	...	...	...	...	(a) £3 0 0		
					(b) 6 0 0		
Bailiff's fees	...	...	...	...	— 8 0		30
					£9 8 0		
				Total	...	£9 8 0	

(Sgd.) F. A. H. BOTCHEY,  
*Registrar, Divisional Court, Sekondi.*

No. 2.

Writ of Summons.

Suit No. 28/1946.

IN THE SUPREME COURT OF THE GOLD COAST,  
WESTERN JUDICIAL DIVISION,  
DIVISIONAL COURT HOLDEN AT SEKONDI.

In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division.  
Land Court,  
Sekondi.

Between

(1) KWESIE TUAKYI and (2) KOFI ESSON of Konfuaku,  
Successors according to Native Customary Law of  
10 Kojo Attah, Deceased ... .. *Plaintiffs*

and

KWODWO MANKRADU ... .. *Defendant*

CHIEF KOBINA ANGU, Chief of Mansu ... .. *Co-Defendant.*

No. 2.  
Writ of  
Summons,  
Suit No. 28  
of 1946.  
21st  
November,  
1946.

Order of Joinder 9/4/47.

To KWODWO MANKRADU of Inchaban—

You are hereby commanded in His Majesty's name to attend before  
this Court at Sekondi on Monday the 2nd day of December, 1946,  
at 8.30 o'clock in the forenoon, then and there to answer a suit by Kwesi  
Tuakyi and (2) Kofi Esson of Konfuaku against you.

20 The Plaintiffs claim from the Defendant the sum of £200 by way of  
mesne profits for the use and occupation of portions of Bortogina Lands,  
Plaintiffs' ancestral property.

Issued at Sekondi the 21st day of November, 1946.

Sum claimed	...	...	...	...	£200	0	0
Court fees	...	...	...	...	4	0	0
Bailiff's fees	...	...	...	...	-	2	3
Total					...	£204	2 3

(Sgd.) F. A. H. BOTCHEY,  
*Registrar, Divisional Court, Sekondi.*



In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division,  
Land Court,  
Sekondi.

No 3.

Writ of Summons.

Suit No. 29/1946.

IN THE SUPREME COURT OF THE GOLD COAST,  
WESTERN JUDICIAL DIVISION,

DIVISIONAL COURT HOLDEN AT SEKONDI.

No. 3.  
Writ of  
Summons,  
Suit No. 29  
of 1946.  
21st  
November,  
1946.

Between

(1) KWESI TUAKYI and (2) KOFI ESSON of Konfuaku, Successors according to Native Customary Law of Kojo Attah, Deceased	...	...	...	...	...	...	...	<i>Plaintiffs</i>	10
and									
BUSUMAFI	...	...	...	...	...	...	...	<i>Defendant</i>	
CHIEF KOBINA ANGU, Chief of Mansu	...	...	...	...	...	...	...	<i>Co-Defendant.</i>	

Order of Joinder 9/4/47.

To BUSUMAFI of Inchaban—

You are hereby commanded in His Majesty's name to attend before this Court at Sekondi on Monday the 2nd day of December, 1946, at 8.30 o'clock in the forenoon, then and there to answer a suit by Kwesi Tuakyi and (2) Kofi Esson &c. of Konfuaku against you.

The Plaintiffs claim from the Defendant the sum of £150 by way of 20 Mesne Profits for the use and occupation of portions of Bortogina Lands, Plaintiffs' ancestral property.

Issued at Sekondi the 21st day of November, 1946.

Sum claimed	...	...	...	...	£150	0	0
Court fees	...	...	...	...	3	0	0
Bailiff's fees	...	...	...	...	-	2	3
					<hr/>		
Total	...	...	...	...	£153	2	3
					<hr/> <hr/>		

(Sgd.) F. A. H. BOTCHEY,  
*Registrar, Divisional Court, Sekondi.*

No. 4.

**Affidavit of Chief Kobina Angu.**

In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division.  
Land Court,  
Sekondi.

IN THE SUPREME COURT OF THE GOLD COAST.

WESTERN JUDICIAL DIVISION,

DIVISIONAL COURT, SEKONDI.

Suit No. 27/1946.

No. 4.  
Affidavit  
of Chief  
Kobina  
Angu,  
4th  
January,  
1947.

(1) KWESI TUAKYI and (2) KOFI ESSON of Konfuaku,  
Successors according to Native Customary Law of  
Kojo Attah (Deceased) ... .. *Plaintiffs*

10 *versus*

KWESI ENIMIL, Odikro of Bortogina Village for himself  
and as representing the people of Bortogina Village ... *Defendants.*

I, KOBINA ANGU, Chief of Mansu Division, Wassaw Fiasi State,  
oath and say as follows :—

1.—That I am the Chief of Mansu Division in Wassaw Fiasi State.

2.—That the Defendant Odikro Kwesi Enimil of Bortogina Village is  
one of my sub-chiefs and that Bortogina lands are attached to the Stool  
upon which I am sitting.

20 3.—That I claim ownership of Bortogina lands, the subject matter  
of this action and interested in the result of this action.

4.—That I am anxious to be joined as a Co-Defendant to this suit in  
order to defend the title of the Stool of Mansu and myself in this action  
and make this Affidavit in support of Motion for leave to be joined as a  
Co-Defendant in this action.

Sworn at Sekondi this 4th day of  
January, 1947, after this affidavit  
had first been read over and  
interpreted to the deponent in  
the Fanti language by me when  
30 he seemed perfectly to understand  
the same before making his mark  
thereto in the presence of and  
before me,

His  
KOBINA ANGU X  
Mark

(Sgd.) F. A. H. BOTCHEY,  
*Commissioner for Oaths.*

In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division.  
Land Court,  
Sekondi.

No. 5.

Notice of Motion for Order of Rejoinder.

IN THE SUPREME COURT OF THE GOLD COAST,  
WESTERN JUDICIAL DIVISION,  
DIVISIONAL COURT, SEKONDI.

Suit No. 27/1946.

No. 5.  
Notice of  
Motion for  
Order of  
Joinder.  
31st  
January,  
1947.

(1) KWESI TUAKYI and (2) KOFI ESSON of Konfuaku,  
Successors according to Native Customary Law of  
Kojo Attah (Deceased) ... .. Plaintiffs

versus

10

KWESI ENIMIL, Odikro of Bortogina Village for himself  
and as representing the people of Bortogina Village ... Defendants.

TAKE NOTICE that this Honourable Court will be moved on  
Wednesday the 12th day of February, 1947 at 9.00 a.m. or so soon thereafter  
as Counsel for the Defendant herein and Chief Kobina Angu of Manso  
Division, Wassa Fiasie State, can be heard for an Order joining the said  
Chief Kobina Angu as a Co-Defendant herein : And for such other relief or  
Order as to this Honourable Court may seem just.

Dated at Sekondi the 31st day of January, 1947.

(Sgd.) F. AWOONOR WILLIAMS, 20  
Counsel for Defendant and Chief Kobina Angu.

To the Registrar, Divisional Court, Sekondi.

And to the Plaintiffs Kwesi Tuakyi and  
Kofi Esson, their Counsel or Solicitor,  
R. S. Blay, Esqre., Sekondi.

Filed 4/2/47 at 9.5 a.m.

(Intd.) O. A.,  
for R. D. C.



## No. 6.

Order joining Chief Kobina Angu as a Co-defendant in Suit No. 27 of 1946.

12.2.1947.

LAND COURT, SEKONDI, Wednesday, the 12th day of February, 1947,  
Coram HOOPER, J.

KWESI TUAKYI &c. v. KWESI ENIMIL &c.

Motion on Notice for an Order joining Chief Kobina Angu of Manso Division, Wasa Fiasie State, as a Co-Defendant.

Williams for the Applicant Chief Kobina Angu moves—Order as  
10 prayed.

(Sgd.) C. A. HOOPER,  
*Judge.*

In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division.  
Land Court,  
Sekondi.

No. 6.  
Order  
joining  
Chief  
Kobina  
Angu as a  
Co-defend-  
ant in  
Suit No. 27  
of 1946.  
12th  
February,  
1947.

## No. 7.

Court Notes ordering Pleadings.

20.2.1947.

LAND COURT, SEKONDI, Thursday, the 20th day of February, 1947,  
Coram COUSSEY, J.

KWESI TUAKYI AND ANOTHER v. KWESI ENIMIL AND ANOTHER.

BLAY for Plaintiffs.

20 WILLIAMS for Defendants.

I order pleadings herein : Statement of Claim within 21 days : Defence within 10 days of delivery of Statement of Claim and Reply (if any) within 7 days after delivery of Statement of Defence.

(Intd.) J. H. C.,  
*Judge.*

KWESI TUAKYI AND ANOTHER v. KOJO MANKRADU.

BLAY for Plaintiffs.

BY COURT :

I order pleadings. Statement of Claim to be filed and delivered  
30 within 21 days, Defence within 10 days of delivery of Statement of Claim,  
and Reply (if any) within 7 days after delivery of Defence.

(Intd.) J. H. C.,  
*Judge.*

No. 7.  
Court Notes  
ordering  
Pleadings.  
20th  
February,  
1947.

KWESI TUAKYI AND ANOTHER v. BUSUMAFI.

In the Supreme Court of the Gold Coast, Western Judicial Division. Land Court, Sekondi.

BLAY for Plaintiffs.

BY COURT :

I order Pleadings. Statement of Claim within 21 days ; Defence within 10 days of Delivery of Statement of Claim, and Reply (if any) within 7 days after delivery of Defence.

(Intd.) J. H. C., Judge.

No. 7. Court Notes ordering Pleadings 20th February, 1947—continued.

No. 8. Plaintiffs' Statement of Claim, Suit No. 27 of 1946. 6th March, 1947.

No. 8. Plaintiffs' Statement of Claim.

10

IN THE SUPREME COURT OF THE GOLD COAST, WESTERN PROVINCE DIVISION, LAND COURT, SEKONDI.

Suit No. 27/1946.

Between

(1) KWESI TUAKYI (2) KOFI ESSON of Konfuaku, Successors according to Native Customary Law of Kojo Attah, Deceased ... Plaintiffs

and

KWESI ENIMIL, Headman of Botogina Village, for himself and as representing the people of Botogina Village ... Defendant.

20

Plaintiffs' STATEMENT OF CLAIM, delivered by R. S. Blay, Esquire, of Counsel for Plaintiffs, pursuant to an Order of Court, made herein on the 20th day of February, 1947.

1.—The Plaintiffs are successors in title of Kojo Attah of Konfuaku in the Shama State.

2.—Plaintiffs' Predecessors Kojo Attah was the owner of Botogina lands, the same having been purchased by him at a Public Auction.

3.—Kojo Attah's title to the said land was upheld by a Judgment of the Divisional Court, dated the 17th day of May, 1909, and by the Full Court dated the 30th day of November, 1911.

4.—By a Writ of Possession dated the 29th day of October, 1912, the said Kojo Attah was placed in possession of the said Botogina lands by a Writ of Possession issued in that behalf.

5.—The Defendant and his people are occupying parts of Botogina lands, and have cultivated farms thereon and are otherwise using the said Botogina lands without paying tribute to the Plaintiffs wherefore Plaintiffs claim as per their Writ of Summons issued herein.

Dated at Sekondi this 6th day of March, 1947.

10 To The Registrar, The Land Court, Sekondi, and to the Defendant.

Filed at 9.30 a.m. on 8/3/47.

(Sgd.) R. S. BLAY,  
*Counsel for Plaintiffs.*

(Sgd.) F. A. H. BOTCHEY,  
*Registrar, Divisional Court, Sekondi.*

In the Supreme Court of the Gold Coast, Western Judicial Division, Land Court, Sekondi.

No. 8. Plaintiff's Statement of Claim, Suit No. 27 of 1946. 6th March, 1947—*continued.*

No. 9.  
Plaintiffs' Statement of Claim.

IN THE SUPREME COURT OF THE GOLD COAST,  
WESTERN JUDICIAL DIVISION,  
LAND COURT, SEKONDI.

Suit No. 28/1946.

20

Between

(1) KWESI TUAKYI and (2) KOFI ESSON of Konfuaku, Successors according to Native Customary Law of Koho Attah, Deceased ... .. *Plaintiffs.*

and

KWODWO MANRADU of Inchaban ... .. *Defendant.*

Plaintiffs' STATEMENT OF CLAIM, delivered by R. S. Blay, Esquire, of Counsel for Plaintiffs, pursuant to an Order of Court made herein on the 20th day of February, 1947.

30 1.—The Plaintiffs are Successors in title of Kojo Attah of Konfuaku in the Shama State.

2.—Plaintiffs' Predecessor Kojo Attah was the owner of Botogina lands, the same having been purchased by him at a Public Auction.

3.—Kojo Attah's title to the said land was upheld by a Judgment of the Divisional Court, dated the 17th day of May, 1909, and by the Full Court dated the 30th day of November, 1911.

4.—By a Writ of Possession dated the 29th day of October, 1912, the said Kojo Attah was placed in possession of the said Botogina lands by a Writ of Possession issued in that behalf.

No. 9. Plaintiffs' Statement of Claim, Suit No. 28 of 1946. 6th March, 1947.

In the Supreme Court of the Gold Coast, Western Judicial Division. Land Court, Sekondi.

5.—The Defendant has entered upon the said Botogina lands and cultivated cocoa farms thereon, and has failed to pay tribute to the Plaintiffs wherefore Plaintiffs claim as per their Writ of Summons issued herein.

Dated at Sekondi this 6th day of March, 1947.

(Sgd.) R. S. BLAY, Counsel for Plaintiffs.

The Registrar, The Land Court, Sekondi, and to the Defendant or His Counsel F. A. Williams, Esquire, Sekondi.

No. 9. Plaintiff's Statement of Claim, Suit No. 28 of 1946. 6th March, 1947—continued.

Filed at 9.30 a.m. at 8/3/47.

(Sgd.) F. A. H. BOTCHEY, Registrar, Divisional Court, Sekondi.

10

No. 10. Plaintiffs' Statement of Claim, Suit No. 29 of 1946. 6th March, 1947.

No. 10.

Plaintiffs' Statement of Claim.

IN THE SUPREME COURT OF THE GOLD COAST, WESTERN JUDICIAL DIVISION, LAND COURT, SEKONDI.

Suit No. 29/1946.

Between

(1) KWESI TUAKYI and (2) KOFI ESSON of Konfuaku, Successors according to Native Customary Law of Kojo Attah, Deceased ... Plaintiffs and BUSUMAFI OF INCHABAN ... Defendant.

Plaintiffs' STATEMENT OF CLAIM, delivered by R. S. Blay, Esquire, of Counsel for Plaintiffs pursuant to an Order of Court made herein on the 20th day of February, 1947.

1.—The Plaintiffs are Successors in title of Kojo Attah of Konfuaku in the Shama State.

2.—Plaintiffs' Predecessor Kojo Attah was the owner of Botogina lands, the same having been purchased by him at a Public Auction.

3.—Kojo Attah's title to the said land was upheld by a Judgment of the Divisional Court, dated the 17th day of May, 1909, and by the Full Court dated the 30th day of November, 1911.

4.—By a Writ of Possession dated the 29th day of October, 1912, the said Kojo Attah was placed in possession of the said Botogina lands by a Writ of Possession issued in that behalf.

5.—The Defendant has entered upon the said Botogina lands and cultivated cocoa farms thereon, and has failed to pay tribute to the Plaintiffs wherefore Plaintiffs claim as per their Writ of Summons issued herein.

Dated at Sekondi this 6th day of March, 1947.

The Registrar, The Land Court, Sekondi, and to the Defendant or his Counsel F. A. Williams, Esq., Sekondi.

(Sgd.) R. S. BLAY,  
*Counsel for Plaintiffs.*

In the Supreme Court of the Gold Coast, Western Judicial Division. Land Court, Sekondi.

10

Filed at 9.30 a.m. on 8/3/47.

(Sgd.) F. A. H. BOTCHEY,  
*Registrar, Divisional Court, Sekondi.*

No. 10. Plaintiff's Statement of Claim, Suit No. 29 of 1946. 6th March, 1947—*continued.*

No. 11.

Notice of Motion for Order of Joinder.

IN THE SUPREME COURT OF THE GOLD COAST,  
WESTERN JUDICIAL DIVISION,  
LAND COURT, SEKONDI.

Suit No. 28/1946.

KWESI TUAKYI and KOFI ESSON of Konfuaku Successors  
according to Native Customary Law of Kojo Attah,  
Deceased ... .. *Plaintiffs*

20

*vs.*

KWODWO MANKRADU of Inchaban ... .. *Defendants.*

No. 11. Notice of Motion for Order of Joinder, Suit No. 28 of 1946. 2nd April, 1947.

TAKE NOTICE that this Honourable Court will be moved on Wednesday the 9th day of April, 1947, at 9.00 a.m. or so soon thereafter as Counsel for the Defendant can be heard for leave to join Chief Kobina Angu, Chief of Mansu as Co-Defendant to this suit and for an extension of time to file the Defendant's Statement of Defence. And for such other relief or Order as to the Court may seem just.

Dated at Sekondi this 2nd day of April, 1947.

(Sgd.) F. AWOONOR WILLIAMS,  
*Counsel for Defendants and Chief Kobina Angu.*

30

To The Registrar, Land Court, Sekondi, and to the Plaintiffs Kwesi Tuakyi and Kofi Esson, or their Counsel or Solicitor R. S. Blay, Sekondi.

Filed at 9.30 a.m. on 2/4/47.

(Sgd.) F. A. H. BOTCHEY,  
*Registrar, Divisional Court, Sekondi.*



**Affidavit on behalf of Chief Kobina Angu re Joinder.**

In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division.  
Land Court,  
Sekondi.

No. 12.  
Affidavit  
on behalf of  
Chief  
Kobina  
Angu re  
Joinder,  
Suit No. 28  
of 1946.  
2nd April,  
1947.

IN THE SUPREME COURT OF THE GOLD COAST,  
WESTERN JUDICIAL DIVISION,  
LAND COURT. SEKONDI.

Suit No. 28/1946.

(1) KWESI TUAKYI and (2) KOFI ESSON of Konfuaku,  
Successors according to Native Customary Law of  
Kojo Attah, Deceased ... .. *Plaintiffs*  
*versus*  
KWODWO MANKRADU of Inchaban ... .. *Defendant.* 10

I, KWESI POKU, Odikro of Ntarmakrome in Mansu Division, Wassa Fiasi State, make oath and say as follows :—

1.—That I am the Odikro of Intarmakrome in Mansu Division, Wassa Fiasi State, and sent by Chief Kobina Angu, Chief of Mansu Division, to make this Affidavit on his behalf.

2.—That Botogyina land the subject matter of this action is in Mansu Division, Wassa Fiasi State, and under the Stool of Mansu.

3.—That Chief Kobina Angu, the Chief of Mansu Division, gave permission to Kojo Amachie the brother of Kojo Mankradu to occupy and farm part of Botogyina land the subject matter of this claim before 1914. 20

4.—That the said Kojo Amachie entered and cultivated cocoa and other crops upon the land up to the time of his death, when he was succeeded by the Defendant Kojo Mankradu herein.

5.—That the possession of Kojo Amachie and Kojoe Mankradu is derived from the Stool of Mansu.

6.—That Chief Kobina Angu, Chief of Mansu Division, is desirous of being made a Co-Defendant in this action in order to contest the claim of the Plaintiffs.

I make this Affidavit on behalf of the Defendant Kojo Mankradu and the said Chief Kobina Angu, Chief of Mansu Division, in support of Motion 30 in that behalf.

Sworn at Sekondi this 2nd day of April, 1947, }  
after this Affidavit had first been read over }  
and interpreted in the Fanti language to the }  
deponent by me when he seemed perfectly }  
to understand the same before making his }  
mark thereto in the presence of }

KWESI POKU.  
His  
X  
Mark.

(Sgd.) F. A. H. BOTCHEY,  
*Commissioner for Oaths.*

(Sgd.) F. A. H. BOTCHEY,  
*Registrar, Divisional Court, Sekondi.*  
Filed at 9.30 a.m. on 2/4/37.

No. 13.

Notice of Motion for Order of Joinder.

IN THE SUPREME COURT OF THE GOLD COAST,  
WESTERN JUDICIAL DIVISION,  
LAND COURT, SEKONDI.

In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division  
Land Court,  
Sekondi

Suit No. 29/1946.

No. 13.  
Notice of  
Motion for  
Order of  
Joinder,  
Suit No. 29  
of 1946.  
2nd April,  
1947.

KWESI TUAKYI and KOFI ESSON of Konfuaku, Successors  
according to native Customary Law of Kojo Attah  
(Deceased) ... .. *Plaintiffs*

10 *vs.*

BUSUMAFIE of Inchaban ... .. *Defendant.*

TAKE NOTICE that this Honourable Court will be moved on  
Wednesday the 9th day of April, 1947, at 9.00 a.m. or so soon thereafter  
as Counsel for the Defendant can be heard for leave to join Chief Kobina  
Angu, Chief of Mansu as Co-Defendant to this suit and for an extension  
of time to file the Defendant's Statement of Defence. And for such other  
relief or Order as to the Court may seem just.

Dated at Sekondi this 2nd day of April, 1947.

20 (Sgd.) F. AWOONER WILLIAMS,  
*Counsel for Defendant and Chief Kobina Angu.*

To The Registrar, Land Court, Sekondi,  
and to the Plaintiffs, Kwesi Tuakyi  
and Kofi Esson, or their Counsel or  
Solicitor R. S. Blay, Sekondi.

Filed at 9.20 a.m. on 2/4/47. (Sgd.) F. A. H. BOTCHEY,  
*Registrar, Divisional Court, Sekondi.*



In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division.  
Land Court,  
Sekondi.

No. 14.

**Affidavit on behalf of Chief Kobina Angu re Joinder.**

IN THE SUPREME COURT OF THE GOLD COAST,  
WESTERN JUDICIAL DIVISION,  
LAND COURT, SEKONDI.

Suit No. 29/1946

No. 14.  
Affidavit  
on behalf of  
Chief  
Kobina  
Angu re  
Joinder,  
Suit No. 29  
of 1946.  
2nd April,  
1947.

(1) KWESI TUAKYI and (2) KOFI ESSON of Konfuaku, Successors  
according to Native customary Law of Kojo Attah, deceased *Plaintiffs*  
*versus*  
BUSUMAFI of Inchaban ... .. *Defendant.* 10

I, KWESI POKU, Odikro of Ntarmakrome in Mansu Division, Wassa Fiasi State, make oath and say as follows :—

1.—That I am the Odikro of Intarmakrome in Mansu Division, Wassa Fiasi State, and sent by Chief Kobina Angu, Chief of Mansu Division, to make this affidavit on his behalf.

2.—That Botogyina land the subject matter of this action is in Mansu Division, Wassa Fiasi State, and under the Stool of Mansu.

3.—That Chief Kobina Angu, the Chief of Mansu Division, gave permission to Busumafi between 1915 and 1916 to enter and cultivate cocoa and other crops upon part of Botogyina land the subject matter of this 20 action.

4.—That Chief Kobina Angu, Chief of Mansu Division, is desirous of being made a party to this action in order to defend the title of the Stool of Mansu to the claim herein.

5.—That I make this Affidavit on behalf of the Defendant Busumafi and the said Chief Kobina Angu in support of motion in that behalf.

Sworn at Sekondi this 2nd day of April, 1947 after this Affidavit had first been read over and interpreted in the Fanti language to the deponent by me when he seemed perfectly to understand the same before making his mark thereto in the presence of } KWESI POKU.  
His  
X  
Mark. 30

(Sgd.) F. A. H. BOTCHEY,  
*Commissioner for Oaths.*

(Sgd.) F. A. H. BOTCHEY,  
*Registrar, Divisional Court, Sekondi.*

Filed at 9.30 a.m. on 2/4/47.

No. 15.

Orders joining Chief Kobina Angu as a Co-defendant in Suits Nos. 28 and 29 of 1946.

9.4.1947.

LAND COURT, SEKONDI, Wednesday the 9th day of April, 1947,

Coram COUSSEY, J.

KWESI TUAKYI v. KOJO MANKRADO.

MOTION ON NOTICE for Chief KOBINA ANGU to be joined as a Co-Defendant.

10 Mr. AWOONER WILLIAMS for Chief Kobina Angu moves—  
Mr. BLAY for Plaintiff does not object.

BY COURT—

Let Chief Kobina Angu, Chief of Mansu be joined as a Co-Defendant.  
Williams also applies for extension of time within which to file defence.

ORDER—

Time extended for 10 days.

(Sgd.) J. HENLEY COUSSEY,  
*Judge.*

20 KWESI TUAKYI v. BUSUMAFI.

MOTION ON NOTICE for Chief KOBINA ANGU, Chief of Mansu, to be made a Co-Defendant.

WILLIAMS for Chief Kobina Angu moves—  
BLAY for Plaintiff does not object.

COURT—

Let Chief Kobina Angu, Chief of Mansu be joined as Co-Defendant.  
Williams also applies for extension of time within which to file Statement of Defence.

ORDER—

30 Time extended by 10 days.

(Sgd.) J. HENLEY COUSSEY,  
*Judge.*

In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division.  
Land Court,  
Sekondi.

No. 15.  
Orders  
joining  
Chief  
Kobina  
Angu as a  
Co-defend-  
ant in  
Suits No. 28  
and 29 of  
1946.  
9th April,  
1947.

In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division.  
Land Court,  
Sekondi.

No. 16.

Statement of Defence.

IN THE SUPREME COURT OF THE GOLD COAST,  
WESTERN JUDICIAL DIVISION,  
LAND COURT, SEKONDI.

Suit No. 27/1946.

No. 16.  
Statement  
of Defence,  
Suit No. 27  
of 1946.  
13th April,  
1947.

KWESI TUAKYI and KOFI ESSON of Konfuaku Successors  
according to Native Customary Law of Kojo Attah (deceased) *Plaintiffs*  
*versus*

KWESI ENIMIL, Headman of Botogina Village, for himself and 10  
as representing the people of Botogina Village and Chief  
Kobina Angu as Chief of Mansu Division, Wassaw Fiasie State *Defendants.*

STATEMENT OF DEFENCE delivered by F. Awooner Williams, Counsel  
for Defendants on the 16th day of April, 1947, pursuant to Order of  
Court herein.

1.—The Defendants join with the Plaintiffs in their Statement of Claim  
herein dated the 6th March, 1947, and served upon the first Defendant  
Odikro Kwesi Enimil herein on the 2nd day of April, 1947.

2.—The Defendants herein are not aware of, and do not admit that the  
Plaintiffs are the Successors in title of Kojo Attah as alleged in paragraph 1 20  
of the Plaintiffs' Statement of Claim.

3.—In reply to paragraph 2 of the said Statement of Claim, the  
Defendants deny that Kojo Attah was the owner of Botogina lands situate  
at Botogina in Mansu Division, Wassaw Fiasie State or that the said  
Botogina land was sold in Public Auction as alleged.

4.—The Defendants jointly and severally aver that neither the Stool  
of Mansu now represented by Chief Kobina Angu, the 2nd Defendant, nor  
the 1st Defendant, Kwesi Enimil or his predecessor Odikro Kwesi Pon as  
Odikro of Botogina nor the Oman of Botogina were parties or party to the 30  
Mortgage Deed dated the 10th April, 1904, between Timothy Ebenezer  
Jobson and Samuel Ogden under and by virtue of which the said Kojo  
Attah purported to have purchased Botogina lands, and the Defendants or  
the Stool of Mansu are not bound by the alleged purchase, if any.

5.—The Defendants jointly and severally join issue with the Plaintiffs  
on paragraph 3 of their Statement of Claim. The 1st Defendant Odikro  
Kwesi Enimil as Successor of Odikro Kwesi Pon, Odikro of Botogina Lands  
in Mansu Division aforesaid, aver that the Plaintiffs herein are estopped by :

- (a) The Judgment of Mr. Justice G. K. T. Purcell dated the 26th  
August, 1903 in *T. E. Jobson v. Quasie Pon and 11 Ors.* and

- (b) The Judgment dated the 25th November, 1903 in *J. E. Jobson v. Kwesi Pon & Ors.* delivered in the Divisional Court, Elmina by the said Judge in a suit brought by the said Jobson to eject the said Defendants from Botogina and other lands. The said Judgments were delivered by a Court of Competent jurisdiction and are still in full force and effect.

In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division,  
Land Court,  
Sekondi.

6.—The Defendants herein join issue with the Plaintiffs on paragraph 4 of their Statement of Claim.

10 7.—In reply to paragraphs 3 and 4 of the said Statement of Claim, the Defendants aver that the Plaintiffs' Claim or right of action, if any, is barred by the Real Property Limitation Acts 1833 and 1834 and the Civil Procedure Act 1833 : more than 20 (twenty) years have elapsed from the date when the Plaintiffs first preferred their claim herein against the Defendants, and since the said Judgments.

No. 16.  
Statement  
of Defence,  
Suit No. 27  
of 1946.  
13th April,  
1947—  
*continued.*

8.—The 1st Defendant pleads :—

- (a) That he and his predecessors have been in possession of the said Botogina lands as part of Mansu Division lands in Wassaw Fiasie State, for more than 100 (One hundred) years.
- 20 (b) That he as subject of the 2nd Defendant, and by virtue of the 2nd Defendant's licence and permission is in immediate possession of the said Botogina lands.

The 2nd Defendant, Chief Kobina Angu pleads that he by himself and his subchiefs, Odikros and subjects is in possession of the said Botogina land as part of Mansu Stool lands, in Mansu Division in Wassaw Fiasie State.

30 9.—The said Chief Kobina Angu pleads that the Plaintiffs if successors of Kojo Attah are estopped by the Judgment of Mr. Justice Hawtayne delivered on the 30th April, 1913, in the Divisional Court, Sekondi, between the said Chief Kobina Angu and the said Kojo Attah relating to a claim by the said Plaintiff Angu to tribute in respect of the said Botogina land and affirmed by the Judicial Committee of the Privy Council on the 23rd June, 1916. The Divisional Court, Sekondi, was the Court of Competent jurisdiction over the said action and the parties thereto.

Dated at Sekondi this 13th day of April, 1947.

(Sgd.) F. AWOONER WILLIAMS,  
*Counsel for Defendants.*

To the Registrar, Divisional Court, Sekondi, and

To the Plaintiffs Kwesi Tuakyi & Kofi Esson,  
Their Counsel or Solicitor R. S. Blay, Sekondi.

In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division.  
Land Court,  
Sekondi.

No. 17.

Statement of Defence.

IN THE SUPREME COURT OF THE GOLD COAST,  
WESTERN JUDICIAL DIVISION, LANDS DIVISION,  
LAND COURT, SEKONDI.

No. 17.  
Statement  
of Defence,  
Suit No. 28  
of 1946.  
15th April,  
1947.

Suit No. 28/1946.

KWESI TUAKYI and KOFI ESSON of Konfuaku, Successors  
according to Native Customary Law of Kojo Attah,  
deceased ... .. *Plaintiffs*

*versus*

KWODWO MANKRADU of Inchaban and Chief KOBINA ANGU  
as Chief of Mansu Division, Wassaw Fiasie State ... .. *Defendants.*

10

STATEMENT OF DEFENCE delivered by F. Awoonor Williams of Counsel  
for Defendants on the 16th day of April 1947, pursuant to the Order  
of the Court on the 20th February, 1947.

1.—The Defendants herein join issue with the Plaintiffs on their  
Statement of Claim herein dated the 6th March, 1947.

2.—The Defendants herein are not aware of and do not admit that the  
Plaintiffs are the successors in title of Kojo Attah of Konfuaku in Shama  
State as alleged in paragraph 1 of the Plaintiffs' Statement of Claim.

20

3.—In reply to paragraph 2 of the said Statement of Claim, the  
Defendants deny that Kojo Attah was the owner of Botogina lands situate  
at Botogina in Mansu Division, Wassaw Fiasie State, or that the said Kojo  
Attah purchased the same in public auction as alleged. The 1st Defendant,  
Mankradu in succession to his brother Kwesi Amakyi is a tenant of the 2nd  
Defendant on Bortogina land in Mansu Division, Wassaw Fiasie State.

4.—The second Defendant Chief Kobina Angu avers that he was not a  
party nor was the Stool of Mansu in Wassaw Fiasie State a party to the  
Mortgage Deed dated the 10th April 1904, between Timothy Ebenezer  
Jobson and Samuel Ogden under and by virtue of which the said Kojo  
Attah purported to have purchased Botogina lands, or that he the said  
Kobina Angu or the Stool of Mansu is bound by the alleged purchase, if any.

30

5.—In reply to paragraphs 3 and 4 of the said Statement of Claim the  
Defendants aver that they were not parties to the said suit and are not bound  
by the said Judgments.

6.—In reply to paragraphs 3 and 4 of the said Statement of Claim the second Defendant avers that the Plaintiffs claim or right of action, if any, is barred by the Real Property Limitation Acts 1833 and 1834 and the Civil Procedure Act 1833: more than (20) twenty years have elapsed prior to the date when the Plaintiffs first preferred their claim herein against the Defendants, and since the said Judgments.

7.—In reply to paragraph 5 of the said Statement of Claim the 1st Defendant pleads :—

(a) Possession, as tenant of the 2nd Defendant.

10           The second Defendant pleads—Possession.

8.—The 2nd Defendant, Chief Kobina Angu pleads that the Plaintiffs if successors of Kojo Attah, they are estopped by the Judgment of Mr. Justice Hawtayne delivered on the 30th April, 1913, in the Divisional Court, Sekondi, between the said Chief Kobina Angu and the said Kojo Attah relating to a claim by the said Plaintiff Angu to tribute in respect of the Botogina land and affirmed by the Judicial Committee of the Privy Council on the 23rd June, 1916. The Divisional Court, Sekondi, was the Court of competent jurisdiction over the said action and the parties thereto.

Dated at Sekondi this *15th day of April, 1947.*

20

(Sgd.) F. AWOONOR WILLIAMS,  
*Counsel for Defendants.*

To the Registrar, Divisional Court, Sekondi, and  
To the Plaintiffs Kwesi Tuakyi and Kofi Esson  
their Counsel or Solicitor, R. S. Blay, Sekondi.

(Sgd.) F. A. H. BOTCHEY,  
*Registrar, Divisional Court, Sekondi.*

Filed 16.4.47 at 9 a.m.

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In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division.  
Land Court,  
Sekondi.

No. 17.  
Statement  
of Defence,  
Suit No. 28  
of 1946.  
15th April,  
1947—  
*continued.*



In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division.  
Land Court,  
Sekondi.

No. 18.

Statement of Defence.

IN THE SUPREME COURT OF THE GOLD COAST,  
WESTERN JUDICIAL DIVISION, LANDS DIVISION,  
LANDS COURT, SEKONDI.

Suit No. 29/1946.

No. 18.  
Statement  
of Defence,  
Suit No. 29  
of 1946.  
15th April,  
1947.

KWESI TUAKYI and KOFI ESSON of Konfuaku, Successors  
according to Native Customary Law of Kojo Attah,  
deceased ... .. *Plaintiffs*

10

*versus*  
BUSUMAFI of Inchaban and Chief KOBINA ANGU as Chief of  
Mansu Division, Wassaw Fiasie State ... .. *Defendants.*

STATEMENT OF DEFENCE delivered by F. Awoonor Williams Counsel  
for Defendants on the 16th day of April, 1947, pursuant to Order of  
the Court herein on the 20th day of February, 1947.

1.—The Defendants join issue with the Plaintiffs in their Statement  
of Claim dated the 6th March, 1947.

2.—The Defendants herein are not aware of and do not admit that the  
Plaintiffs are the successors in title to Kojo Attah as alleged in paragraph 1  
of the Plaintiffs' Statement of Claim.

20

3.—In reply to paragraph 2 of the said Statement of Claim, the  
Defendants deny that Kojo Attah was the owner of Botogina lands situate  
at Botogina in Mansu Division, Wassaw Fiasie State, or that the said Kojo  
Attah purchased the said land in Public Auction as alleged.

4.—The 2nd Defendant Chief Kobina Angu avers that he was not a  
party nor was the Stool of Mansu in Wassaw Fiasie State a party to the  
Mortgage Deed dated the 10th April, 1904 between Timothy Ebenzer Jobson  
and Samuel Ogden under and by virtue of which the said Kojo Attah  
purported to have purchased Botogina lands, or that the said Kobina Angu  
or the Stool of Mansu is bound by the said purchase, if any.

30

5.—In reply to paragraphs 3 and 4 of the said Statement of Claim the  
Defendants aver that they were not parties to the said suit, and are not  
bound by the said Judgments.

6.—In reply to paragraphs 3 and 4 of the said Statement of Claim, the  
2nd Defendant avers that the Plaintiffs' claim or right of action, if any, is  
barred by the Real Property Limitation Acts of 1833 and 1834 and by the  
Civil Procedure Act 1833 : more than twenty (20) years have elapsed prior  
to the date when the Plaintiffs first preferred the claim herein against the  
Defendants, and since the said Judgments.

7.—In reply to paragraph 5 of the said Statement of Claim, the 1st Defendant pleads :—

(a) Possession as tenant of the 2nd Defendant.  
The 2nd Defendant pleads—Possession.

8.—The 2nd Defendant, Chief Kobina Angu pleads that the Plaintiffs, if successors of Kojo Attah, they are estopped by the Judgment of Mr. Justice Hawtayne delivered on the 30th April, 1913, in the Divisional Court, Sekondi, between the said Chief Kobina Angu and the said Kojo Attah relating to a claim by the said Plaintiff Angu to tribute in respect of the said Botogina land and affirmed by the Judicial Committee of the Privy Council on the 23rd June, 1916. The Divisional Court, Sekondi, was the Court of competent jurisdiction over the said action and the parties thereto.

Dated at Sekondi this 15th day of April, 1947.

(Sgd.) F. AWOONOR WILLIAMS,

*Counsel for Defendants.*

To the Registrar, Divisional Court, Sekondi, and

To the Plaintiffs their Counsel or Solicitor,  
R. S. Blay, Sekondi.

(Sgd.) F. A. H. BOTCHEY,

*Registrar, Divisional Court, Sekondi.*

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Filed at 9 a.m. on 16/4/47.

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No. 19.

Court Notes Consolidating Cases.

23.2.48.

LAND COURT, SEKONDI, Monday, the 23rd day of February, 1948,  
Coram HOOPER, Judge.

KWESI TUACHI, etc. ... .. *Plaintiff*  
v.  
KWESI ENIMIL ... .. *Defendant.*

30 Mr. BLAY for Plaintiff.

Mr. WILLIAMS for Defendant.

Mr. DICKENS as Assessor.

Counsel on both sides apply to have the cases of Tuachi and Mankradu and Tuachi v. Busumafi consolidated with the present case, as the issues involved are the same throughout, subject to a slight variation of detail, which will not in any way affect the issues themselves.

In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division.  
Land Court,  
Sekondi.

—  
No. 18.  
Statement  
of Defence,  
Suit No. 29  
of 1946.

15th April,  
1947—  
*continued.*

No. 19.  
Court Notes  
Consolidating  
Cases.  
23rd  
February,  
1948.

In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division.  
Land Court,  
Sekondi.

BY THE COURT :

Let the three cases be consolidated.

Mr. Blay opens his case and reads Statement of Claim of 6th March 1947. He says his case is purely documentary, the whole facts being contained in the Exhibits he will file. He refers to Statement of Defence in all three cases which are identical, and reads the Statement of Defence.

As regards paragraph 9 (or paragraph 8 in other two cases)—After Statement of Defence Mr. Blay says he agrees that this represents the true position ; and his clients are prepared to pay the tribute in question to Chief Angu.

No. 19.  
Court Notes  
Consolida-  
ting Cases.  
23rd  
February,  
1948—  
*continued.*

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No. 20.

Evidence of Kwesi Arhin Akwa.

Plaintiffs'  
Evidence.

No. 20.  
Evidence of  
Kwesi  
Arhin  
Akwa,  
1st Witness.  
23rd  
February,  
1948.

KWESI ARHIN AKWA s.a.r.b. in Fanti interpreted by Mr. HAIZEL.

I live at Konfuaku. I am a farmer. I am linguist to the Chief of Kweku. I know the Plaintiff Tuachi. He is my younger brother. I know Kojo Attah. He is dead now. Tuachi succeeded him. During his lifetime Attah bought some land near Konfuaku and extending to Botogina. I know this as a fact. I was present at the time. Attah bought this land from one Ogden, by auction, the Auctioneer being one Davis. At the time Attah bought the land one Kwesi Opon was the Chief of the people who were then on the land. After Attah bought the land, he sued Opon for possession of the land and obtained a Writ of Possession as he won the case. 20

A survey was made of the land by one Brown-Ackah. I went with him. The Surveyor Brown-Ackah gave an original of his plan to Attah. The plan now shown to me is the one I think, though I am not sure, since I cannot read or write.

I tender the plan for identification (No. 1).

Recently I handed this plan and some other documents to Mr. Tackie-Otoo in connection with a case being heard in the Provincial Council. The Botogina land was involved in that case. The title of that case was : *Bowtiman and Others v. Kwami Enimil V and Others*. It was decided in 1944. 30

Later, after getting his Writ of Possession, Attah litigated with the Chief Kobina Angu, Co-Defendant in this present case. Attah was sued by Kobina Angu in the Provincial Commissioner's Court, Sekondi. I was in Court. The case went to the Court of Appeal and thence to the Privy Council. I also handed the papers connected with that case to Mr. Tackie Otoo.

Opon is now dead. He was succeeded by Chief Enimil. When Attah got Judgment against Opon, Opon and his people paid tribute to Attah. They paid tribute to him two or three times. They stopped paying because Chief Angu took action against Attah. During the course of the litigation Attah died. Since then Opon's people have not paid anything at all. They are, however, still on the land. They have farms on the land and so have I.

I am now claiming £300 damages from Opon and his people through Enimil in respect to the land.

10 I know Mankradu. He comes from Inchaban. He is not one of Opon's people or Kwesi Enimil's people. He has a cocoa farm on the Botogina lands. He pays nothing to Tuachi and has not paid anything.

He told me that Enimil granted him permission to farm on the land. I know Mankradu's farm myself. It is a large farm.

I am claiming £200 for occupation of the land by Mankradu.

I also know Busumafi of Inchaban. He has a cocoa farm on the Botogina lands. He has paid nothing at all to Tuachi. He told me that Enimil had granted him permission to farm on the Botogina lands.

20 I know Busumafi's farm. It is a large farm, slightly smaller than Mankradu's.

I am claiming £150 from Busumafi for occupation of this land.

I also claim possession of the land from Enimil.

#### CROSS-EXAMINED.

I am representing the Plaintiff Tuachi in this case and not the Stool of Konfuaku. I remember the 1914-1918 War. I was not linguist then, but I was then the same height that I am now. I have been linguist for about 25 years. I know the native custom, some of it, at least.

30 I was not aware that Botogina land was Mansu Stool land in the Wassaw Fiasi State until Attah bought it and Opon litigated with him. Chief Angu was not a party to that sale that I know of, though he may have been. I do not know.

I do not know whether a sale of Stool land may be made without the consent of the Chief. Land belonging to the Konfuaku Stool cannot be sold without the consent of the Chief and Elders of the Stool. If anyone allowed to farm on the land sets up an adverse title he may be turned off the land.

Attah Kojo has taken possession of the land at Botogina.

40 We are claiming possession from Enimil because the land is ours and we want damages for trespass.

I know that Attah bought the land.

Kojo Attah died about two or three years after the Judgment of the Privy Council.

Enimil has never paid tribute to us and that is why we brought this action. We are farming on the Botogina land and beyond. Enimil's people are farming on the land.

The predecessor of Mankradu was not living on the Botogina land, but he had a farmer there. His name was Amakyi. I do not know how

In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division.  
Land Court,  
Sekondi.

Plaintiffs'  
Evidence.

—  
No. 20.  
Evidence of  
Kwesi  
Arhin  
Akwa,  
1st Witness,  
23rd  
February,  
1948—  
*continued.*

Cross-exam-  
ination.

In the long he had been farming on the land. He was not long on the land, for he died soon after.

Supreme Court of the Gold Coast, Western Judicial Division, Land Court, Sekondi.

Plaintiffs' Evidence.

Mankradu has been on the land for about three years. He is a Shama man, but lives at Inchaban. He refused to pay tribute when asked. Busumafi likewise refused to pay tribute. I do not know how long he has been on the land.

I farm on the land of Botogina by right of Kojo Attah.

I do not know of any dispute between Konfuaku and Chief Angu in the District Commissioner's Court, Tarkwa.

I was present when Kojo Attah bought the land from Ogden. At the time of that sale I knew Chief Kobbina Bardu of Konfuaku.

10

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No. 21.

Evidence of Ebenezer Tackie-Otoo.

No. 21.  
Evidence of  
Ebenezer  
Tackie-  
Otoo, 2nd  
Witness,  
23rd  
February,  
1948.

EBENEZER TACKIE-OTOO Sworn on Bible in English—2nd Witness for Plaintiff.

I live at Shama. I am the Odikro of Nyankrome in the Shama State. In the recent case *Botwiman v. Enimil* in the Provincial Council, Sekondi, I represented the State of Shama. Botogina lands were involved in that case. That was in 1944. In connection with that case I was handed documents by Tuachi and others. The documents now shown to me are the Record of Appeal of *Kobina Angu and Kobbina Atta* 1913—

20

I tender the Record in evidence—Admitted by consent—though Mr. Williams wishes to make it clear that Angu was not a party to the Exhibits put in—(Exhibit A).

I was also handed a Plan. It was a cloth one. I had a copy made of it.

I tender this in evidence as part of the Exhibit in *Angu v. Atta* (Exhibit A). Admitted in evidence—Exhibit B (1) and (2).

I was also handed the case for the Appellant in the case of *Angu v. Atta*. I tender it in evidence—Admitted, no objection—(Exhibit "C").

30

Cross-examination.

CROSS-EXAMINED.

There is no Writ of Possession in the Record (Exhibit A).

I only know what happens on Botogina lands, from what I am told.

Counsel for Plaintiff closes his case.

Counsel for Defendants opens his case and states :—

(1) Kojo Attah never at any time went into possession of the Botogina lands.

(2) Angu and his sub-chiefs have been in possession ever since the Judgment of the Privy Council in 1916. They were in possession before this.

Adjourned till tomorrow.

40

(Sgd.) C. A. HOOPER,  
Judge.

## No. 22.

24.2.1948.

LAND COURT, SEKONDI, Tuesday, the 24th day of February, 1948,  
Coram HOOPER, Judge.

27/46 Kwesi Tuakyi and Another *v.* Kwesi Enimil and Another.28/46 Kwesi Tuakyi and Another *v.* Kojo Mankradu and Another.29/46 Kwesi Tuakyi and Another *v.* Busumafi and Another.  
(Consolidated)

Same Counsel as before.

10 Mr. DICKENS Assessor.

## Evidence of Kobina Angu, Co-defendant.

KOBINA ANGU Sworn on Bible in Fanti—Interpreted by Mr. HAIZEL.

I am Chief of Mansu in Wassaw Fiasi State. I succeeded Bassayin who succeeded Kwamina Baidoo. Bortorgina lands are attached to the Mansu Stool. I brought an action in this Court against Kojo Atta and won. It was about the Bortorgina land. At the time I brought the action Kojo Attah had not been on the land. I brought the action against Kojo Attah since I heard that he had said that he had bought the Bortorgina land (*sic*). I heard that Kojo Attah had had some litigation with Kwesi Opon about  
20 the Bortorgina lands. I know that Kojo Attah had made a Motion for a Writ of Possession of the Bortorgina lands but the Motion was dismissed. I swore an Affidavit in connection with this Motion. I then took action.

I am not aware that Kojo Attah took a Writ of Possession to obtain the land. I would have known had he done so. Kojo Attah was a Konfuaku man.

Kojo Attah appealed against the Judgment given in my favour in this Court and won the appeal.

I went to the Privy Council and got the original Judgment restored.

After I won the case in the Privy Council Kojo Attah did not come to  
30 see me after this. He intended to do so, but he died.

Ever since this I have been in possession of the land of Bortorgina.

I have given permission to certain people to farm on my land at Bortorgina: Amachi from Inchaban, Busumafie. I made a written agreement with these two persons. I gave permission by word of mouth to others who did not farm so extensively. Both these documents had been put in evidence in the case of *Botwiman v. Enimil*, on appeal before this Court.

In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division.  
Land Court,  
Sekondi.

Defendants'  
Evidence.

No. 22.  
Evidence of  
Kobina  
Angu,  
Co-defend-  
ant.  
24th  
February,  
1948.

In the Supreme Court of the Gold Coast, Western Judicial Division, Land Court, Sekondi.

The Plaintiffs, in this present case are Co-Plaintiffs in the appeal case. It is for this reason that I joined as Defendant in this case. Mansu Stool has never sold Bortorgina land to Kojo Attah.

Kwesi Opon has no power to sell Bortorgina land.

Kwesi Opon was succeeded as Odikro of Bortorgina by Kojo Sakyini. When he died he was succeeded by Kwesi Enimil.

Amachi is now dead. He was succeeded by Kojo Mankradu.

Defendants' Evidence.

CROSS-EXAMINED.

No. 22. Evidence of Kobina Angu, Co-defendant. 24th February, 1948—

*continued.*  
Cross-examination.

The Bortogina lands were in possession of Kwesi Opon as caretaker for me. 10

What I am entitled to as overlord of the land is not tribute, but to everything on or arising out of the land and I give what I like to the sub-chiefs or occupiers of the land. My evidence on this point is the same as the case I put up to the Privy Council. Kwesi Opon was my sub-chief. He was mentioned in the case which went to the Privy Council.

An Odikro in possession under a Chief pays *no* tribute to that Chief.

In the evidence I gave before this Court in 1913 before Hawtayne, J., I did *not* say that Opon, my sub-chief was entitled to one-third of the proceeds of the land.

I heard that Attah had bought Bortorgina land, but as the land was mine I stepped in. I did not send my linguist to give evidence in a case which Attah brought against Pon, since my predecessor Bassayin was then acting and I do not know if he sent his linguist. I have never heard since from anyone that he sent his linguist. 20

I sued Kojo Attah claiming tribute from him but I cannot remember if I then said: "Bassayin was my predecessor. He sent his linguist in the case of *Kojo Atta v. Kwesi Pon*. The linguist claimed that these lands "were under me." The evidence I then gave is true.

When Attah won on appeal he applied for a writ of Possession which I opposed. My lawyer then was Mr. Hayford. I failed in my opposition and I then brought an action against Attah. But my action then against Attah was for the payment of tribute by him and not in respect to his possession. He being a stranger I was entitled to tribute. I claimed tribute from him because I heard that Attah had bought the land and also because the Privy Council decided that Attah should pay tribute if he went on the land: but he did not go on the land before he died, so he has never been on the land. 30

Re-examination.

RE-EXAMINED.

Attah never paid me any tribute at all up to the time of his death, since he never went on the land at all. Kwesi Pon paid no tribute. He was a blood relative of mine. Blood relatives and subjects pay no tribute.

No. 23.

Evidence of Kwesi Enimil, 1st Defendant.

In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division.  
Land Court,  
Sekondi.

KWESI ENIMIL s.a.r.b. in Fanti. Interpreted by Mr. HAIZEL. 1st  
Defendant :

I am the present Odikro of Bortorgina. My immediate predecessor  
was Kojo Sakyini and he succeeded Kwesi Pon. When Kwesi Pon was on  
the Stool I was his linguist. The latter never sold Bortorgina land to anyone.  
He had no power to do so under native law. Kwesi Pon died a long ago.  
10 He had litigation with Attah. I saw no bailiff come to drive us off the land.  
Amachi applied to Kwesi Pon for land to farm. I went with him to Mansu  
to see the Chief. Busumafi also applied. I took him to Mansu. They farmed  
the land and paid tribute to me and I took it to the Chief of Mansu. Nobody  
interfered with them.

Defendants'  
Evidence.

No. 23.  
Evidence of  
Kwesi  
Enimil, 1st  
Defendant.  
24th  
February,  
1948.

I know Kojo Attah. He never come to live on Bortorgina land. The  
Mansu Chief had a case with him which went to the Privy Council From the  
time of that Judgment he never went on the land. Amachie is dead. He was  
succeeded on the land by one Mankradu.

CROSS-EXAMINED.

Cross-exam-  
ination.

Attah did not get Judgment against Pon, that he should pay him rent.  
20 The Court found in Attah's favour and said nothing else. I do not know of  
any case of *Jobson v. Pon* at all.

RE-EXAMINED.

Kojo Attah served no Summons on me about the Bortogina land.

Re-exam-  
ination.

No. 24.

Evidence of Kojo Mankradu, 2nd Defendant.

No. 24.  
Evidence of  
Kojo  
Mankradu,  
2nd Defend-  
ant.  
24th  
February,  
1948.

KOJO MANKRADU s.a.r.b. in Fanti. Interpreted by Mr. HAIZEL, 2nd  
Defendant in 2nd case :

A relative of mine Amachin had a farm on Bortogina land. He is now  
dead. He was succeeded by me. I am now in charge. I pay *ebusa* to Kwesi  
30 Enimil, last witness. I am now in possession of the farm. No one has ever  
interfered with my possession. It is a cocoa farm. I am a native of Shama.

CROSS-EXAMINED.

Cross-exam-  
ination.

I pay tribute to Kwesi Enimil. This cocoa season I realized about 16  
bags of cocoa about 40 loads. I gave one-third in tribute to Enimil. I am  
not aware that the land does belong to Kwesi Enimil (*sic*). I have paid  
tribute to Enimil for the last three years. Amarchin also paid tribute to him.



In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division.  
Land Court,  
Sekondi.

## No. 25.

## Evidence of Kobina Busumafi, 3rd Defendant.

Defendants'  
Evidence.

No. 25.  
Evidence of  
Kobina  
Busumafi,  
3rd Defend-  
ant.  
24th  
February,  
1948.

KOBINA BUSUMAFI sworn on Bible in Fanti. Interpreted by Mr. HAIZEL,  
3rd Defendant in 3rd case :

I live in Inchaban. I am a farmer. I know the late Odikro Kwesi Pon. I asked his permission to farm on the Bortogina land which he gave me. I was taken to Chief Angu. I farmed on a cocoa farm. I paid *ebusan* to Kwesi Pon and when he died to Enimil. Nobody interfered with me. I have been on the land for a long while. I took two-thirds and the owner one-third.

CROSS-EXAMINED.

I have paid rent to Enimil for about 15 years. This year I gave three bags of cocoa to Enimil as tribute.

10

No. 26.  
Addresses  
of Counsel.  
24th  
February,  
1948.

## No. 26.

## Addresses of Counsel.

ADDRESSES.

Mr. WILLIAMS closes his case, and addresses the Court.

He refers to paragraph 2 of Plaintiffs' Statement of Claim ; also paragraph 3, paragraph 4 and paragraph 5. As regards this, Counsel submits that there is no Writ of Possession and Plaintiff has not proved that a Bailiff has put the Plaintiff in possession of this land in pursuance of the Writ of Possession.

As regards paragraph 5 the Writ of Summons shows that the Defendants are in possession. Plaintiff must prove that he is owner of the land as set out in paragraph 2 of the Statement of Claim.

Plaintiffs have set up an adverse title as against Defendants in this case and also in the case of *Botwiman & Ors v. Enimil & Ors*. Vide Judgment of Provincial Council 27th March, 1945.

The Judgments relied upon by the Plaintiffs have been declared to be *res inter alios* by the Privy Council and not binding upon the Defendants in this case.

40

Refers to the case of *Castrique v. Imirs*, L.R. 4 H.L. P.414 to show that when a Judgment has been given between two parties, this does not prevent a third party from coming forward to claim the subject matter of the Judgment. Refers to the local case of *Kwafu v. Kojo* Divisional Court Reports, 1929-1931, at page 25—at page 27.

Court refers to page 31 of Exhibit "A" (Certificate of Purchase). Neither the Stool of Mansu nor Kwesi Pon were parties to the Certificate of Purchase, though Bortorgina is mentioned.

As regards the Mortgage at page 26 of the Privy Council Record, neither the Stool of Mansu nor Kwesi Pon were parties to the Mortgage.

Refers to the Judgment of Purcell, J., at pages 55-56 of the Privy Council Record. It is dated 26th August, 1903, and has never been upset. Refers to another Judgment at page 56 of the Record by Purcell, J.

10 v. *Kwamin Tandoh*—Privy Council Reports 1874-1928, page 109. These cases show that right to tribute is based upon ownership.

Refers to 6 W.A.C.A. page 144.

Adjourned till tomorrow.

(Sgd.) C. A. HOOPER,

*Judge.*

In the Supreme Court of the Gold Coast, Western Judicial Division. Land Court, Sekondi.

No. 26. Addresses of Counsel. 24th February, 1948—*continued.*

No. 27.

Addresses of Counsel (continued).

25.2.1948.

LAND COURT, SEKONDI, Wednesday, the 25th day of February, 1948,

20

Coram HOOPER, Judge.

No. 27. Addresses of Counsel (*continued*). 25th February, 1948.

KWESI TUAKYI

*v.*

KWESI ENIMIL AND OTHERS &c.

Addresses contd.

Same Counsel as before.

Mr. WILLIAMS continues his address.

30 The Plaintiffs' case is barred by the Real Property Limitation Acts 1833-1834. Counsel refers to page 48 and page 23 of the Privy Council Record and cases referred to there. Counsel refers to W. A. C. A. Volume 6 page 144: *Mills v. Renner*. Also refers to *Jay v. Johnston* (1893) 1 Q.B. pages 25 and 189; *Watson v. Birch*, 16 L.J. (Chancery) page 188.

Out of two persons claiming to be in possession, the one having title is deemed to be in possession and the other a trespasser—*Ababio IV v. Quartey*, P.C. Judgments, page 40. This follows *Jours v. Chapman*, 2 Exchequer page 803.

If Kojo Attah had a right to go on the land that right is personal but not transmissible. His right died with him. No evidence has been led contrary to this in the present case.

40 In the cases relied upon by the Plaintiff there is nothing to show that the Defendant was sued in his representative capacity. These are all personal actions.

In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division.  
Land Court,  
Sekondi.

No. 27.  
Addresses  
of Counsel  
(continued).  
25th  
February,  
1948—  
continued.

Refers to *Quasie v. Ansafu*, Sarbah Fanti Customary Law, 2nd Edition, page 266 as to the certificate of title.

Refers to Judgment in *Kojo Attah v. Pon and Others* at page 30 of the Privy Council Record, last paragraph.

Mr. BLAY in reply submits :—

- (1) *Ababio and Quartey* does not affect this case. The Plaintiff has a Judgment saying he is entitled to possession as against Kwesi Pon.
- (2) Attah got the Writ of Possession. It is immaterial whether it was executed or not for any reason. 10
- (3) Angu opposed the Writ of Possession. His opposition was dismissed with costs against him.
- (4) Angu did not, as would have been expected, bring an action, claiming possession or to eject him from the land, but brings an action claiming tribute whereby he obviously admits possession by Attah.
- (5) The burden of the Judgment of the Privy Council is that Angu is entitled to tribute as overlord—but nothing else.
- (6) Attah has claimed all along as purchaser. He has more than a life interest and consequently transfer it to his heirs. 20
- (7) The Defendants are the successors of Pon and bound by the Judgments.
- (8) Angu is bound by the Judgment of the Privy Council and cannot now dispute the right of possession of Attah, now represented by the Plaintiff.
- (9) Why Angu applied to be a party is not clear. He is not in any way involved. He has not claimed tribute.
- (10) There is no substance in the contention of the defence that this case is in any way governed by the Statutes of Limitation. Native Law clearly applies to a case of this type, and there is no 30 prescription in native law.
- (11) The Defendants Mankradu and Busumafi have been paying tribute, it is true, to Enimil for Angu, but they are under no obligation to do so, and have, in fact, been paying it to the wrong people. The present Plaintiff is the proper person to receive these tolls and to pay them to Angu in accordance with the decision of the Privy Council.
- (12) The Plaintiff is clearly entitled to possession and to mesne profits from the Defendants.
- (13) The Plaintiff has proved his case clearly and is entitled to his 40 declaration of possession and the sum of £300 claimed for use and occupation of the land.

Judgment reserved.

(Sgd.) C. A. HOOPER,  
Judge.

No. 28.  
Judgment.

24.4.1948.

LAND COURT, SEKONDI, Saturday, the 24th day of April, 1948,

CORAM HOOPER, Judge.

Land Suits Nos. : 27/1946.  
28/1946.  
29/1946.

KWESI TUAKYI AND ANOTHER &amp;c.

*v.*

KWESI ENIMIL AND OTHERS  
(Consolidated)

10

Mr. BLAY for Plaintiffs.  
Mr. WILLIAMS for Defendants.  
Mr. DICKENS, Assessor.

I read my Judgment in which I find for the Plaintiffs. (See Judgment Book.)

The Assessor agrees.

(Sgd.) C. A. HOOPER,  
*Judge.*

20

LAND COURT, SEKONDI, Saturday, the 24th day of April, 1948,

CORAM HOOPER, Judge.

Land Suits Nos. : 27/1946.  
28/1946.  
29/1946.

KWESI TUAKYI and KOFI ESSON &amp;c. ... .. Plaintiffs

*versus*

KWESI ENIMIL and KOBINA ANGU, KOJO MANKRADU and  
KOBINA ANGU, and BUSUMAFI and KOBINA ANGU ... Defendants.

30

(Consolidated)

## JUDGMENT.

In this consolidated action the Plaintiffs, Kwesi Tuakyi and Kofi Esson claim from the Defendants Kwesi Enimil and Kobina Angu, Kojo Mankradu and Kobina Angu, and Busumafi and Kobina Angu the possession of certain land known as Bortogina land, occupied by the Defendants, and the payment of the sum of £300 by the first Defendant Enimil ; £200

In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division.  
Land Court,  
Sekondi.  
—  
No. 28.  
Judgment.  
24th April,  
1948.

In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division.  
Land Court,  
Sekondi.

No. 28.  
Judgment.  
24th April,  
1948—  
*continued.*

by the second Defendant Mankradu ; and £150 by the third Defendant Busumafi for the use and occupation of such land. Kobina Angu applied to be joined as a Co-Defendant in each case.

The Plaintiffs' case is that they are the successors in title of one Kojo Attah of Konfuaku, in the Shama State, Kojo Attah having purchased the land at a Public Auction. They further claim that this title to the land has been established and upheld by two Judgments, one dated the 17th May, 1909 and the other dated the 30th November, 1911, Kojo Attah having been put in possession of the land in question by a Writ of Possession dated the 29th October, 1912. The Plaintiffs complain that the Defendants 10 and their people are occupying parts of the land and have cultivated farms thereon and are otherwise using the land, without paying tribute to the Plaintiffs.

The Defence is a general denial of the case put forward by the Plaintiffs. The Defendants deny (1) that the Plaintiffs are successors in title of Kojo Attah ; (2) that Kojo Attah was ever the owner of the Bortogina land ; (3) that the Bortogina land was ever sold by Public Auction. The case for the first Defendant is that he and his predecessors have been in possession of the Bortogina lands as part of the Mansu Division lands for over one hundred years and that he is now in possession of the land by reason of the 20 fact that the second Defendant, whose subject he is, has given him permission to be in possession of the land.

The Defendants further rely upon estoppel in virtue of two Judgments dated the 26th August, 1903 and 25th November, 1903, in the case of *Jobson v. Kwesi Pon and Others*, and as regards Kobina Angu, by a Judgment dated 30th April, 1913, affirmed by the Privy Council on the 23rd June, 1916 ; and they say that the Plaintiffs' claim is barred in any case by the Real Property Limitation Acts, 1833 and 1834 and by the Civil Procedure Act, 1833. As regards the alleged purchase of land by the Plaintiff's 30 predecessor in title, the Defendants say that neither the Stool of Mansu nor Kwesi Enimil, nor his predecessor Kwesi Pon as Odikro of Bortogina, nor the Oman of Bortogina were parties to the Mortgage Deed dated 10th April, 1904 by which Kojo Attah purported to have purchased the Bortogina land.

In the course of his opening Mr. Blay said he relied purely on documentary evidence to prove his case. As regards the case for the defence (contained in paragraphs 8 and 9 of the Statement of Defence respectively) to the effect that tribute has not been paid by the Plaintiffs to Chief Kobina Angu, Mr. Blay admitted that this was true, and put on record the fact that his clients are prepared to pay the tribute in question to Chief Angu. 40 Consequently, paragraph 5 of the Statements of Claim and paragraphs 8 and 9 respectively of the Statements of Defence need not be considered any further, so far as this point is concerned.

The facts of the case for the Plaintiff have been outlined in the evidence of Kwesi Arhin Akwa, the linguist to the Chief Kweku, and this witness has stated that the Plaintiff, Kwesi Tuakyi, who is his brother, is the successor to one Kojo Attah. Attah at one time bought some land near Konfuaku

extending to Bortogina. The land in question was purchased by Kojo Attah from one Ogden, a European, by auction, the Auctioneer of the land being one Davis. The witness was present at the auction. At the time Kojo Attah purchased the land in question, the Chief of the people who were on the land, was one Kwesi Opon, now deceased, and since succeeded by the first Defendant, Kwesi Enimil. After Kojo Attah had purchased the land he was desirous of obtaining possession of it and for this purpose sued out a Writ of Possession. After paying tribute to Kojo Attah for some time he stopped doing so on the instructions of Angu, the Co-Defendant. The witness added that Opon's people were still on the land.

The documents upon which Mr. Blay relies to make out his case were produced by the witness Ebenzer Tackie-Otoo. They are records of the appeal in the case of Kobina Angu and Kojo Atta (Exhibit "A"); the Plan made of the area in question and a copy thereof (Exhibit "B1 & 2") and the case for the Appellant in *Angu versus Atta* (Exhibit "C"). In cross-examination, the witness stated that there was no Writ of Possession in Exhibit "A." This is the case for the Plaintiff so far as his evidence is concerned.

Opening the case for the Defence, Mr. Williams stressed the fact that Kojo Attah had never at any time gone into possession of the Bortogina lands and the Co-Defendant, Angu and his sub-chiefs have, in fact, been in possession ever since the Judgment of the Privy Council in 1916, and had in fact been in possession before that date.

Mr. Williams called Chief Angu, the Co-Defendant, and the other three Defendants—Kojo Enimil, Kojo Mankradu and Busumafi.

Kobina Angu, the Chief of Mansu in the Wassaw Fiasi State, stated that the Bortogina land is attached to the Mansu Stool. He brought an action against Kojo Attah in respect to the Bortogina land which he won : and up to that time Kojo Attah had not in fact been on the land. Kojo Attah applied by Motion for a Writ of Possession of the Bortogina land but this Motion was dismissed. Kojo Attah then appealed against the Judgment given in Kobina Angu's defence and won the appeal ; but Kobina Angu went to the Privy Council on appeal when the original Judgment was restored. Kojo Attah did not come to see him after this. The witness stated that he intended to do so but he died in the meantime ; ever since that time the witness had been in possession of the Bortogina land. Since then he has given certain people permission to farm on his land at Bortogina. He made a written agreement with Anshai from Inchaban, since deceased, and now succeeded by the second Defendant, Kojo Mankradu and Busumafi, the third Defendant, but as regards the others who had been farming there extensively he gave permission by word of mouth. The witness stated that the Mansu Stool has never sold Bortogina land to Kojo Attah, nor had Kwesi Opon any power to sell the Bortogina land. Kwesi Opon was succeeded as Odikro of Bortogina by Kojo Sekyiani who in turn was succeeded by Kwesi Enimil.

This witness did not give his evidence very clearly and in cross-examination appears to have contradicted his own case as far as the question

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*continued.*

In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division.  
Land Court,  
Sekondi.

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*continued.*

of tribute is concerned, for he stated that what he is entitled to as an overlord of the Bortogina land is not tribute, but everything on and arising out of the land; from this sum he gave what he chose to the sub-chiefs or occupiers of the land.

The three Defendants then gave evidence. Kwesi Enimil, the present Odikro of Bortogina stated that Kwesi Opon never sold Bortogina land to anyone, since he had no power to do so under native law. The witness then confirmed that Amachyi and Busumafi applied to Opon for permission to farm. Kojo Attah never at any time came on the Bortogina land.

Kojo Mankrady stated that he succeeded Amachyi who had farmed 10 on the Bortogina land. The witness paid tribute to Kwesi Enimil. Kobina Busumafi then stated that he had applied to the late Kwesi Opon for permission to farm on Bortogina land which was duly given to him. He paid tribute to Kwesi Opon and when Kwesi Opon died he continued to pay it to Enimil.

This is the case for the Defence, and there can be no doubt that the case as Mr. Blay has submitted, must be decided in great measure on the situation created by the decisions in the cases put in by him, and the arguments as to the effect of those Judgments by the learned Counsel on both sides.

It is first of all desirable to set out the effect of the Judgments relied 20 upon by the Plaintiff.

There are five documents in Exhibit "A" which appear to support the case for the Plaintiff. They are as follows:—

*Certificate of Purchase dated 22nd October, 1903.*

- (1) This certifies that J. K. Jobson had been declared the purchaser of the right, title and interest in a number of pieces of land, including Bortogina, this land having been sold in execution of a Decree in the suit of *J. E. Jobson v. Kobina Baidoo & Ors.*, dated 10th August, 1900.

*Mortgage dated 10th April, 1904, between T. E. Jobson and Samuel Ogden.* 30

- (2) This Deed shows that Ogden paid £100 to T. E. Jobson and as security for the repayment of this sum Jobson mortgaged to Ogden a piece of land known as Intrahoo, 5 sq. miles in extent and in addition other pieces of land, including Bortogina. This Deed provided that the loan should be repayable on the 9th April, 1905, and contains the usual power of sale by auction, or otherwise, in the event of failure to repay the loan on the due date.

*Judgment in Jobson v. Pon dated 17th May, 1909.*

- (3) This Judgment declares Kojo Attah to be the purchaser of the land referred to in the Deed of Mortgage dated 10th April, 1904. 40

*Judgment in Kojo Attah v. Kwesi Pon dated 30th November, 1909.*

- (4) This Judgment confirms the Judgment of Gough, J., dated 17th May, 1909.

*Motion for Writ of Possession dated 29th October, 1912.*

- (5) A Writ of Possession was granted to Kojo Attah, with costs, against Kobina Pon & Ors, and Kwesi Angu.

There are two documents relied upon in the Exhibit by the Defendant. They are as follows :—

*Judgment of 26th August, 1903, Jobson v. Pon.*

(1) In this case the Plaintiff, J. E. Jobson, sought to establish his title to Bortogina land. The Court dismissed the action on two grounds: (1) that the endorsement on the Writ of Summons disclosed no cause of action against Defendants; (2) the Plaintiff was unable to produce any Certificate of Purchase. The action was therefore dismissed with costs.

10 *Jobson v. Kwesi Pon, dated 25th November, 1903.*

(2) In this case Plaintiff claimed to eject the Defendants from the Bortogina lands. After reciting that in the Judgment dated 26th August, 1903, the Plaintiff had failed to produce a Certificate of Purchase to the land, but that since then the Plaintiff had in fact produced a Certificate of Purchase (presumably that of 22nd October, 1903) the Court found that "the endorsement on the Writ of Summons is startlingly dissimilar and different from the endorsement on the Writ of Summons in the previous action." The Court found that neither the Plaintiff nor Chief Kobina Baidu could give any explanation which the Court could accept on the matter.

20

The Court came to the conclusion that the Plaintiff did not know (1) the exact situation; (2) the area; (3) the boundaries of the land to which he sought to establish his title. The Court also came to the conclusion that the Bortogina land was attached to the Stool of Kweku Gyan the Ohene of Mansu. The Court declined to put the Plaintiff in possession of land concerning which he could give no reliable information, and non-suited the Plaintiff.

30 Upon a consideration of the evidence to which I had referred above and the arguments of learned Counsel on both sides, I have come to the following conclusions.

40 It may be convenient to deal first with the effect of the two Judgments in the case of *Jobson v. Kwesi Pon* dated the 26th August and 25th November 1903. The reasons for these decisions being given against Jobson are set out above; but upon considering the other five documents supporting the case for the Plaintiff, I have come to the conclusion that there is nothing in the two Judgments relied upon by the Defendant which could in any way preclude Jobson from mortgaging the land to Ogden nor preclude the Court from declaring Kojo Attah to be the purchaser of the land referred to in the mortgage deed. The two Judgments of the 26th August and 25th November, 1903, seem to me to prove little more than that the evidence placed before the Court when those cases were heard was not sufficiently strong or cogently put to justify the Court in accepting the case for the Plaintiff. There is nothing in these Judgments to preclude the Court subsequently from coming to the conclusion, as it did, that it was clear that Jobson owned

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*continued.*



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Western  
Judicial  
Division.  
Land Court,  
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*continued.*

the land, mortgaged it to Ogden and that Attah purchased it in due course from him.

As regards the Writ of Possession, Mr. Williams has pointed out that the Privy Council Record (Exhibit "A") does not contain the actual writ. On the other hand, there can be no doubt that the writ was granted to Kojo Attah when the Motion was made on the 29th October, 1912, some thirty-five years ago, and it seems unreasonable to conclude, merely because the actual writ is not contained in Exhibit "A" and cannot be produced today, that Kojo Attah was not put in possession. It seems to me unreasonable to conclude that a man would go to the trouble to obtain a Writ of Possession and fail to make use of it afterwards. In any case, I agree with Mr. Blays' submission that even if the Writ of Possession was not executed, this does not affect the legal position created by the grant of the writ to Attah. With regard to the effect of these Judgments I accept Mr. Blay's submission that Kojo Attah is a *bona fide* purchaser. This being so it seems to me that he has clearly more than a life interest in the land which he can transfer to his heirs. 10

Mr. Williams made a somewhat lengthy submission during the course of his concluding address that the case for the Plaintiff must fail in any case, as it was bound by the Statutes of Limitation. The effects of the Judgments on the application of the Statutes of Limitation in the Gold Coast appears to me to be that these Statutes apply even where one of the parties to a case is a native, but do not apply where both parties to the transaction are natives. This being so, I am satisfied that the mere fact that at one stage namely in the deed of mortgage, a European named Ogden made a loan to Jobson and obtained the mortgage of the land as security, does not change the transaction into one in which one of the parties was a European. It is clear that the loan of £100 to Jobson by Ogden was merely an incident in the transfer and devolution of the land in question as between the parties who are admittedly natives. I have therefore come to the conclusion that this case is not governed by the Statutes of Limitation. 20 30

As regards the question of tribute, this point has been settled by Mr. Blay's frank admission that the Plaintiffs, as the subjects of Chief Angu are bound, when they have collected tribute from those due to pay, to hand the tribute over to Chief Angu and that they are prepared to do so.

In view of these considerations I have come to the conclusion that the Plaintiff has established his case and I accordingly give Judgment for the Plaintiff with costs to be taxed by the Registrar. Counsel's fee fifty guineas. Damages assessed at £50.

(Sgd.) C. A. HOOPER, 40  
*Judge.*

Counsel :

Mr. R. S. BLAY for Plaintiffs.

Mr. F. AWOONOR WILLIAMS for Defendants.

No. 29.

Order granting Final Leave to Appeal.

13.7.48.

LAND COURT, SEKONDI, Tuesday, the 13th day of July, 1948,  
Coram HOOPER, J.

KWESI TUAKYI AND ANOTHER ... .. *Plaintiffs-Respondents*  
*vs.*  
KWESI ENIMIL AND OTHERS ... .. *Defendants-Appellants.*

Motion *Ex parte* for Final Leave to appeal.  
10 Mr. WILLIAMS for Appellants.  
Conditions fulfilled.

BY COURT :  
Final Leave to appeal granted.  
Stay of Execution refused.

(Sgd.) C. A. HOOPER,  
*Judge.*

In the  
Supreme  
Court of the  
Gold Coast,  
Western  
Judicial  
Division.  
Land Court,  
Sekondi.

No. 29.  
Order  
granting  
Final  
Leave to  
appeal.  
13th July,  
1948.

No. 30.

Grounds of Appeal.

IN THE WEST AFRICAN COURT OF APPEAL.

20

Between

KWESI TUAKYI and KOFI ESSON as Successors of  
Kojo Attah (Deceased) ... .. *Plaintiffs-Respondents*  
and

KWESI ENIMIL and CHIEF KOBINA ANGU, KOJO  
MANKRADU and CHIEF KOBINA ANGU,  
BUSUMAFIE and CHIEF KOBINA ANGU ... .. *Defendants-Appellants.*  
(Consolidated)

The Appellants being dissatisfied with the Judgment of the Land  
Court, Sekondi, delivered on the 24th April, 1948, and having obtained  
30 Final Leave to appeal therefrom dated the 13th July, 1948, hereby appeal  
to the West African Court of Appeal upon the grounds hereinafter set forth.

GROUPS OF APPEAL.

1. BECAUSE the Court below was wrong in law and in fact in holding that on the Order directing a Writ of Possession to be issued in *Kojo Attah v. Kwesi Pon* in October, 1912, a Writ of Possession

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Court of  
Appeal.

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Grounds  
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African  
Court of  
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of Appeal.  
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*continued.*

was in fact issued and executed without any proof, the Defendants-Appellants denying the issue and execution and pleading that they had in fact been in possession of Bortogina lands since the said Order.

2. BECAUSE the Plaintiffs-Respondents' Writ of Summons and Pleadings prove the possession of the Bortogina lands by the Defendants-Appellants and their subjects, people and licensees and on the Pleadings and evidence, the Plaintiffs-Respondents' claim, if any, was barred by the Real Property Limitation Acts 1833 and 1834, and the Civil Procedure Act 1833, more than 10 20 years having elapsed since the Judgment in 1909 in *Kojo Attah v. Kwesi Pon*, the Judgment of the Court below was wrong in law.
3. BECAUSE the setting up of an adverse title to Bortogina lands by the Plaintiffs-Respondents against the Defendant-Appellant Chief Kobina Angu and his subjects and agents was according to Native Custom a ground for ousting the Plaintiffs-Respondents and their Predecessor Kojo Attah from possession or from entering upon Bortogina lands.
4. BECAUSE the Court below misconceived and misconstrued the 20 effects of the decisions under the Real Property Limitation Acts cited in the Court below and was in law wrong in holding that the said Statutes did not apply in this case and to the Gold Coast.
5. BECAUSE on the Judgment of the Privy Council in this case dated the 23rd June 1916 in *Kobina Angu v. Cudjoe Attah*, the Plaintiffs-Respondents are estopped from claiming title to and possession of Bortogina lands.
6. BECAUSE the Judgment of the Court below was wholly and entirely against the weight of evidence.

Dated this 14th day of July, 1948.

30

(Sgd.) F. AWOONOR WILLIAMS,  
*Counsel for Defendants-Appellants.*

Filed 19/7/48.

(Sgd.) J. ARTHUR  
*for R. D. C.*

## No. 31.

## Hearing of Appeal.

3rd February, 1950.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at Accra on Friday the 3rd day of February, 1950, before Their Honours Sir HENRY WILLIAM BUTLER BLACKALL, President, ARTHUR WERNER LEWEY, Justice of Appeal, and ALAN CHALMERS SMITH, Judge, Gold Coast.

In the West  
African  
Court of  
Appeal.

No. 31.  
Hearing of  
the Appeal.  
3rd  
February,  
1950.

56/48.

10 TUAKYI AND ANOTHER etc. v. ENIMIL AND ANOTHER etc.

TUAKYI AND ANOTHER etc. v. KOJO MANKRADU AND ANOTHER  
and

TUAKYI AND ANOTHER etc. v. BUSUMAFIE AND ANOTHER  
(Consolidated)

## APPEALS FROM JUDGMENT of HOOPER, Judge.

WILLIAMS for Appellants.

BLAY for Respondents.

20 WILLIAMS—Kwesi Enimil is Odikro under Kobina Angu who is Chief of Manso. Plaintiffs are successors of the Purchasers. The other Defendants are licencees and subjects of Manso.  
Page 25.

Judgment for Possession but no evidence that Writ of Possession issued. Smith, Judge, refers to pages 23, 24.

*Watson v. Birch*, 16 Law Journal Reports, Equity 188-90 *re* Statutes of Limitations.

*Mills v. Renner*, 6 W.A.C.A. 144.

*Kwamina Aradzie v. Kobina Yandor and Another*, Full Court Reports, 1922, page 91.

30 *Manche Tate Kpeshie II of Sempe v. Manche Ahuma Kojo II of James town*, W.A.C.A. June 1946, page 113.

If Plaintiff had entered into possession he would be bound to Co-Defendant and if he did not pay for 20 years he could invoke Statute.

In the West  
African  
Court of  
Appeal.

No. 41.  
Hearing of  
the Appeal.  
3rd  
February,  
1950—  
*continued.*

If he did not enter then Co-Defendant can invoke Statute even if Plaintiff offers to pay tribute.

Bokitisi Concession, Sarbah's Fanti Law Reports, page 148.

Redwar 231.

We went to the Privy Council to forestall Plaintiff going into possession.

BLAY—We have been in possession all along.

By SMITH, Judge—Native Law applied both to our relationship with the others on the land and the overlord.

Williams agrees.

*Korkoi Adjuah v. Tetteh Wilson*, Full Court Reports 1926–29, 260 10  
("Because Mortgage executed under English Law does not follow . . . .  
"land held ceases to be held under Native tenure").

*Abinah and Another v. Mrs. Kennedy*, Full Court Reports 1920–21, 21.  
Statute of Limitations does not apply to land held under Native tenure.  
So 30 years' possession would not itself give a title.

Jobson bought under Certificate of Purchase, page 89, interest of a number of natives.

We got a Writ of Possession in 1912 (page 156) which Defendant opposed unsuccessfully. Then he brought action for tribute and won in Privy Council.

WILLIAMS—The basis of Respondents' title is a document and they have not pleaded native custom.

*British Thomson-Houston Co. v. British Insulated and Helsby Cables, Limited*, 1924, 2 Chancery, 160.

Appeals dismissed with costs assessed at £30. 17. 6.

(Intd.) H. W. B.

## No. 32.

## Judgment.

In the West  
African  
Court of  
Appeal.

3rd February, 1950.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at Accra on Friday the 3rd day of February, 1950, before Their Honours Sir HENRY WILLIAM BUTLER BLACKALL, President, ARTHUR WERNER LEWEY, Justice of Appeal, and ALLAN CHALMERS SMITH, Judge, Gold Coast.

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Judgment.  
3rd  
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1950.

Civil Appeal No. 56/48.

- 10 KWESI TUAKYI and KOFI ESSON Successors  
according to Native Customary Law of Kojo  
Attah (Deceased) ... .. *Plaintiffs-Respondents*  
*versus*  
KWESI ENIMIL for himself and as representing  
the people of Bortogina Village and CHIEF  
KOBINA ANGU, Chief of Manso ... .. *Defendants-Appellants.*
- KWESI TUAKYI and KOFI ESSON, Successors  
according to Native Customary Law of Kojo  
Attah (Deceased) ... .. *Plaintiffs-Respondents*  
*versus*  
20 KOJO MANKRADU and CHIEF KOBINA ANGU, Chief  
of Manso ... .. *Defendants-Appellants.*
- KWESI TUAKYI and KOFI ESSON, Successors  
according to Native Customary Law of Kojo  
Attah (Deceased) ... .. *Plaintiffs-Respondents.*  
*versus*  
BUSUMAFIE and CHIEF KOBINA ANGU, Chief of  
Manso ... .. *Defendants-Appellants.*  
(Consolidated)

## JUDGMENT.

30 SMITH, J.: The ingenious arguments and numerous authorities quoted by Counsel for the Appellants have failed to satisfy me that the Judgment of the trial Court was wrong although I do agree that there is one passage in that Judgment which can be criticised.

The main point taken in this appeal by the Appellants is that English Law applies and as there is evidence that the Respondents have been out of possession for more than 20 years they are therefore debarred by the Statute of Limitation. That argument would be perfectly sound if the relationship between the parties was governed by English Law.

40 The learned Judge in his Judgment seems to have thought that the fact that both parties were natives would in itself give rise to the conclusion that Native Law and not English Law would govern their relationship.

In the West  
African  
Court of  
Appeal.

No. 32.  
Judgment.  
3rd  
February,  
1950—  
*continued.*

With respect to the learned Judge that is not correct. The question is whether the parties have bound themselves in terms of English Law or Native Law. For instance if one native gives another a promissory note under English Law, it has been held that the English Law governs their relationship. Similarly, as in the case of *Nelson v. Renner*, if a native gives another a Mortgage under English Law the relationship between the Mortgagor and the Mortgagee in regard to the Mortgage is governed by English Law.

But in this case the land was undoubtedly native tenure originally. The interest of the former owner of the land was seized and sold by the execution of the process of the Court. The right, title and interest which the Judgment Debtor was entitled to under Native Law was bought by one Jobson who later mortgaged it. The Mortgagee later exercised the power of sale in the Mortgage and sold to the predecessor of the present Plaintiffs. What the Plaintiffs' predecessor bought was the right title and interest under Native Law of the original Judgment Debtor. That that is so is shown by the Privy Council case referred to by Appellants' Counsel in which the Co-Defendant claimed tribute under Native Law from the predecessor of the present Plaintiffs. I am in no doubt at all that the Plaintiffs' tenure is governed by Native Law. It is quite clear that he has bought an interest in the property which carries with it the right of possession. Thirty years ago he brought an action for possession and in pursuance of it entered into part of the land. In his evidence in this case he said that the Plaintiffs are in possession of parts while the Defendants are in possession of other parts. The Plaintiffs are entitled to possession of the whole.

As I indicated the final conclusion of the Judgment of the learned Judge is correct. One final point, the Co-Defendant claims that he is now entitled to possession of the land because the Plaintiffs denied his overlordship. It seems to me that the Co-Defendant cannot have it both ways. By claiming tribute in the suit of 1912 he has inferentially rights in the land from which the liability to pay tribute arises. The only occasion upon which the Plaintiffs denied Co-Defendant's right to tribute was when he contested the Co-Defendant's claim in the 1912 case. This alone cannot be a good ground for forfeiture, otherwise no person could ever risk contesting any claim of this nature and holders of land would be left entirely at the mercy of their overlords. I hold that there has been no forfeiture and that the Plaintiffs' title is still unimpaired. I would dismiss this appeal with costs.

BLACKALL, P. : I agree that this appeal should be dismissed.

LEWEY, J. A. : I agree.

(Sgd.) H. W. B. BLACKALL, *President.*

(Sgd.) ARTHUR LEWEY, *Justice of Appeal.*

(Sgd.) A. C. SMITH, *Judge.*

## No. 33.

## Order granting Leave to Appeal to Privy Council.

In the West  
African  
Court of  
Appeal.

22nd June, 1950.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at Accra, on Thursday the 22nd day of June, 1950, before Their Honours ALLAN CHALMERS SMITH, Acting Chief Justice, Gold Coast (Presiding Judge), ARTHUR WERNER LEWEY, Justice of Appeal, and Sir JAMES HENLEY COUSSEY, Judge, Gold Coast.

No. 33.  
Order  
Granting  
Leave to  
Appeal to  
Privy  
Council.  
22nd June,  
1950.

Motion.

10 KWESI TUAKYI AND ANOTHER v. KWESI ENIMIL AND ANOTHER, etc.

WILLIAMS for Appellants.

K. LARBI for Respondents.

Motion for Final Leave to appeal to Privy Council and for Stay of Execution.

WILLIAMS : Reads Affidavit of Chief Kobina Angu.

The Sureties offered were approved by the Court and the Bond executed within time, but by accident the Affidavits justifying the Sureties were not filed until after time.

LARBI : Nothing to add.

20 COURT : Final Leave granted.

As to Stay of Execution :

WILLIAMS : As to Stay of Execution. Moves under Article 8 of Order in Council for Stay of Execution as to possession. Costs and Damages have been paid.

COURT : Can a Stay be granted against an Order for possession. Is the Appellant required to "perform a duty" by the Judgment. Safford and Nillard's Privy Council Practice 793. 14 Halsbury's, 6, Section 6. Court's discretion as to Stay.

30 LARBI : *Egyir Ababio v. Kwodwo Tsia*, 3 W.A.C.A. 24 Appeal not pending until Final Leave granted and Notice filed.

Writ of Possession has been partially executed. Prepared to give undertaking that Respondents will not take possession of any further portions of the land.

WILLIAMS—I accept the undertaking and withdraw application for Stay. Costs £2. 2. to Respondents.

(Sgd.) A. C. SMITH,  
*Ag. Chief Justice.*

(Sgd.) ARTHUR LEWEY,  
*Justice of Appeal.*

(Sgd.) J. HENLEY COUSSEY,  
*Judge, Gold Coast.*



Exhibit  
" A. "

EXHIBITS.

T. E. Jobson  
v. Cudjoe  
Mensah and  
5 others.  
Writ of  
Summons,  
Suit No. 25  
of 1901.  
17th June,  
1901.

Exhibit " A "—Writ of Summons in re T. E. Jobson v. Cudjoe Mensah and 5 others.

Office Copy.

(Sgd.) Q. B. Mensah,  
Registrar.

H Marked for Identification  
in Attah v. Pon and Others.  
(Intd.) F. V. 10.5.1911.

Admitted in evidence.  
(Intd.) F. V. 10.5.1911.

No. 30.

WRIT OF SUMMONS.

10

No. 25.

Suit No. 25 of 1901.

IN THE SUPREME COURT OF THE GOLD COAST COLONY.

Between

T. E. JOBSON ... .. *Plaintiff*

and

CUDJOE MENSAH AND 5 OTHERS ... .. *Defendants.*

To CUDJOE MENSAH AND 5 OTHERS of Konfueku—

You are hereby commanded in His Majesty's name to attend this Court at Sekondi on Monday the 17th day of June 1901, at 8 o'clock in the forenoon, then and there to answer a suit by T. E. Jobson of Konfueku 20 against you.

The Plaintiff claims £25. 0. 0. damages from Defendants for having trespassed upon Plaintiff's land called Ehumabakadu.

Issued at Secondee the 17th day of June 1901.

Sum claimed	...	...	...	...	£25	0	0
Court fees	...	...	...	...	-	6	0
Bailiff's fees	...	...	...	...	-	11	4
					<hr/>		
				Total	...	£25	17 4
					<hr/> <hr/>		

(Sgd.) J. BOWERS ROWLANDS,  
*Commissioner.* 30

**Exhibit " A."—Writ of Summons in re J. E. Jobson v. Cudjoe Aryarpah and 11 others.**

Exhibit  
" A."

Office Copy.  
(Sgd.) P. V. Conlon,  
Registrar. 28.10.02.

G1 marked for identification  
in Attah v. Pon and Others.  
(Intd.) F. V. 10.5.1911.  
Admitted in evidence.  
(Intd.) F. V. 10.5.1911.

J. E. Jobson  
v. Cudjoe  
Aryarpah  
and others  
Writ of  
Summons.  
28th  
October,  
1902.

No. 37.

No. 30.

**WRIT OF SUMMONS.**

10 SUPREME COURT OF THE GOLD COAST COLONY.

Between

J. E. JOBSON ... .. *Plaintiff*

and

CUDJOE ARYARPAH AND 11 OTHERS ... .. *Defendants.*

To IMMAIL of Bortorginah—

You are hereby commanded in His Majesty's name to attend this Court at Elmina on Monday the 7th day of November 1902, at 8.30 o'clock, in the forenoon, then and there to answer a suit by J. E. Jobson of Elmina against you.

20 The Plaintiff claims to establish his title to all that piece or parcel of land situated at Bortorginah and known as Bortorginah in Chama District under a Certificate of Title.

Issued at Elmina the 28th day of October 1902.

Sum claimed	...	...	...	...	£1 10 0
Court fees	...	...	...	...	1 2 0
Mileage Bailiff's fees	...	...	...	...	- 12 0
					<hr/>
Total	...	...	...	...	£3 4 0
					<hr/> <hr/>

(Sgd.) C. BROWNE,  
*Judge or Commissioner.*

Exhibit  
"A."

Exhibit "A."—Judgment in re Jobson v. Aryarpah and 11 others.

Jobson v.  
Aryarpah  
and  
11 others.  
Judgment.  
26th  
August,  
1903.

Jl. Marked for Identification in Attah v Pon and Others.  
(Intd.) F. V. 10.5.1911.

Admitted in evidence.  
(Intd.) F. V. 10.5.1911.

Cor. PURCELL, J.

26/8/03.

JOBSON v. ARYARPAH AND 11 OTHERS.

J. E. JOBSON v. CUDJOE ARYARPAH AND 11 OTHERS.

Plaintiff claims to establish title to all that piece or parcel of land 10 situate at Bortorginah and known as Bortorginah in Chama District under a Certificate of Purchase.

BY COURT : This action must be dismissed on 2 grounds :

(1) That the endorsement on the Writ of Summons discloses no cause of action against the Defendants.

(2) That the Certificate of Purchase by which Plaintiff seeks to establish his title to the property is admittedly not even in existence.

The action is therefore dismissed and with costs.

(Sgd.) G. K. T. PURCELL. 20  
26/8/03.

Certified True Copy.

(Sgd.) H. ANAMAN.  
Elmina. 29/8/03.

Certified True Copy.

(Sgd.) FRANK VARDON,  
*Registrar.*

---

Exhibit "A."—Decree in re J. E. Jobson v. Cudjoe Aryarpa.

Exhibit  
"A."

I. Marked for Identification in Attah v. Pon and Others.  
(Intd.) F. V. 10.5.1911.

J. E. Jobson  
v. Cudjoe  
Aryarpa  
Decree.  
26th  
August,  
1903.

Admitted in evidence.  
(Intd.) F. V. 10.5.1911.

No. 3

No. 39.

FORMAL DECREE.

IN THE SUPREME COURT OF THE GOLD COAST COLONY.

Between

10 J. E. JOBSON ... .. Plaintiff

and

CUDJOE ARYARPA, QUAW ENIN, QUASIE PONN, AMPONSAH,  
QUAW ANNAIM, CUDJOE AININ, ERBUM IMMAIL,  
CUDJOE QUESIE, BUAMPOI, QUASIE AINCHILL, QUASIE  
AMISSAH ... .. Defendants.

IT IS DECREED in the above suit, that the above-named Defendants do recover from the above-named Plaintiff the sum of £260. 7. 4. together with for costs, and the said Defendant is *sic* hereby ordered to pay the sum of £260. 7. 4. forthwith, or by the following 20 instalments.

Dated at Elmina the 26th day of August 1903.

Dated at Cape Coast the 1st day of July 1908.

Debt	...	...	...	...	...	£-	-	-
Costs	...	...	...	...	...	260	7	4
						£260 7 4		
						£260 7 4		

By the Court.

(Sgd.) FRANS SMITH,  
*Judge.*

Certified True Copy.

30 (Sgd.) FRANK VARDON,  
*Registrar.*

Exhibit  
"A."

Exhibit "A."—Certificate of Purchase of Lands.

Certificate  
of Purchase  
of Lands.  
22nd  
October,  
1903.

CERTIFICATE OF PURCHASE OF LANDS.

No. 2257/03.

IN THE SUPREME COURT OF THE GOLD COAST COLONY  
WESTERN PROVINCE.

A.D. 1903.

Suit No. 93/99.

Between

J. E. JOBSON ... .. *Plaintiff*

and

KOBINA BAIDOO, KOBINA EBIN KWESI KWATIA KOFI 10  
BUSUMSHI, KOFI BORDIA, KWAMIN BUAYAH KUJO  
ATTAH, KWEKU AFELI KOFI NUAMA ... .. *Defendants.*

This is to certify that J. E. Jobson has been declared the Purchaser of the right, title and interest of Kobina, Kobina Ebin Kwesi Kwatia, Kofi Busumchi, Kofi Bordia Kwamin Buayah, Kujo and Kweku Nuama in the messuages lands and tenements hereinafter mentioned, that is to say :

ALL those pieces and parcels of land known as Takyiabunsandi Passaganu, Ahunanu, Mokwomo, Akutuasi, Issiwdu, Ekoomasoi, Bortorgina, Buama, Intwafibweadu, Ewhiretwhiramu, Apeimbra, Imbire, Kukuradu, Passrel and houses situate in Konfueku in the District of Sekondi and 20 bounded on the South by the villages Atuma, on the North by Konfueku, on the East by Anakwan River and on the West by the mark land mark of Kweku Dadzie of Esiamas : which said messuages, lands and tenements were sold in execution of a Decree in the above suit by Order of this Court, dated the 10th day of August 1900.

Dated at Axim the 22nd day of October 1903.

(Sgd.) STANLEY W. NORGAN,  
*Signature of Judge.*

Certified true copy.

Registrar.

30

This Instrument was delivered to me for registration by Lance Miller Esquire of Sekondi this 2nd day of April 1906 at 2 o'clock in the afternoon.

(Sgd.) FRANK VARDON,  
*Registrar of Deeds.*

Exhibit " A."—Writ of Summons in re T. E. Jobson v. Kwesi Pon and others.

Exhibit  
" A."

G2 Marked for Identification  
in Attah v. Pon and Others.  
(Intd.) F. V. 10.5.1911.  
Admitted in evidence.  
(Intd.) F. V. 10.5.1911.

Office Copy.  
(Sgd.) E. A. Jonah.  
Registrar.

T. E. Jobson  
v. Kwesi  
Pon and  
others.  
Writ of  
Summons.  
6th  
November,  
1903.

No. 2.

WRIT OF SUMMONS.

IN THE SUPREME COURT OF THE GOLD COAST COLONY.

10 To QUASIE PONN, QUACOE INNAIM, FAISUHINN, KOJO ARYAPAH, ASSUAKU  
& KOJO AINIMM, Defendants of Bortorgina.

Your attendance is necessary to answer a suit by T. E. Jobson of Elmina.

The Plaintiff's claim is to eject the Defendants from all those pieces or parcels of lands known and called Ekoomasoi, Bortogina and Buama together with the buildings thereon and situate at Konfueku in the District of Sekondi and bounded on the North by Konfueku, on the South by the village at Atuma, on the East by Annankwan River and on the West by land mark of Quacoe Dadzie of Esiaman which said pieces or parcels of  
20 lands with the buildings thereon are together of the value of £250 and bought under a sale by the Court.

Also £150. 0. 0. damages for mesne profits.

You are hereby commanded in His Majesty's name to attend in person before the Court at Elmina on the 16th day of November 1903 and on every adjournment of the Court until the case be disposed of.

Issued at Elmina the 6th day of November 1903.

Sum claimed	...	...	...	...	£400	0	0
Court fees	...	...	...	...	4	0	0
Bailiff's fees	...	...	...	...	1	0	8
					<hr/>		
				Total	...	£405	0 8
					<hr/> <hr/>		

30

(Sgd.) D. WALDRON,  
*Signature of Commissioner or Judge.*

Exhibit "A."      Exhibit " A. "—Hearing in re T. E. Jobson v. Kwesi Pon and others.

T. E. Jobson  
v. Kwesi  
Pon and  
others.  
Hearing.  
24th  
November,  
1903.

J2. Marked for Identification in Attah v. Pon and Others.  
(Intd.) F. V. 10.5.1911.  
Admitted in evidence.  
(Intd.) F. V. 10.5.1911.

Tuesday, November 24th 1903. Corom PURCELL, J.

J. E. JOBSON v. KWESI PON AND OTHERS.

Plaintiff's claim is to eject Defendants from certain lands known and called (1) Ekoomasei (2) Bortorgina (3) Buama together with the buildings thereon situate at Konfueku in District of Sekondi value £200 and £150 10 damages mesne profits.

LEUNG for Plaintiff.  
RENNER for Defendant.

Judgment.  
25th  
November,  
1903.

Exhibit " A. "—Judgment in re T. E. Jobson v. Kwesi Pon and others.

25/11/03.

BY THE COURT: In my Judgment the Plaintiff in this action must be nonsuited. On August 26th last the Plaintiff brought an action in this Court to establish his claim admittedly to the same piece of land as he does now, the endorsement on the Writ of Summons being as follows:—

Plaintiff claims to establish title to all that piece of land 20  
situate at Bortorgina in Chama District under Certificate of  
Purchase.

On it being stated to the Court that although the Plaintiff asserted that he bought the land in question at the Sheriff's sale two and a half years previously yet no Certificate of Purchase had ever been issued to him. The action was dismissed on the following grounds: (1) That the endorsement on the Writ of Summons discloses no cause of action against the Defendants. (2) That the Certificate of Purchase by which Plaintiff seeks to establish his title to this property is admittedly not even in existence.

Since the dismissal of this action Plaintiff appears to have obtained 30  
Certificate of Purchase which sets forth names of about 11 or 12 different  
pieces of land and brings the present action. Now although the present  
action is brought to establish the Plaintiff's title to and eject the Defendants  
from what is admittedly the identical same land or lands as the action  
brought in this Court in August to which I have just referred it will be  
observed that the endorsement on the Writ of Summons is startlingly

dissimilar and different from the endorsement on the Writ of Summons in the previous action. It is as follows: The Plaintiff's claim is to eject the Defendants from all those pieces or parcels of lands known as and called Ekumasei Bortorgina and Buama together with the buildings thereon and situate at Konfueku in the district of Sekondi and bounded on the North by Konfueku, on the South by the village of Atuma, on the East by the Annankwan River and on the West by the land mark of Quacoe Dadzie of Essiaman which said pieces or parcels of lands with the buildings thereon are together of the value of £250 and bought under a sale by the Court. Also £150 damages for mesne profits. Neither the Plaintiff nor Chief Kobina Baidu whom I must assume he is acting in concert with in this matter can give me any explanation which I can possibly accept on the matter. On all the evidence before me I have come to the conclusion that the Plaintiff has no knowledge whatsoever of either (1) the exact situation, (2) the area, and (3) the boundaries of the land or lands which he seeks to establish his title to in this action. And I further come to the conclusion that the land known as Bortorgina is in truth and in fact land attached to the Stool of Kweku Pon Chief of Mansue and on which the Defendants were properly located as holding from that Chief (Kweku Pon). It is quite clear under the circumstances that it will be impossible for this Court apart from all other considerations to put the Plaintiff in possession of lands concerning which as I have already remarked, he appears startlingly ignorant.

The Plaintiff must therefore be non-suited and with costs.

(Sgd.) G. K. T. PURCELL,  
25/11/03.

Exhibit  
"A."  
Judgment.  
25th  
November,  
1903—  
*continued.*

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**Exhibit "A."—Indenture between T. E. Jobson and S. Ogden.**

Pon *v.* Jobson, Attah Claimant.  
"A" by Claimant.  
30 (Intd.) J. A. W.,  
Deputy Registrar.  
11/5/09.

"C" by Plaintiff.  
Attah *v.* Pon and Others.  
(Intd.) J. A. W.  
for Registrar.  
10/5/11.

Indenture  
between  
T. E. Jobson  
and  
S. Ogden.  
10th April,  
1904.

"A" No. 660/04.  
2/6.

THIS INDENTURE made the Tenth day of April One thousand nine hundred and four Between TIMOTHY EBENEZER JOBSON of Chama in the Gold Coast Colony West Africa Gentleman (hereinafter styled the



Exhibit "A."  
 ———  
 Indenture between T. E. Jobson and S. Ogden. 10th April, 1904—  
*continued*

Mortgagor) of the one part and SAMUEL OGDEN of Bank Villas Fairfax Road Prestwick near Manchester in the County of Lancashire in England and of Accra in the aforesaid Gold Coast Colony Gentleman (hereinafter styled the Mortgagee) of the other part WITNESSETH that in consideration of the sum of One Hundred Pounds sterling (£100) to the said Timothy Ebenezer Jobson now paid by the said Samuel Ogden the receipt whereof the said Timothy Ebenezer Jobson hereby acknowledges the said Mortgagor hereby grants unto the said Mortgagee and his heirs ALL that piece or parcel of land known and styled as "Inteahoo" situate on the right bank of the River Ancobra and described as follows: From the Baibianiha Village to Enkroo Rivulet measuring five square miles and which said piece or parcel of land is more particularly described and delineated in the Plan drawn at the foot of a certain Indenture dated the 10th day of December One thousand nine hundred and three made between Chief Cobbinah Ampondrow Kwesie Yebuah and Kwaminah Qurankyie all of Sarman in the District of Eastern Wassaw of the one part and the said Mortgagor of the other part whereby the property known and styled as "Inteahoo" aforesaid was granted in fee simple unto the said Mortgagor and the said Mortgagor hereby also grants unto the said Mortgagee and his heirs ALL those pieces and parcels of land known as Takyiabimundu Passanganu Ahunana Mohwomo Ektuasi Issiwdu Ekkomasei Bortorgina Buama Intwafubrueadu Abumandu Fwhiretwhiranu Apeimbra Mbrirekuburadu and Passreh respectively and the houses situate in Konfueku in the District of Sekondi in the aforesaid Gold Coast Colony and bounded on the South by the village of Atuma on the North by Konfueku on the East by Anakwan River and on the West by the land mark of Quacoe Dadzie of Esiaman (which said messuages lands and tenements were sold in execution by a Decree of the Supreme Court of the Gold Coast Colony dated the Tenth day of August One thousand nine hundred) with all easements rights and things appurtenant or reputed as appurtenant to all or any of the various lands or properties hereby granted to the said Mortgagee AND all the estate and interest of the Mortgagor therein TO HOLD the same unto and to the use of the Mortgagee his heirs and assigns PROVIDED ALWAYS that if the sum of One hundred pounds (£100) with interest thereon shall be paid on the Ninth day of April One thousand nine hundred and five pursuant to the Mortgagor's covenant next hereinafter contained the said hereditaments shall at the request and cost of the Mortgagor his heirs or assigns be reconveyed to him or them AND the Mortgagor hereby covenants with the Mortgagee to pay the sum of One hundred pounds sterling (£100) on the Ninth day of April One thousand nine hundred and five with interest thereon after the rate of Ten pounds (£10) per cent. per annum computer from the date hereof and also (if the said principal sum be not paid on that day) to pay interest thereon half-yearly on the 9th day of October and the 9th day of April until the said principal sum shall be fully paid AND THE MORTGAGOR further covenants with the Mortgagee his heirs and assigns that the Mortgagor now hath good right to grant the

said hereditaments in manner aforesaid free from incumbrances AND THAT he and all other persons (if any) having an interest in the said hereditaments will at his or their own cost during the continuance of this security and afterwards at the cost of the person or persons requiring the same do and execute or cause to be done and executed all such acts deeds and things for further assuring the said hereditaments unto and to the use of the Mortgagee his heirs and assigns as by him or them shall be reasonably required AND IT IS HEREBY DECLARED that the Mortgagee his executors administrators or assigns may at any time without any

10 further consent sell the hereditaments hereby granted or any part thereof either together or in lots and either by public auction or private contract and either with or without special stipulations as to title or otherwise and may buy in at sales by auction and rescind contracts for sale and re-sell and may also execute assurances give receipts for the purchase money and do all other things for completing the sale which may be thought fit and shall out of the sale moneys first pay the costs and expenses of such sale or otherwise incurred in relation to this security and secondly pay the moneys which shall then be owing upon this security and shall pay the surplus (if any) to the Mortgagor his heirs or assigns PROVIDED ALWAYS that

20 the foregoing power of sale shall not be exercised unless default shall be made in payment of the said sum of One hundred pounds (£100) or the interest thereof or some part thereof on the said Ninth day of April One thousand nine hundred and five PROVIDED ALSO that no purchaser upon any sale under the aforesaid power shall be concerned to see or inquire whether any such default has been made or whether any other conditions have been complied with or otherwise as to the necessity or propriety of such sale or shall be affected by notice that no such default has been made or that the sale is otherwise unnecessary or improper

Exhibit  
"A."  
—  
Indenture  
between  
T. E. Jobson  
and  
S. Ogden.  
10th April,  
1904—  
*continued.*

IN WITNESS WHEREOF the said Parties have hereunto set their

30 hands and seals the day and year first above written.

Signed Sealed and Delivered by the said parties in the presence of us as witnesses :	}	(Sgd.) T. E. JOBSON (L.S.)
		(Sgd.) S. OGDEN (L.S.)

(Sgd.) J. H. BISSUE,  
*Sekondi Trader.*

(Sgd.) T. J. MITCHUAL,  
*Chama Tarkwa Roas.*

On the Twenty-eighth day of April 1904 at 9.15 o'clock in the forenoon this Instrument was proved before me by the oath of the within

Exhibit "A." named TIMOTHY EBENEZER JOBSON to have been duly executed by the within named.

Indenture  
between  
T. E. Jobson  
and  
S. Ogden.  
10th April,  
1904—  
*continued.*

Given under my hand and Official Seal.

(Sgd.) JOHN MAXWELL (L.S.)  
*District Commissioner, Sekondi.*

This Instrument was delivered to me for registration by LANCE MILLER of Sekondi this 9th day of May 1904 at 8.30 a.m.

(Sgd.) FRANK VARDON,  
*Registrar of Deeds.*

This Instrument is registered as No. 17 and is engrossed on pages 92 10 to 95 Register of Mortgages Volume 8 of October 1903 Cape Coast.

(Sgd.) FRANK VARDON,  
*Registrar of Deeds.*

Depositing	2/6
Recording	24/-
Taking out	2/6
	<hr/>
	29/-

This is the instrument marked "A" referred to in the oath of TIMOTHY EBENEZER JOBSON sworn before me this 28th day of April 1904.

(Sgd.) JOHN MAXWELL,  
*District Commissioner.*

Exhibit "A."—Writ of Summons, T. E. Jobson v. Kwesi Pon and others.

Exhibit  
"A."

Office Copy.  
(Sgd.) Q. B. Mensah,  
Registrar.

G3. Marked for Identification  
in Attah v. Pon and Others.  
(Intd.) F. V. 10.5.1911.

Admitted in evidence.  
(Intd.) F. V. 10.5.1911.

T. E. Jobson  
v. Kwesi  
Pon and  
others.  
Writ of  
Summons.  
31st  
August,  
1904.

No. 30.

WRIT OF SUMMONS.

SUPREME COURT OF THE GOLD COAST COLONY.

10 No. 506.

Suit No.

Between

T. E. JOBSON ... .. Plaintiff

and

QUASIE PONN, QUOW INNAIN FAISUHIN, KOJO AYAPA,  
ASSUAKU and KOJO AININN ... .. Defendants.

To KOJO AYAPA of Botogina.

You are hereby commanded in His Majesty's name to attend this Court at Cape Coast on the 12th day of September 1904 at 8.30 o'clock in the forenoon, then and there to answer a suit by Plaintiff T. E. Jobson of Elmina against you.

The Plaintiff's claim is to eject the Defendants from all those pieces or parcels of lands known and called Koomasei Botogina and Buama together with the buildings thereon and situate at Konfueku in the District of Sekondi and bounded on the North by Konfueku, on the South by the village of Atuma, on the East by Annankwan River and on the West by land mark of Quacoe Dadzie of Esiaman which said pieces or parcels of lands with the buildings thereon are together of the value of £250 and bought under a sale by the Court.

Also £150 damages for mesne profits.  
30 Issued at Cape Coast the 31st day of August 1904.

Sum claimed	...	...	...	...	£400	0	0
Court fees	...	...	...	...	2	5	0
Bailiff's fees	...	...	...	...	-	6	0
Injunction	...	...	...	...	-	12	8
Total					...	£403	3 8

(Sgd.) A. R. PENNINGTON,  
Judge.

Exhibit "A."—Kojo Attah's Receipt for £144 in payment of lands under Mortgage Deed 10/4/04 between T. E. Jobson and S. Ogden.

Kojo Attah's Receipt for £144 in payment of lands under Mortgage Deed 10/4/04 between T. E. Jobson and S. Ogden. 26th October, 1906.

Pon v. Jobson.  
Atta and Others : Claimants.  
" A " by Claimants.  
(Intd.) J. A. W.,  
Registrar. 10/5/09.

" B " by Plaintiff.  
Atta v. Pon and Others.  
(Intd.) J. A. W.  
for Registrar.  
10/5/11.

Received from KOJO ATTAH, the sum of One hundred and forty-four pounds (£144) being full payment for lands sold and bought under Mortgage Deed dated on the 10th of April 1904 between TIMOTHY EBENEZER JOBSON of 10 Chama and SAMUEL OGDEN of Bank-villas Fairfax Road, Prestwich near Manchester in the County of Lancashire (all that piece and parcels of land, as mentioned in the attached Papers.

(Sgd.) L. T. C. DAVIS,  
26/10/06.  
Sekondi, 26.10.06.

Certified true copy.  
Registrar.

Exhibit "A."—Affidavit of Kojo Attah.

Affidavit of Kojo Attah. 29th September, 1908.

" E " Put in evidence by Plaintiff in  
Atta v. Pon and Others.  
(Intd.) F. V.  
10/5/1911.  
Jobson v. Pon " C " by Plaintiff.  
(Intd.) J. A. W.,  
Ag. Registrar.  
11/5/09

20

IN THE SUPREME COURT GOLD COAST COLONY,  
WESTERN PROVINCE, SEKONDI.

	Between						
T. E. JOBSON	...	...	...	...	...	...	<i>Plaintiff</i>
	and						
KWESIE PON AND OTHERS	...	...	...	...	...	...	<i>Defendants.</i>

30

I, KOJO ATTAH, of Konfueku in the Chama District of Sekondi do hereby make oath and say as follows :—

1.—That the properties known as Takyiabimundu Passanganu Ahunana Mohwemo Ekutuasi Issiwdu Ekoomasoi Bortogina Buama Intwafubweadu Abumandu Fwhiretwiranu Apeimbra Mbirekuburanu and Passreh

respectively and the houses situate in Konfueku in the District of Sekondi and bounded on the South by the village of Atuma on the North by Konfueku on the East by Anankwan River and on the West by the land mark Quacoe Dadzie of Esiaman were purchased from Lamuel Thomas Caxton Davis of Sekondi acting as Auctioneer for Samuel Ogden on the 26th October 1906 by Private Treaty.

Exhibit  
"A."  
Affidavit  
of Kojo  
Attah.  
29th  
September,  
1908—  
*continued.*

2.—That I paid on behalf of myself Kwa Baidoo and Kobina Komasio for the sum of One hundred and forty-four pounds (£144) to him in payment thereof.

10 3.—That we have been in undisputed possession of the said properties since and have cultivated and planted crops thereon.

4.—That on the 21st day of September 1908 a Writ of Fi. Fa. was caused to be issued of this Honourable Court at the suit of Kwesi Pon and Others for the recovery of the sum of Two hundred and seventy pounds one shilling and eight pence (£270. 1. 8.)

5.—That the said properties belong to us and that the said Kwesi Pon and Others have no right thereto.

20 Sworn at Sekondi this 29th day of September 1908. This affidavit having been first read over and explained to him in the Fanti language by H. Ephee and he seemed perfectly to understand the same and made his mark thereto in my presence.

KOJO ATTAH            His  
   X  
   Mark

(Sgd.) W. H. DAKEYNE,  
*District Commissioner.*

Exhibit "A."—Affidavit of Kojo Attah.

Affidavit  
of Kojo  
Attah.  
28th  
November,  
1908.

30 IN THE SUPREME COURT OF THE GOLD COAST COLONY CENTRAL PROVINCE.  
DIVISIONAL COURT.

   Between  
T. E. JOBSON    ...    ...    ...    ...    ...    ...    *Plaintiff*  
   and  
KWESI PON AND OTHERS    ...    ...    ...    ...    ...    *Defendants.*

I, KOJO ATTAH of Konfueku in the District of Sekondi do hereby make oath and say as follows:—

1.—That a Writ of Fi. Fa. has been issued out of this Honourable Court by the Defendants in the above action and certain lands known as

Exhibit  
"A."  
Affidavit  
of Kojo  
Attah,  
28th  
November,  
1908—  
*continued.*

Takyiabimundu Passanganu Ahunana Mohwomo Ekutuasi Issiwdu Ekoomasoi Bortorgina Buama Intwafubweadu Abumandu Fwhiretwhiranu Apeimbra Mbirekubradu and Passreh respectively and the houses situate in Konfueku and bounded on the South by the village of Atuma on the North by Konfueku on the East by Anankwan River and on the West by the land mark of Quacoe Dadzie of Assiaman have been seized by the Deputy Sheriff under the said Writ of Fi. Fa.

2.—That the said lands were sold in execution of a Decree of His Honour Mr. Justice Morgan in the Western Province of this Colony dated the 10th day of August 1903 and were purchased by the above-named Plaintiff at Public Auction on the 22nd day of October 1903. 10

3.—That thereafter the above-named Plaintiff mortgaged the lands to one Samuel Ogden of Sekondi and under the terms of the said Mortgage these lands were offered for sale by the said Mortgagee.

4.—That on the 26th day of October 1906 the said lands were purchased by myself Kwow Baidoo and Cobbina Komasie.

5.—That I together with Kwow Baidoo and Komasie immediately entered into possession of the said lands and have remained in undisturbed possession until the month of September 1908 when the said lands were seized by Order of the Deputy Sheriff acting on the aforesaid Writ of Fi. Fa. 20

6.—That immediately the said lands were seized I together with Kwow Baidoo and Cobbina Komasie issued Interpleader proceedings in the Divisional Court at Sekondi and the hearing of the said proceedings was fixed by His Honour Mr. Justice Purcell for the 30th December 1908 as will be seen from the receipt hereto attached and marked "A."

7.—That these lands are now again being offered for sale by Public Auction and if the sale should take place before the hearing of the said Interpleader proceedings our claims would be seriously prejudiced.

8.—That I therefore on behalf of myself and on behalf of Kwow Baidoo and Cobbina Komasie crave that this Honourable Court may see fit to order Stay of the said Sale until such time as the Interpleader proceedings may be altered either in this Honourable Court or in the Divisional Court at Sekondi. 30

Sworn at Sekondi this 28th day of  
November 1908 the same having  
been duly read over and interpreted  
to the said Kojo Attah in the  
Fanti language by A. D. Andoh and  
he appeared to duly understand  
the same.

His  
KOJO ATTAH X  
Mark

40

Before me,  
(Sgd.) J. T. FURLEY,  
*Commissioner for Oaths.*

Exhibit " A."—Hearing in Proceedings in T. E. Jobson v. Kwesi Pon and others, Attah interpleading as Claimant.

Exhibit  
" A."

Attah v. Pon and Others. " F " by Court.

(Intd.) J. A. W.  
for Registrar.  
10/5/11.

T. E. Jobson  
v. Kwesi  
Pon and  
others.  
Attah  
interplead-  
ing as  
Claimant.  
Hearing.  
10th May,  
1909.

IN THE SUPREME COURT OF THE GOLD COAST COLONY,  
WESTERN PROVINCE.  
DIVISIONAL COURT, SEKONDI.

10 Monday, the 10th day of May, 1909, before His Honour F. H. GOUGH, Judge.

T. E. JOBSON v. KWESI PON, KOFI ESSUAKU and KWA NAIME  
Defendants. KOJO ATTAH AND OTHERS claiming attached property.

Mr. RENNER for Execution-Creditors, i.e., Defendants.

Mr. MILLER for Claimant Kojo Attah and Others.

Mr. MILLER for Claimant :

KOJO ATTAH.

10th August 1900 execution T. E. Jobson, Plaintiff and Kobina Baidoo and Others a sale made under Decree of lands belonging to Kobina Baidoo and Others.

20 T. E. Jobson was declared the purchaser. Certificate of Purchase given 22nd October 1903. 10 April 1904 Jobson mortgaged *inter alia* the lands so acquired to Samuel Ogden of Manchester. The conditions of the Mortgage were not fulfilled. The Mortgagee sold under the Mortgage. Mr. Davis Auctioneer sold by Private Treaty and gave a receipt to Kojo Attah and Others, the present Claimants. Receipt dated 26th October 1906. From that date Claimants have been in undisturbed possession of the lands until in September 1908 when the lands were seized by the Deputy Sheriff under a Writ of Fi. Fa. in the action of *Jobson v. Kwesi Pon and Others*. Interpleader proceedings were then instituted by present Claimants  
30 and the sale was temporarily stopped. Subsequently the properties were advertised for sale under the same Writ, the Deputy Sheriff not being aware of the Interpleader proceedings. On the 1st December 1908 I moved before Smith, J., at Cape Coast and an Order was granted stopping the sale pending the decision of the Court on these proceedings. Affidavit of Kojo Attah dated 1st December 1908 read (filed at Cape Coast, the original is not at Sekondi) read.

Counset  
opens for  
Claimant,  
Kojo  
Attah.



Exhibit "A." Mr. RENNER pleads :

Counsel pleads for Execution-Creditors, i.e., Defendants. 10th May, 1909. Mortgage alleged to be made between Ogden and Jobson was not *bona fide* but made to defeat the ends of justice. That the sale if any vesting right in Jobson related to a place or area called Konfueku which is not defined either in the Mortgage or in the Certificate of Purchase. There was no legal sale or transfer from Ogden to Attah. That Attah Jobson and Baidoo are identical in interest. As between Jobson and Attah there is collusion.

Evidence. KOJO ATTAH sworn a.t.h.r.b. speaks Fanti through Court Interpreter :

Kojo Attah. 10th May, 1909. KOJO ATTAH. Farmer at Konfueku. I remember entering into 10 agreement with Jobson. Jobson had bought land and we agreed with Jobson to farm on the land and pay him tribute.

" We " were all the men and women of Konfueku this was about 4 or 5 years ago. The lands were 1st Tetchi Abbina 2nd Ahiwanu 3rd Ntwabura 4th Pasire 5th Akutu Asse 6th Ekumaserii 7th Essudu 8th Mahumdu 9th Botogina 10th Mumma 11th Ntorasi 12th Amponura 13th Twitwaben 14th Abunan 15th Passuamu. We paid as tribute each man £1 a year and each woman 10/-. We gave receipts for 6 months. We ceased paying because all these lands were sold and I purchased them. I purchased the lands 2 years 6 months and 15 days ago. The Auctioneer 20 came to Konfueku and rang bell. His name was Lamuel Davis. One Kobina Komsie and Kwa Baidoo joined in the purchase. We paid £144. We paid it to the Auctioneer. He gave me a receipt. (Document shown to witness.) That is the receipt. I know it is the receipt because though I can't read, it was given to me by the Auctioneer and kept by me till I handed it over to my Counsel. (Put in and marked " A. ") After paying the money, we remained and worked on the lands. We remained there for two years before we were disturbed.

During that time we were not asked to pay rent by anyone. At the end of the two years I saw Kwesi Pon and Enuaku and others with a Decree 30 to seize the land. A bailiff was with them. This was about 6 months ago. I then went to Court and swore an affidavit. Since then I have been living on the lands. We farm on them. The names of lands I have given are the names of different lands. They are all joined together from Konfueku to Botogina. They are all farm lands. Jobson has not asked any rent from me since the sale by the Auctioneer. I have never at any time spoken to Jobson about the purchase. Jobson knows I bought.

Cross-examination. XXd. Mr. RENNER.

I know Jobson knew I had bought because we arranged with him to pay rent: we ceased to pay rents, so I suppose he knew we had 40 bought.

Mr. Miller was the Counsel to whom I gave the receipt. I don't know that he was Counsel also for the person who is supposed to have sold.

I did not get anything besides the receipt from the Auctioneer. I arranged with Davis to buy when he was ringing the bell : there was bidding and I bid for it.

I bid £100 the Auctioneer said " No " but that I should pay £144. After I came down to Seccondee to pay for the lands he gave me the receipt. I bid £100 on the land and was told to pay £144 on the land ; it was on the same day. The Auctioneer went to Botogina and returned. The agreement to pay £144 took place at Konfueku. It was 14 days after Davis told me to pay £144 that I came to Seccondee and paid him. I had already paid him something on account on the land itself. I am not related to Jobson.

I know Baidoo he is not related to me. He was my original landlord. I don't know if Baidoo is related to Jobson. I had been a tenant of Baidoo I don't know how long before. Davis came on the land. It was a long time. I know how Jobson came into possession of the land. It was mortgaged to Jobson ; he put it up for sale and he (Jobson) bought it. It was mortgaged to Jobson by Baidoo. I don't know of their relationship. I was in the village of Konfueku hence I know of the mortgage. It was a long time before Davis came that the mortgage to Jobson by Baidoo had taken place. I know it is 2 years 6 months and 15 days since I bought it because of the date on the receipt. The receipt has been read to me.

The mortgage of Baidoo to Jobson took place at Konfueku village not in a house but outside in a Public place. The amount was not mentioned in my hearing. I cannot tell if any one else heard others were present. I was there not because I was invited but only casually. I saw Baidoo and Jobson.

I never knew the boundaries given of the lands mortgaged until I bought it myself.

Konfueku is an old village. Botogina is a village. The other places are farms. There are small sheds there in which we can sleep. There are two Chiefs of Konfueku. One is Baidoo : the other is Amissah. They are both under the Chief of Chama. Botogina is under Chief Bassayin of Mansu.

No one ever told me the boundary between Baidoo and Amissah until I bought the land. I was then told by Davis the Auctioneer. It was on the day he went to sell. Lamuel Davis is a stranger. Davis did not show me any tree as the boundary between Amissah and Baidoo but the village is divided into two Amissah owning one part and Baidoo the other.

Bortogina is Baidoo's. Botogina is under Bassayin. Baidoo is under Chief of Chama. I say Botogina is Baidoo's because Auctioneer read it to me. I have lived all my life in the neighbourhood I know the inhabitants of Bortogina are under Bassayin but when I bought the land I was told they were included.

When the sale took place the neighbouring villages were not invited. Adjourned to tomorrow.

F. H. GOUGH.

Exhibit  
" A. "

Evidence.  
Kajo  
Attah.  
10th May,  
1909.  
Cross-exam-  
ination—  
*continued.*

Exhibit "A." Tuesday the 11th day of May 1909 before His Honour F. H. GOUGH, Judge.

Evidence.  
Cross-examination of  
Kojo Attah  
(continued).  
11th May,  
1909.

JOBSON *v.* PON, ATTAH AND OTHERS claiming attached property.

KOJO ATTAH XXd RENNER contd.

Before I offered £100 someone had bidden. Kwas Baidoo had bidden. I was not buying for Baidoo.

In these proceedings I am assisted by Baidoo and Komsie. They did not contribute to the price. If I want anything from them, I can get it but they have paid nothing so far.

It is my land as I have paid for it. Kwa Baidoo and Komsie are elders and assist me in looking after the land. Pon had his elders when he claimed the land so I had these elders to help me. 10

I remember making an Affidavit. It was read over to me before the District Commissioner. (A part of this Affidavit read to witness "by private treaty.") It was not sold by private treaty. It is a mistake in the Affidavit. There are two elders in Konfueku besides Baidoo and Komsie. (Another part of the Affidavit put to witness "paid on behalf of myself Baidoo and Komsie"). I bought the land for all the people living on it: these two people are elders and therefore must assist me. No one living on the land contributed to the purchase money. If anyone gave me money, it was a loan. 20

One Kutumebi lent me £10 and charged £1 interest. One Kutsua lent me £15 and charged £1. 10/-. I have paid them back.

I am the landlord of all the people living on the land. I could turn them out if they did anything wrong. As to Baidoo and Komsie, I could eject them if they did anything wrong.

I swore the "said properties belonged to us and not to Pon and Others."

Q. Can a tenant according to native law declare ownership in himself with saying at the same time "under" some body?—A. No.

Q. Can a person who declare himself an owner, name outside persons or tenants as co-owners?—A. Yes. 30

Baidoo and Komsie are liable to pay tribute. If Baidoo and Komsie died, his successor would have to report to me and bring rum before they could hold the land. If I didn't like the successors, I needn't keep them on as tenants.

I intended to purchase Botogina: it was included in the paper. I have heard that Jobson has tried to establish a title to Botogina. I don't know if he succeeded. This was before my transaction with Davis. I don't know if Jobson summoned Ekrah Yaminie.

I know a man called Ekrah Kobbina, he came from Konfueku. I know he left Konfueku and lived at Tuntowura. Tuntowura is a stream running through Pasire and is part of the land I bought. 40

I know Jobson sued Ekrah Kobbina about Tuntowura: I don't know the result. Ekrah Kobbina is still living there. He gives me no tribute. They have not come to me as landlord.

I know Jobson summoned Pon but I don't know whether it was respecting 6, 9 and 10. I claim them.

The people living on these lands have never paid tribute or acknowledged me as landlord. I went to Botogina to speak about it. It was after I had paid for the land. They promised to come and see me in a week. They never came. This was 21½ years ago.

Jobson is not related to me. Jobson's sister is my wife. I don't know that Jobson is Baidoo's son. I am not Baidoo's linguist.

10 I paid the money at Secondee. He gave me "A" and another paper which is with my lawyer. The latter was too old: it contained the list of the lands. I gave it back to Davis to be made out fresh and signed. Since this matter cropped up, the old one was sent to me and is with my lawyer. I paid £80 on account for which I received a temporary receipt. On paying the residue, I returned it, and received a receipt for the whole. I paid the £80 and received the temporary receipt at Konfueku. I paid the balance at Secondee where I received the second receipt and the old paper. I paid the money at Davis's house. The Deed was read over to me at Konfueku, when I paid the balance he gave the Deed to me. At Secondee I received "A" and the old Deed the latter I gave you.

20 When the people refused to pay tribute, I went to Miller and enquired and found Davis had sent it. If I had known the people would not pay tribute, I still would have bought. If I had known 6, 4, 9, 10 were disputed lands, I would not have bought. The people are living on them: no one has told me they dispute my title. Botogina has not disputed my title: they promised to pay tribute but haven't.

If a tenant refuses to pay tribute to his landlord, by Native law he has not the right to clear his crops. I did not see Jobson before I went to my solicitor.

Re Xd. MILLER.

30 I should know the old Deed if I saw it. (Document shown to witness.) It is the paper Davis gave me when I paid the balance. (Document put in and marked "B.") I can give you the names of some persons who were present Kobbina Koom, James Bordon and Kutsia. After purchase I went to Botogina in person.

When they didn't come as promised, I told them to go. I did so by written notice. They took no notice. I intended to take proceedings but when I came to Secondee my Counsel had gone to England. Afterwards I came to Secondee and met Mr. Miller. I am only claiming the lands mentioned in the paper.

40 I was sued by Jobson a long time ago. Jobson did not sell me up. Before the sale a notice of sale was filed, i.e. put up at Konfueku and Botogina. After the bell ringing the inhabitants met.

After the bid of £100, Davis said the debt is too big and that I should pay £144. I paid the £80 the same day.

Jobson's litigation with Ekrah Kobbina was about Konfueku and Bortogina. It was a long time ago, before I bought the lands.

Exhibit  
'A.'

—  
Evidence.  
Cross-exam-  
ination of  
Kojo  
Attah  
(continued).  
11th May,  
1909—  
continued.

Re-exam-  
ination.

Exhibit  
"A."

Evidence.  
Kobbina  
Komsie.  
11th May,  
1909.

Pon and his people have not recognised my title. We are enemies and have been so since the sale. All the people on the lands in Konfueku pay no tribute now they used to pay Jobson when he owned the lands. (Attah's Affidavit put in and marked "C.")

KOBBINA KOMSIE sworn speaks Fanti through Interpreter.

KOBBINA KOMSIE. Farmer. Living at Low Town, Konfueku. I know Kojo Attah and Jobson and Pon. I know the lands in dispute and remember the sale of them. Davis sold them at Konfueku. I was present.

Before sale Davis rang bell. Attah offered £100, and Davis said the debt was too big and he must pay £144. Attah paid £80 on account. Davis mentioned the properties he was selling. Others were present. 10

When Attah paid the £80, he received a temporary receipt. Afterwards he came to Secondee and paid the balance. I was present.

I am not one of Kojo Attah's elders. He told me to assist him. At time of sale Attah was living in Lower Town Konfueku.

When Jobson owned the land Attah paid rent to him. It was agreed rent of £1 each man, and 10/- each woman. After the sale I paid rent to no one. I remained on the land. No demand for rent was made by anyone. Since the sale Jobson has not been on the land. Before the sale he used to come and collect his rents. 20

I remember these lands being seized by the Court at the instance of Pon. All the lands Attah bought were seized. The lands have not yet been sold. I am living on them I pay tribute to no one : if Attah claimed it, I would pay.

Cross-examination.

XXd. RENNER.

I heard Attah give his evidence. Before Jobson came and asked tribute I had lived at Konfueku for years. So had many others. I lived there when Kobina Baidoo was there. I was born there. No one paid tribute until Jobson asked for it. We paid Jobson because when he bought the land he asked us. He called a meeting. He said he had paid Kobina Baidoo's debt and that the land was therefore his. 30

I have never lived at Botogina. Botogina is as far from Konfueku as Secondee is from Poassi (i.e. 6 miles).

I have never met Jobson at Botogina. As long as I can remember there have been people living at Botogina. They have been as far as I remember under Kwesi Pon : that is what they say. I have lived all my life at Konfueku. The Botogina people I have heard, were once under Kobbina Baidoo, when he was a Chief. He is a Chief. I don't know his successor.

In my lifetime I have not known the Botogina people do anything to show they were under Baidoo. The Botogina people are under Bassayin of Mansu. 40

I am liable to pay tribute to Attah, because I have no interest on the land : he bought it and I did not assist him to buy it.

11.10 Court adjourned.

2 p.m. Court resumed.

Exhibit  
"A."

KOBBINA KOMSIE.

Evidence.  
Kobbina  
Komsie.  
11th May,  
1909.  
Cross-examination—  
*continued.*

XXd. RENNER (continued).

I know Kobbina Effreim. I left him outside the Court this morning. I did not consult a lawyer about the land. Attah informed me about the sale of the land to him. He informed me about this case. I am not claimant in this case.

At the time of the sale by Davis, I did not hear any bid except of £100. Davis at Konfueku stayed in no one's house.

10 I was not in Court when Attah gave his evidence this morning. I was with Attah when Davis was at Konfueku. When Attah was buying the villages I was there. I was there when Attah bought. Attah called me to witness his paying. He paid £80 in my presence in his own house. There was also present a lot of people. I was behind Attah helping him and would have to help to count the money. I saw there Kutsia and Kobina Koom, I can't remember any more Effrim was not there. He was at Buama (10) I know Kwa Baidoo. I don't remember seeing him there. Kwa Baidoo did not assist in counting the money.

20 The Konfueku people did not so far as I know contribute to the money. I gave nothing myself. Attah is a farmer. He is not a Chief; he is an elder in his family. I and Kwa Baidoo are not members of his family. Before this sale the lands were not attached to a family Stool of Attah's. Attah being a farmer and an elder in his own family had no councillors before the sale.

After the purchase of the lands, Kwa Baidoo and I being his tenants, are his councillors. Councillors are people called in to assist one, when one has a palaver.

30 "Brempon" means a rich man. Brempon has councillors but a poor man has none. Brempon cannot issue summons but he can settle e.g. a fight between two youngmen. He could not compel their attendance. Attah is not so far as I know a Brempon. When Davis came to sell he did not go to any one's house. He left for Secondee the same day. I did not go with him to Botogina that day. I did not see him at Botogina that day. I never went there myself. I never saw Davis at Konfueku again.

The money was paid in Attah's house after Davis return from Botogina. I heard Attah bid the £100 in Botogina road. I was on this road. It was on the outskirts of Konfueku.

40 After the bidding of £100 which was refused, Davis went to Botogina and came back again. When Davis refused the £100 he said Attah must pay £44 more: he then went to Botogina, returned and went to Attah's house where he received £80 on account.

On the outskirts of Konfueku Davis was ringing the bell and continued the ringing on the way to Botogina after refusing the £100.

Exhibit  
"A."

Evidence.  
Kobbina  
Konsie.  
11th May,  
1909.  
Cross-exam-  
ination—  
*continued.*

Davis told Attah he must pay £44 more after his return from Botogina. This was about the time when Attah was paying £80. The £80 was paid after it was agreed £144 should be the price.

I came with Attah to Secondee to pay the balance to Davis. It was 14 days after paying the £80. There was present at the paying of the balance James Bordoh Kwa Baidee and myself. When the balance was paid, Bordoh counted out the money. It was £64. Davis gave receipt to Attah and another big paper. I didn't notice whether it opened "2." I could tell it if I saw it again. So far as I know I have never seen it since when the £64 was paid. I heard no conversation. 10

I remember a man called Cudjoe Mensa living at Konfueku but there are many of this name. I don't know whether a Cudjoe Mensah was summoned by Jobson about any land. I was not there. I know a man at Konfueku called Ekra Yamini. I don't know if Jobson summoned him.

I know lands called Atumabakadu in a little way from Konfueku. I have my plantains there. Cudjoe Mensah went to live there. Ekrah Yamini is now living there.

I don't know of any action by Jobson against these two men in respect of the land. I know Botogina. I have never heard that 6 years ago Jobson brought an action to establish his title to Botogina. I know Cudjoe Ayepa : I used to see him pass to Chama. He lived at Botogina. I don't know that Jobson brought an action against Ayepa and failed. 20

I don't know that Jobson brought an action to recover 4, 6, 9, 10 in the Divisional Court.

When Davis went to Konfueku there was no opposition to his selling.

In Secondee I only saw the receipt given. Kwa Baidoo is not a Claimant in this case.

I know a man called Kofi Asuaku. He lives at Botogina. I own no land there. I don't know if Kwa Baidoo owns any land there. I have never instructed anyone to claim land for me at Botogina. Asuaku has 30 neither worked nor lived on any land to which I lay claim.

I know Kwesi Pon of Botogina. He has not worked or lived on any land to which I lay claim.

I have no lawyer in respect of lands of mine at Konfueku or Botogina. I have not authorised anyone to use my name in claiming lands. It has not been reported to me that my name has been so used. (2 letters from Mr. Miller on behalf of Claimants admitted put in and marked "D.")

Re-exam-  
ination.

Re Xd. MILLER.

I don't know all about this case. I have been with Attah to your office. I know Attah is claiming the land. I came to your office when the 40 lands were seized. Attah asked me to come with him. Kwa Baidoo came also.

I was present when Attah swore the Affidavit. I heard it read over by the District Commissioner. Kwa Baidoo is sick and has been sick for 2 months. I saw the notice fixed up at Konfueku and Botogina.

The sale was advertised to take place at Konfueku in the street on the Botogina road. It was there I saw Davis ringing bell.

He said he was selling from Konfueku up to Botogina. He said that Jobson had given the land to a whiteman, and the whiteman had instructed the Auctioneer to sell it to pay his debts.

When the £100 was bid the Auctioneer said he was going to ring the bell at Botogina. I was present at the sale at which Jobson bought the lands. It was a long time ago. There was no dispute as to Jobson's title to these lands.

Exhibit  
"A."

Evidence.  
Kobbina  
Komsie.  
11th May,  
1909.  
Re-exam-  
ination—  
*continued.*

10 By leave of the Court XXd. RENNER.

I don't know what lands Jobson bought. Because he and no one received tribute from us. I say his title was not disputed. I only refer to Konfueku.

Re Xd. MILLER by leave of Court—

Jobson bought lands part Botogina to Anaquam.

MR. BISSUE sworn.

JOSEPH HENRY BISSUE. Merchant in Secondee. I know Mr. Jobson and Mr. Samuel Ogden. Ogden was General Manager on the Gold Coast for P & B.

Joseph  
Henry  
Bissue.

20 I remember Jobson approaching Ogden to borrow money. Ogden in the end arranged to lend him money. I remember a Mortgage by Jobson to Ogden. I witnessed it. That is my signature. I recognise the signature of Ogden and Jobson. (Put in and marked "E.")

The money was not paid in my presence. Ogden asked me if Jobson was a good man to lend money to. I suggested a Mortgage should be given by way of security.

XXd. RENNER—

30 At the time 10th April 1904 when the Mortgage was made Jobson was doing no work. He gave no other document than the Mortgage to Ogden. I did not see him give a document of 10th December 1903.

Cross-exam-  
ination.

I was called as a witness by Ogden. Jobson was not then doing business with Ogden. In my presence there was no discussion about a Concession on the Ancobra River.

I don't remember if Jobson had anyone to witness for him. It was executed at P & B's. I was sent for to witness it. I did not hear it explained to Ogden what Konfueku was. I don't know Botogina, but I know Konfueku.

Adjourned to 8.30 tomorrow.



Exhibit "A." Wednesday the 12th day of May 1909, before His Honour F. H. GOUGH, Judge.

Evidence.  
Joseph  
Henry  
Bissue.  
Cross-examination  
(continued).  
12th May,  
1909.

MR. BISSUE XXd. RENNER (continued)—

Konfueku has about 100 houses and about 150 people.

I know Davis. I never saw in Secondee any advertisement about the sale of Konfueku. I know about town a good deal. I don't know Kobina Baidoo. I know Jobson.

The houses in Konfueku belong to different people.

Re Xd. MILLER.

I was in P & B's employ when I witnessed the Mortgage. It is 5 years 10 since I was at Konfueku. I was passing through.

Kwasi  
Kutsia.

KUTSIA sworn speaks Fanti through Court Interpreter—

Xd. Mr. CHRISTIAN.

KWASI KUTSIA. Am a farmer at Konfueku. I know Attah and Jobson.

I remember a man coming to ring a bell at Konfueku. I don't know how many years ago, but it was a long time ago. It was Davis. He rang the bell, saying he was selling the town part of Konfueku as far as Botogina. He sold the lands, several lands. He sold in Botogina road, at a place where there was a tree under which people used to sit. There were many people 20 there. Davis said he was selling Jobson's lands.

Attah bid for them £100, which Davis didn't accept. Davis then rang a bell and went to Botogina. He returned and sold the lands to Attah for £144. Attah paid £80 on account.

I knew Jobson when he owned the land. He used to visit the land. To collect monies. He collected monies from us because we lived on his land. When he got debt, he used to collect money from us because he was master of the land. I don't know how much he collected. Each man paid £1, each woman 10/- per annum.

Since Attah's purchase Jobson has not collected money. 30

There were notices up before the sale, one at Konfueku and the other at Botogina.

I know the names of Jobson's land. (He mentions 14, 12, 13, 8, 4, 7 Mirekubura 3, 5, 6, 9.) These are all I can remember. Davis mentioned the names of the lands.

Cross-examination.

XXd. RENNER.

I saw the notices. The notice at Botogina I did not see, as I didn't go with the Auctioneer. The notice at Konfueku was fixed on Cudjoe Baidoo's house. The notice was fixed by Davis. I saw Davis at Konfueku in connection with the sale twice. I don't know how long after fixing the 40 notice. the sale took place. It was, I think, about a fortnight. I was born

at Konfueku. There are two companies at Konfueku, Wombil and Ankobia are their names. They amount to about 200 men in all. There are plenty of women and children in Konfueku. The houses in Konfueku belong to different persons. They all joined in building houses. I know the lands called "10," "9," "6," and Etamabakadu. The last belongs to Djomo people. I know a place called Awhiregya. There is not at this place a boundary between Konfueku and Botogina. There is no old boundary there: It is a bush where we used to farm. I never heard Davis say he was selling Concessions. Jobson collected money about 3 or 4 times, sometimes 5/- sometimes 10/- from each of us. The most I have seen him collect from one person is 10/-. I know a village called Etumah. It is on Kwesi Esson's land. Jobson collected the tribute himself. Attah bought at Essikuma a group of houses. I was present at the payment and at the bargain. Attah offered £100. Davis said notices have been posted at Elmina, Cape Coast and Axim: great debt has been incurred: Attah must pay £144. Attah paid £80 at once. We were all gathered together in Attah's yard, men and woman. Attah offered £100: Davis said £144: Attah then agreed and paid £80 there and then. Davis gave Attah a paper. I did not see stamp. I didn't come to Secondee to see the balance paid. Davis was not in Attah's yard when he said he was selling Jobson's lands. Davis was as I understand, selling all the lands he had given notice of. Davis spoke Fanti, and told us this in Fanti. The people of Botogina work at No. 6 and we worked there too. Each man has his own farm. Botogina people do not so far as I know, work at Atumabakadu. Botogina people, I don't know whether they work at No. 10. I know Ekrah Kobina. Etumabakadu is land: Ntontowura is a stream running through it. Ekrah Kobina works by the side of this stream. I don't know if Jobson summoned Ekrah Kobina about the land. (Ekrah Kobina called and identified.) I know Kojo Mensah and Ekrah Yamini. I don't know if Jobson summoned them. Mensah and Yamini worked by the stream aforesaid. I know Sagu and Amoonaba. They worked by the same stream. I don't know if Jobson summoned them. I knew Kobina Baidoo. I don't know if he is Jobson's father. Kobina Baidoo has no linguist. He once had one but he is dead. Attah did not become linguist on his death. Attah did not act as such. Kobina Baidoo is alive but old. I don't know how soon after paying £80 Attah came to Secondee.

Re Xd. CHRISTIAN.

The street is at the end of the space between the sets of houses at Essikuma. The bargain took place under the tree. Then Davis went to Botogina, and then returned and we went to Attah's yard, where the £80 was paid on account. The two companies were not represented at the bargain. Some members of each company were present including women. I heard Davis say he was going to sell a concession in Wassaw, but I don't know what kind of a concession it was. It is all contained in the paper. Kobina Baidoo had a linguist when he was a Chief. He is now dispossessed of his lands.

Exhibit  
"A."  
Evidence.  
Kwasi  
Kutsia.  
12th May,  
1909.  
Cross-examination—  
*continued.*

Re-examination.

Exhibit  
"A."

MR. JOBSON sworn.

Xd. MILLER.

Evidence.  
Timothy  
Ebenezer  
Jobson.  
12th May,  
1909.

TIMOTHY EBENEZER JOBSON. I am independent. Live Secondee. I attend under subpoena. I know Kwesi Pon and the other execution creditors. I know Kojo Attah of Konfueku. I remember buying some lands at Konfueku. It was 10th August 1900. I bought them at a Public Auction. Under a Sheriff's sale. After purchasing I entered into possession. They were farm lands. There were many people living on them. They agreed to pay ground rents. The agreement was made at Elmina. It was a written agreement. I haven't it with me at this moment. 10  
They agree to pay £1 each man and 10/- woman. They paid this only once, for the property was sold before the time of next payment. After this I mortgaged the property to Ogden. He was Manager in Secondee for P & B. I knew him through Mr. Lance Miller. The Mortgage is dated 10th April 1904. Exhibit "A" is the Mortgage I signed. Ogden lent £100 at 10 p.c. interest. Ogden lent me the money personally. The money was paid to me in cash. Mr. Bissue, Mr. Miller and Mitchual were present. I have had no dealings with P & B. The money was repayable in 12 months. I was not able to repay the money when due. I received a notice respecting the Mortgage from Mr. Miller. (Letter shown to witness.) That is my 20  
handwriting. (Put in and marked "E.") You, Mr. Miller were acting for Ogden. I have several notices from you, but they are not here. My property was sold under the Mortgage. I last saw you (Miller) about the Mortgage about 3 years ago. Since then I have not spoken to you on any subject.

XXd. RENNER.

Cross-examination.

I once sued Kobbina Baidoo and others at Axim. The names of the people I sued are on Exhibit "B." The Defendants in that action are related i.e. Kwesi Kutua is related to Baidoo. Kofi Bosumchi is related to Baidoo. Kofi Bodey is related to Baidoo. Kwamin Barkwa is related to Baidoo. Attah is related to Baidoo. Efeli is related to Baidoo. Kyama is related to Baidoo. Ebin is related to Baidoo. All were related to each other. These people lived at Konfueku. There were very many more people living there. The people who lived there owned houses. They owned their houses separately from the Defendants. Kobbina Baidoo is my cousin on my father's side. At the time when I bought, they were farming on Kobbina Baidoo's land. I was not born at Konfueku: my father belonged there. I did not grow up in Konfueku. I could not inherit any of Kobbina Baidoo's property. Before I sued Baidoo, I was not concerned with what his property was. Kobbina Baidoo mortgaged the 30  
property to me. I sued him: the property was sold by the Sheriff: I bought it in. 40

11.15 Court adjourned.

2.30 p.m. Court resumed.

Exhibit  
"A."

MR. JOBSON. XXd. RENNER (continued).

Kobbina Baidoo was the real Defendant: I summoned the others because they were his relatives. Those were the only people who were liable to me. Kobbina Baidoo and his relatives gave me a Mortgage. They did not dispute my claim before the Court. Before the Mortgage I had not been to Botogina. Before I sold, I had not been to Buama. 10 Before I sold, I had not been to No. 6. I know land called Akwirregya. It is between Konfueku and Botogina. The lands which I bought in do not lie between Konfueku and Botogina. I can't say whether any land I bought lay in the Djomo side. I visited each land. I visited them after I bought them. The lands have no distinct boundaries. If I sued in respect of one of them, I could point out the boundaries. "No. 2" I could tell the boundaries of that. It is in the middle of my property. The lands of mine which abut No. 2 are Mahan on one side, on the other side No. "3," on another side No. "8," on the remaining side Lower Konfueku. Mahan was my property. "No. 6" I could not tell the boundaries of that 20 "No. 4" I could not tell the boundaries of that. "No. 10" Buama and Mahan are the same. "No. 10" bounded by Apimenim on one side, on another by land with no name stretching towards Botogina on another side by a piece of land the name of which I don't know, on another by Konfueku. All my lands join together. "No. 13" bounded on one side by Nkwanta Essidu, on another by Mensah's land, on another by Konfueku, on the 4th by Buama. Konfueku and Lower Konfueku are one place, separated by one street: I bought Lower Konfueku only. Upper Konfueku has houses in it. I don't claim the houses in Upper Konfueku. After I had purchased, I took action against Botogina people to recover 30 the lands: the action is still pending. I brought the action in 1902. Kwesi Pon was the Defendant with Ayepa. In 1903 I was non-suited. The costs were not £200 against me. I don't remember a man named Bossman, an Assistant Registrar at Cape Coast. I may have known him by sight, not by name. I still say I had no costs of £200.

You Mr. Renner sent me a false bill for which Purcell, J., reprovod you. From that time you have not sent me another false bill. The Court by your instructions sent me a false bill. I got a taxed bill. I have not paid it, because Purcell, J., said it was a fraud. The case was heard by Purcell, J. (Paper shewn to him.) This is the first time I have seen it. It is certified 40 copy of a decree in my action against Pon and Others. I do not know whether the costs therein were the same in amount as in the bill for which Renner was reprovod by Purcell, J. I don't remember whether the bill before Purcell, J., was £200 odd. I have not paid any of the taxed costs in that action. The Decree shewn to me purports to be signed by Smith, J. It refers to the costs in my action against Pon in 1903. It purports to be signed 1st July, 1908 by your brother-in-law Smith, J. I brought an action against Sagu and his wife and others in respect of Etumabakadu, which I had bought. The case was transferred to Cape Coast. I did not get

Evidence.  
Timothy  
Ebenezer  
Jobson.  
12th May,  
1909.  
Cross-exam-  
ination—  
*continued.*

Exhibit  
" A. "

—  
Evidence.  
Timothy  
Ebenezer  
Jobson.  
12th May,  
1909.  
Cross-exam-  
ination—  
*continued.*

Judgment because the case was not heard. This was in June 1901. Ekrah Yamini and Mensah were Defendants in the same action. I have not yet revived the action. I issued a Summons against Kwa Ionim, Pon and Others for Botogina, No. 6 and Buama in 1903. It is still pending. I bought the whole of Botogina including the houses. There were two Writs, one for Botogina and another for Botogina and some other lands.

The people of Botogina acknowledged me as their landlord. The people at Konfueku who arranged to pay me rent were the Lower Konfueku people. They paid the first rent, because the property was sold before the time for second payment. The agreement was written at Elmina by E. P. Dontoh. I do not suggest that the whole of the people of Lower Konfueku were present at one time at Elmina. They first proposed an agreement at Konfueku : I declined to do it there because there was no one to draw it up. The Lower Konfueku people were the only people with whom I had an agreement. I know Kojo Attah. 10

When my property was sold I was at Elmina. I did not instruct Davis about the sale. I did not see any notices about the sale. My property was sold in May or June 1905 or 6. When I mortgaged to Ogden, I was not being pressed for debt.

My concession was sold at the same time as the Konfueku &c. Attah, 20 I am told, bought the concession.

The sale of the concession, which is at Axim, took place, I was told, at Konfueku. (Exhibit " A " shewn to witness.) (" Houses in Konfueku " mortgaged.")

The Mortgage says nothing about the houses in Botogina, because they were in dispute. It refers to Mortgage of 10th December '03 i.e. the concession. I had it : I handed it to Mr. Ogden.

The concession was in the nature of an annual lease.

When I executed Exhibit " A " I had not got to survey stage, in Concessions Court. 30

Ogden never issued a Summons against me in respect of my debt : he sold under the Mortgage.

Kobbina Baidoo is a sub-chief under Chama. I do not know if Konfueku lands are attached to the Stool of Chama. I do not know when I bought Baidoo's lands.

I know what freehold means. I bought a freehold when I bought Baidoo's lands. I believe Kobbina Baidoo owned all the houses in Konfueku. Kobbina Baidoo told me so.

Attah never saw me about the Interpleader proceedings. Exhibit " E " was not in answer to the last notice : I received other notices afterwards. 40

Thursday, the 13th day of May 1909. Before His Honour F. H. GOUGH, Judge.

MR. JOBSON XXd. RENNEN (continued).

I received money from Ogden at the time I signed the Mortgage. I don't know P & B's office. I saw Ogden at his house. The room I was

in was apparently not an office. I went there with my nephew Mitchual. Bissue had gone before Ogden paid me the money. I received cash at Ogden's house, not in cheque. Mr. Miller was present when I received the cash. Directly after payment, I handed the Mortgage to Mr. Ogden.

At the time of mortgaging I don't remember if I told Ogden that my title to some of the properties was disputed. (Paper shewn to witness.) It is notice respecting a sale under the Mortgage. There was only one sale. (Notice put in and marked "F.")

10 Actions against Mensah Sagu Yamina were in June 1901. Action against Pon and Others in October 1902 and November 1903. The renewal of the Decree in the last action is dated July 1908. The date of the Judgment is August 1903.

I last saw my Concession paper relative to my Axim property when I mortgaged my property to Mr. Ogden. I took the Concession paper to Mr. Ogden together with the Konfueku papers, when I was negotiating the loan. I left them with him after I got the money, on the same day that I got the money.

Re Xd. MILLER.

20 (Paper shewn to witness.) That is the Concession paper which I handed to Ogden on the day I executed the Mortgage. (Put in and marked "G.")

I had several notices from Mr. Miller: I brought them to the Court yesterday: I haven't them with me this morning. I had yesterday in Court the agreement with my tenants. I haven't it with me now.

Ogden paid me the money in silver. I mortgaged to Ogden the properties comprised in the Certificate of Purchase together with the concession.

Since I received the money from Ogden I cannot say whether I have issued a Summons against Pon. I have taken in all three Writs against Pon.

30 As to No. 1 I was non-suited. As to No. 2 I was non-suited. As to No. 3 is still pending.

By leave of Court XXd. RENNER.

I have not taken fresh action since the appeal.

Mr. MILLER says that is his case.

Mr. RENNER opens his case.

Jobson not *bona fide*. Concession invalid as it purports to be a freehold.

Sale to Attah was not by Order of Court.

KWESI PON, sworn a.t.h.r.b. speaks Fanti through Court Interpleader.

40 KWESI PON. Sub-chief under Bassayin of Mansu. I know Kobbina Baidoo of Lower Konfueku. I have lived at Botogina all my life. My ancestors lived there before me. I have land given me by Bassayin.

I know No. 6: it is my farm. I don't know Etumabakadu: it belongs to Djomo people. I know Ntotowura: it is a stream. I and my people work on its banks.

Exhibit  
"A."

—  
Evidence.  
Timothy  
Ebenezer  
Jobson.  
13th May,  
1909.  
Cross-exam-  
ination—  
*continued.*

Re-exam-  
ination.

Kwesi Pon.

Exhibit  
"A."

Evidence.  
Kwesi Pon.  
13th May,  
1909.

I know Buama : my people work there. So far as I know these lands have never been out of the possession of my people.

My predecessors have never paid tribute to Konfueku people. I have never paid tribute.

Jobson has summoned me and my people about Botogina and for the land which extends to Anankori (a stream). Buama and No. 6 are in this area. The houses at Botogina belong to my people. No house at Botogina belongs to Baidoo.

Cross-examination. XXd. MILLER.

I don't know if there was a sale to Jobson. I remember the Sheriff 10 seizing the lands at Konfueku, and a bell ringing. There was no notice fixed up. Davis came to sell.

I don't know what time it was sold to Jobson. When Davis came, I did not see who bought. I heard that Jobson had bought some land at Konfueku. I was not present at the sale. Before I heard Jobson buying, I never saw any notice. I heard there was a notice at Konfueku. I did not object to the sale.

Jobson claimed Botogina : and we didn't allow it.

I saw no notices when Davis sold. I heard of no notice. I saw Davis 20 when he came to Botogina. He was ringing a bell. I never saw a notice.

Davis said he has seized Konfueku, and as Botogina also belonged to Jobson he was there to sell it. I did not offer to buy as the property is my own. It is a long time since Davis came.

I know the land belonged to Jobson and he took out Summons against me. I don't know if Kojo bought any of the properties at Konfueku. I never heard of it. Attah never came and told me so. He never to my knowledge came and said so at Botogina.

I received a lawyer's letter after Davis' sale. It was from Mr. Miller giving me a week's notice. I sent the letter to Mr. Renner.

About 4 persons were mentioned in it besides Kojo Attah. 30

Attah never claimed rent from me or from anyone else at Botogina.

I know Esuakwo and Ndem. Esuaku is a Councillor. Ndem is my linguist. Letters were sent to them about the land. I knew after the letter that Attah was claiming Botogina. The letter was not soon after the sale by Davis. It was a year after.

Before I had Miller's letter, I had no letter from Attah. I don't know of anybody from Botogina having a letter from Attah.

I heard first of his claim from Miller's letter.

When Davis came I didn't ask who was the purchaser.

Re-examination.

Re Xd. RENNER.

40

I only received one letter from Mr. Miller. I can't read or write.

Jobson's land is Konfueku : he sold Botogina and he took action against us and we won.

(Letter of 18th January 1906 put in and marked "H.")

JOBSON recalled by permission. Xd. MILLER.

I had written agreement with my tenants at Konfueku. I produce the agreement. That is the original: it bears my signature.

(Mr. Renner objects: I admit) Put in and marked "I."

XXd. RENNER—

All those who signed were people of Lower Konfueku. It was signed at Elmina.

All the marks were made at Elmina in my presence.

EKRAH KOBGINA, sworn, speaks Fanti through Court Interpreter.

10 Am a farmer. Live Ntotowura. Have lived there a long time. I have farmed there.

I know Jobson. I had litigation with him. Jobson summoned me and Others about land. He summoned us for trespass on land at Etumabakadu. Sagoe and Mensah were summoned with me. It was heard at Secondee a long time ago. We won. It is 8 years ago.

When we finished the case, the Court did not order us to pay anything. Since then we have held our lands.

We have never paid tribute or made agreement with Jobson. Have never acknowledged him as landlord.

20 Ntotowura is on the outskirts of Botogina. Botogina and Lower Konfueku was separated by a farm called Akwanegya. Since my youth it has been the boundary.

XXd. MILLER.

I have not heard all the evidence in this case. I have heard none of it. I didn't hear Attah give his evidence as I was downstairs.

Jobson bought land at an auction in my presence. He afterwards ejected us.

Others were present when he bought. Kobbina Baidoo was present, and many others. Pon was not present.

30 Jobson paid £400 for the lands. No one else bid.

Jobson brought a bailiff; bell was rung. Bailiff read the names of the lands. I didn't hear Botogina mentioned.

Kobbina Baidoo has no lands at Konfueku or Botogina.

When we had not been ejected, I was living under Baidoo.

Jobson ejected us. We then went and lived at Ntotowura.

The land from which we were ejected was called Lower Konfueku. After ejection, I did not return.

I was not present when Davis sold. I was in my small village.

40 No. 8. When I was under Baidoo, I was working at No. 8. I was ejected from

I never heard of the sale by Davis. I saw no notice.

I gave my lawyer a paper in connection with Ntotowura.

Exhibit  
"A."

Evidence.  
Timothy  
Ebenezer  
Jobson.  
recalled.  
13th May,  
1909.  
Cross-exam-  
ination—  
*continued.*

Ekrah  
Kobbina.

Cross-exam-  
ination.



Exhibit  
"A."  
-----  
Evidence.  
Ekrah  
Kobbina.  
13th May,  
1909.  
Cross-exam-  
ination—  
*continued.*

It was a Summons paper not a notice.  
I didn't hear Davis ringing the bell. I don't know him.  
I didn't know a sale had taken place until Attah quarrelled with Pon and said he had bought the land.  
11 a.m. Court adjourned.  
2 p.m. Court resumed.

EKRAH KOBINA. XXd. MILLER (continued).

(Attah and Borden called.) I know them. I did not see them the week after Davis's sale at Botogina.

Kwesi Pon did not tell me they had been to Botogina. I have not 10 heard that Attah came to Botogina about the sale.

I say that the first time I heard of the sale by Davis was when Pon and Kofi came to seize the land. That was 7 months ago.

My village is as far from Konfueku as this Court is from Sofukrome. (The sergeant says 2 hours walk.)

I don't know if there are people living at Konfueku who work outside. I don't know if there are people living at Konfueku who work at Ntotowura.

I work at Ntotowura. I know Kutsia. I have not seen him at Ntotowura. I have not heard of his working at Ntotowura.

I know Kutu Bebi. I have not seen him at Ntotowura. I don't 20 know of his farming at all.

I knew Kobbina Koom at Konfueku. I have not seen him farming at Ntotowura.

I know Komsie. I don't know if he works at Ntotowura: I have never seen him.

It is a native custom for neighbouring farmers to meet before the opening of the season in one's village. I have never met any of the four in this way.

In one's own village it is customary to exchange labour.

Kutsia's farm does not adjoin mine. The farms adjoining mine are 30 Mensah's, Sagoe's and Kwamin Ewu Ewu's.

Re-exam-  
ination.

Re Xd. RENNER.  
From where I live at Lower Konfueku is as far as from here to Aboardi (2½ hours away).

I came to work at Ntotowura by Pon's permission.

When Jobson bought, he bought Lower Konfueku and a farm. On that day I never heard any one buy Botogina.

(Writs dated 10th June 1901, 31st August 1904 put in and marked J1, 2, 3.)

Mr. RENNER says that is his case.

## Exhibit "A."—Addresses of Counsel.

Exhibit  
"A."

Mr. RENNER addresses Court.

Addresses  
of Counsel.  
13th May,  
1909.

Page 378 Auctioneers' Ordinance page 382 Sections 16, 17, 18.

Friday the 14th day of May 1909 Before His Honour F. H. GOUGH, Judge. 14th May,  
1909.JOBSON *v.* PON AND ANOTHER.

Attah, Claimant.

Mr. RENNER continues.

Mr. MILLER for Claimant.

Setting aside irregular sale Volume 1 page 89 Order 45.

10 Judgment reserved.

F. H. GOUGH.

## Exhibit "A."—Judgment.

Judgment.  
17th May,  
1909.

Monday the 17th day of May 1909, before His Honour F. H. GOUGH, Judge.

JOBSON *v.* PON AND OTHERS.

Attah-Interpleading.

This is an Interpleader Action in which Kojo Attah and Others claim as against the Execution Creditors in the action of *Jobson v. Pon and Others* to be the owners of certain property in Konfueku and its vicinity. It appears from the evidence that the lands in question and certain houses

20 in Konfueku were acquired by purchase by Jobson sometime previous to 1904. The lands and houses were mortgaged by him to one Ogden together with other properties by an Indenture of Mortgage dated 10th April 1904. The Mortgagee sold them under powers conferred by the Indenture of Mortgage and Kojo Attah was the Purchaser. It does not appear that the Claimants other than Kojo Attah have any interest in the lands or houses. I am invited by Counsel for the Execution Creditors to reject the claim of the Interpleading Parties on the ground that the transaction between Ogden and Jobson was not *bona fide*, that it is not then owing to lack of definition of the word Konfueku both in the Certificate of Purchase

30 and in the Mortgage what lands Jobson was mortgaging, that there was no legal sale to Attah and that Attah and Jobson the Execution Debtors are in collusion to defeat the ends of justice. One of these objections viz. : the vagueness of the description of the lands originally acquired by Jobson is equally a difficulty in the way of the Execution Creditors as of the Claimants, but I am of opinion after considering the oral evidence that the expression "houses in Konfueku" means "houses in Lower Konfueku"

Exhibit  
"A."  
—  
Judgment.  
17th May,  
1909—  
*continued.*

with regard to the other pleas on behalf of the Execution Creditors I do not think the evidence in support of them is sufficient to justify me in ignoring the documentary evidence on the other side. For these reasons my Judgment must be for the Claimant Kojo Attah with costs. The other Interpleading Parties seem on the evidence to have been improperly joined as Claimants.

Costs to be taxed.

F. H. GOUGH.  
17.5.'09.

Kojo  
Attah v.  
Kwesi Pon  
and others.  
Writ of  
Summons.  
4th  
November,  
1909.

Exhibit "A."—Writ of Summons in Proceedings, Kojo Attah v. Kwesi Pon 10  
and others.

Office Copy  
Suit No.

WRIT OF SUMMONS.

IN THE SUPREME COURT OF THE GOLD COAST COLONY.

Between

KOJO ATTAH ... .. Plaintiff  
and  
KWESI PON AND OTHERS ... .. Defendants.

To KWESI PON, KOFI ESSUAKA and KWA NEME of Bortogina— 20

You are hereby commanded in His Majesty's name to attend this Court at Secondee on Monday the 14th day of December 1909 at 8.30 o'clock in the forenoon, then and there to answer a suit by Kojo Attah of Konfueku against you.

The Plaintiff claims (1) Possession of the land known as Bortogina together with farms houses and buildings thereon (2) The sum of One hundred and fifty pounds (£150) as rent due for the use and occupation of the said land farms houses and buildings by the said Defendants their agents servants or Defendants in the alternative Plaintiff claims the sum of One hundred and fifty pounds (£150) as damages for the said use and occupation 30 of the said land farms houses and buildings.

Issued at Secondee the 4th day of November, 1909.

Sum claimed	...	...	...	...	£150	0	0
Court fees	...	...	...	...	1	10	0
Bailiff's fees	...	...	...	...	—	8	4
					<hr/>		
Total	...	...	...	...	£151	18	4
					<hr/> <hr/>		

(Sgd.) C. H. P. LAMOND,  
*Judge or Commissioner for Judge.*

Hearing in Proceedings. *Kojo Attah v. Kwesi Pon and others.*Exhibit  
"A."

Tuesday the 9th day of May 1911, before His Honour F. H. GOUGH, Acting Senior Puisne Judge.

Kojo  
Attah v.  
Kwesi Pon  
and others.  
Hearing in  
Pro-  
ceedings.  
9th May,  
1911.

KOJO ATTAH *vs.* KWESI PON AND OTHERS.

Claim £150 for use and occupation of land at Bortogina.

Mr. WILLIAMS and Mr. MILLER for Plaintiff.

Mr. RENNER and Mr. ADDO for Defendant.

Mr. MILLER opens case.

Mr. RENNER pleads :—

- 10 (i) Ownership of the land as country.  
 (ii) Long possession.  
 (iii) Entitled to hold property by native law and custom against Plaintiff and predecessors, if they held it.  
 (iv) Defendants are under King of Mansu, of whose territory the land in dispute forms part.

KOJO ATTAH sworn a.t.h.r.b. speaks Fanti through Court Interpreter.

Kojo  
Attah.

Xd. MILLER.

20 KOJO ATTAH : Am an elder of Konfueku. Have lived there about 20 years. Bought some land by public auction. Davis was the Auctioneer. I bought it about 4 years ago. A bell was rung from this place to Bortogina and Konfueku, and Awhiabrim. People attended and offered to buy the land. There were biddings. I was declared the purchaser. I paid £144. There was no dispute when I bought the land. I bought Aboman, Techiabina Abumam, Nichabura Passereh, Muhumo, Ekutuani, Ekoomawi Bortogina, Buama, Mirekuburado, Apimbra, Parkuanah Inuru Wahano, Benim, Issudo. The boundary of these lands was Amankwan Mines. I have boundary with Kwezie Dadzie. I have boundary with Chief of Etuma at Abuman. I have boundary with Chief of Konfueku. The land now in dispute is part of the land I bought. I mean Bortogina. I possess 30 Botogina. When the Bailiff came I had the sale stopped. After the Writ of Execution, the Interpleader came on before Gough, J. He gave Judgment in my favour. I am living on a portion of the land. The Defendants live on Bortogina land and should pay rents. I have no trouble except with Bortogina lands. They have never offered to pay rent. They deny that the land has been sold to me.

XXd. RENNER.

40 As a farmer. I don't know how Davis came to sell the land. I made an Affidavit in connection with the sale. I didn't swear in that Affidavit I bought by private treaty. When I first claimed Bortogina, Mr. Miller was my lawyer. When I bought the land, Miller was not my lawyer.

Cross-exam-  
ination.

Exhibit "A." —  
 Kojo Attah  
 9th May, 1911—  
 Cross-examination—  
 continued.  
 10th May, 1911.

When I started the Interpleader proceedings, he prepared the Affidavit I swore to. I gave him instructions. Since I purchased from Davis, I have not lived or worked at Bortogina. Among the lands sued over by the Interpleader was Bortogina. I swore that among others I was in undisputed possession of Bortogina.

Adjourned to 8.30 a.m. to morrow.

Wednesday the 10th day of May 1911. Before His Honour F. H. Gough, Acting Senior Puisne Judge.

KOJO ATTAH *v.* KWESI PON AND OTHERS (continued).

KOJO ATTAH. XXd. RENNER (continued).

10

The people I am suing have a village on Bortogina land. I am suing them for rents because they are living in the village which I bought. I say I have bought the houses and the land. They were living when the bell rang. I don't know how long before the bell rang they were living there. I have lived at Lower Konfueku all my life. When I lived at Konfueku people were living at Bortogina. I bought Konfueku and Bortogina including all lands. When I lived at Konfueku in Jobson's time rents were paid by me to Jobson for Konfueku lands. Before Jobson Baidoo owned these lands. Jobson bought them from Baidoo. There is a Chief called Amissah in the neighbourhood. Baidoo's property was distinct from Amissah's. Both had property in Konfueku but only Baidoo's was sold. I don't know the boundary, but the paper shows it. Davis did not point out any physical object as a boundary. Some of the Bortogina people are under Bassayin of Mansu. I bought the lands. I didn't buy the people. I bought what Baidoo had. In the former proceedings I did not say Bortogina was under Bassayin of Mansu. I said Baidoo was a Captain under the Chief of Chama. I did not say I know the Bortogina people are under Bassayin but when I bought the lands they were included. When I bought I did not know the ownership of these lands was in dispute. I did not hear that Jobson had a dispute with Ekra Kobina about Konfueku and Bortogina lands.

20

*Q.* Did you say to the Judge Jobson and Ekra Kobina's dispute was about Konfueku and Bortogina lands?—*A.* No.

*Q.* Did you say this litigation was a long time before I bought the lands?—*A.* No, the Defendants and his people have never recognised my title.

*Q.* Did you say in the former proceedings the Konfueku people paid rent to Jobson?—*A.* Yes. At the time of my Interpleader, the Konfueku people were not paying rents but they agreed to pay. They were not paying tribute but agreed to do so when this case is over. In Baidoo's time I did not pay rent or tribute to Baidoo. I pay rent to Jobson. I know Poassi. I don't know if Bortogina is as far from Konfueku as Poassi is from

30

40

Seccondee. I have not measured it. I know 6 a.m. time. Leaving Konfueku at that time, a fast walker would get to Bortogina at 7 a.m. a slow one at 7.30 a.m. I can't count all the people at Bortogina. They are many. I don't know that Jobson three times failed to establish his title to Bortogina.

Q. I suggest to you you arranged the price in Davis' house?—

A. That is not so. I got paper from Davis when I paid the money. I got a Certificate of Title. Davis signed it. That is the paper which tells me that I bought. When I paid £80 he gave me a small paper. When I paid the balance he gave me a large paper, and took back the small one. He also gave me Baidoo's papers, which Baidoo had given to Jobson. I can't tell how many papers he gave me; they have been in Court for over a year. Davis only gave me one paper. He signed. Davis gave me no other paper. I gave the paper to my Counsel, and also a document between Jobson and Ogden was produced in Court. Before the case I had only the paper Davis gave me. Since the case, nobody gave me paper except that Pon wrote to me, when I demanded rent from him.

Exhibit  
"A."

Kojo  
Attah  
10th May,  
1911.

Cross-examination—  
continued.

Re-Exd. WILLIAMS.

I got the papers between Ogden and Jobson from Davis. I brought all the papers I had to the Court last time. They are still in Court.

Re-examination.

MR. BROWN ARKAH, sworn, Xd. WILLIAMS.

JOSEPH WILLIAM BROWN ARKAH, Surveyor. I remember being instructed to make Plan of some land beyond Chamah. Mr. Addo and Mr. Miller instructed me. There was a dispute between Attah and Kwesi Pon. I surveyed the land. Both parties were present. They shewed their boundaries. I made a Plan. (Document shown to witness.) That is the Plan: it is signed by me. The land claimed by Attah is bordered Red. (By consent put in and marked A.)

J. W.  
Brown  
Arkah.

XXd. ADDO.

Land claimed by Pon goes to the Whini River. Pon pointed that part of the boundary called on the Map Baidoo's boundary. He said it was Baidoo's boundary. I saw the Ahanta Concessions Pillar Marks.

Cross-examination.

LEMUEL THOMAS CURTIS DAVIS, sworn, Xd. WILLIAMS.

Licensed Auctioneer living at Seccondee. Know Kojo Attah the Plaintiff. I first saw him at Konfueku. I was there owing to instructions to sell properties at Konfueku. Bortogina and other lands mentioned in a mortgage deed. I sold them to Kojo Attah. There was a man acting as a Chief called I think Quaw Baidoo: I understand he was uncle to Attah. It was a long time ago. (Document shown to witness.) It is the receipt I gave to Kojo Attah for the purchase money of the land I sold. It is

Lemuel  
Thomas  
Curtis  
Davis.

Exhibit "A." signed by me. (Put in and marked (B.)) (Document shown to witness.)  
 After selling to Attah I gave them to Attah. The first is a Mortgage Deed  
 between Jobson and Ogden. The second is Jobson's Certificate of Purchase  
 (Put in and marked C and D). I went to Bortogina. I passed through  
 Konfueku to Bortogina. I put out the notice before the sale. I advertised  
 in two issues of the Gold Coast Leader. I sent to put up notices on  
 Bortogina. I saw the notices when I was there. I put notices at Chama,  
 Tarquah, Dixcove and Mansu. I sold what was mentioned in the Mortgage :  
 I didn't know the boundaries.

Lemuel  
 Thomas  
 Curtis  
 Davis.  
 10th May,  
 1911—  
*continued.*

Cross-examination. XXd. RENNER.

10

It is not as far from Bortogina to Konfueku as from here to Chama. I should say it is about 4 or 5 minutes from Konfueku to Bortogina. I did not get notice of opposition to the sale of land. The purchase money was paid in four instalments so far as I remember. The first was paid at once ; the last was paid about a month or two after. I gave a receipt for each instalment. I gave " B " taking back the other receipts when the whole was paid. When I went to Konfueku I had the Mortgage with me. I can't remember what I did with the Mortgage. It is not true that I only had instructions, and that Mr. Miller had the mortgage. I don't remember giving it back to Mr. Miller. It is a long time ago. I think I gave it with the Writ of Possession and the full receipt to Attah. I went to Bortogina but I was stoned and after explaining the matters to the Chief, I returned to Konfueku, where I sold the land to Attah the next day. There was an auction but Attah's bid was insufficient. I then let people know the reserve price. It was arranged that Attah should have the land at that price. I should call this a private sale. I don't know why the women stoned me at Bortogina. I was a stranger to them. I should explain it was the boy who was ringing the bell who was stoned. They showed hostility to the sale. I have no copy of the notice left. There was 50 printed copies. The arrangement was made with Attah, not in his house, but in the street. The first payment was £80, i.e. £50 and in two or three days another £30. There were two lands : I didn't sell that in the Ancobra direction : for the Konfueku lands fetched what was wanted. The lands sold included Bortogina and other lands. I don't know the extent of Konfueku lands. I didn't sell anything except the lands. I only sold what was in the mortgage.

Cudjoe  
 Koom.

CUDJOE KOOM, sworn a.t.h.r.b. speaks Fanti through Court Interpreter.

Xd. WILLIAMS.

Live Chama. Sub-Chief to Chief of Chamah. The Chama Stool has lands attached to it. Going towards Wanan side there are lands attached to the Chama Stool. There is a boundary then between the Chama Stool and Kwamina Enimil. The boundary is Anankoi : it is a river. Near the

40

boundary there is no one living, but we clean our road as far as there. On the other side, the Wassaw people clean. I live in Chama town. We have been cleaning the road about 20 years. We began before Enimil the elder died. Know Bortogina village and Konfueku village. I don't know Konfueku land, I know the village; there are several villages on the land. The people of Bortogina are strangers but the land is under the Chief of Chama. Bortogina is near a village called Buawah. I don't know Akutuasi; the captains know it. Bortogina land was sold. Attah bought it.

Exhibit  
"A."  
Cudjoe  
Koom.  
10th May,  
1911—  
*continued.*

XXd. RENNEN.

Cross-examination.

10 I only know of the sale through my blood relatives at Konfueku. I have been at Konfueku to attend funeral customs of my relatives. I have passed through Bortogina on my way to Adansi to collect money; there is Upper and Lower Konfueku. Upper Konfueku belongs to Amissah. Lower belonged to Baidoo. The land on which Upper and Lower Konfueku is built is under the Chief of Chama. The Chief of Chama owned from as far as the boundary. Bassayin has only claimed the land. The lawyer wrote to me about Bortogina people disputing with Attah and Mensa claiming also and this is why I am here. Attah came to see me and told me the Mansus had said Attaban was the boundary between them and Chama and  
20 we have come to say that isn't so. I am not claiming land for our Stool. It is about as far from Konfueku to Bortogina as from here to Poassi. Buama and Bortogina is as far as from here to Lagos Town. I know Baidoo of Lower Konfueku, I don't know Jobson alias Eshun. Bortogina has not paid tribute to Chama Stool. Bortogina Chief every year offers a sheep to the Stool of the Chief of Konfueku. I saw it 3 times as a young man. I have forgotten the name of the then Chief. The man who gave the sheep was a stranger from Daboassi. He was a hunter and lived at Bortogina. I have not known the Chief of Bortogina give a sheep. The road is cleaned as far as Amanka by the Sub-Chief of Chama. Mansu cleans the other side  
30 of Amanka. When Attah came to me, Kobina Effrim and some others came with him. They did not say they had been fighting with Pon for Bortogina.

11 a.m. Court adjourned.

2 p.m.

Re Xd. WILLIAMS.

Re-examination.

Mansu people cleaned road other side of Amankor. Mansu people are under Enimil.

JOSEPH ANDOH WILSON, sworn, Xd. WILLIAMS.

Joseph  
Andoh  
Wilson.

40 Interpreter and clerk to this Court. Resides Secondee. Know the parties in this action. Remember a case *Jobson v. Pon*, Attah Claimant. I was Interpreter in that case. (Document shown to witness). It is an



- Exhibit "A." Affidavit by Attah in the case just mentioned. It was put in evidence and marked by me. I find Bortogina mentioned. (Put in and marked "E"). (Another Document shown to witness). It is a certified copy of proceedings in the same case. It contains the Judgment. I certified the copy. (Judgment tendered and marked "F").
- Joseph Andoh Wilson. 10th May, 1911—  
*continued.* XXd. RENNER.
- Cross-examination. I know Jobson, and Attah and Pon. I have no knowledge of the parties except what I heard in Court. I only know Jobson as a litigant in Court. (Document shown to witness). They are certified copies of 3 Summonses. They relate to a land called Bortogina in Chama District. 10 They are dated 1902, 3, 4. (Marked for Identification G. 1—3). (Document shown to witness). It is a certified copy of record dated 1901, relating to a land Ehuma Bakudu. (Marked for Identification "H"). (Document shown to witness). Decree dated 1st July, 1908, against Jobson for £260.7.4 costs. It relates to writ for 1902. (Decree marked for identification "I"). (Documents shown to witness). Certified copies of Judgments in *Jobson v. Ayapa* and 11 others, and in *Jobson v. Pon* and others. (Marked for identification "J.1" and "J.2"). I have had custody of the papers *Jobson v. Pon*, Attah Claimant, until Mr. Vardon came. I have seen the Exhibits in that case. They appear to be correct. Some I think have been 20 withdrawn by Mr. Miller, but have been returned. I saw no printed notices of the sale.
- Re-examination. Re Xd. MILLER.
- Mr. Renner acted for Pon. There was no appeal. Mr. Williams says that is his case. Mr. Renner submits no case. I don't agree. Mr. Renner tenders the Documents identified by Mr. Wilson in Cross-examination. Mr. Williams objects, as not shown the same land in dispute. Objection overruled. Documents admitted and marked as they were marked for identification. Mr. Renner opens case for Defendants. (Notes date April 1904). (Owing to dispute as to whether Mr. Renner is correct in quoting 30 from the evidence given in former proceedings, I recall Mr. Wilson).
- By the Court. BY THE COURT :
- I produce a certified copy of proceedings in *Jobson v. Pon*, Attah Claimant. (Put in and marked "F").
- Kwesi Pon. KWESI PON, sworn a.t.h.r.b. speaks Fanti through Court Interpreter. Xd. RENNER.
- Defendant in this action. Live Bortogina, and am Headman there. Am under Bassayin of Mansu. The lands are his. Have lived Bortogina long : I was born there. Know Baidoo of Lower Konfueku. Bortogina people have nothing to do with Konfueku people. We have never 40

acknowledged the right of any one in Konfueku over us. We have never acknowledged Jobson or Attah. We have never paid them tribute or rent. We have never given rent or tribute to the King of Chama. The people of Bortogina are farmers generally. We farm on Ahwiringya, Attani, Ntontowura, Bortogina and Buama lands. There is a boundary between our land and Baidoo's land. It is Ahwiringya. I know two villages Dwaa and Nsukoko. They are on my land. Our people have been sued by Jobson as to Bortogina. I succeeded. He sued me twice at Elmina and twice at Cape Coast. Cudjoe Ayepa was one of my people. Cudjoe Enami was one of my  
 10 people. He was one of the people summoned by Jobson, together with me. Enama Ba I don't remember. Jobson has been to my village. It was after he has taken action against me. Bortogina is an hour's walk from Konfueku. I know the road to Amankor. I cleaned the road last year. Have always cleaned the road.

Exhibit  
 "A."

Kwesi Pon.  
 10th May,  
 1911—  
*continued.*

XXd. MILLER.

Cross-examination.

Am a Captain of Banayim. Am an Ohene, because Banayim has given me the village. I am not a stranger. My people are not strangers. They are not Fantie. The Chief of Konfueku is not over Bortogina. The Chief of Chama is not over Bortogina. I have never paid tribute to any one: if  
 20 there was any to pay Banayim who put me on the land, would have told me. Davis came to Bortogina and rang a bell. I didn't see any notice about the sale. He said he was selling Bortogina land, and I told him we were not owing, anything. I went and told Bassayin. Davis didn't go to Mansu to tell Bassayin. I told Davis to go and he didn't. The sale took place about 3 years ago. We got Judgment. I received 2 letters from you telling you to quit the property. I didn't know about Attah buying it. I don't remember the property being seized. I don't know of a Writ of Fi. Fa. against it. I remember the case before the present Judge. I brought my evidence before  
 30 the Judge. Kojo Attah was claiming against me. Judgment was not given against me. I didn't appeal. I got some costs against them and they some against me. It was about 2 years ago.

Adjourned until 8.30 tomorrow.

Thursday, the 11th day of May 1911. Before His Honour F. H. GOUGH, Acting Senior Puisne Judge.

ATTAH *v.* PON AND OTHERS, (continued).

KWESI ANKRA, sworn a.t.h.r.b. speaks Wassaw through Court.

Interpreter. Xd. ADDO.

Kwesi  
 Ankra.  
 11th May,  
 1911.

Farmer. Linguist to Chief Bassayin of Mansu. Know Pon, the  
 40 Defendant. Know Attah the Plaintiff. Know Bortogina. Pon is Ohene of that place. I was sent by Bassayin to put him on the Stool. It is seven

Exhibit  
"A."

Kwesi  
Ankra.  
11th May,  
1911—  
*continued.*

years ago, but I am not a scholar. Bortogina is under Bassayin. I know its boundaries. Ahwingya is the boundary between Pon and Baidoo. Before Pon was on the Stool, Nketia was on it. There are other villages near Bortogina under Bassayin. They are Montowura, Dwaa Nsukoko Amankonsu. I know Buama village; it is a boundary between Dadzie and Bassayin. I know the road from Bortogina to Amankor. Pon cleans it up to Anankonsu and thence to Mansu. Po Mensah first lived at Bortogina for 23 years when McCarthy War broke out.

He was Pon's ancestor. Since then Pon's people have lived on Bortogina land. Bortogina is under Bassayin. In Vroom's time a fine of £100 was imposed on Bassayin for not cleaning the road. I know Konfueku. Bortogina does not pay tribute to Konfueku Chief.

Cross-examination. XXd. WILLIAMS.

In Wassaw Jobson's people farm, they do pay tribute. Formerly it was not so. The other boundaries of Bortogina are, one boundary is with Chirewah's land. The Whini is the boundary. The other boundary is with Chief of Inchaban. The boundary is Intamakrone. The other boundary is Attasi: this is the boundary with Konfueku. Buama village is partly owned by Dadzie and partly owned by Bassayin. Bassayin's people don't live there. People from Dadzie's village live there. I have been to Bortogina. The people farm round Bortogina. They farm towards Buama. Kweku Pon has complained to Bassayin of people disturbing him: Bassayin said he shouldn't mind him but if a claim was made, he should go to Bassayin, Bassayin when Put Pon on the Stool, there was no Stool debt. Pon told Bassayin a case was pending between himself and Attah. Bassayin told him to go and see Mr. Renner. Bassayin was ill, took an interest in the case and sent me to represent him. I joined the people in engaging Counsel for Bassayin. Pon is a Captain to Bassayin. I am giving evidence to-day for the first time in a case between Attah and Pon. I don't know if Bassayin has sent anyone else before to give evidence. I have been Linguist a long time. Pon is an Ohene of Bortogina. Odikro is the same as Omanhin. The £100 fine was for not clearing the road from Mansu to Intamiakrome and from thence to Ahwingya. I saw Po Mensah. I was small: I could walk, but not carry a load. He lived at Bortogina: when I saw him he was an old man. I didn't see McCarthy War. I never saw Po Mensah; I was told about him. Pon told the Chief of Mansu that an auctioneer had come to sell lands; he said Renner must be informed as everything was in his hands. Pon informed Mr. Renner. There was a case over it. Mansu Chief heard of it. Pon told Mansu Chief the result of the case. I don't know if before the auctioneer came, a bailiff had been to sell lands. I don't know if Pon so reported to Mansu Chief. Pon reported twice to Mansu Chief about his lands being interfered twice and I am here. Know Jobson. I know boundaries of Bortogina lands, because I visit them, and I was sent by Mansu Chief when Pon was enstooled to point out the boundaries. It was a long time ago. It was after the Karikari War, and after Prempeh (1896)

I don't know how many years ago. I know when the Kuntum comes, but I don't know how to count it. It was in Pon's time that when a stranger came from Chama bush to farm he would pay tribute. Pon does not pay tribute to Bassayin. Pon did not tell Bassayin that the land had been adjudged to be Attah's. Pon told Bassayin that Attah wanted £140 from him. Bassayin said he musn't pay but must go and inform Mr. Renner. Pon told Bassayin that Jobson had sold Bortogina land to Attah, and hence Attah wanted £140 from him. That is what this case is about. There was a previous case between Attah and Pon and Pon went to prison because he didn't (pay) the costs. Bassayin was informed and got the money and released Pon ; afterwards Mr. Renner got costs. I don't know if any one told Bassayin that the land had been adjudged to be Attah's.

Exhibit  
"A."  
Kwesi  
Ankra.  
11th May,  
1911.  
Cross-exam-  
ination—  
*continued.*

EKRA KOBINA, sworn a.t.h.r.b. speaks Fanti through Court Interpreter.

Ekra  
Kobina.

Xd. ADDO.

Formerly lived at Konfueku. Now live at Ntontowura. I left Konfueku with 10 others, because Jobson said he had bought the land, and collected rents from us. We did not understand it and asked him whether the Government had hands in it. He said he had interfered with his collecting rents. He ejected us : we went to Kwesi Pon, who took us to Mansu Chief who gave us lands to live on. I now live on these lands. I lived on them about 10 years. Since living there Jobson has not collected rents.

XXd. WILLIAMS.

Cross-exam-  
ination.

I didn't hear since I left Konfueku that Konfueku and Bortogina lands were sold. I have heard nothing about bell ringing at Bortogina. Jobson said he had bought land. I don't know about it ; I wasn't present. I remember the case of Jobson and Pon, Attah claimant. I didn't see a bailiff come up to sell lands a long time ago. I didn't see Jobson there with bailiff. I gave evidence in the case I mentioned for Pon. I followed Pon. (Mr. Williams calls attention to what witness said in that case.) I said, "Jobson bought land at auction in my presence." I said "he afterwards ejected us ; and others were present when he bought." I said Kobina and Baidoo and many others were present when he bought. I said "Jobson paid £400 for the lands." I said "Jobson brought a bailiff ; bell was rung." At Ntontowura, I am a farmer, In *Jobson v. Pon*, Attah Claimant, Bortogina was talked about. We litigated about Bortogina lands. In that case Pon was not guilty ; both sides paid expenses. I don't know if Attah paid expenses : he got expenses from the other side. The present question was not decided. I am under Bassayin : am one of his subjects. I saw Davis yesterday : I never knew him before. When Jobson came with a bailiff, he didn't mention names of any lands. At the

Exhibit "A." last trial I did not say the bailiff read the names of the lands. Mr. Renner says that is his case.

Ekra Kobina,  
11th May,  
1911.  
Cross-examination—  
*continued.*

Mr. RENNER addresses Court.  
11 a.m. Court adjourned.  
2 p.m. Mr. RENNER continues.  
Mr. WILLIAMS replies.  
Judgment reserved.

(Sgd.) F. H. GOUGH.

11th May 1911.

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Exhibit "A."—Judgment.

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Judgment.  
15th May,  
1911.

Monday the 15th day of May 1911. Before His Honour F. H. GOUGH  
Acting Senior Puisne Judge.

KOJO ATTAH *v.* PON AND OTHERS.

In this case the Plaintiff seeks to assert possession of a certain land known as Bortogina together with farm houses and buildings thereon and in addition claims £150 rent or in the alternative £150 as damages. I may observe the latter two claims amount to a distinction without a difference. This land has been subject of litigation before, and it is the misfortune of the Defendants that the last time it came before the Courts was before me. On the 17th May, 1909, in the action of *Jobson v. Pon and Others*, I had to give Judgment when the present Plaintiff made a claim to property attached by the execution creditors, i.e., the Defendants in that action and the Chief Defendant in this action, and my Judgment was in favour of the Claimant, i.e., the present Plaintiff. The land at present in dispute was included in my Judgment which was based on the documentary evidence laid before me, particularly a Mortgage between Jobson and Ogden, in which Bortogina land was mentioned. The present action was tried without pleadings, but as is usual in such actions I called on the Defendant's Counsel to plead verbally, and the pleas substantially meant that the Plaintiff was not entitled to the possession of the land in dispute. My Judgment in 1909 meant that the Plaintiff was so entitled, whether I was right or wrong. The persons who were aggrieved by my decision could have appealed to the Full Court; they did not appeal. I have no power now to reverse my own decision, and to give Judgment in favour of the Defendants would mean to reverse my decision given in 1909. Whatever rights over those in occupation of the land the present Plaintiff acquired by successfully claiming the property attached in the case of *Jobson v. Pon and Others* are no greater and no less than those belonging to Ogden as Mortgagee in the Indenture of Mortgage from Jobson to Ogden. As to what these rights are I have not

sufficient data to give, a decision. But on the 1st paragraph of his claim, set forth above, I give Judgment for the Plaintiff: on the 2nd and 3rd paragraphs which are the same thing I give no decision, in other words the Plaintiff is non suited: on the main issue the Plaintiff has succeeded, and I give him costs.

Exhibit  
"A."  
—  
Judgment.  
15th May,  
1911—  
*continued.*

(Sgd.) F. H. GOUGH.

15th May, 1911.

Tuesday the 16th day of May, 1911. CORAM GOUGH, Judge.

ATTAH *v.* PON AND OTHERS.

10 I deliver the Judgment written on page 238.

(Sgd.) F. H. GOUGH.

16th May, 1911.

**Exhibit "A."—Grounds of Appeal.**

IN THE SUPREME COURT OF THE GOLD COAST COLONY, WESTERN PROVINCE, DIVISIONAL COURT, SECCONDEE.

Grounds  
of Appeal.  
15th July,  
1911.

Certified True Copy.  
Registrar.

KOJO ATTAH *v.* KWESI PON AND OTHERS.

1.—That Judgment was against the weight of evidence and indefinite  
20 as to area called Bortogina.

2.—That the decision in the Interpleader suit heard between the parties hereto was not a Judgment having the force (in its relation to this case) of a *Res Judicata*.

3.—That the subject of the Interpleader was not Bortogina or any part thereof.

4.—That the Plaintiff was not entitled to Judgment not having shown any better title than his privy Jobson established in the previous action he brought to recover same land.

5.—That the Defendants were in possession and proved their title to  
30 the land and that the Judgment was otherwise erroneous and contrary to law and the Defendants were entitled to Judgment.

Dated at Secondee this 15th day of July, 1911.

(Sgd.) PET. AW. RENNER,  
*Solicitor for Defendants.*

The Registrar,  
Divisional Court,  
Secondee.

Certified True Copy.

(Sgd.) FRANK VARDON,  
*Registrar.*

Exhibit  
"A."

Exhibit "A."—Final Leave granted.

Final  
Leave  
granted.  
27th July.  
1911.

Thursday the 27th day of July, 1911, before His Honour Mr. F. H. GOUGH,  
Acting Senior Puisne Judge.

ATTAH *v.* PON AND OTHERS.

Motion for Final Leave to appeal.  
Mr. RENNER is support of Motion.  
Affidavit of J. B. Amissah read.  
Final Leave granted.

(Sgd.) F. H. GOUGH,  
27th July, 1911. 10

Certified True Copy.

(Sgd.) FRANK VARDON,  
*Registrar.*

Judgment  
30th  
November,  
1911.

Exhibit "A."—Judgment.

KOJO ATTAH *v.* KWESI PON & OTHERS.

Mr. RENNER for Appellant-Defendant.  
Mr. WILLIAMS for Respondents.  
Mr. RENNER opens.  
Mr. WILLIAMS.

(Sgd.) CRAMPTON SMYLY, C.J. 20  
(Sgd.) A. EARNSHAW, J.

30.11.1911.

In the SUPREME COURT of the GOLD COAST COLONY, EASTERN PROVINCE,  
at the Full Court held at Victoriaborg, Accra, on the 30th day of  
November, 1911, before Their Honours Sir Philip CRAMPTON SMYLY,  
KNIGHT, CHIEF JUSTICE and Albert EARNSHAW, Judge.

KOJO ATTAH     ...     ...     ...     ...     ...     *Plaintiff-Respondent*  
*v.*  
KWESI PON, KOFI ESSUAKU AND KWA NAIME     *Defendants-Appellants.*

In this case the Court after listening carefully to the arguments advanced 30  
by the Counsel for the Appellant sees no reason for disagreeing with the  
Judgment of the Court below.

That judgment is based on a previous Judgment and finds "*Res  
Judicata.*"

The Court is quite satisfied on a review of the evidence in both this and  
the previous case that the question of ownership and possession of the land  
known as Bortogina was decided by Mr. Justice Gough in the Interpleader

case *Jobson v. Pon and Others*, Kojo Attah, the present Plaintiff, being claimant. Exhibit  
"A."

As there was no appeal from that Judgment dated 17th May, 1909, the question cannot be again raised between the same parties. Judgment.  
30th  
November,  
1911—  
*continued.*

This Court finds, confirming the Judgment of the Court below, that the issue of this case is "*Res Judicata*," and on that ground dismisses the appeal with costs.

Costs of appeal fixed at £16. 0. 0.  
Courts below to carry out this order.

10 (Sgd.) CRAMPTON SMYLY, C.J.  
(Sgd.) A. EARNSHAW, J.

**Exhibit "A."—Motion for Writ of Possession.**

At a DIVISIONAL COURT held at Secondee on Tuesday, October 29th 1912, before His Honour Mr. Justice E. C. WATSON. Motion for  
Writ of  
Possession.  
29th  
October,  
1912.

KOJO ATTAH and KWESI PON, KOFI ESSUAKU and KWA NAIME.

Motion for Writ of Possession.

Mr. MILNE moves.

Mr. HAYFORD moves *ex parte* for leave to oppose.

Leave granted.

20 Affidavit of Kojo Attah read in support.

Mr. HAYFORD opposes on behalf of Kobina Angu.

Let the Writ of Possession issue to the Plaintiff with costs against the Defendant and Kobina Angu.

E. C. WATSON,  
J.

**Exhibit "A."—Writ of Summons in Proceedings, Kobina Angu v. Kojo Attah.**

No. 118. Suit No. 118/1912.

SUPREME COURT OF THE GOLD COAST COLONY.

30 Between  
KOBINA ANGU ... .. *Plaintiff*  
and  
KOJO ATTAH ... .. *Defendant.*

Writ of  
Summons.  
Suit No. 118  
of 1912.  
30th  
October,  
1912.

To KOJO ATTAH of Konfuaku.

You are hereby commanded in His Majesty's name to attend this Court at Secondee on Thursday the 6th day of February, 1913, at 8.30 in the



Exhibit  
"A."  
Writ of  
Summons,  
Suit No. 118  
of 1912.  
20th  
October  
1913—  
*continued.*

forenoon, then and there to answer a suit by Kobina Angu of Secondee against you.

The Plaintiff's claim is to establish his title to tribute as against the Defendant in respect of all that piece or parcel of land situate at Bortogina and known as Bortogina in Chama District.

Issued at Secondee the 30th day of October, 1912.

Sum claimed	...	...	...	Judicial Relief	
Court Fees	...	...	...	£1 10	
Bailiff's fees	...	...	...	4	
Total				£1 14	10

(Sgd.) E. C. WATSON,  
*Judge.*

Hearing in  
proceedings  
Kobina Angu  
v. Kojo  
Attah,  
15th April,  
1913.

**Hearing in proceedings. Kobina Angu v. Kojo Attah.**

At a DIVISIONAL COURT held at Secondee on Tuesday April 15th 1913 before His Honour Mr. Justice LIONEL E. HAWTAYNE.

Kobina Angu	}	To establish Title to Tribute.
<i>v.</i>		
Kojo Attah		

Mr. LANCE MILLER for Defendant.

Mr. HAYFORD for Plaintiff.

Mr. LANCE MILLER pleads. *Res Judicata*—See page 344.

HAYFORD. Not same case. This case for tribute the other action for possession.

Kobina  
Angu.

KOBINA ANGU, sworn a.r.b.

I am Chief of Mansu Lower Wassaw. I know Kwesi Pon he lives at Botogyina he is my sub-chief.

The lands are in possession of Kwesi Pon and are under my Stool. Bassayin was my immediate predecessor. I remember Attah bringing an action against Kwesi Pon for possession of these lands. Bassayin was not a party to that action. If Kwesi Pon sold any of the land he would have to pay me proceeds. I would give him one-third and the other two-thirds would be divided between myself and my elders. This is the custom of my Stool. I know Kobina Hangay. He was sawing boards on the Botogyina lands. I got my portion of the money he paid. I know Kwamina Essa. He is also a sawyer and he worked on the same land and I got my tribute thro' Kwesi Pon for his so working. Canoes are made out of wood on this land. Some people from Supome did so. Pon paid me proceeds and it was divided. I had nothing to do with the action of *Kojo Attah v. Kwesi Pon and Others*. I now claim tribute.

20

30

XXd.

Bassayn was my predecessor. He sent his linguist to give evidence in case of *Kojo Attah v. Kwesi Pon*. The linguist claimed that these lands were under me. The Court decided that the land was under Chief of Chama. Kwesi Pon and Kojo Attah made agreement. I don't know the terms of agreement. I don't know if rent is paid to Kojo Attah for these lands. The lands are mine they are attached to my Stool. The Chief of Chama has no right over these lands.

Exhibit  
"A."  
Kobina  
Angu.  
15th April,  
1913.  
Cross-exam-  
ination.

Re Xd.

10 I never authorised Kwesi Pon to make agreement.

ATTAH KOBINA, sworn a.r.b.

I am linguist to Omanhin Lower Wassaw. I know Chief Kobina Angu. He is under Paramount Chief of Lower Wassaw. I know lands of Botogyina. Those lands are attached to Plaintiff's Stool. I know Kwesi Pon. He is sub-chief to Angu. The lands of Botogyina lands are bounded by Chama lands. One Nicholas bought Botogyina lands. The land he bought was Assomeboon land—part of Botogyina lands. That land bounded by Ashieme lands and the Intime lands. The sale was not opposed. Badu was then Chief. Kobina Angu is entitled to tribute over the lands  
20 Botogyina when sold.

Attah  
Kobina.

XXd.

I knew Kwesi Anekra Linguist. I don't know he gave evidence in *Attah vs. Kwesi Pon*.

Cross-exam-  
ination.

Adjourned to 21st for witness Princess Kiriwa.  
Costs of adjournment costs in cause.

At a DIVISIONAL COURT held at Secondee on Monday, April 21st 1913 before  
His Honour Mr. Justice LIONEL E. HAWTAYNE.

30 KOBINA ANGU }  
vs. } To establish Title to Tribute—See page 463.  
KOJO ATTAH }

Mr. HAYFORD for Plaintiff.  
Mr. LANCE MILLER for Defendant.

PRINCESS KIRIWA, sworn a.r.b. speaks in Fanti through Interpreter  
Aikins.

Princess  
Kiriwa.  
21st April,  
1913.

I am Chief of Daboassi. I know Chief Angu. I am under Omanhin of Lower Wassaw. I know lands known as Botogyina lands. I know the caretaker called Kwesi Pon. He overlooks land for Angu the land being on his Stool. Quassi was Chief on Stool when I first knew of Mansah. The

Exhibit  
"A."

Princess  
Kiriwa.  
21st April,  
1913—  
*continued.*

next Chief Bedu. Then Bassayin. And after him the present Plaintiff. The Botogyina lands were under the Stool of Mansuah. I have a boundary with the Mansuah Stool. I remember one Nicholas buying some Botogyina lands. Nicholas placed boundary marks on the land. The purchase money was paid to Angu. The Caretaker Kwesi Pon had a portion. Two-thirds of the money paid was given to Angu and the other one-third to Kwesi Pon. Angu was paid two-thirds because he was the owner of the land. My people at Daboassi make canoes out of wood on Botogyina land and Angu gets a portion of the money they pay for the wood. The Supome people are my neighbours. They also work on the Botogyina land. They also pay Angu. I have seen them pay. I have a boundary on the Chama side of Angu's land. The boundary is Siassi. Botogyina lands would be towards Mansuah. This boundary is the ancient boundary between the two stools. I have another boundary on Chama side with Kweku Addi of Asorku. 10

Cross-examination.

XXd.

I know of no dispute between Angu and any one over the lands. I have not heard of one Job having a dispute. I never heard he bought these lands or mortgaged them in 1904. I never heard that Attah bought them at auction. I never heard of action brought by Attah in which Chief of Chama gave evidence. I don't know if my people went with Surveyor when land was surveyed. I never sent them. I did not see the Surveyor. I have never known of any dispute about Botogyina lands except this present one. I only heard of this case recently when Bailiff came with Subpoena. That was the first time I heard of this dispute. I was served on 9th April with subpoena. I have boundary with Kweku Dadzie. I have never heard of claim of Chief of Chama over these lands. I have never seen tribute paid to Chief of Chama. I have never seen Botogyina people pay tribute to Plaintiff. I know my people do. 20

Re Xd. Nil.

Addresses  
of Counsel.

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Exhibit "A."—Addresses of Counsel.

30

Mr. Hayford lays over proceedings in *Attah v. Kwesi Pon and Others* and draws attention to evidence of Kwesi Pon and Kwesi Ankra.

Case for Plaintiff closed.

Mr. Lance Miller asks that proceedings before Mr. Justice Watson on 29/10/12, page 344 be also considered. Laid over.

Mr. Casely Hayford: *Attah v. Pon* on which Defendant relies the present Plaintiff was not a party. Ankrah the Linguist to Plaintiff's predecessor gave evidence but that fact does not make him a party.

Evidence of Ankrah that Botogyina under Bassayin the Chief of Mansuah predecessor of Plaintiff. The points of Law arise (1) That the person who gives leave to another to live upon land is entitled to tribute in respect of that land. (ii) That the holder for time being is the man in possession ; and so long as he renders tribute to Licensor, he cannot be disturbed in his possession. If he goes out of possession and another takes his place, the right to tribute survives. Refers to Judgment Enquiries 164,169 (Akim) quoted in Gold Coast Native Institutions on page 49 Hayfords Book and in Sarbah's Book page 141. As to record laid over present Plaintiff not a party. The case referred to on 344 was only a Motion for Writ of Possession. The man in possession was Kwesi Pon on behalf of Angu.

Mr. Miller refers to page 18 of Appeal Record laid over. Evidence of Ankrah—stating that he was sent by Bassayin. Evidence of Linguist of Omanhin of Chama page 14 Appeal Court Record 30th November 1911. Decision reserved.

LIONEL E. HAWTAYNE.

Exhibit  
" A. "  
—  
Addresses  
of Counsel.  
21st April,  
1913—  
*continued.*

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Exhibit " A. "—Judgment.

30.4.1913.

Judgment.  
30th April,  
1913.

At a DIVISIONAL COURT held at Secondee on Wednesday, the 30th day of April 1913 before His Honour Mr. Justice LIONEL E. HAWTAYNE.

KOBINA ANGU *v.* KOJO ATTAH.

This is a claim by the Plaintiff to establish his title to tribute as against Defendant in respect of all that piece or parcel of land situate at Bortogina and known as Bortogina in Chama District.

Mr. Lance Miller for the Defendant pleaded *res judicata* and relied (i) on the case of Kojo Attah (Plaintiff Respondent) vs. Kwesi Pon and Others (Defendants Appellants) decided by the Full Court on appeal from decision of Mr. Justice Gough of the 15th May 1911 ; and (2) on decision of Mr. Justice Watson dated 29th October 1912.

I cannot agree with Mr. Lance Miller that the fact that Angu or Ankura being linguist to Ohin Bassayin and giving evidence was sufficient to make that Chief party to the suit.

As to Motion before Mr. Justice Watson referred to it does not appear that Kobina Angu was party to that Motion. Both of the cases referred to were for possession whereas this case is one for tribute and I hold that the plea of *res judicata* fails. Judgment for the Plaintiff with costs.

LIONEL E. HAWTAYNE,  
*Judge.*

Exhibit  
" A. "

Exhibit " A. "—Grounds of Appeal.

Grounds of Appeal.  
30th July,  
1913.

IN THE SUPREME COURT OF THE GOLD COAST COLONY, WESTERN PROVINCE.  
DIVISIONAL COURT, SECCONDEE.

KOBINA ANGU *v.* KOJO ATTAH.

1.—That the Judgment was against the weight of evidence and against definite decision in the actions viz. : (1) Interpleader suit *Jobson v. Kwesi Pon and Others*, Kojo Attah Claimant, Judgment dated the 17th May 1909, (2) Action *Kojo Attah v. Kwesi Pon and Others* Judgment dated the 15th May 1911 (3) Full Court Judgment dated the 30th November 1911 in case *Kojo v. Kwesi Pon and Others* (4) *Kojo Attah v. Kwesi Pon and Others* Writ of Possession decision dated the 29th October 1912. 10

2.—That the subject of the actions was over Bortogina lands and Kobina Angu Predecessor late Chief Bassayin of Mansu sent his linguist to represent him in both actions.

3.—That the Plaintiff was not entitled to Judgment for tribute over Bortogina lands in Chama District not having shown any better title than his said Sub-Chief Kwesi Pon tried to establish in the previous actions and he the Plaintiff through his predecessor late Chief Bassayin endeavoured to support Kwesi Pon to claim these Bortogina lands.

4.—That the Defendant was in possession and proved his title to the land by putting in documents and that the Judgment was otherwise erroneous and contrary to law and the Defendant was entitled to Judgment. 20

Dated at Secondee this 30th day of July, 1913.

LANCE MILLER,  
*Counsel for Defendant.*

To The Registrar,  
Divisional Court,  
Secondee.

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Exhibit "A."—Final Leave to Appeal granted.

At a DIVISIONAL COURT held at Secondee on Friday, the 1st day of August 1913, before His Honour Mr. Justice F. H. GOUGH.

ANGU v. ATTAH.

Motion by Defendant for Final Leave to appeal from Judgment of Divisional Court 30th April 1913.

MR. BRUCE AUSTIN in support.

The Registrar says everything is in order.  
Final Leave granted.

10

1st August 1913.

F. H. GOUGH,

Exhibit  
"A."  
—  
Final Leave  
to Appeal  
granted.  
1st August,  
1913.

Exhibit "C."

LAND COURT, SEKONDI.

Exhibit "C."

Put in evidence by the Plaintiff *in re* Kwesi Tuakyi &c. v. Kwesi Enimil.

Intd. J. H., Asst. Registrar. 23/2/48.

IN THE PRIVY COUNCIL.

20 ON APPEAL FROM THE SUPREME COURT (COURT OF APPEAL) OF GOLD COAST COLONY, WESTERN PROVINCE.

Between

KOBINA ANGU ... .. (Plaintiff) Appellant

and

KOJO ATTAH ... .. (Defendant) Respondent.

CASE FOR THE APPELLANT.

1.—This is an Appeal from a Judgment of the Supreme Court of the Gold Coast Colony, Western Province, sitting as a Full Court for the hearing of Appeals, dated the 28th day of February, 1914, reversing the Judgment of His Honour Mr. Justice Lionel E. Hawtayne, sitting as the Divisional Court of the Western Province, dated the 30th day of April, 1913.

30

2.—On the 30th day of October, 1912, the Appellant as Plaintiff commenced a suit (No. 118/12), by Writ of Summons in the said Western Province against the above-named Respondent as Defendant claiming to establish his title to tribute as against

Exhibit  
"C."  
—  
In the  
Privy  
Council.  
—  
Between  
Kobina  
Angu  
and Kojo  
Attah.  
Case for the  
Appellant.  
Appeal  
from  
Judgment,  
28th  
February,  
1914,  
reversing  
Judgment,  
30th April,  
1913.

Exhibit  
"C."

In the  
Privy  
Council.

Between  
Kobina  
Angu  
and Kojo  
Attah.  
Case for the  
Appellant.  
Appeal  
from  
Judgment,  
28th  
February,  
1914,  
reversing  
Judgment,  
30th April,  
1913—  
*continued.*

the Defendant in respect of a piece or parcel of land situate at Bortogina and known as Bortogina in the Chama District.

3.—The Appellant is the Superior Chief of Bortogina and is the successor of Bassayin on the Stool (or Chief's Throne) of Bortogina, and as such Superior Chief is entitled by Native Custom to receive, and, as appears, from the evidence on the Record, did receive tribute from persons who occupied the Bortogina land until his right to tribute in respect of the said land was disputed by the Respondent in these proceedings.

4.—At the hearing of the Suit mentioned in paragraph 2 10 hereof on the 15th and 21st days of April, 1913, before His Honour Mr. Justice Lionel E. Hawtayne in the Divisional Court (the Court of First Instance) evidence both oral and documentary was adduced by the Plaintiff (the present Appellant) and a Plan was produced and marked A. The Defendant (the present Respondent) adduced no evidence, but relied on the Judgment of His Honour Mr. Justice F. H. Gough, dated the 15th day of May, 1911, in a suit entitled "Kojo Attah *v.* Kwesi Pon and Others"; also the decision on appeal in the same case before the Full Court dated the 30th day of November, 1911, and the Order of His Honour Mr. Justice E. C. 20 Watson therein dated the 29th day of October, 1912. On the 30th day of April, 1913, Judgment was given by Mr. Justice Hawtayne for the Plaintiff (the present Appellant).

5.—The Defendant (Respondent) appealed to the Full Court (or Court of Appeal of the Colony) from the said Judgment on the following grounds, viz. :—

- (1) That the Judgment was against the weight of evidence and against definite decisions in the actions, viz. : (1) Interpleader Suit "Jobson *v.* Kwesi Pon and Others, Kojo Attah, Claimant." Judgment dated the 17th 30 May, 1909; (2) Action "Kojo Attah *v.* Kwesi Pon and Others," Judgment dated the 15th May, 1911; (3) Full Court Judgment dated the 30th November, 1911, in case "Kojo Attah *v.* Kwesi Pon and Others," (4) "Kojo Attah *v.* Kwesi Pon and Others," Writ of Possession, decision dated the 29th October, 1912.
- (2) That the subject of the actions was over Bortogina lands, and Kobina Angu's predecessor, late Chief Bassayin of Mansu, sent his linguist to represent him in both actions.
- (3) That the Plaintiff was not entitled to Judgment for 40 tribute over Bortogina lands in Chama District, not having shown any better title than his said Sub-Chief Kwesi Pon tried to establish in the previous actions and he the Plaintiff through his predecessor late Chief

Bassayin, endeavoured to support Kwesi Pon to claim these Bortogina lands :

- (4) That the Defendant was in possession and proved his title to the land by putting in documents and that the Judgment was otherwise erroneous and contrary to law, and the Defendant was entitled to Judgment.

6.—This Appeal came on for hearing in the Full Court (or Court of Appeal) before Their Honours Mr. Justice F. H. Gough, Acting Chief Justice, Mr. Justice E. C. Watson and Mr. Justice F. Barrett Lennard on the 27th and 28th days of February, 1914, and on the last-mentioned date the Full Court delivered Judgment allowing the Appeal and with costs both of the trial in the Divisional Court and of the hearing on Appeal. Such Judgment being in effect briefly as follows, viz. : that the Respondent (the present Appellant) had failed to establish his rights to any tribute in respect of the land Bortogina, and that the Judgment of the Divisional Court was erroneous.

7.—On the 17th day of November, 1914, the Full Court granted leave to appeal to His Majesty in Council from the said Judgment of the Full Court dated the 28th February, 1914.

8.—The Appellant submits that the said Judgment of the Full Court dated the 28th day of February, 1914, should be reversed, and the said Judgment of the Divisional Court dated the 30th day of April, 1913, maintained for the following, among other

#### REASONS

- (1) Because the right of a Superior Chief to receive tribute from the tenants or occupants of lands attached to his "Stool" (or Throne) is based upon an old and well-established Native Custom fully recognised in decisions of the Supreme Court of the Colony, and the evidence adduced at the hearing in the Divisional Court proved that the Appellant, who is the successor of Bassayin, Superior Chief of Bortogina, received tribute, as such Superior Chief, in respect of the Bortogina land, and this right to tribute was not questioned or disputed until these proceedings.
- (2) Because the right of a Superior Chief to receive tribute in respect of the occupation of lands attached to his "Stool" cannot be destroyed or affected by a change of tenants or occupants, but remains a charge on the land in the hands of whoever occupies the land, the right being founded on the ownership vested in the Superior Chief as the owner of the lands of his "Stool."

Exhibit  
"C."

In the  
Privy  
Council.

Between  
Kobina  
Angu  
and Kojo  
Attah.  
Case for the  
Appellant.  
Appeal  
from  
Judgment,  
28th  
February,  
1914,  
reversing  
Judgment,  
30th April,  
1913—  
*continued.*



Exhibit  
"C."

In the  
Privy  
Council.

Between  
Kobina  
Angu  
and Kojo  
Attah.  
Case for the  
Appellant.  
Appeal  
from  
Judgment,  
28th  
February,  
1914,  
reversing  
Judgment,  
30th April,  
1913—  
*continued.*

Nothing in the record of these proceedings shows that the Appellant has been divested, or has divested himself of such right, or has relinquished it.

- (3) Because the case relied on by the Respondent related to the right to the possession of the Botogina land, and the Appellant does not claim the possession thereof, but the right to receive tribute from the tenant or occupant in respect of such land. The Appellant was not a party or privy to these proceedings, and therefore cannot be prejudiced or affected thereby, the causes of action moreover being different from that which is the basis of his claim in the present proceedings. 10
- (4) Because the fact that the Appellant's predecessor's "Linguist" (or representative) was called as a witness and gave evidence in the case of "Kojo Attah *v.* Kwesi Pon and Others" relied on by the Respondent, cannot prejudicially affect the Appellant in the present proceedings, as the Appellant was not a party to that action, and had no opportunity of cross-examining the witnesses or of being heard on the questions of right involved nor was the cause of action the same as in the present proceedings. 20
- (5) Because the Respondent derives title from the Judge's Certificate of Purchase dated the 22nd October, 1903, and marked D in the Record, by which one J. E. Jobson was declared the Purchaser at sale by auction under a Writ of Fi. Fa. in the action of "J. E. Jobson *v.* Kobina Baidoo and Others" of certain lands, including the Bortogina land. Under the said Certificate, the said J. E. Jobson obtained only the "right, title and interest of the Judgment Debtor in the property sold," according to Order XLV, Rule 34. Schedule 2, Supreme Court Ordinance, 1876. Such an incident of tenure or charge on the land as that claimed by the Appellant remains unaffected by such a sale, and attaches to the land in the possession of any subsequent purchaser, tenant or occupant. 30  
The Respondent claims possession as a subsequent purchaser.
- (6) Because the Judgment of the Full Court dated the 28th day of February, 1914, is against the weight of evidence and contrary to the evidence. 40

H. W. HAYES REDWAR

# In the Privy Council.

No. 49 of 1950.

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

BETWEEN

KWESI ENIMIL for himself and as representing  
the people of Bortogina village and Chief  
Kobina Angu, Chief of Manso  
*(Defendants-Appellants) Appellants*

AND

KWESI TUAKYI and KOFI ESSON, Successors  
according to Native Customary Law of Kojo  
Attah, deceased *(Plaintiffs-Respondents) Respondents*

AND BETWEEN

KOJO MANKRADU and CHIEF KOBINA  
ANGU, Chief of Manso  
*(Defendants-Appellants) Appellants*

AND

KWESI TUAKYI and KOFI ESSON, Successors  
according to Native Customary Law of Kojo  
Attah, deceased *(Plaintiffs-Respondents) Respondents*

AND BETWEEN

BUSUMAFI and CHIEF KOBINA ANGU,  
Chief of Manso *(Defendants-Appellants) Appellants*

AND

KWESI TUAKYI and KOFI ESSON, Successors  
according to Native Customary Law of Kojo  
Attah, deceased *(Plaintiffs-Respondents) Respondents*

(CONSOLIDATED)

## RECORD OF PROCEEDINGS

ASHURST, MORRIS, CRISP & CO.,  
17, Throgmorton Avenue, E.C.2,  
*Solicitors for the Appellants.*