

4, 1955

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In the Privy Council

On Appeal from
The West African Court of Appeal

UNIVERSITY OF LONDON
W.C.1.
-3 JUL 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES

43510

BETWEEN CHIEF J. M. KODILINYE and J. C. NWANGWU for themselves and on behalf of the OBOSI PEOPLE *Appellants*

AND

10 PHILIP AKUNNE ANATOGU and JOSEPH AKUNNIA AGBU for themselves and on behalf of the OGBO FAMILY OF UMUASELE, ONITSHA *Respondents*

Case for the Appellants

RECORD.

1. This is an appeal from a judgment of the West African Court of Appeal dated the 14th November, 1950, dismissing an appeal by the present Appellants from a judgment of Manson J. in the Supreme Court of Nigeria, Onitsha Judicial Division, dated the 1st October, 1949, granting the present Respondents who were the Plaintiffs in the suit a declaration of title to all that piece or parcel of land known as Ugborimili situate at Onitsha in the Onitsha Division and an injunction restraining the present Appellants who were the Defendants in the suit from interfering with or disturbing the Plaintiffs' ownership of the said land. p. 76. pp. 53-62.

The Appellants are hereinafter referred to as the Defendants and the Respondents as the Plaintiffs.

2. The principal issues for determination in this appeal are as follows :—

- (1) whether the Plaintiffs sufficiently identified the land in suit ;
- (2) whether the Plaintiffs' claim was barred by acquiescence.
- 30 (3) whether the trial judge was entitled to take into account the decisions of the local Native Court in certain other proceedings to which the Defendants and the Obosi people as such were not parties.
- (4) whether the West African Court of Appeal were wrong in refusing the Defendants leave to appeal upon the ground that the learned trial judge omitted from the record a material point in the cross-examination of one John and omitted

altogether the cross-examination of one Palmer and whether the judgment of the trial judge should have been or should now be set aside by reason of such omissions.

3. The case for the Plaintiffs was that in or about the year 1882 one Orikabwe or Orikagbue who was a chief residing at Onitsha (and whom both the parties in these proceedings claim as an ancestor) entered into an agreement with one D. McIntosh acting on behalf of the National African Company Limited whereby he sold to the said Company a plot of land "extending from the first creek called Odamiri falling into the River Niger below The National African Company's Limited Factory at Abutshi to the South Bank of the creek called Dende, to the north of the Factory and bounded on the east by the small creek flowing into the Odamari creek and about three miles inland". No contemporaneous record of this transaction was produced at the hearing but it was referred to in a document drawn up on the 8th October, 1884 by one Edward Hyde Hewett, Her Britannic Majesty's Consul, on board H.M.S. Alecto anchored off Abutshi factory. The said document recited that the said Orikabwe had been brought before the said Hewett and had stated on oath through an interpreter that he was the sole and lawful representative of the family owning the said land. The said document contained the following passage :—

p. 79, l. 26.

" He asked that the Abutshi people might be allowed to use the land for raising yams, corn, etc., and to fish from those parts of the bank which were not in the occupation of the Company, that all persons interested in the ownership had agreed to the sale of the land to the Company that he also asked that if any of his sons or daughters wished for a portion of the land for farming purposes that they should be allowed and that these requests were acceded to".

p. 53, l. 25.

4. In 1886 the National African Company Limited became merged in the Royal Niger Company who became their successors in title.

5. On the 26th October, 1896, the Royal Niger Company entered into a written agreement with the said Oribakwe or Orikagbue who was therein described as " the vendors " in the following terms :—

p. 81, l. 1.

" I. The Vendors for good consideration, the receipt of which is hereby acknowledged sell to the Company all the private rights of every kind not already possessed by the Company in the land between The Creek Dembe on the North to the Creek Ediemiri on the left bank of the River Niger and situated between or close to Abutshi Station and extending back from the river for five hundred yards inland.

" II. The Company agrees not to disturb present tenants or their heirs who may wish to continue in personal occupation of their lands or houses from this date, except at a price to be fixed by mutual agreement at the time".

6. By the Niger Lands Transfer Ordinance enacted in 1916 certain lands belonging to the Royal Niger Company on the 1st January, 1900 and specified in the First Schedule to the said Ordinance were vested in the Governor of Nigeria and his successors in trust for His Majesty. The said Schedule included the following :—

NIGER LANDS TRANSFER.

FIRST SCHEDULE.

No. of Agreement or Instrument on Register	Grantor	Grantee	Date
40	Chief Orrikafbue of Umuseri.	Royal Niger Company, Chartered and Limited.	26th Oct., 1896
10 72	Abutshi—Certificate by Oribakwe re .	Certifying right of Royal Niger Company, Chartered and Limited to land	8th Oct., 1894

7. In 1945, by Ordinances Nos. 22/1945 and 61/1945 the said Niger Lands Transfer Ordinance was amended by (*inter alia*) the inclusion of the following section.

20 “ 14. Where the Governor abandons all the right, title or interest vested in him by virtue of this Ordinance in any vested trust lands or part thereof in accordance with the provisions of this Ordinance then such abandonment shall have effect as if such vested trust lands or part thereof had never been included in the instrument agreement or document, as the case may be, by which the same were originally transferred to the Company ”.

(This Section now appears as Section 15 of Cap. 149, Laws of Nigeria, 1948 edition.)

8. By Order No. 29 of 1948 the Governor acting in pursuance or purported pursuance of the aforesaid section abandoned or purported to abandon all right, title or interest in the lands referred to in the aforementioned agreements.

30 9. By a Writ of Summons dated the 4th January, 1949, in the p. 1. Native Court of Onitsha the Plaintiffs instituted

THE PRESENT SUIT

claiming a declaration and injunction in the terms set in paragraph 1 p. 55, l. 2. hereof. By an order of the District Officer under Section 25 (1) of the Native Courts Ordinance, 1933, and under Section 12 of the Supreme Court Ordinance (No. 23 of 1943) the suit was transferred to the Supreme Court of Nigeria. On the 4th February, 1949, pleadings were ordered.

40 10. By their Statement of Claim dated the 22nd March, 1949 the p. 13, l. 13. Plaintiffs pleaded (*inter alia*) that they were natives of Onitsha, that the people of Onitsha had come from across the Niger from Benin about four hundred years earlier, had met the Ozehs, attacked and driven them away and occupied the present site of the town of Onitsha; that originally Onitsha had boundary with Umuoji; that many years later the Obosi

people came from Ojoto and were granted the land where they live by the Umugi people ; that when they wanted more land they got a further portion from the Onitsha people and that their present Obosi town was on the two portions thus given to them. The Statement of Claim included the following paragraphs :—

p. 3, l. 24.

“ 5. The Plaintiffs are from time immemorial the owners in possession of the land in dispute known as Ugbo-Orimili situate in Onitsha and lying between the Otumoye Creek and the Idemili Stream, and more particularly shown delineated and edged in pink on the plan to be filed in Court with this Statement of Claim ; the Plaintiffs’ ancestor Ogbo being the first person to occupy the said land. 10

“ 6. As owners aforesaid, the Ogbo family occupied the said land by themselves and their tenants for farming purposes without interference from anybody. They have leased the land to the Obosi people who have paid yearly tribute for the right of farming in accordance with Native Custom.

“ 7. In 1882, Orikagbue, an ancestor of the Plaintiffs, granted the said land to the National African Company Limited, and the said Company set up a trading station known as ‘ Abutshi Station ’ thereon. The said grant was referred to in a certificate made by one Edward Hyde Hewett, British Consul on board H.M.S. ‘ Alecto ’ on the 8th of October, 1884. 20

“ 8. By the said grant Orikagbue reserved to the descendants of his family and to their Obosi tenants the rights to be allowed to raise yams, corn, etc., and to fish from spots of the river bank in the occupation of the Company.

“ 9. By the said grant the Company entered into possession of the said land, opened a trading station thereon as aforesaid. The Obosi tenants of the Ogbo family continued to farm on the land and to pay the customary tribute as before. The Trading Station opened by the Company is still on the said land ”. 30

The Plaintiffs further pleaded that by the agreement of the 26th October, 1896, Orikagbue and other members of the Ogbo Family had sold to the Company “ all private rights of every kind not already possessed by the Company in a portion of the land in dispute comprised in the grant of 1882 aforesaid, that is to say between the Dende creek on the north and the Idemiri (Edemeri) on the south and extending inland 500 yards from the Niger. The Statement of Claim also included the following paragraphs :— 40

“ 14. As had been the case before Agreements Nos. 40 and 72 were made, and in accordance also with the reservations in the said agreements, the Obosi tenants of the Ogbo Family continued to farm the land in dispute and to pay the customary tributes, and whenever they failed to pay, the Ogbo family have successfully sued them in Court and recovered the equivalent in money.

“ 18. The Plaintiffs made representations to the Government, and were informed that the Government did not recognise their right to collect rents, but that the whole question of Niger 50

Lands including the land in dispute, were being reconsidered. As a result of the said letter from the Government the Plaintiffs took no further action against the Defendants.

10 “ 19. From 1934, until December, 1948, when the Crown finally withdrew from the land as aforesaid, the Government was still reconsidering the matter and showed no apparent interest in the land with the result that the Defendants and their people of Obosi taking advantage of that position entered on the land in large numbers and erected buildings thereon, claimed the land as their own, and refused to pay further rents to the Plaintiffs, or to recognise them as their landlords as they had done in the past ”.

11. By their Statement of Defence dated the 16th May, 1949, the Defendants pleaded (*inter alia*) that Orikagbue was an Obosi man residing at Onitsha where he was then practising as a native doctor and that he contracted for himself and the Obosi people. They denied that the Obosi people occupying the land at the time of Orikagbue were tenants but averred that they occupied the land as owners. They further pleaded that the Obosi people farming on the land in dispute did so on their own right and not as tenants of the Ogbo family. p. 7, 1. 9.

12. A witness named Benjamin Domingo John, Chief Clerk in the Resident's Office at Onitsha, was called on behalf of the Plaintiff to produce a series of letters passing between the Plaintiffs or the Plaintiffs' solicitors and the Resident, Onitsha Province, or the Secretary, Southern Provinces, the first of such letters being dated the 31st January, 1933 and the last the 13th November, 1942. In letters dated the 2nd September, 1942 and the 13th November, 1942 the Plaintiffs' solicitor had complained to the Resident of the buildings erected in recent years by the Obosi people on the land in question. There was, however, no evidence that any of these letters or the contents thereof were ever made known to the Defendants. p. 11.

13. A witness named Michael Onyekwe Nduba, Court Clerk of Onitsha Native Court since 1933, produced the records of eight cases in the said Native Court alleged to relate to plots of land inside the disputed area and thirteen cases in the said Native Court alleged to relate to plots of land outside the disputed area. The Defendants' Counsel did not oppose the admission of these documents but reserved his right to question their relevance at a later stage. p. 11.

14. The fifth witness called for the Plaintiff was C. H. S. R. Palmer, Assistant Commissioner of Lands, Enugu. His evidence in chief included the following :— p. 14, 1. 20.

“ Witness is referred to Ex. 18. This was prepared in my office. It is a sketch Plan of an area of land retained by the Crown. This Plan—Ex. 12—O.A. Onitsha 143 and is referred to in Ordinance 29/1948. South of the line in Ex. 18 is the land abandoned by Government I see Exs. 10, 11. The area in orange on the West is, I have reason to believe, the area No. 2 in the 4th Schedule to Cap. 86—land retained by the Niger Company.

50 “ With reference to the copies of plans attached to Exs. 53, 54 the originals are presumed to have been made at the time of

the agreements but there is no definite evidence as who made the plans or when ; there is no indication of scale ; they are quite clearly not drawn to scale ”.

In cross-examination and re-examination this witness testified as follows :—

p. 73, l. 13.

“ XX. by Soetan.

Ex. 12 is plan No. OA/143 in Ex. 11. I have reason to believe that the area in orange is the one retained by Niger Company—Item 2 of the 4th Schedule.

Q. The area abandoned by the Crown is area covered by 10 Agreements Nos. 40 and 72 except the area bounded on the north by Otumoye Creek, on the west River Niger ?—A. I cannot demarcate the land entirely in Ex. 10. The area abandoned by the Crown extends 3 miles inland.

Q. In Agreements Nos. 40 and 72 the northern boundary is Dende Creek ?—A. Yes.

Q. You have Otumoye Creek in sketch plan, why ?—
A. —

Q. What do dots on the plan in the agreements represent?
A. The dots appear to indicate Asaba, Onitsha, etc. 20

Q. The dots indicate the towns ?—A. Yes.

Q. The marks represent the Royal Niger Company Station at Obosi ?—A. Yes.

Re-Exd. by Mbanefo.

Q. By whom and when were the plans made ?—A. The presumption has always been that they were prepared at the same time as the instruments themselves. These are copies of originals in Lagos but I do not know when and by whom they were prepared.

Q. Are the plans drawn to scale ?—A. There is no 30 indication of scale on the plans” .

p. 14, l. 31. The learned judge did not record the above cross-examination and re-examination but wrongly recorded that there had been no cross-examination.

p. 15.

15. The next witness called on behalf of the Plaintiff was one J. T. John, civil engineer and licensed surveyor, who deposed that he had made the plan, exhibit 11, in addition to 4 other plans, namely exhibits 6, 14, 15 and 16. The cross-examination of this witness was recorded by the learned trial judge as follows :—

p. 15, l. 16.

“ XX. I signed Ex. 11 but the additions have been 40 made by another Surveyor without my knowledge. The whole of Ex. 11 was not traced by Emodi as is stated on it but only certain things were superimposed on it. I made Ex 11. in 1941 for a pending case between Onitsha and Obosi people over a Nupe Settlement. The Pink line was the whole of the area claimed by the Umuasele Family of Onitsha” .

In fact, the full cross-examination was as follows :—

“ Q. You say Plan Ex. 11 was not wholly made by you ?— p. 72, l. 1.

A. Yes.

Q. That was not the plan you signed ?—A. It was the plan I signed.

Q. Were the alterations made with your permission ?—

A. Not to my knowledge.

Q. Ex. 10 is marked ‘traced by me’ ?—A. It is not correct.

10 Ex. 11. Q. You made Ex. 11 in 1941 ?—A. Yes.

Q. You did not make it for any case ?—A. I was told a case was pending but I was not told the case. I was told the Onitsha people wanted to institute action against Obosi people in the area of Nupe Settlement.

Q. From the area—River Niger to pink (opposite the Niger Company Settlement) in Ex. 11 what is the length ?—
A. About 1,100 yards. BY COURT: A number of Umuasele Family took me along. I don’t remember who they are. I went down with members of Umuasele Family. I did a survey before for one Egbuna of Onitsha. In making the plan for Umuasele I tried to go along the same trace as that of Egbuna. The case was *Egbuna versus J. M. Kodilinye* ”.

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16. The first Plaintiff, Philip Akunne Anatogu, deposed that he was the head of the Ogbo Family and that before and since the grant to the Niger Company, his family allowed the Obosi people to farm the land and pay tribute. He continued as follows :— p. 17, l. 34.

“ We used to go to the land to make sacrifice or juju for them on the land. Each year when they farm on the land they used to bring a goat or fowl, gin and palm wine and we make sacrifice. They used to bring these things to indicate that we gave the land to them and when killed we eat and drink together. They farmed each year at a separate spot each year and the sacrifice was made each year at that spot. There are many Obosi people farming on our land but they do not pay us tribute. The sacrifice is now given up because in 1928 they refused to pay us claiming the land as their own, Exs. 27A, 27B. See also Ex. 33. Since 1928, we the Ogbo Family have sued Defendants for non-payment of tribute, Exs. 29, 30, 31. We got judgment. I myself have been present with my father at least five times at these sacrifices. I have my own original counterpart copy of the Agreement of 1896 (Ex. 54). This is it, Ex. 57. It has been in possession of the Ogbo Family since 1896. I’ve myself had it in my own personal possession for over 30 years ”.

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And this witness further deposed as follows :—

“ Since 1928, there are many Obosi people who have built houses and we, the Plaintiffs, the Ogbo people, wrote to the Government and told them what was happening, Exs. 19—27 ”.

p. 18, l. 31.

17. The evidence of the Second Plaintiff included the following :—

p. 25, l. 26.

“ Our land—this disputed land—is farmed by us. Some Obosi people farm there with our consent and they pay us. When the time came to allot land to them, they came to the spiritual Head with gin, palm wine for inspection of the land. When allotted and the harvest reaped they will bring 21 seed yams. Before harvest is reaped, we would go with them to the land and perform sacrifice for them. Only the owners of the land can perform such sacrifices for them. The Obosi people who are thus given land bring their Headman with them—I 10 can remember Anah Akalue, Okafor Kwochaka, Ikejiofo Esekudo, Ebenezer Obiefuna, Exs. 30, 31, 33, 34. These 4 live near Otu-Obosi on the disputed land. They do not pay tribute for the Obosi people now, except Sammy the son of Okafor. They had 4 houses ; all are now occupied except one, that of Ikejiofor. They used to pay tribute for farming and for their sub-tenants, but they do not do so now. They ceased to do so since 1928 and began to claim ownership of the land. We took action against them in Court for non-payment of tribute. We won (Exs. 30, 31, 32). Even after judgment, they con- 20 tinued to refuse to pay. I should say there are some 200 houses now on our land built and occupied by the Obosi people. Some have thatched roofs, some corrugated iron. We petitioned the Government asking them if they were aware of what the Obosi people were doing on our land.”

pp. 39, 42, 46.

18. The Defendants called *inter alia* three members of the Obosi tribe who deposed that according to tradition the land in dispute belonged to the Obosi people.

19. The second Defendant deposed that :—

p. 41, l. 9.

“ The Plaintiffs have never written to us protesting against 30 our occupation ”.

This statement was not challenged in cross-examination.

p. 44, l. 1.

Ikefunainwugbolu, an Obosi Ibo, deposed that he and his father and grandfather before him had all farmed land at “ Otu-Obosi ” near where the Company had their station but he had never paid tribute to anyone and no Onitsha man had demanded any rent or tribute or tried to disturb his possession. His father had never told him that he paid tribute and he had never seen his father pay tribute. In cross-examination this witness stated that he had been summoned in the Native Court by one Okafor, not an Onitsha man, for farming on his land. The case 40 had been dismissed. He further stated that he had built his house about 30 years ago.

p. 44, l. 23.

Wilson Izuora, an Obosi, deposed that he lived at Otu-Obosi and had been born there. His father had died at Otu-Obosi and had been a farmer. Neither he nor his father had ever paid tribute to anyone and no Onitsha man had ever sued him or his father.

p. 45, l. 1.

Baba Sigaba deposed that he lived at Otu-Obosi and had been born there. His father had come from Bida and settled at Otu-Obosi a long time before this witness was born. An Obosi man permitted his father to live there and both his father and he himself had paid tribute 50

of 5s. per annum to Oboli Ikeazor, an Obosi man. He had never paid tribute to an Onitsha man nor had any Onitsha man demanded any.

Francis Ndupu Ajie, an Aboh Ibo, deposed that he had been a small boy when his father came with a friend and lived near the Company's plot of land. Jibike Anene, an Obosi man, brought him there. He did not know if his father had paid tribute to an Onitsha man, but he paid Jibike. This witness also paid Jibike and no Onitsha man had tried to disturb his possession up to today. p. 45, l. 18.

Obiakufie, an Isioko, deposed that he was a palm-fruit cutter who had lived at Otu-Obosi for 40 years. His land had been given to him by the first Defendant, to whom he paid 10s. per annum. He knew no Onitsha land, and no Onitsha man had disturbed him. p. 46, l. 1.

20. The Defendants also called the Registrar of the Court, who produced documents relating to an action instituted in 1944 by the Assistant Commissioner of Lands, Onitsha, against J. O. Mozie of Obosi and J. I. Nwogem of Obosi, claiming under the Crown Lands Ordinance an order that the possession of the Crown Land at Onitsha situate between the Creek Dende on the North and the Creek Idemili on the South and extending back from the left bank of the River Niger for a distance of three miles inland between the two creeks named—be given by Defendants to the Plaintiff within two calendar months. The particulars of the claim alleged that the land was vested in the Crown by the Niger Lands Transfer Ordinance and was mentioned in the first Schedule as No. 72, that the Defendant was in occupation of the land and had erected a house on it, and that the Defendant had no right title or licence to be in occupation of the said land. By a notice dated the 4th January, 1945, the Assistant Commissioner of Lands discontinued the summons. p. 180, p. 181
l. 1.
p. 182, l. 1.

21. The judgment of the learned trial judge included the following passage :—

“ The land granted in 1896 by Ex. 54 covers an area of land extending from NDENDE CREEK on the North to IDEMIRI CREEK on the South for a distance of 500 yards inland. (See Ex. 10—yellow line and Plaintiffs' 2nd witness.) The earlier grant of 1884—Ex. 53—covers a very much larger area from the NDENDE CREEK on the North to the IDEMIRI CREEK on the South for a distance 'about 3 miles inland'. The earlier grant would thus appear to include the land granted by the later grant and one wonders why the later one was drawn up. The first grant—the 3 mile limit—was made to the National African Company: the second grant of 500 yards was made to the Royal Niger Company their successors. It may be that the Royal Niger Company felt that they did not need such a vast area as that conferred by the 1884 grant. On Ex. 57—one of the triplicates of the 1896 grant—there is in a note in manuscript—' This annuls the prior Agreement made and attached hereto and dated 31st July, 1882 '. The Lands Officer (5th witness) says these words do not appear on the Counterpart in Lagos. The 1882 Agreement is not attached to Ex. 57 and is not before the Court; it may be the Agreement referred to in Ex. 53 which confirmed it, as it says the 1882 Agreement was made in the dry season of 1882. But there is no clear evidence to show that the Niger

Company abandoned their rights over 3 miles and accepted a fresh agreement for 500 yards. Both Agreements are referred to in Cap. 86 as still subsisting.

“ Further Ex. 54 gives to the Company all the private rights of every kind not already possessed by the Company, so Ex. 53 was regarded as still existing and Ex. 54 is supplementary. In any event, both Exs. 53 and 54 were executed or confirmed by the same person or persons—Odikagbue and others.

“ Ex. 53 says the plot granted extended ‘ about 3 miles inland ’ and the plan attached thereto shows the area, although not drawn to scale. The area edged pink in Ex. 10 which is the whole of the area which the Plaintiff’s family claim is covered by Exs. 53 and 54, a part only of which is the subject-matter of this suit, the remainder being still vested in the Crown, is not even at its widest part up to $1\frac{1}{2}$ miles—the whole area is pear-shaped, of unequal breadth.

“ The Plaintiffs do not claim any land outside the pink line—except their own quarter over the Uko Swamp N.W. of Ex. 10 and, as far as I know, never have claimed any—so ‘ about 3 miles ’ in 1884 (Ex. 53) has shrunk in 1949 to the area edged pink ”.

Save as aforesaid the learned judge did not consider what was the precise extent of the land in dispute.

p. 58, l. 1. As regards the traditional evidence, the learned judge accepted the Plaintiffs’ version as more probable. He regarded their version as not unlikely.

The learned judge next held that there was ample evidence to justify a finding that the Plaintiffs had proved acts of ownership extending over a long period over the southern area shown on the Plan (Exhibit 10) by receiving rents and granting leases or rights of occupancy. In arriving at this conclusion he said :—

“ The Plaintiffs say that the Obosi people have been their tenants and until the Obosi people became obstructive in about 1928 they have received rent from them. Some Obosi people still pay them (Plaintiffs’ Twelfth witness). The Plaintiffs sometimes sued for non-payment and won (Exs. 30, 31 and 32) ”.

Finally, the learned judge said :—

p. 61, l. 22. “ FIFTHLY : The Defendants say that the Plaintiffs have allowed them to occupy the land in dispute over a period of many years and they should not now be disturbed (2 N.L.R. 100).

“ Nothing can be further from the truth. The Plaintiffs have certainly been aware of the Defendants’ squatting occupation but they have never acquiesced in it for a moment. Before the Divesting Order No. 29/48 was made, the Plaintiffs protested again and again to Government about the unlawful occupation of Defendants and asked for action to be taken (Exs. 19, 23, 26, 27A and 27B).

“ As soon as the above Order became effective the Plaintiffs’ hands were free and they took immediate action—they issued a summons against Defendant within 3 days ”.

The learned judge therefore granted the declaration and injunction claimed by the Plaintiffs as aforesaid.

22. The Defendants appealed from the said judgment to the West African Court of Appeal. The grounds of appeal included the following:—

10 “ 1. Inadmissible evidence was admitted. Agreement No. 40 (Ex. 57) produced by the Plaintiffs was wrongly received in evidence by the Court. p. 64, l. 2.

“ 5. The Court was wrong in law to find that Obosi people have always been the tenants of the plaintiffs until ‘ Obosi people became obstructive in about 1928 ’ and that ‘ the Plaintiffs had received rent from Obosi people ’ for if the Plaintiffs sold the land in dispute to the Niger Company in 1882 the Plaintiffs have by the sale extinguished their rights and could not therefore have collected rents from the Obosi people up to 1928. p. 64, l. 20.

20 “ 8. The Court misdirected itself as to the location and/or the extent of the land in dispute. p. 65, l. 1.

“ 9. The Court wrongly interpreted Agreement Nos. 40 and 72 (Exs. 53 and 54) by holding that ‘ Even in 1884 Obosi people and others living at Otu-Obosi were regarded as on the land with the consent of the Ogbo Family ’.

“ 10. The Court misdirected itself as to the effect of all the Native Court Judgments and in accepting the evidence of the letter-press of the Plaintiffs’ composite plan as to the real location of the sites in Native Court Cases.

30 “ 11. The Court erred in law in granting to Plaintiffs declaration of title ‘ to all that part of the area edged pink on Ex. 10 which lies South of the green line running East and West ’ ”.

23. On the 27th October, 1950 Counsel for the Defendants moved the West African Court of Appeal for leave to add a further ground of appeal (12a) namely that the answers given in cross-examination by the witnesses Palmer and John which are set out in paragraph 14 hereof, had not been recorded by the learned trial Judge. In support of this motion Affidavits were filed setting out the aforesaid answers. On the 6th November, 1950, leave to file this additional ground was refused. p. 74, l. 20. p. 74, l. 30.

40 **24.** On the 14th November, 1950, judgment of the West African Court of Appeal was delivered by Blackall, P. as follows:—

“ The question at issue in this appeal is the ownership of an area of land at Onitsha edged pink on the plan Ex. 10. Manson J. in a lucid and well referenced judgment found in favour of the Respondents. As the learned Judge’s reasons are fully set out in his Judgment and this Court sees no reason to differ from them, there is no need to recapitulate them. It p. 76, l. 22.

is enough to say that the evidence fully supports the findings of the Court below, and that in our view there is no substance in this appeal ”.

Verity C.J. and Lewey J.A. concurred.

p. 77, .
p. 78.

25. Conditional leave to appeal to His Majesty in Council was granted on the 27th November, 1950 and final leave on the 22nd April, 1951.

26. The Defendants respectfully submit that this appeal should be allowed and the judgments of the Supreme Court of Nigeria and the West African Court of Appeal set aside and judgment entered for the Defendants, or alternatively that this case should be sent back to the Supreme Court of Nigeria for a fresh trial, for the following, amongst other

REASONS

- (1) Because the Plaintiffs failed sufficiently to identify the land in suit.
- (2) Because Exhibit 53 should not have been admitted in evidence and even if it had been admissible should not have been relied upon by the Court.
- (3) Because on the true construction of Section 15 of the Niger Lands Transfer Ordinance the Plaintiffs must be deemed to have acquiesced in the occupation of the land in dispute by members of the Obosi tribe and in the erection by such persons of buildings on the said land and are therefore estopped from setting up their own title to the land or denying the right of the Obosi people to live thereon.
- (4) Because in the alternative, if the Plaintiffs were entitled to set up their title to the land in dispute before the 1st January, 1949 or to claim tribute from the Obosi people they failed to do so, at least from 1928 onwards, although fully aware of the aforesaid occupation and erection of buildings, and are therefore estopped as aforesaid.
- (5) Because the learned trial Judge erred in holding that because the Plaintiffs had protested to the Government about the Defendants' occupation they must be held not to have acquiesced therein.
- (6) Because the learned trial Judge should have held that letters passing between the Plaintiffs and the Government which were not communicated to the Defendants could not in any way be taken into account as against the Defendants.
- (7) Because the learned trial Judge erred in finding that the Plaintiffs had proved acts of ownership extending over a long period by receiving rents and granting leases or rights of occupancy, since, according to Exhibits 53 and 54 upon which the Plaintiffs relied all such rights were extinguished in 1882 or alternatively in 1896.

- (8) Because the learned trial Judge erred in relying on decisions in the Onitsha Native Court in proceedings to which the Defendants were not parties.
- (9) Because the learned trial Judge failed to take into account the evidence referred to in paragraph 20 hereof of Obosi witnesses who testified that they and their fathers had lived and farmed on the lands in dispute for many years without paying tribute to or being disturbed by the Onitsha people.
- 10 (10) Because the learned trial Judge failed to record or take into account material parts of the evidence of the witnesses Palmer and J. T. John, and the West African Court of Appeal refused leave to include such omissions in the additional grounds of appeal.
- (11) Because the West African Court of Appeal merely expressed their agreement with the trial Judge and held that the evidence supported his finding and failed to consider in their judgment the actual grounds of appeal put forward on behalf of the Defendants.

In the Privy Council

On Appeal from
The West African Court of Appeal

CHIEF J. M. KODILINYE and J. C. NWANGWU
for themselves and on behalf of the OBOSI
PEOPLE

v.

1. PHILIP AKUNNE ANATOGU
2. JOSEPH AKUNNIA AGBU for themselves
and on behalf of the Ogbo family of Umua-
sele, Onitsha.

Case for the Appellants

WATKINS, PULLEYN & ELLISON,
14, Gray's Inn Square, W.C.1.