

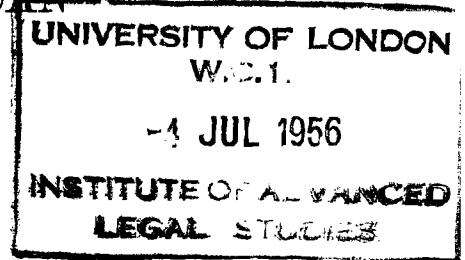
(13), 1955

In the Privy Council.

No. 23 of 1953.

- 43538

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



BETWEEN

THE STOOL OF ADANSI represented by NANA BONBRA
ADJEI II (Plaintiff) Appellant

AND

THE STOOL OF BRENASE represented by NANA
AMOABAN OKO II (Defendant) Respondent.

RECORD OF PROCEEDINGS

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EXHIBITS.

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In the Privy Council.

No. 23 of 1953.

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

BETWEEN

THE STOOL OF ADANSI represented by NANA BONBRA
ADJEI II (Plaintiff) *Appellant*
and

THE STOOL OF BRENASE represented by NANA
AMOABAN OKO II (Defendant) *Respondent.*

RECORD OF PROCEEDINGS

No. 1.

Statement of Claim.

Filed 21.6.48
(Intd.) H. K. C.,
for R. D. C., Kumasi.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

IN THE SUPREME COURT OF THE GOLD COAST DIVISIONAL COURT,
ASHANTI, KUMASI.

No. 1.
Statement
of Claim.
19th June
1948.

ADANSIHENE represented by NANA KWAKU NKANSAH II ... *Plaintiff*

v.

10 BRENASIHENE represented by AMOABAN OKO II *Defendant.*

STATEMENT OF CLAIM.

1.—The Plaintiff's claim is to establish title to the land bounded on the North by the Southern boundary of the Kokofu Stool lands from the point where it is intersected by line of longitude 1° 20' West to the point where it meets the Anum River thence bounded on or towards the East by the right bank of the River Anum to its confluence with the River

In the
Supreme
Court
(Divisional
Court,
Kumasi).

No. 1.
Statement
of Claim.
19th June
1948—
continued.

Prah thence bounded on the East by the right bank of the River Prah to the point where it is crossed by the line of latitude 6° 05' North thence bounded on the South by the said line of latitude 6° 05' North to its intersection with line of longitude 1° 20' West thence bounded on the West by the said line of longitude 1° 20' West to its intersection with the said Southern Boundary of the Kokofu Stool lands.

2.—The Plaintiff says that his predecessor in title Kwa Ntwi Barima was placed in possession of (inter alia) the land the subject matter of this action by the then Asantehene Nana Osei Yaw and that the said land thenceforth remained in the possession of the Plaintiff's Stool without 10 interruption until the present time.

Dated at Kumasi this nineteenth day of June 1948.

(Sgd.) J. J. PEELE & CO.,
Plaintiff's Solicitors.

To the Registrar, Divisional Court,
Kumasi, and to the above-named
Defendant, Brenasihene, represented
by Amoaban Oko II, his Agent or
Solicitor, Mr. W. Esuman Gwira
Sekyi, Cape Coast.

20

CERTIFICATE OF SERVICE.

Upon the 1st day of July 1948 a copy of this Statement of Claim was served by me on Brenasehene Amoaban Oko. This I did by serving a copy of this Statement of Claim on the said Brenasehene personally at Brenase.

(Sgd.) N. A. BADGER,
Bailiff.

No. 2.
Statement
of Defence.
9th July
1948.

No. 2. Statement of Defence.

Filed 12.7.48
(Intd.) H. C.,
for R. D. C., Kumasi.

30

IN THE SUPREME COURT OF THE GOLD COAST LAND COURT,
ASHANTI, KUMASI.

ADANSIHENE represented by NANA KWAKU NKANSAH II ... *Plaintiff*
v.
BRENASIHENE represented by AMOABAN OKO II ... *Defendant.*

STATEMENT OF DEFENCE.

Delivered this day of July, 1948.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

No. 2.
Statement
of Defence.
9th July
1948—
continued.

1.—The Defendant is the Ohene of Brenasi, a Division of the State of Akim Busumi in the Colony under the Omanhene of that State and the Plaintiff is Omanhene of the State of Adansi in Ashanti.

2.—The Defendant's ancestor Yaw Frempon migrated from Kokofu in Ashanti with his relatives and founded the village of Brenasi, having cleared the virgin forest over the land in dispute up to the boundaries of the said land, namely on the North by land belonging to the Ohene of Murenem in the Akyim Abuakwa State, on the South by land belonging to the Ohene of Otweresu in the Akyim Abuakwa State, on the East by the Rivers Prah and Anu and on the West by land belonging to the Ohene of Bodwisango in Adansi aforesaid as shown in the Plan filed herewith.

3.—Within these boundaries, the Defendant's said ancestor founded many villages, some of which are Nsese, Huntoadu, Framasi, Supome, Asaa, Akukobonumasu, Nteteim and Busumpimasu.

4.—Of all animals killed by hunters within the said boundaries portion was, according to custom, sent to Yaw Frempon and his successors; all persons who tapped rubber within the said boundaries gave one-third share of the rubber to the said Yaw Frempon's immediate successor Nana Ebento.

5.—Nana Ebento aforesaid was succeeded on the Brenase Stool by Andoh, who was succeeded in his turn by Kobina Eiffa, who was succeeded in his turn by the Defendant.

6.—The said Kobina Eiffa granted licences to over 60 persons who have farms on the said land in dispute under the ebusa system, paying their ebusa regularly to the occupant of the Brenase Stool.

7.—The Defendant has two large cocoa farms on the land in dispute and his labourers work within the said farms and over 30 members of his family have cocoa farms on the said land.

8.—The Stool of Brenase owned, and without interference from anybody worked the ferry that was over the River Prah at Nseseh, and collected tolls from those ferried up to the time Government took over the said ferry about 25 years ago.

9.—A portion of the land originally owned by the Defendant's Stool was acquired by the Government from the Stool of Brenase the sum of £75 having been paid by the Government to the said Stool in respect of the said acquisition.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

10.—The Defendant denies paragraph 2 of Plaintiff's Statement of Claim and avers that the Plaintiff has never been in possession of the land subject matter in dispute.

Dated at Cape Coast this 9th day of July, 1948.

No. 2.
Statement
of Defence.
9th July
1948—
continued.

AMOABEN OKO II,
Representative of Brenasihene.

His
X
Mark

To the Registrar, Land Court,
Kumasi, and to the above-named
Plaintiff, Adansihene, represented
by Nana Kwaku Nkansah II.,
Fomena.

10

Witness to mark :
Cape Coast.

CERTIFICATE OF SERVICE.

UPON the 12th day of July, 1948, a copy of this Statement of Defence was served by me on J. J. Peele & Co., Solicitors for Plaintiff herein through their Chief Clerk Robert Arthur personally at Kumasi.

(Sgd.) N. HAMMOND,
Bailiff.
12.7.48.

20

No. 3.
Writ of
Summons.
— October
1949.

No. 3.
Writ of Summons.

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI,
DIVISIONAL COURT HOLDEN AT KUMASI.

Suit No. 233/1949.

Between

THE STOOL OF ADANSI represented by NANA BONSA ADJEI II *Plaintiff*
and

THE STOOL OF BRENASE represented by NANA AMOABAN OKO II
of Brenase *Defendant.*

30

To THE STOOL OF BRENASE, represented by
NANA AMOABAN OKO II of Brenase.

YOU ARE HEREBY COMMANDED in His Majesty's name to
attend before this Court at Kumasi on Saturday the 5th day of November

1949, at 8.30 a.m. o'clock in the forenoon, then and there to answer a Suit by The Stool of Adansi represented by Nana Bonsra Adjei II against you.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

No. 3.
Writ of
Summons.
— October
1949—
continued.

- 10 1. The Plaintiff's claim is to establish title to the land bounded on the North by the Southern boundary of the Kokofu Stool lands from the point where it is intersected by line of longitude 1 20 West to the point where it meets the Anum River thence bounded on or towards the East by the right bank of the River Anum to its confluence with the River Prah thence bounded on the East by the right bank of the River Prah to the point where it is crossed by the line of latitude 6° 05' North thence bounded on the South by the said line of latitude 6 05 North to its intersection with line of longitude 1 20 West thence bounded on the West by the said line of longitude 1° 20' West to its intersection with the said Southern Boundary of the Kokofu Stool lands.
- 20 2. The Plaintiff says that his predecessor in title Kwa Ntwi Barima was placed in possession of (inter alia) the land the subject matter of this action by the then Asantehene Nana Osei Yaw and that the said land thenceforth remained in the possession of the Plaintiff's Stool without interruption until the present time.

Issued at Kumasi the day of October 1949.

Sum claimed					Judicial Relief
Court fees	...	...	...	...	£3 0 0
Bailiff's fees	...	...	...	...	0 1 0
					<hr/>
Total	...	...	...	...	£3 1 0
					<hr/> <hr/>

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

CERTIFICATE OF SERVICE BY BAILIFF.

30 UPON the 2nd day of November, 1949 this Summons was served by me on Nana Amoaban Oko II, Defendant. This I did by serving a copy of the above Summons on the said Defendant personally at Brenase.

(Sgd.) M. A. NUNOO,
Bailiff.

No. 4.
Court Notes.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

5.11.49.

IN THE DIVISIONAL COURT, KUMASI, Saturday the 5th day of November,
1949, before JACKSON, J.

No. 4.
Court
Notes.
5th
November
1949.

233/49.

THE STOOL OF ADANSI represented by NANA BONSA ADJEI II
v.

THE STOOL OF BRENASE represented by NANA AMOABAN OKO II.

ASAFU-ADJAYE, MEAD and ATTOH for Plaintiff Stool.
Defendant present.

10

ASAFU-ADJAYE : Ask that plan dated 24th December 1947 and which
was prepared by Defendants in a case instituted by them in the Divisional
Court at Cape Coast and which was struck out for want of jurisdiction in
the Colony. Ask that pleadings filed in this Court which was pending in
the Court of Commissioner, Northern Territories and which by operation
of law became pending in this Court be accepted and adopted as pleadings
in this suit.

DEFENDANT : I wish to consult my lawyer.

Trial at Kumasi on 15.11.49.

(Sgd.) J. JACKSON,
Judge.

20

No. 5.
Court
Notes.
15th
November
1949.

No. 5.
Court Notes.

15.11.49.

IN THE DIVISIONAL COURT, KUMASI, Tuesday the 15th day of November,
1949, before JACKSON, J.

233/49.

THE STOOL OF ADANSI

v.

THE STOOL OF BRENASE.

30

MEAD for Plaintiff. (ASAFU-ADJAYE not present also briefed) and ATTOH.
CRABBE for Defendant.

Claim is as per Writ of Summons.

CRABBE : We adopt the pleadings formerly filed.

COURT : Pleadings before me are Statement of Claim dated 19.6.48 and Statement of Defence dated 9.7.48.

MEAD : For the purpose of identifying only the area in dispute we adopt the plan filed by Defendant and dated 24.12.47—admitted by consent and marked as Exhibit No. 1.

MEAD opens :

10 Mr. Selby is a witness—but unless Court requires him further ask that he may be released.

COURT : There does appear to me to be an overlap of the land situate in the northern part of this area with land which was the subject of another action, in which I gave judgment then for the Adansi Stool and in which the Stool of Akim-Abuakwa was the then Plaintiff. It also appears in my docket that on the 15.9.48 a letter was received from Mr. Sackeyfio, Solicitor for the Defendant, protesting at this encroachment by survey on his client's land.

It is desirable that Mr. Selby indicates on plan (Exhibit 1) in this action the extent of this overlap.

20 Otherwise apart from any inspection of the land by me, at which his attendance would be extremely helpful and welcome—I do excuse his attendance.

COURT : I would also invite attention to the fact that this claim for title has been before the Courts in one way or another since 1937.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

—
No. 5.
Court
Notes.
15th
November
1949—
continued.

PLAINTIFF'S EVIDENCE.

No. 6.

Kwasi Addai.

KWASI ADDAI (m) s.s. in Twi : 1ST WITNESS FOR PLAINTIFF :

EXAMINATION-IN-CHIEF :

30 Am Abadiacherihene to the Adansi Stool. I have held this office since about 5 years. I am seventy years old. Have been connected with Adansi Stool affairs since my infancy as I was working with my Elders. Anybody who was sent to the land I would accompany the messenger. The Ohene would appoint me to do it. The Ohenes always come from my family. I am the eldest of the "royals."

Plaintiff's
Evidence.

—
No. 6.
Kwasi
Addai.
15th
November
1949.
Examina-
tion.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Plaintiff's
Evidence.

No. 6.
Kwasi
Addai.
15th
November
1949.
Examina-
tion—
continued.

I know the land which my Stool is claiming in this case. I did not accompany Mr. Selby—but I know the line which he cut and that is the land which we are claiming.

Q. Do you know how long the land this land has belonged to Adansi Stool?—A. At that time I was not born.

Q. Do you know how Adansi Stool came into possession of the land?—A. My ancestor told me the land belonged to the Adansi Stool.

Q. Do you know how long before you were born?—A. I was told by my Elders that the Adansihene got possession of the land ever since the time of Osei Yaw. 10

Q. Who was Osei Yaw?—A. The then Asantehene.

Q. How long ago was he Asantehene?—A. I cannot tell—I was not born at the time.

Q. Who was the Adansihene that you first knew?—A. Kwa Antwi Barimah.

His sister was called Kwa Ntwiaa. She was Queen Mother.

Q. Can you remember any dispute between Adansi and Brenasi regarding their lands before the case was taken in the Asantehene's Court?—A. Yes, I know. About 30 years ago.

I attended a meeting at Brenase at which the then District 20 Commissioner, Obuasi called Armitage and the then District Commissioner at Cape Coast was also present. The Ohene of Akim-Swedru and the Ohene of Adansi were also present. Armitage told Adansihene that he was going to Brenase and that he should accompany him. I went because the Ohene of Adansi was my uncle and it was my duty to accompany him as we were going to discuss boundaries. Any "royal" goes on such an occasion as later one may be put on the Stool and one must get acquainted with these matters.

Q. Was the Brenase Stool represented at the meeting?—A. Kwabena Fah was the Brenasehene and was present. 30

Q. As result of that meeting were any documents drawn up?—A. Yes.

Q. Were you present when they were signed?—A. Yes, I was present.

Q. Did Kwabena Fah sign?—A. He signed.

IN REPLY TO COURT :

Q. Did Adansihene also sign?—A. He did.

EXAMINED :

Q. What was Adansihene's name then?—A. Kobina Foli.

Q. Before that meeting were there any Brenase people on the land?—A. No. 40

Q. After the meeting did Brenase people come on to the land at any time?—A. When Nana Foli was being destooled they came there.

Q. How long after this meeting was it that Kobina Foli was destooled?—A. He was destooled in 1931.

Q. After being destooled how long was it before a new Adansihene was enstooled?—A. About 3 years after.

- Q.* During that period who managed the affairs of the Stool?—
A. Nobody—there were troubles.
- Q.* Who was made the next Adansihene?—*A.* Kwasi Tabi, my nephew.
- Q.* You remember the case brought in the Asantehene's Court regarding this Court?—*A.* Yes, I came and gave evidence.
- Q.* That action started 12 years ago?—*A.* Yes.
- Q.* Why was that action brought?—*A.* Brenasehene swore an oath that the land belonged to him.
- Q.* You said Brenase people were coming on the land about time
 10 Kobina Foli was being destooled?—*A.* Yes.
- Q.* At time of action in Asantehene's Court were they still on the land?—*A.* Yes.
- Q.* Does your Stool collect any tribute from these Brenase people?—
A. When case was still going on and we went to collect taxes—they said the case was still on and that they would not pay.
- Q.* The small villages on this land e.g. Ofuasi—do you know who is in charge of that village?—*A.* Ofuasihene approached Adansihene for land to cultivate.
- I was alive when they came first to this village.
- 20 *Q.* Whom does Ofuasihene serve?—*A.* Swedru-hene.
- Q.* Does he pay any tribute to Adansi Stool?—*A.* Yes every year. He paid in money and we gave him a receipt.
- Q.* And village of Nsese? Who was in charge?—*A.* Kofi Osei—the Adansihene's grandson.
- IN REPLY TO COURT :
- Q.* When was Nsese village first founded on the Ashanti side of the Prah River?—*A.* Before I was born.
- Q.* At your earliest recollection how many houses were then there i.e. on this side of the Prah?—*A.* About 6 houses.
- 30 EXAMINED :—
- I know the village of Nsese on the other side of the Prah.
- Q.* To whom does that belong?—*A.* Brenasehene.
- Q.* On this land in dispute is there any timber cutting going on?—
A. Timber was cut. But not now—Messrs. Grant & Co. cut some. Grant paid the money to the Adansihene.
- Q.* How long ago was that?—*A.* About 12 years or may be 15 years ago.
- Q.* You know village called Kyenkenase?—*A.* Yes. Kofi Osei is in charge.
- 40 Yes the same as who is in charge of Nsese.
 He goes up and down.
 Nsese is the big village. Kofi Osei goes there to inspect—where he has placed people to cultivate.
- Q.* How long has Kyenkenase been there?—*A.* At first there was only a cottage and people went there for snails—they came from Adansi. There are several people there now.

In the
 Supreme
 Court
 (Divisional
 Court,
 Kumasi).

Plaintiff's
 Evidence.

No. 6.
 Kwasi
 Addai.
 15th
 November
 1949.
 Examina-
 tion—
continued.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Plaintiff's
Evidence.

No. 6.
Kwasi
Addai.
15th
November
1949.
Examina-
tion—
continued.

IN REPLY TO COURT :

Q. Are they Brenase people or Adansi ?—*A.* Some of them are Ofuasi people who make farm there and pay "ebusa" in money and receipts are issued.

EXAMINED :

Yes I know Huntoadu.

It is a village surrounded by bamboos.

There is no one living there now.

Q. How long is it since anyone lived there ?—*A.* Since about 20 years.

Only hunters used to go there and hunt.

There is farming now—so they do not hunt.

Q. When people lived there were they Adansi or Brenase ?—*A.* They were people of Adansi.

I know Framasi.

At one place you find bamboos. One is a village surrounded by bamboos and is called Framasi. The other is also called Framasi.

Framasi is on the Asaa River.

One Framasi is situate on one side of the stream and the other one is on the other side of the Asaa.

Q. Are there people living in both places ?—*A.* Yes—people of Adansi. 20

IN REPLY TO COURT :

Framasi is about one mile from the Asaa River.

EXAMINED :

Q. When did Yaw Kuramua first settle on the land ?—*A.* He came from Brenase. I've never been there. It was when I got to the land that I heard he had succeeded Kobi—a linguist to Brenasehene. I've never been to the place where he lives.

Q. Do you know how he came to make his farm there?—*A.* I don't know.

IN REPLY TO COURT :

Q. Since hearing this in Court have you gone to have a look at this place ?—*A.* No. 30

EXAMINED :

I know village called Supom.

It is not on any river.

It is far from the Prah. It would be about 3 miles.

I have been to Supom.

Yes people are living there now.

There is another Supom which is close to the Prah.

People are also living there.

Q. How far is the first Supom from the Asaa River ?—*A.* About 40 1½ miles.

Q. How far from Framasi is that Supom ?—*A.* About 2 miles.

Yes I know the village called Ntettim.
People of Adansi live there.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

IN REPLY TO COURT :

Q. Why was it called Ntettim ?—A. When they first settled at the place they found ants which got into their food. There were 3 trees infested with ants.

Plaintiff's
Evidence.

EXAMINED :

The village began before my life time.
Adansi people live there today.

No. 6.
Kwasi
Addai.
15th
November
1949.

10 Q. How far is that from the River Asaa ?—A. It is far.
I cannot say how far but it is very far.

Examina-
tion—
continued.

IN REPLY TO COURT :

I know of only one Ntettim.

EXAMINED :

I know Hiama Nkyin.
You find it when you go from Nsese to Kyenkyenase.
Q. Who lives there ?—A. People of Adansi. Kofi Sei looks after them.
Some of them come from somewhere and pay " ebusa " to Adansihene.

CROSS-EXAMINED BY CRABBE :

20 Q. I suppose you have been told the whole history of your State ?—
A. Yes.

Cross-exam-
ination.

Q. Who was the one who told you that ?—A. Where I went and what I knew I have spoken of.

Yes I went to the place before I assumed my present position.
My predecessor told me some of the history.

Q. Can you give the names of some of them who gave you the history ?
—A. My grandfather Kwabena Foli then Adansihene told me.

Q. Did they mention to you name of Yaw Frimpong ?—A. The Ohene only told me names of Adansi people.

30 Q. Has that name ever been mentioned to you ?—A. No.

Q. Were you also told that people from Kokofu came and settled on this land ?—A. If any man from Kokofu settled there he pays tax. Some people from Kokofu settled there and were asked by the Ohene to go and take snails.

Q. How long ago was that ?—A. A year after the Yaa Asantewah War.

IN REPLY TO COURT :

Q. How old were you at the time of that war ?—A. I fought. I even had a rifle and I even had 2 wives.

CROSS-EXAMINED :

40 Q. Were you told of the person who led them to the land ?—A. I was not told.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Plaintiff's
Evidence.

No. 6.

Kwasi
Addai.
15th
November
1949.
Cross-exam-
ination—
continued.

Q. If I said it was Yaw Frimpong who brought them you would not dispute it?—A. All that I know is that they settled on the land and that we were asked to take snails from them.

Q. And Yaw Frimpong founded villages of Nsese?—A. I don't know that.

Q. And Huntoadu?—A. It is Adansihene's village.

Q. Also Framasi?—A. No.

Q. Who first founded Framasi?—A. Their names are in the papers—but I cannot remember it.

IN REPLY TO COURT :

Q. Are you remembering your history from these papers or what your grandfathers told you?—A. From both—but I cannot read. 10

CROSS-EXAMINED :

Q. Who founded Supom—the one alongside the Prah?—A. Tia Kosua. His nephew is Kofi Sei who lives at Nsese.

Q. You know that Tia Kosua comes from Brenase?—A. No—he comes from Adansi. He is dead.

He was Adansihene's Asafuhene.

Asaa is a River.

Q. Who founded Ntettim?—A. Kwadjo Beng. 20

Q. Who founded Busumpimasu?—A. Kotei—an Adansi man now dead.

Founded before I was born.

When I first saw him (Kotei) he was very old.

Q. Who is now in charge of that village?—A. Kwaku Asare—a nephew of Kotei.

Q. Is that his only village?—A. Yes.

Q. Have you other people looking after the other villages?—A. Yes.

Q. You told us of a meeting at Brenase when District Commissioners were present. What matters were discussed at that meeting?—A. The Government made us pay £75 to the Chiefs of Brenase and Akim-Swedruhene. We also paid £50 to Brenasehene. And so the Whitemen made us understand that we had bought the boundaries of the River Pra. 30

Brenasehene told the meeting that from that time he had nothing further to do with this side of the river Prah i.e. on the Adansi side and that if any of his subjects were to cross the River he would first inform the Adansihene. After that Government placed 2 people there so that they could cross people by canoe from one side of the river to the other free of charge. After some time the Brenase people came to our side, they swore an oath saying the land was theirs and that brought this case. 40

Yes, the agreement was put down in writing.

Q. Were you given the receipt for the £50 which you said you paid?—A. The Government paid the £50—it was not we who paid.

Q. No money was paid to Adansi at all?—A. No.

IN REPLY TO COURT :

Q. Did Adansi pay anything to Brenase?—A. Yes, we paid £75 to them. Government told us to pay. I was present when the £75 was paid

It was paid in cash. Armitage and District Commissioner, Cape Coast said that when we paid the money he would give it to Akim-Swedru and I saw the two District Commissioners standing together and they gave the money to their Clerk to give to Akim-Swedru.

In the Supreme Court (Divisional Court, Kumasi).

Q. How many days were you at that meeting ?—A. We went one day —met the next and then left.

Any Chief when he is himself has money with him.

Plaintiff's Evidence.

CROSS-EXAMINED :

10 Q. Was the land ever acquired by Government ?—A. No—it was not —it was only a question of boundary when Government asked us to show the boundary of our land.

No. 6.

Kwasi Addai. 15th November 1949.

IN REPLY TO COURT :

Q. Before the District Commissioners met had there been any dispute between Adansi and Brenase ?—A. Yes—we had a man ferrying on the River. The people on the other side said they would buy a canoe and ferry. We said we would not agree. They would not agree. We each informed our District Commissioner and so it was decided that we should all meet at Brenase.

Cross-examination—continued.

CROSS-EXAMINED :

20 I know the Anu River.

Q. I suppose the money was paid in respect of that portion of the land ?—A. No—that part had belonged to us for a long time.

I was speaking of the lands near the ferry at Nsese.

Q. There are people from Brenase living now on the land in dispute ?—A. Yes—at time we were destooling Nana Foli.

Q. When there is no occupant of the Stool there is a Caretaker for the lands ?—A. Yes—a caretaker will be appointed but in this case when the destoolment was on we divided and so all of us came to Kumasi and litigated.

IN REPLY TO COURT :

30 The Adansihene lives at Fomena. Fomena is 30 or 40 miles from this land.

CROSS-EXAMINED :

Formerly there was no State Treasury. We used to send one of our subjects to Nsese to collect.

Q. When did you last collect ?—A. About 3 years ago.

Yes—there will be a record of the payment in the Treasury Books.

Q. Who was responsible for collection of tribute at Yaw Kuramua before this action started ?—A. Adansihene employed a Clerk to collect.

40 Q. I say that man pays tribute to Brenasehene ?—A. I don't know. If an animal is killed—a big animal—the owner of the land is given one of the legs.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Plaintiff's
Evidence.

No. 6.
Kwasi
Addai.
15th
November
1949.
Cross-exam-
ination—
continued.

Q. And what happens to the produce of the farm?—*A.* If plantains we take nothing. Formerly we took nothing—but since the cultivation of cocoa the owner of the land will just charge you say £10 and you will cultivate it.

IN REPLY TO COURT :

We have a system called “ebusa.” It existed before the days of cocoa and when we were tapping rubber.

We took nothing on account of farming for foodstuffs only.

“Ebusa” applied to cocoa and coffee cultivation.

When we tapped rubber we charged “ebusa.”

If he gave me a small “rum” I would give him leave to farm and charge him no annual payment—but at the end of the year he might dash me two fowls or so—but it was not obligatory.

The receipts I spoke of were in respect of cocoa and crops like that.

10

CROSS-EXAMINED :

Q. Did you know that Kobina Efa granted leases to many people?—

A. It was Kobina Efa with whom we defined the boundary.

When we defined the boundary—he had not leased the land to anyone.

IN REPLY TO COURT :

Q. Did you at any time see a stranger on the land and ask him why he was there he would reply that he had a lease from Kobina Efa?—

A. I do not go to the land to collect tolls so I would not know.

Q. Did you often visit these villages?—*A.* Yes—some of them.

NO RE-EXAMINATION :

No. 7.
Kofi Sei.
15th
November
1949.
Examina-
tion.

No. 7.
Kofi Sei.

**KOFI SEI (m) s.s. in Twi : 2ND WITNESS FOR PLAINTIFF :
EXAMINATION-IN-CHIEF :**

Live at Nsese. I am in charge of that village. I serve the Bonsra Stool at Fomena-Adansi i.e. the Stool of the Plaintiff.

30

Q. How long have you lived at Nsese?—*A.* About 15 years.

Q. How long has village of Nsese been in existence?—*A.* I cannot tell.

It was there before I was born.

IN REPLY TO COURT :

I was born at Fomena.

EXAMINED :

Kwasi Addai (last Witness) is older than me—it might be ten years older.

Q. When you went to Nsese 15 years ago who was in charge ?—
A. My uncle Tia Kosua was in charge.

He died about 6 years ago. Litigation had started before he died.

I took charge of the village about 15 years ago.

I took charge of it before my uncle died.

10 Q. Why was that ?—A. Because he was sick and he asked me to take charge.

My uncle was then living at Fomena.

Q. Are there any Brenase people living at Nsese ?—A. Where I am there are none—but they are on the other side of the river.

Q. Do you know of any Brenase in the neighbourhood of Nsese ?

—A. There are none living on my side of the river near Nsese.

I know Kyenkyenasi.

My uncle gave it to a man called Kwadjo Furdjuor.

Kwadjo Fordjuor is an Ofuasi man who came to beg my uncle.

20 Q. Have you anything to do with Kyenkyenasi ?—A. Yes—when cocoa is harvested there I collect money from there and take it to the Ohene.

Q. Are there any Brenase people in that neighbourhood ?—A. No—only Ofuasi people.

Ofuasi and Brenase people are different.

We collect money from the Ofuasi people in respect of the land and take it to the Adansihene.

This money is collected each year.

I know Hياما Nkyin. I collect tolls from that place.

I collect them from Ofuasi people—not Brenase people.

I also collect from Amokom higher up the river.

30 There are people living at Amokom—but they have shifted a bit from where they were by the river as they were getting flooded.

There are no Brenase people there.

I also collect from village called Supom—that is up the Prah—on my side and is on the banks of the river.

Even today people are living there.

Q. What is state of village. Are they good houses ?—A. There are no substantial buildings. They are farmers and are strangers. They work there.

40 Q. Among the people there are there Brenase people ?—A. No—there is no Brenase man.

Q. Do you collect from any other place ?—A. Yes from Framasi.

Q. How far from the Prah is Framasi ?—A. About 4 miles.

Q. And how far from the Asaa River ?—A. They draw water from the Asaa and the houses of Framasi are not even half a mile from the river.

Q. Are there any Brenase people at Framasi ?—A. No.

Q. Do you know a Kramo Yesifu—a farmer ?—A. Yes he has his village more than a mile from Framasi. Kramo Yesifu is a man who came from Brenase to settle there.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Plaintiff's
Evidence.

No. 7.
Kofi Sei.
15th
November
1949.
Examina-
tion—
continued.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Plaintiff's
Evidence.

No. 7.
Kofi Sei.
15th
November
1949.
Examina-
tion—
continued.

Q. Does he pay any money from his farm?—A. No—he does not pay anything.

Q. Do you know why he does not pay anything?—A. Because of this litigation when ever we approached him for the money he said he would not pay.

Q. How long has he had this farm?—A. About 6 years now.

Q. Kramo Yesifu is a name not of the south but of the north?—
A. He was Twi born but a member of Mohammedan faith.

Q. Anywhere else where you collect?—A. Yes at Asasu.

Q. Do you know a man there called Kwasi Fah farming near Asasu? 10
—A. There are some Akwapims living in that area—but I do not know that name.

I collect money from the Akwapims.

I went there this year.

IN REPLY TO COURT :

Q. When did Akwapims come there first?—A. About 10 years ago—they came to ask for the land—but they did not cultivate the land at once.

EXAMINED :

They started cultivating about 8 years ago.

They are growing cocoa. 20

A certain part of the land has been given to Egya Yebi an Akwapim man.

IN REPLY TO COURT :

He first obtained permission to cultivate about 10 years ago. He started to plant about 8 years ago.

EXAMINED :

Q. Do you know a farmer called Yaw Kuramua?—A. Yes, I know him. It was during the litigation that he came on the land and I told him I would not allow him.

He built a house but it is broken now. He came from Brenase. 30

Q. When did he give up the farm?—A. About 2 years ago.

Q. Near Supom do you know a farmer called Kofi Agyie?—A. I don't recognise that name.

Q. You know village called Huntoadu?—A. I know Ntuado—people from there draw water from the Nsese River. The people who live there are people from Togoland and I collect money from them each year.

IN REPLY TO COURT :

Q. When did they come there first?—A. About 8 years ago—they would come and go.

EXAMINED :

Q. Do you collect from the land to the north of Framasi?—A. Yes there you have the Asaa River. 40

I go up as far as the Apaa River.

Because of this litigation whenever I attempted to go near the Anu (pronounced Enu) River they would try to beat me.

Q. Do you know a farmer called Kwami Tei ?—A. I cannot say.

Q. Kwasi Kra ?—A. There are plenty over there and I cannot remember their names.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

IN REPLY TO COURT :

Yes the further up the river the hotter it becomes. I was afraid and ran away.

Plaintiff's
Evidence.

EXAMINED :

Q. How long had these hostile people been on the land ?—A. I don't know when they were put on the land.

10 Q. When did they become hostile ?—A. Since the beginning of this litigation.

No. 7.
Kofi Sei.
15th
November
1949.

Q. Were they on the land before the litigation started ?—A. They started settling on this land while we were destooling Kobina Foli.

There was a lot of litigation about his destoolment.

Examina-
tion—
continued.

Q. Was anyone looking after the land while Kobina Foli was being destooled ?—A. Nobody was—because of the litigation and we were divided in opinion.

Q. When you collected money did you give any receipts ?—A. We did. Yes I am illiterate.

20 Ohene employed a Clerk who came to where I was and gave receipt. The Clerk's name is Edusai.

IN REPLY TO COURT :

Q. When did the receipt system begin ?—A. It was started before this litigation.

EXAMINED :

The Clerk, Edusai is still with the Adansihene.

CROSS-EXAMINED BY CRABBE :

Q. Do you know anything of the history of this land in dispute ?—A. Yes—I know some.

30 Q. How was this land founded ?—A. It was Nana Asantehene who gave this land to Adansihene.

Cross-exam-
ination—

IN REPLY TO COURT :

Q. Have you ever heard that in ancient days Adansi was more powerful than the Asantehene ?—A. I've never heard that.

Q. Have you ever heard that Denkyera was more powerful than Asantehene ?—A. That I have heard.

CROSS-EXAMINED :

Q. How did the Asantehene get the land ?—A. I cannot tell.

40 A. They used to come there. But when they came we drove them out. I am speaking of recent years.

When I was young Brenase people did not come and settle there. It is only recently they asserted the right to settle on this side.

In the
Supreme
Court
(Divisional
Court,
Kumasi).
Plaintiff's
Evidence.

Q. Where did you live when you were young?—A. At Fomena.

IN REPLY TO COURT:

Q. When was the very first time that you actually came on to this land?—A. About 25 years ago.

Q. Did you build a house for yourself there 25 years ago?—A. I did not—but my uncle had a house there on the banks of the Prah near Hiama Nkyin.

No. 7.
Kofi Sei.
15th
November
1949.
Cross-exam-
ination—
continued.

CROSS-EXAMINED:

Q. Did you ever go with him to Busumbinasu?—A. Yes I went there with my uncle. There was a mountain and there was a white man 10 looking for gold and we showed him the place near there. The white man dug for the gold. It would be about 20 years ago.

He stayed there for 6 months and took samples.

No man from Brenase came and asked us why this part was being dug.

Q. Who was the Head of the village at the time?—A. Kotey.

Q. Where did Kotey come from?—A. Adansi.

Q. At that time how many villages were there on the land?—A. There were only a few—namely Ntettim, Busupimasu. Akokobenumsuni.

These were the only three villages on that side of the land.

I am not speaking of the Framasi side. 20

On the Framasi side there were Supom, Okyenasi just 3 villages.

Q. Were all these 6 villages inhabited by Adansi or by Brenase?—A. It is only of late that Brenase came there. Formerly Adansi people were living there.

Q. What do you mean by “only of late”?—A. When we destooled the Chief then the Brenase people came and settled.

The River bends a bit to Brenase side—so they used to come to our side to farm.

Brenase is much closer to the river than Fomena.

Q. And they cultivated on this side of the river before this question 30 of destoolment?—A. It is not so.

Q. You were collecting taxes from the people on the land?—A. Yes.

Q. And there were already then people from Brenase on the land.

A. No, I did not see any.

The Brenase people formerly would build a hut, hunt and then go away.

That was in the olden days.

Q. What then did people of Fomena go there to do?—A. We went to get snails.

If my uncle had not gone there the Akim people would have taken 40 all the lands.

Q. Those people of Brenase who wanted to fight you—when did they first settle on that land?—A. I do not know them very well. They came about 6 years ago.

Q. Did you know of any meeting held at Brenase when the District Commissioners, Armitage and District Commissioner Cape Coast were present?—A. I was present at that meeting.

I was then young.

When my uncle was going—I accompanied him.

My uncle then had a house at Nsese.

10

“ A ”

Q. Why was it necessary to have a meeting?—A. There was a dispute about the land between Adansihene and Brenasehene. Yes, it was the same land as is in dispute now. Kofi Ankrah the Swedruhene came. Kwabena Fa, the Odikro of Brenase, Adansihene came. The Commissioner at Cape Coast came. The District Commissioners at Saltpond and Obuasi also came. Formerly whenever one wanted to cross the Prah he used a canoe. When we were discussing the matter—there were 2 white men and they said that no Adansi man should cross to the other side of the Prah and that no Akyem should cross and come on to the Adansi side to work. He could pass through the land. The meeting was held in Brenase. The white man said that my master (Adansi) should be on one side of the river and the others on the other.

Q. Why was it necessary to go to the river and argue about this matter?—A. The Brenase had wanted to take the land from us.

20

They came on the land and we drove them off.

We were collecting snails on the land.

Brenase said they would also collect snails and we objected.

Brenase objected to our getting snails.

District Commissioner Armitage then was living behind Fomena.

IN REPLY TO COURT :

The District Commissioners looked at the land.

They inspected the land at Nsese and beyond Nsese to Ahudwo where the Otwereso people from Akim Abuakwa were disputing.

The District Commissioners went to Framasi and to Busumpimasu.

30

They were there about 4 days and I was there the whole time.

They walked round the whole of the land now in dispute.

Q. Did Adansi and Brenase point out all their villages?—A. They were pointed out.

After they had seen all these—they said we should come to the River and settle the matter.

We had a palaver at the river and as a result the white man spoke and every thing died out.

A “ book ” was made. Adansi was given a copy.

CROSS-EXAMINED :

40

Q. Was anything recorded in this “ book ” as to what was to happen to these villages?—A. I cannot say. I am illiterate.

No re-examination.

Adjourned to 16.11.49.

(Sgd.) J. JACKSON,
Judge.

In the
Supreme
Court
(Divisional
Court,
Kumasi).
Plaintiff's
Evidence.
No. 7.
Kofi Sei.
15th
November
1949.
Cross-exam-
ination—
continued.

No. 8.
Court Notes.

In the
Supreme
Court
(Divisional
Court,
Kumasi).
—
No. 8.
Court
Notes.
16th
November
1949.

MEAD : Surveyor has delineated in pencil on Exhibit " 1 " the overlap with the plan exhibited in the suit *Ofori Atta & Anor. v. Adansihene & Anor.* Surveyor wishes to know whether it is to be inked in some distinctive colour or left in pencil.
Koi Larbi and Crabbe for Defendants.
COURT : Let it be delineated in ink of a distinctive colour.

No. 9.
Ekow Selby.

10

Plaintiff's
Evidence.
—
No. 9.
Ekow
Selby.
16th
November
1949.
Examina-
tion.

EKOW SELBY (m) s.s. in English : 3RD WITNESS FOR PLAINTIFF :
EXAMINATION-IN-CHIEF :

Licensed Surveyor living Cape Coast. In December 1947 I prepared a plan in connection with land dispute between Stools of Adansi and Brenase. This is the plan (refer to Exhibit " 1 ") dated 24.12.47. In the preparation of that plan I was not accompanied by representatives of Adansi Stool. I was accompanied by representatives of Brenase Stool. I have indicated on the plan various farms and villages I saw all the farms that I indicated. All those which I plotted I actually saw. And the same applies to the villages. Where I indicated " ruins " or " ruined " it means that I could see indications that there had been houses there before. There were small mounts. In giving names to the farms I got the names from the representatives of the Chief of Brenase. A man called Yaw Kroama showed me most of the places.

That also applied to the names of villages. I had never been on this land before. Yesterday I inserted a pencil line across the northern area. I obtained that information from a plan in Court. This is the plan (refers to Exhibit No. 1 in suit *Afori Atta & Anor. v. Adansi Stool & Anor.*) Exhibit No. 1 in this Court now shows the extent of the overlap of the land in the former action with that in this one.

30

The town of Brenase lies about 3 miles East of the River Prah—east of the confluence of the Prah and Anu Rivers.

Cross-examination. CROSS-EXAMINED BY CRABBE (with LARBI).

I went on land on instructions of Mr. Sekyi Counsel for the Defendants. I had no opposition from anyone I saw on the land—other than from

the Adansihene who objected to my entering on the land—so I returned to Cape Coast and obtained an Order of Court to enter.

IN REPLY TO COURT :

It is flat country. Not much forest other than near the Otwereso boundary and on the western area. All the eastern area is planted with cocoa. Some of the cocoa trees there are 20–30 years old—but not many of them—these are on the eastern portion—the north and eastern areas are new cocoa farms and foodstuffs. Cocoa farms there are I think 5–10 years old. The gold mining pits in the north west area are not more than 3 feet in diameter and are nearly filled in. All the buildings and farm buildings not of a permanent nature.

There is a fairly large village on the Asaa River with the name Yaw Kuramua situate above.

I have marked that village as “farmstead.”

The old cocoa farms are near Nsese—that is where the largest trees were.

(Good demeanour.)

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Plaintiff's
Evidence.

No. 9.

Ekow

Selby.

16th

November

1949.

Cross-exam-

ination—

continued.

No. 10.

Kwadjo Anokyi.

No. 10.

Kwadjo

Anokyi.

16th

November

1949.

Examina-

tion.

KWADJO ANOKYI (m) s.s. in Twi : 4TH WITNESS FOR PLAINTIFF :

20 EXAMINATION-IN-CHIEF :

Cocoa farmer. Live at Ofuasi near Pregua on the other side of the Prah. I have cocoa farms on this side of Pregua—at a place called Amakom. Coming from Ofuasi you cross the Prah to Pregua and I walk about an hour along the bush path before I come to Amakom. Amakom is about one hour's walk from the river.

IN REPLY TO COURT :

Q. How far is the farm from the river ?—A. About 10 minutes walk.

EXAMINED :

30 I was sitting on the Stool of Okwanye III but I abdicated. I was Ohene of Ofuasi. Ofuasi is situate on the far side of Prah River on Akim-Swedru and Busume land.

I crossed the Prah. I asked land of Nana Kwabena Foli. I asked him personally. He was at Fomena. He asked his brother Nana Tia Kosua to come to Nsese and met me there and there we talked over the matter.

That was 25 years ago.

Q. What was the name of the village you established ?—A. Tihiniti.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

IN REPLY TO COURT :

I was the first person to settle there.

I called it that because it was given to me by the Omanhene.

It means anyone who has given you a place of abode to find food and one has to praise him.

Plaintiff's
Evidence.

IN REPLY TO COURT :

This is a different place to Amakom.

From where the Asaa River joins the Prah River my village is about 5 minutes walk—it is below the confluence of these rivers. Tihiniti is about 5 minutes walk from the Prah River.

10

No. 10.
Kwadjo
Anokyi.
16th
November
1949.
Examina-
tion—
continued.

EXAMINED :

I know Afransi—when you cross the Prah River you go by a footpath to Afransi. I pass through Afransi to get to my town Ofuasi.

I plant plantains, cocoa-yams.

Q. Do you pay anything to the Adansihene?—*A.* Yes—he said if the cocoa becomes good—I will kill a sheep—but if the cocoa crop is not good I will have to pay any amount I can get.

I pay it to Egya Kofi Sei.

Q. How often do you pay these amounts?—*A.* I pay it yearly.

Q. How much did you pay last year's cocoa season?—*A.* I paid for 20 the cost of a sheep.

I paid £2 8s. 0d. the value of a sheep paid to the Ohene.

I stay on the land with my children.

I know there is a village called Kyenkyenasi.

Q. Who are the people living there?—*A.* If people are living there—how can I give their number.

I know the people living there. They came from Ofuasi.

I know Hياما Nkyin. The inhabitants there came from Ofuasi.

My brother lives at Amakom. He is living there now. He has a house there.

30

IN REPLY TO COURT :

I do not remember the surveyor coming.

No Surveyor came to my village.

Cross-exam-
ination.

CROSS-EXAMINED BY LARBI :

Q. Defendant in this case is your nephew?—*A.* No, he is not.

Q. Are you not related to Nana Amoaben?—*A.* He is the son of my elder brother—he does not inherit from me.

Q. Is Defendant by custom a member of your family?—*A.* According to custom he cannot inherit.

Yes, we were living on Defendant's land on the other side of the Prah. 40

Q. And you were also paying tribute to the Defendant?—*A.* No.

Q. When you kill an animal don't you send a leg to the Defendant?—*A.* No we take it to Kofi Sei.

Q. And at Afransi you do the same?—*A.* When we are on the other side of the river we do not send the leg to Kofi Sei.

No—we did not send any leg to the Defendant.

If we kill an animal on the other side of the River Prah I would give it to my master who was my elder uncle.

Q. Why did you give the leg to Osei?—*A.* You mean in my village?

Q. Why did you give it to him?—*A.* Because we had made the arrangement that if I killed any game the leg belonged to him; Yes it was because the land belonged to him.

10 Yes I was a Chief for sometime.

Q. I suggest you sent legs to Defendant on about 10 occasions?—

A. No—whenever we killed any game we eat it.

I abdicated—I was not destooled.

Q. Why did you abdicate?—*Q.* It was in connection with “Lampo”—my subjects said they would not pay.

Q. I suggest that your subjects paid but you refused to pay and were destooled?—*A.* It is not so.

20 *Q.* And Defendant sat on your destoolment case?—*A.* My subjects did not like to pay and as I had already signed the paper for tax and there was trouble—so I abdicated.

Q. Defendant sat on that case?—*A.* It went before Omanhene Kofi Ankrah—the Ohene of Akim Busume.

Q. Did Defendant not preside over it before that?—*A.* When Defendant came matter had already been decided.

I know my nephew Mosi.

Q. He took your place on the Stool?—*A.* Yes.

Q. Tihiniti is about 1½ miles from Brenase?—*A.* I know Tihiniti—that is my village.

(Question repeated 3 times—evasion.)

30 *Q.* I suggest to you that the evidence you have given that you got the land from Adansihene is false?—*A.* No.

Q. I suggest you are biased because of your destoolment?—*A.* I am not biased because there is already a paper—an agreement.

IN REPLY TO COURT :

Q. How do you know there is such a written agreement?—*A.* I was given a paper—when one gets land one is given a paper. I gave it to the Adansi School Society.

Q. Did you get that paper when you first went on the land?—*A.* No—I got it after.

40 *Q.* How long after?—*A.* It was long a bit.

LARBI: Ask that the agreement be put in evidence—coming from custody of Plaintiff.

(Admitted and marked “A.”)

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Plaintiff's
Evidence.

No. 10.

Kwadjo
Anokyi.
16th
November
1949.

Cross-exam-
ination—
continued.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Plaintiff's
Evidence.

No. 10.
Kwadjo
Anokyi.
16th
November
1949.—
continued.
Re-exam-
ination.

RE-EXAMINED :

Q. Do you know where the town of Brenase is ?—*A.* It is on the other side of the Prah.

Q. If you went from your village of Tihiniti to Brenase how long would it take you ?—*A.* From Tihiniti to Ofuasi is 2 hours walk and from Ofuasi to Brenase is about 5 minutes walk.

Q. When you get to Brenase do you know another village near there called Tihiniti ?—*A.* I do not know that village.

(A witness who was evasive in his answers.)

No. 11.
Ossei
Kwaku.
16th
November
1949.
Examina-
tion.

No. 11.

10

Ossei Kwaku.

**OSSEI KWAKU (m) s.s. in English : 5TH WITNESS FOR PLAINTIFF :
EXAMINATION-IN-CHIEF :**

Retired Civil Servant. In 1937 I was Registrar of District Commissioner's Court at Obuasi.

Q. Is this your signature on the document ?—*A.* Yes.

Q. What is the document ?—*A.* It is a copy of a letter dated 3rd February 1909 signed by Armitage—addressed to Chief Commissioner, Ashanti.

I certified the document to be a true copy.

20

Before I did so I compared it with the original which was in the District Commissioner's Office at Obuasi.

This copy I think was made from a duplicate of the original.

There was a "Palaver Book" in which a copy of this letter was written and from that Book I copied this document.

COURT : Will this document be permitted to go in by consent ?

LARBI : Yes for what is worth.

(Admitted and marked Exhibit No. 2.)

I also copied this enclosure.

LARBI : No objection to its admission.

30

(Admitted and marked No. 3.)

No cross-examination.

No. 12.
Kwaku Amum.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

KWAKU AMUM (m) s.s. in Twi : 6TH WITNESS FOR PLAINTIFF :

Farmer living Framasi. Framasi is on this side of the River Prah. It is about 1½ miles from the River Prah. You cross the river Asaa before getting there. My own town is Nunguo on the other side of the Prah. To go to Framasi—you first come to Ofuasi, then you cross the Prah River—you then cross the River Asaa and then you reach Framasi.

Plaintiff's
Evidence.

No. 12.
Kwaku
Amum.
16th
November
1949.
Examina-
tion.

I draw water from the Asaa—it is about as far as from here to the
10 War Memorial (200 yards).

Q. How long have you been at Framasi ?—A. 18 years.

Q. Have you got a permanent building there ?—A. Yes—it is one made of swish.

Q. Who gave you permission to farm there ?—A. Kofi Osei (refers to second witness).

Q. Do you pay anything to him ?—A. Yes.

Q. How much ?—A. At first I gave him £20 “ rum ”—when I first went.

IN REPLY TO COURT :

20 Q. Did he give you a receipt for the £20 ?—A. Yes—he did.

Q. Where is it ?—A. It is with a certain man named Nda Kwaku.

Q. Why is it with him ?—A. He is the eldest among us—he speaks for us—all our properties are with us.

EXAMINED :

Q. Did you pay anything else ?—A. At end of each year I give him “ rum ”—at first I paid £7.

IN REPLY TO COURT :

I got receipts for these sums—it is with Nda Kwaku.

I cultivated cocoa on the land.

30 I belong to Nunguo Tribe.

I know Brenase people—I know about one of them.

Q. Has any Brenase man come to drive you away ?—A. When I first came and got the land they came and said the land was theirs and that we should quit.

We went and told Kofi Sei who took us to Obuasi and there Nana Foli said we should go back and cultivate as it belonged to him.

IN REPLY TO COURT :

Q. How long ago is it since you went to Nana Foli ?—A. About 17 years.

40 EXAMINED :

Since then Brenase people did not come to drive us away.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Plaintiff's
Evidence.

No. 12.
Kwaku
Amum.
16th
November
1949.

Cross-exam-
ination.—
continued.

CROSS-EXAMINED BY LARBI :

Q. Have you not got an agreement paper with Adansi?—A. Yes.

Q. When was that?—A. Last year—about a year ago.

Yes—I have the agreement—it was brought here yesterday. The Stool Secretary took it.

I know Kofi Afani.

Q. He represented the Defendant at your village?—A. I don't know.

Q. He lives at Framasi?—A. I don't know Kofi Afani.

Q. Who represents Defendant at Framasi?—A. I don't know.

IN REPLY TO COURT :

Q. How many houses are there at Framasi?—A. Twenty-two.

CROSS-EXAMINED :

Q. You say that no one has come from Defendant to collect tolls from you?—A. Yes—no one has.

IN REPLY TO COURT :

Q. Do you remember when the surveyor came?—A. I don't remember.
No re-examination.

10

No. 13.
Akyim Tei.
16th
November
1949.
Examina-
tion.

No. 13.
Akyim Tei.

AKYIM TEI (m) s.s. in Twi : 7TH WITNESS FOR PLAINTIFF :
EXAMINATION-IN-CHIEF :

20

Farmer. My farm is at Aframase. I live on my farm. My home in Nunguo. To go from there to Aframase, I pass to Accra and then to Nsawam—to Swedru—then to Akim Oda—then I get to Ofuase. I then branch to the left and walk until we reach the Prah. I cross the Prah. Where I cross it is called Adaba Kwasi. There is from there a footpath to the farm which is about an hour's walk from the Prah. The Asaa River is close to my farm—very near to it. I draw water from it.

I cultivate right on the banks of the river and my house is from it about as far as from here to the shopping street behind the Post Office (300–400 yards.)

I know Fumasi Kuma. I passed through that place when I came from Accra.

IN REPLY TO COURT :

Q. How many houses are there near your own?—A. I have made 5 buildings where I stay. I mean one house with five rooms.

There are 22 houses in all including mine.

30

EXAMINED :

I know Kwaku Amum (indicates 6th witness).

I came with him to ask for land.

He lives in same building as I do.

We have built rooms in lines.

We do not live in the same house.

Q. Who gave you the land to make the farm ?—A. Nana Kofi Osei.

Q. About how long ago ?—A. 18 years ago.

10 Q. Do you pay anything for farming on the land ?—A. Yes I pay something.

The first time we paid £60.

My brothers and I worked in company—including Kwaku Amum and we paid a lump sum of £60.

Q. How many of you were in that company ?—A. 22 members.

Q. After paying the £60 have you paid anything monthly or yearly ?—A. The time has not yet arrived. The next payment is not due until next Christmas.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Plaintiff's
Evidence.

No. 13.
Akyim Tei.
16th
November
1949.
Examina-
tion—
continued.

IN REPLY TO COURT :

20 Q. Do I understand that since you paid the £60 you have paid nothing further ?—A. Yes—at the end of the year we have to pay more.

Q. How much do you have to pay then ?—A. I will have to pay £4 13s. according to the agreement made.

The agreement was made about a year ago.

We are growing cocoa.

3 Q. How many seasons have you harvested your cocoa ?—A. About times before we made the agreement.

Q. What did you realise on your first harvest ?—A. About £13.

Q. And your second ?—A. I did not record it—but about £24.

Q. And the third ?—A. That is this season. I have not yet sold it.

30 CROSS-EXAMINED BY LARBI :

Q. Were you given a receipt for the £60 ?—A. Yes.
This is the receipt.

(Admitted and marked B.)

Q. Do you know Ndah Kwaku ?—A. Yes.
Yes—he is a member of our company.

Q. He is the leader in fact ?—A. Yes—truly.

Q. Before you paid the £60 you had been told by Defendant to quit ?—A. No.

Q. Did you not come to beg the Defendant ?—A. No.

40 No re-examination.

Cross-exam-
ination.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

No. 14.

Narkwa.

Plaintiff's
Evidence.

No. 14.
Narkwa.
16th
November
1949.
Examina-
tion.

NARKWA (m) s.s. in Ga : 8TH WITNESS FOR PLAINTIFF :

EXAMINATION-IN-CHIEF :

Blacksmith. I am also a farmer. Live at Nsese. I am a native of Nunguo. I came to lodge at Nsese. I came there about 18 years ago. I live at Nsese on this side of the Prah River. There is another river near there whose name I do not know. It is not so far from the river. (Describes distance of about 300-400 yards.)

Q. How many buildings are there ?—A. About 4 buildings. 10

Q. How many altogether ?—A. I have not counted them. I did not know I would be asked that.

Q. Who gave you the land ?—A. Kofi Sei.

Q. How long ago was it when land given to you ?—A. About 18 years ago.

Q. When Kofi Sei gave you the land did you give him anything ?—A. I used to give him small thing. I gave him about £60.

Q. When did you give him the £60 ?—A. About last year.

IN REPLY TO COURT :

I did not get a receipt. We grouped ourselves together and a receipt 20 was given to us.

I gave the receipt to Kofi Sei. He asked me for it when I was coming to Court.

EXAMINED :

Q. How much of the £60 did you pay ?—A. I paid £2 13s. 3d.

IN REPLY TO COURT :

My wife did not pay—but my wife's daughter paid. My wife's son not daughter paid. He paid 14s.

EXAMINED :

Q. What group paid this £60 ?—A. Nunguo people. 30

Cross-exam- CROSS-EXAMINED BY LARBI :
ination.

Akyim Tei is in our Company (7th witness).

Kwaku Amum is our leader—he stood for us all (refers to 6th witness).

Q. How many of you are there in this company ?—A. About 12.

Q. Not 22 ?—A. It was 22.

Q. And you say that your first payment was last year and that was £60 ?—A. Yes.

Q. Since then you've paid no more?—A. Now it is another year coming and Kofi said he would reduce the rate—but did not say how much. Unless the time comes we do not know how much we shall have to pay. I do not know the Defendant. I know him only as a Chief.

Q. You know him well—he told you to quit?—A. Yes.

IN REPLY TO COURT :

Q. When did he (Defendant) tell you to quit?—A. He did not tell me anything about the land.

10 RE-EXAMINED :

Q. Does the rate depend on the harvest?—A. Yes.

IN REPLY TO COURT :

Q. Is that agreement in writing?—A. I don't know if it is written.

In the Supreme Court (Divisional Court, Kumasi).

Plaintiff's Evidence.

No. 14. Narkwa. 16th November 1949.

Cross-examination—continued.

Re-examination.

No. 15.

Adaba Kwesi.

ADABA KWESI (m) s.s. in Twi : 9TH WITNESS FOR PLAINTIFF :

EXAMINATION-IN-CHIEF :

Farmer. My farm is at Supom. I am a native of Gave (Togoland). The farm is on this side of the Prah River. I cultivate up to the bank of the Prah.

20

IN REPLY TO COURT :

Q. Do you know a man called Kofi Agyei farming near you?—A. I do not know the name. But many people farm there.

There are bamboos near my farm.

I live there all the time.

EXAMINED :

Q. How many houses have you there?—A. There are villages surrounding—I got the land from the Gave people around.

30 Foli. Q. From whom did you get the land?—A. From Adansihene Kobina

Q. How long ago?—A. About 21 years ago.

Q. Did you give the Adansihene anything when he gave you the land?—A. I gave him something and he gave me a paper.

IN REPLY TO COURT :

Somebody took the paper from me and brought it here.

Q. Is this the one?—A. Yes this is it.

(Admitted and marked No. 4.)

No. 15. Adaba Kwesi. 16th November 1949. Examination.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Plaintiff's
Evidence.

No. 15.
Adaba
Kwesi.
16th
November
1949.
Examina-
tion—
continued.

Cross-exam-
ination.

EXAMINED :

I am growing cocoa on this farm.

Q. How many of you are living at Supom ?—*A.* About 20.

I know Brenase people.

Q. Since you have been there have they come and asked money from you ?—*A.* They haven't.

CROSS-EXAMINED :

Q. You know there is a dispute about this land ?—*A.* Yes—I've heard of that.

Q. When did you hear of it ?—*A.* As soon as I came on the land I got 10 to hear of it.

Q. When was your last payment made to the Adansihene ?—*A.* Last year.

Q. How much did you pay last year ?—*A.* £100 minus £10. (£90.)

That was for me and my company.

We are about 20 in the company.

IN REPLY TO COURT :

Q. On how many occasions have you paid to Adansihene ?—*A.* The first time we paid £4.

CROSS-EXAMINED :

Q. You said that on one occasion, the last payment you paid £90 ?—*A.* Yes and after the end of the year we will have to pay again.

Q. Were you given a receipt for this £90 ?—*A.* Yes.

Q. Where is it ?—*A.* Once we had paid we knew the matter had died out—we kept the receipt but it has been eaten by ants.

No re-examination.

20

No. 16.
Kojo Koto.
16th
November
1949.
Examina-
tion.

**No. 16.
Kojo Koto.**

KOJO KOTO : (m) s.s. in Twi : 10TH WITNESS FOR PLAINTIFF :

EXAMINATION-IN-CHIEF :

Farmer. Farm at Supom. I live there. I have been there 21 years.

IN REPLY TO COURT :

Q. How old were you when you first arrived ?—*A.* 21 years old.

EXAMINED :

I know Adaba Kwesi (9th witness). I came with him from my town to Supom. I plant cocoa there.

I am member of his company.

30

Do not live in same house. He has his own.
I have mine.

Q. How much did you have to pay for this land?—A. Adaba Kwesi and his elders got the land. Last year I paid £3.

Q. You know the Brenase people?—A. I know their village. I know them.

Q. Have they come to collect money from you?—A. No—they have not taken any money from me.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Plaintiff's
Evidence.

CROSS-EXAMINED :

10 Q. 21 years ago you were a very small boy?—A. I was young at the time. (Witness looks about 30 years old.)

At that time I grew my own cocoa trees.

I cannot remember my age when I came to Supom.

No. 16.
Kojo Koto,
16th
November
1949.
Examina-
tion—
continued.

IN REPLY TO COURT :

When I came to Supom I was not married.

Later on I married.

I had then been in Supom.

I cannot say how long I had been in Supom before I married my wife there.

20 It would be about 8 or 9 years after.

She has children by me—the eldest is about so high (indicates 7-8 years).

Cross-exam-
ination.

CROSS-EXAMINED :

Q. To whom did you pay the 24s.?—A. I paid it to Adaba Kwesi.

No re-examination.

No. 17.

KRAMO AMADU.

KRAMO AMADU : (m) s.s. in Twi : 11TH WITNESS FOR PLAINTIFF :

EXAMINATION-IN-CHIEF :

30 Farmer. Farm at Hياما Nkyin. I live there. My native town is Ofuasi. I am an Ashanti man. A Moslem.

Have been on this farm for 15 years now.

Hياما Nkyin is on the banks of the Prah about 1 mile from Kofi Sei's village called Nsese.

I know the Nsese River.

Q. Who gave you the farm?—A. Kofi Sei gave me the land.

No. 17.
Kramo
Amadu.
16th
November
1949.
Examina-
tion.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Plaintiff's
Evidence.

No. 17.

Kramo
Amadu.
16th
November
1949.
Examina-
tion—
continued.

Q. Did you pay anything when he first gave you the land?—*A.* I paid £2 8s. 0d. to him.

Q. Since then have you been paying anything to him?—*A.* Yes.

Q. On how many occasions?—*A.* About three times I have paid since the first payment.

I pay each year.

IN REPLY TO COURT :

Yes I've harvested my cocoa three times.

EXAMINED :

I know Brenase people.

10

Q. Have they come to collect anything from you since you came on the land?—*A.* No.

Q. What did you plant on your land?—*A.* Cocoa.

IN REPLY TO COURT :

Q. Did you plant your cocoa trees in the first year you arrived at Supom?—*A.* Yes.

Cross-exam-
ination.

CROSS-EXAMINED :

Q. You are a subject of Defendant?—*A.* Strictly speaking because of the Stool on which he is sitting he is related to my father.

Q. Village called Afransi belongs to Defendant?—*A.* Yes—it belongs to Defendant. 20

Q. And Hiama Nkyin belongs to Defendant?—*A.* I don't know that.

IN REPLY TO COURT :

I came from Ofuasi-Swedru.

The ancestors came from Ashanti.

CROSS-EXAMINED :

Q. You had heard for a long time about this land dispute?—*A.* Yes I had heard about it.

Q. When did you first hear of it?—*A.* After I had cultivated the place for some time. 30

Q. It was before your cocoa trees had grown?—*A.* When I got to hear of it the trees had not started bearing.

Re-exam-
ination.

RE-EXAMINED :

Q. How far is Hiama Nkyin from Afransi?—*A.* About 2 miles at a rough estimate.

IN REPLY TO COURT :

It would take not even an hour if you were not a fast walker.

No. 18.

Abudulai.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

ABUDULAI (m) s.s. in Twi: 12TH WITNESS FOR PLAINTIFF:

EXAMINATION-IN-CHIEF:

Plaintiff's
Evidence.

Cocoa farmer. Farm at Hiama Nkyin. I live there. Have been farming there since about 15 years.

Q. Who gave you the land to farm on?—A. The Adansihene.

Q. Did you pay anything when he gave you the land?—A. Yes—I paid £1 4s. 0d.

10 The Adansihene came to Kofi Sei's village and I paid it to him.

That Adansihene is now destooled.

He came to Kofi Sei's village.

I call it Kofi Seikrome.

Q. How far is it from your farm?—A. About 2 miles.

River Prah is near Kofi Sei's village.

Q. Any other River?—A. There are plenty of small rivers intervening—one is called Nsese.

I have cocoa, plantains and cocoa-yams.

20 Q. From where did you come from?—A. Ofuasi in Akyim Swedru.

I know Brenase people.

Since I came to Farm they have not come to collect any money from me.

CROSS-EXAMINED BY LARBI:

I know Kramo Amadu (11th Witness)—we are related.

We came to this place on the same day.

When you cultivate and get good crops you pay—if you can't get good crops you don't pay.

Yes I've only paid 24s.

Apart from the first "rum" which I paid—I have made one other payment—yes I have cocoa farms.

Cross-exam-
ination.

30 IN REPLY TO COURT:

I was growing cocoa at Ofuasi before.

The land at Hiama Nkyin is better.

Q. At Ofuasi how many years is it before the trees bear fruit?—A. If you are lucky—after 4 years.

The average tree would yield after 4 years.

No re-examination.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Plaintiff's
Evidence.

No. 19.
Kobina
Safu.
16th
November
1949.
Examina-
tion.

No. 19.
Kobina Safu.

KOBINA SAFU : (m) s.s. in Twi : 13TH WITNESS FOR PLAINTIFF :
EXAMINATION-IN-CHIEF :

Cocoa farmer at Kwaten. (Nkutaim.) I know the path leading from Nkutaim to Nsese. My farm is on the Subirisu side. My farm is along the path leading from Nkutaim to Subirisu and is on the left hand side of the path—it is alongside the path and not far from Nkutaim—not even a mile.

Q. Who gave you the land ?—A. Kwabena Foli the then Adansihene. 10

He gave the land to my father.

I first came to the land about 30 years.

I came from Dadiasie near Kokofu.

We have our own Omanhene (Kokofu, a State North East of Fomena in Ashanti).

Q. Since you came on the land have you been paying anything ?—

A. My father paid £10 for the whole village of Nkutaim.

Q. Since the first payment have you made any other payments ?—

A. Last year we paid £10.

I know Brenase people.

They have never asked me for money. They are on the other side 20
of the river.

Cross-exami-
nation. CROSS-EXAMINED BY LARBI :

Q. Were you there when surveyor came ?—A. No.

Q. The farm of yours was not included in any survey ?—A. I have not seen any surveyor.

If he had come I would have heard of it.

Yes, I've heard that Brenase and Adansi were litigating about land.

I heard that a long time ago.

Adjourned to 17.11.49.

(Sgd.) J. JACKSON,
Judge. 30

No. 20.
Kwadjo
Klafu.
17th
November
1949.
Examina-
tion.

No. 20.
Kwadjo Klafu.

KWADJO KLAFU : (m) s.s. in Twi : 14TH WITNESS FOR PLAINTIFF :
EXAMINATION-IN-CHIEF :

Farmer. Farm at Hintadu (Huntoadu). Native of Togoland. I first came to Huntoadu about 11 years ago. When I came—I came via Akim Oda to Afransi. I passed through village of Nsese to get there.

Q. Who first gave you permission to farm there?—A. Kofi Sei.

Q. Did you give him anything for allowing you to farm there?—A. Yes I paid him £10.

Grow cocoa there—also rice. Have a house there. I have founded a village there. There are about 4 houses there. I live there. About 4 of us there.

Q. Apart from first payment of £10 have you made any other payments?—A. Have paid on about 4 occasions since then.

I pay in cash.

10 Paid 7s. three times.

I don't know Brenase people.

Q. Apart from Sei has any one else demanded money from you?—A. No.

CROSS-EXAMINED BY LARBI :

Q. How many years have you been on the land?—A. 11 years.

Q. You must have heard there was a dispute between Adansi and Brenase?—A. Yes, I've heard of that.

Q. Did you meet any people there at all when you first settled?—A. No.

20 Q. Did you name the place Huntoadu?—A. My landlord told me that there was a place called that where I should settle.

Q. Did you pay £10 at time you entered or later?—A. I paid at time I entered the land.

I was given a receipt.

The receipt is at my home town in Awona in Togoland.

Q. Have you any agreement in writing with Kofi Sei?—A. No.

Q. Why did you pay 7s.?—A. At end of each year I pay 7s.

I started growing rice last year. The cocoa crop failed.

30 Q. I put it to you that Brenasehene went on several occasions to eject you?—A. I have never seen him at all.

No re-examination.

No. 21.

Kwaku Sogo.

KWAKU SOGO : (m) s.s. in Twi : 15TH WITNESS FOR PLAINTIFF :

EXAMINATION-IN-CHIEF :

Farmer. Farm at Supom. Come from Togoland. Cross Prah—after passing Ofuasi and then reach Supom on the Asanti side—not a mile from the river. Can hear anyone calling from the banks of the river. Many other villages near there. There are more than 12 villages near there.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Plaintiff's
Evidence.

No. 20.

Kwadjo
Klafu.

17th
November
1949.

Examina-
tion—
continued.

Cross-exam-
ination.

No. 21.
Kwaku
Sogo.
17th
November
1949.
Examina-
tion.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Plaintiff's
Evidence.

No. 21.
Kwaku
Sogo.
17th
November
1949.
Examina-
tion—
continued.

My village consists of 3 houses.

Q. You know of Kofi Agyei's village?—A. No.

There are no bamboo trees near my farm.

Adansihene gave me permission to farm. His name was Kobina Foli.

When he first gave me land there—what he gave me is recorded in the paper which I gave to Adaba Kwesi, (9th witness) (Exhibit 4).

Q. How long have you been on this land?—A. 21 years.

Q. Have you paid anything since then?—A. Sometimes £1 a year, sometimes 30s. Sometimes £2.

Q. How many times have you paid?—A. I am illiterate so I did not record the payments. 10

When my cocoa grew up we made a written agreement that I would pay so much. The written agreement is with our leader.

COURT: You cannot examine as to the contents of a document which is in existence. The document must be produced.

I know the Brenase people.

They have not come to drive us away.

Cross-examination. CROSS-EXAMINED BY LARBI:

Q. Were you in the village when the Surveyor surveyed the land?
—A. I was not there. I had gone to my home town. 20

Yes I gave my written agreement to Adaba Kwesi.

Q. Was Adaba Kwesi already on the land when you first arrived?
—A. We all came same year. We all came the same day.

I saw the Adansihene myself at Fomena.

I was the youngest among them.

We saw Kofi Sei and he took us to the Adansihene—we went by Abuabo.

We did not pay the money on the same day we saw him. He asked us to go with Kwaku Sei and then come back if we liked it.

We paid the money about a year after I think. 30

No re-examination.

No. 22.
Tei
Larnyo.
17th
November
1949.
Examina-
tion.

No. 22.
Tei Larnyo.

TEI LARNYO: (m) s.s. in Ga: 16TH WITNESS FOR PLAINTIFF:

EXAMINATION-IN-CHIEF:

Farmer. Farm at Framasi. I live there. I came from Nungo. Farm is I think about 2½ miles from River Prah. Cross Asaa River before reaching my village. There are other villages in neighbourhood. They are our own villages. We have no names—we call the whole place Framasi. 40

IN REPLY TO COURT :

Q. Why did you choose the name Framasi ?—A. It was our landlord who named the place.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

EXAMINED :

Have been there about 18 years.

Q. Who gave you the land to farm on the first time ?—A. Kofi Sei.

Q. What did you give him for giving you the land i.e. the first time ?

—A. We grouped and gave him some “drink.”

It was a long time and I cannot say how much it was.

10 I contributed 12s.

Plaintiff's
Evidence.

No. 22.

Tei

Laroyo.

17th

November
1949.

Examina-
tion—
continued.

IN REPLY TO COURT :

Q. Before you arrived there were there any people living at Framasi ?

—A. No—we met no one.

EXAMINED :

Since then I've paid £1.

I cultivate cocoa.

I don't know the Brenase people.

Since occupying the land no one else has come to collect money from us, or to drive us off the land.

20 CROSS-EXAMINED BY LARBI :

Q. In 18 years you've only paid twice, once 12s. and then £1 ?—

A. Yes.

Q. When did you pay the £1 ?—A. About 2 years ago. After that we grouped to pay more money—I only paid 30s.

Q. Were you there when surveyor came ?—A. No.

Q. Did you know that a surveyor had been ?—A. I heard of it but I did not see him.

It is about a year ago I heard of it.

Q. Who is the leader of your group ?—A. Kwaku Amum (6th witness).

30 I did not make any written agreement.

The group was given a receipt.

Cross-exam-
ination.

IN REPLY TO COURT :

Q. Was the receipt given at the same time as you paid the money ?

—A. Yes.

The receipt is with Kwaku Amum.

Q. How long had you been there before you started planting your cocoa trees ?—A. The day after we arrived.

Q. How many annual harvests have you had of the fruits of these trees ?—A. My land is not good. Last year was the first time I had

40 a harvest.

CROSS-EXAMINED :

Q. Did not Brenasehene tell you to quit the land some time ago ?—

A. At that time I was not present. It was hearsay.

Q. How long ago was it when you heard that ?—A. About 18 years ago.

No re-examination.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

No. 23.

Joseph Classpeter.

Plaintiff's
Evidence.

No. 23.
Joseph
Classpeter.
17th
November
1949.
Examina-
tion.

JOSEPH CLASSPETER: (m) s.s. in English: 17TH WITNESS FOR
PLAINTIFF:

EXAMINATION-IN-CHIEF:

Ist Division Clerk and Registrar at Chief Commissioner's Office. Appointed to that office since 1945. Am in charge of the office records. Recently I made search for the originals of these Exhibits (Nos. 1 & 2). I was also requested to search for an agreement referred to in Exhibit 2— one signed by Chief of Brenase. I was not able to find the originals of 10 one of these documents.

Q. Could you trace any record of this letter (Exhibit 2)?—A. I found it recorded in the Incoming Correspondence Register—but could not trace it.

No cross-examination.

No. 24.
Court
Notes.
17th
November
1949.

No. 24.

Court Notes.

COURT: These exhibits went in by consent yesterday.

MEAD: We have made every endeavour to trace the originals of these documents in the places of deposit where they might be expected to be. 20 We seek to prove now a further enclosure referred to in Exhibit 2. That is the agreement referred to in paragraph 7. We have evidence of an attesting witness to that agreement who was present at that "palaver" and assisted in the interpretation of the "palaver." He was then Clerk to the Chief Commissioner Central Province, and copies of the original were made by him on his return to his office, and he has one of these copies in his possession.

LARBI: Submit that such a document coming from such a source cannot be admitted.

COURT: I agree that it is an unusual source and being a document 30 of an official nature I should also add a most irregular source for a civil servant to be in possession of a copy of official correspondence—but I think that goes rather to what weight is to be attached to the document and not to the principle of inadmissibility. I rule that this evidence is admissible.

MEAD: I should add that a copy of this document was found in the District Commissioner's Office at Obuasi but it is not a certified one.

COURT: That evidence I am of the opinion is more proximate to establish proof of this document subject to evidence as to when, where and how it was found in that office. 40

No. 25.

Albert Wellington Fosu.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

ALBERT WELLINGTON FOSU : (m) s.s. in English : 18TH WITNESS FOR
PLAINTIFF :

Plaintiff's
Evidence.

EXAMINATION-IN-CHIEF :

Ist Division Clerk and Registrar at District Commissioner's Office at
Obuasi. Am in charge of records of that office. Recently search for
original of an agreement dated 1.2.1909 and signed by Chief of Brenase.
I was unable to find the original—but I found a copy in a file dealing with
10 Adansi and Brenase land dispute, a file kept at Obuasi Office and in my
charge. It is File 7/32. The copy I found attached to a letter
No. 388/7/1932 dated 15th February 1941 addressed to the Chief
Commissioner at Kumasi. It was attached to a copy of that letter.

No. 25.
Albert
Wellington
Fosu.
17th
November
1949.
Examina-
tion.

MEAD : I tender the copy.

EXAMINED :

This was attached to 86.

COURT : The copy attached to enclosure 86 is apparently the one
referred to in paragraph 5 of the Adansehene's letter dated the 13.2.1941
and marked as enclosure 85. This copy clearly cannot go in evidence as
20 it does not come from the custody of any person who was a party to this
agreement. The correspondence is evidence only that the original has been
lost.

Has any notice been given to Brenase to produce the original
agreement ?

MEAD : The original should be in the hands of the person in whose
favour the waiving was made i.e. the Government.

No cross-examination.

COURT : I will hear the oral evidence as to the contents of this missing
document.

No. 26.

Albert Benjamin Josiah.

No. 26.
Albert
Benjamin
Josiah.
17th
November
1949.
Examina-
tion.

ALBERT BENJAMIN JOSIAH : (m) s.s. in English : 19TH WITNESS FOR
PLAINTIFF :

EXAMINATION-IN-CHIEF :

Retired Civil Servant living Cape Coast. In 1909, in February, I was
attached to the office of the Commissioner of the Central Province as Clerk
and Interpreter.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Plaintiff's
Evidence.

No. 26.
Albert
Benjamin
Josiah.
17th
November
1949.
Examina-
tion—
continued.

In 1909 there was a dispute about Brenase boundaries. The Commissioner of Central Province met the Provincial Commissioner, Obuasi and Capt. Armitage at Brenase.

I accompanied the Commissioner of Central Province—it was sometime in February 1909.

A "palaver" was heard in public at Brenase. As result agreements were drawn up. There were about two agreements.

Q. Have a look at this document (Exhibit 3) and read it.

Do you remember such an agreement being drawn up at that time?—

A. Yes and I witnessed it and it was interpreted by W. B. Dsani, the 10 Clerk and interpreter to Provincial Commissioner, Obuasi and he is now dead.

Q. Do you remember any other agreement being drawn up at that time?—A. Yes one between Kobina Fa, Chief of Brenase and the Governor.

Q. What happened to the original of that agreement?—A. So far as I can remember it was sent to office of Secretary for Native Affairs.

Copies were kept in each office.

I and Mr. Dsani made the copies from the original.

Q. Have you one of these copies?—A. I kept one made by Kobina Fa.

Q. Why did you keep it?—A. Because it was a precious document. 20

Q. Did you keep other documents personally?—A. No.

IN REPLY TO COURT :

Q. Why did you keep this one?—A. To bring to my memory that I had been there. It was a historic occasion and because there was going to be a riot.

The Government had fixed the Prah as the boundary between the Ashanti and the Colony before this palaver.

EXAMINED :

This palaver concerned certain lands which belonged to the Colony Chiefs namely Kobina Fa, Chief of Brenase and Kofi Ahinken, Omanhene 30 of Akim-Swedru. They had palaver with Adansi.

EXAMINED :

Omahan Kobina Foli of Adansi and his Chiefs were present.

This is a copy of the agreement which was made then.

(Admitted and marked No. 6.)

CROSS-EXAMINED by LARBI :

No questions.

No. 27.
Court Notes.

MEAD : We have 2 witnesses—one is the Asantehene's linguist and the other is a Treasury witness. The former's evidence relates solely to tradition and history—the latter relate to establishment of Stool Treasury in 1943—prior to which there were no records.

Linguist is sitting in Asantehene's Court this morning.

10 COURT : I cannot grant an adjournment to enable evidence to be given at a later stage which is in effect the very foundation of the Plaintiff's claim. I will permit the evidence as to the establishment of the Treasury to be interposed at a later period. There have been weeks and weeks to forsee whether the Linguist's evidence was required or not.

MEAD : My case is closed subject to that evidence.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

No. 27.
Court
Notes.
17th
November
1949.

DEFENDANT'S EVIDENCE.

No. 28.

Amoaban Oko.

AMOABAN OKO (m) s.s. in Twi : DEFENDANT :

EXAMINATION-IN-CHIEF :

20 I am the Adontehene of Akim-Busume and am representative of Nana Kokofuhene of Asante to whom the lands belong. The Ohene of Akim-Busume is subject to the Kokofuhene.

Have been a Chief of Brenase about a year and a half.

Have heard the evidence of Plaintiff :

Q. How did you get to this land ?—A. That land belongs to Nana Kokofuhene. We were all in Asanti when he sent his nephew Yaw Frimpong. I am speaking of what I was told by my elders.

The then Kokofuhene was named Agyeman Ponfi.

30 At that time the Ohene of Asanti was called Nana Osei Tutu (i.e. the Asantehene). He sent his nephew Yaw Frimpong to the land now in dispute—to go and settle there. The only man then who had a boundary with his was Bodwisangohene who was the Asafohene of Adansihene.

We also had a boundary with Nana Dawuhene called Fosu Kobi, that is on the Okywereso side.

I also had a boundary with Muronam Odikro called Nana Amoyaw.

When Yaw Frimpong went there—he settled on the land at a place called Asaso (spelt as Asaasa).

He was a hunter and that was the only use to which he put the land.

Q. Was the the only one who settled at Asaasa ?—A. No—he came with his brother Andoh.

Defendant's
Evidence.

No. 28.
Amoaban
Oko.
17th
November
1949.
Examina-
tion.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Defendant's
Evidence.

No. 28.
Amoaban
Oko.
17th
November
1949.
Examina-
tion—
continued.

Andoh settled at a place called Supom—not even quarter of a mile from the river.

Yaw Frimpong and Andoh owed allegiance to the Kokofuhene.

Yaw Frimpong was a nephew to Kokofuhene and he brought all the game that he killed—who in turn would give him some.

Later on Kokofuhene made Frimpon an Ohene over the land.

After he was made Ohene—he and his subjects settled on the land.

Q. From where did his subjects come?—A. They were all from Kokofu in Asanti.

Q. Are there now any Kokofu people on the land?—A. Yes, plenty 10 of them.

Q. When did you first notice that the Adansi had filtered on to the land?—A. About 12½ years ago, and we started litigating.

IN REPLY TO COURT :

Q. Was that the first dispute that you had ever had with them?—A. No. That was not the first time—but that was the first occasion which I had witnessed myself. I am 39 years old.

I learned that when I grew up.

EXAMINED :

Kwabena Fa was a Chief of Brenase. I saw him before he died. 20

IN REPLY TO COURT :

Q. When was the first occasion upon which you walked on this land?—A. As soon as I was able to walk.

EXAMINED :

I was eighteen years old when I first went on the land. My elders told me to go and inspect the land as it would be one of my properties when I came to the Stool.

When Adansihene tried to claim the land 12½ years ago I swore an oath. Adansihene answered the oath and my predecessor who swore the oath litigated. 30

IN REPLY TO COURT :

Q. How long after oath was sworn was evidence in the Native Court started?—A. Not even a month.

EXAMINED :

Q. How many cases about this land have been before the Asantehene's Court?—A. In my life-time I have seen 2 cases besides this one.

Q. When was the one before this one?—A. That was about 12 years ago.

Q. Which was the first one?—A. The one in Asantehene's Court about 12½ years ago. 40

Q. Which was the second one?—A. In same month.

That one came to this Court.

The plan (Exhibit "1") was used in a case at Cape Coast.

I know the villages of Nsese.

IN REPLY TO COURT :

Kwaku Brafu showed the surveyor where the places were.

EXAMINED :

The people farming on the land pay to me.

Some of them have lived there for 20-36 years.

I farmed on the land at a place called Gyasaayo.

It is about 2½ miles from the Apaa River.

I started farming there about 11 years ago.

There is also a farm at Supom.

10 That was started about 13 years ago.

CROSS-EXAMINED by MEAD :

Q. You said land belongs to Stool of Kokofu ?—A. Yes.

Q. So that you hold this land under the Stool of Kokofu ?—A. Kokofu gave me the land. I am Ohene of that place.

I serve the Kokofu Stool.

IN REPLY TO COURT :

Q. Could you sell this land without the consent of Kokofuhene ?—A. I could not without informing him.

CROSS-EXAMINED :

20 Q. Have you informed Kokofuhene of this action ?—A. Yes, and I have subpoenaed him to give evidence.

Q. Kokofu Stool serves the Asantehene ?—A. Yes.

Q. Do you serve the Asantehene through the Kokofu Stool ?—A. Yes.

Q. You are also Adontehene of Akim-Busume ?—A. Yes.

Q. Is that an independent Stool in the Colony ?—A. In the Colony they are—but when they come to Asanti they serve the Kokofuhene.

Q. Have they any connection with Akim-Swedru ?—A. That is the same as Akim-Busume.

30 Q. So in the Colony you can be independent—but in Ashanti you have to serve the Kokofuhene ?—A. Even in the Colony we are his subjects. Allegiance never ceases. I serve him with my land.

Q. And is the town of Brenase subject to the Kokofu Stool ?—A. Yes.

Q. You have said this land was given to your Ancestors by the Kokofu Stool ?—A. Yes.

Q. You remember a case about 20 years ago between Stools of Adansi and Kokofu concerning their boundaries in which it was decided that the southern boundary of Kokofu land was at Supom River ?—A. I don't remember.

IN REPLY TO COURT :

40 Yes in olden days Akim-Busume owed allegiance to Kokofu. Yes—they still do.

CROSS-EXAMINED :

Q. Are not the Akim-Busume Akims ?—A. They are Asantis.

No re-examination.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Defendant's
Evidence.

No. 28.
Amoaban
Oko.
17th
November
1949.
Examina-
tion—
continued.

Cross-exam-
ination.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

No. 29.

Bafuo Ntin Awuah.

BAFUO NTIN AWUAH (m) s.s. in Twi : 1ST WITNESS FOR DEFENDANT :
EXAMINATION-IN-CHIEF :

Defendant's
Evidence.

No. 29.
Bafuo Ntin
Awuah.
17th
November
1949.
Examina-
tion.

I am Odikro of Odumasi under Ofori Atta of Akim-Abuakwa. I live at Odumasi in Akim-Abuakwa. I know the people of Brenase. We have a boundary with them. I showed my boundary to the Surveyor at River Ojam about 2 or 3 years ago. It is called Ojoamopia.

There is a stream at Brenase called Ojam and the one at Otwereso is called Pia (describes S.W. Adansi). 10

When Brenase and Otweresu people met at a certain place one called it Ojam—the other called it Pia—so it was called Ojampia.

I am 75 years old now. Since I have known this land I've known it as Agyeman and it belongs to the Kokofuhene, and Otweresu Fosu Kobi and Bodwisawu.

I have no farm there.

No cross-examination.

No. 30.
George
Mende.
17th
November
1949.
Examina-
tion.

No. 30.

George Mende.

GEORGE MENDE (m) s.s. in English : 2ND WITNESS FOR DEFENDANT : 20
EXAMINATION-IN-CHIEF :

Farmer. Live at Brenase. Have lived there about 36 years. I am a native of Freetown. I was in Accra—I met Kwaku Brefu who brought me to Brenase.

Q. Where did you farm?—A. On this side of the river—I cannot say what the Fanti name is.

Yes—I know a place called Ochyera.

Surveyor came to my farm and I showed it to him.

Surveyor placed a peg there.

Anu River is as far as this from me (indicates 200 yards). 30

Jonnie Kura is close to me.

Have been there for 36 years.

Q. Have Adansi people ever come there to drive you away?—A. No—they have done nothing to me.

Q. When you first settled there who was Ohene of Brenase?—
A. Kobina Fah.

Cross-examination. CROSS-EXAMINED by MEAD :

Q. Some years ago were you not paying money to a representative of Adansi?—A. No.

Q. A man called Edusa or Kofi Sei?—A. I know Kofi Sei—but I've 40
not paid any money to him.

- Q. Did he ask you to pay ?—A. No.
 Q. You are not farming there to-day ?—A. I am still there.
 I have cocoa nuts and cocoa as well.
 Q. When did you plant your cocoa ?—A. 36 years ago.
 When I planted them—three or four years before I harvested them.
 I got the cocoa from Fernando Po.
 I've harvested the cocoa about 7 times.
 The seventh time I had very little. I cut it last year. I cut it every
 season. Every year I harvest it—it is about seven or eight times.
 10 Yes, I live at Brenase village.
 Q. Do you remember since being there a "palaver" at which some
 white men came ?—A. White men came there all the time.
 No re-examination.

In the
 Supreme
 Court
 (Divisional
 Court,
 Kumasi).

Defendant's
 Evidence.

No. 30.
 George
 Mende.
 17th
 November
 1949.
 Cross-exam-
 ination—
continued.

No. 31.

Yaw Brehia.

No. 31.
 Yaw
 Brehia.
 17th
 November
 1949.
 Examina-
 tion.

YAW BREHIA (m) s.s. in Twi : 3RD WITNESS FOR DEFENDANT :
 EXAMINATION-IN-CHIEF :

20 Senior Kyiami (i.e. Linguist) to Kokofuhene. I live at Kokofu.
 Nana Kokofuhene asked me to come here and represent him. I know
 people of Brenase and the Brenasehene. They owe allegiance to Nana
 Kokofuhene.

Q. Do you know there is a dispute between Brenasehene and
 Adansihene ?—A. Yes—I've heard there is litigation about land.

IN REPLY TO COURT :

I have never seen that land myself.

EXAMINED :

Q. Why do people of Brenase serve Kokofuhene ?—A. Because
 Brenasehene is a nephew of Kokofuhene.

30 Q. How did his nephew get there ?—A. Nana Agyeman Amprongi,
 formerly a Kokofuhene, about 250 years ago was there. The then
 Asantehene was Nana Osei Tutu—the nephew of Kokofuhene. So
 Kokofuhene and Asantehene were holding all the lands and they asked
 Yaw Frimpong to settle at Brenasi. They settled at Brenasi.

IN REPLY TO COURT :

By tradition the first man to settle at Brenasi was Yaw Frimpong.

EXAMINED :

They continued to serve Kokofuhene.

Akim-Busume also serve Kokofuhene.

40 I have heard of Kobina Fa—a Chief of Brenasi but did not know him
 personally.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Defendant's
Evidence.

No. 31.
Yaw
Brehia.
17th
November
1949.
Cross-exam-
ination—
continued.

CROSS-EXAMINED by MEAD :

Have been a linguist for 9 years.

Q. What were you before that?—A. I was a painter at the P.W.D.

Q. You remember when present Defendant was placed on Brenase Stool?—A. I cannot tell, as I was not informed.

They did not pass the matter through me.

Q. Has Brenasehene taken oath before Kokofuhene?—A. Yes.

It is not even a year since he was shown to the Kokofuhene.

I was there.

But when he was enstooled I did not know—I was not there.

Q. Brenase Stool—do they serve only Kokofu Stool or do they serve any other stool?—A. Only Kokofu Stool.

No re-examination.

10

No. 32.
Kwame Ti.
17th
November
1949.
Examina-
tion.

No. 32.
Kwame Ti.

KWAME TI (m) s.s. in Twi : 4TH WITNESS FOR DEFENDANT :

EXAMINATION-IN-CHIEF :

Asafoatse at Brenasi. I farm at Pregya.

I pointed out the place to the surveyor. I assisted him in cutting the line. It is near the banks of Prah River.

20

I am not near Anu River.

Amoabeng Oko put me on the land 21 years ago.

Since then Adansi people have not tried to drive me out.

I've not seen anybody there.

I pay no money to them. Not even a halfpenny.

Cross-exam-
ination. CROSS-EXAMINED :

Yes, I've heard of a man called Kofi Sei. I've never met him.

Q. How did you come to hear of his name?—A. In conversation people mentioned his name in connection with this litigation and they said he was on the side of Adansi.

30

That was about eleven (11) years ago—when I first got to hear of him.

Q. How soon after you had got on your farm did you hear about him?—A. Nine years after I had settled there I got to hear of him.

Q. During these 9 years did Kofi Sei never come and ask you for tribute?—A. He has never come to me.

I farm cocoa.

Q. How often have you harvested your cocoa?—A. I've harvested for 12 years.

No re-examination.

No. 33.

Yesifu.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

YESIFU : (m) s.s. in Twi : 5TH WITNESS FOR DEFENDANT :

EXAMINATION-IN-CHIEF :

Defendant's
Evidence.

Farmer. I live at Brenasi. I farm at Supom. Have been there about 40 years. Cultivate cocoa. Only work on cocoa.

Q. Who put you on the land?—A. Amoabeng Oko. He was the predecessor of Defendant.

10 The Ohene is my younger brother. I pay no tribute to anyone. I heard a surveyor had gone there. I heard that when I returned from Saltpond.

No one from Adansi has ever demanded money or tribute from me.

No. 33.
Yesifu.
17th
November
1949.
Examina-
tion.

CROSS-EXAMINED BY MEAD :

Cross-exam-
ination.

Q. Where is this place Supom?—A. It is across the Prah from Brenasi. We drink from that river.

I have a house there. I have got houses there.

Q. How many houses were there then when you first went there?—

20 A. My grandfather called Andoh was living there and I built new ones to replace those that had fallen in ruins.

When I got there all his buildings had broken down.

Q. When did you build them up again?—A. I cleared them and I built again on the same site.

Q. Do you know Kwaku Sogo?—A. I know that he is living there. He is living near me.

I've heard Adaba Kwasi's name.

I don't know in what village he is living.

Q. And Okoto?—A. I don't know him.

I have coco nuts, oranges, limes.

I planted these trees a year after I had settled on the land.

30 Q. Are they still bearing fruit—the limes and oranges?—A. Yes—they have grown tall.

Q. How long have you known Kwaku Sogo?—A. I cannot tell when I first saw him.

Q. Would it be 20 years ago?—A. I cannot tell.

Q. You know Kofi Sei?—A. Yes I know he is staying at Nsese and that there is a road leading from his place going to Adansi.

Q. Has he ever asked you to pay tribute to Adansi?—A. No—he has not even come to my village.

IN REPLY TO COURT :

40 Q. For how long have you known Kofi Sei?—A. When going to Nkutaim I used to see him.

I did not know him when I first settled there.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Defendant's
Evidence.

No. 33.
Yesifu.
17th
November
1949.
Cross-exam-
ination—
continued.

Re-exam-
ination.

At one time I was visiting a friend and I then saw him.

I could not tell how long ago that would be.

That was while this litigation was going on.

Q. What made you notice him particularly?—A. A friend of mine was there and this man asked me where I was going and I said “to Nkutaim on a mission.” I then asked him what he was doing there and he said “I am staying with this man Kofi Sei and am asking him for a job.”

That was the first time I saw Kofi Sei.

RE-EXAMINED :

Q. When you first went on the land did you meet anyone there?— 10

A. No.

Adjourned to 18.11.49.

(Sgd.) J.JACKSON,
Judge.

No. 34.
Kofi Afani.
18th
November
1949.
Examina-
tion

No. 34.
Kofi Afani.

KOFI AFANI : (m) s.s. in Twi : 6TH WITNESS FOR DEFENDANT :

EXAMINATION-IN-CHIEF :

Farmer living at Prega-Brenasi. Have been there for 20 years. My father comes from Afransi and my mother from Ahwinase in Akwapim area. Brenasehene gave me the land on which I farm. When I was shown the land I paid £3. (Marked on plan Pra-Egya). 20

Cultivate cocoa. Ohene told me to cultivate the land and when I progressed he would make an agreement with me. I cultivated for 8 years, before the litigation started. Because of the litigation we made no agreement.

Q. Have you ever paid anything to the Adansi people?—A. No.

There are other people there—my brothers and nephews.

Cross-exam-
ination. CROSS-EXAMINED BY MEAD :

Amoaben Oko was the Ohene of Brenasi with whom I made the agreement. 30

Q. How did you come to know about any litigation concerning this land?—A. The Ohene told me.

He told me this in his village at Brenase.

I was then living at Framasi where I work.

IN REPLY TO COURT :

Q. So you work at Framasi—I understand you said Pra-Egya?—

A. Where I live and work is at Framasi. We cross the river to go to Framasi at Pra-Egya.

My farm from the Prah River is about 1 mile.

CROSS-EXAMINED :

I know Apaa River. It is near my village—not a mile from it.

When I cross the Prah—I cross the Apaa before I come to my village and which is on the bank of the Apaa.

Surveyor came to my farm about 2-3 years ago.

Q. Did you tell the Surveyor your name ?—A. Yes.

I do not know Kofi Sei.

I have never heard of him.

Q. Since you planted your cocoa how many times have you harvested it ?—A. Within 3 years I had a little cocoa.

(Witness evades the question put to him 3 times.)

RE-EXAMINED :

After the 3 years I harvested the following year and I got 20 loads.

After the first harvest—a year goes by before the next harvest.

(A completely unreliable witness.)

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Defendant's
Evidence.

No. 34.
Kofi Afani
18th
November
1949.

Cross-exam-
ination—
continued.

Re-exam-
ination.

No. 35.

Kwaku Berifu.

No. 35.
Kwaku
Berifu.
18th
November
1949.
Examina-
tion.

KWAKU BERIFU : (m) s.s. in Twi : 7TH WITNESS FOR DEFENDANT :

EXAMINATION-IN-CHIEF :

20 Twafuhene of Brenasi. Am 62 years old. I am Safuhene to Brenasehene. My predecessor Kwame Dubin was given the land by Nana Frimpong. I was young then. Kwame Dubin was caretaker of this land. Frimpong was living at Kokofu. I have farms on the land at Benumusu about $2\frac{1}{2}$ miles from the Prah. George Mende's village is about $2\frac{1}{2}$ miles from mine. I draw water from the Prah River. I know Yaw Donkor—he has a boundary with me—he comes from Brenase. Have never paid anything to the Adansi Stool.

CROSS-EXAMINED BY MEAD :

30 Q. Have you any farms on the Brenase side of the Prah ?—A. Yes—I have.

Q. Which are the better ones those on Brenase or those on Adansi side ?—A. The first I cultivated was at Brenasi—but the one at Pra-Egya is better.

The cocoa trees at Brenasi are very old.

Q. These are the only portions of the land on which you have been ?—A. I know all the land—where I spoke of is where I have farms.

Brenase Stool serves Akim-Swedru Stool.

Akim-Swedru is subject of Kokofu.

RE-EXAMINED :

40 No question.

Cross-exam-
ination.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Defendant's
Evidence.

No. 35.
Kwaku
Berifu.
18th
November
1949.
Cross-exam-
ination—
continued.

IN REPLY TO COURT :

I was present when Chief Commissioner of the Colony and Provincial Commissioner, Obuasi met about 40 years ago. There I saw the Ohene of Swedru called Kofi Ahinkora, Nana Kobina Efa the Brenasehene, Adansihene Kobina Foli. At a place called Nsese there was a ferry which was used in crossing the River Prah—Government told Kobina Efa that he wanted to take the river and employ people to ferry, because the people who were doing it were taking tolls and Government said it would take over the ferry to ferry people free of charge. Government said that as they were taking the ferry from us and were getting tolls—they would give us £50.

Q. Was anything besides the ferry discussed?—*A.* Yes. It was said that from Anu going to Akim side at Gemagye—the Government said that part should be given to them to look after.

This area contained cocoa farms made by Brenase people—that was not near the land in dispute.

Nothing else was discussed about the land now in dispute.

Q. Why was the Adansihene there?—*A.* Because we had a ferry at Nsese and Adansihene also wanted to have a ferry there—which Government thought would bring trouble.

CROSS-EXAMINED by MEAD :

Q. Do you remember if any documents were signed in connection with this palaver?—*A.* I did not see that.

IN REPLY TO COURT :

Akontanse is on the land on the other side of the Prah getting towards Banka land.

10

20

No. 36.
Kofi Kakra.
18th
November
1949.
Examina-
tion.

No. 36.
Kofi Kakra.

KOFI KAKRA (m) s.s. in Twi : 8TH WITNESS FOR DEFENDANT :

EXAMINATION-IN-CHIEF :

I am a doctor—live at Mansu, near Simpa Kwado. I knew Brenasehene very well. I went to him for land. He gave me some land at Gyansayaho I cross Prah and walk for three hours from the river before I reach my farm. After crossing the Prah—I pass George's village and then Berifu's village.

IN REPLY TO COURT :

Kojo Abebrese has a village not quite a mile from me—his village is nearer the Prah than mine.

30

I know Kwa Kuma. He is near me—about 2 miles from me. I showed my place to the Surveyor. I told him the name as Adzinyiwaranyiwodzi Kofi Andoh is near me—I go through his village to get to mine.

Agyei Krom is very close to my village (describes distance of 150 yards).

EXAMINED :

Have been on this land 15 years.

Do not pay any tribute to Adansi people.

They've never attempted to drive us out of the land.

CROSS-EXAMINED by MEAD :

10 Q. Was it the Brenasehene now in Court who gave you the land ?—

A. Yes, the one in Court.

Q. Where is the town where you live ?—A. At Gyansayaho on this side of the Prah.

I live only there—in my farm.

No re-examination.

LARBI : That is our last witness. I wish to tender copies of judgments referred to in Exhibit 2.

(Admitted by consent and marked " C " and " D," " E " and " F.")

In the
Supreme
Court
(Divisional
Court,
Kumasi).

Defendant's
Evidence.

No. 36.
Kofi Kakra.
18th
November
1949.
Examina-
tion—
continued.

Cross-exam-
ination.

No. 37.

20

Kwaku Berifu (recalled).

KWAKU BERIFU : 7TH WITNESS (RE-CALLED BY COURT) :

I remember hearing of a person named Anno. He was a native of Brenase. I heard of him as Kobina Anno. He was a nephew of Nana Agyeman Konfi the Kokofuhene. Kofi Annor was Kobina Anno's brother. Kofi Annor was Ohene's brother. I heard of the name of John Daniel—but I did not see him. I don't know where he came from.

I know Offramassie—it is on the land in dispute.

Bosompimaso is on the land in dispute.

I heard of Coffee Boontoe. He was a full brother of Nana Frimpong.

30 I did not hear of Quacoe Mensah.

I know a village between Oda and Eyinem called Addakumah. I know village called Afransi—that is on the other side of the Prah. Abbradi I know. It is on the other side of the Prah. Hutaido is on the land in dispute.

I do not know land called Infinetu.

NO CROSS-EXAMINATION by LARBI :

NO CROSS-EXAMINATION by MEAD :

Case closed for the Defendant.

No. 37.
Kwaku
Berifu.
18th
November
1949 (re-
called).

In the
Supreme
Court
(Divisional
Court,
Kumasi).

No. 38.
Court Notes.

MEAD : I do not think that evidence that Stool Treasury was not in existence before 1943.

No. 38.
Court
Notes.
18th
November
1949.

LARBI : Agree there was no Stool Treasury before 1943.
Counsel consent that a copy of my judgment dated 21.9.49 be put in evidence but solely as affording a history of the present action from 1937 up to that date.

(Admitted and marked "G.")

No. 39.
Address of
Counsel for
the
Defendant.
18th
November
1949.

No. 39.
Address of Counsel for the Defendant.

10

LARBI ADDRESSES COURT :

Before commenting on evidence refer to Exhibit No. 2 which in paragraph 3 makes it clear that certain Supreme Court judgments were considered and established that Ando was successor to Stool of Brenase. Paragraph 5 of that letter refers to agreement, reference to property on right bank of Prah. Refer to Exhibit 3.

Submit that Adansi was not party to the agreement between Brenase and Government and rights in land were granted to Government. If Government has no further need of these lands—they revert to Brenase. 20
This document is put in by the Plaintiffs themselves.

Exhibit 4—Agreement between Adansi and certain people—refers to the LEFT Bank of the Prah coming from Cape Coast—this point not raised as to identity of land. 9th Witness said he had been on land for 21 years. Document is dated 1939 at which time the action was already before the Asantehene's Court. He cannot produce the receipt for £90 which he says he paid. This Exhibit 4 was tendered as being the receipt for the money paid on the first occasion.

Difficult to reconcile with evidence of 15th Witness (Sogo) who said he paid about £10 and gave to the leader (9th Witness)—the document 30
is made out in name of 9th Witness alone.

Submit that no agreements made with Adansi until after the case was started in the Asantehene's Court.

Evidence adduced as to payments of £75 and £50.

If they renounced their interests in the land that is no estoppel.

As far back as 18 years ago Brenasehene attempted to eject people.

Refer to evidence of Tei Larnyoh (16th Witness)—he was then at Framasi.

Brenase descended from Kokofus, and still pay allegiance to Kokofu. Plaintiff cannot rely on weakness of Defendants' case—he can only succeed on strength of his own.

I would not expect to find Defendants at place where Kofi Sei was to be established.

Exhibits " E " and " F " refer to land in extreme north.

10 When Defendant saw that Plaintiff was trespassing in 1937 he took action at once by swearing an oath to which Plaintiff responded.

It was after this action that more people were put on this land by the Adansihene.

Court has suggested a compromise and will consult my clients in that matter.

In the Supreme Court (Divisional Court, Kumasi).

No. 39. Address of Counsel for the Defendant. 18th November 1949—*continued.*

No. 40.

Address of Counsel for the Plaintiff.

No. 40. Address of Counsel for the Plaintiff. 18th November 1949.

MEAD REPLIES :

20 Plaintiffs' claim rests principally on settlement either by subjects of Adansi Stool or by persons who have been permitted to settle by consent of the Plaintiffs. Plaintiffs' original claim covered a larger area than that contained in the plan (Exhibit " 1 "). Defendants only dispute Plaintiffs' title so far as indicated on that plan. In that connection I refer to the northerly portion which overlaps an area to which claim was made in a previous suit *Ofori Atta v. Adansi*. It is obvious that in respect of that area there is considerable conflict as to ownership.

Certain amount of historical evidence given by Plaintiff's first Witness which must be regarded in light of events within living memory.

30 Plaintiff submit has established acts of ownership in North-West area or at Bosumpimasu where Plaintiff's Witness Kofi Sei said he went in search of gold—such an overt act must have been known to the people in the neighbourhood. There was no opposition. No evidence to Defendants to contradict or to explain otherwise the presence of these gold pits.

Plaintiff has established that at Nttetim and at Framasi and at Supom near the Prah—also places at Amakon, Nsese. Hiama Nkyin and Kyenkyenasi. These are all places of sufficient size to be given a name and to be marked on the map.

Defendants have led no evidence to show the title of possession or otherwise to these places.

40 The plan used in the suit was prepared at instance of Defendants although in another proceedings—it was Defendants' representative who

In the
Supreme
Court
(Divisional
Court,
Kumasi).

No. 40.
Address of
Counsel for
the
Plaintiff.
18th
November
1949—
continued.

indicated the boundaries to the surveyor and who told the surveyor the names of persons and places on the land.

It should be remarked that Defendant has failed to substantiate his claim to the great majority of the places and farms which were indicated by them to the surveyor 2 years ago as being his. His evidence is entirely confined to a small area lying at junction of Anu and Prah Rivers and a little to the WEST.

It should be observed that this area is almost on a line with the town of Brenase (Defendant's Headquarters) and within easy distance of it. Defendants have not established any village or town in that neighbourhood and I suggest that the use by the Defendants of that area was either as an overflow from their own lands or else to supply evidence in early days of this litigation. 10

Even the evidence of Defendants regarding North-East area is open to doubt in that many of the witnesses called—their names do not appear upon the plan and the reference is that they have come there since the surveyor came on the land.

The Defendants are endeavouring to assert their title through the Stool of Kokofu—but the representative of the Kokofu Stool said he had never been on this land and did not know it. 20

Submit his evidence is of no value.

Exhibits Nos. 2, 3 and 6 are records of an event which took place in 1909. Exhibit 3 clearly refers to an area of land outside of area in dispute. It has a common boundary at Anum River for a short distance.

By this agreement people of Akim-Swedru and Brenase relinquished their claims to that land in favour of the Government. And further to other land situate on RIGHT Bank of Prah in Southern and Central Provinces of Ashanti. What these claims were are not defined. In Exhibit "6" the Defendant relinquished all claims to land and property on RIGHT Bank of Prah to which he might have been entitled under certain judgments which were referred to in the agreement (Exhibit "6") 30

Two of these judgments in both of which John Daniel was Plaintiff—in one case the action was struck out—in the other Plaintiff non-suited—no rights established under either judgment. Claim before the Court is not evidenced in the copy of the proceedings ("E"). Exhibit "C" does state the lands referred to. No evidence to connect the names and places there with those places similarly named within the area in dispute.

Kofi Boontoe v. Pataquin & Anor.—there is again no evidence to link those places names with similar places names on disputed land.

Defendants have suggested that whatever rights they had prior to the signing of these documents in 1909—so far as those rights mentioned in Exhibit 6, these have been revived. No evidence that Government relinquished the rights ceded to them and in its absence it must be assumed they are still vested. 40

COURT: There was certainly no evidence as to what period they asserted their rights.

MEAD : In paragraph 2 of Exhibit 2. The views of the Adansihene are nowhere even indicated—but submit he was there to listen to the claim then made by the Defendant and from paragraph 4 of that letter the claim was of such a shadowy nature that Adansihene was not called upon to make any statement in answer. Submit that as argument and interpretation to reconcile the fact of Adansihene's presence and which is admitted by both sides—with the absence of any comment in that letter.

The Government paid Akim-Swedru people £75 to take over the area set out in Exhibit 3—which is outside of this land in dispute, and
 10 Asafuhene evidenced that the £50 was given to them to give up their ferry rights.

That does not entirely agree with Exhibit No. 6. There were no hunting rights reserved in this area—i.e. South of confluence of Anum and Prah River.

Paragraph 7 of No. 2—the right to place nets right across the river was reserved for discussion with the Adansihene—which affords further support for the argument that Adansihene's rights in land were not being attacked.

As regards any question of compromise—my clients say they are quite
 20 open to consider suggestions.

In the
 Supreme
 Court
 (Divisional
 Court,
 Kumasi).
 —
 No. 40.
 Address of
 Counsel for
 the
 Plaintiff.
 18th
 November
 1949—
continued.

No. 41.
 Court Notes.

No. 41.
 Court
 Notes.
 18th
 November
 1949.

LARBI : Ask leave to put in the copy of proceedings relating to Exhibit " F."

MEAD : I cannot consent to it going in.

COURT : I will grant leave for evidence in proof of these proceedings to be given in evidence on the

MEAD : If my learned friend can produce a proper certified copy I will consent.

30 COURT : Provided Counsel are agreed I will admit the copy upon notification from Mr. Mead that he consents otherwise I leave it to the other side to move the Court to hear evidence on any convenient date.

Subject to this I reserve judgment to 12.12.49.

(Sgd.) J. JACKSON,
Judge.

In the
Supreme
Court
(Divisional
Court,
Kumasi).

No. 42.
Judgment.

IN THE SUPREME COURT OF THE GOLD COAST. ASHANTI.

No. 42.
Judgment.
13th
January
1950.

At a DIVISIONAL COURT held at Kumasi on Friday the 13th day of January, 1950, before His Honour Mr. Justice JACKSON.

Suit No. 233/1949.

THE STOOL OF ADANSI
v.
THE STOOL OF BRENASE.

JUDGMENT.

10

The writ in this action was applied for by the Solicitors for the Stool of Adansi on the 26th October last and a writ was issued out of this Court by the Registrar on some day in that same month (but which date he has omitted to state in the Writ of Summons) but which was made returnable on the 5th November. This writ was issued as the result of a decision given by me on the 21st September and which exhibited as Exhibit " G " gives a short history of the checkered course of this action which originated in the Asantehene's Court of Grade " A " sometime in 1937. It follows that for more than twelve years the issue as to the title to the land has been subjudice and in addressing my mind to the evidence given before me I must necessarily divorce from my mind that evidence which relates to acts of ownership within that period and to address my mind to those acts which preceded the commencement of the action in the Asantehene's Court in 1937. 20

The plan exhibited and marked as No. 1 is one which was prepared by Mr. Selby, Licensed Surveyor, in 1947, and which he made under instructions given to him by the Ohene of Brenase, the representative of the Defendant and Brenase Stool.

The land indicated thereon and delineated in pink is the area now in dispute. The land to the EAST of that line it is agreed belongs to the Brenase Stool, but in viewing the plan from the Plaintiff's angle it must be quite clearly understood that the limitations on the north west and south and the names of the adjoining land-owners are those as evidenced by the Defendant, and not by the Plaintiff, whose case is that the land now in issue is only a part of a very much larger area of the land in all those directions, and which is claimed to belong to the Stool of Adansi. 30

The land to the north marked as " Muronem Stool Land," and which includes that area to its south up to the line shown in yellow, was the subject of an action which came before me on the 5th and 8th November last, an action between the Stools of Akim Abuakwa and Muronem, the Plaintiffs and Adansi and Banka Stools, who were the Defendants ; and in 40

which action judgment was entered for the Defendant stools on the 12th November. The present Defendant stool i.e. Brenase was not a party to that action ; the Plaintiffs in the former action having vigorously opposed any consolidation of these trials, and as the title of the Akim Abuakwa and Muronem Stools are no longer in issue in respect of this part to the north in view of that decision, it is only fair to record that when the plan was prepared in that former action, and which the parties before me agreed did overlap to the extent shown by the line in yellow, that Brenase did not remain dormant, but did, by their then Solicitor, Mr. Sackeyfio, protest at the survey being made through their land.

In the
Supreme
Court
(Divisional
Court,
Kumasi).
—
No. 42.
Judgment.
13th
January
1950—
continued.

It is astonishing that after this action has been before the Courts in one way or another for twelve years or more, and in one which seek a declaration of title to the land, the only plan which is relied upon by the Plaintiff stools is this one now before me and which was one prepared by the Defendant stool for use in the Land Court at Cape Coast in 1947 and 1948. This I have been told, but perhaps I may be forgiven if I take judicial notice of this fact, was the plan prepared as the result of an order made by me at Cape Coast in 1947, and in which I ruled that the Land Court in Cape Coast had no jurisdiction as the land was situate in Ashanti and not in the Colony.

With this preliminary and explanatory survey of the manner in which the action finally came to trial I will now address myself to the writ, the pleadings and the evidence.

The first paragraph of the writ of Summons is one which seeks to establish title to the area of land there described and which Mr. Mead, Counsel for the Adansi Stool, avers is the same in description as that area shown as delineated in pink on the plan exhibited and marked as No. 1

The second paragraph sets out the root and descent in title, and which sets out the sole facts in support pleaded in the Statement of Claim dated the 19th June, 1948, and which pleading was adopted as being the pleadings in the action now before me. The Defendant Stool in the same manner adopted the statement of defence of theirs which was dated the 9th July, 1948.

Although the title claimed is not set out with any particularity i.e. whether title to possession, title of ownership, absolute or qualified, the trial proceeded on the clear and unmistakable basis that the title claimed by the Plaintiff stool was one of absolute ownership and the defence was a traverse of the Plaintiff's claim to ownership and possession and setting up, but not by way of counterclaim, one of absolute ownership and possession being vested in the Defendant Stool.

Now what is the Plaintiff Stool's root of title as pleaded ? It is that one Kwa Ntwi Barima, the predecessor in title of the Plaintiff was placed in possession of the land by the then Asantehene Nana Osei Yaw. What was the title of the former Asantehene to enable him to grant possession has not been pleaded. Almost at the close of the Plaintiff's case learned Counsel for the Plaintiff asked for an adjournment to enable a linguist of the Asantehene to be called to give evidence as to history and tradition. I declined, at that stage, i.e. on the 17th November (on the third day of

In the
Supreme
Court
(Divisional
Court,
Kumasi).

No. 42.
Judgment.
13th
January
1950—
continued.

the trial), to grant such an adjournment for the reason that if such history or tradition was relevant or admissible then it was the very foundation of the Plaintiff's case, and steps should have been taken to assure that this evidence was before the Court. I would add that the excuses for the non-attendance of this Witness were not satisfactory, and that even were this witness not available, there were a score and more linguists attached to the Asantehene whose duty it is to know the history or tradition, and any one of whom could have been called.

But there was a further objection that even had the linguist been called he would not have been permitted to evidence facts relating to any interest in the land which might have been vested in the Asantehene when he granted possessory rights to the Plaintiff's predecessor in title, since such facts, and which facts were material ones, had not been pleaded. 10

I have treated the claim by the Plaintiff, as I have said before, as being one praying for a declaration that the title of exclusive possession and ownership is vested in the Plaintiff Stool and it is axiomatic that in actions of this description a Plaintiff can only succeed upon the strength of his own title and cannot rely upon the weakness of that of his opponents.

Apart from history and tradition a person seeking such a declaration must evidence acts of ownership, within the period of living memory, sufficiently positive and numerous from which the only reasonable inference that can be drawn is he possessed rights of exclusive possession or of ownership. 20

I will now review that evidence. The first Witness to be called was Kwasi Adai a man of some 70 years of age and at present occupying the office of Abadiachinhene to the Adansi Stool. His evidence as to the time and manner in which the Adansi Stool came into possession of the land was as follows :

“ Q. Do you know how Adansi Stool came into possession
“ of this land ?—A. My ancestor told me the land belonged to 30
“ the Adansi Stool.

“ Q. Do you know how long before you were born ?—
“ A. I was told by my elders that the Adansihene got possession
“ of the land ever since the time of Osei Yaw.

“ Q. Who was Osei Yaw ?—A. The then Asantehene.

“ Q. How long ago was he Asantehene ?—A. I cannot tell—
“ I was not born at the time.

“ Q. Who was the Adansihene that you first knew ?—
“ A. Kwa Antwi Barimah.”

It was pleaded that this man Kwa Antwi Barimah was first 40 person to be placed in possession of the land by the Asantehene.

This being so one would naturally expect to find that either Kwa Antwi Barimah was in physical possession either himself or in possession by what is known to custom by a “ caretaker ” i.e. within the period of this Witness' life of some seventy years.

Now the evidence of this Witness, which is the earliest in time, relates to an event which happened on the 1st February 1909 i.e. some 40 years

ago and which was a meeting at BRENASI (BERONASE) between two Senior Government Officials namely Mr. E. C. Elliot, then Commissioner of the Central Province and Mr. C. H. Armitage, then Commissioner of the Southern Province. Now this Witness' recollection of that event when cross-examined was that the meeting between those officials was convened as the result of a land dispute between Adansi and Brenase and that it was decided and they (Adansi) should pay to Brenase sums of £75 and £50 and that they (Adansi) were made to understand that these sums had been paid to Brenase and Akim Swedru as monies for "buying the boundaries of the River Prah."

10 There was no suggestion by this witness that Adansi ever objected in any form to such payments, and that payment, if true, would, standing by itself, afford some evidence that some interest in land or rivers which had not formerly been enjoyed by them (Adansi) had been purchased from Brenase, and it would by itself afford evidence in rebuttal of the claim to possession as the result of any grant from the Asantehene in the past. This evidence that the "palaver" then was a land dispute between Adansi and Brenase was corroborated later by the evidence of one A. B. Josiah (19th witness) who in 1907 was the Clerk and Interpreter attached to the office of the Commissioner of the Central Province.

20 Another version of the reasons for that meeting was given in a later part of the trial by Kwaku Bufu (7th witness for Defendant) who in reply to me said he was present at that meeting and his version of the reasons for that meeting were stated by him in the following words.

"At a place called Nsease there was a ferry which was used
 "in crossing the River Prah—Government told Kobina Efa that
 "he wanted to take the river and employ people to ferry because
 "the people who were doing it were taking tolls and Government
 "said it would take over the ferry to ferry people free of charge.
 "Government said that as they were taking over the ferry from
 30 "us and were getting tolls—they would give us £50"

Now the Plaintiff put in evidence a copy of a letter dated the 3rd February 1909, purporting to be signed by Messrs. Eliot and Armitage (Exhibit No. 2) as well as an agreement in relation of a payment of £50 made by the *Government* to Brenase (Exhibit No. 6).

That letter and those events, it is conceded by Counsel for both parties, referred principally to land situate to the north of the area now in dispute and described on the plan as Government land situate north of the confluence of the Rivers Prah and Anum.

40 But paragraphs 3 and 4 of that letter also relate to a part of the land now in issue and described as being situate at NSESE (INCESSE) and at which time the NSESE on the right bank of the Prah consisted then of only a recently constructed bush-hut.

It is also clear that the object of that agreement as explained by these officials to the Chiefs of Brenase was "the position and extent of the land "which Government proposed to take." It is agreed that the land acquired in the north between the Prah and Anum is now the constituted

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Anum Forest Reserve but that Government neither has nor claims any interest in the land now in issue.

The River Prah forms here the administrative boundary between Ashanti to the West and North and the Colony to the East and South, and it is extremely significant that in this letter the only mention made of Adansi is the one in paragraph 7 (ii) which reads

“ ii Fishing rights on the left bank of the Prah to be held by
“ Akim Soadros. Their right to place nets across the whole
“ breadth of the river to be discussed with the Omanhine of
“ Adansi”

10

Now this was a letter addressed to the Chief Commissioner of Ashanti and the terms of that letter do appear to corroborate rather the version given of the meeting by Kwaku Bufu than it does that given by the Plaintiff's witnesses. There is however evidence from both sides that the then Adansihene (Kobina Foli) was present and it does not appear to me to be unreasonable, I was almost inclined to say irresistible, that what the officials then had primarily in mind was to obtain a satisfactory boundary between Ashanti and the Colony and to buy out the rights in land possessed by Brenase on the Right Bank of the Prah, and thus to make the Prah River not only the administrative boundary but the boundary of Stool rights in land. Had the Adansihene been made a party to that agreement (Exhibit 6) all would have been well, but it does not necessarily follow that because Brenase were willing to surrender certain rights in favour of Government, that they would be prepared to do so in favour of Adansi, and I cannot help feeling or conjecturing that this fact must have operated in the minds of the learned Commissioners at that meeting and at its conclusion.

It is quite clear that under these agreements the Plaintiff stool can acquire no interest in the land unless they can show that they have had a subsequent assignment of these rights from Government, and that they have not been able to show or even attempted to show.

Now from that date what is the evidence of acts of ownership as displayed by the Adansi Stool ?

That is derived almost exclusively from the evidence of the witness Kofi Sei (2nd witness) and those witnesses who have derived their interests in possession by reason of grants made to them by him, and who include Kwaku Amum (6th), Akyim Tei (7th), Narkwa (8th), Kramo Amadu (11th), Abudulai (12th) (indirectly through Adansihene), Kwadjo Klefu (14th) and Tei Laryao (16th). The other witnesses in possession claim their rights to possession from the last Adansihene (Kobina Foli) and one of which witnesses was Kwadjo Anokyi (4th) whose evidence was so evasive and unsatisfactory that I rejected it i.e. evidence as to the manner in which he obtained rights at AMAKOM—a hamlet situate north of and close to the confluence of the Rivers Prah and Asaa.

Another witness Adaba Kwasi (9th) a native of Togoland also affirmed that he got land at Supom, just north of Amakom, direct from Adansihene

Kobina Foli. He says that he obtained these rights about 21 years ago and that in exchange for money then paid he was given a document, and the document which he then tendered in this connection was the one admitted and marked as Exhibit No. 7 which is dated the 4th February 1939 and was clearly a grant made whilst this action was sub judice.

The next witness Kojo Koto's (10th) evidence is that he came to Supom at the same time as Adaba Kwasi (9th witness) and that clearly would be also in 1939 and not 21 years ago as he testified, and again whilst the action was sub judice.

- 10 Kobina Safu (13th witness) also claims under Kwabena Foli, and the land which he described as having been granted to him was described as being just off the path from NKUTAE to SUBIRESU and on the extreme south west part of the land and says his father purchased the whole village of Nkutam. But when cross-examined he admitted he had neither seen nor heard of any surveyor coming upon the land and I am satisfied that if in truth he had any land so situate he simply could not have failed to have heard of such a visit and I am satisfied that if he does possess any land, that it is certainly not within the area now in issue. Kwaku Sogo (15th witness) who has a farm at Supom obtained his rights at the same time as
- 20 Adaba Kwasi (9th witness) and that grant clearly also was in 1939.

Apart from these instances of occupation within recent years of areas south of the Asaa River and principally around NSESE and to its south, there was apart from the evidence of occupation at Supom and Amakom—no evidence of occupation, that I could accept, north of River Asaa.

There was a fragment of evidence relating to the visit of a European gold prospector near BUSUMBIMASU in the extreme north west which was elicited by Defendant's Counsel under cross-examination and evidence of prospecting which was unopposed by any Brenase man.

- 30 Nsese—it is equally clear that no person ever took a grant from him and the evidence of Kofi Sei is that he has only lived at Nsese for about 15 years and that his uncle Tia Kosua, from whom he inherited, only died 6 years ago, but says he took charge of it 15 years ago when his uncle was sick. The evidence in this case in respect of time is very indefinite, and as has already been said, what had been described by witnesses as 21 years ago is proved by documentary evidence to have occurred in 1939 i.e. only ten years ago, and whatever land Kofi Sei and his uncle occupied 15 years ago their rights were clearly challenged by Brenase either immediately or in any event very soon afterwards when an oath was sworn by Brenase
- 40 more than 12 years ago and which oath precipitated the action in the Asantehene's Court and which is the foundation for the one now before me.

I will now deal with the case put to me by the Defendant Stool and which was pleaded in the Statement of Defence dated the 9th July, 1948.

The evidence relating to history and tradition was given by Yaw Brebia (3rd Witness) who is the senior linguist of the Kokofuhene, in Ashanti, by Amoaben Oku (representing the Defendant Stool) and by the Adontehene of Akim Busume, in the Colony. That history is that the

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first settler on this land was one Yaw Frimpong, a nephew of the then Kokofuhene called Nana Agyiman Ampimfi and during whose life the then Asantehene was Osei Tutu, a nephew of the then Kokofuhene.

It is testified that by tradition the first man to settle in this area was Yaw Frimpong and that he first settled at a place called Asaasu. (This was indicated to me as being the village situate on the Asaa River and shown on the plan (Exhibit No. 1)). He was a hunter and that was the sole use to which the land was put at that time. He came there with a brother named Andoh and they both continued to pay allegiance to the Kokofuhene. Later Frimpong was created an Ohene on the land and 10 then other people from Kokofu came there and settled on the land. On his western side it is said that Frimpong had as his neighbour one Bodwisangohene, then the Asofohene of Adansihene. That is the evidence of Amoaben Oko. The evidence of Yaw Brebia is that the first man to settle at Brenase was this same Yaw Frimpong. Brenase according to the evidence of Mr. Selby, the surveyor, is situate about 3 miles east of the confluence of the Rivers Prah and Anum. All traditional evidence affirms in the most positive terms that the State of Akim Busume (Swedru) situate in the Colony (East of the River Prah) owed allegiance in ancient days to the Kokofuhene in Ashanti and that the symbols of allegiance are still 20 observed, although at the same time, within the Colony that State of Akim Busume regards itself as independent, in regard to the other States in the Colony, but still subject to Kokofu in Ashanti by tradition.

That is the traditional background against which the events within living memory must be viewed. I would say at once that the history which shows a movement of population from Ashanti into the Colony is of the pattern which corresponds to the histories which have been narrated in the Courts of the Colony for the past eighty years or more.

Do the events within living memory tend to corroborate that tradition? Three cases heard in the Supreme Court in the latter part of the last century 30 were referred to in the letter dated the 3rd February 1909 and which was tendered by the Plaintiff Stool as being a part of their case (Exhibit No. 2). They were referred to as

Boontee v. Pataquin Quacoe Monsah, Smith, J., 6.1.1881.

John Daniel v. Anne, Rewar, J., 28.3.1893.

Daniel v. Andor, Griffith, C.J., 16.10.1895.

How far the lands discussed in these judgments are embraced within the land now in dispute is difficult to ascertain with any degree of certainty in the absence of pleas, but quite clearly reliance was placed upon them by the Commissioners who met at Brenase in 1909 and a study of these 40 judgments does afford some support for the evidence given by the Defendant Stool.

Copies of proceedings in the case *Coffee Boontoe v. Pataquin and Quaw Mensah* heard by W. J. Smith, J., on the 6th January 1881 were tendered in evidence by Counsel for the Defendant and this quite clearly is one of the judgments referred to. It is a claim to lands described as being

“AFRAMASSIE, ASSARSOO, ACOOCORBONOOMSO and BOSOMPIMASOO.”

They were described by the then Plaintiff as being "all adjoining lands." The only lands which I can identify by a similarity of name are those described then as being Assarsoo and Bosompimaso and which were said to be those described on the plan in the case (Exhibit 1) as being ASAASU and BOSOMPIMASU. The parties are "ad idem" that the names so given on the plan are the names by which those localities are known, and there has been no suggestion that similar names exist elsewhere in the vicinity and the East side of the Prah. There is a Frimpon mentioned there as a brother of the Plaintiff. That this man Frimpon was the first 10 settler seems to be doubtful.

But the evidence of Quam Buadoo there was that as far back as 1863 "ASSARSOO belonged to Frimpon" he said

"when I lived at Bosompimasoo I and the Ashanties who lived in the village gave portion to Frimpon. On the 1st occasion I was at Assarsoo and caught 2 captives whom I gave to Frimpon. I lived at Bosompimasoo now. When I kill game I gave it to Frimpon still and the Ashanties when they came to kill game gave me portions for Frimpon."

This evidence does suggest that this man Frimpon was then regarded 20 as being the Ohene of that land.

The evidence of Pataquin does tend to identify further the locality of the land then in issue, when he said

"The distance between Incessail and Assarsoo is about the same as from Cape Coast to Moree. Incessail is on a branch of the Prah." If Incessail is the same as Nsese as it would appear the Nsese, east of the Prah is shown to be a distance of about 4 miles which does correspond approximately to the distance between Cape Coast and Moree.

The evidence of the Defendant Quacoe Mensah in that early case was

30 "I killed game one day and Plaintiff's brother ANDOR came and took it away."

This Andor appears then to have asserted rights to game killed in this area and if he is the Andor who was the uncle of Kobina Fah, the Chief of Brenase who signed Exhibit No. 3—the acknowledgment of the receipt from Government for £75, then I think it can be fairly safely said that this case does refer to the land now in issue, as affirmed by the Defendant Stool and that it does bear out in a very substantial measure the traditional story as evidenced by the Defendant and his witnesses. Who were the Defendants is not stated and there is no suggestion that they were any predecessors in title of the present Plaintiff. The case solely affords some 40 evidence of acts of ownership on the land by persons who were predecessors in title to the present Defendant.

I will now deal with the case of *John Daniel v. Anno* (Redwar, J. 24th March 1893) tendered and admitted as Exhibit "C." There John Daniel claimed as against one Anno £75 damages for trespass at villages and lands described as "INCECE, AFFRANSI, ADDAKUMAH, ABBRADI and

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HUTARDI ” and by “ taking fare.” Later the claim in respect of the appropriation of the then Plaintiff’s ferry was withdrawn. The Plaintiff then was a man of Akim living in Cape Coast who claimed he was entitled to the proceeds of the ferry, which fairly clearly is the one then situate, and still situate at Nsese. He said “ Inceci is on the west of my land and “ Abbradi is still further to the West, then you come to Addakumah, which “ is the furthest to the West.”

Later on he refers quite clearly to the 1881 case and he is quite clear in saying that he makes no claim to these lands—it is to his rights at Inceci which he had obtained, as he said, by gift that he contests. 10

On the learned Judge’s ruling that there had been adduced no evidence to sustain a claim for trespass the Plaintiff was non-suited. I do not think that this case is of any assistance to me in the present action as it appears to relate to interests in land east of the river and ones which were said to have been obtained by way of gift and not of inheritance.

The third case of *Daniel v. Andor* heard before Griffith, C.J. on the 16th October 1895 was not evidenced by any copies of judgment or proceedings.

Next in point of time from the case heard in 1881 passes a period of some 28 years when the Commissioners met at Brenase and discussed the effect of these judgments in relation to this part of the land which they sought to acquire and did acquire by a payment of £50 made to Kobina Fah, Chief of Brenase and “ nephew and successor of Coffee Boontoe, “ Plaintiff in *Coffee Boontoe v. Pataquin and Quaw Mensah* Coram Smith, J. “ and of Anno Defendant in *John Daniel v. Anno* Coram Redwar J. and “ in *Daniel v. Andor.*” 20

Now it is perfectly clear that the then Adansihene was present and made no protest whatsoever. It was an admission by conduct that Brenase and not Adansi had the interests in the land on the right bank of the River Prah and which I am satisfied by other evidence before me related to that stretch of the Prah to the south of its confluence with the Anum River. 30

This evidence viewed against the traditional evidence is consistent with that historical survey as to the manner and extent to which the Defendant Stool possessed the user of the land.

In paragraph 2 of that letter there is reference to one OBIN OFASSEN, a Chief of OCHERESO (marked and spelt as OTWERESO in the Plan exhibited in this action) who claimed to be a subject of “ Omanhin AMOA KWATTA “ of KYEBI (KIBI) ” and claimed the villages of MIRONAM and BANKA. MIRONAM and BANKA are settlements to the north of the land in dispute and which was the subject of another action in which I gave judgment last month. 40

The evidence of Bafuo Nti Awuah (1st Witness for Defendant) and who was the Odikro of Odumasi under Ofori Atta of Akim Abuakwa (Kibi) was that he had a boundary with BRENASE at the Rivers described in the extreme south-western corner of the plan as OJAM and PIA. He was a man of some 75 years of age and had always heard that the land of his

neighbours belonged to the Kokofuhene. This evidence was not cross-examined and affords further corroboration both of tradition and of interests in land as recognised by neighbours. He appeared to me to be a truthful witness and as I have already remarked that evidence was not challenged by cross-examination.

There was in addition evidence of farming and especially cocoa farming by persons claiming under the Defendant in areas identified as being at Supom (evidence of Yesifu (5th Witness) for a period it is said of 40 years and which, if true, but which is not necessarily untrue, would be in breach of the Brenase's agreement with Government in that same year.

The evidence of George Mende (2nd Witness) a Sierra Leonean who occupies land in the north-eastern area on the right bank of the Prah appeared to me to be reliable. He settled there originally in the days of Kobina Fah (the Chief of Brenase who obtained £50 from Government). If 36 years is an accurate estimate then he would have settled there about four (4) years after the meeting of the Commissioners already referred to.

The other evidence of farming relates practically exclusively to that area to the north of the line marked in yellow, but clearly the farming has become intensified since the litigation started and cannot be regarded as affording any evidence of unchallenged acts of ownership.

In summary I would say that prior to the meeting of the Commissioners at Brenase in 1909 I can find no evidence that any person subject to the Adansi Stool ever occupied any part of the land, with the possible exception in the village of BUSUMAMASU, but what was the nature or quality of their title to occupy that place there is insufficient evidence to afford any justification for any positive finding.

There is ample evidence that prior to 1909 some people of Brenase who had migrated from Kokofu in Asante did possess interests in land west of the Prah and land which to the community was valuable to hunters alone. By customary law the first establishment of a right to hunt would establish an interest in land which would be regarded by custom as having been acquired from the Stool to which the hunters owed allegiance i.e. in this case the Kokofu Stool, but which later might become established as a subordinate stool to the parent stool, and the subordinate stool is now situate within the Colony under the senior stool of Akim Swedru, but both stools still serving as is said the Stool of Kokofu, the parent stool. Quite clearly such interests in land and allegiance straddling a large River like the Prah must have caused some considerable degree of embarrassment to the administrators at that time and who seem to have found rivers such attractive features as boundaries; I think more by reason of their indestructibility and certainty than as affording any indication of any true limitations of land interests on either bank of the river.

Again in this case I have found exemplified what I have seen repeatedly in nearly 30 years in West Africa and largely spent in land litigation, that rivers, whilst affording immense attractions to administrators, are almost invariably no indication of true boundaries between either Tribes, Clans

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or sometimes even families. These arbitrary but convenient administrative arrangements prove often the most fruitful sources of land litigation.

It is quite clear that until about 15 years ago neither the Plaintiff's nor Defendant's people made any substantial use of the land, and the Plaintiffs certainly none at all. The agreement of 1909 would tend to prevent any economic development by the Defendant. The knowledge that they had no rights of ownership would deter the Plaintiffs from encroaching upon the land.

Economic development in more recent years coupled with its profits, overcome these scruples, and as each side indiscriminately entered into 10 agreements with strangers to cultivate cocoa, so the time came when the Defendants realised that the agreement of 1909 was regarded as a dead letter and that its only effect had been to encourage the Plaintiff's predecessor in title into an exercise of power in the land which had never belonged to him or to his predecessor, and as a result the oath was sworn by Brenase, and in 1937 litigation commenced in the Native Court of the Asantehene at Kumasi and which by disgraceful procrastination has been delayed under one pretext or another for a period of more than 12 years. These are ugly facts and for which responsibility must be equally borne 20 by both the Political Administration and the Supreme Court (who have been seized of the action for more than 4 years). Delay in all litigation is to be deplored and condemned. In land litigation it tends to create and perpetuate injustices which rankle in the minds of the people long after the Judges have departed and died.

In conclusion I would say that the Plaintiff's claim to any declaration for title has neither been evidenced by any root or by any evidence upon which any Court could come to any reasonable conclusion that they were entitled as owners to exclusive possession. Such "rights" as they sought to acquire were those of squatters on land acquired from Brenase, land 30 which appears to have been abandoned by Government and which on abandonment reverts to the original owners (Brenase) and who, justifiably regarded the Adansi as mere trespassers.

I would add that I did not join the Attorney-General as a party as the case had been for some years before both the Chief Commissioners of Ashanti and the Northern Territories and I think I may correctly assume that had Government intended to contest such rights in land that the Attorney-General would have asked to have been joined as a party many years ago.

The land is clearly now of considerable value both as a cocoa farming area and in regard to valuable timber standing in the central and western 40 areas of the land in issue and I had invited Counsel and the parties to see me in Chambers before I delivered judgment and before I inform them of its effects, to see whether some compromise might not be arrived at but on the failure of Brenase to appear I have delivered judgment as above. The claim by the Plaintiff Stool is dismissed and judgment entered for Defendant Stool with costs to be taxed.

(Sgd.) J. JACKSON,
Judge.

No. 43.
Grounds of Appeal.

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IN THE WEST AFRICAN COURT OF APPEAL.

THE STOOL OF ADANSI represented by NANA
BONSRA ADJEI II *Plaintiff-Appellant*

v.

THE STOOL OF BRENASE, represented by NANA
AMOABAN OKO II of Brenase *Defendant-Respondent.*

No. 43.
Grounds of
Appeal.
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10 The Appellant herein being dissatisfied with the Judgment by the Divisional Court, Kumasi, dated 13th day of January 1950 and having obtained Final Leave to Appeal therefrom dated the 14th day of July 1950 hereby appeals to the West African Court of Appeal upon the grounds hereinafter set forth.

GROUNDS OF APPEAL.

1.—That the learned Judge failed to consider adequately various acts of the Plaintiff Stool indicating ownership of the land in dispute.

2.—That within the area of land in dispute particularly on the north of the Pra River there are admitted and well-known Forest Reserves
20 constituted by bye-laws passed by the Adansi Native Authority or Adansi Stool in 1930 and 1940. There is no record of any objection to the constitution of these Forest Reserves either by the Defendant Stool or by any other stool or persons. If the Defendants contend that they are owners, why have they not protested during the last 20 years.

3.—The fact that the Adansi Stool had granted concessions along the north-bank of the River Pra ; particularly from the confluence of the Rivers Pra and Anum to a point well towards the west of Prasu in 1910 as appears in Gazette Notices of that year at pages 632 and 633, should
30 have weighed with the learned Judge in determining the exclusive possessory rights of the Plaintiff Stool.

4.—The learned Judge did not give sufficient weight to the fact that the River Prah has been accepted and acknowledged as the boundary between the Colony and Ashanti without opposition from any stool or persons for a considerable number of years. That the Defendant's contention is therefore a belated attempt to shift the said boundary between the Colony and Ashanti.

5.—That the Defendant's Stool cannot be entitled to any rights in and across the River Pra, as on their own showing it had divested itself of any contentions rights or interest it may have had in the area by accepting
40 monetary payments of Seventy-five pounds (£75) and Fifty pounds (£50)

In the West African Court of Appeal. respectively through the Government; which said monetary payments were made by the Adansi Stool.

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Appeal.
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continued.

- 6.—The learned Judge misdirected himself in law in holding *inter alia* :
- (a) that payment of monies by the Adansi Stool to the Brenase Stool afforded evidence in rebuttal of the Claim of Plaintiffs to possession of the land as the result of a grant from the Asantehene ;
 - (b) that the Plaintiff Stool can acquire no interest in the land unless it can show a subsequent assignment of rights therein from the Government ;
 - (c) that prior to the meeting of the Commissioners at Brenase in 10 1909 he could find no evidence that any person subject to the Adansi Stool ever occupied any part of the land with the possible exception in the village of Busumamasu ;
 - (d) that “ rights ” which the Plaintiffs’ Stool sought to acquire were those of squatters on land acquired from Brenase ;
 - (e) that the land appears to have been abandoned by Government and on abandonment reverted to Brenaseis.

7.—That due weight was not given to the historical fact that that the Akims were driven away from the land in dispute by the forces of the Asantehene and that the Akims migrated across the Pra and any land 20 they might have possessed were taken over by the Asantihene who granted possession thereof to the Plaintiffs’ Stool. That the first settlers on the land after the Akims left were the Adansis.

8.—The learned Judge should not have entered Judgment for the Defendants in that they had not instituted counterclaim for title to the land.

9.—The Judgment contradicts in effect the judgment given by the same learned Judge in favour of the Plaintiff Stool in the case of the Akim Abuakwa and Muronam Stools versus the Adansi Stool.

10.—The Judgment is otherwise erroneous and contrary to law and 30 equity and against the weight of evidence.

Dated at Adontene Chambers, Kumasi, this 21st day of July, 1950.

(Sgd.) SAMUEL A. ATTOH,
Pp. E. O. ASAFU-ADJAYE,
Solicitor for Plaintiff-Appellant.

The Registrar, West African Court of Appeal, Accra, and to the Stool of Brenase represented by Nana Amoaban Oko II of Brenase, his Agent or Solicitor.

No. 44.
Additional Ground of Appeal.

Filed 7.1.52
at 2.55 p.m.
A. K. T.
for Regr. W.A.C.A.

In the West
African
Court of
Appeal.

No. 44.
Additional
Ground of
Appeal.
7th January
1952.

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

10 THE STOOL OF ADANSI represented by NANA
BONSRA ADJEI II *Plaintiff-Appellant*
v.
THE STOOL OF BRENASE represented by NANA
AMOABAN OKO II *Defendant-Respondent.*

TAKE NOTICE that at the hearing of this Appeal the Plaintiff-Appellant will ask leave to argue the following Additional Ground of Appeal :

1. The learned Trial Judge misconstrued the documents Exhibits 2, 3, 4 and 6, and their effect upon the case, and consequently misdirected himself on the main issues involved in the case.

Dated at La Chambers, Accra, this 7th day of January, 1952.

20

(Sgd.) N. A. OLLENNU,
Solicitor for Plaintiff-Appellant.

The Registrar, West African Court of Appeal, Accra, and to the above-named Defendant-Respondent or to his Solicitor, Accra.

No. 45.
Court Notes.

9th January, 1952.

No. 45.
Court
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9th & 11th
January
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30 Mr. OLLENNU with him Mr. SIRIBOE for Plaintiff-Appellant.
Mr. KOI LARBI—with him Mr. CRABBE for Defendant-Respondent.

OLLENNU—

Refers to Judgment—Statement of Claim.

Certain documents dating back to 1909 were put in evidence—It is upon a proper construction of those documents that the case depends. Exhibit 3—page 92.

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continued.

We are in agreement that “ Right Bank ” means right from the source.
 Exhibit No. 3, page 92.
 The “ Government Land ” is properly indicated on Plan.
 Refers—particularly to paragraph 2.
 The Prah is the recognised boundary between the Colony and Ashanti—
 it was in 1909 and still is.
 Refers to Exhibit 6.
 Kobina Fah
 Chief of Beronase—renounced all his rights to land and property to
 the West of the Prah— 10
 Exhibits 6 and 3—were made on same day i.e. 1st February, 1909.
 Exhibit 6 was confirmed by overlord. Exhibit 3, page 92.
 From 1st February 1909 Beronase lost for ever any interest they
 might have had in land west of the Prah.
 Judge held that if Government did not assert its claim to land in
 question, West of Prah, it went back to Beronase—but he did that because
 he failed to take into consideration effect of Exhibit 2, pages 93 to 95.
 It was never contested in Court below that the agreement was not as is
 set out in Exhibit 6.
 The Beronase renounced all rights in land West of Prah south of the 20
 confluence of the River Prah and Anum rivers.
 I submit that the Adansi stepped into the vacuum and then became
 the owner of the land on the western bank of the Prah—south of the
 confluence of the Prah and Anum rivers.
 See—particularly sub-paragraph ii of paragraph 7 of Exhibit 2.
 From 1st February 1909 Adansis have been the owners of the land
 in question.
 Exhibit “ C ”—Claim was dismissed—
 Exhibit “ D ” Action was withdrawn. 30
 Adansi—were already on the land when Brenase went there.
 Plan was made for Defendants—some of our villages have been
 omitted—other plan will show this.
 Plaintiff’s evidence page 8.
 Evidence at page 9.
 Judgment pages 59 and 60.
 I submit that Exhibits 2, 3 and 6 do not support contention that £50
 and/or £75 was paid in respect of Ferry rights.
 Page 59—If one purpose of meeting was to establish boundary between
 Stools—which Stools? Why should Adansi sign Exhibits 3 and 6— 40
 in what capacity ?
 We adjourn to 2.40 p.m.—Resume 2.10 p.m.

OLLENNU :

At page 64—line 27—submits that Judge was wrong—why should
 Adansi say anything—they were not being asked to give up any right.
 Submits that 3, 6 and 2 (Exhibits) were results of friction between

Adansi and Beronase—that is why Adansi representative was present when Exhibit 3 was executed—also 6. In the West African Court of Appeal.

Refers to evidence at page 40—speaks of a dispute about Brenase. Page 8 of record—

NOTE :

Submits that second paragraph of Judgment page 60 shows that Judge misdirected himself—Adansi never claimed through Government they had been on land years before Exhibits 2, 3 and 6 were made.

Occupation subsequent to 1909.

10 Each witness we called testified to our occupation since 1909.

See page 60 of Judgment.

“ A ” is clearly a misdirection—it really refers to a transaction which took place many years ago. Complains about Judgment—line 3 on page 66.

Says that there is evidence of witnesses not criticised by Judge.

Evidence of Kofi Sei page 14 and on

“ A ” of Kofi Sei’s evidence at page 19—is strong evidence of a dispute about this land—between Adansi and Brenase.

20 Draws attention to evidence for defence regarding occupation of land—only relates to—except in one case—land north of yellow line.

Trial Judge has used Defendant’s claim to land to defeat our claim.

Kofi Sei does not speak of dispute between Adansi and Brenase—very clearly.

Refers to evidence at page 61.

Judge held that we failed in not establishing and claiming root of title through Asantehene.

NOTE—Submits that it was pleaded—

See Statement of Claim—Yes—but it was denied in Statement of Defence.

Adjourned until 11.1.52 at 8.30 a.m.

30

(Intd.) S. F. S.

11th January, 1952.

Counsel as before.

OLLENNU :

Refers to *Foli v. Akese* Volume 1 W.A.C.A. Reports page 1. Volume 2 W.A.C.A. Reports page 46—Case shows that we were there asserting our claim to the land in dispute.

Mr. KOI LARBI :

40 Refers to pleadings. Paragraph 2—only evidence to support the allegation of title is the Cross-examination of Kofi Sei at page 17 of record—lines 33 to 34—

“ Q. How was this land founded?—A. It was Nana “ Asantehene who gave this land to Adansihene.”

No. 45.
Court
Notes.
9th & 11th
January
1952—
continued.

In the West African Court of Appeal. No. 45. Court Notes. 9th & 11th January 1952—*continued.*

LARBI—refers to page 40 of record—and remarks of trial Judge. Exhibit 3 page 92. Draws attention to words—“ that in consideration of the Government “ of the Gold Coast Colony having taken over certain land on the right “ bank of the River Prah.”

Draws attention lines 29 to 32—page 12 of record—

OLLENNU—

The Plaintiff not only pleaded the grant but also that we have been in possession for many years—Judge’s conclusions were not justified by the evidence. The evidence clearly shows that we have been in possession 10 for a long period of time Adansi.

Exhibits 2, 3 and 6—clearly show that Brenase gave up any rights they had.

C. A. V.
(Intd.) S. F. S.
P.

11.1.52.

No. 46. Judgment. 17th March 1952.

No. 46.
Judgment.

WEST AFRICAN COURT OF APPEAL.

General sitting held at Accra, 17th March, 1952. 20

Cor : FOSTER-SUTTON, P., COUSSEY and MANYO-PLANGE, JJ.

Civil Appeal
No. 45/50.

THE STOOL OF ADANSI represented by NANA
BONSRA ADJEI II Plaintiff-Appellant

v.

THE STOOL OF BRENASE represented by NANA
AMOABAN OKO II Defendant-Respondent.

JUDGMENT. 30

COUSSEY, J. : This Appeal arises in a dispute of long standing between the Stool of Adansi as Plaintiff, and the Stool of Brenase as Defendant, as to the ownership of a considerable area of land in Ashanti with the River Prah, as its Eastern boundary, and the Mpunpunasi, Mbomen and Dawumasu streams and the Anu or Anum River to its confluence

with the Prah river, as its northern boundary. On the western side there are the lands of the Bodwisango Stool southward to the Ojam stream. The southern boundary is with Otwersu Stool lands from the Ojam stream to the River Prah at a point marked Tasandua Bonso on the plan exhibited by consent of the parties. The survey for this plan was made *ex parte* by the Defendant and the foregoing is the Defendant's description.

The plan was adopted by the Plaintiff for the purpose of identifying only, the land in dispute. An area of land in the north, edged yellow, has, with other land, been the subject of an action between the Stools of
 10 Akim Abuakwa and Muronem as Plaintiffs, and the Stools of Adansi and Banka as Defendants. The present Defendant, the Brenase Stool, still claims that area from the Adansi Stool, who opposed Defendant's joinder in the suit referred to.

In the present suit the Plaintiffs, by their statement of claim, averred that a predecessor in title Barima Kwa Ntwi, was placed in possession of (inter alia) the land in dispute by the then Asantehene Nana Osei Yaw (who flourished from 1824 to 1838) and that the land has since that grant remained in the possession of the Plaintiff's Stool without interruption. This is denied by the statement of defence.

20 The Defendant's claim that their ancestor Yaw Frimpong migrated many years ago with his people from Kokofu in Ashanti and, with the Akim Bosomes, settled on the land in dispute, as well as on land on the Eastern side of the River Prah; that they founded the seat of their Stool at Brenase about three miles to the east of the River Prah and that they have received tribute from occupiers of the land and, until 1909, worked the ferry across the River Prah at Nsese when, by agreement with the Government, they gave up their rights to the ferry and also granted land to the north of the confluence of the Rivers Prah and Anum, to the Government.

30 Brenase, is a division of the State of Akim Bosome (Swedru). This State is situate in the Colony where it is independent, but it still observes an ancient allegiance to Kokofu in Ashanti from whence its people sprang, and which allegiance, has not been affected by the fact that Government has fixed the River Prah as the territorial boundary between Ashanti and the Colony. Fomena, the seat of the Plaintiff's Stool is some 40 miles west of the River Prah. The Plaintiffs claimed a declaration of title to the land. The learned trial Judge rightly kept in view that in such an action a Plaintiff can succeed only upon the strength of his title and not upon the weakness of his opponent's title.

40 In the words of the learned Judge :

“ Apart from history and tradition a person seeking such
 “ a declaration must evidence acts of ownership, within the period
 “ of living memory, sufficiently positive and numerous from
 “ which the only reasonable inference that can be drawn is he
 “ possessed rights of exclusive possession or of ownership.”

In the absence of direct title deeds, acts of ownership are the best proofs of title.

In the West
African
Court of
Appeal.

No. 46.
Judgment.
17th March
1952—
continued.

In the West
African
Court of
Appeal.

No. 46.
Judgment.
17th March
1952—
continued.

After a full review of the Plaintiff's evidence of occupation, which involved an examination of the actual instances and transactions in which the Plaintiff's alleged right had been acted upon, the learned Judge found that the Plaintiff had not made any substantial use of the land until litigation commenced, in or about the year 1937. He held that prior to the meeting of the Commissioners at Brenase in 1909 which will be referred to later in this judgment, he could find no evidence that any person, subject to the Adansi Stool, had ever occupied any part of the land, with the possible exception of the village of Busumamusu, and of the nature or quality of their title to occupy that place, there is insufficient evidence to afford any 10 justification for any positive finding.

The Plaintiffs also failed to prove satisfactorily, a grant of the land from the former Asantehene, Nana Osei Yaw.

Towards the close of the Plaintiff's case an adjournment was applied for to enable a linguist of the Asantehene, the Paramount Chief of Ashanti, to be called to give evidence, presumably of such a grant. This, the root of the Plaintiff's title, should have been embarked upon at the outset of the case. The learned Judge, for the reasons given in his judgment was right, in my opinion, in refusing the adjournment. He observed also that the title of the former Asantehene to grant the land to the Plaintiffs had not 20 been pleaded and clearly, it would have been unwise, for obvious reasons, to indulge the Plaintiff to make a case at that stage of the enquiry.

But the main ground on which this Appeal has been argued is that the learned Judge allowed himself, erroneously, to be impressed more by what happened in relation to the land before the year 1909, but that if he had interpreted certain documents correctly, which were exhibited by the Plaintiffs, he would have granted the declaration of title claimed.

The first document, Exhibit "3," which is dated at Brenase 1st February, 1909, is a declaration by the Chief of Brenase and his overlord the Omanhin of Akim Soadro (Bosome) that in consideration of a present 30 of £75 by the Government of the Gold Coast Colony and of the Government having taken over land bounded on the West by Anum river, on the South by the Prah river, on the East by the Prah river, and on the North by the Anwiaso-Akontanase Road from the point where it crosses the Anum river to the point where it crosses the Prah river, the said Chiefs renounced all claims and property they may have possessed to the said land and also all claims or right to other lands situate on the right i.e. West bank of the River Prah in the southern and central Provinces of Ashanti.

The second document, Exhibit "6" which is also dated at Brenase, the 1st February 1909, is a declaration by Kobina Fah as Chief of Brenase 40 and nephew and successor of Coffee Boontoe, that in consideration of a present of £50 by the Government, he renounced all claims to land and property on the right bank of the Prah river to which he may have been entitled under three judgments in suits in the Supreme Court as successor to Coffee Boontoe and Annor or Andor (the brother of Coffee Boontoe) who were parties to the suits in the Supreme Court referred to.

It is admitted that the Chief of the Adansi was present at the meeting at which the Commissioners obtained the two documents above set out but that he was neither party nor signatory to them.

These documents were not pleaded by the Plaintiff; but Kwasi Adai the principal witness of the Plaintiff, testified that he was present with the Adansihene at the meeting which, according to this witness, was convened on account of a land dispute between Adansi and Brenase, and that Adansi in fact paid the sums of £50 and £75 to Brenase through the Commissioners.

10 After reviewing the evidence of the Plaintiffs and Defendants as to this meeting and considering the effect of a Report to the Chief Commissioner of Ashanti Exhibit "2," written contemporaneously by the Commissioners present at the meeting, the learned Judge arrived at the conclusion that the object of the Commissioners was to define a satisfactory administrative boundary between Ashanti and the Colony, namely the River Prah, and that the Plaintiff Stool did not purchase the land and cannot assert title thereto by virtue of the documents mentioned. To do so would, in fact, be in conflict with the Plaintiff's statement of claim which avers that about 125 years ago, and not in 1909 by purchase from or agreement with the Defendant Stool, the Plaintiffs had acquired a grant
20 from the Asantehene. These documents cannot be relied upon by the Plaintiff as amounting to an executive decision. If the intention of the Commissioners had been to define by these agreements the boundaries of Stool lands between Adansi and Brenasi as the River Prah, I think effect to this would probably have been accomplished by an order following the agreements and the order would have been validated by operation of the Ashanti, Boundary, Land, Tribute and Fishery Disputes (Executive Decisions Validation) Ordinance Cap 120. But even then it would not have had the effect of passing the ownership of the land to the Defendants. *Kwasi Safo v. Chief Kofi Yensu & Ors.*, 7 W.A.C.A. Reps. 167 at p. 169.

30 The Plaintiffs clearly have no rights of title under these agreements. They also failed to prove that by them the Defendant Stool intentionally relinquished its rights in the full knowledge that they were waiving rights in the Plaintiffs' favour.

In the year 1941 the Colonial Secretary of the Gold Coast had cognisance of the dispute relating to this land but the Government did not assert a claim to any part thereof by virtue of the two declarations of the Brenases, Exhibits "3" and "6." But, as the learned Judge found, these documents one of which refers to earlier litigation by the Brenases, do support substantially the Defendants' tradition and evidence of acts of ownership.

40 The evidence of occupation and user preponderates in favour of the Defendant Stool; the sum total of them characterises ownership. I would not dissent therefore from the view of the learned trial Judge that such "rights" to the land the Plaintiffs sought to acquire were as squatters on land acquired by Government from Brenase, and abandoned and not reasserted by Government. On relinquishment by Government the land would revert to the original owners, the Defendant Stool; but I would dismiss the appeal on the ground that the Plaintiffs have failed to prove

In the West African Court of Appeal.

No. 46.
Judgment.
17th March
1952—
continued.

In the West African Court of Appeal. a root of title or any title or that they have had such exclusive possession of the land as would entitle them to a declaration in their favour confirming a title.

J. HENLEY COUSSEY,
J.A.

No. 46.
Judgment.
17th March
1952—
continued.

FOSTER-SUTTON, P. : I concur.
MANYO-PLANGE, J. : I concur.

No. 47.
Court Notes
granting
Final Leave
to Appeal
20th
October
1952.

No. 47.

Court Notes granting Final Leave to Appeal.

20th October, 1952.

10

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

Coram : JACKSON, Ag. C.J., sitting as a Single Judge of Appeal.

MOTION :

THE STOOL OF ADANSI represented by NANA BONSRA ADJEI

v.

THE STOOL OF BRENASE represented by NANA AMOABAN OKO II

Motion on notice for an order for final leave to appeal to the Privy Council.

Ollennu moves in terms of motion and affidavit.

Final Leave to appeal granted.

20

(Sgd.) J. JACKSON
J.

EXHIBITS.

Defendant's Exhibit " H."—Proceedings. Coffee Bontoe v. Pataquin & another.

By consent (from custody of Defendant) in
re Stool of Adansi v. The Stool of Brenase etc.

(Intd.) F. A. H. F.
Court Clerk Kumasi
25.11.49.

25th September, 1880.

Defendant's
Exhibit.
" H."
Proceed-
ings.
Coffee
Bontoe v.
Pataquin &
another.
25th
September
1880 and
6th and 8th
January
1881.

10 In the Supreme Court of the Gold Coast Colony Western Province
before me Acting Chief Justice Macleod.

25th September, 1880.

Coffee Bontoe v. Pataquin & Quaw Mensah.

This was a land case No. 158 and was called at Elmina every day
this week without any appearance being made for either party although
the Registrar at Cape Coast was ordered to send the parties on to Elmina
as soon as they arrived.

Cause struck out of hearing list.

(Sgd.) HECTOR MACLEOD.
Ag. C.J.

20

Certified True Copy.

(Sgd.) J. T. ODAMETHEY,
Registrar, Divisional Court,
Cape Coast.

6th January 1881	}	The Plaintiff claims the
Coffee Bontoe		lands Afframassie, Assarsoo,
v.		Acocorbonoomsoo and
Pataquin & Quacoe Mensah	}	Bosompimasoo.

30 Assessors	}	Robertson.
		Cudjoe Essah.
		Quamina Amissah.

COFFEE BOONTOE declares that he will speak the truth. The
Defendant Pataquin has no land adjoining mine. The lands mentioned
belonged to my ancestors. My ancestor Agapon had been in possession
of these lands. Amoabinsoo was in possession.

Defendant's
Exhibit.

"H."

Proceed-
ings.

Coffee

Bontoe v.

Pataquin &
another.

25th

September

1880 and

6th and 8th

January

1881—

continued.

Interoo was also my ancestor and was in possession. Another ancestor called Aquow had the land also. My brother Frimpong was in possession before the Defendants took the land. Agasou my uncle had the land before Frimpong. Danquah Amoah had the land before that. Two years ago the Defendant took the land. Pataquin said the land was his and when Mensah wanted a place to live Pataquin gave it to his brother. They are all adjoining lands and Pataquin said his ancestors bought all.

Frimpong is blind and a leper and unable to travel. Pataquin took Afframassie and Assarsoo and Acoocorbunumsoo and Bosompimasoo. Pataquin went to Assarsoo and he was asked how he came to live there and he said his ancestors had bought it. He refused to go off the land. Pataquin gave Afframassi to his brothers. We hunt on the land or kill monkeys. Quacoe Amoah's land is a boundary on the Akim and Fanie's on the Ashanti side. Essimil's land is the boundary also on the Ashanti side next to Fannie and Bodoson. Accasay has land there also adjoining mine. Eccomah has also land there next to mine. Pataquin comes from Quilso some miles away. I do not know Pataquin before he came and made a claim to the land.

10

CROSS-EXAMINED BY PATAQUIN: I have never seen you at Bosompimasoo I do not know Ochill. I know Quamina Apow he lived at Incessay and my brother Frampong was living at Assarsoo and my brother Andor was living at Afframassie. Quamin Apow lived at Quilso. I never saw him on these lands.

20

Adaponsiale formerly belonged to my ancestors but you have taken it from me. This land is on one side of the Prah and the 4 lands claimed on the other. Since I have known the land no part of it has been sold.

COBBINA EFFREEM: I know a village called Banassi. I knew a man called Danquah Amoah. I used to hunt and when I killed an animal I gave it to Plaintiff's uncle Danquah Amoah. When I collected snails I gave them to him also. I hunted at Assarsoo and when I killed game I gave it to Plaintiff's uncle also. I stayed at Assarsoo four years. It is a long time since I hunted there. Apow was his uncle. I never saw Apow on Assarsoo. I never heard of anyone giving the game or snails to Apow.

30

CROSS-EXAMINED: When I applied to the headman at Assarsoo to live there he told me Assarsoo belonged to him. I knew Bonnah. He was my grandfather. Plaintiff is Bonnah's grandson. Bonnah never occupied Assarsoo. I heard of Incessay being sold. Bonnah never occupied Assarsoo. He hunted and gave the game to Danquah Amoah. Bonnah did not sell Afframassi or Assarsoo.

40

QUAMIN BILFAH: I applied to Yow Frimpong for a piece of land to work on. He gave me Afframassi; in a month's time Mensah came to Afframassie and lived with me for 4 days and he sent me and my brother to Frimpong to ask about the land, to tell him that he Mensah was going

to Assarsoo. Frimpong came and asked me why I had asked Mensah to live there. I then drove Mensah away. Defendant's Exhibit.

I gave to Frimpon whatever game I killed when I lived upon the land. "H."

CROSS-EXAMINED : Mensah was present but you were not. It was in 1863 that Mensah came. He only stayed there 5 days. I have not seen him since. Proceedings.
Coffee Bontoe v. Pataquin & another.

QUAMIN BUADOO : I know the lands Afframassie, Assarsoo. In 1863 Assarsoo belonged to Frimpon. In the last war I caught 2 captives and gave them to Frimpong. I took them at Assarsoo. When I lived at Bosompimasso I and the Ashantees who lived in the village gave portion to Frimpon. On the 1st occasion I was at Assarsoo and caught 2 captives whom I gave to Frimpon. I lived at Bosompimassoo now. I never heard of any of them being sold. When I kill game I gave it to Frimpon still and the Ashantees when they came to kill game gave me portions for Frimpong. 25th September 1880 and 6th and 8th January 1881—
continued.

CROSS-EXAMINED : I have never seen Pataquin at Bosompimassoo.

COBBINA AGGAY : When the Ashantee captain was coming to fight Danquah Amoah and Dansu sent to say that Amoah was to take charge of Assarsoo. After this another Ashantee captain came out. Danquah Amoah had the same instructions. After Danquah Amoah, Ayasou had the lands and then Frimpon. I never heard of Apow purchasing the land. I do not know Bonnah. When another Ashantee captain came out of Coomasie the Queen of Akim sent to Gasow to ask for a captain. They killed one Ashantee and I took the jaw to the Queen.

CUDJOE EKKU : I live at Assarsoo. It belongs to my father Yow Frimpon and so does Afframassie. My father has not sold any of the land.

Mensah lived at and Pataquin at Assarsoo. Pataquin and Mensah have claimed the lands for the last two years. Before the land came to my Father it belonged to Gasu.

CROSS-EXAMINED : I did not see you at Benassie.

PATAQUIN : The lands belonged to Ochill from Bonnah. Assarsoo and Afframassie. Apow told me that Ochill had purchased the lands from Bonnah. Apow had the lands about 30 years and then they came to me Quacoe Amoah's land is one of the boundaries. Fanie's land is not a boundary. It does not adjoin Essimah's land. Neither Acasay nor Ecomah's land adjoins mine. My land adjoins Incessary and both are on the same side of the river. The distance between Incessail and Assarsoo is about the same as from Cape Coast to Moree. Incessail is on a branch of the Prah. The distance between Afframassie and Assarsoo is about the same as from Cape Coast to Moree. Afframassie is in between Incessail and Assarsoo.

CROSS-EXAMINED : The Ashantees did not pay me duties for holding a market at Afframassie. I don't know Ekku. I have never seen him

Defendant's Exhibit. "H." Proceedings. Coffee Bontoe v. Pataquin & another. 25th September 1880 and 6th and 8th January 1881—continued.

at Assarsoo. I had heard of Amoah and Gasow. I heard of them in connection with Brenassie. Wee Assamoah left in 1863. I saw people collecting snails but I don't know that they gave Apow any. The hunters gave Apow portions of game and since I succeeded they have given me some. I cannot say whether Gasow sent for the snails that were collected.

Court adjourned.

8th January, 1881.

QUACOE MENSAH : I live at Eyeribee near to Afframassie and Assarsoo. Quamina Apow was my uncle. He had a brother Ochill. Apow told me my grand uncle Ochill bought a land and that he should point it out to me. 10 Apow died and his nephew Pataquin pointed out the land and I used to hunt on the land. I killed game one day and Plaintiff's brother Andor came and took it away. Pataquin was dissatisfied. Pataquin had a palaver and judgment was given against Boontoe the Plaintiff. Boontoe refused to give it up. I have hunted on the land 2 years. I took the game to Pataquin. I know Yow Frimpon—he lives at Benassie. Incessail is near the Apah. Incessail was bought from. Incessail and the two other property. I know Quacoo Amoah's land is on the right of Assarsoo. Fenni's land is far from Incessail on the left.

Essimil's land is not a boundary of Assarsoo. I do not know Ecconah. 20 I knew Danquah Amoah—he lived at Banassie.

CROSS-EXAMINED : After I had been there 3 days Yow Frimpon sent to drive me away. Apow sent for Frimpon and told him the land belonged to him. Frimpon said I do not know that it was Apow who had sent him and he gave him an apology and a flask of rum. I returned to Eyribee and Frimpon came there. Apow told me all this.

CUDJOE CARCOO : I have hunted on the lands and took the game to Frimpon. I am Bonnah's grandson. It was because the land belonged to Frimpon that I took the game to Frimpon.

ECCOUAH EKERA : I live at Quelso. These lands belonging to a 30 relative of mine were sold. Eccoua Accoumiah was Bonnah's wife and Bonnah sold the lands to pay his debts. My great grandmother told me of this. I don't know to whom they were sold.

Defendant's case.

The Assessors are of opinion that the two lands in dispute are the lands of the Plaintiff.

Judgment for the Plaintiff with costs.

(Sgd.) W. J. SMITH,
A.P.J.

Certified True Copy.

(Sgd.) J. T. ODAMETTY,
Registrar, Divisional Court,
Cape Coast.

Defendant's Exhibit "F."—Court Order, Coffee Bontoe v. Pataquin & another.

By consent (from custody of Defendant) in
re The Stool of Adansi *vs.* The Stool of Brenase.

(Intd.) F. A. H. F.
 Court Clerk.
 18/11.

Defendant's
 Exhibit.
 "F."
 Court
 Order,
Coffee
Bontoe v.
Pataquin &
another.
 6th January
 1881.

IN THE SUPREME COURT OF THE GOLD COAST, CENTRAL PROVINCE.

Jan. 6th, 1881.

10

Coffee Boontoe
v.
 Pataquin and Quacoe Mensah.

The Plaintiff claims the lands Offramassie, Assarsoo Acoocarbonoomsoo
 and Bosompimasoo.

Assessors—Robertson, Cudjoe Essah, Quamina Amissah.

* * *

The Assessors are of opinion that the two lands in dispute are the
 lands of the Plaintiff.

Judgment for the Plaintiff with costs.

(Sgd.) W. J. SMITH,
A.P.J.

20

Certified True Copy.
 (Sgd.) EML. R. AMAAH,
Registrar, Adontenhene's Tribunal,
 Brenase.
 6.3.41.

Defendant's Exhibit "C."—Proceedings, John Daniel v. Anno.

By consent (from custody of Defendant) in *re*
 The Stool of Adansi etc. *v.* The Stool of Brenase etc.

(Intd.) F. A. H. F.,
 Court Clerk, Kumasi.
 18.11.49.

30

24th March, 1893.

John Daniel
v.
 Anno

"C."
 Proceed-
 ings, *John*
Daniel v.
Anno.
 24th, 27th,
 and 28th
 March 1893,
 and 10th
 May 1894.

Plaintiff claims £75 for trespass making use of my villages and lands
 known as Incese, Affransi, Addakumah, Abbradi and Hutardi and taking
 fare.

Defendant's
Exhibit.

“ C. ”

Proceed-
ings, *John*
Daniel v.
Anno.
24th, 27th,
and 28th
March 1893,
and 10th
May 1894—
continued.

Mr. Assam for Plaintiff.

Mr. Renner for Defendant declines to plead to writ as it stands.

Mr. Assam applies to be allowed to amend the writ of summons as follows :—

Plaintiff claims £75 damages from Defendant for trespass committed by Defendant in April 1892 on Plaintiff's land known as Incese, Affransi, Addakuma, Abbradi and Hutardi and on Infinetu.

Mr. Renner objects that the trespass should clearly appear on the writ.

Mr. Assam is heard.

10

BY THE COURT :

As there are no pleadings in this Court unless by leave, it is necessary for the Plaintiff to state his claim more fully and explicitly on the writ of summons than would be the case where a Statement of Claim follows upon a concise endorsement of the writ. I think the objection is a fair one under the circumstances.

Mr. Assam adds to his claim by adding after committed by Defendant the words “ by felling palm trees, cutting plantains and appropriating the proceeds of Defendant's ferry.”

After discussion Mr. Assam withdraws the claim for the appropriation 20 of the proceeds of the Plaintiff's ferry and an injunction.

BY THE COURT :

The amendment is allowed as follows :

Plaintiff claims £75 damages from Defendant for trespass committed by Defendant in April 1892 by felling palm trees and cutting plantains on Plaintiff's lands known as Incese, Affransi, Addakumah, Abbradi and Hutardie.

Defendant's pleas 1. Not guilty.
2. Sib : Ten.

Mr. Assam opens and calls :—

30

JOHN DANIEL, Sworn :

I live at Cape Coast permanently and came from Akim. I was living some time ago in one of the villages, that called Inceci, for 7 years. I lived in Inceci because the land belonged to my ancestor Yarquah who gave it to me about 11 years ago. He gave me Inceci, Affransi, Abbradi, Addakumah and Hutardo. Yarquah gave me the 5 lands at the same time about 11 years ago. There is a ferry on the land and I take the proceeds of the ferry. People make rubber on all these lands and a third part of it is given to me. They give me a portion of the proceeds of the sale of plantains grown on the lands, a portion of the snails got from the land 40 1/3 portion of the beasts shot on the land. It is 7 years since I got people to go on the land and they gave me portion of what they got from it. I first

heard of the Defendant's trespassing on the land last April. I was at Cape Coast then. I sent an express messenger to see whether the Defendant was trespassing or not, and then took this action for what the messenger told me. I knew Defendant in Akim bush. I went to hunt, and lost my way in the bush and came across Defendant in the bush and he took a cutlass and showed me to my village Inceci, he cut a pathway. He said nothing. He said this is the way to your village.

Yarquah got the lands from Bonda, his uncle. Bonda got the land from Chinkron, Bonda's uncle. Chinkron got the lands from Sabiri, Chinkron's uncle. I have boundary with Yah Fosu on the west with Defendant on the east. I don't know the name of the owner of the land with whom I have boundary on the north.

I have boundary with Amoaku's land on the south. Affransi is the nearest of my lands to the Defendant and abuts on the Defendant's land.

There is a large stone as a boundary mark between him and my land.

Inceci is on the west of my land and Abbradi is still further to the west, then you came to Addakumah, which is the furthest to the west. After I heard of this trespass I have not met the Defendant anywhere.

20 CROSS-EXAMINED BY MR. RENNER.

My native name is Kwesi Tetteh. I was born in Cape Coast. It is about 2 years since I was at Inceci. It is 7 years since I last lived at Inceci. The last time that I lived at Inceci I was there about 5 years. I had a case in this Court with Kweku Kwah about Inceci. I summoned him. I know Patachim. He is not a relative of mine. I have no relative called Kweku Mensah. I know Kweku Mensah. Neither Patachim nor Kweku Mensah have had anything to do with the land Incece nor Addakumah.

I don't know Akokobunimsu.

I know a man called Kofi Bontu.

30 I don't know whether he is related to Defendant.

There has not been a case about the 5 lands claimed in the writ of summons.

Patachim knew the land Incece that it belonged to Yarquah. Patachim lived on Incece.

Patachim knows Affransi, but he has not lived there. He is dead. Patachim was neither a witness nor a party to a suit about Incece in this Court; there never has been a case about Incece.

Patachim died about 4 years ago.

40 There are on that district no lands bearing the same names as those on my writ of summons.

I don't know Essibay, nor that the title to these lands have been before Essibay for decision. These lands are stool property, belonging to Yarquah's Stool. The stool is called Sabiri's Stool because it belonged to him. He sat upon it. Yarquah's the only one of my ancestors whom I knew personally.

Kuakoom succeeded Yarquah.

Defendant's Exhibit.
"C."
Proceedings, John Daniel v. Anno. 24th, 27th and 28th March 1893, and 10th May 1894—continued.

Defendant's
Exhibit.
"C."
Proceed-
ings, *John*
Daniel v.
Anno,
24th, 27th,
and 28th
March 1893,
and 10th
May 1894—
continued.

I was only given the lands. These were not the only lands belonging to Sabiri.

Cross-examination not concluded.

The Court adjourns to 8 a.m. on Monday the 27th instant.

(Sgd.) HAYES REDWAR,
J. (Temp.)

27th March, 1893.

The Court resumes pursuant to adjournment.

John Daniel
v.
Anno .

10

Adjourned cause (from 24.3.93 p. 670, ante)

JOHN DANIEL'S Evidence continued :—

(Cross-examination continued by Mr. Roberts by permission of Court, as Mr. Renner is engaged in a cause before Mr. Justice Smith.)

I was born at Cape Coast, lived in Akim 7 years and came to Cape Coast 2 years. It is 11 years since the land was given to me. I have been receiving income from this land. I give the land to persons to work on terms of the persons giving the 3rd part of everything got on the land, rubber and animals.

20

I first received rubber from this land 11 years ago ever since the land was given to me. The rubber industry has been going on on my land 11 years. The messenger I sent was Kobina Tawiah. I did not know the Defendant before I met him at Akim.

The Defendant has land on the eastern boundary of my land. Ampiassi has land north of mine, abutting on mine. I have not been speaking with anybody about the ownership of the land north of mine.

I forgot the name and since I first answered this question, I remember his name. I know Kwamin Buadu. He has not lands near mine.

I don't know that he is related to Defendant.

30

I never met Buadu in the Akim bush cultivating land near mine. I have never paid rent to Yow Afinpon. I know Bonto. Yow Afinpon never had a case in this Court about this land in which Afinpon represented him. It was in respect of other lands, Assason, Pramassi, Akokobunumssu, and Abosumpimassu.

I did not claim those lands, nor my family.

I have an uncle called Kwakkum. He did not summon Defendant about 7 months ago. I have not heard of Kwakkum summoning Defendant at anytime, Kwakkum is the head of the family and sits on the stool. This land is stool property. Kwakkum is in Court here. I sue because

40

these were the lands given to me absolutely by Yarquah. Yarquah succeeded to the lands as head of the family. He gave these lands to me absolutely because if I had been living at Akim I should have been the head of the family and entitled to the stool. Kwamin Buadu has been living on this land Incece since last April. The man shewn to me is Kwamin Buadu. I was living on the land last, one year before last April.

Defendant's Exhibit.
 "C."
 Proceedings, *John Daniel v. Anno.*
 24th, 27th, and 28th March 1893, and 10th May 1894—
continued.

Buadu's family have no houses on Incece. I sent a messenger to see what Buadu was doing.

I don't know Yaw Afrinpon.

10 My income from tribute from all the land was about £20. When I said £15 first, I meant that was the tribute from Incece. I received tribute first from Incece. Buadu is not living on my land and gave me no tribute. I first received tribute from Incece 11 years ago and then I received rubber, as well as other things.

(BY COURT.) Buadu has given me no tribute for his occupation of Incece since last April.

20 (CROSS-EXAMINATION continued.) The quantity of rubber I first received as tribute from Incece was about 30 balls. I lost some and sold some. The value of what I sold was about £4. I lost the majority of that rubber, it was stolen. I summoned Anno in the Court at Saltpond for trespass on this land.

The case was not heard.

The stool is not divided. All the lands go with the one stool.

RE-EXAMINED BY MR. ASAAM.

I know other lands besides those belonging to Sabiri, Essudwah, Bontudiassi, Pondasso, Sisinkoro and some others the names of which I have forgotten. Patachim has not been a party to a suit about the lands of this stool, other than the 5 lands named in my writ.

30 KUDJO KWAKKUM: declared: I live at Bontudiassi. I know Plaintiff, he is my nephew. I am the Chief of Bontudiassi and am on the stool of Yah Kwah, who succeeded Bonda. Binda succeeded Chinkron, who succeeded Yow Sninaigay. Yow Sninaigay succeeded Sabiri. The lands connected with the Stool are Bontudiassi, Essudwah, Mbruah, Suteh, Afutubun, Kwasi Addaye, Mquankwadam, Sisinkoro, Ekrudasso and the 5 lands given by my ancestor to Plaintiff are Affransi, Incece, Abbradi, Huntado, Addakumah.

These 5 lands were given to Plaintiff absolutely by Yarquah. I was present when the lands were given to Plaintiff. The others present were the Headmen and Councillors of Yarquah.

40 Yow Amoah was one of the Headmen, he is living. Addadi was another and Tawiah another (Plaintiff's nephew) since the gift of these lands to Plaintiff nobody has claimed ownership but Plaintiff.

(BY COURT) the head of the family when the gift was made was Yarquah.

Defendant's Exhibit. (EXAMINATION continued.) Yarquah gave these lands to Plaintiff because Plaintiff was his grandson. Plaintiff gave Yarquah a sheep to be killed, and 2 flasks of rum.

"C." During the Plaintiff's absence at Cape Coast I have been in charge of Proceedings, *John Affransi*. Kwamin Kwah has been in charge of Incece. I don't know *Daniel v. who is in charge of the other lands.*

Anno.
24th, 27th and 28th
March 1893,
and 10th
May 1894—
continued.

CROSS-EXAMINED BY MR. ROBERTS.

I am sitting upon the stool of Sabiri. Yarquah is dead. I succeeded Yarquah. When Yarquah was making this gift to Plaintiff, he gave as a reason for it that Plaintiff was the son of the eldest of his ancestors and because Plaintiff was at the sea coast he gave him the land, as if Plaintiff had not been on the coast, he would have been the right person to succeed. These 5 lands are no longer stool property but the private property of the Plaintiff. 10

(BY COURT) The family were present at the gift of the lands to Plaintiff.

(CROSS-EXAMINATION continued.) Plaintiff's family were not in any difficulty at the time of the gift nor did Plaintiff assist them out of any difficulty. It is because these lands have been severed from the stool that I do not join in this action. I know Patachin. I have never been sued in respect of these lands by Bontu or anybody. 20

Patachin is in charge of Incece for Plaintiff.

Bontu sued Patachin not in respect of the lands in dispute but in respect of Afframassie, Assassi Akokobunninsu and Abosumpimassu.

Incece is different from Assassu.

Plaintiff has none of the lands Afframassi, Assassu, Akokobunninsu and Abosumpimassu. Patachin was not a domestic of Plaintiff's household. The 4 lands are not connected with Sabiri's stool. The sheep and 2 flasks of rum were only a thankoffering from Plaintiff not purchase money. The lands were of some value, they are used for rubber making and hunting. Yarquah made rubber on the lands about 13 years ago. Plaintiff has had these lands about 11 years. 30

(BY COURT) Kwamin Kwah is now in charge of Incece land, Patachin is dead.

(CROSS-EXAMINATION continued.) Sabiri's sister was Krokumba. Krokumba had a daughter called Fiah and a daughter Adjua So, Adjua So had a daughter Kramba. Adjua So's brother was Yarquah whom I succeeded. Kramba was grandmother of the Plaintiff. I was not present and don't know how Patachin became caretaker of Plaintiff's land Incece. The 4 lands about which Patachin was sued are not near Incece. 40

Not re-examined by Mr. ASSAM.

KWAMIN KWAH : declared : I live at Kwerrasu and am a rubber-maker and ferryman. I make rubber on Plaintiff's land Incece. Yarquah told me that this land belonged to Plaintiff, he told me this at the gift

at which I was present. I was sent for from Incece to Bontudiassi by Yarquah and there the gift was made by Yarquah to Plaintiff of the 5 lands belonging to himself named Addakumah, Abbradi, Incece, Affransi and Hutardo. Yarquah said the Plaintiff was his relation, his grandson. I was living on Incece land a long time before it was made over to Plaintiff and at that time I was giving tribute to Yarquah and had been doing so sometime. Since the land was transferred to Plaintiff I have given tribute to Plaintiff. Yarquah is dead. Kwakkum is now on the stool, he was present when the gift was made to Plaintiff about 11 years ago.

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CROSS-EXAMINED BY MR. ROBERTS :

I gave as tribute to Yarquah's ancestors, fish only, as rubber making was not known then. Rubber making was known first in Plaintiff's time about 7 years ago.

A 3rd part of everything I got on the land was the tribute I paid to Plaintiff—it amounted to about £11 a year. There was no other person living on Incece but myself and people. I left Incece a year ago and came to Cape Coast since then I went back to Kwerrasue, but not to Incece. Yarquah called me to witness the gift of these 5 lands to Plaintiff, because I was working on the lands for him (Yarquah). The gift was made at Bontudiassi. My ancestors were working on Incece during Yarquah's ancestors' time. When Yarquah was making a gift of these lands, he said they would no longer be stool lands. Plaintiff gave Yarquah 1 sheep and 2 flasks of rum as a thankoffering. Yarquah also told me that Plaintiff was the rightful owner if he had not been residing at Cape Coast, he said that Plaintiff was the rightful person to be on the stool before him (Yarquah).

No re-examination.

KOBBINA TAWIAH : sworn : I live at Cape Coast and am a labourer. I know Plaintiff, he is my uncle. About a year ago I remember Plaintiff sending me to his land Incece. I met 4 men and 4 women. I know the name of only one of the men, Kwamin Buadu. The land Incece belongs to Plaintiff. About 11 years ago I went with Plaintiff to a place called Bontudiassi. The Plaintiff's grandfather called Yarquah offered him these lands called Affransi, Incece, Hutardo, Abbradi, Addakumah. I was present when these lands were offered to Plaintiff. By "offered" I mean "presented" as his own possession. Yarquah was the Chief of Bontudiassi. I know that these lands were the property of Yarquah and belonged to his stool.

I can't say whether there are any other lands the property of that stool.

When Yarquah gave these to Plaintiff, Plaintiff bought a sheep the price of which was 18/- and 2 flasks of gin. Kwamin Kwah has been living on Incece since it was given to my uncle. I have been to Affransi not to Hutardo.

Defendant's
Exhibit.

"C."

Proceedings, *John Daniel v. Anno.* 24th, 27th, and 28th March 1893, and 10th May 1894—*continued.*

Defendant's CROSS-EXAMINED BY MR. RENNER.
Exhibit.

"C."
Proceed-
ings, *John*
Daniel v.
Anno.
24th, 27th,
and 28th
March 1893,
and 10th
May 1894—
continued.

Plaintiff had *done for (sic)* the family which caused them to make this gift.

Plaintiff had not arranged to pay a family debt. Two or three persons were present at the gift, and some of the people who were outside. The two or three persons were Kwamin Kwah, myself and one person Fawubun-chil Yammi, who was not a member of the family. I cannot tell whether Kwamin Kwah is a member of the family. Yarquah gave the land in the presence of these people inside a house. There was also present Kudjo Kwahkun who is now the Head of the family. Those were all who were present, they were the only persons present. 10

Cross-examination not concluded.

The Court adjourns to 8 a.m. tomorrow.

(Sgd.) HAYES REDWAR,
J. (Temp.).

28th March, 1893.

The Court resumes pursuant to adjournment.

John Daniel

v.

Anno.

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Adjourned cause from yesterday (see page 679).

CROSS-EXAMINATION OF KOBINA TAWIAH : (contd.) by MR. RENNER. The gift took place at Yarquah's house. I am a nephew of Plaintiff. Plaintiff asked me to go with him to Yarquah's house. I did not tell one what he and I were going there for. About the time of the Ashanti War I was a boy, a little taller than the witness box. When I went to Yarquah's house I saw people seated there. Kwamin Kwah was the 1st person who went into the room. I don't know what Kwamin Kwah is to Plaintiff. I don't know what Kwamin Kwah did at that interview. Two flasks of rum, not gin, were given with the rum knowing the proper English names, 30 I am applying them to the proper spirits. The gift of spirits was made at the same time that the lands were given to the man, the same day. The sheep was given the same day. I saw the sheep myself. I can't remember the person who held the sheep. I did not hold it. The rum was given at the meeting, also the sheep. Both the sheep and rum were at the house when the gift was being made. I did not see anybody selling rum at Yarquah's house. I can't say whether Plaintiff knew what he was going to get this present. Yarquah said to Plaintiff "I have give you this land to

- “be your own property. If you like to sell or mortgage it, you may.” He said also “you can place some men on the land to work for you.” That is all he said. When Yarquah said this Plaintiff got up and thanked him, and the sheep and the rum were brought. I can’t remember whether Yarquah gave a reason for his gift. After drinking the rum we all got up at once. Plaintiff lodged together with Yarquah and when Plaintiff got up Yarquah called somebody to kill the sheep and give some of the mutton to the people. I did not know Kwamin Kwah before then. I can’t remember if Plaintiff and myself met Kwamin Kwah there. Kwamin Kwah went together with Plaintiff. I did not see them go together, but I met Plaintiff and Kwamin Kwah seated at the meeting when I first went. I can’t say whether I was the last person who went to the meeting. At this time I cannot say where Kwamin Kwah was living. Kwamin Kwah was not living at Yarquah’s place. When I went to the meeting Yarquah and the people were talking. At that time Plaintiff was there. It was about these lands called Affransi, Incece, Hutardo, Abbradi and Addakumah. I heard them calling the names of these lands then. Yarquah was calling the names, he said to Plaintiff “I give you Affransi, Incece, Hutardo, “Abbradi and Addakumah as a present.” Kudjo Kwahkum sat next to Yarquah. Nobody gave money to anybody on that day. Plaintiff did not give any money to Yarquah there. I do not know that at any subsequent time while I was there Plaintiff gave money to Yarquah. I saw Plaintiff going to the meeting. I did not see sheep in Plaintiff’s hand. I took no sheep to the meeting. When I was going I did not see any sheep and rum.

(BY COURT) I did not go with Plaintiff. I was inside the room in Yarquah’s house with Plaintiff who got up and went to the meeting outside in the yard. I did not go with Plaintiff then, but followed after.

- CROSS-EXAMINATION : (contd.) The person that came to call Plaintiff from the room when I and he were together, simply said “You are wanted “by Yarquah.” I did not see the gin or rum in Plaintiff’s room before that day. I know Kwamin Buadu, he lives in Incece. I had seen Kwamin Buadu before this case in this Court. When Plaintiff sent me with a message to Incece I found Kwamin Buadu living there. That was about September 1892. I did not know before then where Buadu lived. I have been to Incece several times, the 1st time in the year 1882 when this present was made. I went there in 1886, I was there then a year with Plaintiff until 1887. In 1888 I went there also. I went there again in 1892, that was when I went with the message. I stopped at Incece on the occasion of each visit. From Bontudiassi to Incece is about an hour’s journey. The meeting took place at Bontudiassi. The family of Plaintiff is a big family.

RE-EXAMINED BY MR. ASAAM.

The mutton was given to some of the people of Bontudiassi.

The case for the Plaintiff closes.

Defendant’s
Exhibit:
“C.”
Proceed-
ings, *John*
Daniel v.
Anno.
24th, 27th
and 28th
March 1893,
and 10th
May 1894—
continued.

DEFENCE.

Defendant's
Exhibit.

"C."

Proceedings, *John Daniel v. Anno*, 24th, 27th, and 28th March 1893, and 10th May 1894—*continued*.

Mr. Renner submits that there is no case calling for a Defence.

1. On the ground that the property, having been shown by the Plaintiff's evidence to be a stool property, it could not be severed without certain ceremonies. He cites as an authority upon the Native Law on this point the case of *McIver v. Asraidoo*. Upon referring to the record it is found that this was not the case. Cites *Dadson v. Asraidoo*, which appears to support the view that all members of a family must concur in an alienation.
2. There is no evidence of trespass generally, and no evidence of the 10 specific acts of trespass for which damages are claimed in the writ

Mr. Assam is heard.

BY THE COURT :

Without considering the question of Native Law, I am of opinion that there is no evidence to sustain a claim of trespass and that the Defendant is not called upon for a defence. Plaintiff nonsuited and with costs to be taxed.

(Sgd.) HAYES REDWAR,
Judge (Temporary).

Certified true copy.

(Sgd.) J. T. ODAMETEY,
Registrar, Divisional Court,
Cape Coast.

20

Thursday, May 10th, 1894.

John Daniel, Plaintiff

v.

Kofi Anno, Defendant

Plaintiff claims £50 damages for trespass on Plaintiff's land Incece.

Mr. Sarbah for Plaintiff.

Mr. Roberts for Defendant.

Pleas—Not Guilty (2) Freehold.

Mr. Sarbah informs the Court that he cannot proceed with the case and asks that he be allowed to retire. He has advised his client that he cannot go on.

Mr. Sarbah is allowed to withdraw.

The Plaintiff asks for the case to be struck out.

Case struck out with costs.

(Sgd.) FRANS SMITH,
Judge.

Certified true copy.

Registrar, Divisional Court, Cape Coast.

40

Plaintiff's Exhibit No. 6.—Receipt and Renunciation of claim to land.

Plaintiff's
Exhibit.

By Plaintiff and accepted in RE THE STOOL OF ADANSI, ETC. v. THE
STOOL OF BRENASE, ETC.

No. 6.
Receipt and
Renuncia-
tion.
1st
February
1909.

(Intd.) F. A. H. F.
Court Clerk, Kumasi.

17.11.49.

I, Kobina Fah, Chief of Beronase, and nephew and successor
of Coffee Boontoe, Plaintiff in *Coffee Boontoe vs. Pataquin and*
10 6.1.1881 *Quaw Mensah* Coram Smith J. and of Anno Defendant in *John*
23.3.1893 *Daniel vs. Anno* Coram Redwar J. and in *Daniel v. Andor* Coram
16.10.1895 Griffith C.J. hereby declare that in consideration of a present of
the sum of Fifty pounds (£50) by the Government, I hereby
renounce all claim to land and property on the right bank of the
Prah River to which I may have been entitled under that above
mentioned Judgments as successor to Coffee Boontoe and Anno
or Andor.

KOBINA FAH His
Chief of Brenase X
mark

20 Witness :

KOFI AHINKURA His
Omanhin of Akim Soadro. X
mark

KOBINA EWURU His
Chief of Amantia X
mark

KOFI EWUAH His
Head Linguist of Akim Soadro X
mark

30 Witnesses to marks :

(Sgd.) A. B. JOSIAH JNR.
(Sgd.) W. B. DSANE.

Before us at Beronase this first day of February, 1909.

(Sgd.) E. C. ELIOT C.C.P.
(Sgd.) C. H. ARMITAGE,
Commr. S.P.A.

Plaintiff's Exhibit.

Plaintiff's Exhibit No. 3.—Renunciation of claim to land.

No. 3.
Renuncia-
tion of
claim to
land.
1st
February
1909.

By consent (from custody of Plaintiff) in RE STOOL OF ADANSI v. STOOL OF BRENASE, ETC.

(Intd.) F. A. H. F.
Court Clerk, Kumasi.
16.11.49.

I KOFI AHINKORA AMANHIN OF AKIM SOADRO on behalf of myself my *heris (sic)* and successors and we, the undersigned Sub-Chiefs and Elders of Akim Soadro on behalf of ourselves our heirs and successors, and, together with the said Kofi Ahinkora, on behalf of the people of Akim Soadro hereby declare as follows :—

That in consideration of the Government of the Gold Coast Colony having taken over certain land on the right bank of River Prah, bounded as follows :—

On the North by the road from Anwiaso from the point where it crosses the Anum River to the point where, after passing in an Easterly direction through the villages of JADAMWA, BANKA, TOKWE and KOKOBEN, it crosses Prah River to AKONTANSE—On the East by the Prah River—On the South by the Prah River—On the West by Anum River, and of the said land becoming the property of the Government and of a present of Seventy five pounds, (£75), by the Government to the said Kofi Ahinkora, we hereby renounce all claim we may have possessed to the said land or property situated thereon. 20

2. We further declare that we hereby renounce all claim or rights we may have possessed to other lands or property situated on the right bank of the Prah River in the Southern and Central Provinces of Ashanti.

KOFI AHINKORA	Their	
<i>Omanhin of Akim Soadro</i>	X	
KOBINA FAH	X	30
<i>Chief of Brenase</i>	marks	
KOBINA EWURU	Their	
<i>Chief of Amantia</i>	X	
KWAKU ADAI— <i>Etufuhin</i>	X	
KWAKU BEN— <i>Safohin</i>	X	
KWASI EWUAH	X	
<i>Head Linguist of Akim Soadro</i>		
YOW YEBOA	X	
<i>Chief of Ofuasi</i>	marks	40

Witnesses to marks

(Sgd.) A. B. JOSIAH JNR.
(Sgd.) W. B. DSANE.

Before us at Beronase this first day of February 1909.

Plaintiff's Exhibit.

(Sgd.) E. C. ELIOT,
Commissioner—Central Province.
 (Sgd.) C. H. ARMITAGE,
Commissioner, Southern Province of Ashanti.

No. 3.
 Renuncia-
 tion of
 claim to
 land.
 1st
 February
 1909—
continued.

Certified true copy.

(Sgd.) OSSEI KWEKU
Registrar,
 D.C's. Office, Obuasi.
 10.4.1937.

10

Plaintiff's Exhibit No. 2.—Letter, Commissioner, Southern Province, to Chief Commissioner of Ashanti.

By consent (from custody of Plaintiff) in re STOOL OF ADANSI vs. STOOL OF BRENASE, etc.

(Intd.) F.A.H.F.,
Court Clerk, Kumasi.
 16.11.49.

No. 2.
 Letter,
 Com-
 missioner,
 Southern
 Province, to
 Chief Com-
 missioner of
 Ashanti.
 3rd
 February
 1909.

COPY :

Amantia,
 Southern Province Ashanti.
 3rd February 1909.

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Sir,

We have the honour to inform you that, in accordance with the decision come to after our conversation at AMANTIA we proceeded to BERONASE on the 1st instant, and there met the Omanhin KOFI AHINKORA of AKIM SOADRO with his Chiefs and Elders.

2. The Commissioner of the Central Province first addressed the assembly, and after carefully explaining the position and extent of the land which the Government proposed to take, obtained an admission from the Omanhin that this included all that he and his chiefs claimed. The Chief at OCHERESU, OBIN OFASSEN, who stated that he was under the Omanhin AMOA KWATTA of KYEBI, here laid claim to the villages of MIRONAM and BANKA, but was informed that no such claim would be considered (See the concluding sentence of para : 2 of the Acting Colonial Secretary's letter to you, M.P. No. 2038/05 dated 3, iii. 06.).

3. The question of the lands affected by the Supreme Court Judgments in the following actions :

Boontee v. Pataguin Quacoe Monsah, SMITH, J. 6.1.1881.
John Daniel v. Anne, REDWAR, J. 28.iii.1893.
Daniel v. Andor. GRIFFITH, C.J., 16.x.1895.

Plaintiff's
Exhibit.
—
No. 2.
Letter,
Com-
missioner,
Southern
Province, to
Chief Com-
missioner of
Ashanti.
3rd
February
1909—
continued.

was then discussed, and it was ascertained beyond a doubt that KOBINA FAH, the present Chief of BERONASE under the Omanhin of AKIM SOADRO, was the nephew and successor of ANNE or ANDOR, whose predecessor outside the area claimed by Kofi Akinkora, and we had now the whole of the claims of the Akim Soadrus before us.

5. An agreement, which we attach, and by which in consideration of the disputed area becoming Government property, and of a present of £75 to Kofi Ahinkora, the Omanhin and his chiefs renounced all the claims to land or property on the right bank of the Prah was drawn up and signed in our presence by the Omanhin and his principal chiefs and headmen. 10

6. This document was framed as simply as possible, and must be read with the following rules to which we agreed :—

- i. Those Headmen and people living on Government area to choose within six months whether they will remain or cross into the Colony to serve the Omanhin of Akim Soadro. All communications with the Omanhin of Akim Soadro's court to be discontinued by those who remain.
- ii. The Omanhin of Akim Soadro to retain the ferry across the Prah between Beronase and Amantia.
- iii. The Akim Soadro's to have fishing rights on both banks of the Prah between the points where the Anum River flows into it, and where the road to Akontanse crosses it. 20
- iv. For the present Akim Soadros may hunt in the Government area with the concurrence of the chiefs of Banka, Mironam, or Amantia.
- v. It is understood that these people at present living on the Government area who choose to remain shall not be placed under any Ashanti Chief, but shall communicate with the Commissioner of the Southern Province *through the Chief of Banka.*

7. With regard to the Chief of Beronase's claim, an agreement whereby the Chief renounced any rights he may have possessed, including those under the judgments referred to in para: 3 above, to land or property situated on the right bank of the Prah in consideration of a present of £50 was drawn up and signed by the chief, and witnessed by Kofi Ahinkora and others. We attach this agreement, which must be read with the following rules, as agreed to by the Omanhin and chiefs :—

- i. No Akim Soadro to possess any lands or rights on the right bank of the Prah south of the confluence of the Prah and Anum Rivers.
- ii. Fishing rights on the left bank of the Prah to be held by Akim Soadros. Their right to place nets across the whole breadth of the river to be discussed with the Omanhin of Adansi, after which the Commissioner of the Southern Province of Ashanti will communicate with the Commissioner of the Central Province of the Colony on the subjects, and a modus vivendi arrived at. 40

8. In conclusion we think that you will be pleased to hear that Kofi Ahinkora made an ample apology to the Commissioner of the Southern Province for the allegations made against him in his letter to the Secretary for Native Affairs dated 15.11.06.

Plaintiff's Exhibit.

No. 2.

Letter, Commissioner, Southern Province to Chief Commissioner of Ashanti. 3rd February 1909—*continued.*

We have the honour to be,

Sir,

Your obedient Servants,

The Chief Commissioner of Ashanti.

(Sgd.) E. C. ELIOT. *C.C.P.*

(Sgd.) C. H. ARMITAGE,

Commissioner,

Southern Province of Ashanti.

10

Certified true copy,

(Sgd.) OSSEI KWEKU,

Registrar,

D.C.'s Office Obuasi.

10.4.1937.

Plaintiff's Exhibit No. 4.—Grant of land for cultivation.

By consent (from custody of Plaintiff) in re STOOL OF ADANSI etc. v. THE STOOL OF BRENASE etc.

No. 4. Grant of land for cultivation. 4th February 1939.

(Intd.) F.A.H.F.,
Court Clerk, Kumasi.

16.11.49.

20

In consideration of the sum of £7.4/- the receipt of which was duly acknowledged by Nana Kwabena Fori, Adansihene, my predecessor from you, Adaba Kwasi of Djehukapo in the Volta River District, for the purpose of cultivating on the "Abusa" system (Tripartite Division) and in virtue of powers vested in me as the true and lawful successor to the said Nana Kwabena Fori, Adansihene, Deceased, with the consent and concurrence of my Chiefs, Elders and Councillors, I do hereby grant and convey unto you (Adaba Kwasi) all that piece or parcel of land situate lying and being at Supom adjoining Nsese lands on the left bank of River Prah, commencing from Kumasi—Cape Coast Lorry motor road, for the purpose of cultivation under "Abusa System" without any incumbrance or lawful eviction.

30

Given under my hand this 4th day of February, 1939.

ATIAKOSA

for KOFI ANANE, *Caretaker.*

AMOAKO AGYEMAN

Adansihene.

Their

X

X

marks

Plaintiff's Exhibit. In witness whereof the under-mentioned witnesses have hereunto set their marks and signature in my presence :

No. 4. Their
 Grant of BORKOR AGOZO X
 land for KING DOGO X
 cultivation. MENSAH X
 4th BAFUOR KWAKYI,
 February Krontihene, Fomena X
 1939— marks
continued.

(Sgd.) KWADU AMPONSEM 10
Akwamuhene

Their
 NANA KWASI ADAI X
 OKYEAME ANOWUO X
Akyeamehene
 marks

Prepared by
 (Sgd.) POKU SARKODIE 20
Registrar
 Adansihene's Native Court.

No. 5. Plaintiff's Exhibit No. 5.—Letters No. 85 and 86 on file of Chief Commissioner of Ashanti.

Letters, Nos. 85 and 86 on file of Chief Commissioner of Ashanti. Tended by Plaintiff and accepted in re THE STOOL OF ADANSI etc. v. THE STOOL OF BRENASI etc.

13th February and 15th February 1941. (Sgd.) ? ? 17.11.49.
 (Letters Nos. 85 & 86, numbered in Blue pencil.)

No. 134/43/40.
 Telegraphic Address : Adansihene's Office, 30
 Adansihene Fomena. Abu Bonsia Afriyie Fie,
 P.O. Box 3, Fomena,
 Telephone : Gold Coast.
 Fomena I. February 13, 1941.

My Good Friend,

ADANSI BRENASI LAND DISPUTE.

I have the honour to refer you to your letter No. 263/7/1932 of the 5th February, 1941 and to return herewith the copy of the proceedings.

2. The appeal before His Honour The Chief Commissioner is set down for hearing on the 25th of February, 1941. In the first hearing I put into evidence only two documents dated respectively 1/2/1909 and 3/2/1909 (pages 30-35 of Copy of Proceedings).

Plaintiff's Exhibit.

No. 5.
Letters, Nos. 85 & 86 in file of Chief Commissioner of Ashanti. 13th February and 15th February 1941. *continued.*

3. In paragraph (7) of the letter addressed to His Honour the Chief Commissioner from Amantia dated 3rd February, 1909 by the Commissioner, Central Province—Colony and the Commissioner, Southern Province—Ashanti, you will observe that the question of the Brenasi's claim was discussed at the meeting held at Brenasi on the 1st February, 1909, and in that meeting the Ohene of Brenasi, then Kobina Fah, renounced his claim to any lands he might have possessed on the right bank of the River Prah. This renouncement was embodied in an agreement dated 1st February, 1909 and signed by Kobina Fah, Ohene of Brenasi before Kofi Ahinkora, Omanhene of Akim Soadro Kobina Ewura, Chief of Amantia and Kwesi Ewuah, Head Linguist of Akim Soadro in the presence of the Honourable Commissioners of the Central Province of the Colony and the Southern Province of Ashanti.

4. In paragraph (4) of this letter the Honourable Commissioners decided that the claim of Brenasi to lands on the right bank of the Prah " were of the most shadowy description."

5. It is necessary to support my case with this agreement in which was embodied the renouncement of the Brenasi Stool to lands now in dispute. The defendants maintains that Exhibit " A " was signed on behalf of the Soadro Stool and does not in effect bind his Stool. But this one which I now wish to obtain a copy was signed by the defendant alone and it would be very good for my case to get it into evidence. I enclose herein a copy of this agreement.

6. In the circumstance, I should be glad if you would be kindly disposed to apply to His Honour the Chief Commissioner for a certified copy of this agreement for the purpose of the appeal now pending before His Honour's Court.

7. I shall be grateful for an early reply.

I am,
Your Good Friend,

The District Commissioner,
Obuasi.

His
X
KWAKU NKANSAH II
Adansihene. mark

Writer & Witness to mark :

(Sgd.) ? ?
Chief Clerk, Adansi Native Administration.

Plaintiff's
Exhibit.

No. 388/7/1932.

Obuasi, Ashanti.
15th February, 41.

No. 5.
Letters,
Nos. 85 &
86 in file of
Chief Com-
missioner of
Ashanti.
13th
February
nd 15th
February
1941 -
continued.

ADANSI—BRENASI LAND DISPUTE.

Your Honour,

The Adansihene has applied for a certified true copy of an Agreement dated 1st February, 1909 (copy enclosed herewith) entered into by Kobina Fah, the then Chief of Brenasi. The Adansihene desires this in connection with the appeal in the above case before Your Honour's Court.

2. Could this be supplied on payment, please.

10

B.

District Commissioner.

HIS HONOUR,
The Chief Commissioner,
Kumasi.

2ND AGREEMENT.

I, KOBINA FAH, Chief of Beronase and nephew and successor of COFFEE BOONTOO, Plaintiff in *Coffee Boontoe v. Pataquin and Quaw Mensah*, Coram Smith J. and of Anno, defendant in *John Daniel v. Anoo* Coram Redwar J. and in *Daniel v. Ando* Coram Griffith, C.J., hereby declare that in con- 20
sideration of a present of the sum of fifty pounds (£50) by the Government, I hereby renounce all claim to land and property on the right bank of the Prah River to which I may have been entitled under the above mentioned judgments as successor to Coffee Bontooe and Anno or Andoh.

Witness.	KOBINA FAH <i>Chief of Beronase.</i>	His X mark
KOFI AHINKORA, <i>Omanhin of Akim Soadro.</i>		
KOBINA EWURA, <i>Chief of Amantia.</i>		30
KWESI EWUAH, <i>Head Linguist of Akim Soadro.</i>		

Witness to marks :

(Sgd.) A. B. JOSIAH JNR.
(Sgd.) W. B. DSANE.

Before us at Beronase this first day of February, 1909.

(Sgd.) E. C. ELIOT,
C. C. P.
(Sgd.) C. H. ARMITAGE,
Commissioner C. P A.

40

Defendant's Exhibit " A."—Agreement.

Defendant's
Exhibit.

Tendered in evidence by Defendant (from custody of Plaintiff) in re
STOOL OF ADANSI ETC. v. STOOL OF BRENASI.

" A." Agreement,
9th
February
1944.

(Intd.) F. A. H. F.
Court Clerk, Kumasi.

16.11.49.

MEMORANDUM OF AGREEMENT made the 9th day of February, 1944
Between Nana Kwaku Nkansah II Adansihene (hereinafter called the
" Land-owner " which expression shall where the context so requires or
10 admits include his heir successors in office and assigns) on one part and
Chief Kwame Kwanin, Ohene of Ofuasi in the western Akim District of
the Gold Coast Colony, Kwadjo Anokyi and Kwadjo Kwakyi all of Akim
Ofuasi in the Western Akim District of the Gold Coast Colony (hereinafter
called the " Tenants " which expression shall where the context so requires
or admits include his heir personal representatives and assigns) of the
second part witnesseth as follows :

- 20 1. That in consideration of the Land Owner permitting the Tenants
to cultivate Amakom Land at Nsese the property of the Land-
owner the Tenants hereby agree that the Land-owner shall be
entitled to one-third ($\frac{1}{3}$) portion of any cocoa farms or plantations
on the said land or one third portion of the produce of the said
farms or plantations cultivated by the Tenants.
2. That the Tenants shall jointly pay an additional rent of £2.8.0
to the Land-owner on the 31st of December every year.
3. That the Tenants agree to render any service which by virtue of
the Native Customary Law a Tenant should to a Land-owner.
4. That this agreement shall be binding on the successors of the
parties hereto and enure to their benefit.
- 30 5. That the Tenants shall not have the right to alienate or grant for
cultivation the land on which the farms are cultivated and any
other land belonging to the Land-owner.
6. That in the event of alienation of the farms the consent in writing
of the Land-owner shall first be had and obtained.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands
and seals the day and year first above written.

Defendant's Exhibit. "A." Agreement, 9th February 1944—*continued.*

Marked sealed and delivered by the withinnamed Nana Kwaku Nkansah II Adansihene (Landowner) and some of his Elders after the foregoing had been duly read over and interpreted to him in the Asante language by T. M. Kootin of Fomena when he seemed perfectly to understand the same before making their marks in the presence of :

(Sgd.) T. M. KOOTIN.

<p>KWAKU NKANSAH II <i>Adansihene</i></p> <p>BAUFO KWAKYI II <i>Krontihene</i></p> <p>KOJO ANNOWUOH <i>Akyemehene</i></p>	<p>His X mark His X mark His X mark</p>	<p>10</p>
---	---	-----------

Marked sealed and delivered by the withinnamed Chief Kwame Kwanin Kwadjo Anokyi and Kwadjo Kwakyi all of Akim Ofuasi in the Western Akim District (Tenants) after the foregoing had been duly read over and interpreted to them in the Asante Language by T. C. Aduansere of Ofuasi when they seemed perfectly to understand the same before making their marks hereto in the presence of :

<p>NANA KWAME KWANING <i>Agonahene</i></p> <p>KWADJO ANOKYI</p> <p>KWADJO KWAKYI <i>Tenants.</i></p>	<p>Their X X X marks</p>	<p>20</p>
--	--	-----------

- | | | |
|--|--|---------------------|
| <p>Witnesses and</p> <ol style="list-style-type: none"> 1. KWABENA AFARIWUA
<i>Krontihene Ofuasi</i> 2. KWASI AFARIWUA
<i>Oheneba</i> 3. YAW AFARIWUA 4. YAW AMOAKO 5. YAW MENSAH | <p>Their
X
X
X
X
X</p> | <p>marks
30</p> |
|--|--|---------------------|

"B." Receipt. 9th March 1944.

Defendant's Exhibit "B."—Receipt.

By Defendant (from custody of Plaintiff) in re THE ADANSI STOOL, ETC.
v. THE STOOL OF BRENASE, ETC.

(Sgd.) F. A. H. FILSON,
Court Clerk,
Kumasi.

ASHANTI NATIVE ADMINISTRATION.

Fomena Branch Native Authority
Division No. A.T.P. 8970.

Receipt to be
handed to payer.

£60

9-3-1944.

Received from Kweku Agbo & Co., the sum of Sixty pounds.....
shillings and.....pence, on account of sheep money at Nsese.

Signed J. E. NTORE.

10 Place Fomena.

Defendant's
Exhibit.

“ B. ”

Receipt.
9th March
1944—
continued.

Defendant's Exhibit “ G. ”—Judgment, Adansi Stool v. Brenase Stool.

By consent of Parties in re ADANSI STOOL, ETC. v. BRENASE STOOL, ETC.

(Signed) F. A. H. FILSON,
Court Clerk, Kumasi.

18.11.49.

21.9.49.

“ G. ”
Judgment,
Adansi
Stool v.
Brenase
Stool.
21st
September
1949.

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI, held at Kumasi
on Wednesday the 21st day of September 1949 before JACKSON, J.

Transferred

20 Suit No. 7/1946.

ADANSI STOOL
v.
BRENASE STOOL.

ASAFU-ADJAYE for Plaintiff.

SACKEYFIO for Defendant.

COURT :

30 This suit comes before me today as being a suit in the Court of the
Chief Commissioner of the Northern Territories pending immediately prior
to the commencement of amending ordinance No. 27 of 1945 which came
into force on the 31st December 1945, and that by the provisions of Section 6
of that amending Ordinance the jurisdiction to hear the suit was
exclusively conferred upon the Supreme Court.

Defendant's
Exhibit.
"G."
Judgment,
Adansi
Stool v.
Brenase
Stool.
21st
September
1949—
continued.

In my judgment there was no suit pending between the parties at the time of the commencement of this Ordinance.

A suit between the parties was instituted sometime in 1937 in the Asantehene's Native Court "A" and from which decision the defendant appealed to the Court of Chief Commissioner of Ashanti. On the 25th February 1941 the learned Commissioner held that neither that Court nor that of the Asantehene had any jurisdiction as the suit being one between a Chief in the Colony and a Chief in Ashanti was triable only by the Court of the Chief Commissioner of the Northern Territories.

On the 29th July 1941 the plaintiff applied to the Colonial Secretary 10 by a letter that the Governor might be pleased to make an Order under Section 67 (1) (b) of the Courts Ordinance to enable the Court of the Chief Commissioner of the Northern Territories to exercise his jurisdiction. An order, dated the 28th (?) November 1941 was duly made by the Governor.

By the provisions of the General Procedure Rules Schedule 3 Part 1 Order 2 Rule 1

"1. Every suit shall be commenced by a writ of summons to be issued by the Registrar. The Summons shall issue without application in writing."

It appears that before the Order under Section 67 was made by the 20 Governor no writ of summons had been issued out of the Court of the Chief Commissioner of the Northern Territories, and that there was solely the written application to the Governor for the Order, but no application or issue of any writ out of the appropriate Court. It follows that when the Order of the Governor was issued it assumed, and it appears assumed wrongly that a writ had been issued since without a "writ" there can be no "Suit" and the Order referred specifically to "the said suit."

In my judgment the Order so made in the absence of a writ was inoperative and void and for these reasons I find that there being no suit 30 pending in the Court of the Chief Commissioner of the Northern Territories at the time immediately prior to the coming into force of Ordinance No. 27 of 1945, there is nothing now pending before me.

I have suggested to learn Counsel that to enable this dispute to be heard at the same time as two others now pending the plaintiff may wish to issue a writ out of the Divisional Court and that the pleadings filed in the former and abortive proceedings may be treated as pleadings in any new action. I make no order as to costs—the matter of jurisdiction having been raised by the Court.

(Sgd.) J. JACKSON,
Judge. 40



In the Privy Council.

No. 23 of 1953.

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

BETWEEN

THE STOOL OF ADANSI
represented by NANA BONBRA
ADJEI II ... (*Plaintiff*) *Appellant*

AND

THE STOOL OF BRENASE
represented by NANA AMOABAN
OKO II ... (*Defendant*) *Respondent.*

RECORD OF PROCEEDINGS

T. L. WILSON & CO.,
6 Westminster Palace Gardens,
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.