

37, 1953

In the Privy Council.

No. 7 of 1953.

33604

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

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

IN THE MATTER OF JOHN INTSIFUL (deceased)

BETWEEN

HENRY CHARLES CHRISTIAN, otherwise called KOFI
AMPAH (Defendant) *Appellant*

AND

SAMUEL TAWIAH INTSIFUL (Plaintiff) *Respondent.*

RECORD OF PROCEEDINGS.

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In the Privy Council.

No. 7 of 1953.

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

IN THE MATTER OF JOHN INTSIFUL (deceased)

BETWEEN

HENRY CHARLES CHRISTIAN, otherwise called KOFI
AMPAH (Defendant) *Appellant*

AND

SAMUEL TAWIAH INTSIFUL (Plaintiff) *Respondent.*

RECORD OF PROCEEDINGS

No. 1.

Writ of Summons No. 68/1950.

Suit No. 68/1950.

IN THE SUPREME COURT OF THE GOLD COAST.
CENTRAL JUDICIAL DIVISION.

DIVISIONAL COURT HOLDEN AT CAPE COAST.

Between

SAMUEL TAWIAH INTSIFUL, of Cape Coast *Plaintiff*

and

10 HENRY CHARLES CHRISTIAN, otherwise called KOFI AMPA, of
Cape Coast *Defendant.*

To HENRY CHARLES CHRISTIAN, otherwise called KOFI AMPA,
of Cape Coast.

In the
Supreme
Court.

No. 1.
Writ of
Summons
No. 68/1950.
20th
December,
1950.

In the
Supreme
Court.

No. 1.
Writ of
Summons.
No.68/1950.
20th
December,
1950—
continued.

YOU ARE HEREBY COMMANDED in His Majesty's name to attend before this Court at Cape Coast on Friday, the 12th day of January, 1951, at 8.30 a.m. o'clock in the forenoon, then and there to answer a Suit by Samuel Tawiah Intsiful, of Cape Coast, against you.

The Plaintiff claims to be one of the Executors of the last Will, dated the 20th day of November, 1944, of JOHN INTSIFUL, late of Cape Coast, Gentleman, deceased, who died on the 18th day of June, 1950, and to have the said Will established, the other Executor, the Defendant, having renounced.

The Writ is issued against you for having entered a caveat against the 10 grant of Probate of the said Will.

Issued at Cape Coast the 20th day of December, 1950.

		£	s.	d.
Sum claimed	...			Administration
Court fees	...	4	0	0
Bailiff's fees	...	0	1	0
		£4 1 0		
		£4 1 0		

(Sgd.) ROGER VAN DER PUIJE,
Registrar Divisional Court.

No. 2.
Statement
of Claim.
17th
January,
1951.

No. 2.
Statement of Claim.

20

Filed 18.1.51.

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

WESTERN PROVINCE, DIVISIONAL COURT, CAPE COAST.

In the Matter of JOHN INTSIFUL (Deceased).

SAMUEL TAWIAH INTSIFUL *Plaintiff*

v.

HENRY CHARLES CHRISTIAN, otherwise called KOFI AMPAH ... *Defendant.*

STATEMENT OF CLAIM delivered this 18th day of January, 1951. 30

1.—The Plaintiff is one of the Executors of the last Will of John Intsiful, late of Cape Coast, Deceased, who died on the 18th day of June, 1950, at Cape Coast.

2.—The Defendant is the nephew of the said John Intsiful, and one of the Executors named in the last Will of the said Testator.

In the Supreme Court.

3.—On the 20th day of November, 1944, the said John Intsiful duly executed his Will in the presence of Revd. James Amissah Hammond and Joseph Brookman Amissah Arthur, which said Will was duly deposited in the Divisional Court by the Revd. James Amissah Hammond by direction of the Testator on the same day it was executed.

No. 2. Statement of Claim. 17th January, 1951—*continued.*

4.—Under the Will of the said John Intsiful, Harry Ata Intsiful, Samuel Tawiah Intsiful, Kweku Ghan and Kofi Ampah were appointed
10 Executors of his said Will.

5.—The said Harry Ata Intsiful and Kweku Ghan respectively died in the lifetime of the Testator and the said Kofi Ampah otherwise called Henry Charles Christian now Defendant herein, renounced Probate and entered a caveat against the grant of Probate of the said Will.

The Plaintiff therefore claims to be one of the Executors of the last Will, dated the 20th day of November, 1944, of John Intsiful, late of Cape Coast, Gentleman, deceased, who died on the 18th day of June, 1950, and to have the said Will established, the other Executor the Defendant having renounced Probate.

20 This Writ is issued against the Defendant for having entered a caveat against the grant of Probate of the said Will.

Dated at Anibok Chambers, Cape Coast, this 17th day of January, 1951.

(Sgd.) W. E. GWIRA SEKYE,
Counsel for the Plaintiff.

To the Registrar, Divisional Court, Cape Coast,
and to the above-named Defendant, Henry Charles Christian, otherwise called Kofi Ampah, Cape Coast.

30

No. 3.

Statement of Defence

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

WESTERN PROVINCE, DIVISIONAL COURT, CAPE COAST.

PROBATE DIVISION.

In the Matter of JOHN INTSIFUL (Deceased).

SAMUEL TAWIAH INTSIFUL Plaintiff

v.

HENRY CHARLES CHRISTIAN, otherwise called KOFI AMPAH ... Defendant.

No. 3. Statement of Defence. 26th January, 1951.

In the
Supreme
Court.

No. 3.
Statement
of Defence.
26th
January,
1951—
continued.

STATEMENT OF DEFENCE delivered this 27th day of January, 1951.

1.—Save hereinafter expressly admitted the Defendant denies all the allegations contained in the Statement of Claim herein.

2.—Defendant is the nephew of John Intsiful, late of Cape Coast (Deceased), who died on the 1st day of June, 1950.

3.—Defendant denies paragraph 3 of the Statement of Claim and avers that at the date of the alleged Will the Testator was totally blind and could not have executed the Will as alleged, he having been blind as from the year 1943.

4.—That the signature of the Testator in the Will is not the true signature of the Testator the said John Intsiful (Deceased). 10

5.—The Defendant therefore denies Plaintiff's claim to have the alleged Will of John Intsiful, dated the 20th day of November, 1944, established.

Dated at Cape Coast this 26th day of January, 1951.

(Sgd.) C. F. H. BENJAMIN,
Solicitor for Defendant.

To the Registrar, Divisional Court, Cape Coast,
and to the above named Plaintiff, Samuel
Tawiah Intsiful, of Cape Coast, his Agent or
Solicitor.

20

Plaintiff's
Evidence.

No. 4.
J. M.
Arthur.
1st Witness
for Plaintiff.
12th
March,
1951.

No. 4.

J. M. Arthur : 1st Witness for Plaintiff.

Civil Suit No. 68/1950.

DIVISIONAL COURT, CAPE COAST, CENTRAL JUDICIAL DIVISION, Monday,
the 12th day of March, 1951, before Mr. Justice DENNISON.

In re Estate of JOHN INTSIFUL (deceased).

S. T. INTSIFUL Plaintiff

v.

H. C. CHRISTIAN Defendant. 30

SEKYI for Plaintiff.

BENJAMIN for Defendant.

SEKYI : Son of deceased ; Defendant a nephew. Defendant renounced probate. Kweku Ghan and H. A. Intsiful predeceased the deceased ; calls :—

JOHN MICHAEL ARTHUR : s.o.B. (English) :

Law Clerk to Mr. Johnson, Barrister. I knew the deceased John Intsiful ; sometime before he died he called me and gave me a paper and asked me to type it for him and this I did according to his instructions. This is the paper I typed (tendered no objection, admitted as Exhibit " P.I. "). P.I. I understood to be the deceased's Will and I handed it back to him after I had typed it.

In the Supreme Court.

Plaintiff's Evidence.

No. 4.

J. M.

Arthur.

1st Witness

for Plaintiff.

12th

March,

1951.

—continued.

Cross-examination.

CROSS-EXAMINED :

10 When I typed P.I. I was not then working for any Lawyer. Previously I had worked for you as a clerk. I left you in 1943. I can't (*sic*) say how long it was after I left you that I typed P.I. I cannot give the date of the deceased's death. I was not present when P.I. was executed. I was not a devoted friend of the deceased. When I typed P.I. the deceased was not blind ; he could read. I don't know that deceased had bad eye-sight ; he was old but very strong and not at all nervous.

RE-EXAMINATION :

Nil.

COURT :

I handed back the original of P.I. to the deceased.

20

No. 5.

J. A. Hammond : 2nd Witness for Plaintiff.

No. 5.

J. A.

Hammond.

2nd Witness

for Plaintiff.

12th

March,

1951.

Examination.

JAMES AMISSAH HAMMOND : s.o.B. (English) :

30 Methodist Minister now stationed at Arkra. In November 1944 I was stationed at Cape Coast. I knew the late John Intsiful, he was a member of my church. I know this man (J. B. A. Arthur—identified). In November 1944 Arthur and I met at the deceased's house ; it was November 20th ; we did so at the request of the deceased. I arrived before Mr. Arthur. The deceased told us that he had made his Will and he wanted us to witness it ; he signed it in our presence and we also signed it ; this P.I. is the Will I witnessed and it bears my signature. I had known the deceased for some time. The deceased asked me to help him to sign because he said his eyes were dim. I aided him ; I indicated the place to sign and held his hand whilst he signed. Arthur and I signed after the deceased and he then sealed the Will and asked me to deposit it in this Court and this I did.

In the
Supreme
Court.

TO COURT :

We witnessed the Will in the morning.

Plaintiff's
Evidence.

CROSS-EXAMINED :

No. 5.
J. A.
Hammond.
2nd Witness
for Plaintiff.
12th
March,
1951.
—continued.
Cross-exam-
ination.

The deceased did not tell me who had prepared the P.1. nor did he show me the original draft of the Will. He did not tell me where the original draft was. The deceased was not totally blind but his eye-sight had been bad for some time before he died—how long I can't say. He had ceased to attend service on account of his bad-eye-sight. For sometime prior to his death the deceased was nervous ; he was 93 when he died. I know Thomas Acquaaah who knew the deceased very well ; they were 10 friends. The deceased was my guardian. I know Mrs. Julia Blankson, she is a leader in our Church. The deceased definitely signed P.1. I only held his hand.

Re-exam-
ination.

RE-EXAMINATION :

When I was at school I used to stay with the deceased.

No. 6.
J. B. A.
Arthur.
3rd Witness
for Plaintiff.
12th
March,
1951
Examina-
tion.

No. 6.

J. B. A. Arthur : 3rd Witness for Plaintiff.

JOSEPH BROOKMAN AMISSAH ARTHUR : s.o.B. (English) :

I live in Cape Coast I know the last witness. On November 20th, 1944, I met Mr. Hammond at the late John Intsiful's house ; the latter had sent for me and Mr. Hammond. The deceased said he had made his Will and asked us to witness his signature. He produced P.1. The deceased could not see very well so he asked Mr. Hammond to help him to sign ; the latter showed the deceased where to sign and directed his hand and he signed. Then we both signed P.1. Mr. Hammond put P.1. in a document (*sic*) and sealed it up. I then left. P.1. bears the deceased's signature. 20

Cross-exam-
ination.

CROSS-EXAMINED :

The deceased did not show me the original draft ; he did not say who had prepared the Will. I had no occasion to read P.1. Prior to the deceased's signing P.1. I had not seen the deceased's signature. I can't remember if the deceased was nervous. I can't say if the deceased was totally blind when he signed P.1. He was groping the things on his table. 30

RE-EXAMINATION :

Nil.

No. 7.

S. T. Intsiful : Plaintiff.

In the
Supreme
Court.

SAMUEL TAWIA INTSIFUL : s.o.B. (English) :

No. 7.
Plaintiff's
Evidence.

I live in Cape Coast. I am a full son of the deceased, whom I used to help in his store. When my father was not able to work I was placed in charge of the store. My father retired in 1941. In 1943 my father instructed me to collect his rents ; in 1948 he gave me this power of attorney (tendered no objection, admitted as Exhibit " P.2. "). In 1948 when P.2. was made the deceased was totally blind. The deceased made a thumb
10 print of Exhibit P.2. I am an executor under the Will and I applied for Letters of Administration.

S. T.
Intsiful.
Plaintiff.
12th
March,
1951.
Examina-
tion.

CROSS-EXAMINED :

Cross-exam-
ination.

I did not know until the caveator told me that my father had made a Will. Mr. Hammond did not tell me. All the deceased's papers are in my custody ; I have not seen a draft of a Will but I saw a type-written copy of P.I. From 1945—no my father did not sign any papers.

TO COURT :

My father's eye-sight started to fail in 1941.

RE-EXAMINATION :

20 Nil.

No. 8.

Rev. G. R. Acquaaah : 4th Witness for Plaintiff.

No. 8.
Rev. G. R.
Acquaaah.
4th Witness
for Plaintiff.
12th
March,
1951.
Examina-
tion.

GADDIEL ROBERT ACQUAAH : s.o.B. (English) :

Chairman, Methodist Church, Gold Coast. I knew the deceased ; he was an active member of my church. My signature appears on P.2., this I signed at the request of the deceased. In 1948 the deceased was nearly blind but mentally alert.

CROSS-EXAMINED :

Cross-exam-
ination.

In 1948 the deceased might have been able to sign his name if someone
30 had guided his hand, he was not illiterate.

RE-EXAMINATION :

Nil.

In the
Supreme
Court.

8

No. 9.

Plaintiff's
Evidence.

J. B. A. Arthur (recalled).

No. 9.
J. B. A.
Arthur
(recalled).
12th
March,
1951.

J. B. A. ARTHUR (recalled by Court) :

Same oath. P.I. was not read over to the deceased prior to execution.

No. 10.

Counsel's Addresses.

No. 10.
Counsel's
Addresses.
12th
March,
1951.

BENJAMIN : I do not intend to call any evidence. Plaintiff should be non-suited.

SEKYI : No suggestion deceased did not understand the contents—not blind in 1944. Totally blind in 1948. Presumption deceased was not blind, also that he had read P.I. Admit hand had to be guided. 10

BENJAMIN : Strong evidence of feebleness, eye-sight and incapacity to sign without help. P.I. typed three years before it was executed. Plaintiff not entitled to relief sought, asks for order that deceased died intestate.

No. 11.

Judgment.

No. 11.
Judgment.
12th
March,
1951.

The witnesses for the Plaintiff all struck me as completely honest. It is established by the evidence that the Testator started to go blind in 1941 and that his malady increased with each succeeding year. I have no doubt that in 1944 the Testator's eye-sight was so bad that he could not read also that his health was so feeble as to require help when he signed Exhibit " P.I." In these circumstances Order 49 rule 29 applies (see also page 29 of the 18th edition of Tristram and Cootes Probate Practice) ; the evidence in this case is that the Will was not read over to the Testator prior to execution, nor is there any evidence before me except that of J. M. Arthur that the Testator had full knowledge of its contents ; it is indeed curious that this lawyer's clerk did not read over to the Testator the result of his labours. In the circumstances the Plaintiff's claim must fail and as a result the Testator is held to have died intestate. This case was occasioned by reason of the manner in which the Testator made the alleged will and it is, therefore a proper case for each party to receive his costs out of the estate and I so order. 20 30

Counsel's costs assessed at 10 guineas each.

Remaining costs to be taxed.

(Sgd.) T. A. DENNISON,
Judge.

No. 12.

In the
Supreme
Court.

Motion Paper by Plaintiff for review of Judgment.

Filed 22.3.51.

No. 12.
Motion
Paper by
Plaintiff for
Review of
Judgment.
22nd
March,
1951.

IN THE SUPREME COURT OF THE GOLD COAST, WESTERN PROVINCE,
CENTRAL JUDICIAL DIVISION, DIVISIONAL COURT, CAPE COAST.

In the Matter of JOHN INTSIFUL (Deceased).

SAMUEL TAWIAH INTSIFUL Plaintiff

v.

10 HENRY CHARLES CHRISTIAN otherwise called KOFI AMPAH Defendant.

TAKE NOTICE that this Honourable Court will be moved by
W. Essuman-Gwira Sekyi, of Counsel for the Plaintiff herein on
Thursday, the 5th day of April, 1951 at 8.30 of the clock in the forenoon
or so soon thereafter as Counsel can be heard for an Order reviewing the
Judgment delivered herein on Monday the 12th day of March, 1951 on the
following grounds, namely :—

- 20 1. That the learned Judge having shortly after the witness John Michael Arthur, left the witness box intimated in open Court that he would like the said witness re-called for further questions, the disappearance of the said witness till after Judgment was delivered raises a reasonable presumption of collusion between him and the Defendant.
- 2. That Counsel for the Plaintiff stated, when closing the Plaintiff's case, that he closed the said case subject to what the witness Michael Arthur would say when re-called.

And for such other Order as to this Court may seem just.

Dated at Anibok Chambers, Cape Coast, this 22nd day of March, 1951.

30 (Sgd.) W. E. G. SEKYEI,
Counsel for the Plaintiff.

To the Registrar, Divisional Court, Cape Coast,
and to the abovenamed defendant, Henry Charles Christian of Cape Coast

In the
Supreme
Court.

No. 13.

Affidavit of Plaintiff supporting Motion.

No. 13.
Affidavit of
Plaintiff
supporting
Motion.
22nd
March,
1951.

IN THE SUPREME COURT OF THE GOLD COAST, WESTERN PROVINCE,
CENTRAL JUDICIAL DIVISION, DIVISIONAL COURT, CAPE COAST.

In the Matter of JOHN INTSIFUL (Deceased).

SAMUEL TAWIAH INTSIFUL Plaintiff

v.

HENRY CHARLES CHRISTIAN otherwise called KOFI AMPAH Defendant.

I, SAMUEL TAWIAH INTSIFUL, of Cape Coast, Plaintiff herein,
make oath and say as follows :

10

1.—That Judgment in a suit for Probate brought by me against the Defendant above-named was delivered herein on Monday the 12th day of March, 1951.

2.—That the hearing of the suit commenced and ended on the same day.

3.—That the first witness for the Plaintiff was John Michael Arthur who had before the hearing sent to the office of my Counsel, Mr. W. Esuman-Gwira Sekyi, the typewritten proof of his intended evidence, signed by himself, copy of which is as follows :—

In re JOHN INTSIFUL, late of Cape Coast (Deceased).

My name is John Michael Arthur. I live in Cape Coast and am Prince
and Law Clerk. I remember, in or about the year 1944, I was called for by
John Intsiful, now deceased, when I went he took me in his bedroom and
shut the door of the room. He told me that he wanted to prepare his last
Will and Testament, and that he need my assistance. I said I would
give him every possible assistance. He then forbade me not to tell anybody
about. He then gave me a paper and pencil and started dictating to me
in English language which I jotted down everything. This took us about
45 minutes. I then repaired to my house and typed a draft copy of it.
The following day in the morning I went to old Intsiful with the typed copy
and gave it to him. He took his looking glass and perused it, and made
certain corrections and additions, and gave it to me to make a final copy
of it. I went home and did it and brought the Final copy as well as the
draft copy of his last Will and Testament and handed them to him. Old
Intsiful asked for my remuneration but I refused to charge him anything,

30

he then being my Father and a neighbour. Some few weeks after, I received an envelope and on opening it found a handsome gift of 10/6. That is all I know in this matter.

In the
Supreme
Court.

Dated at Cape Coast this 25th day of October, 1950.

(Sgd.) J. MICHAEL ARTHUR.

No. 13.
Affidavit of
Plaintiff
supporting
Motion.
22nd
March,
1951—
continued.

4.—That in the witness box he gave evidence contradictory of which was in the said proof in the most material parts thereof.

5.—That in cross-examining him learned Counsel for the Defendant made an unsuccessful effort to get him to answer in the affirmative a question to this effect: “At the time you typed this document you were not in my employ” for the witness persisted in his answer “when I typed P. I. I was not then working for any lawyer.”

6.—That shortly after the conclusion of the evidence of the said witness, the learned Judge intimated to my Counsel in open Court that he would like the witness Michael Arthur recalled for further questions, and my said counsel sent promptly to telephone to the office of the said witness’s employer for the said witness.

7.—That the witness was reported not to have reached the said office, and I made an effort to find him by engaging a taxi-cab and looking for him, accompanied by one J. H. Ankrah.

8.—That up to the time that Judgment was delivered the witness Michael Arthur could not be found but he appeared outside the Court shortly after Judgment had been delivered herein.

9.—That as far as I can recollect, my Counsel stated when closing the case for the Plaintiff, that he closed it subject to what the witness Michael Arthur would say when recalled.

10.—That I am aggrieved by the said Judgment and crave that this Honourable Court review the said Judgment so as to re-call the said Michael Arthur for Further questioning and either reverse the said Judgment or Order a non-suit with liberty to bring a fresh action.

11.—That the following are the grounds on which I apply for the said Order:—

1. That the learned Judge having shortly after the witness John Michael Arthur left the witness box intimated in open Court that he would like the said witness re-called for further questions, the disappearance of the said witness till after Judgment was delivered raises a reasonable presumption of collusion between him and the Defendant.

In the
Supreme
Court.

2. That Counsel for the Plaintiff stated, when closing the Plaintiff's case, that he closed the said case subject to what the witness Michael Arthur would say when recalled.

No. 13.
Affidavit of
Plaintiff
supporting
Motion
22nd
March,
1951—
continued

12.—That this affidavit is in support of a Motion for an Order in the terms of the Motion paper filed herewith.

Sworn by the said Samuel Tawiah }
Intsiful at Cape Coast this 22nd day } (Sgd.) SAMUEL T. INTSIFUL.
of March, 1951.

Before Me,
(Sgd.) Charles A. Bannerman,
Commissioner for Oaths.

10

No. 14.
Affidavit of
Defendant
opposing
Motion for
Review.
3rd April,
1951.

No. 14.

Affidavit of Defendant opposing Motion for Review.

IN THE SUPREME COURT OF THE GOLD COAST, CENTRAL JUDICIAL DIVISION,
DIVISIONAL COURT, CAPE COAST.

In the Matter of JOHN INTSIFUL (Deceased).

SAMUEL TAWIAH INTSIFUL Plaintiff
v.
HENRY CHARLES CHRISTIAN, otherwise called KOFI AMPAH... Defendant. 20

I, HENRY CHARLES CHRISTIAN, otherwise called KOFI AMPAH,
of Cape Coast, make oath and say as follows :

1.—That I am the Defendant herein.

2.—That the affidavit of Samuel Tawiah Intsiful sworn to on the 22nd day of March, 1951, has been served on me and I have studied the contents thereof.

3.—That in reply to paragraphs 3, 4 & 5 of the said affidavit, I am credibly advised that even assuming them to be correct the cumulative effect is that the evidence of the said J. Michael Arthur is negligible and unreliable and such as can never support the claim of the Plaintiff herein 30
for the grant of Probate.

4.—That I deny the allegation in paragraph 9 of the affidavit of the said Samuel Tawiah Intsiful as being incorrect.

In the
Supreme
Court.

5.—That I am credibly advised that the Plaintiff herein has not disclosed good and sufficient grounds to justify the application for the Review of the Judgment herein.

No. 14.
Affidavit of
Defendant
opposing
Motion for
Review.
3rd April,
1951—
continued.

6.—That in the circumstances, I swear to this affidavit in opposition to the Relief which the Plaintiff claims herein.

Sworn at Cape Coast this 3rd day of April, 1951 } (Sgd.) H. C. CHRISTIAN.

10 Before Me,
(Sgd.) B. CROSBY DAVIS,
Commissioner for Oaths.

No. 15.

Court Notes of Argument on Motion for Review.

DIVISIONAL COURT, CAPE COAST, CENTRAL JUDICIAL DIVISION, Thursday, the 5th day of April, 1951, before Mr. Justice DENNISON.

No. 15.
Court
Notes of
Argument
on Motion
for Review.
5th April,
1951.

In re : Estate of JOHN INTSIFUL (Deceased).

S. T. INTSIFUL
v.

20 H. C. CHRISTIAN.

WILLIAMS & SEKYI for Applicant.

BENJAMIN for Respondent.

30 WILLIAMS.—Application under O.41 Cap. 4. Opens affidavit of applicant and that of Respondent. Court took into consideration O.49 r. 29 had knowledge of its contents. Ex. “ P.1 ” result of Testator’s instructions not blind at that period. Will made and asked witnesses to attest. Evidence proves execution—no evidence led by Respondent. Will has come from custody of the Court. Law presumes Testator signed “ P.1 ” knowing it was a Will. Circumstances prove that the Testator knew the contents. Tristram 14th Ed. ps. 418-422. *Hostilow v. Stobie* (1865) 1.P. & D.64. Collusion leave to Court.

BENJAMIN.—Disappearance of Arthur collusion. Ground 2 incorrect. Arthur witness for Plaintiff. Different statements cannot be relied on by either side. Nothing to show Testator knew and understood the contents

In the
Supreme
Court.

and Plaintiff must prove this in Court. Arthur in statement to Solicitor did not say he read over contents to Testator. Plaintiff clearly failed to discharge onus cast on him.

No. 15.
Court
Notes of
Argument
on Motion
for Review.
5th April,
1951—
continued.

WILLIAMS.—Arthur could not produce original gave it back to Testator. Presumptive evidence shows due execution.

ORDER :

The witnesses in a case of this nature are the Court's witnesses and not those of either party. The Plaintiff's affidavit does not make out J. M. Arthur to be a witness of any great reliability. I wished to re-call this witness when the evidence showed that the attesting witnesses did not read over to the Testator P.1 and who was at the time aged and almost totally blind. Reserving the question as to whether or not this witness is a person whom I can rely on I will re-call him to answer the question I had originally intended to ask ; the witness to be re-called on 16th instant. It is no fault of the Testator that this application has had to be made and I award to-day's costs, assessed at 5 guineas to the Defendant. 10

(Intd.) T. A. D.,
Judge.

No. 15a.
Court
Notes
(including
evidence of
J. M.
Arthur on
recall).
16th April,
1951.

No. 15A.

Court Notes (including Evidence of J. M. Arthur on recall). 20

DIVISIONAL COURT, CAPE COAST, CENTRAL JUDICIAL DIVISION, Monday,
the 16th day of April, 1951, before Mr. Justice DENNISON.

SAMUEL TAWIAH INTSIFUL
v.
HENRY CHARLES CHRISTIAN.

WILLIAMS and SEKYEI for Plaintiff.

BENJAMIN for Defendant.

P.1—RE-CALLED BY COURT :—s.o.B. (English) :—

I never read over the Will to the Testator, as soon as I gave P.1 to the Testator I left him. At the time I made P.1 the Testator could see. 30

WILLIAMS with permission :

I did not make a statement to Mr. Sekyi. The Plaintiff asked me to make a statement. I typed one out and then I found it not correct and I refused to give it to Mr. Sekyi, but the Plaintiff took it to Mr. Sekyi although I had told him it was incorrect. This is the statement I am referring to and which the Plaintiff gave to Mr. Sekyi (tendered no objection—admitted as Exh. P.3). That is my signature on P.3. I typed P.1 in 1944. I have been a law clerk for over 20 years.

WILLIAMS : The Plaintiff has this morning produced a sealed envelope, he states he found this amongst the Testator's papers.

In the Supreme Court.

BENJAMIN : I object to this new evidence.

COURT : I will admit this in order to ascertain if it helps the case one way or the other (seal broken and the envelope is found to contain a copy of P.1—admitted as Exhibit " 4 ").

No. 15a. Court Notes (including evidence of J. M. Arthur on recall). 16th April, 1951—*—continued.*

WITNESS : P. " 4 " is the earlier copy I made of P.1.

10 BENJAMIN : P.4 is incorrect and I told the Plaintiff it was incorrect and I refused and make the same on oath. When I typed P.2 I told the Plaintiff I had forgotten the circumstances under which P.1 was made and the Plaintiff helped me to correct P.2.

WILLIAMS : P.1 and P.4 both signed by Testator. Tristram and Cootes 14th Edn. p. 33. Knew by implication contents of P.1 Tristram p. 413 *et seq.*

BENJAMIN : Did Testator know the contents when P.1 executed. Draft Arthur made is missing.

Court : Ruling to be given 21st instant.

(Intd.) T. A. D.,

J.

20

No. 16.

Ruling on Motion for Review.

No. 16. Ruling on Motion for Review. 21st April, 1951.

DIVISIONAL COURT, CAPE COAST, CENTRAL JUDICIAL DIVISION, Saturday, the 21st day of April, 1951, before Mr. Justice DENNISON.

In the Matter of JOHN INTSIFUL (Deceased)

SAMUEL TAWIAH INTSIFUL Plaintiff

v.

HENRY CHARLES CHRISTIAN otherwise called KOFI AMPA of Cape Coast Defendant.

HYDE for SEKYEI for Plaintiff.

30 BENJAMIN for Defendant.

RULING :

An application having been made under Order 41 for review, I agreed to recall Mr. John Michael Arthur.

Mr. Williams, Counsel for the Plaintiff bases his submissions on the fact that the whole circumstances of the case go to show that the Testator

In the Supreme Court.

No. 16.
Ruling on Motion for Review.
21st April, 1951
—continued.

was fully aware of the contents of his Will when he executed it, and was also aware of it when he received it back from Mr. Arthur, the Law Clerk. On both occasions that Mr. Arthur has been before the Court his evidence made it clear that he did not read over P.1 to the Testator. In the case of *Garnett-Botfield v. Garnett-Botfield* 1901 P. page 335, it was held that if the Court is not satisfied with the way in which the Will was read over to the Testator intestacy would result.

In this case the Testator was very old when he made his Will and his eye-sight was beginning to fail. In these circumstances I fail to see how a Court could presume that the Testator himself read the Will and understood its contents. 10

In all the facts of the case, I am far from satisfied that it has been proved before me that the Testator was fully aware of and understood the contents of " P.1 " when he executed the same. For these reasons, I do not propose to review my judgment. I consider it was right and proper to have the witness J. M. Arthur recalled and each side will receive its costs out of the estate.

Costs for each party assessed at 10 guineas, inclusive.

(Sgd.) T. A. DENNISON,

Judge. 20

In the West African Court of Appeal.

No. 17.
Plaintiff's Grounds of Appeal.
30th April, 1951.

No. 17.

Plaintiff's Grounds of Appeal.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, ACCRA.

NOTICE OF APPEAL.

In the Matter of JOHN INTSIFUL (Deceased).

SAMUEL TAWIAH INTSIFUL *Plaintiff-Appellant*

v.

HENRY CHARLES CHRISTIAN otherwise called

KOFI AMPA *Defendant-Respondent.* 30

TAKE NOTICE that the Plaintiff being dissatisfied with the Judgment of the Divisional Court, Cape Coast, dated the 12th March, 1951, and confirmed on review on the 21st April, 1951, doth hereby appeal to the West African Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

And the Appellant further states that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5.

2.—The whole of the decision complained of.

In the West
African
Court of
Appeal.

3.—Grounds of Appeal :

- (A) Because the direct evidence proved that the Will emanated from the Testator, he having given directions for the preparation thereof; acknowledged the same before his attested witnesses specially summoned for this purpose as his last Will and instructed the attesting witnesses to witness or attest his signature as such to the said Will, Ex. P.1 : and thereafter the Testator instructed Revd. Hammond, one of the attesting witnesses to lodge the said Will in the Divisional Court, Cape Coast, after sealing the envelope containing the said Will, the Judgment of the Court below was wrong in law and on the facts.
- (B) Because the indirect or circumstantial evidence established affirmatively that the Testator was of sound mind and memory and acknowledged the said Will Ex. P.1 to be his act in law, the Judgment of the Court below was wrong in law and on the facts and therefore cannot stand.
- (C) Because the evidence established that when the Testator made the said Will, Ex. P.1, in 1944 and executed same in 1944, the Testator's vision was not impaired and that he could read and he was in the vigour of health although old, the Judgment of the Court below was wrong in law and cannot stand.
- (D) Because the Judgment of the Court below was wholly and entirely against the weight of evidence.
- (E) Because in law the evidence established the due execution of the Will by the Testator.

—
No. 17.
Plaintiff's
Grounds of
Appeal.
30th April,
1951—
continued.

4.—RELIEF SOUGHT :

The Judgment to be set aside or reversed.

5.—Persons to be served :

Henry Charles Christian otherwise called Kofi Ampah,
Defendant-Respondent, Cape Coast.

Dated at Cape Coast the 30th April, 1951.

(Sgd.) W. E. GWIRA SEKYEI,
Counsel for S. T. INTSIFUL,
Plaintiff-Appellant.

To the Registrar, W.A.C.A., Accra, and to the
Defendant-Respondent, Henry Charles Christian
otherwise called Kofi Ampa, Cape Coast.

In the West
African
Court of
Appeal.

No. 18.

Court Notes of Argument.

No. 18.
Court
Notes of
Argument.
17th
December,
1951.

17th December, 1951.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION :

Coram : FOSTER SUTTON, P., COUSSEY and KORSAH, JJ.

In re JOHN INTSIFUL (Deceased)

SAMUEL TAWIAH INTSIFUL *Plaintiff-Appellant*

v.

HENRY CHARLES CHRISTIAN alias KOFI AMPAH *Defendant-Respondent*

Mr. WILLIAMS for Plaintiff-Appellant.

10

Mr. BENJAMIN for Defendant-Respondent.

BENJAMIN : I submit that appeal is not properly before the Court.
The Judgment of 21st April is merely a refusal to review a Judgment—
We do not call upon Williams.

Held—appeal is properly before Court.

WILLIAMS :

Refers to original Judgment—page 8 confirmed on 21st April—
page 15 of Record.

We say that he was fully competent.

The instructions were given in 1941—in 1944 he summoned witnesses 20
and signed Will—

We call on Benjamin—

The whole contest centres round question—did testator know what
he was doing.

Will was not read over to him.

Arthur gave conflicting stories—

page 5—page 10—

Law Reports P. (1901) p. 335.

Court suggests that testator showed a test : intention—

BENJAMIN—Question of fact.

30

S.F.S., *c.a.v.*
P.

17.12.51.

No. 19.

Judgment.

In the West
African
Court of
Appeal.

WEST AFRICAN COURT OF APPEAL. General sitting held at Accra,
21st December, 1951.

No. 19.
Judgment.
21st
December,
1951.

Coram : FOSTER-SUTTON, P., COUSSEY and KORSAH, JJ.

Civil Appeal No. 34/51.

In the Matter of JOHN INTSIFUL (Deceased)

SAMUEL TAWIAH INTSIFUL of Cape Coast ... *Plaintiff-Appellant*
v.

10 HENRY CHARLES CHRISTIAN *alias* Kofi Ampah of Cape Coast
Defendant-Respondent.

JUDGMENT.

FOSTER-SUTTON, P. : In this case the Plaintiff claimed as Executor of the last Will, dated 20th November, 1944, of John Intsiful, who died on the 18th June, 1950, to have the Will established. The Writ of Summons was issued against the Defendant, one of the other Executors appointed under the Will, who had renounced and entered a caveat against the granting of Probate of the Will in question.

20 The Testator gave his instructions regarding the preparation of the Will in dispute, Exhibit P.1., sometime in 1941, and the document was typed in that year. After it had been typed it was handed to the Testator who appears to have kept it in his custody up to the 20th of November, 1944, when he told James Amissah Hammond, a Methodist Minister, and Joseph Brookman Amissah Arthur, both of whom gave evidence at the hearing in the Court below, that he had made his Will and asked them to witness his signature.

30 There was evidence that in November, 1944, the Testator was in a feeble state of health and that his eyesight was poor. Both of the witnesses I have already referred to gave evidence that the Testator's hand had to be guided when he made his signature to the Will.

The learned trial Judge, in effect, held that the Testator was not competent on 20th November, 1944, owing to his feeble state of health and bad eyesight to make a Will, and he accordingly held that John Intsiful died intestate, and gave Judgment for the Defendant.

It was argued on behalf of the Appellant that the evidence clearly shows that the Testator knew what he was doing when he executed the testamentary document in question and, in my opinion, the preponderance of evidence is in favour of that contention.

40 The Testator gave detailed instructions for the preparation of Exhibit P.1., he kept it in his possession for several years and eventually told two responsible persons that he had made his Will and wished them to witness his signature to it. After the Will had been signed and witnessed

In the West African Court of Appeal.

No. 19. Judgment. 21st December, 1951—*continued.*

he asked Mr. Hammond, the Methodist Minister, whose evidence I have already referred to, to deposit it in the Divisional Court, Cape Coast, which he did.

Another witness Gaddiel Robert Acquah, Chairman of the Methodist Church in the Gold Coast, gave evidence that in 1948 the deceased “ was nearly blind but mentally alert.”

In my opinion the better view of the facts in this case is that the Testator was fully aware of the contents of Exhibit P.1. when he executed it on the 20th November 1944, that he knew what he was doing and wished to make his last Will and Testament. To hold otherwise would defeat the Testator's wishes which he has clearly expressed and wished to be carried out. 10

It follows, therefore, that in my opinion this Appeal should be allowed and that there should be a declaration that the Will in question is a valid one. In the circumstances I think the costs should be paid out of the Testator's estate, and I would fix the Appellant's costs on this Appeal at £18 : 9 : 6d. and the Respondent's at £15 : 0 : 6d.

S. FOSTER SUTTON, P.

COUSSEY, J. : I concur.

J: HENLEY COUSSEY, J.

KORSAH, J. : I concur.

K. A. KORSAH, J. 20

Counsel .

AWOONOR-WILLIAMS for the Appellant.

HAYFRON-BENJAMIN for the Respondent.

No. 20. Court Notes Granting Final Leave to Appeal to Privy Council. 26th June, 1952.

No. 20.

Court Notes granting Final Leave to Appeal to Privy Council.

26th June, 1952.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION :

Coram :

FOSTER-SUTTON, P., COUSSEY, J.A., and WINDSOR-AUBREY, J.

Motion

(10) S. T. INTSIFUL *v.* H. C. CHRISTIAN, &c.

30

Motion for final leave to appeal to Privy Council.

Mr. BENJAMIN for Appellant.

BENJAMIN moves :

Order in terms of Motion.

S. F. S.

P.

26.6.52.

EXHIBITS.

“ P.1.”—Testator’s Will.

Put in by Plaintiff in Samuel Tawiah Intsiful *v.* Henry Charles Christian and marked Exhibit “ P.1.”

(Sgd.) E. JEURY BLANKSON.

12.3.51.

Marked “ STI ” by me.

(Sgd.) S. TAWIAH INTSIFUL.

Exhibits.

“ P.1.”
Testator’s
Will.
20th
November,
1944.

10 THIS IS THE LAST WILL AND TESTAMENT of me JOHN INTSIFUL, Merchant of Cape Coast in the Gold Coast being of sound mind and perfectly well knowing that it is the firm decree of the ALMIGHTY GOD, Maker of All Things, who had appointed UNTO all men to die and that sooner or later it must fall to my lot to die as well : I therefore Do Hereby revoke all former Wills and Testaments heretofore made by me and SOLEMNLY DECLARE this to be my LAST and only WILL and TESTAMENT. In the first place I commend and command my immortal Soul to the Almighty God, who gave it, and my mortal body be buried in Cape Coast as well as my funeral custom also be performed in Cape Coast. I direct and enjoin my executors hereinafter named not to allow any Asafu Company to attend my funeral custom and play its drum. I direct and enjoin my blood family to live 20 peacefully with my children and shun all quarrels and or litigations during and after my funeral custom. I further command and stress that my funeral custom should be conducted in Christian rites.

1.—Now touching such *wordly* properties wherewith it hath pleased God to bless me in this world, and any other property hereinafter specified that I may die possessed, I will and desire it to be apportioned amongst the following legatees hereinafter named, that is to say, principally and first of all.

30 2.—I give and bequeath my personal effects to my children born by me by my beloved wife Effuah Koom alias Mary Bekwi. I also bequeath my personal effects such as Native Wearing apparels to be shared equally by the following members of my family namely :—Kweku Ghan, Ekua Enyabie, Abba Atta, Kofie Ampa and their respective issues.

3.—My business by the name and style of JOHN INTSIFUL should be continued by my children namely : Harry Ata Intsiful and Samuel Tawiah Intsiful, the proceeds of such business are solely for themselves. My families have no right whatsoever in the said business.

4.—I give and bequeath to my beloved wife by name Effuah Koom alias Mary Bekwi my House No. 63 Ashanti Road, Cape Coast, for herself and her children’s children forever.

Exhibits.
 ———
 " P.1."
 Testator's
 Will.
 20th
 November,
 1944—
continued.

5.—I give and bequeath to my blood family, my house situate lying and being at No. 5 Intin Street, Cape Coast to live peacefully for ever.

6.—I give and bequeath my two (2) storey house situate lying and being at Sekondi, known as and called SEKONDI HOTEL, also House No. 47/11, Asafu Street, Sekondi, to my blood family and all my children, the said children mean the children by my beloved wife Effuah Koom alias Mary Bekwi and Effuah Asasi, Ekuah Otua and Kwami Otu. I strictly direct that the proceeds thereof should be shared as follows: One third to be deposited with the Bank of British West Africa Limited for repairs of the abovenamed properties, payment of ground rents and town rates; the balance two thirds to be shared in equal moiety between my children abovenamed and my family including Amba Nerba, Akosuah Nkruma and Ekua Nyamiadam. 10

7.—I direct that the rents accruing from my land situate lying and being at Tantri Road, Cape Coast, now leased by Messrs. Union Trading Company, Limited, Cape Coast, be paid over to my children by my wife Effuah Koom alias Mary Bekwi. I direct that my sons Harry Ata Intsiful and Samuel Tawiah Intsiful should endeavour to educate one or two of my blood grand children in one of the Secondary Schools operating in Cape Coast. 20

8.—I direct that the proceeds of my Concession should be paid over to my blood family and my children by my wife Effuah Koom alias Mary Bekwi in equal moiety.

9.—I direct that the proceeds of my shares in the Ashanti Gold Fields be paid over to my children by my wife Effuah Koom alias Mary Bekwi.

10.—I direct my Gold Guard be handed over to my son Harry Ata Intsiful.

11.—I give and bequeath to my beloved wife Effuah Koom alias Mary Bekwi on account of her valuable services rendered to me cash the sum of One hundred Pounds (£100). 30

12.—I give and bequeath to Kwamina Ammah Intsiful cash the sum of Seven Pounds (£7), to Kwamina Affarku the sum of Six pounds (£6), to C. W. Crentsil alias Kwami Kuranchi the sum of Five pounds (£5), to Aba Amuabah the sum of Five pounds (£5).

13.—I give and bequeath to my son Harry Ata Intsiful, cash the sum of Fifty pounds (£50), to my son Samuel Tawiah Intsiful the sum of Fifty pounds (£50), to my daughter Mrs. Elsie Savage the sum of Fifty pounds (£50), and to my daughter Mercy Intsiful the sum of Fifty pounds (£50). To John Wilson Intsiful the sum of Ten pounds (£10).

14.—I give and bequeath to my sister Ekua Enyibir cash the sum of Twenty-five pounds (£25), to my sister Abba Atta the sum of Twenty-five pounds (£25). To Kweku Ghan the sum of Twenty pounds (£20), to Ekua Baidua the sum of Ten pounds (£10). To Akosuah Nkrumah the sum of Ten pounds (£10), to Ambah Nerbah the sum of Ten pounds (£10). To the late Ekua Nyamiadam's issues the sum of Ten pounds (£10). To Kwami Otu the sum of Ten pounds (£10). To Ekua Otua the sum of Ten pounds (£10). To Effua Assasi the sum of Ten pounds (£10), and to J. S. Crentsil cash the sum of Ten pounds (£10).

Exhibits.
 "P.1."
 Testator's
 Will.
 20th
 November,
 1944—
continued.

10 15.—I direct that after payments to legatees, the residue of my estate, that is cash should be shared equally by my children namely, Harry Ata Intsiful and Samuel Tawiah Intsiful.

16.—I direct that all my household furnitures and crockeries should be shared amongst my children.

17.—I direct that my outstanding debts when collected should be shared between Harry Ata Intsiful and Samuel Tawiah Intsiful.

18.—I direct that the bequests hereinafter made by me should not be distributed until the expiration of six (6) months from the date of my death.

20 19.—I desire that my children should provide coffin and shroud and to pay a donation of Twenty guineas (£21), and that the Executors should carry it out, that is to say, the donation should be accepted.

20.—I nominate and appoint the following Gentlemen to be my executors of this my Will namely Harry Ata Intsiful, Samuel Tawiah Intsiful, Kweku Ghan and Kofi Ampah.

In Witness whereof, I have hereunto set my hand and Seal this 20th day of November, One thousand nine hundred and Forty-four (1944).

Signed sealed by the said John Intsiful, the Testator in the joint presence of us both who in his presence and in the presence of each other and at his request have hereunto subscribed our names as witnesses.

30

(Sgd.) JOHN INTSIFUL (L.S.).

Witness : (Sgd.) JAMES AMISSAH HAMMOND,
 Methodist Church, Cape Coast.

(Sgd.) JOSEPH BROOKMAN AMISSAH ARTHUR,
 4, Intin Lane, No. 6, Cape Coast.

“ P.4.”—Copy of Testator’s Will.

Exhibits.
 ———
 “ P.4.”
 Copy of
 Testator’s
 Will.
 20th
 November,
 1944.

Put in by Plaintiff in S. T. Intsiful v. H. C. Christian and marked
 Exhibit “ P.4.”

(Sgd.) E. JEURY BLANKSON.

16.4.51.

IN THE NAME OF GOD—AMEN.

THIS IS THE LAST WILL AND TESTAMENT of me JOHN INTSIFUL, Merchant of Cape Coast in the Gold Coast being of sound mind, and perfectly well knowing that it is the firm decree of the ALMIGHTY GOD, Maker of All Things, who had appointed UNTO all men to die and that sooner or later 10
 it must fall to my lot to die as well: I therefore Do Hereby revoke all former Wills and Testaments heretofore made by me and SOLEMNLY DECLARE this to be my LAST and only WILL and TESTAMENT. In the first place I commend and command my immortal Soul to the Almighty God who gave it, and my mortal body be buried in Cape Coast as well as my funeral custom also be performed in Cape Coast. I direct and enjoin my Executors hereinafter named not to allow any Asafu Company to attend my funeral custom and play its drum. I direct and enjoin my blood family to live peacefully with my children and shun all quarrels and or litigations during and after my funeral custom. I further command and 20
 stress that my funeral custom should be conducted in Christian rites.

1.—Now touching such worldly properties wherewith it hath pleased God to bless me in this world, and any other property hereinafter specified that I may die possessed, I will and desire it to be apportioned amongst the following legatees hereinafter named, that is to say principally and first of all.

2.—I give and bequeath my personal effects to my children born by me by my beloved wife Effuah Koom alias Mary Bekwii. I also bequeath my personal effects such as Native Wearing apparels to be shared equally by the following members of my family namely:—Kweku Ghan, Ekua 30
 Anyiaba, Abba Atta, Kofi Ampah and their respective issues.

3.—My business by the name and style of John Intsiful should be continued by my children namely: Harry Ata Intsiful and Samuel Tawiah Intsiful, the proceeds of such business are solely for themselves. My families have no right whatsoever in the said business.

4.—I give and bequeath to my beloved wife by name Effuah Koom alias Mary Bekwi my House No. 63 Ashanti Road, Cape Coast, for herself and her children’s children forever.

5.—I give and bequeath to my blood family, my House situate lying and being at No. 5 Intin Street, Cape Coast to live in peacefully for ever. 40

6.—I give and bequeath my two (2) storey house situate lying and being at Sekondi, known as and called SEKONDI HOTEL, also House No. 47/11, Asafu Street, Sekondi, to my blood family and all my children, the said children mean the children by my beloved wife Effuah Koom alias Mary Bekwi and Effuah Assasi, Ekua Otua and Kwami Otu. I strictly direct that the proceeds thereof should be shared as follows:— One third to be deposited with the Bank of British West Africa Limited for repairs of the abovenamed properties, payment of ground rents and town rates; the balance two thirds to be shared in equal moiety between
 10 my children abovenamed and my family including Amba Nerba Akosuah Nkruma and Ekua Nyamiadum.

7.—I direct that the rents accruing from my land situate lying and being at Tantri Road, Cape Coast, now leased by Messrs. Union Trading Company, Limited, Cape Coast, be paid over to my children by my wife Effuah Koom alias Mary Bekwi. I direct that my son Harry Ata Intsiful and Samuel Tawiah Intsiful should endeavour to educate one or two of my blood grand children in one of the Secondary Schools operating in Cape Coast.

8.—I direct that the proceeds of my Concession should be paid over
 20 to my blood Family and my children by my wife Effuah Koom alias Mary Bekwi in equal moiety.

9.—I direct that the proceeds of my shares in the Ashanti Gold Fields be paid over to my children by my wife Effuah Koom alias Mary Bekwi.

10.—I direct my Gold Guard be handed over to my son Harry Ata Intsiful.

11.—I give and bequeath to my beloved wife Effuah Koom alias Mary Bekwi on account of her valuable services rendered to me, cash the sum of One hundred pounds (£100).

12.—I give and bequeath to Kwamina Ammah Intsiful cash the sum
 30 of Seven pounds (£7), to Kwamina Affarku the sum of Six pounds (£6), to C. W. Crentsil alias Kwami Kuranchi the sum of Five pounds (£5), to Aba Amuabah the sum of Five pounds (£5).

13.—I give and bequeath to my son Harry Ata Intsiful cash the sum of Fifty pounds (£50), to my son Samuel Tawiah Intsiful the sum of Fifty pounds (£50). To my daughter Mrs. Elsie Savage the sum of Fifty pounds (£50), and to my daughter Mercy Intsiful the sum of Fifty pounds (£50). To John Wilson Intsiful the sum of Ten pounds (£10).

14.—I give and bequeath to my sister Ekua Enyibir cash the sum of Twenty-five pounds (£25), to my sister Aba Atta the sum of Twenty-five

Exhibits.
 " P.4."
 Copy of
 Testator's
 Will.
 20th
 November,
 1944—
continued.

Exhibits.
 P.4.
 Copy of
 Testator's
 Will.
 20th
 November,
 1944—
continued.

pounds (£25), To Kweku Ghan the sum of Twenty pounds (£20), to Kofie Ampah the sum of Twenty pounds (£20) to Ekua Baidua the sum of Ten pounds (£10) to Akosuah Nkrumah the sum of Ten pounds (£10) to Ambah Nerbah the sum of Ten pounds (£10). To the late Ekua Nyamiadum's issues the sum of Ten pounds. To Kwami Otu the sum of Ten pounds (£10). To Ekua Otua the sum of Ten pounds (£10). To Effua Assasi the sum of Ten pounds (£10), and to J. S. Crentsil cash the sum of Ten pounds (£10).

15.—I direct that after payments to legatees, the residue of my estate, that is cash should be shared equally by my children namely, Harry 10
 Ata Intsiful and Samuel Tawiah Intsiful.

16.—I direct that all my household furnitures and crockeries should be shared amongst my children.

17.—I direct that my outstanding debts when collected should be shared between Harry Ata Intsiful and Samuel Tawiah Intsiful.

18.—I direct that the bequests hereinafter made by me should not be distributed until the expiration of six (6) months from the date of my death.

19.—I desire that my children should provide coffin and shroud and to pay a donation of Twenty guineas (£21) and that the executors should 20
 carry it out, that is to say, the donation should be accepted.

20.—I nominate and appoint the following gentlemen to be my executors of this my Will namely:—Harry Ata Intsiful, Samuel Tawiah Intsiful, Kweku Ghan and Kofi Ampah.

In witness whereof I have hereunto set my hand and Seal this 20th day of November, One thousand nine hundred and forty four.

Signed sealed by the said John Intsiful, the Testator in the joint presence of us both who in his presence and in the presence of each other and at his request have hereunto subscribed our names as witnesses.

(Sgd.) JOHN INTSIFUL. (L.S.) 30

(Sgd.) JAMES AMISSAH HAMMOND,
 Methodist Minister, Cape Coast.

(Sgd.) JOSEPH BROOKMAN AMISSAH ARTHUR,
 4, Intin Lane No. 6, Cape Coast.

“ P.2.”—Power of Attorney.

Put in by Plaintiff in Samuel Tawiah Intsiful v. Henry Charles Christian and marked Exhibit “ P.2.”

Exhibits.
 “ P.2.”
 Power of
 Attorney.
 19th April,
 1948.

(Sgd.) E. JEURY BLANKSON.

12.3.51.

Gold Coast
 10/-
 Stamp Duties.

KNOW ALL MEN BY THESE PRESENTS that I JOHN INTSIFUL of
 10 ANOMABU and CAPE COAST in the Western Province of the Gold Coast
 Colony of West Africa MERCHANT now for sometime infirm and incapacitated
 by old age do hereby appoint my SON SAMUEL TAWIAH INTSIFUL also of
 Cape Coast aforesaid to be my true and lawful attorney for me and in my
 name to act for me during my said incapacity in respect of all my lands
 buildings and other properties situate in Cape Coast aforesaid and elsewhere
 on the Gold Coast aforesaid in all matters affecting the said lands buildings
 and other properties AND to institute prosecute and defend all actions,
 execute agreements leases deeds of conveyance or mortgage in respect
 thereof TO give sign take receive and execute receipts for all monies
 20 acquittances releases or other discharges in respect of the said premises to
 all and or every person AND also to adjust settle compound and compromise
 all matters accounts reckonings transactions and disputes and things
 whatsoever relating to the said premises AND GENERALLY to do execute
 and perform all or any other act deed matter or thing whatsoever relative
 to the said premises as fully as possible and to all intents and purposes
 whatsoever as I might or could do in my own person in case these presents
 had not been made and one or more substitute or substitutes under him to
 appoint and at his pleasure to remove and displace and another or others
 to appoint giving and hereby granting unto my said ATTORNEY and his
 30 SUBSTITUTE or SUBSTITUTES my full POWER AND AUTHORITY in the premises
 and HEREBY allowing ratifying and confirming and agreeing to ratify and
 confirm all and whatsoever my said ATTORNEY and his substitute or
 substitutes shall lawfully do or cause to be done in or about the premises
 by virtue of these presents. I hereby ratify and confirm all acts and deeds
 done or purported to have been done by my said true and lawful Attorney
 in or about the said premises prior to the date of the execution by me of
 these presents.

I declare that this POWER OF ATTORNEY shall remain and continue in
 force until notice of my death or other revocation hereof shall be actually
 40 received by my said Attorney SAMUEL TAWIAH INTSIFUL.

Exhibits. IN WITNESS WHEREOF I have hereunto set my hand and seal this
" P.2." 19th day of April, One thousand Nine hundred and Forty-eight.

Power of Attorney.
19th April, 1948—
continued.

SIGNED by making his mark Sealed } His
and Delivered by the said JOHN } (Mkd.) JOHN INTSIFUL X
INTSIFUL in the presence of } mark

(L.S.) and R. T. P.
signed by making

Signed by making his mark sealed }
and delivered by the said John }
Intsiful in the presence of :— }

10

(Sgd.) GADDIEL R. ACQUAAH.

(Sgd.) J. B. AMISSAH ARTHUR.

Witness to mark :

(Sgd.) J. B. AMISSAH ARTHUR.

CERTIFICATE.

I GADDIEL ROBERT ACQUAAH, Superintendent Minister of the Cape Coast Circuit of the Methodist Church, Gold Coast, do hereby certify that I was present on the 19th day of April, 1948 when John Intsiful, a member of the Church at Cape Coast duly executed the foregoing power of attorney by making his mark thereto after the contents thereof had been read over to him and he had signified his approval thereof, he by reason of old age and physical infirmity, not being able to write though literate. 20

Dated the 19th day of April, 1948.

(Sgd.) GADDIEL R. ACQUAAH,
Supt. Minister,
Methodist Church,
Cape Coast.

Witnesses to Signature :

(Sgd.) KWESI BENJAMIN ELLIS.

(Sgd.) ? ? ?

30

In accordance with Section 18 of Cap 179 I certify that in the opinion of the Commissioner of Stamps this Instrument is chargeable with a Duty of Ten Shillings.

Commissioner of Stamps Office.
Cape Coast 26.4.1948.

(Sgd.) JOHN OTOO,
Commissioner of Stamps.

“ P.3.”—Statement by J. M. Arthur.

Put in by Plaintiff in S. T. Intsiful *v.* H. C. Christian and marked Exhibit “ P.3.”

(Sgd.) E. JEURY BLANKSON.

16.4.51.

In re JOHN INTSIFUL, late of Cape Coast, Deceased.

Exhibits.

“ P.3.”
Statement
by J. M.
Arthur.
25th
October,
1950.

My name is JOHN MICHAEL ARTHUR. I live in Cape Coast, and am Prince and Law Clerk.

10 I remember, in or about the year 1944, I was called for by John Intsiful, now deceased, when I went he took me in his bedroom and shut the door of the room. He told me that he wanted to prepare his last Will and Testament and that he needed my assistance. I said I would give him every possible assistance. He then forbade me not to tell anybody about.

20 He then gave me a paper and pencil and started dictating to me in English language which I jotted down everything. This took us about 45 minutes. I then repaired to my house and typed a draft copy of it. The following day in the morning I went to Old Intsiful with the draft typed copy and gave it to him. He took his looking-glass and perused it, and made certain corrections and additions, and gave it to me to make a final copy of it. I went home and did it and brought the final copy as well as the draft copy of “ His Last Will and Testament ” and handed them to him. Old Intsiful asked me for my remuneration but I refused to charge him anything, he then being my father and a neighbour. Some few weeks after I received an envelope and on opening it found a handsome gift of 10/6d. That is all I know in this matter.

Dated at Cape Coast this 25th day of October, 1950.

(Sgd.) J. MICHAEL ARTHUR.

In the Privy Council.

No. 7 of 1953.

ON APPEAL FROM THE WEST AFRICAN COURT
OF APPEAL

(GOLD COAST SESSION).

IN THE MATTER OF JOHN INTSIFUL (deceased).

BETWEEN

HENRY CHARLES CHRISTIAN
otherwise called KOFI AMPAH
(Defendant) *Appellant*

AND

SAMUEL TAWIAH INTSIFUL
(Plaintiff) *Respondent.*

RECORD OF PROCEEDINGS

BURCHELLS,

68 Victoria Street,

London, S.W.1,

Solicitors for the Appellant.

A. L. BRYDEN & WILLIAMS,

53 Victoria Street,

London, S.W.1,

Solicitors for the Respondent.