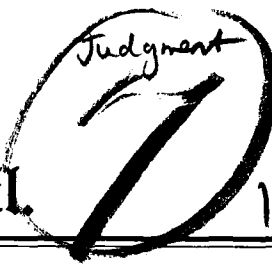


PC
~~GH 469~~

Nigeria



No. 15 of 1954.

In the Privy Council.

1956

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL.

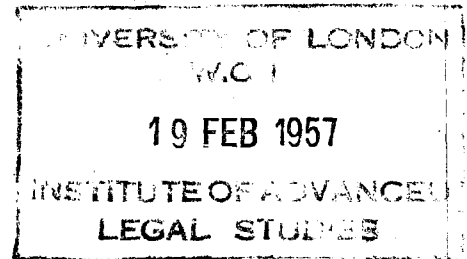
BETWEEN

**AKINOLA ADEFOLALU, the Alawe of Ilawe for himself and the
people of Ilawe (Plaintiff) - - - - - Appellant**

AND

1. **ALADESANMI II, the Ewi of Ado-Ekiti for himself and the
people of Ado-Ekiti - - - - -**
2. **ADETOKUNBO ATOMOBASE (Defendants) - - - Respondents.**

RECORD OF PROCEEDINGS



REXWORTHY, BONSER & WADKIN,
83/85 Cowcross Street,
London, E.C.1,
Solicitors for the Appellant.

HERBERT OPPENHEIMER, NATHAN & VANDYK,
20 Copthall Avenue,
London, E.C.2,
Solicitors for the Respondents.

INSTITUTE OF ADVANCED
LEGAL STUDIES,
25, RUSSELL SQUARE,
LONDON,
W.C.1.

In the Privy Council.UNIVERSITY OF LONDON
W.C.T.

19 FEB 1957

INSTITUTE OF ADVANCED
LEGAL STUDIES**ON APPEAL***FROM THE WEST AFRICAN COURT OF APPEAL*

BETWEEN

45956

AKINOLA ADEFOLALU, the Alawe of Ilawe for himself and the
people of Ilawe (Plaintiff) *Appellant*

AND

1. ALADESANMI II, the Ewi of Ado-Ekiti for himself and the
people of Ado-Ekiti
2. ADETOKUNBO ATOMOBASE (Defendants) *Respondents.*

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BUT NOT PRINTED**

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Counter Affidavit of 1st Defendant to oppose Motion for Stay of Execution	22nd December 1951
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Certificate of Service of Notice of Appeal	7th November 1952
Certificate of Compliance of Conditions	7th November 1952
Notice of Dispatch of Record	6th January 1953

In the Privy Council.

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL.

BETWEEN

AKINOLA ADEFOLALU, the Alawe of Ilawe for
himself and the people of Ilawe. (Plaintiff) . *Appellant*

AND

- 1. ALADESANMI II, the Ewi of Ado-Ekiti for
himself and the people of Ado-Ekiti.
- 2. ADETOKUNBO ATOMOBASE. (Defendants) *Respondents.*

RECORD OF PROCEEDINGS

No. 1.

NATIVE COURT SUMMONS.

NOTE.—Place and date of hearing will be notified later.

NATIVE COURTS.

Suit No. 21/49.
No. 126.

*In the
Native
Court of
Ekiti.*

No. 1.
Native
Court
Summons,
18th June
1949.

(Civil Summons.)

20 IN THE NATIVE COURT OF JUDICIAL COUNCIL OF EKITI,
NIGERIA.

Between AKINOLA ADEFOLALU, the Alawe (m.) of
Ilawe for himself and the people of Ilawe . Plaintiff

and

- 1. ALADESANMI II, the Ewi of Ado
- 2. ADETOKUNBO ATOMOBASE (m.) of Ado Defendants.

To : Aladesanmi II, the Ewi of Ado Ekiti and Adetokunbo Atomobase (m.)
of Ado.

30 YOU are commanded to attend this Court at
on the day of 1949 at 10 o'clock a.m. to answer
a suit by Akinola Adefolalu Alawe of Ilawe against you.

*In the
Native
Court of
Ekiti.*

No. 1.
Native
Court
Summons,
18th June
1949,
continued.

The Plaintiff claims (1) Declaration of title to all that piece and parcel of land situate and being between the town of Ilawe and Ado-Ekiti in Ekiti Division, Ondo Province, Nigeria bounded on the first side by "Igbo Amadin," on the second side by "Ile Pupa," on the third side by "Agbe" and on the fourth side by "Oke Isapa." (2) £100 being damages for trespass on the said land committed by the Defendants through their people of Ado-Ekiti. (3) Injunction to restrain such trespass.

Issued at Ado-Ekiti the 18th day of June, 1949.

TAKE NOTICE—If you do not attend the Court may give judgment 10 in your absence.

State Plaintiff's claim clearly.

(Sgd.) ? ? ?
for Signature of President or
Vice-President.

No. 2.
Order of
Transfer,
3rd
December
1949.

No. 2.
ORDER OF TRANSFER.

His Honour,
The Puisne Judge of the Supreme Court of the Benin Judicial Division,
Benin City.

Suit No. 21/49.

20

(Title as in No. 1.)

CLAIM :

1. Declaration of title to all that piece and parcel of land situate and being between the town of Ilawe and Ado-Ekiti in Ekiti Division, Ondo Province, Nigeria, bounded on the first side by "Igbo Amadin," on the second side by "Ile Pupa," on the third side by "Agbe," and on the fourth side by "Oke Isapa."

2. £100 being damages for trespass on the said land committed by the Defendants through their people of Ado-Ekiti.

30

3. Injunction to restrain such trespass.

By virtue of the powers vested in Residents under section 25 (1) (c) of the Native Courts Ordinance (No. 44/1933), I, Roy Atcherley Vosper, Resident, Ondo Province, do order the transfer of the above suit to the Supreme Court of the Benin Judicial Division for hearing and determination.

REASONS :

On application of Counsel for the Plaintiff, on the grounds that the Ado Court is not competent to try the case without bias against the Plaintiff.

(Sgd.) R. A. VOSPER,
Resident,
Ondo Province.

40

Date : Dec. 3, 1949.

No. 3.

ORDER FOR PLEADINGS AND PLAN.

IN THE SUPREME COURT OF NIGERIA.
IN THE SUPREME COURT OF THE BENIN JUDICIAL DIVISION.
Holden at Ado-Ekiti.

Before His Honour OLUMUYIWN JIBOWU, Puisne Judge.
Monday the 24th day of April, 1950.

*In the
Supreme
Court of
Nigeria.*

No. 3.
Order for
Pleadings
and Plan,
24th April
1950.

Suit No. B/12/1950.

10 AKINOLA ADEFOLALU the Alawe of Ilawe on behalf of himself and
the people of Ilawe

Versus

ALADESANMI II, the Ewi of Ado, for himself and the people of Ado.
Awolowo for Plaintiff.

Majekodunmi (Uwechia with him) for the Defendants for plan and
pleadings.

20 Pleadings ordered. Statement of Claim with a plan of the land in
dispute to be filed within 3 months and the Statement of Defence to be
filed within 6 weeks after being served with the Plaintiff's Statement
of Claim with a copy of the plan of the land in dispute. Case to be heard
at the next Sessions.

(Sgd.) O. JIBOWU,
Judge 24/4/50.

No. 4.

STATEMENT OF CLAIM.

IN THE SUPREME COURT OF NIGERIA.
IN THE SUPREME COURT OF THE BENIN JUDICIAL DIVISION.
Holden at Ado-Ekiti.

No. 4.
Statement
of Claim,
22nd July
1950.

Suit No. B/12/50.

30 Between AKINOLA ADEFOLALU, The Alawe of Ilawe
for himself and the people of Ilawe . . . Plaintiff

and

1. ALADESANMI II, The Ewi of Ado-Ekiti
for himself and the people of Ado-Ekiti
2. ADETOKUNBO ATOMOBASE . . . Defendants.

. STATEMENT OF CLAIM.

1. The Plaintiff is the Paramount Ruler of Ilawe in Ekiti Division,
and he sues on behalf of himself and the people of Ilawe.

40 2. The first Defendant is the Paramount Ruler of Ado-Ekiti and
Igede and he is sued on behalf of himself and the people of Ado-Ekiti
and Igede.

*In the
Supreme
Court of
Nigeria.*

No. 4.
Statement
of Claim,
22nd July
1950,
continued.

3. The second Defendant is a native of Ado Ekiti, but he claims undefined portions of the land in dispute in his own right.

4. The land which is the subject matter of this action is bounded on the West and South by the remaining land of Ilawe people, on the North and North-west corner respectively by the lands of Igede and Ara people, and on the East by the land of Ado Ekiti people, and it is shown and more particularly defined in the survey plan attached and filed herewith edged therein pink.

5. Some centuries ago, the first Alawe of Ilawe left Ile Ife with his mother, and in their company were one Elero a hunter, one Ausi an Ifa 10 Priest, and several followers, in order to found a kingdom of his own.

6. With the help of Elero the hunter, the Alawe succeeded in discovering the present place now known as Ilawe, and settled thereon.

7. Adjoining and surrounding the site of Ilawe town was an extensive area of ownerless and unoccupied forestland, which the Alawe appropriated to himself for the use and benefit of himself and his people.

8. The Plaintiff avers that the remaining land of Ilawe people and the land in dispute formed part only of the entire land over which the Alawe and his people exercised dominion and rights of ownership at the time when Ilawe was founded. 20

9. Some centuries ago, the people now known as Ado Ekiti people migrated from Ile Ife.

10. They settled in succession at Ibokun, Ushin, Ikerre and Agbado, but they were driven from these places because of their ill-natured and un-neighbourly manners.

11. From Agbado, they settled at a place between Ifaki and Iworoko but, on account of small-pox epidemic, they abandoned that place and went to settle at another place called Ago Elemi.

12. Owing to molestation by wild elephants, they again left Ago Elemi and finally came to the place now known as Ado Ekiti which was then within 30 the area of land over which the Alawe exercised dominion and rights of ownership and possession.

13. The then Head of Ado and his people begged for land from the then Alawe and his people, and the latter, out of kindness, granted to the former absolutely a portion of the latter's land.

14. The boundary between the portion of land granted to the Ado people and the remaining land of Ilawe people was marked by Peregun Trees, Atori Trees, Irosun Trees, and other prominent Trees like Iroko. Those boundary marks are shown along the violet-pink edge in the plan attached and filed herewith. 40

15. From time immemorial when the original boundary was made, the Alawe and his people have been in exclusive possession of, and have been and are still exercising rights of ownership over the whole land in dispute.

16. About twenty-five years ago the people of Igede (a town under Ado Ekiti) wrongfully entered the land in dispute while in the exclusive possession of the Alawe and his people; but after repeated complaints and representations by the people of Ilawe to the Authorities, a District Officer was appointed to arbitrate between the Igede people and Ilawe people.

*In the
Supreme
Court of
Nigeria.*

No. 4.
Statement
of Claim,
22nd July
1950,
continued.

17. After the Igede people and the Ilawe people had signed an undertaking consenting to the District Officer's arbitration, the District Officer did mark a boundary which followed the ancient boundary between the
10 people of Ilawe and the people of Ado through whom the Igede people claim. The District Officer's boundary marks are heaps of stones shown in the plan attached herewith.

18A. About 16 years ago, the people of Ado Ekiti and Igede, and the agents, servants or those claiming through the second Defendant wrongfully entered the land in dispute while in the exclusive possession of the Alawe and his people, have attempted to evict by force the Ilawe farmers on the said land, and have succeeded in some cases in expropriating Ilawe farmers of their cocoa or kola farms, or of their farm holdings.

20 18B. The Plaintiff says that the persons mentioned in paragraph 18A *supra* continue to remain on the land in dispute in spite of incessant protests by the Alawe and his people.

19. The people of Ilawe have, from time immemorial, been and are still cultivating extensive portions of the land in dispute, for growing kolanuts, cocoa, bananas, yams, maize and other crops.

20. From time immemorial, the Alawe and his people have always been and are still cultivating and reaping the palm-fruits on the land in dispute, and have always been and are still exercising other acts of ownership on the said land.

30 21. The Plaintiff avers that the royalties for timber felled on the land in dispute are paid into Ilawe Revenue.

22. The Plaintiff also avers that he and his people are still in exclusive possession of by far the largest portion of the land in dispute.

Wherefore the Plaintiff claims as per his Writ of Summons.

Dated this 22nd day of July, 1950.

(Sgd.) OBAFEMI AWOLowo,
Plaintiff's Solicitor.

*In the
Supreme
Court of
Nigeria.*

No. 5.
Statement
of Defence,
1st
September
1950.

No. 5.

STATEMENT OF DEFENCE.

IN THE SUPREME COURT OF NIGERIA.

IN THE SUPREME COURT OF THE BENIN JUDICIAL DIVISION.

Holden at Ado-Ekiti.

Suit No. B/12/1950.

(Title as in No. 4.)

DEFENCE.

Save and except as are hereinafter expressly admitted the Defendants deny all the allegations of facts contained in the Plaintiff's Statement of Claim as if each and every one of such allegations has been separately taken and specifically traversed. 10

1. The Defendants deny paragraph 1 of the Statement of Claim, and say further that the Plaintiff is by tradition the Bale or Village Head of Ilawe, a town traditionally part of Ado-Ekiti Kingdom and owing allegiance to the 1st Defendant as the Oba of Ado. The Plaintiff is traditionally a member of the Ado Council and ranks 7th in seniority in Ado following after the other Village Heads. The Plaintiff stands in the same relationship to the 1st Defendant as the other Village Heads of Ado Community. 20

2. The Defendants admit paragraphs 2 and 3 of the Statement of Claim, but say that the portions claimed by the second Defendant are defined.

3. The Defendants deny paragraphs 4, 5, 6, 7 & 8 of the Statement of Claim and put the Plaintiff to the strictest proof thereof.

4. The Defendants while admitting paragraphs 9 & 10 of the Statement of Claim say that they settled only at Agbado and not any other place mentioned by the Plaintiff, and deny being driven from where they settled for reasons given by the Plaintiff.

5. The Defendants while admitting paragraph 11 of the Statement of Claim say that they did not abandon on account of any epidemic, and say further that the places mentioned by the Plaintiff are up till today part of Ado-Ekiti land. 30

6. The Defendants deny paragraphs 12, 13, 14, 15 & 17 of the Statement of Claim and put the Plaintiff to the strictest proof thereof.

7. The Defendants while admitting that there was arbitration by a District Officer between the Igede people and Ilawe people say that the arbitration was made in 1933. The Defendants deny the alleged trespass by the Igede people on the Ilawe's land. The Defendants say that the Ilawe people committed trespass on the Igede's land, and that the Igede people sued and got judgment for damages and costs against the Ilawe people. 40

8. The Defendants deny paragraphs 18A & B of the Statement of Claim, but say that the second Defendant succeeded in all his land cases

against the Ilawe people, and that the people of Ilawe who remain on the second Defendant's land today are regularly paying "Ishakole," and that is why they are still on the land.

9. The Defendants deny paragraphs 19, 20, 21 & 22 of the Statement of Claim, and put the Plaintiff to the strict proof thereof.

10. The second Defendant pleads *res judicata* as he had been obtaining judgments against the present Plaintiffs over this same portion of Ado-Ekiti land.

The Defendants will contend at the hearing of this suit that the Plaintiff is not entitled to claim as per the Writ of Summons.

Dated at Ibadan this 1st day of September, 1950.

(Sgd.) A. A. MAJEKODUNMI,
Defendants' Solicitors.

*In the
Supreme
Court of
Nigeria.*

No. 5.
Statement
of Defence,
1st
September
1950,
continued.

No. 6.

PLAINTIFF'S MOTION to sue in a representative capacity.

IN THE SUPREME COURT OF NIGERIA.

IN THE SUPREME COURT OF THE BENIN JUDICIAL DIVISION.

Holden at Ado Ekiti.

Suit No. B/12/50.

20

(*Title as in No. 4.*)

No. 6.
Plaintiff's
Motion to
sue in a
representative
capacity,
8th
December
1950.

EX PARTE MOTION.

TAKE NOTICE that this Honourable Court will be moved on the 13th day of December, 1950, at the hour of nine o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the Plaintiff for an order giving approval to the authorisation given to the Plaintiff to sue in the above action for the benefit of and on behalf of the Plaintiff and of the people of Ilawe, and for such further or other orders as to this Honourable Court may seem fit.

Dated this 8th day of December, 1950.

30

(Sgd.) OBAFEMI AWOLOWO,
Plaintiff's Solicitor.

*In the
Supreme
Court of
Nigeria.*

No. 7.

DEFENDANTS' MOTION to defend in a representative capacity.

IN THE SUPREME COURT OF NIGERIA.

IN THE SUPREME COURT OF THE BENIN JUDICIAL DIVISION.

No. 7.
Defendants'
Motion to
defend in a
representative
capacity,
11th
December
1950.

Holden at Akure.

Suit No. B/12/50.

(Title as in No. 4.)

EX PARTE MOTION.

TAKE NOTICE that this Honourable Court will be moved on the 13th day of December, 1950, at nine o'clock in the forenoon, or so soon 10 after as Counsel can be heard on behalf of the two Defendants for an order of this Court authorising them to defend this action in a representative capacity and for such further or other orders as this Honourable Court may deem fit to make in the circumstances.

Dated this 11th December, 1950.

(Sgd.) NWABUFO UWECHIA,
Defendants' Solicitor.

No. 8.
Note of
Pro-
ceedings,
11th
December
1950.

No. 8.

NOTE OF PROCEEDINGS.

IN THE SUPREME COURT OF NIGERIA.

20

IN THE SUPREME COURT OF THE BENIN JUDICIAL DIVISION.

Holden at Akure.

Before—

HIS HONOUR OLUMUYIWA JIBOWU, Puisne Judge.

Monday the 11th day of December, 1950.

Suit No. B/12/1950.

(Title as in No. 4.)

Awolowo for Plaintiff.

Majekodunmi (Uwechia with him) for the Defendants.

Awolowo asks the Court to strike out paragraph 10 of Defence or 30 ask 2nd Defendant for particulars.

Majekodunmi offers to give particulars.

Awolowo opens his case and asks for adjournment to enable him to call the surveyor who is not yet available but has been sent for.

Adjourned to 12th instant.

(Sgd.) O. JIBOWU,
Judge 11/12/50.

PLAINTIFF'S EVIDENCE.

No. 9.

Adekunle Coker.

*In the
Supreme
Court of
Nigeria.**Plaintiff's
Evidence.*

At Akure, Tuesday the 12th day of December, 1950.

Xd. by Awolowo : 1st Plaintiff's witness : ADEKUNLE COKER, male, Yoruba, sworn on the Bible, states in English Language as follows :—

I am a licensed surveyor. I live at 66, Clifford Street, Ebute-Metta.

I know the Plaintiff in this case. I did a survey of a large piece of land for him at Ilawe. I made a plan of the area said to be in dispute. I tender the plan, marked Exh. "A." The land is covered with thick forest and dense bush. The land in dispute is edged pink on Exh. "A." The Alawe sent about 300 people to clear the boundary. The bush is very thick and I detailed my assistant to see after the clearing of the boundary. Abolade Coker is the name of the Assistant.

No. 9.
Adekunle
Coker, 12th
December
1950.
Examina-
tion.
Ex. "A"

After the boundary had been cleared, I then did the survey. I saw the A.D.O. Mr. North East who directed me to the 1st Defendant. I sent Abolade Coker to ask the 1st Defendant to send his men to be present at the survey I was going to make. His people however, did not make themselves known to me at the time of the survey.

Along the boundary line from Igbo, I found a big kola tree ; it is an old tree following the violet line. I found Atori, Peregum and Irosun trees at intervals. There were also heavy heaps of stone round Atori trees. The heaps of stones were at intervals along the boundary line ; there were also two big Iroko trees along the boundary ; there was a sand mound ; it is an old mound in a dense forest. The heaps of stones are old and the stones appeared to have been brought from another locality. The peregum trees are between 4" and 12" in diameter. The Atori trees are fully grown and are about 9" in diameter. There are no boundary marks on the pink edge of the area. Nearly the whole area in dispute is under cultivation. There is a village, Eyuyu, in the area. I found maize, yam, cocoa, kola and other cash crops on the area. Ilawe people pointed out to me places belonging to them and I show them on Exh. "A."

Xad. by Majekodunmi : All what I show on Exh. "A" are what the Ilawe people showed me. Practically the whole area had been cultivated. The Ilawe people showed me their plantations. They showed me also what Ado people had planted. No, I was not shown any plantation made by Ado people. I was told Ado people were using the land in dispute. I met some Igede people at Eyuyu Village ; they stated that they were put there by Ado people.

Cross-
examina-
tion.

The land in dispute is within the area coloured grey in the map now shown to me and marked "B" for identification. I did not personally see the 1st Defendant. At the time I knew there was a boundary dispute between Ado and Ilawe people, I did not write to the 1st Defendant.

"B" for
identifica-
tion.

Rxd. by Awolowo : I saw the Atori, Peregum and other trees on the land hence I showed them on Exh. "A." I did not show them because I was told about them.

Re-exami-
nation

Xad. by Court : The maize and yam farms were made by Ado people.

Cross-
examina-
tion by
Court

Xd. by Awolowo : 2nd P.W. ABOLADE COKER : male, Yoruba, sworn on the Bible, states in English Language as follows :—

I live at Salvation Army Road, Ibadan. I am an Assistant to the 1st P.W. a licensed surveyor.

I went with him to Ilawe to do a survey. We saw the A.D.O. Mr. North East who directed us to the 1st Defendant. I went to see the 1st Defendant. I told the Ewi that we had come to survey the land in dispute between Ado and Ilawe people. I asked for his representatives at the survey to commence on the 5th day. The Ewi told me it was not necessary to send a representative and that the Alawe who complained should show me what he complained about. I asked him to send to Igede people to be present and not to make trouble. He promised to do this. 10

I have seen plan Exh. "A." The area in dispute is the one edged pink. The boundary line edged violet was a thick jungle. I was present when it was cut by about 250 people.

I saw on the boundary Peregun, Ege and Iyerosun. The people who cut the boundary looked for the marks while cutting the bush to find them. All the marks found on the Abolade boundary line are shown in the violet line on Exh. "A." There are just on the other side of the boundary line. 20

Xad. by Majekodunmi : The Ilawe people looked for their marks before cutting the boundary line. I was present throughout the survey. The Ilawe people told me they had no new plantation on the land except cocoa they had planted years ago. They stated that Ado people then used the greater portion of the land in dispute to which they had no access. They showed us the maize and yams planted by Ado people. They stated that the whole land was then occupied by Ado people. I saw Igede people on the land ; I saw also their houses. The village known as Eyuyu is theirs. 30

One Akitipa came and claimed a part of the land and the plantations thereon for his father. The Ilawe people heard him. None of them challenged his statement. The Ado people on the land were still farming there during the survey. The cocoa was evergreen with thick bush.

No Rxn.

Xad. by Court : The land on the other side of the violet line on Igede's side is covered with thick bush.

No. 11.

Akinola Adefolalu.

Xd. by Awolowo : 3rd P.W. AKINOLA ADEFOLALU, male, Yoruba, sworn on cutlass, states in Yoruba Language as follows :—

I am the Alawe of Ilawe and the head of Ilawe people. I know Ado Ekiti and Igede people ; they are my neighbours. The Ewi is the head of Ado and Igede people. Ado and Igede people have a common boundary with me. Iroko, Kola, Atori, Irosun and Peregun trees mark our boundary. The trees were planted at a time beyond living memory.

10 Ilawe people have a large piece of land. We are descendants of Oduduwa and migrated from Ife.

One Oniwe was a wife of Oduduwa and begot Adegunle, a female, for Oduduwa. Adegunle was the mother of Alawe. Alawe was born at Ife.

Oduduwa commanded Alawe to go and found his own dominion at Ilawe. Oduduwa named the place Ilawe. There was nobody at Ilawe when Alawe got there.

20 Elero, a hunter and Awusi went to Ilawe with Alawe. We still have titles of Elero and Awusi in Ilawe. Elero first set his feet on the land as he cut a track for the Alawe. The descendants of Alawe have been living on the land since. The Ewi is also a descendant of Oduduwa. The first Ewi was a direct son of Oduduwa. I know the place inhabited by Ado Ekiti people. The place occupied by Ado Ekiti people belonged to the first Alawe. Ado people were not there when Alawe got to the area.

Alawe left Ife before Ewi. From Ife Ewi went to Ibokun ; from Ibokun he went to Ushin ; then to Agbado ; from Agbado to a place between Ifaki and Iwonoko ; then to Ago Elemi and finally to Ado Ekiti.

30 Two Ilawe people were then farming there. One of them was Ade-eleso, son of Alawe and the other was Oroko. Ewi begged them for land to settle on and was told they were not the owners of the land. The Ewi was directed to their father Akinbieleyo, the then Alawe. Atakumese was then the Ewi.

Atakumese saw Akubieleyo and the latter gave the former land. A boundary was then marked between them. It is the boundary I have told the Court about ; it was marked with Peregun, Atori and other trees.

40 The dispute about the land in dispute started during the time of my father Afinbiokin. He was exiled to Abeokuta about 26 years ago. He died about 20 years ago at Abeokuta.

My father was at Abeokuta when the dispute started. The dispute started about a year after he left for Abeokuta.

No one troubled us on the land before my father left for Abeokuta. From the time the boundary was made up to the time my father left for Abeokuta no one troubled us on the land in dispute. Since then Igede and Ado people have been disturbing us on the land in dispute.

*In the
Supreme
Court of
Nigeria.*

*Plaintiff's
Evidence.*

No. 11.
Akinola
Adefolalu,
12th
December
1950.
Examina-
tion

*In the
Supreme
Court of
Nigeria.*

*Plaintiff's
Evidence.*

No. 11.
Akinola
Adefolalu,
12th
December
1950,
continued.

Cross-
examina-
tion.

Since 25 years ago the Igede and Ado people have been crossing our boundary to work on our own side of the boundary. They crossed the boundary without our consent. We did not agree and so brought this action.

I became the Alawe after my late father. Seven days after my installation, the Ewi got me arrested and I was imprisoned for 6 months. On my release I was detained at Ado Ekiti for four years in Chief Odofin's house.

Some of my people are still using a portion of the land in dispute. Iroko trees had been felled on the land in dispute before. I gave the 10 permission to cut them. I did not get any royalty. I have a subordinate Native Authority of my own.

Xad. by Majekodunmi: The Alawe has no duty to perform to the Ewi. It is not the duty of the Alawe to wash the feet of the Ewi. The Alawe and his people did not build a portion of the Ewi's palace. It is not correct that all Alawes before my father acknowledged the overlordship of the Ewi. My father did not acknowledge the Ewi as overlord. My father refused to acknowledge Ewi's authority and he bought crowns. He was tried on these charges. He was found guilty and fined. He continued to give trouble hence he was deported. 20

It is true that 15 chiefs of Ilawe were sentenced to two months' I.H.L. each by Capt. Sullen in 1927 for disobeying the Ewi.

I assumed the Baleship of Ilawe without the knowledge and consent of the Ewi and I was sent to gaol for 6 months and detained at Ado Ekiti for 4 years after my discharge.

The Ewi had nothing to do with the establishment of the Court at Ilawe. The Ewi did not consent to land being given to the Roman Catholic Fathers at Ilawe.

I know the time the road from Ilawe to Igbara Odo was made. The Ewi did not ask me to send 100 men on the road. I got the road 30 constructed and ordered my men to make the road.

From Ado one gets to Odo; from Odo one gets to Ilawe; from Ilawe one goes to Igbara Odo and then to Oke Agbe. Oke Agbe is the boundary between me and Ado. Ado and Igede people use a greater portion of the land in dispute. They started to go on the land in dispute while I was in prison. Yes, they were there during my father's time. We tried to eject them and failed, hence we come to this Court. I don't know Balogun Akintola of Igede. I remember Adubu, Olu and Owosemi were taken to Court about 10 years ago. I don't know what they were arrested for. They were fined. I know they appealed to the D.O. and 40 to the Resident. I don't know the Resident's decision. I know the 2nd Defendant. I heard Akitipa of Odo sued Adubu and 16 others. By consent certified copy of proceedings is tendered and marked Exh. "C." They did not pay and were sent to gaol. I don't know he sued Adubu and 16 others again. By consent a certified copy of the proceedings is tendered and marked Exh. "D." I don't know Akitipa Adekunsun of Odo. Odo is on the land in dispute. I knew 2nd Defendant in Court. I know Akitipa and Samini and 14 others. Certified copy of proceedings

Ex. "C"

Ex. "D"

is tendered by consent and marked Exh. "E." There was an appeal to the D.O. but I don't know if a plan of the land was then made. I knew they appealed to the Resident. Certified copy of proceedings is tendered by consent and marked Exh. "F."

*In the
Supreme
Court of
Nigeria.*

10 I know Amugbodogbe stream at Odo on the land in dispute. I don't know Sam Oni. I don't know when he was sued by Akitipa to quit his land. I now remember Sam Oni; he then stated that the land belonged to the Elemo of Ilawe. Hence I sent the Elemo and the Olokosu to meet the D.O. I don't know the decision. I know Oguntuwase Atobumeji of Ilawe. Certified copies of proceedings in Akitipa versus Soni Oni are by consent tendered and marked Exhs. "G," "H," and "J."

*Plaintiff's
Evidence.*

No. 11.
Akinola
Adefolalu,
12th
December
1950,

I know Akitipa sued Oguntuwase. Certified copy of proceedings is, by consent tendered and marked Exh. "K."

continued.

Ex. "E"

Ex. "F"

I know Oguntuwase sued Akitipa. Certified copy of proceedings is by consent tendered and marked Exh. "L."

Exs. "G"

"H" & "J"

I know nothing about Aporis the Sopetu of Odo versus Ojo Ologboshere of Ilawe and 11 others of Ilawe. Certified copy of the proceedings is, by consent tendered and marked Exh. "M."

Ex. "K"

Ex. "L"

20 Ado people moved from place to place owing to tribal wars. The Alawe did not move with them. The Alawe never moved to Oke Asa; he has never left Ilawe. It is not correct that he later joined the Ewi at Ado. The Alawe did not ask the Ewi for land. The Arajoka of Igbomodo and the Onigede did not then give land to Ilawe people at the request of the Ewi.

Ex. "M"

30 My father, Aderunteka Afinbiokin, was the first Alawe that I know. I don't know he went by the name of Adeyemi. The first Alawe was Oniwe; the 2nd was Adelokan; the 3rd was Aposunpoja; the 4th was Amewela; the 5th was Adesiluku; the 6th was Adegbulugbe; the 7th was Akubojosun; the 8th was Ogunbe; the 9th was Adelugu; the 10th was Ogoemo; the 11th was Akubieleyo; the 12th Ogboye-lomoako; the 13th was Afinbiokin and 14th is myself.

Adjourned to 13th instant.

(Sgd.) O. JIBOWU,
Judge,

12/12/50.

*In the
Supreme
Court of
Nigeria.*

No. 12.
Note of
Pro-
ceedings,
13th
December
1950.

No. 12.

NOTE OF PROCEEDINGS.

IN THE SUPREME COURT OF NIGERIA.

IN THE SUPREME COURT OF THE BENIN JUDICIAL DIVISION.

Holden at Akure.

Before—

HIS HONOUR OLUMUYIWA JIBOWU, Puisne Judge.

Wednesday the 13th day of December, 1950.

Suit No. B/12/1950.

AKINOLA ADEFOLALU, the Alawe of Ilawe, etc.

10

versus

1. ALADESANMI II, Ewi of Ado, etc.
2. ADETOKUNBO ATOMOBASE.

EX PARTE MOTION

by Plaintiff for order to sue in a representative capacity.

Awolowo moves.

Order as prayed.

(Sgd.) O. JIBOWU,

Judge 13/12/50.

EX PARTE MOTION

20

by Defendants to defend in a representative capacity.

Uwechia moves.

Order as prayed.

(Sgd.) O. JIBOWU,

Judge 13/12/50.

Awolowo for Plaintiff asks for leave to amend the writ by adding the words "and Igede" after "people of Ado-Ekiti" after the name of the 1st Defendant.

Majekodunmi has no objection. Application is therefore granted.

No. 13.

Akinola Adefolalu (continued).

*In the
Supreme
Court of
Nigeria.*

Xan. by Majekodunmi continues: AKINOLA ADEFOLALU, warned that he is still on his oath, continues:—

*Plaintiff's
Evidence.*

I knew Ewi Ajimode. He was the father of first Defendant. My father was the first Alawe that I know. I think Ajimuda was the 19th Ewi of Ado. Adewunmi succeeded Ajimuda. The 1st defendant succeeded Adewunmi. Ilawe got to the area before Ogotun and Igbara Odo people. The Ilawe people took part in two intertribal wars. The Benin people
10 attacked Ilawe during the reign of Oguntu, the 8th Alawe. The Ilawes were not then driven to Oke Asa, near Esure.

No. 13.
Akinola
Adefolalu
13th
December
1950.

Ikerre people attacked Ilawe people during the reign of the 11th Alawe. The Ilawes were not captured; they won the fight. Ikerre people did not occupy Ilawe for 7 months; the Ijeshas did.

Cross-
examina-
tion,
continued

The Ijeshas occupation was during the reign of the 12th Alawe. The Ilawes were not then at Oke Asa. We drove the Ijeshas away after 7 months.

I know of Ekitiporapo war; that was during the reign of my father. The Ilawes did not take part in it. The Ilawes never left Ilawe to live
20 at Oke Asa, near Esure. I am speaking the truth. I was not born when the Benis attacked Ilawe. I don't know what happened then. The Benis captured Ilawe. The Ilawes did not run to Oke Asa although some of them were taken away as slaves. The Ilawes did not scatter. They ran into the bush and returned to their town. The Benin people occupied Ilawe town after capturing it. I don't know how long their occupation lasted. The Benis captured Ilawe sixteen times. Shortly after the Benis went away, the Ikerre people attacked Ilawe. The Ijeshas attacked the Ilawes from the back while they were running away from the Ikerre people.

30 No, it was after the Ikerre people left that the Ijeshas came. The Ilawe people ran into the bush. The Ijeshas were in Ilawe for 7 months. No, they settled about 2 miles from our town and were pillaging our farms. The Ilawes did not run into the bush near Ado Ekiti.

Odo is a portion of the land in dispute. I know of only three chiefs at Odo. I don't know they are 8 in number. They are chiefs of Odo. Chief Akitipa is the head chief of Odo. I know only the present Akitipa. My father died 24 years ago. I succeeded him. The 2nd Defendant was the Akitipa when I succeeded my father. Yes, he has not been Akitipa for more than 12 years. In the absence of Akitipa, Sapetu the next
40 chief, started to sue in respect of Odo land; that was about 22 years ago. I don't know Adepunrun.

I used to pass through Odo on my way to the D.O. at Ado Ekiti. I don't know the people who lived at Odo. I know that the chiefs on the land are the chiefs of the Ewi.

I was born and bred at Ilawe. I do not farm at Odo but my people farm there. Ado people occupied the place and drove away my people.

*In the
Supreme
Court of
Nigeria.*

*Plaintiff's
Evidence.*

No. 13.
Akinola
Adefolalu
13th
December
1950,
Cross-
examina-
tion,
continued.

My father claimed the land as his. He did nothing as there was no trouble then.

I was not under the Ewi until 1946. I have a native court in Ikerre. I used to give permission for Iroko and other trees to be felled but I have never been paid any royalty.

Europeans have been taking rubber and big trees from the land for over 50 years. I don't know the royalties were being paid to the Ewi.

My father asked for the royalties but they were not paid to him. It was since Ilawe was separated from Ado Ekiti in 1946 that I thought I should get the royalties. Not a penny has ever been paid over to Ilawe. 10
Igbara Odo has also been separated from Ado Ekiti.

I went with my father to the meeting of the Crowned Heads at Ado Ekiti before he was deported. I am surprised to hear that my father had stated that it was his duty to wash the feet of Ekiti Obas.

Yes, I told the Court that the dispute started about 16 years ago. The trouble started the year after my father was deported. My father claimed the land. I don't claim the land because of the separation.

The present occupiers of the land were not then in my father's time. This is the first action being taken on the land by Ilawe people. I have been the Alawe for 21 years. I come to Court now because the troubles 20
are too many.

Re-exami-
nation.

Rwd by Awolowo : The troubles started with the deportation of my father ; he was 6 years in exile before he died. I was in gaol for 6 months and detained at Ado for 4 years. Since then up to 1946 I was compelled to be under the Ewi. I was patient and so did not come to Court before now.

I have never got my share of the royalties.

Up to 4 years ago all taxes collected in Ilawe were paid to the District Officer at Ado. We still pay them to the District Officer.

The troubles started about 6 years after my father was deported. I went to Abeokuta with my father. 30

The three chiefs I know at Odo are Ado Ekiti chiefs. They were not at Odo in my father's time. Ado and Igede occupy a greater portion of the land in dispute. I have not gone round the land. My father was prosecuted for not recognising the Ewi as his overlord and for setting himself up as a District Head and buying 2 crowns. He refused to recognise the Ewi as his overlord. The Ewi asked that each person at Ilawe should pay 3/- per head to him for his new palace. That was the start of the trouble.

Sixteen and not 15 chiefs of Ilawe were sent to prison because they did not recognise the Ewi. Eight others were gaoled at Ondo and 8 others 40
at Ado. The first batch of sixteen were sent to gaol at Benin. The Ewi was the President of the Court that sentenced them. There have been 16 Alawes including myself. They are :— Oniwe, Adelekan, Amewalagbodosun, Amosunpeja, Oba Ayikininuode, Adesuluku, Adegbulugbe, Ogunbe, Adelabu, Akubojuosun, Ogoemo, Oyopateakun, Akubieleyo, Ogboyelomo-oko, Afinbiokin and myself.

Xcd. by Court: About a hundred people accompanied the first Alawe to Ilawe. There were about 40 men; the rest were women and children.

The father of the 1st Alawe was one Igesi at Ilode, a quarter in Ife. The 1st Alawe was asked to go and find a place to establish himself. I cannot tell how long ago it was that the 1st Alawe left Ife.

I cannot tell how long we had been at Ilawe before the British Government was established. Ilawe was never under Ado Ekiti.

*In the
Supreme
Court of
Nigeria.*

*Plaintiff's
Evidence.*

No. 13.
Akinola
Adefolalu
13th
December
1950,
continued.

Cross-
examina-
tion by
Court.

No. 14.

Michael Ajakaiye.

10

Xd. by Awolowo: 4th P.W. MICHAEL AJAKAIYE, male, Yoruba, sworn on the Bible, states in English language as follows:—

I am a native of Ilawe. I am Ilawe Council Clerk. I know the land in dispute. I went with the Surveyor. I am familiar with the boundary marks.

20

A kola tree marks our boundary with Asa. There are two Iroko trees on our boundary and also Afefe Hill. There are Peregun and Atori trees between the Iroko trees. From Afefe one goes to Okuta Olemo. Near Okuta Olemo is a map heap of stones. There is a big heap of sand near the foot path between Ilawe and Igede. Apan Stream crosses the boundary. Further down is Orita Metta where there are big Peregun Trees. Amayinkorodo stream also crosses the boundary. The Omiwo River is a boundary of the land in dispute. The boundary goes down to Igbo Asaw. Igbo Asaw is a boundary between Ilawe and Ado Ekiti. The rest of the land west by the boundary is Ilawe land.

The boundary of the land in dispute is between Igbo Asaw and Oke Isegun, right up to Igbo Amadin. There are no Peregun and Atori trees on this side of the boundary.

30

Ilawe has a District Council. The Alawe and his Council now control the Revenue of Ilawe; they also administer the revenue. Royalties on trees felled are now paid to the Alawe. We have printed Estimates of Revenue for 1946. Before 1946, our taxes and royalties were paid into the coffers of the Ekiti Federal Council. Ilawe was then part of Ado. Igborra Odo, Osi, Iddo Fagboro, were also part of Ado.

Xcd. by Majekodunmi: I have a farm at Ajugbin. It is not shown on Exh. "A." I have been farming there about 20 years ago. The farms of Ado and Igede people are not in the majority. I cannot tell the number of Ado and Igede people on the land in dispute.

40

Odo is just a hut. I don't know the number of chiefs there. I know only two chiefs there—the Akitipa and the Edemo. I don't know Safetu.

I don't know Adepunrin. The only Akitipa I know is the 2nd Defendant. I knew him about 8 years ago. I don't know he is the 9th Akitipa of Odo.

No. 14.
Michael
Ajakaiye
13th
December
1950.
Examina-
tion.

Cross-
examina-
tion.

*In the
Supreme
Court of
Nigeria.*

*Plaintiff's
Evidence.*

No. 14.
Michael
Ajakaiye,
13th
December
1950,
continued.

I knew the father of the present Alawe. I knew when he was deported. There was no Akitipa in his time. Ado people were not then on the land. It was about 25 years ago that our people were driven from the land; no, they were not driven but being harrassed on the land. I am about 33 years of age. I don't know my correct age.

Some of our people had sued the Akitipa.

I know Oke Agbe. From Ado one gets to Odo and then Ilawe; from Ilawe one gets to Igbara Odo. I don't know Oke Agbe. I was engaged in August, 1949, by the Alawe. The area coloured grey in the map marked " B " for identification was never Ado land. I don't know the extent of Ado land. The land in dispute up to Igbara Odo was never Ado land. Ilawe, Osi, Igbara-Odo were separated from Ado on the 1st April, 1946. The Ewi had authority over the areas before the separation. The royalties are not being paid to Ado up till now. We put so much royalties in our estimates. I cannot tell if any royalty had in fact been paid to the Alawe. I know Iroko trees had been felled in Ilawe land for more than 50 years. I don't know the royalties were paid to the Ewi. Ilawe started to prepare District Estimates in 1947. I don't know that royalties up to November, 1947 have been deposited in Ado Ekiti Treasury. 10

I cannot tell to whom royalties were paid before 1946. 20

*Cross-
examina-
tion by
Court,*

Xad. by Court : As a matter of fact, no royalties have been paid to the Alawe since 1946. The Ewi has no boundary with Ogotun people. I know he has boundary with the Ara people. I don't know the boundary.

*Re-exami-
nation.*

Rxd. by Awolowo : I told the Court I did not know the extent of Ado land. They have a boundary with us and that is what I have described; it is from Igbo Amedo in Igbo Asaw. The Ewi has boundary with Ara people.

*Cross-
examina-
tion by
Court.*

Xad. by Court : I don't know how the boundary between us and Ado came to be demarcated. We have boundary with Asa, Ikerre and Igbara Odo people. They are marked with Peregun and Atoris. I saw boundary with Igbara Odo. 30

No. 15.
Adeyemi
Olode,
13th
December
1950.

*Examina-
tion.*

No. 15.

Adeyemi Olode.

Xd. by Awolowo : 5th P.W. ADEYEMI OLODE, male, Yoruba, sworn on cutlass, states in Yoruba Language as follows :—

I am a native of Ilawe and I live at Ilawe. I am a farmer. I have a farm at Eyuyu. I have been farming there for about 37 years. My father was a farmer and had a farm at Eyuyu. My grandfather farmed at the same place. I am still farming at Eyuyu.

There are other farmers at Eyuyu; they are Igede people. Ilawe people also farm there. Igede people have been farming there since 25 years ago; that was after Afinbiokin was taken away to Abeokuta. He was the then Alawe. No Igede man farmed at Eyuyu before Afinbiokin 40

was taken away. We did not give them permission to farm there. We did not like it. They did not come to my own farm. They used to steal yams from other farms.

*In the
Supreme
Court of
Nigeria.*

Daniel Agbo, Gabriel Arowosoge, Gabriel Babalola, John Akinyemi, John Akinwele, Rufus Idowu, Isaiah Ojo, Olugbade, Aroge, Michael Ale are Ilawe people farming at Eyuyu. We have been farming there together with our respective fathers. I planted banana, kola trees, cocoa, palm trees and yams. I planted maize and pepper also. I planted cocoa and kola on the land. I have never paid Ishakole, rent or tribute to anyone.
10 No one has ever demanded rent, tribute or Ishakole from me. I was a little boy when Afinbiokin was taken away.

*Plaintiff's
Evidence.*

No. 15.
Adeyemi
Olode,
13th
December
1950,
continued.

Xcd. by Majekodunmi : I know Odo farmland. I don't know chief Akitipa is the head of Odo. I don't know of any chief at Odo. Odo is part of the Alawe's farmland. I am not surprised to hear that the Alawe had told the Court he had never been to Odo. I have only heard of the 2nd Defendant as Akitipa at Odo. I don't know he has sued any Ilawe man.

Cross-
examina-
tion.

I know Owoshemi, Adubu, Olu, natives of Ilawe ; as also Adaramodu, Owolabi, Olowokere, Moses Oni, Ajakaiye, Ale, Seda Agbakin, Momodu,
20 Oluwasuyi, Moses Amogbon, Olu Balogun, Moranku, J. Aroge, Fakinajo and J. Adubu.

I don't know Sam Oni. I know Komolefe Folade, Agbetusi Moses Oni and Apayinoge. I don't know Gomiko. I know Oguntuwase Atotumeji. None of them pays Ishakole for their holdings. I don't know the Court ordered them to pay Ishakole. I don't even know they had been taken to Court. Ilawe people use the greater part of the land in dispute. It is not correct that Ilawe people have been ousted from the land in dispute. I don't know there are 8 chiefs at Odo. I have given the names of Ilawe people farming on the land in dispute. I don't know the
30 number of Igede people on the land, nor the number of Ado people on the land.

From Ado one gets to Odo and Ilawe before reaching Igbara Odo. I don't know Oke Agbe. I know the Ewi has a boundary with the Alara of Ara. The Alawe and the Alara have a common boundary at Igbo Amadin. I don't know where the boundary between the Ewi and the Alara is. I don't know the boundary between the Ologotun and the Ewi. I don't know they have a common boundary.

The Ewi did not rule over Ilawe up to Igbara Odo before 4 years ago. I heard that Ilawe was before under the Oni of Ife. We were separated
40 not from Ife but from Ekiti. We were never under the Ewi.

The Alawe never attended meetings at Ado Ekiti. I don't know when our Native Court was established. I know the time the R.C. Mission wanted land at Ilawe. The Ewi had no objection at first ; he did not give his consent to the land being given. I was then about 12 years old. I was too young to know what was going on then.

Rxd. by Awolowo : There is a quarter in Ilawe known as Odo.

Re-exami-
nation.

Xd. by Awolowo : 6th P.W. OLUWAFEMI, male, Yoruba, sworn on the Bible, states in Yoruba Language as follows :—

I am Chief Awusi of Ilawe. I am a farmer. I am about 50 years old. I was about 25 years old when Afinbiokin was deported. I farm at Okuta olomo. I know Afefe Hill. My farm extends to the Hill and Okuta olemo. I know Asa Stream ; it is near my farm. I was born on my farm which belonged to my father and my great grandfather. I have cocoa, kola, palm trees, yams, maize, and cotton in my farm. Other Ilawe people have farms near me. James Ayileke, David Akiri, Abraham Opo, Jacob Amogbon are some of them. I have known them there since my youth. They also planted cocoa, kola trees and other things. Afinbiokin was deported about 25 years ago. It was the result of the Ewi's demand of 3/- per head for Ilawe for the building of a new palace. The Alawe said he was not under the Ewi. He was then deported. After his deportation many chiefs of Ilawe were arrested, as also some of the influential people. About 16 chiefs and 8 non-chiefs were arrested and imprisoned at Benin, Ado and Ondo. Some of the non-chiefs are still alive. Ogorogbe Egbedi is now here. The Akitipa started to trouble Ilawe people. He alone troubled Ilawe people. Our people's yams were stolen. 10

About 16 years ago a boundary was made for our people. One James of Igede complained that his cocoa was stolen ; then a D.O. marked boundary between Igede people and our people with heaps of stones. We showed the D.O. our boundary. The heaps of stones were put by Oluta Olomo in my presence. There was no land dispute between us and Igede people before Afinbiokin was deported.

Xd. by Majekodunmi : I never heard that Ilawe was ever under the Ewi. All taxes collected at Ilawe were paid to Ado Ekiti. I don't know to whom royalties were paid. An Igede man had dispute with an Ilawe man. The District Officer said that Igede people must not go over the boundary until the matter comes before the Judge for a decision. Ado and Igede people were then on the Western side of the boundary. We did not go to their side of the boundary. 30

I know only the 2nd Defendant as Akitipa. I knew him about 8 years ago. I don't know many Ilawes pay him Ishakole. I don't know there are 8 chiefs at Odo. I don't go there at all.

I know Odo quarter in Ilawe. They are the people farming on the Odo farm. They still live at Ilawe. I know the last and the present Alawes. I don't know the extent of the land in dispute. I know my own part of it. 40

Rxd. by Awolowo : The people living at Odo quarter are native of Ilawe. They are not migrants from Ado.

Xd. by Court : I live at Oke Emo at Ilawe. It is a bit far from Odo quarter. I know all the people living at Odo quarter. I know only about ten of them. About 30 people live in the quarter. I don't know them all. I don't know where their ancestors came from.

Adjourned till 9 a.m. on the 14th instant.

(Sgd.) O. JIBOWU,
Judge, 13/12/50.

*In the
Supreme
Court of
Nigeria.*

*Plaintiff's
Evidence.*

No. 16.
Oluwafemi,
13th
December
1950,
continued.

Cross-
examina-
tion by
Court.

No. 17.
Asokiti,
14th
December
1950.

Examina-
tion.

No. 17.
Asokiti.

10 *Xd. by Awolowo* : 7th P.W. ASOKITI : male, Yoruba, sworn on cutlass, states in Yoruba language as follows :—

I am a native and chief of Ilawe. I live at Ilawe. I know there is a land dispute between Ilawe and Ado Ekiti people. The land in dispute belongs to the Ilawe people. We have a boundary with Ado from time immemorial. Ilawe people came from Ife. About 150 people came from Ife. The Alawe, who was then called Oniwe, was the leader of the party. Oloja Adim, Oloja Aye and Safetu were chiefs among the party.

Oligesi was the father of Oniwe and his mother was Adegunle. Adegunle was a daughter of Oduduwa. Oniwe was Adegunle's mother.
20 Oduduwa asked Oniwe and others to go and found dominions of their own. Ewi was a descendant of Oduduwa. He also left Ife. The Ewi left Ife before Oniwe.

Oniwe first went to Ilesha after leaving Ife. The Owa of Ilesha, a son of Oduduwa was there then. From Ilesha Oniwe settled between the towns now known as Ogotun and Apa. From there Oniwe settled at Ilawe. A hunter named Elero went before the party to find the places where the party settled. Elero was also a chief. Elero was the first person to set foot at Ilawe. There was nobody beside Elero when the party arrived at Ilawe. Ado and Igede people were not there. Ilawe people have never
30 left Ilawe since they settled there.

After leaving Ife the Ewi went to Ibokun, Ushin, Agbado, Iworoko and Ago Elemi. Then he came to Akubieleyo, the Oba of Ilawe, to ask for land. Atakumose was the Ewi. He sent Osapeji to give him land. Oroko and Adegbuleye were on the land now known as Ado Ekiti. A boundary was then made between Ilawe people and Ewi's people. Porogun trees, Irosu and Atori trees were planted to mark the boundary. The boundary marks have never been removed.

The dispute between Ilawe and Ado people about land started about 27 years ago.

40 I knew Afinbiokin, the father of the present Alawe ; he was then at Ilawe. The Ewi asked that each person at Ilawe should contribute 3/- towards the building of his palace. The Alawe refused to carry out the

*In the
Supreme
Court of
Nigeria.*

*Plaintiff's
Evidence.*

No. 17.
Asokiti,
14th
December
1950,
continued.

order and he was summoned to Ado. He was fined £20 and later deported. Many Ilawe people were arrested. Akitipa then entered our farms and harvested our crops. I first heard of Akitipa about 11 years ago. Ado people entered our farms and harvested our crops. Igede people did the same. Ado and Ogede people did not enter our land before Afinbiokin was exiled. Ilawe people have been farming on the land in dispute since the town was founded. Ilawe people were under the Ewi; they were put under him by the British Government. Before the advent of the British Government, Ilawe was not under the Ewi. It was during the time the Ewi demanded 3/- per head from us that we knew Government had put us under him. We did not like the position, since the trouble that followed. We did not approve of Ado and Igede people's coming on our land. I was a farmer. I am too old to farm now. My farm is not in the area in dispute. There is a quarter in Ilawe called Odo. I know the quarter very well. The population of the quarter is over 200. The people were born at Ilawe. The leading chief of the quarter is Obantu; his ancestor came originally from Ife. Odo quarter people farm in Odo farm on the land in dispute. 10

I only know the present Akitipa. I don't know when he holds sway; he lives at Ado. He used to come to Odo farm. I did not hear of any Akitipa at Odo before 11 years ago. No Akitipa lived at Odo farm before Afinbiokin was deported. I know the present Akitipa as we used to meet at Ado Ekiti Council. There are other chiefs at Odo besides the Akitipa. Sapetu is one of the chiefs. I know him personally. I met him also at Ado Ekiti Council. I knew only Afinbiokin as Alawe before the present Alawe. I don't know the names of the previous Alawes. Ogboyelowo-oko was the Alawe after Akubieleyo. He was succeeded by Afinbiokin. Akubieleyo reigned for about 38 years. Ogboyelowo-oko ruled for 24 years. Afinbiokin reigned for about 150 years. He was Alawe before I was born; he was an old man when I knew him. He was carried to Ado and could not walk. 30

*Cross-
examina-
tion.*

Xad. by Majekodunmi: I know Efemi of Odo; he is not my friend. It is not correct that I used to visit him. He is an Ifa priest. I am also an Ifa priest.

I know Akitipa, Sapetu and Odolfin of Odo. I hear of Edemo and Odopetu. I don't know Edemomu, Soro, Aboduwodi and Asomo.

I know Akitipa, Sapetu and Odolofin to be chiefs of Odo. I know only one Sapetu and one Odolofin. The Odolofin I knew is dead.

I don't know Aporio Sapetu. I don't know the name of the Sapetu I knew. He died about 8 years ago. I don't know another one had been installed. I don't know Adeyeye. I did not visit him. 40

I don't know Adepunrun. I passed through Odo farm when going to Ado Ekiti. I don't know the people farming there. I have no farm there. I don't know that Ilawe people farming in Odo pay Ishakole to the Akitipa. I have never heard of Balogun Akintola of Igede. I know there have cases in Court between Igede and Ilawe people. Benin people besieged Ilawe during the time of Ogunbe, the 8th Alawe. They captured Ilawe. They lived in Ilawe for only about 3 months and not for 6 months. Ilawe people ran into the bush where they farmed.

Ikerre people also attacked Ilawe in the time of Alumu Akubieleyo. The Ijeshas did not attack Ilawe at the same time. The Ijeshas did not capture Ilawe. They laid seige to our town for 7 months. Ogboyelowoko was then the Alawe. They camped about 1-1½ miles from Ilawe town.

We never went to Oke Asa. The fight with the Ijeshas took only one day. The British Government put us under the Ewi. Major Tucker visited Ilawe; he was not the first European to come there. Bower was the first white man to come there. Tucker came after him about 50 years ago. I don't know who gets the royalties of the trees felled in Ilawe and its environs. It is not correct that Igede and Igbara Odo gave Ilawe land at the request of the Ewi. It is not correct that the Alawe was washing the feet of Ekiti Kings. (The Alawe was before a Bale; this was before the advent of the Europeans.) We called him Alawe. It was recently he started to wear a crown. The Alawe when Bale was not prostrating before the Ewi. The Ewi has always been a crowned head. The Alawe used to rub his hands together whenever he met the Ewi.

About 60 men were in the party of the Oniwe when he left Ife; the rest were women and children. They first stopped at Ilesha and lived in the house of the Elejoka. They then settled between Ogotu and Apa. I don't know the Ologotun and Ewi have a common boundary. I don't know Oke Agbe. I don't know Alara and the Ewi have a common boundary.

We were never under the Ewi. I know Ilawe was separated from Ado Ekiti about 4 years ago. We were under the Ewi before the separation. Ado and Igede people were farming in Ilawe before the separation. They have been farming on the land in the time of Afinbiokin. No one then cheated the other. No one then farmed beyond the boundary. We were never subjects of the Ewi.

I have never been on the land in dispute with the Elejoka of Odo. I have been to the District Officer at Okelumo. I did not go on account of any land dispute but on account of a woman I was seducing. Since Government separated us, they separated our lands.

I don't know if there has been inter-tribal marriages between the Ado people at Odo and the Ilawe women.

Exd. by Awolowo: Afinbiokin was still Alawe even when he was at Abeokuta. So far as we were concerned, he ceased to be Alawe when he died.

Ado and Igede people did not enter the land in dispute before Afinbiokin was deported. They farmed then on their own side of the boundary and did not cross the boundary. No one called Afinbiokin Bale; he was an old man and was saluted "Kabiyesi," which is a salutation for an Oba. The Alawe had a white crown which he wore at Obalufon festival, and he got the crown from Ife.

Xxd. by Court: The first Alawe was Oniwe. The name of the town is derived from "Oniwe."

Oniwe was the name of the father of Adegunle. Adegunle was a woman. She had a son called Oniwe. Elero was the pioneer who found a place for Oniwe's party to settle.

*In the
Supreme
Court of
Nigeria.*

*Plaintiff's
Evidence.*

No. 17.
Asokiti,
14th
December
1950,
continued.

*Re-exami-
nation.*

*Cross-
examina-
tion by
Court.*

*In the
Supreme
Court of
Nigeria.*

*Plaintiff's
Evidence.*

No. 18.
Michael
Ajakaiye
(recalled).
14th
December
1950.

*Examina-
tion.*

Ex. "N"

Ex. "O"

*Cross-
examina-
tion.*

*Cross-
examina-
tion by
Court.*

No. 18.

Michael Ajakaiye (recalled).

Xd. by Awolowo : 4th P.W. MICHAEL AJAKAIYE : recalled by leave of Court, and sworn, states as follows :—

I tender the counterpart of lease between the Alawe and the R.C.M. of Ilawe land, marked Ex. "N." I tender the Subsidiary Estimates 1950-51 of Ekiti Native Administration marked Ex. "O." Page 1 of Exh. "O" shows Imber Royalties.

Xad. by Majekodunmi : Exh. "O" was prepared by the Finance Committee of Ekiti N.A. Exh. "O" shows amount collected from each 10 town on timber. The Alawe has been credited with £25 for timber royalties.

No rxn.

Xad. by Court : The Ekiti Federal Council is known as Ekiti N.A. It consists of twenty town including Ilawe.

Ekiti N.A. Treasurer collects timber royalties and accounts for them. Exh. "O" is a financial statement of the accounts.

No. 19.

John Ojumongbe.

No. 19.
John
Ojumongbe,
14th
December
1950.

*Examina-
tion.*

Xd. by Awolowo : 8th P.W. JOHN OJUMONGBE, male, Yoruba, sworn 20 on the Bible, states in Yoruba Language as follows :—

I am the Egbedi of Ilawe. I am a native of Ilawe, and I live there. I am a farmer. I know about the land dispute between Ilawe and Ado people. I have no farm on the land in dispute. The dispute started about 11 years ago. The Ilawe people refused to contribute 3/- each asked for by the Ewi. The Alawe was deported. The Ilawe people refused to serve the Ewi. The chiefs and important people were sent to Benin prison. 16 chiefs went to Benin Prison ; 8 men were imprisoned at Ado. I was one of the 8 imprisoned at Ondo for 18 months. Ado Ekiti people were then coming into our farms to harvest our crops. Ado Ekiti did not 30 come on our land before the 3/- per head demanded. They used to farm on our land without trouble before the dispute. They farmed on their own side and we farmed on ours. There is a boundary between us marked with Peregun trees. The land east of the boundary belongs to Ado people. Ado people did not cross the boundary to our side before the demand for 3/- per head nor did they harvest our crops.

Afinbiokin had been deported before Ado people crossed over the boundary to our side. I cannot say how long Afinbiokin lived in Abeokuta before he died. On his death we installed the present Plaintiff as Alawe. On the 7th day of his installation he was taken to Ado and he was gaoled. 40 I was also gaoled. The Plaintiff was detained at Ado after his discharge from prison. I know Odo in Ilawe town. I sometimes visit Ado Ekiti

and pass by Odo village. The inhabitants of Ilawe live there. I know only the present Akitipa. There was no Akitipa in Odo Village before Afinbiokin was deported.

Xcd by Majekodunmi: The Akitipa is the only chief at Odo whose name I have heard. I have heard of no other chief. I don't go there. I have never been there. I don't know Eyuyu Village. I have never been on the land in dispute. I know people who work on the land and are natives of Ilawe. I have been told about them. I don't know that 8 Ado chiefs live at Odo.

10 Ado Ekiti and Igede people were not working on the land in dispute in the time of Afinbiokin. If the Alawe said they were, he was mistaken in his evidence. I know the Elijofin; he is much older than I am. He could not have told the Court that Ado and Igede people were working on the land in dispute in the time of Afinbiokin.

We have a boundary with Igede people. There was a dispute between an Igede man and an Ilawe man and a boundary was made between them. Both Igede and Ilawe were then under the Ewi. I don't know if Osi and Igbara Odo were also under the Ewi.

20 The Ewi and the Ologotun have no common boundary. From Ado Ekiti one gets to Odo, then to Ilawe and then to Igbara Odo. From Igbara Odo one gets to Oke Agbe. The Ewi has no boundary at Oke Agbe. I don't know if the Ewi has a common boundary with the Alara. There was a boundary between Ilawe and Ado people.

No Rcn.

No. 20.
COURT NOTES.

Awolowo asks the Court to order that the evidence of the Oni of Ife be taken on commission. Majekodunmi has no objection.

30 ORDER that the evidence of the Oni of Ife touching the matter in dispute in this case be taken on commission by the Magistrate Grade I, Ife, at a time convenient to him, after giving due notice to Counsel on both sides.

Case is adjourned to the next Sessions.

(Sgd.) O. JIBOWU,
Judge.
14/12/50.

*In the
Supreme
Court of
Nigeria.*

*Plaintiff's
Evidence.*

No. 19.
John
Ojumongbe,
14th
December
1950,
continued.
Cross-
examina-
tion.

No. 20.
Court
Notes,
14th
December
1950.

ADEREMI I, the Oni of Ife.

*In the
Supreme
Court of
Nigeria.*

*Plaintiff's
Evidence.*

No. 21.
Aderemi I,
the Oni of
Ife, 2nd
February
1951.

IN THE MAGISTRATE'S COURT OF NIGERIA.

IN THE MAGISTRATE'S COURT OF THE IFE MAGISTERIAL DISTRICT.
Holden at Ife.

Before HIS WORSHIP LEWIS OLUBODUN FADIPE, Esqr.
Magistrate.

Friday the 2nd day of February, 1951.

Suit No. B/12/50

(Title as in No. 4.)

10

Obafemi Awolowo for the Plaintiff.

Majokudunmi for the Defendants.

Examina-
tion.

Examined by Awolowo—ADEREMI I, The Oni of Ife, sworn on Bible in English :—

I know the title—Alawe of Ilawe. According to tradition the word "Alawe" was derived from "Oniwe". The Oniwe was one of the Oloris, i.e. wives of Oduduwa. This wife of Oduduwa used to be in charge of washing of all kola nuts presented to the Oduduwa during festivals, hence she was given the name "Oniwe". There was another "Olori" who was in charge of the safe keeping of such kola nuts. This Olori was given an appellation of "Olosi". The "Oniwe" was the great grandmother of the Alawe: she begot the mother of Alawe's father. Alawe's father died without any title. It is not correct according to history, that the title "Alawe" was given to the person whose duty was to wash the feet of all Ekiti Obas. By tradition the Alawe was and is still entitled to wear a crown. It was the immediate successor of Oni, that is Ogbogbodirin Oni, otherwise known as The Obalufon, who gave the Alawe his crown. All the sons of Oduduwa were given crowns with the exception of Oranyan. After the sons had been given crowns they were sent out of Ile ife to found kingdoms, as their father Oduduwa was old and blind. The Ewi of Ado was one of the sons of Oduduwa. According to history when the Ewi left Ife he first settled at a certain place where he had a quarrel with the Owa of Ilesha; Olosi also was near that spot. Later the 3 of them moved to and settled in different places, the Owa settling at Ibokun; The Olosi and The Ewi at different other places whose names I cannot now give.

When the Alawe was given a crown, he was also asked out of Ife to found a kingdom for himself, and he did so. It was the same Olosi who used to keep Oduduwa's kola nuts who moved away from the place referred to above after some quarrel with the Owa.

According to tradition all the sons of Oduduwa who were given crowns were to be independent of each other.

Cross-
examina-
tion.

Cross-examined by Majekodunmi :—I learnt that the British Government separated Ilawe from Ado-Ekiti for administrative purpose only 4 years ago. I heard of a petition being presented by Late Sir William Geary on behalf of the Alawe to the Government asking that the Alawe be allowed to wear a crown. I have been consulted by the Government on several occasions regarding the question of the Alawe's crown. I was

consulted through Administrative Officers. It is correct that I told the Government that the ancestor of Ilawe was one Oniwe, wife of Oduduwa, that, at the time the senior sons of Oduduwa went away after receiving their crowns, the Oniwe had no son who could receive a crown; but he had a daughter who married one man at Ilode quarter at Ife through whom he had a grandson, and it was this grandson who received a crown from Oduduwa's successor. I cannot say where the Alawe first settled before he got to his present site; I cannot even say whether he did settle anywhere before he got the present site or not. I know that the Alawe was under the Ewi of Ado until 4 years ago. It must be presumed that the Alawe was performing some services to the Ewi. In 1903 when Oni Adelekan submitted to the Government in Lagos the names of all crowned Obas in Yoruba land the name of the Alawe was not included as well as the names of several other Obas. I do not know the extent of land owned by the Ewi or any other Oba; but I know the extent of my own land. I do not know that one of the duties of the Alawe to the Ewi was to wash the latter's feet. I do not know that a portion of the Ewi's Afin was built by the Alawe and his people for the Ewi. The Oni of Ife has ceased to know about the internal working and affairs of Ekitiland for a long time. I do not know that the Alawe had lost his crown before the advent of the British Government.

*In the
Supreme
Court of
Nigeria.*

*Plaintiff's
Evidence.*

No. 21.
Aderemi I,
the Oni of
Ife, 2nd
February
1951,
continued.

Re-Examined by Awolowo :—I cannot say when the Alawe came under the Ewi. There is no tradition handed down to me to show that the Alawe was at any time under The Ewi before the advent of the British. It was not only the Alawe's name that was omitted in the list of crowned Obas submitted to the Government by Oni Adelekan; several other Obas were also left out, including one Elemure of Emure. When these omissions were detected, the late Oni Adelekan took immediate steps to correct this mistake. (At this stage Awolowo asks leave of court to put a question to the witness to clarify an important point in the last statement of the witness in his evidence in chief, although the matter does not arise out of cross-examination. The word "Sons" used by the witness when he said "According to tradition all the sons of Oduduwa who were given crowns were to be independent of each other," was meant to include "grandsons" as well. Majekodunmi objects and says the word "Sons" means "sons" and nothing more.

*Re-exami-
nation.*

The Court rules that Awolowo be allowed to re-examine the witness on the point.)

When I said all the sons of Oduduwa who were given crowns were to be independent of each other I did not mean only immediate sons but all the descendants of Oduduwa who were given crowns.

Cross-Examined by Majekodunmi :—The Ewi was a direct son of Oduduwa and so a granduncle of the Alawe.

*Cross-
examina-
tion.*

(Sgd.) ADEREMI,
Oni of Ife.

Taken down by me in the presence and hearing of the Defendants this 2nd day of February, 1951.

(Sgd.) L. OLUBODUN FADIPE,
Magistrate.

*In the
Supreme
Court of
Nigeria.*

*Plaintiff's
Evidence.*

No. 22.
Abolade
Coker
(recalled),
14th
March 1951.

No. 22.

Abolade Coker (recalled).

IN THE SUPREME COURT OF NIGERIA.

IN THE SUPREME COURT OF THE BENIN JUDICIAL DIVISION.
Holden at Akure.

Before—

HIS HONOUR OLUMUYIWA JIBOWU, Puisne Judge.

Wednesday the 14th day of March, 1951.

Suit No. B/12/1950.

(*Title as in No. 4.*)

10

Awolowo for Plaintiff.

Majekodunmi, Uwechia with him, for the Defendants.

Awolowo asks for leave to call the 2nd witness Abolade Coker. Leave is granted.

Examina-
tion,

Xd. by Awolowo : ABOLADE COKER, 2nd P.W., recalled and sworn states as follows :—

Exh. " A " is the plan of the land in dispute.

(N.B.—Exh. " A " is unfortunately not in Court as it has been left behind in Benin, so witness is asked to stand down till tomorrow when the plan will be available.)

20

No. 23.
Gabriel
Dada,
14th
March 1951.
Examina-
tion

No. 23.

Gabriel Dada.

Xd. by Awolowo : 9th P.W. GABRIEL DADA, male, Yoruba, sworn on the Bible, states in Yoruba Language as follows :—

I am a native of Ilawe. I am a farmer. My farm is at Igbo Amifadin. It is on the footpath to Ara. I have boundary on the right with Ara people. I have boundary also on the same side with Igede people. There are Peregun trees and Iroko trees marking my boundary with Igede people. My father, his father and other ancestors had worked on the same farm. I planted cocoa and kola trees. My father also planted cocoa and kola trees. I have always been in quiet possession of my farm until Igede people started to trouble me. My father was then alive ; he died 11 years ago. The Igede people started to trouble me about 18 years ago. They first started to take away the yams my father had in the farms ; then came in a large number and claimed the land. My father told them his ancestors had been working there for years. I was present. They beat me and my father on the day and he went to sue them in the Native Court. It was Ewi's Court. He sued Asawo of Igede. The case was adjourned for a long time and the case was not heard. The Igede people then molested him more ; they took away more of his crops. For the past twelve years, I have been retaliating by destroying their own crops. I reported the

30

40

matter to the present Alawe. Igede people are still on the land and I am still on my farm ; other Ilawe people have farms near me ; they are still on their farms. There are more Ilawe people on my own farm than the Igede people. They are 15 people farming on my own land ; they are my relatives.

*In the
Supreme
Court of
Nigeria.*

*Plaintiff's
Evidence.*

Xwd. by Majekodunmi : I am about 40 years old. The Plaintiff has been Alawe for about 20 years. I started to report the Igede people to the Alawe about 12 years ago. Igede people are under Ado.

No. 23.

Gabriel
Dada,
14th

March 1951,
continued.

10 Ado people did not come on my land. I know Odo. I know only two chiefs there ; they are Sapestu and Odolofin. I know the present Akitipa ; he was installed about 11 years ago. I know only the present Sapetu and no other one. I knew him about 11 years ago. I know only the present Odolofin ; I knew him about 11 years ago. It is not correct that he was installed about 32 years ago. I did not know there was an Odolofin at Odo until 11 years ago. Odo is near Ilawe Town. Odo people are under the Ewi, who put them on the land. I know a bit of the land in dispute. There are more people on the land than Ado people. I don't know more about the land than the Alawe, but I know there are more Ilawe people on the land than Ado people.

Cross-
examina-
tion.

20 The Ewi has no common boundary with Ara people. There is a boundary between Igede people and Ara people. There is no boundary between the Ewi and the Ologotun. I know Oke Agbe ; it is not the boundary between the Ewi and the Ologotun.

30 I know the footpath between Ilawe Town and Igede Town. My farm does not extend to the footpath. One end of my farm is the boundary with Ara people. My land is between the footpath between Ilawe Town and Igede Town and the land of Ara people. Ado people did not plant any yams and maize on the land. I have heard that there had been cases in Court about the land in dispute between Ado and Ilawe people and that the Ado people had always been successful.

Rwd. by Awolowo : Igede people are still on the land ; they planted nothing ; they used to plant maize and yams there. I have maize and yams there also.

Re-exami-
nation.

40 *Xwd. by Court :* I have never heard of anyone planting Iroko tree. Irosun trees are sometimes used as boundary. If they are cut and the cuttings are planted, they grow. I know Eyuyu Village ; it is near my farm. Igede people farm there. The village was founded only about 11 years ago. My ancestors and myself have planted cocoa and kola trees on the land I claim as mine. The surveyor saw our plantations. Eyuyu Village is about a mile from the footpath between Igede Town and Ilawe Town.

Cross-
examina-
tion by
Court.

Xd. by Awolowo : 10th GABRIEL FALADE, male, Yoruba, sworn on the Bible, states in Yoruba Language as follows :—

I am a native of Ilawe. I farm at Ajingbin. I know Ajingbin Stream. It is at the bottom of my farm ; my farm touches it. I have a cocoa plantation at Urokin. I know Irokin Stream ; it is at the end of my farm. I have been on the two farms since about 25 years ago. My father owned the lands. He planted kola trees on the lands. I worked with him on both farms. I have always worked on the farms. About 11 years ago I was disturbed on the lands. I planted cocoa and yams. The Akitipa came to me in my farm and asked if I was the person farming there and I told him I was. He asked how I got there and I told him the land belonged to my ancestors. He claimed the land. He went away and came back the following week when he asked me to pay Ishakole. I refused. He told me he was going round all the farms. About a month later, he sued many people but he did not sue me. I never went to Court at any time. 10

He later came to me at Irokin while I was plucking cocoa. He tried to take the cocoa but he did not succeed. I went to the District Officer at Ado Ekiti to report him. People at Irokin were sued but I was not. I am still on my land at Irokin. There are other Ilawe people farming in the area ; they are still there. 20

Two people brought by Akitipa are planting yams on my land and strangers also brought by him are reaping palm fruits on my land.

I don't know where the man came from but they are not Ilawe people. The strangers are Isobos. The men were brought on the land about ten years ago. No one demanded Ishakole from me before the Akitipa did about 11 years ago. I pay no Ishakole to any one. Some Ilawe people have boundaries with me. 30

On my farm there are more Ilawe people than non-Ilawes.

Xcd. by Majekodunmi : One Olofinsuyi was my father ; he was Adopetu of Ilawe and not of Odo. He did not go from Odo to Ilawe. The 2nd Defendant did not sue me 6 years ago. I know the time the District Officer went round to collect the Intelligence Report. My father was not then 4th in rank to the Akitipa of Odo. I remember that I and others appeared before District Officer R. E. Brown. No, I did not go before the D.O. The 2nd Defendant did not withdraw the case against some defendants because they were Odo people. I am not a native of Odo. I was not one of the people who built Akitipa's house at Odo. My father had a hut at Odo ; that was long time ago. He was not then resident at Odo. He did not sleep in the hut but had his food there. 40

I know a quarter at Ilawe known as Odo ; my father lived in Odo quarter. I know many people were sued by the Akitipa in respect of the land in dispute. He did not sue as far back as 23 years ago, but only since 11 years ago. I first knew of the action he took 11 years ago. There are more Ilawe people on the land in dispute than Ado people. I know of

only two Ado people on my own farm land. I don't know Odolofin's farm and Sapetu's farm. I know Akitipa Village; Isobo village is within my land. Akitipa Village is within my father's land. I know only two chiefs at Odo, viz. :—Sapetu and Odolofin. I knew Sapetu about 11 years ago and Odolofin at the same time. The water I drink is taken from Irokin Stream at the bottom of my farm; it is 2 miles from Ilawe; it is not within the Odo area. Odo has no land there but I knew the area called Odo. Irokin is in Odo area but it belongs to Ilawe. I started to see Ado people on the land about 11 years ago. I went to prison 15 years ago on account of a fight over the land in dispute. I did not then know it was Ado land. I fought with Igede people. Six of us from Ilawe were imprisoned. I know Oke Sapa. I don't know Peregun trees are there. I know N.A. Surveyor Igbo. I know the time he surveyed Oke Sapa when there was a boundary dispute between Ilawe people and Odo people. The boundary was not put at Oke Sapa and marked. The dispute was not settled. The Court will find Peregun trees at Oke Sapa if it pays a visit to the place. They were used as boundary between Ilawe and Ototolo and not between Ilawe and Odo. Odo is 2 miles from Ilawe. People in Odo quarter are Ado people, but they got there only about 11 years ago. The Ewi has no boundary with the Ologotun. I know Oke Agbo. It is not the boundary between the Ewi and the Ologotun; they have no common boundary.

I don't know Oke Agun. I know the hill between my two farms. It has no name; we call it "Oke," a hill. It is not within Odo; it is near Odo.

Rxd. by Awolowo : The Peregun trees at Oke Isapo were planted many years ago. I don't know when they were planted. They were not planted when surveyor Igbo came. I was sent to prison for uprooting some cocoa trees on my father's farm. They were planted by Igede people. Sam Oni lives at Okebedo; Olukusun lives at Odo, Ilawe, also Seda, Olu Balogun, Momodu, Komolefe Abere, Adebu, Oroku, Agbedusi, Moses Oni, Amogbon, Damiko, Apeyinoge, Oluwasuyi. All men sued excepting one lived at Odo, Ilawe. Natives of Ilawe live at Odo, Ilawe.

Xrd. by Court : Elero is the family head, hence the quarter is known as Odo. The people sued are all members of Elero family. About 150 people live at Odo; we are all members of one family. There are six quarters in Ilawe, viz. :—Okeime, Aye, Ire, Adin, Okebado, Okepo. Odo is within Oke-emo; it is a sub-quarter of Oke-Emo.

I don't know why the quarters were and so named. I don't know why the sub-quarter is called Odo.

Ado people and Ilawe people were not mixed together nor was the quarter occupied by Ado people in Ilawe known as Odo. People living at Odo quarter are not Ado people.

Odo farm is part of Ilawe.

*In the
Supreme
Court of
Nigeria.*

*Plaintiff's
Evidence*

No. 24.
Gabriel
Falade,
14th
March 1951,
continued.

*Re-exami-
nation.*

*Cross-
examina-
tion by
Court.*

Akinola Adefolalu (recalled).

In the
Supreme
Court of
Nigeria.

Plaintiff's
Evidence

No. 25.
Akinola
Adefolalu
(recalled),
14th
March 1951.
Cross-
examina-
tion by
Court.

Xd. by Court: AKINOLA ADEFOLALU, Plaintiff, recalled by Court and sworn states as follows:—

My ancestors were from Ife. The first Alawe had a crown. He was wearing the crown as Oba. It is correct that the late Sir William Geary wrote to Government to allow me to wear a crown. At the time I was not wearing a crown. My father bought two crowns and got into trouble over it. All Alawes were wearing crowns until the time of my father. The Alawes have always been crowned heads. The Alawe was an Oba and not a Bale before the advent of the Europeans. 10

My ancestors descended from a daughter of Oduduwa. I don't know of any other descendant from a daughter of Oduduwa who was given a crown. I agree that the Obalufon gave my ancestor a crown as testified by the Oni. I cannot explain why my father was prevented from wearing his own crown.

A boundary was made between my ancestors and the Ewi of Ado.

My townspeople knew about this boundary. The lands in respect of which my people were sued were within my land. I was patient then and advised my people to be patient as we have a Government. Farms extended to part of the boundary line and some part of it were in the bush. No one plants Iroko trees but if found on the boundary they are adopted as boundary marks. Atori and Irosun trees are usually planted to mark boundaries. We sometimes plant kola trees to mark boundaries and the planter and his heirs and successors reap the fruits. 20

Examina-
tion.

Xn. by Awolowo by leave of Court: I told my people to be patient because I was detained for 5 years by Government hence I did not sue personally. My father was deported on account of the crown affair. The crown question was settled about 4 years ago. It was after that that I took this action. I took action in 1949. Irosu, Atori and Peregun trees on our boundary were planted by Akutieleyo. 30

Cross-
examina-
tion.

Xxn. by Majekodunmi by leave of Court: I have told the Court about the boundary marks. It was made between Ilawe and Ado people. It was not a boundary between Igede and Ilawe. I reported the conduct by Ado people to the D.O. and Chief Commissioner.

My father was the Alawe 23 years ago.

Adjourned to 15th instant.

(Sgd.) O. JIBOWU,
Judge, 14/3/51.



No. 26.

Bolade Coker (recalled).

At Akure, 15th March, 1951.

Xd. by Awolowo : 2nd P.W. BOLADE COKER, recalled and sworn, states as follows :—

I assisted in making plan Exh. "A." Oshun Stream flows into Oruwo River. It is not shown on Exh. "A" through oversight. I can show the position of the stream on Exh. "A."

(N.B.—He is allowed to show it on Exh. "A.") I have now shown
10 the position of Oshun Stream on Exh. "A."

No xxn.

*In the
Supreme
Court of
Nigeria.*

*Plaintiff's
Evidence.*

No. 26.
Bolade
Coker
(recalled),
15th
March 1951.
Examina-
tion.

No. 27.

COURT NOTES.

N.A. Treasurer, Ado Ekiti and District Officer, Ado Ekiti who are on subpoena have not been served. Subject to their evidence being taken later on ; the Defence will now open their case.

No. 27.
Court
Notes,
15th
March
1951.

DEFENDANTS' EVIDENCE.

No. 28.

Daniel Aladesanmi.

20 *Xd. by Majekodunmi* : DANIEL ALADESANMI, male, Yoruba, sworn on the Bible, states in English Language as follows :—

I am the Ewi of Ado Ekiti. I have about 33 villages under me. I know Ilawe. It was under me until 1946. The land between Ado and Oke Agbe is my land. In 1946 Government separated Ilawe from Ado. There was no pronouncement separating land. It was stated that the land still remained Ado land. I tender Government Survey Report of September, 1933, showing the extent of Ado land, marked Exh. "B."

30 I know the Plaintiff ; he is the Bale of Ilawe. I own the land on which Ilawes are. My boundary with the Ologotun is at Oke Agbe. I have boundary with the Alara of Ara at Oke Asa. I know the land in dispute. I own the whole area. There are many Ado people on the land in dispute. Ado people have been on the land for about 500 years. They have chiefs of their own. Before the inter-tribal wars there were about 50 chiefs on the land but the number is now about 8. There are female chiefs there ; they are three in number.

The Bale of Ilawe was rendering me service. The Alawe in the past was the head of the persons to prepare bath for the Ewi as women were not allowed to go near the Ewi's bathroom. The Ilawe people were

*Defendants'
Evidence.*

No. 28.
Daniel
Aladesanmi,
15th
March 1951.
Examina-
tion.

Ex. "B"

*In the
Supreme
Court of
Nigeria.*

*Defendants'
Evidence*

No. 28.
Daniel
Aladesanmi,
15th
March 1951,
continued.

thatching the Ewi's house annually; they brought yams, palm oil, kola nuts and dried meat yearly. The Alawe used to come to perform the Ile Awe festival at Ado and remain for 7 days. The Ewi used to send to the Alawe to bring men when there were communal works to be done.

Timbers were felled on the land in dispute and the royalties were paid to the Ewi. I was paid royalty on the trees felled on the land up to April, 1950. The royalty for April, 1950–March, 1951 has been ordered to be placed on deposit and I don't know who would get it.

The Ewi of Ado gave Ilawe people the land on which they settled after the Benin War. When the Ewi and his people were driven from the town by the Binis, the Alawe and his people were also driven from their land. The then Ewi camped at Iworoko and the Ilawe people camped at Oke Asa. When the Binis went back to Benin, the Ewi and his people went back to their homesteads. The Alawe who was before at Igunrin, then asked the Ewi for land as the prince at Igunrin was troubling him. The Ewi put him at Igunrin. The Ewi asked him to look round for a piece of land among his people. He reported that he had found a place between Igede and Igbaraodo. The Ewi called the Onigede and Arajoka of Igbara-odo and asked them to give them land. The Akitipa of Odo was also asked to give him land. I made a boundary between Igede and Ilawe at Igbo Oti Oke and between Igbara-odo, and Ilawe at Ita Ekun, and between Akitipa and Ilawe at Oke Isapa. The Alawe and his people then occupied the land so given them. 10

The Plaintiff's evidence that Akubieleyo gave the Ewi land is not correct. There were only three Alawes since Akubieleyo's time and Akubieleyo's son, Odole, is still alive at Ilawe. The Benin War was round about 1815. It was during the time of Alawe Ogunbe.

N.B.—Awolowo complains that the defence is travelling outside their statement of defence by leading evidence as to facts not pleaded. He asks that the Court should expunge evidence going outside the defence in the alternative grant him leave to call rebutting evidence, if necessary. 30

The Court does not think it will be fair to prevent the defence for putting their whole case before the Court, although it agrees with Awolowo that the defence has not alleged facts they are now proving as to land having been given by Ado the Ewi of Ado to the Ilawe people and the boundaries of such land. The Court therefore decides to grant leave to the Defendants to amend their defence and to grant the Plaintiff leave to call rebutting evidence, should it be necessary.

The Court rises for a short time.

Additional defence has now been filed. 40

Awolowo asks for costs and is awarded 3 guineas costs.

Xn. by Majekodunmi continues: There was dispute over the land in question before Plaintiff's father was exiled. There was dispute between Ilawe people and Odo people; Odo people are Ado people. The Odo people got to the area before the Ilawe people. A boundary was made between Ilawe and Odo. The Ilawe people never disputed my overlordship over the land in dispute, before. The Government did not clarify the

position of Ilawe as regards the land they occupy as there was no dispute about the land. I was surprised to see the summons. In the past my consent was sought to dealings with the land. I remember the time the R.C. Mission wanted land at Ilawe. My predecessor in office was approached ; he at first objected but later consented to land being granted to them. No other denomination was granted land to my knowledge.

*In the
Supreme
Court of
Nigeria.*

*Defendants'
Evidence*

Igede people are my subjects.

No. 28.

Daniel
Aladesanmi,
15th
March 1951,
continued.

10 In 1933 there was dispute between Igede and Ilawe people about land. Igede people reported to me. I sent some chiefs to go and see if anyone had trespassed or gone beyond the boundary. The District Officer later on arbitrated between them. The original boundary was then properly defined. Both Ilawe and Igede lords belong to me as the Ewi. I own the whole land up till today. I believe the Alawe executed the lease to the R.C. Mission. At the time there was a misunderstanding between the Ewi and Ado people and no council meetings were held. Mr. Swayne was the D.O. who demarcated the boundary between Igede and Ilawe people.

20 Ilawe Court was established round about 1921. Cases relating to land at Ilawe went to Ado District Court up to 1946. This is the first time that the Ilawe people are disputing my overlordship over the land in

30 I have seen official map of Ekiti Division. The map now shown to me and marked " P " for identification is the map. It shows correctly the extent of Ado land. The Akitipa is head chief of Odo. The 2nd Defendant is the present Akitipa ; he is not the first Akitipa. The 8 male and 3 female chiefs are responsible for the administration of Odo ; they are subordinate to the Ewi. The Akitipa could sue in respect of Odo land with my permission. I know there had been Court actions between him and the Ilawe people. Cases went to Court when I could not effect amicable settlement. I have personally known two Akitipas. The 2nd Defendant was installed Akitipa in 1939 by me.

" P " for
identifica-
tion.

XXd by Awolowo :—I don't know my age for certain but I am about 50. In 1930 when I was under Government I gave my age as 30. Akitipa Adeyeye died when I was away from Ekiti. I don't know when he died. I was installed as Ewi in 1937. There was no Akitipa then. It had then been vacant for about 10 years. Adeyeye was the Akitipa before the 2nd Defendant. I heard of Akitipa Adekunrun. It may be correct that Adekunrun was the last Akitipa before the installation of the 2nd Defendant as Akitipa.

Cross-
examina-
tion.

40 I started life as a farmer. Then I went to school and was a teacher. I left teaching work for the Railway. I was away from Ado from 1919-1937. I am familiar with the traditional history of Ado and the town under it. I could not say whether Adeyeye or Adekunrun was the Akitipa before the 2nd Defendant as I did not live at Odo. It is only the history of Ado alone that I know. I did not study the geneological tree of the Akitipas. There has been Akitipas before the 2nd Defendant.

The Alawe was the head of servants of the Afin. Traditionally, the servants were grouped into two. One is Ologun Adele, head of a group

*In the
Supreme
Court of
Nigeria.*

*Defendants'
Evidence*

No. 28.

Daniel
Aladesanmi,
15th
March 1951,
continued.

Ex. "B1"

and the Alawe head of the other group. Ologun Adele's function was to arrange men who were to sit down at the Afin with the Ewi and arrange those who were to go errands.

The Alawe's group was to take care of the bathroom and making sacrifices in connection with the bathroom. Ifa Oracle might declare that a certain animal be sacrificed in the bathroom; it was the duty of the Alawe to see after the sacrifices.

Ologun Adele and Alawe were subordinate to chief Ejigbo.

I am familiar with the Intelligence Report of Ado. It is fairly accurate account of our traditional history. 10

The Intelligence Report is tendered and marked Exh. "B1."

At page 50 Exh. "B1" are the names of the palace chiefs at paragraph 143. They are the Ejigbo, The Esunla, The Elijoka and the Omosio. The four are the Agba Ile. The heads of the Owode Owa are the Ologun Adele, the Elesi and the Soniku. The Alawe was not mentioned because there was trouble then between Ado and Ilawe. Ilawe was not dealt with in Exh. "B1"; it was made a separate subject. Exh. "B1" has 5 appendices. I have not got in Court a report showing that the Alawe was the head of the Ewi's bathroom messengers. I have not fabricated the story. I don't know if the Alawe was also the washer of the feet of the Ekiti Obas. 20

The area coloured grey in Exh. "B" refers to Ado Ekiti land. It represents the towns under Ado Ekiti. I know the difference between political overlordship and the ownership of land covered by the political overlordship. It is possible for certain areas to be under the political overlordship of an Oba and that the lands under the overlordship may be vested in the people of the areas. The different towns in the grey area are mentioned by name and shown in Exh. "B." Neither I nor my lawyer put the red lines across the grey area in Exh. "B."

Ado people settled principally in three places on their way from Ife, viz. :—at Odisisi, the site of the present Odesisi, Agbado and Ado. Those are the three places where they settled. The Ewi was a direct son of Oduduwa. Oduduwa was not the Oni. The Oni was a son of Oduduwa. Odisisi is otherwise known as Okepopo. I agree with the evidence of the Oni of Ife as to how my ancestors left Ife. I can tell the history of the sons of Oduduwa before they left Ife. I don't know Oniwe to be Oduduwa's wife. I don't know his wives. I don't know Olowu's connection with Oduduwa. I don't know as much traditional history of Oduduwa and his descendants as the Oni of Ife. I know the Olosi of Osi. There are several Olosis. The Olosi of Osi in my area is a descendant of Oduduwa. I did not keep the Olosi in bondage until 1946. He was paying annual tribute to the Ewi. 30 40

Yoruba people had trees used for marking boundaries. Peregun trees were used, Atori might be used between two farmers. I have never heard of Irosin being used as boundary marks. Iroko trees are used as boundaries. They live for a long time hence they are used as boundary marks. Peregun were used as boundaries between Igede and Ilawe people. When land was given to Ilawe people only Peregun was used.

I have been on the land in dispute. I resided in Ilawe between 1917 and 1918. Some of my relatives were farming a little beyond Oke Isapa, between Odo and Ilawe. Some of them farmed on Igede side and others on Ilawe side. I have not walked round the land in dispute.

*In the
Supreme
Court of
Nigeria.*

There are Peregun trees at Igbo Oroke. I cannot tell how many. Peregun trees were planted. The Surveyor did not request me to send people to witness the survey. I expected the surveyor to write to me. He told me he was in difficulty. I did not discuss the matter with the surveyor.

*Defendants'
Evidence*

- 10 The boundary runs from Igbo Oroke to Oke Isapa. I see Exh. " A " and Peregun trees shown on the boundary from Igbo Amadin down to Igbo Asaw. I see heaps of stones shown on the plan. I cannot explain how they got there.

No. 28.

Daniel
Aladesanmi,
15th
March 1951,
continued.

I agree that Mr. Swayne put heaps of stones on the boundary in 1933.
Adjourned to 16th instant.

(Sgd.) O. JIBOWU,

Judge 15/3/51.

No. 29.

ADDITIONAL DEFENCE.

- 20 Filed at 11.45 a.m.
15/3/51. (Intld.) Ola A.

No. 29.
Additional
Defence,
15th
March 1951.

ADDITIONAL DEFENCE.

11. The first Defendant says that he owns the whole lands in dispute.
12. The first Defendant says that in about 1815 he was compelled to leave his town by the Benin War and that the Plaintiff who was the servant of the first Defendant left also. The first Defendant camped at Iworoko and the Plaintiff at Oke Asa.
13. Before the Benin War the Plaintiff was living at Igunrin. After the departure of the Benins the Plaintiff came to the first Defendant to request another land due to the constant troubles he had with the first Defendant's sub-chief at Igunrin.
- 30 14. The first Defendant then asked the Plaintiff to look over the 1st Defendant's land and report of any suitable site. Eventually, the first Defendant allotted to the Plaintiff land bounded by Igbo Orioke on the Igede side, by Igbo Asa on the Ara side Ita Ekun on the Igbaraodo side and Oke Isapa on the Odo side but the first Defendant still retained ownership of the land in dispute and was always paid tax, tributes and royalties in respect of the land.

*In the
Supreme
Court of
Nigeria.*

No. 29.
Additional
Defence,
15th
March 1951,
continued.

15. The people of Ado were already on the greater portion of the land in dispute and they were so many that they have chiefs of their own including women chiefs. But when the inter-tribal wars scattered them some settled at Ilawe, where their quarter is known as Odo, some at Igede, and others remain on the land.

16. The first Defendant says he has no boundary with the Plaintiff the boundary referred to by the Plaintiff is one made in 1933 between Igede people and Ilawe, both of whom were subjects of the first Defendant. The consent of the first Defendant was always obtained in dealings with land at Ilawe.

10

A. A. MAJEKODUNMI,
Defendants' Solicitor.

*Defendants'
Evidence.*

No. 30.
Daniel
Aladesanmi,
(continued),
16th
March 1951.

No. 30.

Daniel Aladesanmi (continued).

Akure, Friday the 16th day of March, 1951.

Resumed.

Xrn. by Awolowo: DANIEL ALADESANMI, warned that he is still on his oath, continues:—

Cross-
examina-
tion,
continued.

Ogunbe was the Alawe during the Benin expedition in 1815. The Binis waged war against Ado only once; they attacked Ilawe also only once. The Ilawe people camped at Oke Ara. My evidence that the Alawe was a servant of the Ewi is not a fabrication. I remember the 7th P.W. Asokiti, gave evidence. It is correct that Ogunbe was the Alawe when the Binis attacked them at Ilawe. The Ilawes ran to Oke Ara. It is not correct they went to Esure. Oke Ara is between Esure and Osi. Yesterday I told the Court that Ogunbe and his people went to Igunrin before they were given their present site which is called Ilawe. Igunrin and Ilawe are two different places. It was not suggested to Asokiti that the Ilawes were at Igunrin at the time of the Benin war. It is not an afterthought. Igunrin is about 7 miles to Ado. The Ilawes were at Igunrin for about 200–300 years before the Benin war.

The Alawe did not cease to be an officer of the household of the Ewi until 1924. The services were rendered only once a year. When the Alawe left for Igunrin he was only coming once a year to perform his duty. Ologun Adele's title is presently vacant. When it is filled, the holder will have to come to the Afin and remain there from morning till night.

The office of the Elesi is vacant. The last Elesi died about 4 years ago. I met him in office; he was not living in the Afin but was coming there every day. When the Alawe became a big man he was sent to Igunrin; he still remained chief Alawe. The Olosi was bringing the Ewi annual 40 tribute.

Since I became the Ewi I abdicated in 1940 for 13 days and then lived at Akure. It was in August, 1940. My predecessor in 1917 at first objected to land being given to the R.C. Mission but later withdrew his objection. The R.C. Mission applied for land only once. I left Ado only once and I was not exiled. The lease to R.C. Mission was executed in 1942, but the arrangements started in 1940. The plan on Exh. "N" is dated 9/8/39 and 10/12/41. The Ewi was in trouble from the end of 1939 to 1942. The R.C. Mission had been at Ilawe since 1917.

*In the
Supreme
Court of
Nigeria.*

*Defendants'
Evidence.*

*No. 30.
Daniel
Aladesanmi,
(continued),
16th
March 1951,
continued.*

10 Government separated Ilawe from Ado in 1946. We told Ilawe people in the presence of the Chief Commissioner that the land still remained Ado land in spite of the separation.

I cannot tell exactly when Afinbiokin was deported but I know his trouble started in 1925.

The District Officer made a boundary between Igede people and the Ilawes; it followed the original boundary. The D.O. put a heap of stones near Okuta Olomo to demarcate the boundary. In our area it is not usual to plant so many Peregun trees and other trees on the boundary line. This is the only case where I have heard of such a thing being done.

20 I knew Shashere who was in office when Sapetu Apomo sued; he is now dead. I have not seen Exh. "H" before, nor have I seen Exh. "M." (N.B. The evidence of Shashere in Exh. "H" is read out to the witness, also the evidence of Modasise.) It sounds strange to me. I have boundary with Ologotun; the boundary would be about 25 miles long. Oke Agbe was made the boundary. The hill extends almost the whole length. I agree that trees are used as boundary marks where there are no natural landmarks like rivers or hills.

30 The boundary between Odo people and Ilawe is at Oke Isapa. It is not strange that there was no mention about Oke Isapa when litigations were not in respect of land in the area. It will be strange for any one to state that the boundary is at any place other than Oke Isapa. I don't know Oshun Stream. I know Omoro River. Safetu Aporio represented Odo people in the action (Exh. "M"). The boundary fixed in Exh. "H" is incorrect.

It was necessary for Shashere to mark the boundary between the two litigants. I told the Court yesterday that the land dispute started before Afinbiokin was deported. It was a dispute between Akitipa and an Ilawe man. The matter went before the D.O. at Oke Imo. I don't remember the year.

40 All Odo people were entitled to use Odo land. They cannot use Odo land if they are no longer under the jurisdiction of the Ewi. If they are still under the jurisdiction of the Ewi, they can use the land; it does not matter where they live. The people at Odo quarter in Ilawe are people who went there when they were scattered during inter-tribal war. They ceased to be under the jurisdiction of the Ewi in 1946. They would be entitled up to 1946 to use Odo land with the permission of the Akitipa. We started to collect Tax in Ado Ekiti between 1919 and 1920. The Odo quarter people had their respective farmlands at Odo before the war. They could return after the war to cultivate their old farms. They have to get

*In the
Supreme
Court of
Nigeria.*

*Defendants'
Evidence.*

*No. 30.
Daniel
Aladesanmi,
(continued),
16th
March 1951,
continued.*

the permission of the Akitipa as they no longer live at Odo. They have since been identified with Ilawe, hence they have to get the permission of the Akitipa to farm on Odo land.

The Ewi and the Alawe never had a boundary between them.

The Alawe and his people went to settle at Ilawe when the Ewi gave the Alawe land. His people were his followers. He was an important person when he went to settle at Ilawe. The Akitipa used to sue with my permission if I failed to settle disputes amicably.

I was president when proceedings in Exh. " D " were being taken but I left the bench before the case started. I signed Exh. " D " as also the 10 proceedings in Exh. " E." Not all Ado people are interested in Odo land.

I confirm what I told the Court yesterday that my overlordship to the land in question has never been disputed by Ilawe people. It was since 1925 that Ilawe people started to dispute my overlordship. I don't know that the Alawe granted lands to the Apostolic Church, the Salvation Army and the C.M.S. If they have been granted lands, it was without my knowledge and consent.

It is not correct that the Alawe and his people came from Ife and settled at Ilawe before the Ewi came to the area. It is not correct that we stopped at Ibokun, Ushin, Ikerre, a place between Ifaki and Iworoko and Ago 20 Elemi before reaching Ado Ekiti. I don't know any Ewi by the name of Atakumose. I don't agree that Akubieleyo was the Alawe when we got to Ado. It is not correct that Elero took the Ewi to Akubieleyo to obtain land. The Alawe did not give us land. No boundary was ever made between the Ewi and the Alawe. The Alawe was not independent of the Ewi before the advent of the British Government. It is not correct that the Alawe was put under the Ewi for administrative purposes. In the past, two Obas never met. Afinbiokin was punished because he was aspiring to be an Oba and would not submit to the Ewi. Ilawe chiefs 30 were also punished for not submitting to the Ewi. It is not correct that it was then Igede and Ado people entered Ilawe farms to pillage. I don't know whether the Ewi before me gave permission for actions to be taken against Ilawe people. Many Ado people were farming on the land in dispute before Afinbiokin was deported. All land cases at Ilawe had to come to Ado Court because they had no Court at Ilawe. The Ewi had nothing to do with the minor Courts but only took part in proceedings in the Appeal Court.

Costs of £20 and £10 were awarded to Ado in the Divisional Court.

I own the land up to Ogotun. Royalties were paid to me up to April, 1950. I collected royalties on trees on land up to Igbara Odo. All 40 royalties were paid to Ado N.A. I issued hand notes to the Forest Guard to issue permits to cut timber. All revenues were paid into a common purse but each N.A. is advised of the share belonging to it. This is shown in my subsidiary Estimate; it is prepared by Ekiti Federal Treasurer. All royalties were paid to Ado up to last year. I see Exh. " O ". I agree that in Exh. " O " revenue accruing from royalties was credited to each District. It shows revenue from royalty credited to Ilawe. Exh. " O " is not the first Estimate showing royalties credited to the different N.As.

Exh. " O " is the Ekiti N.A. Subsidiary Estimates, 1950-51. Exh. " O " is the 2nd or 3rd Estimates of its kind. I am supplied with a copy of the Ekiti N.A. Subsidiary Estimates. I attend meetings when Estimates are discussed. I don't know on whose authority map marked " P " for identification was prepared.

*In the
Supreme
Court of
Nigeria.*

*Defendants'
Evidence.*

10 *Xad. by Majekodunmi* : I am not only an overlord of the Ilawes but I also controlled Ilawe land. The Alawe lived at Alawe quarter at Igunrin. The boundary made between Ilawe and Igede is what I call original boundary. It was made by the Ewi. There were Igede people on Ilawe side after the boundary was made. They are still there up till today. There was no dispute between Ilawe and Ado Ekiti people in 1933 and no boundary was made between them. Both Igede and Ilawe people were subjects of the Ewi. I still claim Osi land in spite of the separation. The Olosi last year issued a hand note to the Forest Guard to issue permit to fell timber and I protested. The Olori was queried and nothing more has been heard about it. I have had no trouble with Igbara Odo.

No. 30.

Daniel
Aladesanmi,
(*continued*),
16th
March 1951,
continued.
Re-exami-
nation.

20 *Xad. by Court* : The Osi people protested against their being placed under the Ewi when the British Government took up the administration of Ekiti land about 1900. Lashigidi, Igbara Odo and Ode also claimed to be independent of the Ewi. It was towards the end of 1924 that the Alawe claimed to be independent of the Ewi. I tender appendix " D " to Exh. " B1," marked Exh. " B2." The boundary made in 1933 is not as extensive as the one shown in Exh. " A." The 1933 boundary started from Igbo Oroko on the footpath between Ilawe and Igede. I don't know where the 1933 boundary ended. My people settled at Osi and Igbara Odo ; my people settled there. The Ilawes were also my people. The Alawe left Ife with the Ewi ; he was appointed at Ife as head of the people responsible for Ewi's bath. He accompanied the Ewi to Ado before he was sent to Igunrin. Only the Ewi had a crown. There was no Igede man on the Ilawe side of the boundary after the Ewi demarcated their boundary.

Cross-
examina-
tion by
Court.

Ex. " B2 "

40 Igbo Asaw is in Ado land. Ilepupa is between Ado land and Ikerre land ; it is Ado land. Ilawe land is Ado land and touches Ado land. There was no boundary between Ilawe and Ado. Igbo Asaw belongs to Ado. I don't know Ita Ebu Rocks. Odo lands extend for as far as the footpath between Ado and Ilawe. Odo land does not extend as far as Ilepupa. Adugbese Village belongs to Ado people. I don't know of Adewusi's Village. I have never been on the land edged purple on Exh. " A " from its junction with the land edged pink, right down to just above Ilepupa. I see Peregun, Atori, Irosu, heap of stones all along the purple line. I cannot explain how the trees and stones got there. There was no dispute in 1933 as to the land in the area.

PLAINTIFF'S EVIDENCE (continued).

No. 31.

Daniel Longe.

*In the
Supreme
Court of
Nigeria.*

*Plaintiff's
Evidence
(continued).*

Xd. by Awolowo : 11th P.W. DANIEL LONGE, male, Yoruba, sworn on the Bible, states in English Language as follows :—

No. 31.
Daniel
Longe,
16th
March 1951.
Examina-
tion.

I am the Asst. Treasurer and Chief Tax Clerk at Ado Ekiti. I come to represent the Treasurer. I tender the Ekiti N. A. estimates for 1948-49, 1949-50, marked Exhs. "Q" and "Q1," the Ekiti Native Treasury Estimates 1950-51, marked Exh. "Q3" and the Ekiti N.A. Subsidiary Estimates 1949-50 marked Exh. "Q4." Exh. "O" is the Subsidiary 10
Estimates for 1950-51.

Exs. "Q"
& "Q1"
Ex. "Q3"
Ex. "Q4"

I see Exh. "O." Items of royalties are shown against each term. It was not shown in previous years Subsidiary Estimates. Timber Royalties were credited to the account of Ekiti Federal N.A. The fund was then centralised. The money was used to finance central services and if there was a balance it was shared proportionately between the various Districts including Ilawe, Igbara Odo and Osi. The amount is credited to the account of each District as surplus. In Exh. "O" the fund was split up. In Exh. "O" £25 Timber Royalty was credited to Ilawe. The District concerned can spend the money as it likes. Each 20
District has to contribute now towards the expenses of central services. I cannot tell if any timber royalty has in fact been credited to the account of Ilawe, since Exh. "O" came out.

Cross-
examina-
tion.

Xxd. by Majekodunmi : The splitting system came into operation from 1st April, 1950—March 31st 1951. In the past when royalties were paid by Government Treasurer, a receipt was given by the local Treasurer. The N.A. Treasurer signs the receipt. The N.A. Treasurer issues receipts on behalf of Ekiti N.A. The receipt is not given in the name of the Ewi. We have nothing to do with the issue of timber felling permits in our office.

No Ran.

30

Adjourned to 17th instant.

(Sgd.) O. JIBOWU,
Judge 16/3/51.

No. 32.

Stephen Oyelola Adedeji.

Akure, Saturday the 17th day of March, 1951.

Resumed.

Xd. by Awolowo : 12th P.W. STEPHEN OYELOLA ADEDEJI, male, Yoruba, sworn on the Bible, states in English Language as follows :—

I am the D.O.'s Interpreter at Ado Ekiti. The D.O. is on subpoena and I come to represent him. I tender agreement dated 12th July, 1933, between the Bale of Ilawe and the Bale of Igede, from our office file.
 10 The agreement is not stamped and Majekodunmi object to its admission. Awolowo withdraws it—it is therefore rejected in evidence.

Xxd. by Majekodunmi : The District Officer was also subpoenaed by the Defendants to produce certain documents. I tender our official map of Ekiti land, marked Exh. "P." I tender the Travelling Commissioner's Diary for 1897-1902, marked Exh. "R." We have not got Akure Court Record Book for 1897 in the office. I tender Ekiti Court Book, 1905, marked Exh. "S"; also Ekiti Division Files No. 280 Vols. I-V, marked Exh. "T"- "T4"; also file No. 215, marked Exh. "T5"; also File No. 182 marked Exh. "T6"; also Ekiti District
 20 official Diary 1917-19, marked Exh. "T7"; also E.D.O. Diary 1920-21, marked Exh. "T8"; also Ekiti Division land Dispute Register, marked Exh. "T9"; also Ekiti Divisional Criminal Record Book Vol. I, marked Exh. "T10"; also Ado Native Court Record Book, 1921, marked Exh. "T11"; also Ado Native Court Record Book, 1925, marked Exh. "T12". I tender letter written by D.O. Kay on the 16th June, 1932, to the Ewi of Ado, marked Exh. "U."

Page 1 of Exh. "T" refers to Ilawe; also pages 145 and 150.

Pages 187 and 399-400 deal with Ilawe.

Pages in Exh. "T."

30 Page 707 in Exh. "T2" deals with Ilawe. The whole file 1 Exh. "T3," deals with Ilawe. The whole of the file, Exh. "T4," also deals with Ilawe.

Pages 62-7 of "T5" refer.

Exh. "T6" deals with Igede-Ilawe land dispute.

Page 1 of "T7" deals with Ilawe; also pages 39 and 64, and unpagged but flagged entry of September, 1919.

Entries of 11th March, 1920, 8th and 10th October, 1920 in Exh. "T8" also refer to Ilawe.

Pages 72-78 in Exh. "T9" refer.

Pages 38-40, 19 of Exh. "T10" deal with Ilawe. Also entry of
 40 1/4/27 on pages not numbered.

*In the
 Supreme
 Court of
 Nigeria.*

*Plaintiff's
 Evidence
 (continued).*

No. 32.
 Stephen
 Oyelola
 Adedeji,
 17th
 March 1951.
 Examina-
 tion.

Cross-
 examina-
 tion.

Ex. "P"

Ex. "R"

Ex. "S"

Exs.
 "T-T4"

Ex. T5"

Ex. "T6"

Ex. "T7"

Ex. "T8"

Ex. "T9"

Ex. "T10"

Ex. "T11"

Ex. "T12"

Ex. "U"

*In the
Supreme
Court of
Nigeria.*

*Plaintiff's
Evidence
(continued).*

No. 32.
Stephen
Oyelola
Adedeji,
17th
March 1951,
continued.
Ex. "W"
Re-exami-
nation.

Pages 232-4 of "T11" refer; also pages 40 and 279 in Exh. "T12."

The whole of Exhs. "R" and "S" refer.

I tender the Minutes Book of Ekiti Council and Ekiti Judicial Council, marked Exh. "T13"; pages 27-28, 32, 40 and 42 refer.

I tender the plan used in Suit D2/45, marked Exh. "W."

Rxd. by Awolowo: I got Exh. "W" from the Resident's office on the instructions of the District Officer.

Plaintiff closes his case.

*Defendants'
Evidence
(continued).*

No. 33.
Ademesan,
17th
March 1951.
Examina-
tion.

DEFENDANTS' EVIDENCE (continued).

No. 33.

10

Ademesan.

Xd. by Majekodunmi: 2nd D. W. ADEMESAN, male, Yoruba, sworn on cutlass, states in Yoruba Language as follows:—

I am the Ologotun of Ogotun. I know the 1st Defendant. I know Ado Ekiti. I know also the places called Odo, Ilawe and Igbara Odo. The land between Ado Ekiti and Igbara Odo belongs to the Ewi. My land adjoins that of Ewi with whom I have a common boundary at Oke Agbe. Oke Agbe (Agbe Hill) is the boundary. Pillars were made recently and planted on the boundary. I had land dispute with Igbara Odo and a European acted as arbitrator between us and put in the pillars. The land on the other side of the pillar was declared to be Ado land and that the land on my side of the pillars belongs to me. One coming from Ado Ekiti in my direction first goes to Odo and then Ilawe. After Ilawe he gets to Igbara Odo and to Ogotun. My boundary with the Ewi is at Oke Agbe. 20

I have known Odo for about 50 years. The head Chief at Odo is the Akitipa. The 2nd Defendant is the present Akitipa. He is not the first Akitipa. I know about three Natives of Ado live at Odo.

I know Igede. The Akitipa has subordinate chiefs. I know the Alara of Ara. I have a common boundary with him.

Cross-
examina-
tion.

Xxd. by Awolowo: I knew Odo when I was a young man and a native doctor. I knew the place about 50 years ago. I was a Babalawo (Ifa priest). I visited Odo several times while going to Ado. I visited Odo last about 6 years ago. I just passed through Odo. I did not visit anyone there though I sent someone to salute the Akitipa. I could not get a lorry then and had to walk. It was a day's journey. I left home at about 6 a.m. and got to Ado after 8 a.m. I got to Ado about 10 a.m. I met the chiefs in Council. I left home at the 2nd cockrow. I cannot read a clock. 30

I don't know the traditional history of Ekiti land nor that of Ado Ekiti. I don't know the history of Ogotun. Ewi is a king in his own land and I am a king in mine. We have a common boundary. There has been a common boundary between Ado and Ogotun since we both got on our 40

lands. I told the arbitrator that Oke Agbe is the boundary between the Ewi and myself. Igbara Odo crossed Oke Agbe into my land, hence the dispute. I reported the trespass to the Ewi who promised to settle the matter. A final settlement was made by the demarcation made by the arbitrator. The Ewi sent representatives to place his own side of the case before the Arbitrator.

*In the
Supreme
Court of
Nigeria.*

*Defendants'
Evidence
(continued).*

It was not the Ewi who crossed Oke Agbe but his subjects at Igbara Odo.

I don't know how Odo came to be founded. I don't know the history of Ilawe. I know Odo belongs to Ado because subjects of Ewi are made the Akitipa of Odo. The Ilawe and Ado people are one. I know Igbara Odo is now independent of Ado Ekiti, but it was under Ado before. I knew the three Akitipas I have mentioned personally. I knew them as Akitipa but not their names. The 2nd Defendant is the third one. The 1st Akitipa I knew was a Babalawo. I cannot say how long the 2nd Defendant has become Akitipa. I became Ologotun about 30 years ago. I knew 2nd Defendant before he was made Akitipa; that was about 10 years ago. He used to come to salute me when he was on leave. I knew he was made Akitipa about 5 years ago. I knew two other Akitipas before the 2nd Defendant.

No. 33.
Ademesan,
17th
March 1951,
continued.

I don't know when the last Ologotun died. The Akitipa is an important chief. I heard when he died. I sent there and found he was dead; that was more than 6 years ago. When 2nd Defendant was installed he sent to salute me. It was not long after the former Akitipa died that the 2nd Defendant was installed. I cannot tell how long as I did not reckon the time.

I don't know there is an Odo quarter in Ilawe. I have told the truth about what I know.

No rxn :

. No. 34.

30

Adelusi Arasowole.

Xd. by Majekodunmi : 3rd D.W. ADELUSI ARASOWOLE, male, Yoruba, sworn on the Bible, states in Yoruba Language as follows :—

No. 34.
Adelusi
Arasowole,
17th
March 1951.
Examina-
tion.

I am the Alara of Ara. I became the Alara about 1½ years ago. I know the Ewi of Ado Ekiti. I have a common boundary with him at Oke Asa. The boundary is marked with a Peregun tree. The original tree was big before it was uprooted and another was planted in its stead. The boundary runs towards the right to my boundary with the Ologotun. There is a footpath along the boundary. The boundary line extends on the left to my boundary with the Ajero. Igede is in front of the boundary line, on the left side. Ilawe is in front of the boundary line on the right side. The land belongs to the Ewi.

Xcd. by Awolowo : I was Alara about 1½ years ago. I was born at Ara. I am about 45 years old. I was a produce buyer at Okuku Station near Oshogbo. I used to come home yearly, at Easter time.

Cross-
examina-
tion

*In the
Supreme
Court of
Nigeria.*

I don't know the history of Ekiti lands, nor of Ara. I know the history of my relationship with the ruling family. I don't know how Ado, Ilawe, Ogotun, Igbara-Odo, Ijero and Effon were founded.

*Defendants'
Evidence
(continued).*

I don't know the Akitipa of Odo. I don't know the 2nd Defendant. I know the 1st Defendant. I don't know you.

*No. 34.
Adelusi
Arasowole,
17th
March 1951,
continued.*

There is a footpath running from Oke Asa to Ogotun. There is no footpath on the other side of the Peregun tree but a hill, which runs towards Ijero. I grew to know the footpath.

I don't know when the dispute between the Ewi and the Alawe started. I did not send anybody to be present at the survey of the land in dispute. I know Chief Ologbosere but I did not send him to the Alawe. I don't know Igbo Amadin. 10

No R-Xn. :

*Cross-
examina-
tion by
Court.*

Xrd. by Court : From the Peregun tree the footpath runs, on the right, to the boundary with the Ologotun.

The Ilawe people occupy land up to the footpath, in front. I know the land to belong to the Ewi, although it is occupied by the Ilawes. The Ilawes have no crowned Oba.

Adjourned to 19th instant.

(Sgd.) O. JIBOWU, 20
Judge, 17/3/51.

*No. 35.
David
Ajenifuja,
19th
March 1951.*

**No. 35.
David Ajenifuja.**

Akure, Monday the 19th day of March, 1951.

Resumed.

*Examina-
tion,*

Xd. by Majekodunmi : 4th D.W. DAVID AJENIFUJA, male, Yoruba, sworn on the Bible, states in Yoruba Language as follows :—

I am a farmer. I live at Odo. I was born at Odo. I am about 55 years of age. Akitipa Adepunrin was my father. My father died about 15 years ago. The next Akitipa was installed about 12 years after his death. I was about 30 years when my father died. I was about 10 years old when he was installed the Akitipa. My father had a farm at Odo. I have been farming on his land since he died. No one has disturbed me on the land. 30

Odo people live at Odo ; they came from Ado. I grew to know about 200 people at Odo. There are more than 300 people there now.

My father's senior brother, Adegeye, was Akitipa before my father. I know the present Akitipa. Land from Odo to Ilawe belongs to the Ewi.

I know Igunrin. It is between Odo and Ilawe, near Oke Isapa ; it is near river Orunro, also known as Oruwo. I don't know Ilepupa. 40

Igunrin also belongs to the Ewi. There is a boundary between Igunrin and Odo. There is also a boundary between Odo and Ilawe. The boundary is at Oke Isapa, 8 miles from Ado.

*In the
Supreme
Court of
Nigeria.*

Afinbiokin was the first Alawe that I know. He was the Alawe when my father was installed the Akitipa. There was no clash then between my father and the Alawe but with Odo people resident at Ilawe. The friction was due to the fact that the Odo people at Ilawe refused to come to Odo to settle.

*Defendants'
Evidence
(continued).*

No. 35.

David
Ajenifuja,
19th
March 1951,
continued.
Cross-
examina-
tion.

Xad. by Awolowo : My father gave the Odos at Ilawe some presents
10 when he became the Akitipa. He afterwards asked them to leave Ilawe
and settle at Odo ; they refused. I cannot tell how many years Odo people
have been living at Ilawe. The people went to Ilawe when Oyo wars
scattered Odo people. I don't know when the Oyo wars took place as
I was not born then. I was not told the history of the wars. Odo people
at Ilawe were farming on Odo land at the time of the installation of my
father. They continued to farm there after my father's installation ;
they are still farming there. The Odos at Ilawe cannot now farm on Odo
land because they won't come home. They now pay Ishakole for farming
on Odo land. My father demanded Ishakole from them as they would
20 not come to live at Odo. I don't know of any Odo man living at Igede.
I have never heard that some Odo men live at Igede.

Odo people were from Ado ; their ancestors were from the Afin
at Ado. I have a house at Ado and another at Odo. I regard both places
as my home. My house is at Isoro quarter at Ado. There are more
houses than 22 at Odo. I have never counted their number. The houses
would be about 25. In my view, the adults at Odo would be about 300 in
number. About 20 people live in my house. There are about 6 rooms
in the house. It is not the biggest house in the village. There are about
10 adults in my house. It is not correct that I went recently to farm
30 at Odo.

The boundary between Odo and Ilawe is at milestone 8 on the motor
road from Ado Ekiti. It is an old boundary. We have there Peregun
trees planted in rows along the boundary line. I don't know who planted
them. They have been planted before I was born. They were not
planted by Shashere. I knew Shashere ; he is now dead. There was
a case between the Akitipa and Sam Oni about 12 years ago. There was
also an action taken by Aporio the Sapetu against Ilawe people. I was
interested in the cases. Shashere was one of the Native Court members.
He planted Peregun trees on the boundary as the old ones were burnt down.
40 The old ones were uprooted and kola trees planted in their stead.
Ologbosere, the father of Oguntuwase, destroyed some of the old Peregun
trees. It is true the old boundary marks were destroyed although no
reference was made in the evidence to the destroyed boundary marks.
I am the head of the people farming in the area and my evidence is true.
Aporio took action because my father was dead. All Odo people were
interested in the case. From mile 8 the Peregun trees go towards
Amugbadagbe Stream which Ilawe people call Oshun.

N.B. By consent the proceedings before the D.O. on appeal from
D2/45 (Exh. " E ") is tendered and marked Exh. " E1."

Ex. " E1 "

*In the
Supreme
Court of
Nigeria.*

*Defendants'
Evidence.
(continued).*

No. 35.
David
Ajenifuja,
19th
March 1951,
continued.

Other boundaries of Odo are Igunrin, Odogun Igede. There were Peregun trees on the boundaries. I grew to meet the boundaries. The Peregun trees are still there. I knew the time the surveyor surveyed the land for Amudagbe's case. I don't know when the survey for this case was made. I don't know Igbo Asaw or Onitametta. I don't know when the surveyor made the survey. I saw paths cut, through our farms but I don't know who cut them. I was not disturbed in my farm hence I made no inquiries. The Ewi does not live at Odo and so cannot know as much of the boundaries as the people who live there and go round Odo boundaries. I don't know Solomon or his farm hut. I know Amukoko's hut. I know 10 Isobo village by mile 6. The Akitipa put the Isobos there. There is a village on the other side of the road; it belongs to a palm wine tapper named Adegbuyiro. I don't know if he is also known as Solomon. I know Babalola, a trader; he is an Ilawe man. I don't know where his farm is. I know Babalola, son of Odogun of Ado Ekiti; I have a common boundary with him.

I know Igunrin. I was fishing in Oruwo river and then got to Igunrin. Igunrin is about 3 miles from Odo. Ado people live and farm at Igunrin. It is a long time since I went there. It is a smaller village than Odo. Nobody has taught me what to say. 20

The present Akitipa should know that my father had ruled that all Odo men living at Ilawe must pay Ishakole to farm on Odo land. I don't know what the present Akitipa's policy is, but my father took Ishakole from Odo people living at Ilawe for farming on Odo land.

We have a boundary with Ilawe people. I don't know any place called Oke Agbe on Ado road. I don't know Okuta Olomo and Afefe Hill. I don't know the names of all the villages in Ado-Ilawe road.

I know Oshun or Amudabagbe stream and Oruwo river. I know where they meet.

No R-xn.

30

*Cross-
examina-
tion by
Court.*

Xad. by Court: I don't know Ariji Stream. I know Agbeje Stream it flows into Amugbadogba Stream. Agbeji Stream is about 3 miles to Ilawe Town. It does not flow as far as Odo Village before entering the bush. I don't know if Agbeji Stream flows into Oruwo River.

Odo people living at Ilawe paid their taxes to Ilawe. They did not make any contribution to Odo or Ado. They built houses at Odo but the houses are now in ruins. They were made to pay Ishakole because they refused to settle at Odo.

No. 36.

Adeshida.

*In the
Supreme
Court of
Nigeria.*

Xd. by Majekodunmi : 5th D.W. ADESHIDA, male, Yoruba, sworn on the Bible, states in Yoruba Language as follows :—

*Defendants'
Evidence.*

I am the Deji of Akure. I know the Alawe of Ilawe and also the Ewi of Ado Ekiti. The Alawe was a servant of the Ewi; he was the person to wash the Ewi's feet. Ilawe people are on Ewi's land. There is a boundary between me and the Ewi, at Ero. It is not true that the Alawe gave land to the Ewi to settle on. I knew the father of the Plaintiff; we used to
10 meet at our council meetings; he used to sit by the Ewi with the other Bales under the Ewi. My own Bales used to sit by me.

No. 36.
Adeshida,
19th
March 1951.
Examina-
tion.

I was present when the last Alawe was kicking against the authority of the Ewi. I was one of the people who sat over his case.

The Plaintiff's father was the first Alawe I knew personally as he used to come to our Council with the Ewi. There had been other Alawes before the Plaintiff's father; they were with the Ewi before the advent of Europeans. This is the first time that an Alawe has brought an Ewi to Court. A town under one does not bring one to Court.

Xcd. by Awolowo : I know the history of Ekiti land. I know the
20 Alawes used to wash the feet of the Ewis. I don't know about the other servants. Before the advent of the Europeans two Obas never met, but could only send messages of goodwill to each other. The messengers could come back to report about the organization of the Ewi's palace. It was traditional history that the Alawe was washing Ewi's feet in the morning. The Plaintiff's father himself told the Council that he used to wash the Ewi's feet. All Ekiti Obas were present. I am one of the Ekiti Obas. The Alawe did not wash my own feet. The Alawe had no connection with the Elekole. I don't know if he was washing the feet of other Obas, but I know he was servant of the Ewi. He Plaintiff's father told our Council
30 that he was washing the Ewi's feet. This is on record. Pullen was the European then at the meeting. Whatever is recorded must be correct. He was not the servant of all Ekiti Obas.

Cross-
examina-
tion.

The Alawes used to live with the Ewi. When the Alawe became a big man, the Ewi gave the Alawe land to stay and so did the Deji and other Obas. I don't know other servants of the Ewi who were given lands. All village heads under the Ewi were given lands by the Ewi. I know a lot about the Alawe from what was stated at our Council meeting in my presence. I have told the Court what I heard the Plaintiff's father tell the Council. Before he told us what he was doing for the Ewi, I have heard
40 it in history. I have heard of Ejigbo; he was one of the servants of the Ewi. I cannot tell the service he was rendering in the Ewi's palace.

I know the Ologun Adele takes care of the Ewi. He is to run errands and see that nothing evil happens to the Ewi. I don't know the other servants of the Ewi.

I know the land occupied by the Ilawe people. We crowned Obas have boundaries with one another. We have no boundaries with Bales. I have boundary with the Ewi and not with the Alawe who is within the territory of the Ewi. I don't know that Ilawe has been separated

*In the
Supreme
Court of
Nigeria.*

*Defendants'
Evidence
(continued).*

No. 36.
Adeshida,
19th
March 1951,
continued.

from Ado Ekiti. I did not hear of Igbara Odo and of Osi. I have a common boundary with the Ewi at Igbara Odo. I love the Ewi as two crowned Obas must love each other. I don't dislike the Alawe. The other Obas and I had to deal with Plaintiff's father. The 1st Defendant lived with me for about 6 months when he had trouble at Ado. My ancestors were from Ife and were descended from Oduduwa. The trouble comes when a village head claims to be a crowned head.

The Owa and the Ewi left Ife at the same time. They lived at Iromu where they quarrelled; the Owa went his way and the Ewi did the same. I don't know if the Ewi stayed at Ibokun, Ushin, Ikerre and Agbado. I don't know where he stayed until he got to Ado. I don't know where the Ewi found the Alawe, but he was Ewi's servant. 10

I don't know Olosi. I never heard that Oduduwa had a wife, Oniwe, who cleaned kola nuts for him. He did not deal in kola nuts. Abata kola nuts are indigenous fruits. The Obas keep Abata kola nuts for entertaining visitors. Odudewa must have kept kola nuts for visitors. The Benins at one time attacked Ado Ekiti and Ilawe. Ijesha did not fight with the Ilawes to my knowledge. The Ibadans did. The Alawe did not kick against the Ewi until the advent of the Europeans.

I don't know Odo. The Akitipa is an Ado Chief at Odo. 20

No r-cn.

No. 37.
Adetokunbo
Atomobase,
19th
March 1951.
Examina-
tion.

No. 37.
Adetokunbo Atomobase.

Xd. by Majekodunmi : 6th D. W. ADETOKUNBO ATOMOBASE, male, Yoruba, sworn on the Bible, states in English Language as follows:—

I am the Akitipa of Odo. I am 62 years old. I was installed the Akitipa of Odo on the 8th April, 1938. Adepunrin was the Akitipa before me. I don't know when he died. There is nothing on record as to the date of his death. I am the 10th Akitipa according to history. I knew two Akitipas, viz.:—Adegeye and Adepunrin. I was about 25 when I knew Adegeye. There are other chiefs at Odo besides the Akitipa. They are the Safetu, Odolofin, Edemo, Odopetu, Edemorun, Soro, Aboluwodi, Ejemu and Asamo. The women chiefs are Eye Oshemowe, Iyejero and Iyeluji. Odo is a town and not a village. Odo was attacked by Benin and Oyo people. The inhabitants scattered; some went to Ilesha, Iworoko, Ilawe and Igede. 30

Those who went to Ilawe did not return to Odo. Those who fled to Igede and Ilesha remained there.

I know Ilawe Town. There is a boundary between Odo and Ilawe at Oke Isapa. The boundary, according to history, was made by the Ewi between Odo and Ilawe. 40

I did not agree that Ilawe people should farm at Odo unless they paid Ishakole.

I know the area in dispute as shown on Exh. "A."

The Ilawe people shown on Exh. "A" as farming on the land in dispute pay me Ishakole yearly. I tender counterfoil of my receipts given to them. (Awolowo objects to the counterfoils being received in evidence on the ground that the counterfoils are not admissible to prove that the receipts were in fact issued to the people whose names appear on the counterfoils.

*In the
Supreme
Court of
Nigeria.*

*Defendants'
Evidence
(continued).*

10 Majekodunmi refers to section 96 of Cap. 63 Vol. II Laws of Nigeria, 1948 edition. He says that the Plaintiff was not served with notice to produce the originals of the receipts alleged to have been given. He has therefore not laid the foundation for acceptance of secondary evidence. The counterfoils are therefore rejected in evidence.

No. 37.
Adetokunbo
Atomobase,
19th
March 1951,
continued.

I won't allow them to remain on the land if they fail to pay me Ishakole.

Adjourned to 20th instant.

(Sgd.) O. JIBOWU,
Judge 19/3/51.

No. 38.

COURT NOTES.

Akure, Tuesday the 20th day of March, 1951.

No. 38.
Court
Notes,
20th
March 1951,

20

Mr. Awolowo informs the Court that he was under a misapprehension when Exh. "W" was being tendered that it was only being tendered for identification. He now objects to the admissibility of the plan in evidence.

Mr. Majekodunmi states that the plan was the one used before the District Officer and the Resident and the cases to which it referred; says that the plan was part of the proceedings before the D.O. and marked as an exhibit. The plan has come from proper custody of the Resident.

30 *Ruling*:—The Court considers the objection now raised to the admissibility of Exh. "W" in evidence is belated. Even if objection against its admissibility has been raised before, I would have ruled against it as it formed part and parcel of the proceedings before the D.O. and the Resident when they sat on appeal on Suit No. D2/45, and it is impossible to follow the proceedings before the D.O. and the Resident, without referring to the plan which was their guide.

DEFENDANTS' EVIDENCE (continued).

*In the
Supreme
Court of
Nigeria.*

No. 39.

Adetokunbo Atomobase.

*Defendants'
Evidence
(continued).*

*No. 39.
Adetokunbo
Atomobase
(continued),
20th
March 1951.
Examina-
tion
continued.*

Xn. by Majekodunmi : ADETOKUNBO ATOMOBASE, warned that he is still on his oath, continues :—

I told the Court yesterday that all the Ilawe people shown as having farms on the land in question in Exh. " A " pay me Ishakole. Ado people occupy the rest of the land in dispute not shown as being farms of Ilawe people. There are more Ado people on the land in dispute than Ilawe people. 10

The boundaries between Odo and Ilawe are at Oke Isapa and Amugbadogbe.

There is no Odo man on the Ilawe side of Oke Isapa. Awajolu stream is the boundary between Odo and Igede. From Oke Isapa to Awajolu stream, called Toro stream on Exh. " W " is the boundary between Igede and Odo.

The boundary shown on Exh. " A " did not exist between Ado and Ilawe people or between Igede people and Odo people.

Igbo Asaw belongs to Ado people. There was never a dispute over Igbo Asaw. No boundary was ever made on Igbo Asaw side with Ado people by anybody. I am very surprised to see a boundary marked with Peregun and heaps of stones on Igbo Asaw side. 20

If any of the Ilawe men shown on Exh. " A " as having farms on the land in question fail to pay his Ishakole, I shall take them to Court. One coming from Ado has to go across Oruwo River on the way to Odo. There is a bridge over the river. Ilawe people call Amugbadogbe Oshun Stream. There is Oshun stream passing through Odo and our women used to go there to worship " Oshun." I put the Isobos on the land in dispute. I know Apon river. Johnson, an Isobo, is my tenant. Solomon is my cousin and farms on the land in dispute. His full name is Solomon Adegbuyiro; he is still on the land. I know Amukoko farm hut. Amukoko is a native of Odo. 30

Exhs. " C "—" L " are certified proceedings of the actions taken by me against Ilawe farmers on the land in dispute. Exh. " M " is a certified copy of proceedings taken by Apono Safetu against Ilawe farmers on the land in dispute.

Ex. " X " In September, 1943, Ado N. A. took action against 3 Odo farmers. I tender a certified copy of the proceedings, marked Exh. " X."

In Exh. " E1 " I withdrew my action against 7 of the Defendants. Olukoko, Sam Oni, Juniko, Apayinoge have left. Komolafe Abere is still on the land as he identified himself with Odo. Agbelusi agreed to pay Ishakole. 40

I was present when the three Odo men in Exh. " X " were tried for stealing. The man Komolafe Abere in Exh. " E1 " is the same man who gave evidence in Exh. " X." It is correct Komolafe's father lived

at Ilawe although he was an Odo man. That was why I withdrew my action against him. The Ewi made the boundary between Odo and Ilawe. He too made the boundary between Igede and Odo.

Ewi owns the land on which Ilawe people are. Ewi's land extends to Oke Agbe at the extreme end of Igera Odo.

Xxd. by Awolowo : Ewi's land extends to Oke Agbe. I have never been there but that is our traditional history. I never heard of any other boundary marks. History did not tell me of Peregun trees as boundary marks between Ologotun's and Ewi's lands. History tells me that there is usually a Peregun tree at the boundaries between two Obas. This refers to Divisional boundaries. In case of District boundaries we have Peregun trees planted in a line along the boundary.

District boundaries are boundaries between people living within the domain of an Oba, e.g. between Odo and Ilawe, and between Ilawe and other Ado people.

There can be a boundary between Igera Odo and Ilawe with Peregun planted in succession. They cannot have a separate boundary with the Ologotun because their land is at the extreme end of Ewi's land. There should be a Divisional boundary marked with only one Peregun.

I did not hear of the dispute between the Ogotun and Igera Odo people. I first heard of it in this Court. (*N.B.* Refers to Exh. "T5" at page 16—paragraph 6 which is read to the witness.) I was not there when the boundary was made. I am surprised to hear that Peregun trees mark the boundary between Ogotun and Igera Odo.

I don't know Igunrin, but I have heard of its history long ago. The Agbunrin is the title of an "Omo Owa." "Omo Owa" means a "son of the Oba." The last Agbunrin is dead and the office has not been filled. I have not been to Ilepupa. I have gone round Odo land. I know from history that the Alawe came from Ife with the Ewi and that he was one of Ewi's servants, but I don't know how he came to settle at the place known as Ilawe.

Odo was a town before, but is now called a village.

I heard in Ewi's evidence that the Ados fled from Ado and that the Alawe also fled from Igunrin when attacked by the Binis. It was the same war that scattered Odo. Oyo war was after the Benin War. I cannot tell the interval between the two wars. The Oyos also attacked Ado. I don't know whether the Ados again fled but Odo people scattered and some of them were taken captives to Ibadan. The Odos all ran away before the Binis actually got there. Some of them went to Ilesha. I cannot say where they fled to.

I heard the Ewi tell the Court that the Muyaka, Onigede and the Odo people gave land to Alawe at the request of the Ewi. At the time Peregun trees were used as boundary marks. They were planted at close intervals. This took place some centuries ago. Peregun trees don't die, unless uprooted. The boundary between Ilawe and Odo were planted with Peregun trees centuries ago. It is approximately a mile in length.

*In the
Supreme
Court of
Nigeria.*

*Defendants'
Evidence
(continued).*

No. 39.
Adetokunbo
Atomobase
(continued),
20th
March 1951,
continued.

*Cross-
examina-
tion.*

*In the
Supreme
Court of
Nigeria.*

*Defendants'
Evidence
(continued).*

*No. 39.
Adetokunbo
Atomobase
(continued),
20th
March 1951,
continued.*

The entire boundary would be about 4 miles in length. They were all planted with Peregun trees; they are there up till today; they are all huge trees.

(Note : Refers to Exh. " H. ") In the case I described our boundaries to the Court. I relied on judgment in Exh. " R. " Two members of Court were called as witnesses. The boundary referred to only one side of our land from Amugbadagbo to Oruwo River ; it is about 1½ miles long. The boundary was marked with ancient Peregun trees which are still there. I have seen the proceedings Exh. " M " before.

Madorise was one of my witnesses in Exh. " H. " (Note : Evidence 10 of Madorise in Exh. " H " is read out to the witness.)

I called Shashere and Maderise as my witnesses to give evidence as to the boundaries. Some of the old Peregun trees were uprooted by Ologbosere, so Shashere and Madorise went to plant new ones. It is not strange that no reference was made in the proceedings that the Peregun trees were uprooted.

I did not refer to the uprooted Peregun trees because it did not then occur to me to do so. Some of the big Peregun trees are still intact up to Oruwo. Not all the trees were uprooted. The trees can be inspected.

We have two boundaries with Ilawe. Amugbadogbe to Oruwo is the 20 southern boundary. The other boundary is northward from Amugbadogbe up to Awojolu. The boundary is marked with Peregun trees. There are about 12 or more in that line. The length is about 1½ miles. Individual farmers use Atori and not Peregun trees to mark their boundaries. This is our custom at Odo. I claimed the entire area edged pink on Exh. " W. " Exh. " W " shows 6 Peregun trees on the western boundary from W, B-E. C and D are also planted with Peregun trees. The trees on Exh. " A " are wild ones, not planted by anybody. Ilawe people showed them to the surveyor. I don't know how the Atori trees came to be there. I was satisfied with the D.O.'s judgment based on Exh. " W. " Exh. " E1 " 30 is the D.O.'s judgment. He gave me B, C-E. There is no Peregun trees between D and E. He did not declare boundary. He read his judgment to me and declared the boundaries. I did not appeal against the judgment. The D.O. told me to forgo our ancient boundary in order to make peace between us. I told the Resident that I preferred our old boundary and he cancelled the one made by the D.O. (Note : *Xan. Oguntuwase* in Exh. " J " is read out to witness.) I asked if the Peregun trees were fully grown then. I mean to ask if they were the ancient Peregun trees. Exh. " H " does not relate to Exh. " W " but Exh. " E1. " Exh. " F " is appeal from " E1. " The Resident would not declare a boundary because I objected to the 40 boundary made by the D.O.

Odo was a town before, but it is now a farm settlement. It is called a farm settlement in the Intelligence Report. Odo is mentioned in Exh. " B1. " (Page 37 Exh. " B1 " is read out to the witness.) I have never seen Exh. " B1 " before. I have read another one with Odo mentioned. I have heard of Ika, Iwere, Aye, Iso and Odo. They are now farm settlements. Odo is not a farm settlement created by Odo people

living at Ilawe. It is not correct that we planted ourselves at Odo after Afinbiokin was deported. The title of Akitipa was not newly invented when I returned from Lagos.

*In the
Supreme
Court of
Nigeria.*

The Ilawe people shown on Exh. "A" paid me Ishakole up to 1946. Agbolusi, Adubu, Olu Balogun and Komolafe paid me Ishakole up to 1946. Elero is not on my land and paid me no Ishakole. Akinyemi paid Ishakole. I see Elero's name on Exh. "W." I showed the surveyor the boundary of our land. Ilawe people made and paid for Exh. "W." None of my people went round the land with the surveyor. We showed the surveyor our
10 boundary with Igede also. We were with the surveyor for only one day. The Ilawe people gave him particulars shown on the southern part of the plan. I am the Bale of Odo. Okuta Oshun is about 2 minutes to the village. I saw Exh. "W." I claimed all the land. I never saw Chief Elero.

*Defendants'
Evidence
(continued).*

*No. 39.
Adetokunbo
Atomobase
(continued),
20th
March 1951,
continued.*

Adubu is still on the land; he did not pay Ishakole from 1946; Agbelusi is also on the land, as also Komolafe, Abere, Falode, and Olu Balogun. Sodu paid Ishakole until he died about 6 years ago. I was paid Ishakole up to end of 1946. Sam Oni left the land when I got judgment against him; that was in 1939.

I sued for trespass in Exh. "E." I sued them for trespass after they paid me Ishakole. They went beyond the place I gave them hence the action. (*N.B.*—His evidence in Exh. "E" is read out to him.) I sued in respect of Atere-Ishin on the other side of Oke Isapa. I did not consider it necessary to tell the Court they were making farms beyond the land I gave them to farm. The Defendants live at Oke Emo quarter of Ilawe but are known as Odo in Ilawe. I heard Falode say that he and the others with exception of Sam Oni live at Odo quarter in Ilawe. Falode, Komolafe and some others live at Odo quarter in Ilawe. There is a quarter in Ilawe known as Odo quarter; it is a part of Oke Emo in Ilawe. Some of the
30 Defendants lived at Oke Emo in Odo quarter of Ilawe. I have never been there. Adubu lives at Odo quarter. Olu Balogun lives at Ayo; that is what he told me. I don't know where the people live.

The people I sued agreed that the land is mine hence they paid Ishakole.

In 1947 the Resident heard an appeal for the trespass action. I sued them because they did not pay their Ishakole. Exh. "F" refers.

I sued in 1948 the same people and others in respect of Odo land.

In 1949 I sued for Ishakole. You stopped its hearing.

In 1950 I got people who failed to pay Ishakole casaed. There have
40 been a series of actions on the land from 1928. *[sic]*

The Odos who left for Ilawe are no longer entitled to use Odo land as they pay their tax not to Odo but to Ilawe; if they had been paying to us, I would not have sued them.

If they had come back to Odo and built houses, they would have been participating in the affairs of Odo. Odo is under Ado, if they pay taxes to Odo, they thereby pay to Ado.

*In the
Supreme
Court of
Nigeria.*

*Defendants'
Evidence
(continued).*

No. 39.
Adetokunbo
Atomobase
(continued),
20th
March 1951,
continued.

Ilawe people paid their taxes from 1928-1945 to Ado. Odo people in Ilawe still have no right to farm at Odo. Commission paid on Ilawe taxes is paid to the Alawe. Odo people at Ilawe help to swell the commission instead of paying to Odo and increasing the Akitipa's commission.

There is a boundary between Odo and Ilawe and between Odo and Igede. The boundaries are planted with Peregun trees at close intervals. The trees are not shown on Exh. " W " as the boundaries then were not in dispute. The Peregun trees on the boundaries are still there.

I don't know if the boundary between Ilawe and Igede are still marked with Peregun trees. I leant from history that they were so marked. 10
The boundary with Igede starts from Awejolu or Joro. I don't know its course as I have never been there. I don't know the boundary between Igede and Ilawe.

I see Igede people shown on Exh. " A. " I know where they are and I have boundary with them. The undisputed area shown on the northern portion of Exh. " W " is Igede land ; they are also on the eastern side.

I cannot say if the boundary shown on Exh. " A " from Igbo Amadin to Okuta Olomo correctly represents Igede boundary with Ilawe as I have never been there. I told the Court I was surprised to see the Peregun trees and Atori trees shown on the boundary line on Exh. " A. " 20

I am surprised to see Peregun and Atori trees shown on the boundary depicted on Exh. " A " from Igbo Amadin to Igbo Asaw.

I heard the surveyor's evidence about the Peregun trees and heaps of stones on the boundary line.

I informed the Ewi of the actions I took after taking action. I sometimes informed him of my intention to take action before I actually took action. I never discussed any of the cases with him before taking action.

I did not know about the Igede-Ilawe dispute arbitrated by the District Officer. 30

I returned home in 1938 to become the Akitipa. I did not go back home to help oppress Ilawe people at Odo.

*Re-exami-
nation.* *R-Xd. by Majekodunmi :* I took action in 1945 because the Ilawe crossed the boundary at Oke Isapa.

No. 40.

John Ojo Lawrence.

In the Supreme Court of Nigeria. [sic]

Xd. by Majekodunmi: 6th D. W. JOHN OJO LAWRENCE, male, Yoruba, sworn on the Bible, states in English Language as follows:—

Defendants' Evidence (continued).

10 I am a Forest Ranger representing the Provincial Forest Officer, Akure. I tender Timber permit Books for permits issued between 1931 and 1945, marked Exhs. "Y"—"Y6"; the flagged pages refer to Ilawe; also Timber Fees Cash Account covering period 1st June, 1946, up to January, 1948, marked Exh. "Y7," the entries relating to Ilawe are marked with blue pencil on the pages flagged. The permits were issued at Ado Ekiti. When a book is exhausted, it is returned to the office of the Provincial Forest Officer; but was at one time at Ondo, but now at Akure.

No. 40. John Ojo Lawrence, 20th March 1951.

Examination.

Xsd. by Awolowo: I tender the Timber Fees Cash Account Book for 1950. The books were handed to me by the Provincial Forest Officer flagged. I don't know who actually flagged them. Up to 1946 our books show owner of timber felled in Ilawe as the Ewi of Ado. Since then the owner in our books is the Alawe. I see the pages flagged and marked with red ink the owner of the trees felled is described as the Alawe of Ilawe.

Exs. "Y-Y6" Ex. "Y7"

Cross-examination.

20 Since 1946 all trees felled at Igbara Odo are shown as the property of the Arajoka of Igbara Odo.

I see the pages flagged and ticked in red in Exh. "Y8"; they show all timbers felled as belonging to the Alawe of Ilawe. These show that the Alawe gave instructions for the issue of the permits.

No R-xn.

Adjourned to 21st instant.

(Sgd.) O. JIBOWU, Judge. 20/3/51.

No. 41.

David Aladesanmi (recalled).

30

Akure, Wednesday, the 21st day of March, 1951.

Xd. by Court: DAVID ALADESANMI, the 1st Defendant, recalled by Court and sworn, states as follows:—

Defendants' Evidence (continued).

No. 41. David Aladesanmi (recalled), 21st March 1951.

I have got appendices A, B and C to Exh. "B1"; I tender them, marked Exhs. "B3" and "B4." (B and C are in one volume.)

No xxn. by Awolowo:

Cross-examination by Court

Defendants' Case.

Exs. "B3" and "B4"

PLAINTIFF'S EVIDENCE (continued).

No. 42.

Stephen Oyelola Adedeji (recalled).

*In the
Supreme
Court of
Nigeria.*

*Plaintiff's
Evidence
(continued).*

No. 42.
Stephen
Oyelola
Adedeji
(recalled),
21st
March 1951.
Examina-
tion.

Awolowo asks for leave of Court to recall Stephen Oyelola Adedeji. Leave is granted.

Xd. by Awolowo : STEPHEN OYELOLA ADEDEJI, sworn on the Bible states as follows :—

I see Exh. " T2 ", page 707. It is a letter from the D.O. Ekiti to the Resident, Ondo Province, dated 9th March, 1945. Pages 478-491 are missing from Exh. " T2." I cannot account for the missing pages. 10
Pages 462-5 are also missing, as also 467-475. I cannot account for them.

I see Exh. " T5," page 16. It is the minutes of a meeting between Ologotun and Igbara Odo people.

I see Exh. " T6," page 25 ; it is the agreement between Igede and Ilawe dated 12th July, 1933.

I see also page 18 of the same Exhibit ; it is a letter from the D.O., Ekiti to the Resident, Ondo Province dated 2nd June, 1933.

I see page 33 of the same File ; it is a note by the D.O. Ekiti, dated 27/9/33. 20

I see Exh. " T10," pages 19-25. It contains proceedings in charge 1/25.

I see Exh. " T3 " pages 790, 799-803 are missing, as also pages 811-13, 815-844, 854-7, 863, 864 and 866. 866 was removed and forwarded to the Alawe of Ilawe. Pages 875-8 are also missing. I cannot account for the missing pages.

I see Exh. " T4." Page 905 is missing, as also pages 911-920, 925, 928, 929, 970-982. I cannot account for the missing pages.

Cross-
examina-
tion.

Xxd. by Majekodunmi : I was transferred to Ado Ekiti 2 years ago. I don't know what reorganisation had taken place in the office. 30

Cross-
examina-
tion by
Court.

Xxd. by Court : The books I tendered in evidence were from the custody of the District Officer, Ekiti.

No. 43.

ADDRESS by Defendants' Counsel.

*In the
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Majekodunmi now addresses the Court for the Defendants. He refers to the original summons transferred from the Native Court to the Supreme Court. (Page 1.) Land claimed said to be bounded by Igbo Amadin, Ilepupa, Agbe and Oke Isapa. He invites attention to plan Exh. "A." Ilepupa and Agbe are outside land shown and claimed in Exh. "A."

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Address by
Defendants'
Counsel,
21st
March 1951.

Oke Isapa is what the Defendants claim as boundary between Ilawe
10 and Odo.

He submits that the land claimed in the Native Court summons is outside land shown on Exh. "A."

The statement of claim paragraph 4, gives entirely different boundaries from what was claimed in the summons.

Submits the Plaintiff did not know what to claim.

To succeed in an action for Declaration of Title the Plaintiff must prove certain things and refers to 11 N.L.R. page 68 *Ekpo v. Ita*.

Submits the Plaintiff has failed to prove exclusive acts of ownership in respect of the land claimed.

20 See page 85 *Ibidun*—declaration can only be tied to a plan. Submits that the Court cannot grant declaration in respect of land shown on Exh. "A." He states that most part of the land shown on Exh. "A" does not show who is on the land and the portions shown as being occupied are occupied by tenants of the Defendant.

Refers to 2 W.A.C.A. 258 *Renner vs. Daboh*. Trespass maintainable only by people in possession. Submits Plaintiff not in possession and therefore cannot claim in trespass but for ejectionment.

30 Submits that Exh. "P" is an official map. Refers to 3 W.A.C.A. 206—Government map is *prima facie* evidence of the facts which it illustrates; also to Vol. VI W.A.C.A. 216 *Udofia vs. Ibikpe* and *Audy vs. Akpabio*. Submits that no one gave evidence of the boundaries.

Refers to Vol. 8 W.A.C.A. 76. Plan must be accurate. Submits that the Plaintiff has not produced accurate plan.

Submits that the claim transferred has not been amended by order of this Court and that the plan filed does not support the claim. Exh. "B" shows plan of Ado land.

40 Refers to paragraph 7 of Defence—says it is borne out by Exh. "C." A.D.O.'s and the Resident's Courts confirmed the judgment. This was in 1942; the Plaintiff was the Alawe and must have been aware of the action. Adubu in Exh. "C" made an admission in Exh. "C." He is shown on Exh. "A."

Ex. "C"

The Akitipa was called as their witness then. They did not allege that the land was the Alawe's nor did they call him as their witness.

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Ex. " D "
Ex. " E "
Ex. " E1 "
Ex. " F "
Ex. " G "
Ex. " J "

Ex. " K "

Ex. " L "

Ex. " M "

Refers to Exh. " D. " The Defendants admitted that they have been making fresh farms. There was no suggestion then that the land belonged to the Alawe.

Refers to Exh. " E. " No mention of the Alawe by the Defendants, nor did they claim ownership of the land.

Exh. " E1 " is our appeal on proceedings, in Exh. " E. " There was no allegation that the land belonged to the Alawe nor did the Alawe apply to be joined as a party.

Exh. " F " is the proceedings on appeal from Exh. " E1. " Boundary declared by " E1 " was cancelled by the Resident ; but confirmed judgment 10 for damages.

Exh. " G " was in 1939—Sam Oni ordered to quit the land. Judgment was upheld by the D.O.

Sam Oni appealed to the Resident, see Exh. " J " ; appeal dismissed.

Exh. " K " was in the Magistrate's Court in 1946. Oguntuwase Atobumeji's farm is shown at Igbo Asaw, outside the area edged pink on Exh. " A. " Judgment for Akitipa. This shows that Ado land extends to Igbo Asaw.

Exh. " L. " Oguntuwase took action against the Akitipa. Plaintiff's claim was struck out and Defendant got judgment on his counter-claim. 20

Exh. " M. "—Defendants admitted Plaintiff's claim and judgment was entered against them in 1929.

This was the earliest case against the Ilawes. They did not claim the land for themselves or the Alawe.

Komolafe whose land is shown on Exh. " A " gave evidence that the land was Odo land and the goods stolen were ordered to be returned to Akitipa. This was in 1943. The Alawe is the Plaintiff ; he knew of the cases against Ilawes but failed to take steps to put forward his claim to the land. This case is the first time the Alawe claims Ilawe land and lands around it. 30

Ex. " N " Exh. " N. " The Ewi gave evidence as to the circumstances under which the deed was executed.

Ex. " U " Exh. " U "—Letter to the Ewi—Ewi asked to come and define boundary. Submits this supports the Ewi's claim to being the overlord of Ilawe and Igbara Odo.

The Deji has told the Court the relationship between the Ewi and the Alawe.

Refers to Exh. " T13, " page 40. The Deji was present and said so, when the Plaintiff's father admitted washing the Ewi's feet, also to Exh. " T10, " page 38 and 39. The Alawe confirmed that he had been washing the Ewi's feet before the Resident. Submits that the Plaintiff is bound by his father's admission. 40

Refers to Exh. " T7, " page 1 re site of lease to R.C. Mission at Ilawe. See also page 39. Alawe said nothing more could be done about

site for R.C.M. because the Ewi objected to it; see also page 64, the Ewi then agreed to a site being given to the R.C.M. at Ilawe. This was in 1917.

He refers to Exh. "T8" entry of the 10th October, 1920. He refers to Amayinkodose stream in Exh. "A" which shows that it runs through Atubu's farm. This stream is also shown on Exh. "W." It runs into Oruwo stream.

Says the Ilawe farmers shown on Exh. "A" are tenants of the Akitipa, against whom the Akitipa had obtained judgment.

10 Eyuyu village shown on Exh. "A" belongs to Igede people. The extreme corner of Exh. "A" on the north west shows farms of the Defendants.

He asks the Court to say that the Plaintiff has not proved his case and that his claim should be dismissed with substantial costs.

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No. 44.

REPLY by Plaintiff's Counsel.

Awolowo replies—

Submits that points in issue few and they are (1) what is the extent of Ilawe land. (2) What is the effect of the judgments in the proceedings
20 before the Court.

Re Writ of summons in the Native Court. He submits that the writ had been generally endorsed and that no boundaries need to have been mentioned. He submits that the Plaintiff is not bound by the boundaries he set out in the summons as he may enlarge or alter them in his statement of claim. Submits that the procedure of the Supreme Court will apply as soon as a case is transferred to it. Refers to 6 W.A.C.A., 173 in support.

Refers also to the White Book 1950, Vol. I page 372 Order 20 Rule 4.

Says the pleadings are to set out precisely the issues in controversy. The Court is to do substantial justice and not to be affected by
30 technicalities.

Refers to Cap. 211 page 61 Vol. 10 of Laws of Nigeria, Order 33. If the authorities cited in the White Book is considered not to cover the question, then the Court should exercise its power under Order 33 of our Rules of Court. He submits that the Defendants knew what case they had to meet and they were not taken by surprise.

He submits that the area claimed is shown in Exh. "A."

Says that Exh. "P" shows, if it shows anything at all, Ado as a Native Authority Unit in Ekiti Division and that it does not show land actually owned by the Ewi.

40 Refers to "Y7" and "Y8" that the Government has recognised the Alawe's right to collect timber royalties on his land since he was made a separate N.A. The same applies to Igbara Odo and Osi, which were also under the Ewi before.

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3 W.A.C.A., 206 when applied to Exh. "P" only shows the N.A. units in Ekiti Division. The map shows not only Ado but also Ilawe. If Ado land had been intended the whole land would have been marked Ado land. E.g., The Alake is the head of Egba N.A. but that does not confer on him the ownership of the lands in the different townships.

Re Exh. "N" and pages 1, 37 and 64 of Exh. "T7," he submits that as long as the Alawe remained under the Ewi, he could not in law grant land to an alien without the authority of his Superior. At the time the Ewi was the sole N.A. and he could not be ignored.

Submits that Exh. "W" is practically worthless. "E1" to which Exh. "W" was tied had been set aside. It was not made by a licensed surveyor. It shows some farms marked on it presumably by the D.O. 10

Refers to Exh. "T13," page 40 (Record p. 165). Submits that the Plaintiff's father could not have stated that he washed the feet of all the Ekiti Obas. Submits that the Alawe has taken action at the first opportunity because he was a subordinate of the Ewi up to 1946.

Extent of Land in issue.—Agrees onus of proof on the Plaintiff to give evidence of tradition and of acts of ownership sufficiently numerous to justify the conclusion that he is the exclusive owner of the land he claims. 20

Tradition—Plaintiff's ancestor left Ife several centuries ago and came to the present site and appropriated a large area of land of which the area in dispute formed a part; that Ewi came and was given a portion of Ilawe land; that a boundary was made between Ilawe and Ado people with Atori, Peregun trees and heaps of stones; that the boundary then made is the one shown on Exh. "A" edged purple. The surveyor saw the Peregun, Atori and Irosun trees which had become big and must have been planted many years ago. Regarding the heaps of stones, he believed they were conveyed to the area from some other place. On the other hand, Defendants say Alawe was a servant of the Ewi, taking care of his bathroom; that he was sent to Igunrin after sometime, and later given land after the Benin war at Ilawe between Igbara Odo, Igede and Odo; that boundary marks were made all along the boundaries at close intervals. 30

There is evidence of the planting of Peregun, Irosu, Atori trees from Igbo Amadin to Ilepupa. Asks the Court to accept Alawe's evidence as regards boundary marks as the boundaries are still there—

What evidence did the defence offer? They are surprised the boundary marks exist as shown on Exh. "A." Submits that the evidence as to the boundary is unassailable and has not been assailed.

Submits evidence has been led that the boundary exists between Igbo Amadin and Igbo Asaw. Evidence of defence contradictory—even if their own story is accepted. 40

Suggests the evidence that Ado gave Ilawe land is an afterthought. The only witnesses to the boundaries are the Ewi and the Akitipa.

He asks the Court to ignore the evidence of the Deji, Ologotun and the Alara as regards the extent of Ado land. None of them could say anything as to the extent of land given by the Ewi to the Alawe, as alleged by the defence.

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The evidence of the Ewi, he submits, was vague. He alleged that Peregun trees were planted at the four corners of the land but that is unsupported.

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Reply by
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10 The Akitipa testified about provincial and district boundaries. District boundaries have Pereguns at close intervals. According to him there are Peregun trees along Oshun stream up to Oruwo River—these trees were in fact planted in 1928.

The defence would not co-operate to make a plan. He asks the Court not to believe the evidence of the Ewi. With regard to western boundary on Exh. "W," there are only a few Peregun trees. Submits that Peregun trees shown on Exh. "W" must have been planted to indicate boundaries of lands owned by individuals.

20 The D.O. deviated from the supposed ancient boundary in Exh. "W." From A—E only 6 Peregun trees were planted. No Peregun trees shown at the top of the north of land shown in Exh. "W." He asks Court to hold that the boundaries alleged to have been under the Defendants' ancestors are a recent invention.

The old Alawe was deported in 1925 long before Aporio took action in 1928 and he could not have thought of planting Peregun, Atori and Irosu trees in the bush to mark boundaries.

No boundary between Igede and Ilawe is shown on any plan. Boundary mark made in 1933 following and ancient boundary is, according [sic] to the Ewi, near Okuta Olomo; which is in the boundary shown on Exh. "A" by the Plaintiff, undisputed area is shown on top of land in dispute in Exh. "W" and the left side of it shows land of Igede people.

30 Boundary mark was shown to the D.O. before he marked the boundary line with a heap of stones near Okuta Olomo.

The Ewi denied that boundaries were marked in ancient times with many Pereguns; the Akitipa's evidence did not agree with his.

Acts of ownership—not in dispute—Ilawe people farm all over the land in dispute, though called trespassers by the Defendants. They persist in using the land in spite of the cases in Court.

40 He asks the Court to accept evidence for the Plaintiff that Ilawe people have been using the land in dispute from time immemorial. The Alawe's evidence that the majority of the people on the land is Ado is a *lapsus linguae*. Even if Ados are in the majority, the Plaintiff's case is that they came on the land after Afinbiokin was deported. The Alawes are still on the land and those of them who gave evidence should be in a position to say how many people of both sides are on the land now.

The timber royalties are paid to the Alawe who issues permits. The Ewi issued the permit before because he was the overlord.

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Reply by
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After Shagamu was separated from Ijebu Ode, Shagamu collects its own revenue and control its own land.

Odo : Ilawes say that Odo is a farm settlement created by Odo people living at Ilawe ; that Ado people invaded the place after Afinbiokin's episode. Akitipa is meant to be a thorn in Ilawe's side.

Ados, on the other hand, say that Odo was an old Ado town broken up by Benin and Oyo wars, when the inhabitants scattered. Asks Court not to believe that Odo people at Ilawe refused to return to their homes within 6 miles. Asks the Court to accept Plaintiff's story as to the origin of Odo. 10

The Ados say the Odos in Ilawe were not allowed to farm at Odo because they paid their taxes to Ilawe and not to Odo. Asks Court not to accept this theory. Odo not mentioned in the Intelligence Report as a town.

Judgments : Asks the Court to attach no value to them because they were all tainted with bias and partisanship ; excepting the judgment on appeal to the D.O. and the Resident. To assess the value of the judgments one must look at the political background—he reads page " E22," paragraphs 55, 56 and 57 of Exh. " B2." When Apoiro sued in 1929 there was no chief in Ilawe. The Judges were all Ado people. Court 20 should hold that they were all prejudiced people.

Akitipa's cases are based on 1928 case. He submits that the judgments are not binding on the Plaintiff in the present case ; they were judgments inter parties—the Plaintiff did not derive his title from any of the parties in the previous actions. The capacities in the cases are different. The Alawe represents the entire people of Ilawe. Exh. " E1 " was not tied to any plan and therefore has no legal effect.

Refers to 13 Halsbury's Laws of England, Hailsham edition, pages 426, 428, 430, 432, paragraphs 479, 480, 482 and 485. 11, N.L.R. page 82 see page 85 last three lines of the penultimate paragraph. Submits that plea 30 of *res judicata* is untenable.

He submits that the Ilawes were sued not for declaration but for trespass. The Ilawes farmed up to the boundary in Exh. " A " but not beyond—Exh. " W " shows the same fact. They appeared before their political enemies.

No special damages claimed—Court could grant general damages if Court held there is trespass.

Submits that evidence is overwhelming that the land in dispute is Ilawes and asks for judgment.

Judgment is reserved.

(Sgd.) O. JIBOWU,
Judge 21/3/51.

40

No. 45.
JUDGMENT.

*In the
Supreme
Court of
Nigeria.*

This is an action transferred to the Benin Judicial Division of the Supreme Court of Nigeria from the Ekiti Divisional Court by an order of the Resident, Ondo Province, dated the 3rd December 1949, under section 25 (1) (c) of the Native Courts Ordinance No. 44 of 1933.

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The Plaintiff claims “(1) Declaration of title to all that piece and parcel of land situate and being between the town of Ilawe and Ado Ekiti in Ekiti Division, Ondo Province, Nigeria, bounded on the first side by
10 ‘Igbo Amadin,’ on the second side by ‘Ile Pupa,’ on the third side by ‘Agbe,’ and on the fourth side by ‘Oke Isapa.’

(2) £100 being damages for trespass on the said land committed by the Defendants through their people of Ado Ekiti.

(3) Injunction to restrain such trespass.”

Pleadings and plan of the land in dispute were ordered and filed.

The Plaintiff’s case is that his ancestor, the first Alawe, left Ile Ife some centuries ago and founded Ilawe; that the first Ewi of Ado also migrated from Ile Ife with his people and was granted land to settle on by the then Alawe who owned all the land in the district; that a boundary
20 was then made between Ilawe people and Ado people; that the Alawe and his people exercised rights of ownership over the whole land in dispute and were in exclusive possession until about 25 years ago when Igede people who were and still are subjects of the Ewi of Ado entered on the land in dispute with the result that the Ilawe people made complaints to the District Officer who, with the consent of both parties, marked the boundaries between Ilawe and Igede with heaps of stones which followed the ancient boundary made between the Ilawe people and Ado people; that about 16 years ago the people of Igede and Ado Ekiti, and the agents and servants of men claiming through the 2nd Defendant entered the land
30 in dispute and succeeded in evicting some of the Ilawe farmers on the land and remained on the land in spite of the incessant protests by the Alawe and his people; that the Ilawe people have, from time immemorial, been cultivating extensive portions of the land in dispute, growing kolanuts, cocoa, bananas, yams, maize and other crops, and reaping palmfruits on the land in dispute; that royalties paid on timber felled on the land in dispute are paid into Ilawe Revenue.

A plan of the land in dispute is marked Exh. “A” and paragraph 4 of the Plaintiff’s Statement of Claim reads:—

40 “The land which is the subject matter of this action is bounded on the West and South by the remaining land of Ilawe people, on the North and North-west corner respectively by the lands of Igede and Ara people, and on the East by the land of Ado Ekiti people, and as is shown and more particularly defined in the survey plan attached and filed herewith edged therein pink.”

On the other hand, the 1st Defendant claims the whole of the land in dispute and alleges that the ancestor of the Plaintiff was a servant of the Ewi who was allowed to live at Igunrin before the Benin war and was after the

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war granted land bounded by Igbo Orioke on the Igede side, by Igbo Ara on the Ara side, Ita Ekun on the Igbara-Odo side and Oke Isapa on the Odo side ; that he still retains the ownership of the land in dispute and was paid tax, tributes and royalties on the land ; he alleges also that the people of Ado were on the greater portion of the land in dispute and had chiefs of their own, both male and female, before they were scattered by inter-tribal wars which made some of them to settle at Ilawe in a quarter land known as Odo quarter, made others to settle at Igede and the rest to remain on the land.

The 1st Defendant denies that Igede people trespassed on Ilawe 10 land and states that Ilawe people trespassed on Igede land and were sued to success for the trespass by Igede people ; that the 2nd Defendant, head chief of Odo, had sued Ilawe people for trespass to Odo land and obtained several judgments against the Ilawe people, and that the Ilawes who remain on the land are paying Ishakole.

The 2nd Defendant pleads *res judicata* in respect of the judgments he had obtained on some portions of the land in dispute which are Ado Ekiti land.

The Defendants deny paragraph 4 of the Plaintiff's Statement of Claim and put him to the strict proof thereof. 20

The 1st Defendant denies that there was any boundary made between Ilawe people and Ado people and says that the boundary made in 1933 by the District Officer was between Ilawe people and Igede people, who were both his subjects.

The questions this Court is called upon to decide are :—

- (1) which of the two parties gave land to the other ?
- (2) Was there a boundary made between them ?
- (3) Is Odo Ado land or Ilawe land ? and
- (4) What is the effect of the judgments obtained by Igede people and the 2nd Defendant against Ilawe people in respect of 30 part of the land in dispute ?

At the conclusion of the evidence on both sides, the learned Counsel for the Defendants submitted that paragraph 4 of the Plaintiff's Statement of Claim shows an entirely different piece of land from the one claimed on the writ of summons, and that the Plaintiff's case must, therefore, fail as the writ of summons has not been amended.

An examination of the plan Exh. " A " reveals that Agbe and Ilepupa are outside the land edged pink. This confirms the submission that the land claimed on the writ of summons is not identical with the one claimed in paragraph 4 of the Statement of Claim and shown on the plan Exh. " A." 40 It, therefore, follows that even if the Plaintiff has succeeded to prove his case as per paragraph 4 of his Statement of Claim and the plan Exh. " A," judgment cannot be entered for him on his writ of summons as it stands.

For the Plaintiff it was submitted that Order 20 rule 4 of the English Supreme Court Rules applies.

That rule reads : “ Whenever a Statement of Claim is delivered the Plaintiff may therein alter, modify, or extend his claim without any amendment of the indorsement of the writ.”

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It was submitted that the writ of summons in this case was endorsed generally and that it was therefore not necessary to set forth the precise ground of complaint or the precise remedy or relief to which the Plaintiff considers himself to be entitled as provided by Order 3, rule 2, of the English Supreme Court Rules, and that the Plaintiff is permitted in his subsequent Statement of Claim to alter, modify, or extend his original claim to any extent, and to claim further or other relief, without amending his writ.

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It was further submitted for the Plaintiff that the Rules of the Supreme Court applies to any case transferred from the Native Court to the Supreme Court as soon as the order of transfer becomes effective.

I agree with the submission of the learned Counsel for the Plaintiff that the rules of the Supreme Court of Nigeria applies to this case as soon as the order of transfer becomes operative.

The contents of the writ of summons satisfy the provisions of Order 2 rule 2 of the Rules of the Supreme Court of Nigeria which provides that
20 “ the writ of summons shall contain the name and place of abode of the Plaintiff and of the Defendant so far as they can be ascertained and that it shall state briefly and clearly the subject matter of the claim, and the relief sought for, and the date (called return day) and place (called the return place of hearing).”

The endorsement on the summons is therefore a general one.

Order 32 rule 1 of the Rules of the Supreme Court of Nigeria provides that written pleadings shall be ordered in all suits unless the Court considers in any particular suit that written pleadings are unnecessary. Our Rules of Court do not make a similar provision to the English Order 20 rule 4
30 as to what should happen when there is a discrepancy between the writ of summons and the statement of claim. In such a case, I agree with the submission that the English Rule will be applicable.

Order 20 rule 4 of the English Supreme Court Rules does not, however, apply to a case in which the Statement of Claim completely changes the cause of action endorsed on the writ of summons without amending the writ.

The case of *Cave versus Crew*, reported in 68 L.T.R. at page 254 is an authority for the proposition that a plaintiff may not introduce in his Statement of Claim a fresh cause of action different from the one mentioned
40 in his writ of summons without amending the writ of summons.

The writ of summons in this case refers to a piece of land bounded by “ Igbo Amadin,” “ Ile Pupa,” “ Agbe ” and “ Oke Isapa.” One naturally expects that the Statement of Claim and plan will refer to the piece or parcel of land so described in the writ of summons ; but we find the Statement of Claim referring to the boundaries shown on the plan Exh. “ A,” which differ materially from the boundaries indicated in the writ of summons.

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In an action for the declaration of title to land, it is necessary that the boundaries of the land in dispute should be defined, and the plaintiff in such a case must give, on the writ of summons, an indication as to the land in respect of which he is making a claim.

I agree that he need not specify the boundaries on the writ and that it would be sufficient if he gives such description of the land as will make the Defendant know the land being claimed ; e.g., if he endorses the writ for a declaration of title to " that piece or parcel of land the dimensions and abuttals of which are shown in the plan to be herein filed " or " to a piece or parcel of land known as No. 2, Johnson Street, Lagos," as the 10 case may be.

When, however, the Plaintiff specified the boundaries on the writ of summons, and he mentions different boundaries in his Statement of Claim and plan, he thereby alters his claim, and indorse. The alteration goes to the root of the action as the cause of action is thereby changed or altered.

I, therefore, hold that the alteration, modification, or extension of the Plaintiff's claim in the Statement of Claim, as supported by the plan Exh. " A," is not within Order 20 rule 4, and therefore required the amendment of the writ of summons. 20

The learned Counsel for the Plaintiff has asked the Court to exercise its powers of amendment under the provision of Order 33 of our Supreme Court Rules if his submission under Order 20 rule 4 of the English Supreme Court Rules is not upheld.

Under this order, the Court has a discretion to amend any proceedings before it at any stage of the proceedings, either of its own motion or on the application of either party for the purpose of determining the real question or questions in controversy between the parties.

The principle to be borne in mind is whether the amendment can be made without embarrassment or prejudice to the other side. 30

In this case, it cannot be suggested that the Defendants were taken by surprise or embarrassed by paragraph 4 of the Plaintiff's Statement of Claim to which they pleaded. Both parties conducted their case on the basis that the claim was as stated in paragraph 4 of the Statement of Claim.

After the case had been fought to the finish on this basis, it appears to me that the matter in controversy should be decided on the merits, and that the Plaintiff's action should not be thrown out on the technical objection raised, which can be met by amendment by the Court, to avoid multiplicity of actions. 40

I, therefore, propose to amend the writ of summons and to award to the Defendants the same costs as I would have granted to them if the Plaintiff's claim is being nonsuited.

The Court therefore amends the writ of summons, in exercise of its powers under Order 33 of the Rules of the Supreme Court of Nigeria, by striking out the words " Bounded on the first side " to " Oke Isapa "

in the first claim on the writ of summons, and by substituting therefor "Bounded on the West and South by the remaining land of Ilawe people, on the North and North-west corner respectively by the lands of Igede and Ara people, and on the East by the land of Ado Ekiti people, shown and more particularly defined in the survey plan to be filed."

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The Defendants are granted 50 guineas costs of this amendment.

Now coming to the matters in issue, there is on record traditional evidence as to how the ancestors of the Plaintiff and of the 1st Defendant came to settle at Ilawe and Ado Ekiti respectively.

10 It is common ground between the parties that the first Ewi was a son of Oduduwa and was one of the sons of Oduduwa who, according to Yoruba mythology, were given crowns and sent out of Ife to found their own kingdoms.

The Plaintiff alleged that the first Alawe was a grandson of Oduduwa through a female child and that Oduduwa sent him out of Ife to found a Kingdom of his own.

20 The Oni of Ife's evidence supported the Plaintiff's theory that the 1st Alawe was given a crown when he was leaving Ife, but differed from the evidence of the Plaintiff (1) in the relationship of the 1st Alawe to Oduduwa, as the Oni stated that he was a great grandson of Oduduwa while the Plaintiff stated that he was a grandson; (2) as regards the person who gave him a crown; the Oni's evidence is that the crown was given to him not by Oduduwa himself as alleged by the Plaintiff, but by his successor, Ogbogbodinrin oni, alias Obalufon.

The Ewis, it is admitted by the Plaintiff and his witnesses including the Oni of Ife, have always been crowned heads.

30 The Alawe does not wear a crown, and there is overwhelming evidence that the attempt of the last Alawe, Afinbiokin, the father of the Plaintiff, to wear a crown met with the disapproval of the Ewi of Ado Ekiti and of the other Obas of Ekiti land. When the matter was referred to the then Oni of Ife as to whether he was entitled to wear a crown, the Oni's reply was in the negative as shown at pages 399-400 of Exh. "T1." (Record p. 151.)

40 The Plaintiff's case suggests that his ancestors lost their crown during the inter-tribal war with the Benins. It was not Ilawe alone that was overrun by the Benins about 1815, Ado Ekiti, the territory of the Ewi, also suffered the same fate. The inter-tribal wars did not make the Ewi lose his crown, and he has continued to wear his crown since the inter-tribal wars ceased up till now. The Plaintiff could not give a satisfactory explanation as to how, if his evidence is true that his ancestors were wearing crowns, they ceased to wear crowns since the Benin war ended. The present Oni, who testified that the Alawes were entitled to wear crowns, did not know that they lost their crowns before the advent of the British Government, but he knew that the Plaintiff petitioned the Government to allow him to wear a crown.

The evidence that the first Alawe had a crown which entitled him and the successive Alawes to wear crowns is not convincing, and the fact

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that the successive Alawes since 1815 have not been wearing crowns appears to me to be positive proof that the Alawe was and is not a crowned head.

Page 805 of Exh. " T3 " (Record, p. 154) shows that when the Plaintiff wore a crown and beaded slippers to the meeting of the Ekiti Obas in 1947, he was divested of the kingly paraphernalia which were seized but were subsequently returned to him.

Indeed page 985 of Exh. " T4 " (Record, p. 156) shows that His Excellency the Governor, in May 1949, rejected the Plaintiff's claim to wear a crown. 10

The evidence of the Plaintiff's witness Osokiti is to the effect that the Alawe was a Bale before the advent of the Europeans, and that goes to prove that although the Alawe was the head of his community, he had not reached the dignity of an Oba.

It is a matter of common knowledge that in Yoruba land a Bale must owe allegiance to an Oba.

The evidence of the Oni shows that the Plaintiff's allegation that the first Alawe left Ife before the first Ewi could not have been true as the Ewi was given a crown and sent away from Ife by Oduduwa himself. The story that the first Alawe was sent out of Ife with a crown by the successor to Oduduwa could not have been true in view of the evidence referred to above. 20

I am not impressed by the Plaintiff's tale as to the exploits of the first Alawe after leaving Ife until he settled at the place now known as Ilawe.

The 1st Defendant's case is that the first Alawe accompanied the first Ewi from Ife as a servant, who was the officer in charge of the Ewi's bathroom ; that he was later allowed to settle at a place known as Igunrin from where he and his followers were driven by the Benins ; that they returned after the wars to Igunrin from where, with the permission of the then Ewi, they settled at the site now known as Ilawe. 30

This history was not accepted by the Plaintiff.

The Deji of Akure gave evidence supporting the story that the Alawe was a servant of the Ewi and that it was his duty to wash Ewi's feet.

There appears to be some truth in the allegation that the Alawe was connected with the palace of the Ewi. The Plaintiff's father Afinbiokin, when charged before the Ekiti Judicial Council for not recognizing the Ewi as his overlord was reported at page 23 of the Minutes of the Judicial Council Exh. " T10 " to have said, " Of course when the District Officer called me before the Ewi, and asked me to salute him, I refused and I said *Ewi is a small boy* and that it was I that bathed him out of blood, when born." 40

It is a matter of common knowledge that, before the advent of the British Government, two Yoruba Obas did not meet, and the evidence of the Deji on that point is a correct and true account of Yoruba custom. It was then impossible for an Oba to have visited the palace of another Oba to give the newborn babe of the brother Oba his first bath.

Ilawe is about 9 miles from Ado Ekiti. There were no motor cars and no motor road between Ilawe and Ado Ekiti at the time the Defendant's father alleged that he bathed the last Ewi when he was born, as the motor road between the two towns was made in 1924. The Defendant's father could not have done the long distance to give the new born babe his first bath if he was not under some obligation to do so. The mere fact of the visit to the palace of the Ewi confirms other evidence that he was not an Oba or crowned head.

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Owing to the dignity of the Oba, one can hardly expect him to bathe his own new born babe much less to travel out of his own domain to bathe the new born babe of another Oba.

It is reported that while the Resident was reviewing the decision of the Judicial Council against Plaintiff's father, the Resident asked the Plaintiff's father whether what he had told Captain Pullen, the District Officer, that he had been washing the feet of the Ewi of Ado is true or not, the Alawe was reported to have answered "Yes. I confirmed the statement." See the last three lines of page 38 (Record p. 164 lines 24-26) and the top line of page 39 of Exh. "T10."

In the Minutes of the Ekiti Judicial Council held on 4th March 1925, see Exh. "T13" at page 42, it was reported as follows: "The Resident then explained to the Alawe that he (the Alawe) had stated that he had washed the feet of the Ewi and then asked the Council if this was the position of a minor or that of a Superior. The Council then replied that this was the work of the minor.

The Alawe then replied that he was the washer of the feet of all the Ekiti Obas."

I have been asked by the learned Counsel for the Plaintiff to hold that the Alawe could not have been reported correctly because there is no evidence that he had, in fact, washed the feet of all Ekiti Obas. The Deji of Akure was present at the meeting at which the Alawe stated that he had been washing the feet of the Ewi and testified about it. I have no doubt that he is a witness of truth and I accept his evidence which supports the minutes recorded. I am satisfied that the minutes recorded the proceedings of the Council Meeting correctly.

There is, however, no evidence in support of the allegation that the Alawe had been washing the feet of the Ekiti Obas. It is not claimed that the Alawe had any connection with any Ekiti Oba other than the Ewi. This is reflected in the Council's reply to Alawe at page 40, item VII of Exh. "T13" (Record p. 166), which reads:—

"The Council reminds the Alawe of his position as a mere Bale, and should therefore properly behave himself before the District Heads. It points out to him that he has been under the Ewi from generations and if he disagrees he should prove it by production of remnant of an old crown worn by his fathers in the past."

The Ekiti Obas, who expressed this view, must have been conversant with the history of the Alawe and his connection with the Ewi.

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The Plaintiff in this case is bound by the above admissions made by his father, Alawe Afinbiokin.

The evidence of the 1st Defendant shows that Ado Town has several sub-towns under it. This is supported by the Intelligence Report of Ado District, Exh. "B1," and its appendices, Exhs. "B2-B4." Ilawe is shown as one of the sub-towns of Ado, and is referred to at pages E20-E27 of Exh. "B2" (Record, p. 133), pages A21-A22 of Exh. "B3" (Record, p. 139), and at page B6 of Exh. "B4" (Record, p. 143).

Section 73 of Exh. "B1" shows the Major E. R. Reeve-Tucker was the first travelling Commissioner to be stationed at Oka Imo, Ilesha, in 10 1899 when the North Eastern District was formed.

On the 21st June, 1900, Ekiti Council for members of the Ekiti Confederacy was formed, and the Ewi was the third of the Ekiti Obas in order of precedence according to section 74 of Exh. "B1."

Section 54 of Exh. "B2" shows that Major Reeve-Tucker visited Ilawe Town on the 18th January, 1901, and spent a night there. Although Ilawe was placed under Ado, the Alawe did not then suggest that he was an independent Oba as some other Obas did: in fact, he did not assert his independence until the 23rd August 1923. There was, however, no open defiance of the Ewi until November, 1924, when the Alawe refused, when 20 called upon by the Ewi, to contribute towards the cost of rebuilding the Ewi's palace, which was the prelude to the clash between the Alawe and the Ewi, which ultimately resulted in the deportation of the Alawe in 1925 to Abeokuta, where he died in 1929.

It appears that the Ewi would not have called upon the Alawe and his people for a contribution towards the rebuilding of the Ewi's palace if the Alawe had been an independent Oba.

The Alawe, in fact, was not an independent Oba, but a Bale, who had to render some service to his Oba, the Ewi.

The Plaintiff's witness, the Oni of Ife, even recognised the fact that the 30 Alawe, while under the Ewi, must be rendering the Ewi some service although he did not know what service he actually rendered.

Section 152 (2) at page 53 of Exh. "B1" (Record, p. 127) shows that, in the past, it was the duty of Ilawe people to repair the outer court of the Ewi's palace and also the festival meeting place known as "Ubamote."

It appears that what the Ewi did was to ask for money in lieu of personal service.

The Plaintiff got himself installed on the death of his father as the Alawe and was prosecuted and sent to six months' imprisonment for setting himself up as the Alawe without the prior approval and consent of the Ewi. 40

Ilawe was separated from Ado in 1946, but in spite of this fact, the Plaintiff and most of his witnesses denied that they were ever under the Ewi.

In the circumstances, I am unable to accept the evidence of the Plaintiff and of some of his witnesses that they have always been independent of the Ewi.

I accept the traditional history of the Alawe and of his people in relation to the Ewi of Ado as related by the 1st Defendant and by the Deji of Akure, and as can be gathered from the Intelligence Report of the Ado District and its appendices and confirmed by the admissions made by Plaintiff's father.

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The Plaintiff alleged that Alawe Akubieleyo gave land now occupied by Ado people to Ewi Atakumase.

The 1st Defendant denied this and stated that he did not know any Ewi who went by the name of Atakumase.

10 Page 15 of Exh. " B1 " gives the name of the first Ewi of Ado as Awamaro. Page 17 of Exh. " B1 " shows that the Benins attacked Akure, Ilawe, Igbaraodo and Ado at the same time, round about 1815, which is evidence of the fact that Ado people had been on their present site before 1815.

The Plaintiff admitted that Ilawe was attacked by the Benins during the reign of Ogunbe, who was the 8th Alawe.

This is confirmed by the 1st Defendant and by section 53 of Exh. " B2."

20 On the Plaintiff's own showing, Akubieleyo was the 3rd Alawe after Ogunbe. He therefore became the Alawe after the Benins had overrun Ado and Ilawe and other places referred to above.

The Plaintiff's evidence and that of his witness Osokiti that Alawe Akubieleyo gave land to the 1st Ewi and marked out a boundary between them cannot, therefore, be true, and I reject the evidence.

It appears that in those early days of settlement of Ado people at Ado Ekiti, there was plenty of unoccupied land around, and that the Ewi gave permission to some of his relations and subjects to go out to the unoccupied lands and found settlements, which grew in later years to be subtowns of Ado Ekiti.

30 I have already accepted the evidence of 1st Defendant and of the Deji of Akure, which the admission of the Plaintiff's father confirmed, that the Alawe was originally a servant of the Ewi until he went out to found a settlement of his own, and I do not, therefore, find any difficulty in accepting the 1st Defendant's evidence that Ilawe was founded in the same way as the other subtowns of Ado.

This brings me to the point as to whether a boundary was demarcated between the Ilawe and the Ado people.

40 The theory that Alawe Akubieleyo demarcated a boundary between the Ilawe and Ado people has been exploded and the 1st Defendant denied that there was any boundary demarcated by any Alawe between the Ado and the Ilawe people.

The plan Exh. " A," filed by the Plaintiff, however, shows a boundary line running from a Kola tree on the road to Ara down to Ilepupa.

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It appears from the evidence of the Surveyor who made the plan and from the evidence of his assistant that about 250-300 Ilawe people looked in the forest for their marks before they cut out the boundary which they surveyed for this case.

The area edged pink on Exh. " A " is the land in dispute. One side of the land in dispute is well marked with Iroko, Atori, Irosun, Peregun, and other kind of trees as well as with heaps of stones, and that is the side coloured pink and purple.

The other side of the boundary is just edged pink without any special feature. 10

It is surprising, however, that there is no tree or any other mark on the spot where the alleged boundary between Igede and Ilawe people started.

Exh. " T6 " is a file devoted entirely to the boundary or land disputes between Ilawe and Igede people.

A District Officer named Ambrose is reported, at page 1 of Exh. " T6 " (Record p. 157), to have suggested River Asa as the boundary between Ilawe and Igede men in 1911; the same page of the exhibit shows that there was another boundary dispute in 1926 which the Ewi referred to the District Officer, because he could not settle it. 20

The last paragraph of the note at pages 33 and 34 of Exh. " T6 " shows that the Ewi, in 1930 or thereabouts, caused a boundary running along the bottom of the East-West valley South of Igbo Oroke to be made between Igede and Ilawe people.

The trouble did not end there as the District Officer, Ekiti, Mr. Swayne, had to act as arbitrator to fix the boundary in 1933.

It appears from the evidence of the 6th Plaintiff's witness and of the 1st Defendant that the boundary was fixed near Okuta Olemo and marked with heaps of stones by the District Officer.

This boundary, according to the 1st Defendant, fell on the original 30 boundary which he made between the two people.

The learned Counsel for the Plaintiff submitted that the stones were placed on the ancient boundary line made by Alawe Akubieleyo, but such an ancient boundary has been disproved.

The fact that a heap of stones was placed at Okuta Olomo is no proof of the alleged boundary line from the Kola tree on the way to Ara up to that point.

There are other heaps of stones and sand mounds shown on the purple coloured boundary, but there is no evidence as to the person or persons who placed them there. 40

It is a matter of common knowledge that, before the advent of the Europeans in this country, rivers, streams, hills, rocks, and trees were used as boundary marks, and the marking of boundaries with stones and mounds were unknown.

At page 25 of the exhibit " T6 " (Record p. 158) is the agreement entered into in 1933 by Ilawe and Igede chiefs, and the boundary then fixed was said not to be final.

Evidently the boundary was not accepted as the letter dated 13/3/36 at page 43 of Exh. " T6 " (Record p. 159) seems to suggest as it states that the Judicial Council had fixed a boundary which the Ilawes were said to have gone over.

A letter from the Alawe dated 15/4/37 is at page 44 of the same exhibit (Record p. 159), in which he stated, *inter alia*, that the District Officer had made boundary of the farmlands about 4 years previous.

Page 64 of the exhibit (Record p. 160) shows that in 1938 there was further trouble about boundary which the 1st Defendant referred on the 5th September, 1938, to the District Officer, who was asked to demarcate a boundary.

There were frictions between the parties right on to 1940 according to Exh. " T6."

I do not need to multiply other instances of boundary disputes between the Ilawes and the Igedes, but the significant point about the dispute is that, at the time the Ilawe people could not have known of the alleged boundary so well marked with trees, sand and stones, reference to which then would have saved both sides, the District Officers and the Ewi a lot of trouble.

It does not appear to me that such an alleged boundary could have existed without the traditional history of its existence being handed down from generation to generation. It does not appear likely to me that the Ilawes in those years could have been ignorant of the existence of the alleged boundary if it then existed; yet there was no reference to any ancient boundary demarcated by an Alawe.

Furthermore, the alleged boundary includes in Ilawe land a farm settlement known as Odo, where several Ado men and women have been created chiefs. The 2nd Defendant, the Akitipa, is the head Chief of Odo.

In respect of Odo land, there were several Court cases between Odo people and the Ilawes, In suit No. 585/28, Exh. " M " Aponio, the Sapetu of Odo sued 12 Ilawe men for planting cocoa and kola trees on his father's land. The Defendants admitted that the land was Odo land, and there was an injunction granted against their planting live trees on the land. A boundary was demarcated between the Odo and the Ilawe people.

In Suit No. 13/1939, Exh. " G," the 2nd Defendant sued Sam Oni of Ilawe for recovery of possession of his father's farmland at Amugbadagbe, Odo, and obtained judgment.

The Defendant appealed to the District Officer's Court, and the judgment of the District Officer's Court in Exh. " H " reads :—

" Judgment of the Ado Court for Plaintiff for his land upheld.

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The land in question is that enclosed by the Oruwo, Oshun and Agbeji stream. The Oshun stream between its confluence with the Oruwo and Arige streams is the boundary between Odo and Ilawe."

The Defendant appealed to the Resident's Court where his appeal was dismissed. See proceedings in Exh. "J."

In Exh. "K," three Odo men were charged with stealing 106 pods of kola nuts from Akomilafe's farm at Ahereushin and the 2nd Defendant's ownership of Ahere Ushin was confirmed by the discharge of the accused and by the kola nuts being ordered to be delivered to the 2nd Defendant. 10 This was in 1943.

In suit No. 10/34 of 1944, Exh. "K" the 2nd Defendant sued O. Atobumeji for 6 years arrears of rent and for possession in respect of Odo land. The matter was settled out of Court on the terms that the Defendant should pay £15 and £5 5s. costs. The Plaintiff withdrew his claim for possession.

In Suit No. D/2/45, Exh. "E," the 2nd Defendant sued and got judgment against 15 Ilawe men for trespass to Ahere Ushin and Agbeje Odo. This was confirmed on appeal by the District Officer, Ekiti, in Exh. "E1," and by the Resident in Exh. "F." 20

In Suit No. 13/47, Exh. "D," the 2nd Defendant sued 17 Ilawe men for trespass to Ahere Ushin, Odo Igede boundary and got judgment.

In Suit D9/40, Exh. "C," Balogun Akitola of Igede sued three Ilawe men for trespass to his farm at Oko Odo and got judgment which was confirmed by the District Officer and by the Resident, Ondo Province, in 1942.

In 10/46/48, Exh. "L," Oguntuase Atomeji withdrew his action in the Magistrate's Court, Ado Ekiti, against the 2nd Defendant for damages for trespass to a farmland at Utalila (Ado) and admitted 2nd Defendant's claim of £5 for arrears of Ishakole for 1946 and 1947 in respect of his 30 farmland at Odo.

Plan Exh. "A" shows land of Oguntuase Atomeji, subject matter of proceedings in Exh. "L," outside the land in dispute, but in the south eastern corner of the land in dispute.

Olu Balogun, Akinyemi, Komolafe, Agbelusi, Adubu Balogun, whose farms are shown on the eastern corner of Exh. "A" on the land in dispute, are men against whom the 2nd Defendant has obtained judgments.

The judgments obtained by the 2nd Defendant have not been set aside, and are, therefore, still in force.

The position then is that the Plaintiff has included in his plan lands 40 which courts of competent jurisdiction had declared to be Odo land and not Ilawe land.

It is significant that in all the cases in which the 2nd Defendant figured as Plaintiff, there was no suggestion that there was an old boundary made between Ilawe and Ado people which put Odo land within the land

of Ilawe people, although Exh. " A " now shows that the farms of Elero, Olu Balogun, Adubu Balogun abut on the alleged boundary put up in this case.

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Farm of Oguntuase Atomeji is shown as being bound on the eastern side by the alleged boundary planted thickly with Iroko, Peregun, Irosun trees and heaps of stones, but in spite of these, he withdrew the action he took against the 2nd Defendant and submitted to judgment on the counterclaim brought by the 2nd Defendant against him.

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The Plaintiff admitted that he knew that the 2nd Defendant sued
10 Adubu, Olu and Owoseni, and that they appealed to the District Officer and the Resident; that he knew that 2nd Defendant sued Adubu and 16 others, and that the Defendants went to gaol when they did not pay the judgment debt; that he knew the 2nd Defendant sued Sam Oni and 14 others, and of their appeal to the District Officer and to the Resident; that he knew when the 2nd Defendant sued Sam Oni asking him to quit; he stated that he then sent Elemo and Olukoso to the District Officer and before the Resident in Exhs. " H " and " J " respectively, and represented the Appellant before the Resident.

It is most incredible that the Elemo did not go back to tell the
20 Plaintiff the results of the appeals as alleged by the Plaintiff.

The Plaintiff further stated that his townspeople knew about the boundary, and he claimed that the lands in respect of which his people were sued are within his land. He stated further that he was patient then and that he advised his people to be patient as they had a Government.

It is impossible for me to believe the Plaintiff that although he knew the lands claimed in the various actions to be his land, yet he folded his arms and saw some of his people go to gaol for farming on lands which, according to him, they had a right to do; and that he was looking on complacently while his lands were being adjudged the property of the
30 2nd Defendant as Odo land.

I don't believe him that his townspeople knew about the alleged boundary shown in Exh. " A " and yet refrained from referring to it before the Native Courts, and before the District Officers and the Residents, who heard the appeals.

It is quite clear from Exhs. " H " and " J " that the Elemo, who was alleged to have been sent by the Plaintiff, did not refer to the alleged boundary in his evidence.

It is abundantly clear that the District Officer, Ado Ekiti, and the Resident of Ondo Province had and still have oversight of Ilawe, among
40 other places in the Province, and that they were and still are the men responsible for the administration of Ilawe. What other Government had the Plaintiff and his people for whom they were waiting according to the Plaintiff ?

In view of the foregoing, I am inclined to accept the evidence of the 2nd Defendant that the alleged boundary line shown on Exh. " A " did not exist between Ado and Ilawe.

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I don't believe that the boundary line shown in purple on Exh. "A" is genuine, and it appears to me that the Plaintiff and his people either discovered the Iroko, Irosun, Peregun, Atori, Obi Edun and Ekika trees which are of natural growth in the thick bush or forest or planted them or some of them, and so waited until they were fully grown to enable them to pass them off as a boundary line between themselves and the Ado people.

As for the heaps of stones, with the exception of the heaps of stones placed near Okuta Olomo in 1933 by the District Officer, Mr. Swayne, there is no proof as to how the other heaps of stones shown on Exh. "A" got on the alleged boundary line; but in view of my findings above, it appears to me that the Plaintiff and his people, without the knowledge of the Defendants, placed the stones on the land. 10

This brings me to the question whether Odo land belongs to Ilawe people or to Ado people.

If the Plaintiff has succeeded to prove the alleged purple boundary line, it would have been impossible to hold otherwise than that all lands south of the boundary line, including Odo land, belong to the Plaintiff and his people of Ilawe, but as the boundary line has not been proved, the Court must look for other facts pointing to the ownership of Odo land.

The Plaintiff claimed Odo land to be Ilawe land and yet disclosed great ignorance of the place. He admitted that he did not even know the people who lived there, although he passed through the place on his way to the District Officer at Ado Ekiti. He also admitted that the Chiefs of Odo are the chiefs of the Ewi. He alleged that his people farmed there, and that they were driven from there by Ado people. 20

It is clear from the evidence of Michael Ajakaiye, 4th Plaintiff's witness and clerk of Ilawe Council, who described Odo as "only a hut," that he has very little or no knowledge of Odo land.

Adeyemi Olode, the 5th Plaintiff's witness, only asserted that Odo is Ilawe land without giving any reason for saying so. 30

James Oluwafemi, Plaintiff's 6th witness, admitted that he did not go to Odo, but alleged that people from Odo quarter in Ilawe farmed there. He, however, did not know where their ancestors came from.

Asokiti, the 7th Plaintiff's witness, also stated that Odo quarter people in Ilawe farmed at Odo.

John Ojurongbe, Plaintiff's 8th witness, also admitted that he did not go to Odo.

The 9th Plaintiff's witness, Gabriel Dada, however, stated that Odo people are under the Ewi who put them on the land.

Gabriel Falade, the Plaintiff's 10th witness, testified that his father Olufinsuyi, had a hut at Odo, a long time ago, although he lived in Odo quarter in Ilawe, and stated that people in Odo quarter are not Ado people. 40

He testified that Ilawe is divided into six quarters, contrary to section 52 of Exh. "B2," which states that there are 7 quarters in Ilawe and the seven quarters are shown on the plan between pages A20 and A21 of Exh. "B3" (Record pages 139 and 140).

In giving the names of the six quarters into which Ilawe was divided, Gabriel Falade gave the names of the quarters as Oke Emo, Aye, Iso, Adin, Okebedo and Okepa; he, however, stated that Odo quarter is a part of Oke Emo. He did not know why the subquarter is known as Odo quarter.

10 The defence claimed that Odo was originally a town until the inhabitants were scattered by Benin and Oyo wars. They stated that some of the Odo people found refuge at Ilawe, which they made their home and refused to return to Odo; that the early refugees and their
10 descendants were allowed to farm on Odo land but as they refused to return to Odo and identified themselves with the Ilawes, they were then considered as strangers, who had to pay Ishakole before they could farm on Odo land.

The defence offers an explanation as to how Odo people happened to be at Ilawe, and I am satisfied from the evidence called for the Defendants that Odo people were and still are Ado people, and that the Odo people in Ilawe were originally Ado people who took refuge there and would not return to their people.

20 I am further satisfied that the Odo refugees in Ilawe lived together in Oke Emo quarter of Ilawe and made the place a subquarter of Oke Emo.

It is obviously to distinguish them from the natives of Ilawe who live at Oke Emo that the place where they live is known as Odo quarter in Oke Emo quarter.

The fact that the refugees from Odo lived, and that their descendants live, at Ilawe does not confer the ownership of Odo land on Ilawe people.

30 I accept the evidence of Ademesan, the Olugotun of Ogotun, 2nd Defendant's witness, that he had known Odo since about 50 years ago as Ado land, and that the chiefs of Odo were Ewi's subjects. He stated that he knew three Akitipas but not by name, and I accept this evidence also as I am satisfied he is a truthful witness.

I accept also the evidence of the Defendant's 4th witness, David Ajanifuja, that he was born at Odo about 55 years ago to Akitipa Adepunrun, who died about 15 years ago, and was succeeded by the 2nd Defendant. I accept his evidence further that his uncle Adegeye was the Akitipa before his father.

The evidence of Aporio, the Sapetu of Odo, in Exh. "M" shows that he had personally farmed on Odo land for about 50 years before 1928, and that his ancestors farmed there before him.

40 The evidence of Oluwasuyi, the Elejua of Ilawe and 6th Defendant in this case, is to the effect that he asked Aporio to give him land to farm on about 40 years before 1928. Aporio put the date at 20 years before the case. If Aporio's evidence is accepted as to date, then land was given to the Elejua to farm about 1908.

The allegation that the Ado people first went on Odo land and drove away the Ilawes after the deportation of Alawe Afinbiokin is therefore untrue, and I reject it.

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Page 67 of Exh. " B1 " shows that the compiler of the Intelligence Report of Ado District visited Ilawe and Odo between 14th and the 19th August, 1933.

At page A25 of Exh. " B3 " (Record, p. 141), Odo is shown as the 13th farm settlements under Ado farm settlements. The Alawe did not then claim Odo as Ilawe farm settlement.

I am satisfied from the evidence before the Court that Odo has always been a farm settlement of Odo people who are from Ado, and that the claim of Ilawe people to it is unfounded.

I now come to the effect of the proceedings and judgments tendered 10
in this case.

Mr. Awolowo for the Plaintiff asked the Court to take no notice of the judgments excepting those given by the District Officer and the Resident because they were tainted by bias and partisanship, and because the actions were taken at a time that there were no chiefs at Ilawe.

The first action taken by Odo people is suit 585/28, Exh. " M. " The case was heard on the 16th October, 1928, and judgment was delivered on the 16th January, 1929.

It is quite true that, following the deportation of Alawe Afinbiokin, some Ilawe chiefs who failed to recognise the overlordship of the Ewi were 20
prosecuted and imprisoned, but too much is being made of the political situation then existing in this case.

Paragraph 56 of Exh. " B2 " (Record, p. 135) referred to by the learned Counsel shows that 15 Chiefs of Ilawe were sentenced to two months' imprisonment each in April, 1927. These chiefs must therefore have been discharged from prison in June, 1927, long before Aporio, the Sapetu of Odo, took his action.

Furthermore, the Plaintiff was imprisoned in August, 1929, which was seven months after judgment had been given in the Sapetu's case. It is, therefore, incorrect, to suggest that there was no chief at Ilawe when the 30
Sapetu took his action.

A perusal of the proceedings in Exh. " M " will satisfy any fair minded person that the Sapetu was not actuated by any ill motive, but by a desire to prevent strangers from planting live trees on Odo land let to them. There was no dispute as to the ownership of the land, and the Defendants in the case included three chiefs of Ilawe, namely, the 1st, 4th and 6th Defendants.

The 6th Defendant, Chief Elejua, admitted that he was a tenant of the Plaintiff and that he was paying Ishakole. He did not claim the land which he admitted was Plaintiff's property. 40

The record of proceedings showed that the Sapetu did not sue because he wanted to recover possession of the land in dispute but because he wanted the Defendants to cease planting live trees on it.

All the Defendants admitted the Plaintiff's ownership. Boundary was then made between Odo and Ilawe people with Peregun trees.

The fact that there was no appeal from the judgment is, in my view, evidence that the Defendants were satisfied with the judgment of the Court.

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Now with regard to the judges who sat over the case, the record shows that they were the Odofin, the Ejigbo, the Sasere and the Egbedi. They probably were Ado Chiefs, but there is no evidence that they were personally interested in Odo land, the subject matter of the action. In my view, the mere fact that they were Ado people did not disqualify them from sitting as judges over a case between Ado people interested in Odo land and their opponents, the Ilawes.

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10 In my opinion, the suggestion of bias and partisanship is unjustified.

The next case is suit No. 13/1939, Exh. "G." This action was taken when the political troubles in Ilawe had ceased. The Plaintiff had been imprisoned, detained and allowed to return to Ilawe.

The allegation of the Plaintiff that he was detained for 5 years is untrue. Paragraph 56 of Exh. "B2" shows that he was allowed to return to Ilawe in September, 1932.

If the Ado people had intended to harass the Ilawes with litigations as suggested by the Plaintiff's Counsel, it does not appear to me that they would have waited for 10 years after the first action before going again
20 to Court.

There has been no proof that the judges in Suit 13/39 were personally interested in the subject matter of the action, and the record does not contain anything which can give rise to the suggestion of bias and partisanship made by the learned Counsel against the judges.

The judgment of the Court of first instance was confirmed on appeal, by way of rehearing, by the District Officer. The District Officer's judgment was confirmed on appeal by the Resident.

There is, therefore no ground on which I could ignore the judgment of the Court of first instance.

30 The next case is Suit No. D9/40, Exh. "C."

The fact that the Court of first instance assessed damages suffered by the Plaintiff at £20 is not evidence of bias and partisanship in the judges. Assessment of damages is a matter on which views may differ. The District Officer who reviewed the case thought the damages of £20 was excessive and reduced it to £12; but, the Resident who reviewed the District Officer's judgment considered £12 excessive. Was the District Officer also biased? No, as the Counsel for the Plaintiff did not make any such suggestion against him.

40 The suggestion of bias and partisanship has not been made out against the judges in Exh. "C."

In the same way the suggestion of bias made against the judges in charge 28/43 cannot be sustained.

It will be absurd to suggest that the Magistrate who dealt with Suit No. 10/34/44 was biased.

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The Defendants in Suit No. 13/47, Exh. "D," were sued in respect of "Ahere Ushin, Odo Igede boundary" in respect of which the Resident had given judgment on appeal in Plaintiff's favour in Exh. "F."

The representative of the Defendants, who gave evidence, admitted that they went again on the same land in respect of which the Resident had given his judgment in Exh. "F."

In view of this admission, there could have been no other judgment than judgment for the Plaintiff, and there is, therefore, no point in the suggestion of bias and partisanship made against the 1st Defendant who presided over the case with other Ekiti Obas. 10

In view of the 1st Defendant's evidence that the 2nd Defendant got his permission before he sued in respect of Odo land, he, the 1st Defendant, should not have presided over the case.

For the same reason, he should not have presided over Suit D2/45.

There was no appeal against Suit No. 13/47, Exh. "D," so the judgment stands and cannot be treated as a nullity.

With regard to Suit No. D2/45, an appeal from the judgment went to the District Officer and also to the Resident, both of whom, on rehearing, confirmed the original judgment by judgments in Exhs. "E1" and "F" respectively. There has been no appeal from the Resident's judgment in Exh. "F," and the judgment therefore stands. 20

There was no suggestion that the proceedings in Exhs. "K" and "L" are tainted in any way.

In all the cases, the Courts had jurisdiction to hear the cases, and the Defendants submitted to their jurisdiction.

The judgments are judgments of Courts of competent jurisdiction which have not been set aside. They are, therefore, valid and in full force.

It was submitted by the learned Counsel for the Plaintiff that the judgments do not bind the Plaintiff as he was not a party to them nor was he a privy of the Ilawes therein involved. 30

The question whether the judgments obtained by the 2nd Defendant and by Balogun Akitola of Igede against Ilawe people preclude the Plaintiff from litigating again the issues decided by the judgments has now become a matter of academic interest only because the question of "*res judicata*" raised by the 2nd Defendant on the pleadings was not taken as a preliminary issue to determine whether or not the judgments would estop the Plaintiff from raising in this case the issues decided by the judgments and the judgments were tendered only as part of the evidence for the defence. 40

It is incontrovertible that the Plaintiff was not a party to any of the previous actions and it therefore follows that the judgments would not estop him from bringing the points decided by them up for the consideration of this Court.

The judgments cannot be treated as a nullity as they afford evidence of the rights of ownership exercised by the Odo people on Odo land, which is part of the land now in dispute.

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I have already found as a fact that Odo land belongs to the Odo people, who are from Ado, and not to Ilawe people.

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continued.

In so far as Odo land included in the plan Exh. "A" is concerned, the judgments confirm the ownership of the Odo people and show that the Plaintiff has not got exclusive possession and ownership of the whole land in respect of which he sued.

10 The Plaintiff and his Counsel cleverly kept away from the witness box the Ilawe people against whom judgments had been recovered in respect of Odo land.

Although the names of some of them like Adubu Balogun, Olu Balogun, Akinyemi, Agbelusi, Komolafe, Oguntuwase Atomeji are shown on plan Exh. "A," they dared not show their faces in Court as the 2nd Defendant had recovered judgments against them in respect of lands shown on Exh. "A" as being theirs.

It is quite evident that they are not the owners of the lands bearing their names as the lands had been declared to be Odo land with its southern
20 boundary on the Oshun Stream which flows between Agbeji Stream and the Oruwo River.

The farms of the Plaintiff's witnesses Michael Ajakaiye, Adeyemi Olode, John Ojorongbe, Gabriel Dada and Gabriel Falade, who testified that they farmed on the land in dispute, are not shown on Exh. "A," although the Plaintiff's surveyor, Mr. Adekunle Coker, testified that he showed on Exh. "A" the farms of the Ilawe people shown to him. The absence of the farms on the plan appears to be evidence of the fact that the alleged farms with those of the alleged neighbours of the witnesses were not shown to the Surveyor.

30 In view of the Surveyor's Assistant's evidence that the Ilawe people told him that they had no new plantation on the land in dispute and that the whole land was occupied by Ado people, which accounts for some cocoa and kola farms being shown in Exh. "A" as "overgrown with bush," I have doubt whether the witnesses in fact farm on the land in dispute.

The Plaintiff and some of his witnesses are remarkable for their untruthfulness, and they gave me the impression that they were prepared to tell lies and fabricate evidence in order to achieve success in this case.

40 In spite of the notorious fact that Ilawe was separated from Ado only in 1946, yet the Plaintiff untruthfully testified that Ilawe was never under Ado, and his witnesses Adeyemi Olodo, John Oluwafemi and Asokiti also gave evidence to the same effect.

The learned Counsel for the Plaintiff asked the Court to rule out plan Exh. "W" because it was not prepared by a licensed Surveyor, but his application was refused on the grounds (1) that the exhibit formed

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part and parcel of the proceedings before the District Officer in Exh. "E1," and before the Resident in Exh. "F," and (2) that it is impossible to follow the proceedings without the plan.

The District Officer himself went on the land in dispute in Suit No. D2/45 and marked on the plan the positions of the lands occupied by some of the Defendants.

He got from the Defendants in Suit No. 2/1940 the plan they prepared for that case, from which he traced on Exh. "W" the land in dispute in 2/1940, which he hatched in blue.

The hatched area shows the land of Odo people as enclosed by the 10
Oruwo, Oshun and Agbeji streams and shows also that Oshun stream between Agbeji and Amugbadagbe streams, on the one hand, and the Oruwo river, on the other hand, as the boundary between Ado and Ilawe.

The ownership of the land above that in dispute in suit No. D2/1940 was shown on Exh. "W" as not in dispute.

The land in dispute in Suit No. D2/1945 is shown on Exh. "W," which is the only plan available from which the position of Ahere Ushin and Agbeji streams on the western side of the land in dispute could be seen.

Furthermore, the motor road from Ado to Ilawe, which passed through 20
Odo village, is shown on Exh. "W" as the southern boundary of the land then in dispute.

The District Officer in Exh. "E1" found that Chief Oniloda, whose farm is shown on Exh. "W," and Chief Odopetu were of Odo origin.

For the sake of future peace, the District Officer, in Exh. "E1" completed Odo's western boundary with Ilawe, and marked the boundary line, A, B, C, D and E on Exh. "W."

The western boundary of the land claimed by the 2nd Defendant passed through A, B, Okuta Isapa, which both Defendants and the 4th Defendant's witness in this case stated to be their boundary with Ilawe, 30
up to the source of Toro stream.

The District Officer thought that this boundary line had few special features although it was marked with Peregun trees, one of which the Ilawe people alleged to be of natural growth, and so varied it slightly. The varied boundary still included Ahere Ushin and Agbeji Odo which were then sued for.

The Resident by Exh. "F" upheld the District Officer's judgment in Exh. "E1," but set aside the boundary line A, B, C, D and E.

In my view, the District Officer generously moved the western boundary line to A, B, C, D and E for the sake of peace, according to the 40
2nd Defendant, and the boundary line could not have been moved eastward any further without giving Ahere Ushin which had been declared as Odo land to the Ilawe people.

Although the Resident set aside the boundary line, there can be no doubt, from his judgment in Exh. "F" upholding the District Officer's judgment, that Ilawe land did not extend to Ahere Ushin. For that reason,

the Resident should, in my opinion, have supported the District Officer's boundary line or had it moved back to its original position as shown on Exh. "W."

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The fact that the boundary line A, B, C, D and E was set aside by the Resident did not nullify the proceedings in E1 as submitted by the learned Counsel for the Plaintiff as the plan Exh. "W," which was Exh. "X" before the Resident, definitely showed the area sued for and in respect of which both the District Officer and the Resident awarded the Akitipa damages.

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- 10 The northern end of the land then in dispute, according to Exh. "W," has a peregun tree at each end, which trees were said to be boundary between Odo and Igede.

The 2nd Defendant in this case testified that the undisputed land beyond the boundary line belongs to Igede people.

In my view, the District Officer, who heard the appeal Exh. "E1" should be commended for his energy and pains in going on the land in dispute to discover where each Defendant had his farm and to mark them on plan Exh. "W," which he used as his guide with a view to settling the boundary dispute for good.

- 20 From his judgment, it is abundantly clear that the descendants of Odo refugees in Ilawe came to farm at Odo with other Ilawes who had no right to farm on Odo land. All went well as long as the descendants of Odo refugees at Ilawe recognised Odo's ownership of the land, but the position naturally changed when the descendants of the refugees affiliated themselves with the Ilawes and claimed Odo land for Ilawe, because they lived at Ilawe and had farms at Odo. This is a true picture of what took place.

In Exh. "E1," the District Officer referred to Adubu, who proved himself, in plain language, to be a liar.

- 30 When sued in Suit No. 9/1940 by Igede people for damaging their farm, he claimed to be a relation of the Akitipa whom he called as a witness, and yet he had the affrontery to deny in D2/45 that he was a relation of the Akitipa, and claimed to be an Ilawe man.

It is such people like Adubu who make it possible for the Ilawes to lay claim, without foundation, to Odo land.

- 40 If plan Exh. "W" is superimposed on Exh. "A," Agbeje and Amugbadagbe streams will be just a few yards below the point where mile 8 is shown on Exh. "A." These streams as well as Oshun stream and their courses towards the Oruwo river on the right are cleverly left out on Exh. "A."

If the streams are shown on Exh. "A," it will be seen that what is shown as the pink boundary line from Igbo Assaw direction to Oke Isapa goes right through the middle of the land declared to be Odo land in Suit No. 2/1940.

There is evidence that before 1946 all timbers felled in Ado District were accounted for as the property of the Ewi, and that, since the separation of Ilawe from Ado, timbers felled at Ilawe were accounted for as the

No. 45.
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property of the Alawe. There is no evidence, however, that the timbers felled and accounted for in Exhs. " Y7 " and " Y8 " were felled on any part of the land in dispute, and so the question of timber felled is not material to the decision this Court is called upon to make in this case.

With regard to Exh. " B," I agree with the Counsel for the Plaintiff that it is a plan showing Ado Ekiti and its districts. It is not necessary for me to make any pronouncement on whether or not the land in the area marked grey and hatched red belongs to the 1st Defendant. Exh. " P " is an enlarged copy of Exh. " B "

In the result, the Plaintiff's claim for declaration of title to the land 10 edged pink on Exh. " A " fails because he has failed to prove that by tradition the land belonged to him and the Ilawe people, and because he failed to prove that the boundary line coloured purple in Exh. " A " was made by Alawe Akubieleyo.

The action fails also because he has failed to prove that Odo land included in the land in dispute belongs to Ilawe people, and because he also failed to prove that he and his people have exercised exclusive rights of ownership on the land in dispute to warrant the inference that he and the Ilawe people are the exclusive owners of the land in dispute.

His claim for trespass to the land in dispute has not been made out, 20 and he is not entitled to the injunction sought.

His action is therefore dismissed with costs assessed at 300 guineas.

(Sgd.) O. JIBOWU,
Judge.

9/10/51.

NOTICE OF APPEAL.

IN THE WEST AFRICAN COURT OF APPEAL.

Holden at Lagos.

W.A.C.A.

30

No. 46.
Notice of
Appeal,
3rd
December
1951.

(Title as in No. 4.)

TAKE NOTICE that the Plaintiff being dissatisfied with the whole of the decision more particularly stated as contained in the judgment of the Supreme Court dated 12th November, 1951, doth hereby appeal to the West African Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

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

2. The decision of the lower Court complained of :—

The whole decision of the said judgment dated 12th November, 40 1951.

3. Grounds of Appeal :—

(1) The learned Judge misdirected himself in law, and came to a wrong conclusion, by holding that paragraph 4 of the Statement of Claim amounted to an alteration of the Writ which “ goes to the root of the action as the cause of action is thereby changed or altered.”

(2) The learned Judge misdirected himself in law, and came to a wrong conclusion by awarding costs to the Defendants on the amendment of the writ of summons, as if the original claim had been nonsuited.

(3) The learned Judge was wrong in law in awarding costs of 50 guineas to the Defendants for the amendment of the writ of summons.

(4) The learned Judge misdirected himself in law, by treating as evidence, such contents or portions of the documentary exhibits as were not expressly and specifically put to witnesses who gave evidence during the proceedings.

(5) The learned Judge misdirected himself in law, and as to the facts, when he held that :—

(i) “ It is a matter of common knowledge that in Yorubaland a Bale must owe allegiance to an Oba.”

(ii) “ It is a matter of common knowledge that, before the advent of the European in this country, rivers, streams, hills, rocks and trees were used as boundary marks, and the marking of boundaries with stones and mounds were unknown.”

(6) The learned Judge misdirected himself as to the facts and came to a wrong conclusion, when he held, by necessary implication, that the Ewi to whom Afinbiokin referred as “ a small boy ” was born before the advent of British Government; and that the Alawe was traditionally a subordinate, or a household servant of the Ewi and a washer of his feet.

(7) The learned Judge misdirected himself as to the facts when he held as follows :—

“ I don't believe that the boundary line shown in purple in Exh. “ A ” is genuine, and it appears to me that the Plaintiff and his people either discovered the Iroko, Irosun, Peregun, Atori, Obi Edun and Ekika trees which are of natural growths in the thick bush or forest or planted them or some of them, and so waited until they were fully grown to enable them to pass them off as a boundary line between themselves and the Ado people.

“ As for the heaps of stones, with the exception of the heaps of stones placed near Okuta Olomo in 1933 by the District Officer, Mr. Swayne, there is no proof as to how the other heaps of stones shown on Exh. ‘ A ’ got on the alleged boundary line; but in view of my findings above, it appears to me that the Plaintiff and his people, without the knowledge of the Defendants, placed the stones on the land.”

*In the
West
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Court of
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No. 46.
Notice of
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continued.

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*In the
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No. 46.
Notice of
Appeal,
3rd
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1951,
continued.

(8) The learned Judge misdirected himself when he held that—
“the fact that the refugees from Odo lived, and that their descendants live at Ilawe does not confer the ownership of Odo land on Ilawe people, and further that “Page 67 of Exh. ‘B1’ shows that the compiler of the Intelligence Report of Ado District visited Ilawe and Odo between 14th and the 19th August, 1933.”

“At page A25 of Exh. ‘B3’ (Record, p. 141), Odo is shown as the 13th farm settlement under Ado farm settlements. The Alawe did not then claim Odo as Ilawe settlement.” 10

(9) The learned Judge misdirected himself by holding that “too much is being made of the political situation then existing in this case.”

(10) The learned Judge was wrong in law, and misdirected himself, by relying for some of his conclusions on the plan Exh. “W,” and by stating as follows :—

“If plan Exh. ‘W’ is superimposed on Exh. ‘A,’ Agbeje and Amugbadagbe streams will be just a few yards below the point where mile 8 is shown on Exh. ‘A.’ These streams as well as Oshun stream and their courses towards the Oruwo River on the right are cleverly left out on Exh. ‘A.’” 20

(11) The learned Judge misdirected himself when he held as follows :—

“There is evidence that before 1946 all timbers felled in Ado District were accounted for as the property of the Ewi, and that since the separation of Ilawe from Ado, timbers felled at Ilawe were accounted for as the property of the Alawe. There is no evidence, however, that the timbers felled and accounted for in Exh. Y7 and Y8 were felled on any part of the land in dispute, and so the question of timber felled is not material to the decision this court is called upon to make in this case.” 30

(12) The Judgment is against the weight of evidence.

4. Relief sought from the West African Court of Appeal :—

That the judgment appealed against may be reversed, and that the West African Court of Appeal may enter judgment for the Plaintiff in the terms of his writ as modified by paragraph 4 of his Statement of Claim.

5. Persons directly affected by the Appeal :—

(1) Aladesanmi II, The Ewi of Ado Ekiti, Ado-Ekiti.

(2) Adetokunbo Atomobase, Odo, Ado-Ekiti. 40

(3) Akinola Adefotalu, The Alawe of Ilawe, Ilawe.

Dated this 3rd day of December, 1951.

(Sgd.) OBAFEMI AWOLOWO,
Solicitor for Appellant.

No. 47.

PROCEEDINGS ON APPEAL.

IN THE WEST AFRICAN COURT OF APPEAL.

Holden at Lagos, Nigeria.

Friday, the 8th day of May 1953.

Before their Lordships

Sir STAFFORD WILLIAM POWELL FOSTER SUTTON, President.

Sir JOHN VERITY, Chief Justice, Nigeria.

Sir JAMES HENLEY COUSSEY, Justice of Appeal.

*In the
West
African
Court of
Appeal.*No. 47.
Proceedings
on Appeal,
8th, 11th
and 18th
May 1953.

10

W.A.C.A. 3703.

AKINOLA ADEFOLALU, The Alawe of Ilawe, etc. Appellants

and

1. ALADESANMI, the Ewi of Ado, etc.

2. ADETOKUNBO ATOMOBASE, etc. Respondents.

Mr. M. Adekunle for Appellant.

Mr. A. A. Majekodunmi with him.

Mr. H. O. Davies, for Respondents.

*Adekunle :**Majekodunmi :*

20 Submits that grounds of appeal (4) and (10) embarrassing and should be struck out.

Adekunle :

Asks leave to amend ground (4). Ground (4) struck out and have to amend ground (10) as indicated granted, i.e., by deleting all the words commencing with "by relying" down to "'W.', and".

Adekunle :

30 Argues grounds (1), (2) and (3), p. 103, line 33 (Record, p. 68, line 18). Submits Judge was right to hold that writ was generally endorsed—but wrong in holding amendment altered claim and writ therefore had to be amended. Awarded 50 guineas costs. Statement of Claim did not extend claim it compressed it. Identity of land remained the same meets and bounds merely amended.

We indicate that he need not continue on this point—we will hear other side on it in due course.

Ground (9), p. 37 (Record, p. 23). Evidence of atmosphere and situation of Plaintiff when the land disputes started—

See also p. 35 (Record, p. 21). Also Evidence of feelings.

Adekunle :

P. 123, line 10 (Record, p. 80, line 21)—ground (9).

40 Ground 12. Submits trial Judge misdirected himself in considering previous Court cases—Exhibit "M."

*In the
West
African
Court of
Appeal.*

No. 47.
Proceedings
on Appeal,
8th, 11th
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May 1953,
continued.

Ground (5) (i). Court cannot take Judicial Notice of such a fact, line 7 p. 107 (Record, p. 70, line 15).

Ground 5 (ii).—P. 114 (Record, p. 74)—The success or failure of our claim depended—to a large extent—on boundary marks.

Ground (6). See Exhibit “ T1 ” p. 399 & p. 105 (Record, p. 69) of Judgment, and top of p. 106 (Record, p. 69).

Ground (7).

Adjourned to 11.5.53.

8.5.53. (Intld.) S. F. S.,
P. 10

Monday, the 11th day of May, 1953.

Continued from above—Counsel as before.

Adekunle :

Statement in Exhibit “ T1 ” regarding right of Oni of Ife to wear a crown was hearsay—should not have been given any weight.

Ground 10. Exhibit “ W.”

Judgment p. 126–129 (Record, pages 82 to 84).

Note—Judgment p. 115 (Record, p. 75) re : boundary—lines 10 to 23 (Record, lines 17–28). See also p. 116 and 117 (Record p. 75–77).

Ground 7 argues at length trial Judge wrong. No evidence to justify his conclusions. Refers to boundary marked by D.O. p. 33 & 62 (Record, p. 20 and 39). 20

Ground 8—

Submits—property remained ours unless we had actually disposed of the land. Deals with evidence. Appellants were invited back p. 75 (Record, p. 48).

Majekodunmi :

We ask him to address us only on question of amendment of the Writ—and consequential order as to Costs. Deals with description of boundary in Writ filed in Native Court and compares with description 30 in Statement of Claim.

C.A.V.
Intld. S. F. S.
P.

11.5.53.

Monday, the 18th day of May, 1953.

Judgment delivered by Coussey, J.A.

Appeal dismissed with costs fixed at £46. 7. 0, but the costs of 50 guineas awarded by the Court below in respect of the amendment of the Civil Summons is reduced to the sum of 3 guineas. 85 of 1953. 40

18.5.53

Intld. S. F. S.
P.

No. 48.
JUDGMENT.

IN THE WEST AFRICAN COURT OF APPEAL.
Holden at Lagos.

*In the
West
African
Court of
Appeal.*

No. 48.
Judgment,
18th May
1953.

Monday, the 18th day of May, 1953.

Before their Lordships :

Sir STAFFORD FOSTER SUTTON, President.
Sir JOHN VERITY, Chief Justice, Nigeria.
Sir HENLEY COUSSEY, Justice of Appeal.

10

W.A.C.A. 3703.

AKINOLA ADEFOLALU, the Alawe of Ilawe, for
himself and the PEOPLE OF ILAWE . . . Plaintiff/
Appellant

and

1. ALADESANMI II, the Ewi of Ado-Ekiti, for
himself and the PEOPLE OF ADO-EKITI . . .
2. ADETOKUNBO ATOMOBASE . . . Defendants/
Respondents.

JUDGMENT

20

(Delivered by Sir Henley Coussey, J.A.)

This is an appeal against a judgment of Jibowu, J. dismissing claims for declaration of title, trespass and for an injunction. The Plaintiff-Appellant sued as the Alawe of Ilawe for himself and the people of Ilawe.

The Plaintiff's case was that his ancestor was the first occupier of the land in dispute and that, some centuries ago, he and his people had established themselves thereon before the first Ewi of Ado and his people migrated from Ile Ife to the place now known as Ado-Ekiti which was within the area of land over which the Plaintiff's ancestors were already exercising rights of ownership, and that the Plaintiff's predecessor, Alawe
30 Akinbieleyo, granted land to the first Ewi and marked out a boundary between the Ewi and the remaining land of the Plaintiff.

This boundary, according to the Plaintiff, was marked by Peregun and such other trees as are usually planted to define a boundary, and it is shown edged violet-pink in the plan " A " exhibited in the action by the Plaintiff.

The 1st Defendant-Respondent is the paramount ruler of Ado-Ekiti and he was sued personally and as representing the people of Ado-Ekiti and Igede.

The 2nd Defendant-Respondent was sued personally, but he is, in
40 fact, the Akitipa of Odo, a sub-chief of the 1st Defendant, and he and the 1st Defendant were granted leave to defend the suit on behalf of all the chiefs and people of Ado-Ekiti.

The 1st Defendant claims that the first Ewi was a son of the Oduduwa, a figure well known in Yoruba legend, and that the first Alawe was a

*In the
West
African
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Appeal.*

No. 48.
Judgment,
18th May
1953,
continued.

servant in his train who, after some vicissitudes, was granted the site now known as Ilawe to settle on, the whole area, including that now in dispute, having some years earlier been occupied by the Ewi and his people who had accompanied him in his exodus from Ile Ife. According to the Defendants, other Ilawes at some time settled on land of the Odo quarter, also under the 1st Defendant. The 1st Defendant denied that any boundary existed between Ilawe and Ado-Ekiti as alleged and defined by the Plaintiff. The 2nd Defendant as head of the Odo quarter set up several judgments he had obtained against the Plaintiff's people as evidence that the Plaintiff is not owner of Odo land within the area of land claimed 10
by the Plaintiff.

In his judgment the learned trial Judge put four questions to himself for determination, namely :—

1. Which of the two parties, Ilawe or Ado, gave land to the other.
2. Was a boundary made, as alleged by the Plaintiff.
3. Is Odo land within Ado land or Ilawe land and
4. What effect have the judgments obtained by the Igede people who are the 1st Defendant's people and by the 2nd Defendant, against the Ilawe, i.e., the Plaintiff's people, in respect of parts of 20
the land in dispute.

Before dealing with these issues the learned Judge reviewed exhaustively the oral and documentary evidence and held that the Alawe was, until recent times, not an independent Oba but a Bale subordinate to the Ewi of Ado.

As to the 1st and 2nd questions, after considering the evidence the trial Judge rejected as untrue the evidence of the Plaintiff and his witnesses that the Plaintiff's predecessor gave any land to the first Ewi and marked out the boundary set up by the Plaintiff.

He found no difficulty in accepting the traditional evidence of the 1st Defendant, confirmed as it was by evidence of admissions made by the Plaintiff's own father to the effect that the Alawe was originally a servant of the Ewi and that Ilawe was founded as a sub-town or village of Ado. 30

The learned Judge then dealt with the numerous boundary disputes between the Ilawe and the Igedes. Having in mind the "ancient" boundary, alleged by the Plaintiff to mark off the land he claimed for his people from that of Igede and other lands of Ado, the learned Judge observed :—

"the significant point about the dispute is that, at the time, (of the disputes) the Ilawe people could not have known of the alleged boundary 'so well marked with trees, sand and stones,' 40
reference to which then, would have saved both sides, the District Officer and the Ewi, a lot of trouble."

Proceeding to the next question, there is a finding after the relevant evidence is considered that Odo land has always been a farm settlement of the Odo people who are from Ado and that the Ilawe claim to it is unfounded.

As to point 4, the learned Judge held that the judgments in evidence were not conclusive in themselves against the Plaintiff, but that they are evidence of acts of ownership by the Odo people on Odo land showing that the Plaintiff had not established exclusive possession and ownership of the area of land for which he sought a declaration.

*In the
West
African
Court of
Appeal.*

The trial Judge concluded as follows in dismissing the claim :—

No. 48.
Judgment,
18th May
1953,
continued

10 “ The action fails because the Plaintiff has failed to prove that he and his people have exercised rights of ownership on the land in dispute to warrant the inference that he and the Ilawe people are the exclusive owners of the land in dispute.”

From this judgment the Plaintiff has appealed. With the exception of grounds 1, 2 and 3, which will be considered later, all the Plaintiff's grounds of appeal question the trial Judge's findings of fact, mostly in the guise of misdirection in law.

The general principles which are applicable in the case of an appeal from a trial by a Judge alone have been stated in *Caldeira v. Gray* [1936] 1 All E.R. 540. Delivering the judgment of the Privy Council, Lord Alness said :—

20 “ The appellant is exercising a right of appeal which is his by right, and their Lordships recognise that they cannot, merely because the question is one of fact, and because it has been decided in one way by the learned trial Judge, abdicate their duty to review his decision, and to reverse it, if they deem it to be wrong. None-the-less the functions of a Court of Appeal, when dealing with a question of fact, and a question of fact moreover, in which, as here, questions of credibility are involved, are limited in their character and scope. This is familiar law. It has received many illustrations and, in particular, in the House of Lords—the most recent of these being the case of *Powell & Wife v. Streatham Manor Nursing Home* [1935] A.C. 243. In that case it was held that where the Judge at the trial has come to a conclusion upon the question which of the witnesses, whom he has seen and heard are trustworthy and which are not, he is normally in a better position to judge of this matter than the appellate tribunal can be; and the appellate tribunal will generally defer to the conclusion which the trial Judge had formed.”

30

40 On this appeal we have had the benefit of a full argument from Counsel for the Plaintiff, but it cannot be overlooked that in the course of his judgment, the trial Judge felt obliged to record, as one of his impressions, that the Plaintiff and some of his witnesses are remarkable for their untruthfulness.

In my opinion the learned Judge after a patient hearing and an exhaustive consideration of the evidence in a judgment which extends to 34 pages of the Record came to the only conclusion possible on the unconvincing evidence of the Plaintiff. I find no reason to differ from his decision on the merits and I would dismiss this appeal.

As to grounds 1, 2 and 3, although the character of the suit remained unchanged, it is clear that the Plaintiff by his statement of claim abandoned the greater part of the land loosely described in the writ of summons in

*In the
West
African
Court of
Appeal.*

No. 48.
Judgment,
18th May
1953,
continued.

favour of the area of land edged violet-pink on the plan Exhibit "A." An amendment of the writ of summons was therefore necessary. At the stage when the amendment was made, namely, at the time of judgment, I consider the award of costs to the Defendants as necessitated thereby, unnecessarily high because the Defendants had, throughout the trial, contested the issue on the description in the statement of claim and plan. Further, the Defendants could, if so minded, have applied to strike out the statement of claim. That they did not do so is in my opinion because they were not, in fact, embarrassed or taken by surprise. In all the circumstances, therefore, I would reduce the costs awarded on the 10 amendment from 50 guineas to 3 guineas for the Defendants.

(Sgd.) J. HENLEY COUSSEY,
J.A.

FOSTER SUTTON, P.

" I concur."

(Sgd.) S. FOSTER SUTTON,
P.

VERITY, C.J., NIGERIA.

" I concur."

(Sgd.) JOHN VERITY,
C.J.

Appeal dismissed with costs fixed at £46.7.0, but the costs of 50 guineas 20 awarded by the Court below in respect of the amendment of the civil summons is reduced to the sum of 3 guineas.

(Intld.) S. F. S.

P.

18 : 5 : 53.

No. 49.

ORDER granting Conditional Leave to Appeal to Her Majesty in Council.

IN THE WEST AFRICAN COURT OF APPEAL.
Holden at Lagos, Nigeria.

Suit No. B/12/1950.
W.A.C.A. 3703.

(Title as in No. 47.)

Tuesday the 14th day of July, 1953.

UPON READING the application herein and the affidavit sworn to
10 on the 1st day of June, 1953, filed by the Appellant and after hearing
Mr. Abiodun Akerele of Counsel for the Appellant and Mr. H. O. Davies
of Counsel for the Respondents :

IT IS ORDERED that conditional leave to appeal to Her Majesty's
Privy Council from the judgment of this Court dated 18th May, 1953, be
granted to the Appellant on fulfilment within 3 months from the date of
this order of the following conditions, namely :—

1. That the Appellant do enter into good and sufficient security to
the satisfaction of the Court in the sum of £500 for the due prosecution of
the appeal and the payment of all such costs as may become payable to
20 the Respondents in the event of the Appellant not obtaining an order
granting him final leave to appeal, or of the appeal being dismissed for
non-prosecution, or of Her Majesty in Council ordering the Appellant to
pay the Respondents' costs of the appeal (as the case may be).

2. That the Appellant do deposit in Court the sum of £50 for the
preparation of the Record of Appeal and do take all necessary steps for
the purpose of procuring the preparation of the record and the despatch
thereof to England.

And that the costs of this application, to be taxed, shall abide the
result of the appeal to Her Majesty in Council.

30

(Sgd.) J. A. SMITH,
Ag. Deputy Registrar.

*In the
West
African
Court of
Appeal.*
No. 49.
Order
granting
Conditional
Leave to
Appeal to
Her
Majesty
in Council,
14th July
1953.

*In the
West
African
Court of
Appeal.*

No. 50.
Order
granting
Final
Leave to
Appeal to
Her
Majesty
in Council,
26th
October
1953.

No. 50.

ORDER granting Final Leave to Appeal to Her Majesty in Council.

IN THE WEST AFRICAN COURT OF APPEAL.
Holden at Lagos, Nigeria.

Suit No. B/12/1950.

W.A.C.A. 3703.

Between AKINOLA ADEFOLAJU, the Alawe of Ilawe,
for himself and the people of Ilawe . . . Appellant

and

1. ALADESANMI II, the Ewi of Ado-Ekiti, for . . . 10
himself and the people of Ado-Ekiti

2. ADETOKUNBO ATOMOBASE . . . Respondents.

Monday the 26th day of October, 1953.

UPON READING the Application herein and the affidavit sworn to on the 28th day of September, 1953, filed by the Appellant and after hearing Mr. Abiodun Akerele of Counsel for the Appellant and Mr. A. A. Majekodunmi of Counsel for the Respondents :

IT IS ORDERED that Final Leave to appeal to Her Majesty's Privy Council from the judgment of this Court dated 18th May, 1953, be granted to the Appellant. 20

(Sgd.) J. BENNETT,
Deputy Registrar.

Exhibit " M. "

NATIVE COURT PROCEEDINGS in Case No. 585/28.

COPY OF PROCEEDINGS.

Native Court Civil Suit No. 585/28 of 16/1/29.

In the Native Court of Ado holden on Tuesday the 16th day of October, 1928, before the President The Odofin and three Court members.

Present :—1. EJIGBO. 2. SASERE. 3. EGBEDI.

Aporio the Sapetu (m) of Odo

Vs.

- | | |
|----|--------------------------------------|
| 10 | (1) Ojo the Ologbosere (m) of Ilawe. |
| | (2) J. Ajongbolo " " " |
| | (3) Ajayi " " " |
| | (4) Ogunmilade Olowo " " " |
| | (5) Adu " " " |
| | (6) Oluwasuyi Elejua " " " |
| | (7) Ajofoyibo " " " |
| | (8) Olugbe. |
| | (9) Ojo Adebayo. |
| | (10) Arowosegbe. |
| 20 | (11) Abaekere. |
| | (12) Oguntuase. |

Claim : In order to show cause why the Defendants should plant cocoa, kola trees and Gbanja trees in the Plaintiff's father land.

" All the Defendants plea Admitted."

Plaintiff : Aborio the Sapetu (m) S.S. I am the owner of the land in question and I have been farming there over 50 years and my old fathers have been farming on. About 20 years ago, one of the Defdts., Oluwasuyi the Elejua came over from Ilawe and met me at my town in Odo. He asked me to give him a portion of land to farm on, and I did give it to him, and from that time he used to give me five yams and one calabash of palm wine and this two things are known as Ishakole. I do not instructed him to plant something like cocoa, kola trees etc. The rest eleven Defdts. do not come to me for land at all, and they do not give me Ishakole. It was this Oluwasuyi the Elejua who brought those eleven Defdrs. namely, Ojo the Ologbosere, J. Ajongbolo, Ajayi, Ogunmilade the Olowo, Adu, Ajofoyibo, Olugbe, Ojo Adebayo, Arowosegbe, Abaekere and Oguntuase, to the land in question, without my knowledge, and they all began to plant cocoa tree and kola tree there. I do not want these people to plant cocoa and kola on my land any more, they can farm there and plant yams, corns etc. there, but I do not (I do not) approve of planting life trees on my land. That is all I have to say.

1st Defdt. : Oluwasuyi the Elejua (m) S.S. I am a farmer a native of Ilawe. About 40 years ago I asked the Plaintiff to give me a portion of land to farm on and he did give it to me, and ever since I have been farming

Exhibits.

Defendants' Exhibits.

Ex. M.
Native
Court Pro-
ceedings in
Case No.
585/28,
16th
January
1929.

Exhibits.
 ———
Defendants'
Exhibits.
 ———

Ex. M.
 Native
 Court Pro-
 ceedings in
 Case No.
 585/28,
 16th
 January
 1929,
continued.

there, I used to give the Plaintiff every year, two loads of yams, kolas and palm wine. It is true I planted about 1,000 cocoa trees there with about 20 kola trees. I do not claim the land at all. The Plaintiff is the owner.

2nd Defdt. : Ojo the Ologbosere (m) s.s. I am a farmer, a native of Ilawe. It is true I am farming on the Plaintiff's land and it is true I have planted about 600 cocoa trees there with 10 kola trees and 10 Gbanja trees, I am not claiming the land, the land solely belongs to the Plaintiff. I do not pay Ishakole before, but my late father Osanyinlusi who were on the land before me, used to give the Plaintiff yams, and kolas yearly. 10

3rd Defdt : J. Ajongbolo (m) s.s. I am a farmer, a native of Ilawe, The land on which I am making farm belongs to the Plaintiff, I do not say it is my land, and I am not claiming for it. The Plaintiff only hired some portions to me there and never gives it to me for ever. I am having about 6,000 cocoa trees there with 10 kola trees and 10 Gbanja trees. It was not the Plaintiff who gives me order to plant there life trees.

4th Defdt : Ogunmilade the Olowo (m) s.s. I am a farmer, a native of Ilawe. The land on which I am farming belongs to the Plaintiff, I used to give the Plaintiff every year, some yams and palm wine, as Ishakole. I do not say the land is not Plaintiff's own, and I am not claiming it. I have planted cocoa trees there about 600 and 10 kola trees, with 10 Gbanja trees. Finish. 20

5th Defdt : Adu (m) s.s. I am a farmer, a native of Ilawe. It was the 4th Defdt. who take me to the land in question, about some years ago, and ever, I have been farming there. I am not the owner of the land. The land belongs to the Plaintiff, I am having about 2,000 cocoa trees and 10 kola trees. That's all.

6th Defdt. : Ajofoyibo (m) s.s. I am a farmer, a native of Ilawe. The Plaintiff is the owner of the land in question, and it was he who gave me permission to be farming there. I am not claiming the land. I used to give the Plaintiff yams in every year, as Ishakole. I am having about 900 cocoa trees there. That is all I have to say. 30

7th Defdt. : Olugbe Samuel (m) s.s. I am a farmer, a native of Ilawe. The land in question belongs to the Plaintiff. I do not claim for it. The Plaintiff is the owner. I have about 2,000 cocoa trees there with about 20 kola trees. That's all.

8th Defdt. : Ojo Adebayo (m) s.s. I am a farmer, a native of Ilawe. The land on which I am farming at Odo, belongs to the Plaintiff and it was he who permitted us to be farming there, but never told us to plant cocoa tree etc. there. I use to give to him yearly, yams, etc. That's all. 40

9th Defdt. : Arowosegbe (m) s.s. I am a farmer, a native of Ilawe. It was my late brother Afolalu, by name who planted cocoa in the Plaintiff's land about 3,000 trees, and when this my brother died, I inherited it all. I do not say the land is not Plaintiff's own. That is all I have to say.

10th Defdt. : Ajayi (m) s.s. I am a farmer, a native of Ilawe. The land on which I was farming at Odo belongs to the Plaintiff, I do not claim the land at all. I have planted cocoa tree about 2,400 with five kola trees and 2 Gbanja trees.

Exhibits.
 ———
Defendants'
Exhibits.
 ———

11th Defdt. : Abaekere (m) s.s. I am a farmer, a native of Ilawe. The land in question belongs to the Plaintiff, and not mine. I have planted about 4,000 cocoa trees there. That is all I see.

Ex. M.
 Native
 Court Pro-
 ceedings in
 Case No.
 585/28,
 16th
 January
 1929,
continued.

12th Defdt. : Oguntuashe (m) s.s. I am a native of Ilawe. The land in question belongs to the Plaintiff. I have been farming there over 20 years ago. The Plaintiff is the owner of the land. I have about 4,000 cocoa trees there with 15 kola trees. I used to give the Plaintiff yams yearly as Ishakole. That is all.

Plaintiff : Aporio the Sapetu (m) s.s. Again. I do not wish that this people should remove from my land, but I do not want them to plant any more cocoa or kola tree there again, as from the date. I would give them land to farm on if any of them come for it ; but they must not plant anything else on the land other than yams corns, finish.

But they must continue giving me Ishakole, i.e. yams, palm wine, as they use to do before.

20 Chief Sasere (m) s.s. : I am a court member. I was sent by the court and Ewi to see the land in question and to make a necessary boundary between the Odo people and Ilawe people. Having got there, together with Fagbile the Court Messenger I examined all the land to and fro and I found that all these Defdts. were farming on the Odo land and planting cocoa trees there also Gbanja. The only a portion of land owned by the Odogbosere of Ilawe one of Defdt. was useless and not so fertile ; after I have worked the land to and fro I then set a boundary there at a fitable point and the boundary consists of Peregun trees, set there by me, in the name of the court and the Ewi of Ado. The Pltff. has agreed to allow Defdts. to be farming on the land as they do before. Both the Defdts. and the Pltff. were quite satisfactory with the boundary that I made.

30 *Judgment* : Runs as follows : The boundary made by the Court through Chief Sasere of Ado, is standing from the date, the Defdt. must not plant any life tree on this land again other than yams and corns, Violator will be punished by a fine of 100/-. The Defdts. must obtain a permission from the Plaintiff for farming and they must pay him necessary Ishakole, as they do before. Violator will be dealt with by a fine of £5. The Defdts. hold pen before the Odofin President, and agree that this land belongs to Odo people. The boundary consists of Peregun trees.

(Marked Odofin His X Mark)
 16/1/29

(Sgd.) H. AWOSIKA,
 Court Scribe.

Exhibits.

Exhibit "G."

ADO DISTRICT NATIVE COURT PROCEEDINGS in Case No. 13/39.

Defendants' Exhibits.

IN THE ADO DISTRICT NATIVE COURT.

Ex. G.
 Ado
 District
 Native
 Court Pro-
 ceedings in
 Case No.
 13/39, 16th
 May 1939.

Holden on Tuesday the 16th day of May, 1939.

Present :—ODOFIN V.P., AWOROKO, ONIGEDE, ODOGUN,
 ALAWE, ALARIERIN.

Case No. 13/39 : Adetokunbo, the Akitipa of Odo

Vs.

Sam Oni, M. of Ilawe.

Claims : The Defendant to quit the Pltff.'s father's farm land situated 10
 at Amugbadagbe Odo.

Claim not admitted.

Plaintiff : Adetokunbo, the Akitipa of Odo, M.S.S. on Bible :—
 I am chief native of Odo. Sometimes last year I saw Defendant working
 on my land without permission from me the owner. I warned him not
 to work there but he refused, he said although the farm land does not
 belong to him but he was permitted to work there by one Elemo of Ilawe.
 I put this claim before the court because he refused to leave the said place.
 About nine days ago, I appeared before this court but the court then
 ordered Defdt. to bring the said Elemo to the court giving him two weeks 20
 for this.

Witness for Pltff. : Osuntoki the Odolofin of Odo (m) s.s. on cutlass
 I am a farmer native of Ado. I am a chief in Odo. I know that farm
 land in question. It is true the Defdt. was found working in the farm land
 which belongs to Odo. The Odo inhabitants all have cocoa farm there.
 We always work in this farm. When there was dispute over the farm the
 matter was referred to the court and when the case was still pending, and
 Defdt. was working there we kept quiet. When we have a new Bale we
 now put our claim before the court that Defdt. should quit our land. The
 Defdt. said he was permitted to work on the land by one Elemo of Ilawe 30
 whereas Elemo has no land there.

Q. by Defdt. : How long have you planted cocoa on this land ?

Ans. by Witness : About five years ago.

Q. by Defdt. : What is the extension of the cocoa farm?

Ans. by Witness : About eight thousand heaps.

2nd Witness for Pltff. : Ojo The Sapetu of Odo (m) s.s. on Bible—I
 am a native of Odo, a farmer. I know about this farm land. It belongs
 to Odo. I have been working on this farm land since I grow up. Odo
 people planted cocoa there about five years ago. It was three years ago
 that we saw Defdt. on the land. We should have put him to court but 40
 there was a land case pending trial. This was between us and one
 Oguntuase. When we saw Defdt. on the land we questioned him but he
 said he was permitted by one Elemo to farm on the land. We told him
 the land did not belong to Elemo but to Odo. Our cocoa farm there is
 about 8,000 heaps.

3rd Witness for Pltff. : Ojo the Edemorun of Odo (m) s.s. on cutlass— I am a farmer native of Odo. The land in question belong to us. We planted cocoa on the farm land about 5 years ago. Surprisingly we saw the Defdt. working there, we warned him to leave there and that the land belong to our father.

Exhibits.
—
Defendants'
Exhibits.
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Ex. G.
Ado
District
Native
Court Pro-
ceedings in
Case No.
13/39, 16th
May 1939,
continued.

Defdt. : Samuel Oni (m) s.s. on Bible—I am a native of Ilawe, a farmer. Truly it was Elemo of Ilawe that gave me this land. The farm land does not belong to my father. I have been working on this land since I grow up and we used to have permission from this Elemo. I
10 started planting cocoa on this farm land about 4 years ago. The Elemo and his sons also work there. I alone have about sixteen thousand there. Truly during the pending case between Odo and Oguntuase of Ilawe they used to meet me in this farm and questioned me on it, I used to give them the same reply that the land did not belong to me and that Elemo permitted me to work there. About 6 months ago, about 32 men from Odo came and met me in the farm and tied me up. They brought me before their Bale the Akitipa of Odo. This was referred to the District Officer, who rebuked them that they should not have assaulted me like that. The Elemo also sent to the D.O. that the land belong to him and not to the
20 Akitipa of Odo. I am the owner of the cocoa there but not the owner of the land. I informed the Elemo that I have been sued on account of this land and he replied that he is the right man to be sued and that when the matter is stated it may be referred to him. The court asked of him when I appeared here about 11 days ago but I said he refused to come I was asked to call him I told him and he sent two representatives to appear for him. I do not know why himself does not turn up.

Q. by Court : Do you know the boundary between Odo and Ilawe ?

Ans. by Defdt. : I do not know. I only know the boundary between my father's farm and others.

30 *Q. by Court* : Do you know whether or not this farm land in question is beyond the boundary between Odo and Ilawe ?

Ans. by Defdt. : I do not know the boundary.

Q. by Court : Did the man who permitted you to farm there show you the boundary?

Ans. by Defdt. : No, he did not show me.

Q. by Court : Is it not right for you to ask for the boundary from him ?

Ans. Defdt. : I asked him he said the boundary was far there.

40 *Wit. for Defdt.* : John Akinwumi (m) s.s. on Bible :—I am a native of Ilawe a farmer. I am sent here by Elemo who is my father. He instructed me to inform the court that the farm land does not belong to Odo, but to him, he has no boundary between Odo but Atomeji and Alaboro Ikereje of Ilawe. He said he has been working on the land from time immemorial. Myself has been working there since I grow up.

Exhibits.
 ———
Defendants'
Exhibits.
 ———
 Ex. G.
 Ado
 District
 Native
 Court Pro-
 ceedings in
 Case No.
 13/39, 16th
 May 1939,
continued.

Q. by Court : How long has your father been working there ?

Ans. Wit. : I understand it was time immemorial but I work there since I grow up. It is said our forefathers have been working there.

Q. by Court : Why does the farm land become a thick forest if this is true ?

Ans. Wit. : It does not become a thick forest.

Court : Defendant said he cut about four thousand forest.

Defdt. : The Defdt. said he did not say so.

Court : Do you know the boundary between Odo and Ilawe ?

Ans. Witness : I know it but it is very far to this place.

10

Q. by Pltff. : Why does your father not present in court ?

Ans. Witness : He goes to a distance.

Q. by Pltff. : Is he sick ?

Ans. Witness : He is not sick.

Q. by Court : You know a farm has four sides, are Atomeji and Alahoro Ikereje the only two with whom you have boundary ?

Ans. by Wit. : We have boundary with Odo also but the boundary is far to this disputed farm.

Q. by Court : Have you ever been shown the boundary by your father ?

20

Ans. by Wit. : He shows me the boundary but no mark there.

2nd Wit. for Defdt. : Aladelusi (m) s.s. on cutlass : I am a farmer native of Ilawe. I am sent here by my father the Elemo to inform the court that Odo has no land there and that he has no boundary with Odo. Odo has no farm there. He has boundary with Atomeji and Alahoro. The Elemo my father gave this land to Defendant.

Q. by Court : Did your father show you the boundary between Odo and Ilawe ?

Ans. by 2nd Wit. : He does not tell me so.

Q. by Court : You know a farm has four sides. With whom have you 30 boundaries in the four sides ?

Ans. 2nd Wit. : We have boundary with Atomeji in one side, Alahoro in the other, Ola in one side and Oge.

Q. by Pltff. : Is Elemo your father quite well ?

Ans. 2nd Witness : Yes he is quite well and can walk to Ado.

Pltff. : I wish the court to find out who tells lies between the two witnesses because the 1st witness said he has boundary with Odo and the 2nd witness says no.

Q. by Court : Who is right between you ?

Ans. by 2nd Wit. : I do not know.

Q. by Court : Who is older between both of you ?

Ans. 2nd Witness : I am older than the 1st witness.

Judgment for :—Plaintiff for his land. The Defendant to return 10/- costs to Plaintiff.

10 Judgment passed by :— (Sgd.) FAGBUARO II, the Odofin
V.P.N.C. 16/5/39.
Alaworoko.

(Sgd.) D. B. LONGE,
N.C.C.

Exhibits.
—
Defendants' Exhibits.
—
Ex. G.
Ado
District
Native
Court Pro-
ceedings in
Case No.
13/39, 16th
May 1939,
continued.

Exhibit "H."

DISTRICT OFFICER'S ORDER ON REVIEW in Case No. 13/39.

Case 13/39. 1st Review Order :

Land visited 18th October, 1939. Statements of two parties too divergent for any decision to be reached.

20 Judgment suspended for case between Atomeji and people of Odo to be consulted. The following interim orders are made pending final judgment.

1. Crops on the disputed land to be reaped by the party which planted them.

2. Anyone planting new crops on the land in dispute must first inform the village heads of both Ilawe and Odo for their information.

(Sgd.) R. B. KERR,
District Officer,
Ekiti Division. 18/10/39.

30 *2nd Review* :

On review : No Order : Appeal out of time allowed.

(Sgd.) R. B. KERR,
D.O.,
Ekiti Division. 29/7/40.

Ex. H.
District
Officer's
Order on
Review in
Case No.
13/39, 18th
October
1939, 29th
March 1940,
10th April
1940, 26th
June 1940.

*Exhibits. 3rd Review Order :**Defendants' Exhibits.*

Ex. H.
District
Officer's
Order on
Review in
Case No.
13/39, 18th
October
1939, 29th
March 1940,
10th April
1940, 26th
June 1940,
continued.

Sam Oni applies for leave to appeal out of time. Leave to appeal granted conditional upon applicant producing before the court within thirty days or surveyor acceptable to the court to survey the line demarcated by court members in case *Oguntuase vs. Babalola*, Ado District Appeal case No. 109/56 (page 74 civil Record Book 54) and producing plan at date to be then fixed.

(Sgd.) R. B. KERR,
District Officer. 10/4/40.

APPEAL from the decision of Ado Native Court Case No. 13/39 10
Adetokumbo, the Akitipa of Odo, Vs. Sam Oni (Sam Oni
Defdt./Applt.) in which claim is that the Defdt. should quit the
Plaintiff's father's farm land situate at Amugbadagbe-Odo.
Before R. B. Kerr Esq., District Officer, Ekiti Division.

The Defendant/Appellant puts in a map Exh. "A." This map has several defects. It has no compass direction sign. There appears to be no foundation for the area marked Oguntuase's land, which appears to be incorrect. The part enclosed by the Ado-Ilawe path and the Oshun and Oruwo streams appears to be reasonably accurate. The line up the Oshun stream marked A1-A2 is vouched for by Chief Sasere and Madarise 20 mentioned on page 289 of Ado Civil Record Book 28 as having been present at the demarcation of the boundary between Ilawe and Ado ordered on that page in the judgment in case 185/32 of Oct. 1933. N.A. *versus* Sapetu of Odo.

Defendant/Appellant Sam Oni S/States, I have been farming on the land in question from my youth. My father and I have been holding it from Elemo. We have not been paying him anything from it.

By Plaintiff: I do not know the boundary between Odo and Ilawe nor am I aware of the case taken by Odo Chiefs against Ilawe in 1929 concerning it. I do not know that in this case the Ilawe people admitted 30 Odo's ownership of the land in question.

Elemo, witness for Defdt./Applt. sworn on matchet: The land on which Sam Oni is farming is land where my father used to farm and I have never been disturbed there.

By Plaintiff: No questions.

Agbakin of Ilawe s/s: I have a boundary south of the Osun river with Elemo who is on the north bank. I know nothing about Shakole presents to Ojo.

Alawore of Ilawe s/s: I have a boundary with Elemo in the Oshun river of which he occupied the north bank. I know nothing about 40 Shakole payments to Odo or whether he should pay.

Oguntuashe of Ilawe s/s: I have a boundary with Elemo to the East. This boundary is the Oruwo River. I have not heard that Elemo should pay Shakole.

Pltff./Respd. sworn on Bible : I put in as evidence copy of proceedings in Ado Native Court civil suit No. 585/28 of 16/1/29, Aporio the Sapetu of Odo Vs. Ojo and eleven others of Ilawe to show cause why they should plant cocoa on Odo land. In their statements it will be seen that all the Defdts. without exception admit planting their cocoa on Odo land and renounce all claim to the land. This land lies between Oruwo, Oshun and Agbeji streams. I also refer to the proceedings in the case Ado Native Court case 185/32 of 5th October, 1933, *N.A. Vs. Sapetu of Odo*, and the demarcation made on an order of court in that case. I call two

10 survivors of the persons appointed to demarcate to give evidence of the boundary with Ilawe.

Sashere sworn on the matchet states : I was a member in the case *Sapetu of Odo Vs. Ojo of Ilawe and eleven others* No. 585/28 of 16/1/29 when the Defendants admitted that they were on Odo land. I was also a member of the subsequent case *N.A. Vs. Sapetu of Odo* No. 185/32 of 5th October, 1933, I visited to demarcate the boundary between Odo and Ilawe. We planted Peregun trees from the point where the Ilawe paths crosses the river Oshun up the stream towards the Oruwo river demarcating the boundary between Odo and Ilawe.

20 No questions by Defendant.

Madarise s/s :—I was the Ewi's messenger and one of those sent to demarcate the boundary between Odo and Ilawe subsequent to the Case *N.A. vs. Sapetu of Odo*, Ado Native Court Case No. 185/32 of 5th October, 1933. We planted the peregun trees from the point where the Oshun river crosses the Ilawe path down the Oshun stream for about three miles to the Oruwo stream. I was sent out there recently and saw the trees still there marking the boundary between Odo and Ilawe.

By Defendant : You were present when we came to demarcate the land.

30 Judgment of Ado Court for Plaintiff for his land upheld. The land in question is that enclosed by the Oruwo Oshun and Agbeji streams. The Oshun stream between its confluence with the Oruwo and Arige streams is the boundary between Odo and Ilawe.

(Sgd.) R. B. KERR,

26/6/40.

Exhibits.
 —
Defendants' Exhibits.
 —
 Ex. H.
 District Officer's Order on Review in Case No. 13/39, 18th October 1939, 29th March 1940, 10th April 1940, 26th June 1940, continued.

Exhibits.

Exhibit "J."

Defendants' Exhibits.

PROCEEDINGS IN RESIDENT'S COURT in Case No. 2/1940.

Ado-Ekiti,
2nd October, 1941.

Ex. J.
Proceed-
ings in
Resident's
Court in
Case No.
2/1940, 5th
December
1940.

Mr. Adetokunbo,
The Akitipa of Odo.

Adetokunbo, the Akitipa of Odo vs. Sam Oni of Ilawe

Ado-Ekiti Native Court, Suit No. 13/39.

The attached copy of proceedings duly amended, please. Will you 10
please acknowledge receipt in due course ?

(Sgd.) ? ? ?
District Officer,
Ekiti Division.

No. 2/1940.

IN THE COURT OF THE RESIDENT, ONDO PROVINCE holden at
Ado-Ekiti this 5th day of December, 1940.

ADETOKUNBO, the Akitipa of Odo . . . Plaintiff/Respondent

vs.

SAM ONI Defendant/Appellant.

CLAIM.

20

Defendant to quit the Plaintiff's father's land situated at
Amugbadagi, Odo.

This is an appeal under section 28 (2) of No. 44 of 1933.

The Plaintiff/Respondent appears.

The Defendant/Appellant is represented by the Elemo.

The Defendant/Appellant appeals on the grounds that he is not
satisfied with the District Officer's decision. Both parties agree to the
map produced before the District Officer's Court and state that the area
in dispute is correctly shown.

Elemo s.s.: My father's farm is adjacent to Agbakin of Ilawe, 30
Alaiworo of Ilawe and Oguntuashe of Ilawe. There is no land here which
belongs to Odo.

By Court: Oguntuashe's farm as far as I know was never adjudged
to Odo. I was not a party to the case. About 3 months ago Plaintiff
came to my farm to destroy my cocoa and yams. I want to be delivered
from the hands of the Plaintiff and to claim my father's property.

Nobody has ever troubled me on my late father's farm.

That is all.

By Plaintiff/Respondent: 1. Do you know there is a boundary between 40
Ilawe and Odo ?

About 16 years ago a boundary was made by the Odo people. This is marked on the plan. It is marked by Peregun trees and took part of my land away. I was not present on the day when the boundary was made. It was last year when I noticed the boundary that I took action against the Plaintiff before the Magistrate. (The Defendant then admits that he means he appealed the present case to the District Officer.)

Exhibits.
—
Defendants' Exhibits.
—

Ex. J.
Proceedings in Resident's Court in Case No. 2/1940, 5th December 1940,
continued.

2. Do you remember the District Officer came and saw the boundary three times ?

10 He came once, we met him on the road the next time. I told him the land belonged to me.

3. Are the peregun trees fully grown now ?

They were planted 16 years ago.

The Plaintiff/Respondent s/s. The boundary was made between me and Defendant in case 585/28. I produce copy of this case. (A copy is already in the possession of the Court.)

The Defendant/Appellant now states there is no boundary between himself and the Plaintiff. Further states the boundary was made by the Plaintiff in his absence.

20 *Report on case :* The Court after reading the cases in the lower Courts was uncertain whether the map produced accurately identified the land in dispute. This uncertainty was solved by the agreement of both parties that the map was correct. There is clear evidence that a boundary was made in case 585/28 between the Odo and Ilawe people and this boundary runs from the point where the Oshun river crosses the Ilawe path down the Oshun stream to the confluence of the Oruwo stream.

The Defendant admits that he started farming four years ago in the disputed area, and was questioned as to his right to do so. His reply was that the land had been given to him by the Elemo.

30 The Court considers that the Defendant/Appellant has encroached on Odo land supported by the Elemo. The case is *res judicata* and Court has only to confirm the judgment of the Native Court in favour of the Plaintiff.

The Court considered the question whether there should be eviction or compensation for eviction. The Court considers that the Defendant/Appellant knew that he was trespassing and sheltered behind the Elemo. The Judgment in Case 585/28 is plain and definitely forbids under penalties the planting of cocoa. The Defendant/Appellant must take the consequences of his illegal act.

Judgment : Appeal dismissed. No order as to costs.

40 Procedure of Appeal under section 28 (3) explained to both parties.

(Sgd.) J. WANN,
Resident.

Exhibits.

Exhibit "C."

Defendants' Exhibits.

ADO DISTRICT APPEAL NATIVE COURT PROCEEDINGS in Case No. D9/40.

Case No. D9/40.

Ex. C.
Ado
District
Appeal
Native
Court Pro-
ceedings in
Case No.
D9/40,
11th June
1942.

IN THE ADO DISTRICT APPEAL NATIVE COURT holden on
Thursday, the 11th day of June, 1942.

Present : 1. THE ODOFIN V.P.
2. ,, OLUYIN.
3. ,, ODOGUN.
4. ,, OBA IBEMO.
5. ,, ALAWE.
6. ODOFIN OF AFAO.

10

Before the ODOFIN V. PRESIDENT and MEMBERS.

Case No. D9/40 :

BALOGUN AKINTOLA (m) of Igede

Vs.

1. ADUBU (m) of Ilawe
2. OLU (m) of Ilawe
3. OWOSENI (m) of Ilawe

Claims : To receive £35 damages for destroying 100 cocoa and 50 kola trees in the Plaintiff's farm situated at Oko Odo during the month of 20 February, 1940.

All Defendants plea not admitted.

Plaintiff :—Balogun Akintola (m) S.S. on cutlass :—I am a native of Igede a farmer. This day, I went to farm and having got there, I was hearing noise of crowd of people and I went to the place to see what was the matter. I met the three Defendants and some others clearing bush to make new farm in my cocoa farm and I observed that they have destroyed the above number of cocoa and kola trees. I asked from them on whose permission they trespassed to my farm and they told me that the permission was given to them by the Akitipa of Odo. I made my way to the said 30 Akitipa to find out from him who denied given anybody's permission to make farm on another man's farm land. I took the young trees of the cocoa destroyed to the said Akitipa who advised me to take up the matter to the court as he is not concerned. This is the cause of action.

Witness for Pltff : Joseph Dada (m) s.s. on Bible :—I am a native of Igede a farmer the Plaintiff is my elder brother. During the month of January, 1940 I in company of the Plaintiff went to our farm and when we got there, we began to hear the noise of crowd of people and we walked to the place to see what was wrong. When we got to them, we met them clearing bush for new farm on Pltff's cocoa farm land and the above mentioned cocoa and kola trees were destroyed. The Pltff. questioned them who has ordered them to work at the place and they told him that the Akitipa of Odo has permitted them thus we proceeded to the said Akitipa to find out from him who denied given land to anybody. That's all. 40

1st Defendant—Adubu (m) s.s. on cutlass :—I am a native of Ilawe a farmer. It was true I approached the Akitipa of Odo to grant me a piece of land for the purpose of making new farm as he is my father and he did permitted me to go and make choice of where I like on the land. As I was clearing the bush, there the Plaintiff and two others came who said that the place I was clearing belongs to one Olowa of Igede and I told him that his statement is quite incorrect as the land in question belongs to the Akitipa of Odo on whose permission I came there to work. I was at home when he brought summons paper against me for destroying his cocoa, kola and Orogbo trees. The cocoa trees that the Plaintiff claimed to be his own belong to one Oisa of Ilawe who had been farming there long ago.

2nd Defdt. Olu (m.) s.s. on Bible :—I am a native of Ilawe a trader. It was true that I cleared some bush for the purpose of new farm but no cocoa trees were been destroyed by me.

3rd Defdt. Edward Owoseni (m) s.s. on Bible :—I am a native of Ilawe a farmer the land in question belongs to the Akitipa of Odo on whose permission we went there to make new farm but no cocoa trees were destroyed by me. That's all.

20 Witness for Defts. : Oisa Fakanbi (m) s.s. on cutlass : I am a native of Ilawe a farmer I approached the Akitipa of Odo to give me a piece of land for farming and it was given. I planted cocoa trees inside the farm and when Igede people came to fight and drove me from the land and from then I had ceased to work at the place. It was true that the Defendants came to the place to make farm 7 years ago but I was not present when they cleared the new farm that caused this misunderstanding. It was the Plaintiff who flogged me when I was making farm on the land in question and also seized my cutlass ever since I did not step the farm again.

30 2nd Witness for Defdts. Adetokunbo the Akitipa of Odo (m) s.s. on Bible : I am a village head of Odo a farmer. The 1st Defdt. is my relative I was not aware when he and others trespassed to the Plaintiff's farm and no permission was given to any of them by me. I know nothing of the cocoa said to have been destroyed.

Judgment for : Plaintiff for £20 damages plus 18/- costs. Parties warned to ask for review within 30 days if dissatisfied.

Passed by Odofin of Afao.
D. L. AYENI,
N.C.C.

FAGBUARO II the Odofin
V.P. N.C.
11/6/42.

Review by the District Officer :

40 Defdts. say they are not satisfied and ask for my Review. They admit that they called Oisa as witness. His evidence is not much in their favour. Anyone who clears new land must be able to back this up with proof of permission from the owner. Defdts. admit clearing. I see no cause to upset this judgment, but I think the damages very heavy. Pltff.'s delay is suspicious. In view of fall in prices, I reduce damages to £12.

D. A. MURPHY,
Ag. District Officer.
21/7/42.

Exhibits.
—
Defendants' Exhibits.
—
Ex. C.
Ado
District
Appeal
Native
Court Pro-
ceedings in
Case No.
D9/40,
11th June
1942,
continued.

Exhibits. Review by the Resident :

Defendants' Exhibits.

Review 25 (2).

Ex. C.
Ado
District
Appeal
Native
Court Proceedings in
Case No.
D9/40,
11th June
1942,
continued.

At instance of Defendant Adubu. Both parties present. The Defendant denied that he had made the statements in the record, and stated that the land was his father's (deceased), and that he had not gone to the Akitipa for permission to farm. I do not believe him. The Record was confirmed by two of the Court Members present.

I do not believe that in making farm, damage to economic crops as alleged could have been done. It is clear however that a trespass has been committed, and though the damage awarded are in my view excessive, I do not propose to vary the D.O.'s Review Orders. The case should have been dealt with on Appeal and not by Review. 10

J. WANN,
Resident Ondo Province.
26/10/42.

Ex. X.
Ado Ewi
Native
Court Proceedings,
14th
September
1943.

Exhibit "X."

ADO EWI NATIVE COURT PROCEEDINGS.

IN THE ADO EWI NATIVE COURT.

Holden on Tuesday the 14th day of September, 1943.

Before the ODOFIN President and Members.

20

- | | | |
|-----------------|----------------|----------------|
| <i>Oke Ewi</i> | <i>Odo Ado</i> | <i>Oke Ila</i> |
| 1. Ejigbo | 7. Odolofin | Ejigbo |
| 2. Odoba | 8. Egbedi | Eseru |
| 3. Olugemo | 9. Oisegan | |
| 4. Akogun | 10. Aremo | |
| 5. Ologunsinkin | | |
| 6. Obasoyin | | |

Native Authority of Ado

Vs.

1. Yesufu (m) of Odo
2. Oni (m) of Odo
3. Ojo (m) of Odo

Charge : Stealing 106 pods of kola nuts value 7/- property of one Akomolafe (m) from his farm Ahere Ushin at Ilawe on 6/9/43. 20

Transferred from Ilawe Native Court on the approval of the District Officer. *All accused persons plea not guilty.*

Witness for Prosecution : Akomolafe (m) s.s. on Bible : I am a native of Ilawe the kola nut trees belong to my father Okerebe, late Oluloda of Ilawe. It happened this day I was coming from farm and on reaching my said father's farm I saw the 1st accused as he was coming down from a kola tree and I aided at him on reaching the spot I found these pods of kola nuts which he has already plucked and I held him thereby the 2nd accused escaped. I took the 1st accused to Ilawe together with the kola nuts and on reaching there, I lodged my complaint after which the accused was charged with the rest two accused persons mentioned by him (the first accused). That's all. 40

2nd Witness for Prosecution : Joseph Aroge (m) s.s. on Bible : I am a native of Ilawe a farmer. This day, late in the evening I in company of the 1st witness for prosecution were coming from farm and on reaching the 1st witness' father's farm we found the 1st accused coming down from a kola tree and he was immediately challenged and the other accused ran away. We held up the first accused and took him to our town (Ilawe) together with the kola nuts already picked by them and was handed over to the Ilopa in charge where he mentioned the 2nd and 3rd accused and they are all charged for stealing after inquiry. That's all.

Exhibits.
 ———
Defendants'
Exhibits.
 ———
 Ex. X.
 Ado Ewi
 Native
 Court Pro-
 ceedings,
 14th
 September
 1943,
continued.

10 *1st Accused* : Yesufu (m) s.s. on rosary : I am a native of Odo a farmer. Truly I was sent to the farm in question in company of the 3rd accused by the Akitipa of Odo to reap the kola nuts as the farm belongs to him. On reaching the kola nuts, there the 1st witness for prosecution and others came and we were challenged for reaping their kola nuts and I explained to them that the kola trees belongs to the Akitipa of Odo and not theirs and as a result they forced me to Ilawe. I was reluctant to follow them but they began to beat me. We have once plucked the kola nuts twice this year on which occasions the 1st witness for prosecution met us and helped us to gather the kola nuts. One Amujo an Ewi's
 20 messenger went with us for the past two times.

2nd Accused : Oni (m) s.s. on cutlass : I am a native of Odo a farmer. I did not go with the 1st and 3rd accused to the farm in question and I could not say what happened at the spot of occurrence. I only heard of this matter from the 3rd accd. That's all.

3rd Accused : Ojo Jimoh (m) s.s. on rosary : I am a native of Odo a farmer. This day I accompanied my father to farm to reap kola nuts whereby the 1st witness for prosecution and others came and met us and they challenged my father and began to threaten that they will behead him ; this made me afraid and I ran home to call our people and before
 30 we got back to the spot they have forced my father to their town (Ilawe). That's all.

Q. by Court to 1st witness for Prosecution : Is the farm in question belongs to Odo or Ilawe ?

Answer : It belongs to Odo but my father is also a native of Odo though lived in Ilawe during his life time.

Witness for Accused : Adetokunbo the Akitipa of Odo (m) s.s. on Bible : I am a farmer native of Ado and the head of Odo farm settlement. The kola trees in question are mine as well as the land on which they were planted. It was I who sent the 1st accused to go to the farm (Ahere Idi
 40 Ishin) to reap the kola nuts for me. Some years ago a portion of Odo land was given to some Ilawe people for farming on payment of yearly Ishakole. It happened one of the 12 people working on the land by name Ojo set fire on the Peregun trees recognised as a boundary between Odo and Ilawe with intent to destroy the boundary and for this reason Odo people sued them to Court in the year 1928 for planting cocoa and other life trees on their land and the Court judgment runs as follows :—Ilawe people not to plant life trees on Odo land and that they should be paying yearly Ishakole to the Odo and whosoever refuse to abide with the court decision shall be liable to punishment of not less than £5. The people

Exhibits.
 ———
Defendants'
Exhibits.
 ———

Ex. X.
 Ado Ewi
 Native
 Court Pro-
 ceedings,
 14th
 September
 1943,
continued.

at the time quitted the land and it was after this that one Elemo of Ilawe, Oni and the 1st witness for prosecution came back to the same farm and started to make farm but not willing to pay Ishakole hence action was instituted against them to quit the land and the court gave judgment accordingly ; above all, the case was reviewed by the Resident and it was then decided on review order that all the life trees on the land should be owned by me without any compensation. After this decision the 1st witness for prosecution and others came to the farm and report to this effect was made to the then District Officer in person of Mr. Vosper who wrote them a strong warning letter to step the farm no more otherwise they will be charged for trespass. I referred the court to the following civil cases Nos. 585/28 of 16/1/29 and Ado Appeal Court case No. 2/40 of 5/12/40. The witness for prosecution have no right whatever to claim ownership of any thing on the land at all. 10

Sentence : All accused persons found not guilty and they are discharged.

Court Remarks : There is no substantial reason to support the statements of the complainant in this case in view of the cases which the witness for accused referred the court to.

Kolas returned to Chief Akitipa of Odo the farm owner. 20

Parties warned to appeal or ask for review within 30 days if dissatisfied.

(Sgd.) FAGBUARO II THE ODOFIN,
 P.N.C. 14/9/43.

Passed by President
 D. L. AYENI,
 N.C.C.

Exhibit "K."

MAGISTRATE'S COURT PROCEEDINGS in Case No. 10/34/44.

IN THE MAGISTRATE'S COURT OF NIGERIA.

IN THE MAGISTRATE'S COURT OF THE IFE MAGISTERIAL DISTRICT.

Holden at Ado-Ekiti.

Before His Worship ABIODUN OLAYEMI ABAYOMI, Esq.

Magistrate Grade I.

Friday, the 10th day of May, 1946.

10/34/44 : A. Atomobase Vs. O. Atobumeji.

- 10 Parties present. Majekodunmi for the Plaintiff. Odunubaku for the Defendant. Case settled out of court on these terms. The Defendant agrees to pay £15 being six years rent in arrears and to be paying £2.10/- yearly as rent :—Plaintiff agrees and also withdraws claim for possession. Plaintiff is awarded £5.5/- costs.

It is adjudged that the Plaintiff do recover against the Defendant the sum of £15 and £5.5/- costs amounting together to the sum of £20.5/-. And it is ordered that the Defendant do pay the sum of £20.5/- to the Registrar of this Court on or before the 29th of June, 1946.

(Sgd.) A. O. ABAYOMI.

10/5/46.

20

*Exhibits.**Defendants'*
*Exhibits.*Ex. K.
Magistrate's
Court Pro-
ceedings in
Case No.
10/34/44,
10th May
1946.

Exhibits.

Exhibit "E. 1."

Defendants' Exhibits.

DISTRICT OFFICER'S COURT PROCEEDINGS in Suit No. D2/45.

Ex. E. 1.
District
Officer's
Court Pro-
ceedings in
Suit No.
D2/45, 11th
and 12th
July 1946.

IN THE COURT OF THE DISTRICT OFFICER, Ekiti Divn., sitting in his appellate jurisdiction under section 28 (1) of the Native Courts Ordinance, No. 44 of 1933 holden at Ado-Ekiti on the 11th & 12th July, 1946.

Ado District Court.
Civil Suit D.2/45.

Adetokunbo, the Akitipa of Odo,
representing Odo Village
Vs.

1. Sam Oni of Ilawe
2. Olukosun of Ilawe
3. Seda of Ilawe
4. Olu Balogun of Ilawe
5. Momodu of Ilawe
6. Komalafe Abere of Ilawe
7. Falade of Ilawe
8. Adubu of Ilawe
9. Poranku of Ilawe
10. Agbelusi of Ilawe
11. Moses Oni of Ilawe
12. Amogbon of Ilawe
13. Damiko of Ilawe
14. Apayinoge of Ilawe
15. Oluwasuyi of Ilawe

Claim : £50 damages jointly and severally for trespass committed by the Defendants on the Plaintiff's farm land known as Ahere-Isin & Agbeje Odo by wrongfully entering & cutting down trees & making arms as from July, 1945.

10

J. of N.Ct. for Plff. for £24 damages & costs. Defdts. appeal. Plaintiff present.

1st, 4th, 5th, 7th, 8th, 9th, 10th, 11th, 12th, 14th and 15th Defendants present. 2nd, 3rd, 6th, 13th Defendants absent sick.

30

I had adjourned this appeal from 14th November, 1945, in order that the N.A. Surveyor might prepare a plan of the land. He had not done all I required when he resigned. He had however prepared a detailed plan of Ahere-Isin the land with which most of the Defendants are concerned. After my inspection of the land on 12th July, I was able to mark on the map the position of Agbeje Odo—the land in dispute in 1940 (Appeal before J. Wann, Resident, Case 2/40). Throughout this appeal I have made use of the plan prepared by Igbo, E.N.A. Surveyor, dated 17/4/46. All references below, unless otherwise stated, are to this plan.

Plaintiff seeks leave to withdraw his claim against 1st, 2nd, 6th, 7th, 10th, 13th and 14th Defendants on the grounds that they have now 40
quitted the land in dispute, or being related to Odo Village have a right to use the land, or have paid him Ishakole.

This leaves as Defendants :—

- | | |
|----------------|---------------|
| 3. Seda | 9. Poranku |
| 4. Olu Balogun | 11. Moses Oni |
| 5. Momodu | 12. Amogbon |
| 8. Adubu | 15. Oluwasuyi |

All except Momodu, No. 5 state, as their grounds of appeal, that as members of Oniloda Family, Ilawe, they are entitled to use the land as it belonged to Oniloda. Momodu, No. 5, states that he is only making use of cocoa which his late brother, Ariola, planted on the land. All the above are farming north of the Ado-Ilawe motor road. The land disputed in 1940 is clearly identified as being all south of the motor road.

Plaintiff, Respondent, believed that the boundary between Ado and Ilawe had been completely fixed in Ado Civil Suit 585/28, but a study of the 1940 cases makes it quite clear that only the southern boundary has been fixed from the confluence of the Oshun & Agbeje streams (south of milestone 8) along the Oshun stream to its confluence with the Oruwo river (see plan). Both parties admit that south of the Oshun stream the land is Ilawe's & belongs to Alaworo & Agbakin.

In reply to Defdt./Appellants' grounds of appeal, Pltff. states that Oniloda & Odopetu were Odo chiefs who after the Kiriji war settled at Ilawe & through them people of Ilawe came to be using the land. Descendants of Oniloda & Odopetu were entitled to free use of the land, but others had to pay Ishakole to Odo. Plaintiff objects to Oniloda descendants bringing these others to make use of the land. Because 8th, 12th and 15th Defdts. now deny their relationship with Odo, Plaintiff includes them in his claim.

I have inspected the land and have seen for myself some of the Defdts.' farms. Their position is as marked by me on the map.

In the presence of 9th, 10th, 11th & 12th Defdts. Plaintiff tenders a book of counterfoil receipts to show that 3rd & 4th Defdts. and members of 9th Defdt's. family, have been paying him Ishakole in respect of the land. Counterfoils also show that 2nd Defendant & Chiefs Oisa & Elekan of Ilawe whose farms were seen on the land, have paid Ishakole to Plaintiff.

30	No. 9/41 of 5/12/41	Chief Olokusun	10/-	part payment
	11/41 ,, 8/12/41	” ”	”	final payment
	13/42 ,, 10/ 1/42	Gabriel Oge & his brother Agbakin (alias Seda, 3rd Defdt.)	5/-	
	14/42 ,, 10/ 1/42	Chief Elegbepa & others (Poranku's family) ..	£1	
	27/42 ,, 31/12/42	Jacob Belo (now chief Elekan)	2/6d.	
40		(Ds. 9, 10 & 12 admit he has a farm on Oniloda land.)		
	30/43 ,, 27/ 1/43	Fakanbi the Oisa (farm seen by me & the Defdts. in Oniloda land)	5/-	
	31/43 ,, 27/ 1/43	Olu (Balogun, D4?) ..	5/-	

Adubu, 8th Defdt. a member of Oniloda family, now denies that he is related to Pltff. Yet in Ado Civil Suit 9/40 in which he was sued by Igede people for damaging their farms in the top right hand corner of the

Exhibits.
—
Defendants' Exhibits.
—
Ex. E. 1.
District
Officer's
Court Pro-
ceedings in
Suit No.
D2/45, 11th
and 12th
July 1946,
continued.

Exhibits. land now in dispute near the Ameyinkorodo stream—he called Pltff./
Defendants' Respondent as a witness & claimed that Akitipa was his relative. (*Vide*
Exhibits. pp. 44–47 of J.B. Vol. 3.)

Ex. E. 1.
 District
 Officer's
 Court Pro-
 ceedings in
 Suit No.
 D2/45, 11th
 and 12th
 July 1946,
continued.

Plaintiff/Respondent refers me to a criminal case (Ilawe 28/43 : transferred from Ilawe N.Ct. to Ado N.Ct. & tried on 14th September, 1943) in which Komolafe, now 6th Defdt. was the principal witness for the prosecution. The charge against 3 men of Odo was "Stealing 106 pods of kola from Ahere Ishin on 6/9/43." Under cross-examination Komolafe then said "The farm belongs to Odo but my father (Oniloda), though a native of Odo, lived at Ilawe." 10

Amogbon, 12th Defdt. claims to be a son of Odopetu. One of his farms is near Odo village & he admits that his father & Chief Sapetu of Odo's father, farmed side by side. He says the Apon stream marks the boundary between the two farms which are about a mile from the motor road. I suggested to him that if, as he claims, the farm belongs to Ilawe, why does Sapetu not pay Ishakole ; likewise several other Odo farmers on the same land. He could not say why.

Oluwasuyi, 15th Defdt. said Odo people own their own village & have farm land round about, but at the same time claimed that Oniloda land went right down to Onikun of Ilawe's land south of the road. In fact, 20 Onikun has no land here & Oluwasuyi's statement is in itself a contradiction, as the map will show.

After inspection of the land, hearing fresh evidence & studying old cases, I have no doubt whatever that Oniloda & Odopetu were of Odo origin. So long as their descendants recognised Odo ownership of the land, Pltff. allowed them to farm freely ; nor did he prevent other people from Ilawe from having farms there so long as they paid Ishakole. It is only recently, when relations between Ado & Ilawe have been more strained, that Odo's original ownership of the land has been denied by some of them.

All Defendants have had farms on the land for several years & non- 30 descendants of Oniloda & Odopetu must pay Ishakole to Odo. So long as 8th, 12th & 15th Defdts. deny their connection with Odo, they too must pay Ishakole to Plaintiff.

Judgment for Plaintiff against 3rd, 4th, 5th, 8th, 9th, 11th, 12th, 15th Defendants. Each is to pay him £2 damages and hereafter regular Ishakole if they wish to continue their farms. I also order them jointly to pay Plaintiff the costs of the action & his share of the costs of the plan, total £8/4/-.

I consider it in the interest of future peace that I should complete the definition of the Ilawe-Ado boundary. I doubt if there ever was a 40 clearly defined boundary & that shows to me by the Plaintiff the western boundary of the land shown on the plan—has few distinctive features. The southern boundary is complete—the Oshun stream. I declare the western boundary of the land to be as follows : From the junction of the Oshun & Agbeje streams in a straight line approximately due north (to milestone 8 on the motor road ; thence eastwards along the motor road for approximately one quarter of a mile to the point where the Igede bush path crosses the road ; thence up the path northwards past the cross-roads known as Ahere Ishin, continuing northwards along the Igede path

along the eastern side of that land marked on the plan as belonging to Chief Odogun. I have marked the boundary (A) (B) (C) (D) (E) on the plan. Pltff. states that he will accept this boundary. West of this boundary no Ishakole will in future be claimable by Odo.

Exhibits.
Defendants' Exhibits.

N.Ct. Judgment modified.

(Sgd.) R. E. BROWN,
 Ag. D.O.
 12/7/46.

Ex. E. 1.
 District Officer's Court Proceedings in Suit No. D2/45, 11th and 12th July 1946, *continued.*

Judgment read to 5th, 7th, 8th, 9th, 10th, 12th, 14th & 15th Defdts. & the Plaintiff in my office on 15/7/46. Right of appeal to Resident within 30 days explained.

(Sgd.) R. E. BROWN,
 Ag. D.O.
 15/7/46.

Exhibit " E. "

ADO DISTRICT APPEAL COURT PROCEEDINGS in Case No. D2/45.

12/12/50.

IN THE ADO DISTRICT APPEAL NATIVE COURT holden on Friday the 21st day of September, 1948.

Before the EWI PRESIDENT and MEMBERS.

20 Case No. D2/45.

Ex. E.
 Ado District Appeal Court Proceedings in Case No. D2/45, 21st September 1948.

ADETOKUNBO the Akitipa (m) of Odo

Vs.

30

1. SAM ONI (m) of Ilawe.
2. OLU (m) of Ilawe.
3. SEDA (m) of Ilawe.
4. OLU BALOGUN (m) of Ilawe.
5. MOMODU (m) of Ilawe.
6. KOMOLAFE ABERE (m) of Ilawe.
7. FALADE (m) of Ilawe.
8. ADUBU (m) of Ilawe.
9. PORANKU (m) of Ilawe.
10. AGBELUSI (m) of Ilawe.
11. MOSES ONI (m) of Ilawe.
12. AMOGBON (m) of Ilawe.
13. GAMIKO (m) of Ilawe.
14. APEYINOGE (m) of Ilawe.
15. OLUWASUYI (m) of Ilawe.

40 *Claims* : £50 damages jointly and severally for trespass committed by the Defendants on the Plaintiff's farm land known as Ahere-Isin and Agbeje Odo by wrongfully entering and cutting down trees and making farms as from the month of July, 1945.

Exhibits.

Plaintiff

Claim not admitted.

Defendants'
Exhibits.Ex. E.
Ado
District
Appeal
Court Pro-
ceedings in
Case No.
D2/45, 21st
September
1948,
continued.

Plaintiff—Adetokunbo the Akitipa (m) s.s. on Bible :—I am a native of Ado a farmer there was a dispute about 20 years ago and the dispute was brought to an end in the Resident's Court about 5 years ago *vide* Resident's appeal Court Case No. 2/40 of 5/12/40. Where it was decided that I am the owner of the land mentioned above and that I have boundary with the Ilawe people which was recognised as Osun—Amugbadagbe to confluence of Oruwo stream. After I have obtained this judgment, most of the Defendants used to come to me and obtained my permission to farm on the land as from 1941 to part of 1944 and they used to pay the 10 Ishakole and obtained receipts from me until the later part of 1944 that they ceased on the advice of one Adebayo from Lagos who persuaded them from doing so and promised them that he will help them to separate from Ado and that they shall have the privilege of free use of the land in question on hearing this information I put up an action against them in the High Court but when I was advised by the District Officer, the Ewi of Ado and others I withdrew the action. The D.O. Mr. R. V. L. Wilkes and the A.D.O. in person of Mr. R. Widup inspected the land in question on two occasions and found that the Defendants were working and farming on 20 my land and they found the boundary said to have been made between me and Ilawe. Olukosun and five others were then the representatives of Ilawe and they were strictly warned that if any of them wishes to make farm on my land, they should approach me and obtain my permission and to pay Ishakole but the Defendants ignored the advice and to my astonishment during the month of July the Defendants entered into my land and started to cut down trees and some other life trees and began to make their farms especially one Adubu the 8th Defdt., transplanted kola trees on the land which is against the order of the Court *vide* Ado Ewi case No. 585/28 of 16/1/29 and as I have been warned by the D.O. not to 30 fight with anybody in the farm but to proceed in the Court with any one that may make farm on my land without my permission. All the Defendants are now making farm on the land without my permission and for this reason I put up my claim against them. That's all.

1st Defendant : Sam Oni (m) s.s. on Bible : I am a native of Ilawe a farmer it was true that I have cocoa plantation and kola trees on the land in question but since the Pltff. has obtained judgment for the land I have ceased going there. That's all.

2nd Defdt : Olu (m) s.s. on Bible :—I am a native of Ilawe a trader it was true that I was making farm on the land though I was not aware that the Pltff. has obtained judgment for the land. 40

3rd Defdt. : Seda (m) s.s. on Bible :—I am a native of Ilawe a farmer I could not deny the fact in view of the fact that I am making farm on the land in question as we have no other farm to go.

4th Defdt. : Olu the Olukosun (m) s.s. on Bible :—I am a native of Ilawe a farmer I have no farm of my own on the land in question but some of my brothers are farming there and from them the Pltff. can put up his claim. That's all.

5th Defdt. : Reported to be ill and could not appear before the Court.

6th Defdt. : *Komolafe Abere* (m) s.s. on Bible :—I am a native of Ilawe a farmer I am farming on the other side of Ahere Isin and not on the particular land that was awarded to the Pltff. That's all.

Exhibits.
—
Defendants'
Exhibits.

7th Defdt. : *Falade* (m) s.s. on cutlass :—I am a native of Ilawe a farmer I was farming on my father's farm land and not on the Pltff.'s land as alleged, our said farm is known as Ahere-Isin but I could not recognise the boundary between us and the Plaintiff.

Ex. E.
Ado
District
Appeal
Court Pro-
ceedings in
Case No.
D2/45, 21st
September
1948,
continued.

8th Defdt. : *Adubu* (m) s.s. on cutlass :—I am a native of Ilawe a farmer it was true that our father has been farming on the land in question long ago before his death took place and for this reason I persisted to have my claim on the land.

9th Defdt. : *Poranku* (m) s.s. on cutlass :—I am a native of Ilawe a farmer I recognised the land in question to be my father's land and I was not aware that the Pltff. has obtained judgment for the land as allowed.

10th Defdt. : *Agbelusi* (m) s.s. on cutlass :—I am a native of Ilawe a farmer I recognised the land in question to be my father's farm land and I was not aware that the Pltff. has got judgment for it.

11th Defdt. : *Moses Oni* (m) s.s. on Bible :—I am a native of Ilawe a farmer I was not aware that the land in question has been awarded to the Pltff. in the Resident's court though I am related to him (Pltff.) on maternal side and had I know of this I would have approached him in person and obtained his permission.

12th Defdt. : *Amogbon* (m) s.s. on Bible :—I am a native of Ilawe a farmer I have my farm land at the other side of Ahere Isin and not to the extend to the place awarded to the Pltff. for this reason I ignored to approach him for permission to make farm.

13th Defdt. : *Jamiko* (m) s.s. on cutlass :—I am a native of Ilawe a farmer I have no farm on the land in dispute I could recollect on one occasion that I went to the farm to make peace when there was a quarrel between Odo and Ilawe people. That's all.

14th Defdt. : *Apayinoge* (m) s.s. on Bible :—I am a native of Ilawe a farmer I have cocoa plantation on the land in question but I have ceased farming there since 5 years ago but I make small farm near the place this year. That's all.

15th Defdt. : *Oluwasuyi* (m) s.s. on Bible :—I am a native of Ilawe a farmer the land in question belongs to my father and we have been farming there long ago. I was not aware that the land has been awarded to the Pltff. in his case against the others in the year mentioned. That's all.

Witness for the Court : *J. A. Ogunsakin E. K.* 35 s.s. on Bible :—I am an E.N.A. Police Const. attached to Ado Native Court. On 17/9/45 I was detailed by the Court to accompany the Ado people to the place where it was alleged that the Ilawe people trespassed to their land and the Akitipa (Pltff.) sent five of his town chiefs to go with me on reaching the place the boundary made with Peregun trees were shown to me as far as to Oshun stream and also to Oruwo stream and in the boundary shown to me

Exhibits. there I observed that the Defendants trespass to the Odo land and make new farms. I also found the new kola trees transplanted by the 8th Defendant on the land in dispute.

Defendants' Exhibits.

Ex. E.
Ado
District
Appeal
Court Pro-
ceedings in
Case No.
D2/45, 21st
September
1948,
continued.

Court Remarks : The Court has carefully listened to the stories of the both parties and according to the admittance of the Defendants' themselves in their statement together with the evidence of the E.N.A. Police Const. sent to the farm in question for investigation of trespass there is no doubt that the Defendants knowingly defied the court's previous judgments.

Judgment. For Plaintiff for £24 damages plus 17/- costs. " Parties warned to ask for review within 30 days if dissatisfied." 10

(Sgd.) D. L. AYENI,
N.C.C.

(Sgd.) ALADESANMI II,
P.N.C.
21/9/45.

Ex. F.
Resident's
Court Pro-
ceedings in
Case No.
4/1947,
19th March
1947.

Exhibit " F. "

RESIDENT'S COURT PROCEEDINGS in Case No. 4/1947.

IN THE COURT OF THE RESIDENT, Ondo Province, E. V. S. Thomas, Esq., sitting in his Appellate Jurisdiction by virtue of Section 28 of the Native Courts Ordinance No. 44 of 1933. Holding at Ado on March 19th 1947.

Case No. 4/1947.

20

Adetokunbo Akitipa of Odo representing Odo Village

Vs.

1. Sam Oni	8. Adubu	} <i>Claim :</i> £50 damages jointly & severally for trespass committed by the Defendants on the Plaintiff's farm land known as Ahere-Isin and Agbeje Odo by wrongfully entering and cutting down trees and making farms as from July, 1945.
2. Olukusun	9. Poranku	
3. Seda	10. Agbelusi	
4. Olu Balogun	11. Moses Oni	
5. Momodu	12. Amogbon	
6. Komolafe Abere	13. Jamiko	
7. Falade	14. Apayinoge	
15. Oluwasusi		

30

This case originated before the Ado District Court which gave judgment in favour of the Plaintiff for £24 plus 17/- costs. The defendants appealed to the District Officer who gave judgment for the Plaintiff against 3rd, 4th, 5th, 8th, 9th, 11th, 12th and 15th Defendants, for £2 damages each and to pay to the Plaintiff jointly costs of the action and Pltff.'s

share of the costs of the plan total £8.4/-. The District Officer further declared a boundary between Ilawe and Ado which boundary is indicated by the letters A, B, C, D, E on the plan which is attached hereto and marked Exh. "K."

Defendants' Exhibits.

Ex. F.
Resident's
Court Pro-
ceedings in
Case No.
4/1947,
19th March
1947,
continued.

The Defendants against whom judgment was given by the District Officer now appeal and when asked to state their grounds of appeal appear not to be aware of the contents of the document attached hereto and marked Exh. "Y" which purports to indicate their grounds of appeal. I therefore propose to hear each Defendant's grounds of appeal individually.

- 10 All Defendants are present in person except Momodu 5th Defdt. who is represented by Dada. All the Defendants except Momodu state that their only ground of appeal in so far as the claim for damages as distinct from the boundary declared by the District Officer is concerned, is that none of them have ever paid Ishakole before, and that in spite of the fact that they had worked on the land in question for years, and that they are entitled to work on the land as members of the Onilado family, Seda, 3rd Defdt. on behalf on himself urges that if he should pay Ishakole to anyone it should be to Adubu. The Defendants also challenge the reliability of the counterfoils of receipts produced by Plaintiff.
- 20 of the contradictory statements which it appears have been made by some of the Defendants in the Courts below, it appears advisable to hear some of the Defendants on oath after warning them that they are on oath. Moses Oni and Fakanbi are selected to give evidence.

Moses Oni s.s. I made a statement in this case before the Native Court, but did not say that I was related to Akitipa.

Adjourned till 20/3/47.

(Sgd.) E. V. S. THOMAS.

Ado-Ekiti, 19th March, 1947.

Resident, Ondo Province.

- 30 *Resumed on 20/3/47.*

Chief Oisa s.s. My name is Fakanbi and I farm near to Odo. I pay Ishakole to nobody. I gave evidence in case D/9/40, but I did not say that Chief Akitipa had given me land or that I had approached him for land.

Note by Court: The statements of Moses Oni and Chief Oisa are entirely at variance with statements made before the Native Court.

In view of the Defendants suggestion that the counterfoils of the receipts issued by Plaintiff to sundry persons are all part of a system of forgery, the evidence of one of these persons chosen at random is taken.

- 40 *Adeniji s.s.:* I am a farmer and I farm near to Akitipa's farm at Odo. I pay Ishakole to him and in 1944 and for three years before I paid 5/- per year.

Exhibits.
 —
Defendants'
Exhibits.
 —

Ex. F.
 Resident's
 Court Pro-
 ceedings in
 Case No.
 4/1947,
 19th March
 1947,
continued.

Note : Witness produces a receipt for 5/- dated 15th November, 1944 which tallies exactly with the counterfoil bearing the same number and the same date.

Adjourned for judgment.

Ado-Ekiti, 20th March, 1947.

(Sgd.) E. V. S. THOMAS,
 Resident, Ondo Province.

Resumed on 22nd May, 1947.

I find that there is no substance in the contentions of the Defendants and in addition it is clear that Moses Oni and Fakanbi at any rate adopt their statements to suit the points at issue. 10

I have no hesitation in upholding the decision of the Court below with the proviso that I do not consider it appropriate in the course of this case to declare a boundary to complete the demarcation of the Ado-Ilawe boundary.

I therefore uphold the judgment of the Court below in so far as it is expressed in the following terms :—

Judgment for Plaintiff against 3rd, 4th, 5th, 8th, 9th, 11th, 12th, 15th Defendants. Each is to pay him £2 damages and hereafter regular Ishakole if they wish to continue their farms. I also order them jointly to pay Plaintiff the costs of the action and his share of the costs of the 20 plan total £8 4/-.

I further order that the costs of the appeal to this Court borne by the Defendants.

(Sgd.) E. V. S. THOMAS,
 Resident, Ondo Province.

Exhibit "D."

EKITI DIVISIONAL NATIVE COURT PROCEEDINGS in Case No. 13/47.

IN THE EKITI DIVISIONAL NATIVE COURT held at Ado-Ekiti on Saturday the 24th January, 1948, before the EWI OF ADO and 7 Court Members :—

1. The Ogoga of Ikerre.
2. The Olojudo of Iddo.
3. The Ore of Otun.
4. The Onire of Ire.
- 10 5. The Onigede of Igede.
6. The Obanla of Ijero.
7. The Olulodu of Emure.

Adetokunbo the Akitipa of Odo
Case No. 13/47
Vs.

1. J. Adubu (m) of Ilawe.
2. Adaramodu do.
3. Owolabi do.
4. Olowokere do.
- 20 5. Moses Oni.
6. S. Ajakaiye.
7. Fakanbi Oisa.
8. Ale.
9. Adubu.
10. Seda Agba-Akin.
11. Momodu.
12. Oluwasuyi.
13. Moses Amogbon.
14. Olu Balogun.
- 30 15. Ponranku.
16. J. Aroge.
17. Fakuajo.

Claim : £100 damages from the Defendants for trespassing into the Pltff.'s land known as "Ahere-Ushin," Odo-Igede boundary, and cutting down trees and making farms without payment of Ishakole to Pltff. against Resident's decision in Ado civil case No. 2/45 of 21/9/45.

The 1st, 2nd, 3rd, 4th, 9th, 13th, 16th and 17th Defendants who are present do not admit the claim.

5th to 8th, 10th to 12th, 14th and 15th Defendants are not present. They have definitely failed to procure any reason for their absence. The Defendants present confirm that the summons papers were served on every Defendant who also was intimated of the hearing date.

Pltff. : Adetokunbo the Akitipa of Odo (m) sworn on the Bible and states : I am 58 years of age, native of Ado-Ekiti and a farmer. I am the Village Head of Odo village in Ado District. The land into which the Defendants trespassed belongs to Odo people by right so that I am representing Odo-people in this particular case. About the month of October, 1945, some of the Defendants trespassed into the very land in question. I put the people before the Ado District Court for trespass and I claimed damages from them at that time. They were adjudged to pay me £25 damages at that time by that court. Upon their appeal to the District Officer's Court, judgment was passed for each of the 8 Defendants

Exhibits.

Defendants'
Exhibits.Ex. D.
Ekiti
Divisional
Native
Court Pro-
ceedings in
Case No.
13/47, 24th
January
1948.

Exhibits.
 ———
Defendants'
Exhibits.
 ———
 Ex. D.
 Ekiti
 Divisional
 Native
 Court Pro-
 ceedings in
 Case No.
 13/47, 24th
 January
 1948,
continued.

to pay me £2 each with costs. Upon their appeal to the Resident's court, the District Officer's court decision was confirmed by the Resident. The 8 Defendants paid me the damages and costs at that time. The Resident's decision specified, that apart from the damages, regular Ishakole should be to me whenever the Defendants wanted to cultivate farms on the land. I now tender in evidence the portion of the Resident's decision which reads as follows :—

“ Judgment for Plaintiff against 3rd, 4th, 5th, 8th, 9th, 11th, 12th, 15th Defendants. Each is to pay him £2 damages and hereafter regular Ishakole if they wish to continue their farms. I also order them jointly to pay Pltff. the costs of the action and his share of the costs of the plan total £8 4/-. I further order that the costs of the appeal to this court be borne by the Defendants. 10

(Sgd.) E. V. S. THOMAS,
 Resident Ondo Province,
 Ado-Ekiti, 22nd May, 1947.”

The 10th, 14th, 11th, 1st, 15th, 6th, 13th, and 12th Defendants are those who paid me the damages in the case finally decided by the Resident. I am now claiming £100 damages for the trespass they committed again on the land during the month of October, 1947, without my information, consent or paying any Ishakole to me. When I reported the Defendants' mischief to the District Officer, the District Officer went to Ilawe to warn the Defendants who showed themselves headstrong to the District Officer's advice. 20

Note : The eight Defendants present sworn on the Bible, delegate one of them—the 13th Defendant—to give evidence on their behalf.

Amogbon (m) aged 30 years, sworn on the Bible and states :—We confirm that the land now in question is the very land over which the decision of the Resident was announced in regard to the Ado civil case No. D2/45 on 22/5/47. Though we paid the damages by force at that time but we were not at any time satisfied with the Resident's decision. The land is ours. We the 17 Defdts. actually are making farms on the land according to the Plaintiff's evidence. 30

Xxd. Defdts. : We understood the Resident's judgment but we told him that we were not satisfied. In fact we have not appealed to any other higher authority since then. We are now cultivating farms on the land.

Remarks : The 8 Defendants present before us confirm, on behalf of themselves and other Defendants absent, that the land for which the 1st, 6th, 10th, 11th, 12th, 13th, 14th and 15th Defendants trespassed into and paid damages to the Plaintiff as ordered by the Resident in his decision in regard to Ado Court Civil Case No. D2/45 is the very one on which they have been making fresh farms and over which the Plaintiff is claiming another damage for trespass. The Defendants clearly understood the Resident's judgment. If they were dissatisfied with it they should have appealed further but this they did not do. It is obviously proved before us that the Defendants actually trespassed into the Plaintiff's farmland and committed damages thereon against his will. 40

Judgment : For Plaintiff against each of the 17 Defendants. Each Defendant to pay £4 damages to the Plaintiff and hereafter regular Ishakole if they desire to continue their farms. The 17 Defendants are also ordered to jointly pay £1 11/- costs of this action to the Plaintiff.

Parties warned to appeal or apply for review within 30 days if dissatisfied.

(Sgd.) ALADESANMI II :
The Ewi of Ado,
President of Court : 24/1/48.

Exhibits.
Defendants' Exhibits.
Ex. D.
Ekiti
Divisional
Native
Court Pro-
ceedings in
Case No.
13/47, 24th
January
1948,
continued.

10

Exhibit "L."

MAGISTRATE'S COURT PROCEEDINGS in Case No. 10/46/48.

IN THE MAGISTRATE'S COURT OF NIGERIA.

IN THE MAGISTRATE'S COURT OF THE IFE MAGISTERIAL DISTRICT.

Holden at Ado-Ekiti.

Before His Worship ABIODUN OLAYEMI ABAYOMI, Esq. Magistrate.

Grade I.

Wednesday the 18th day of February, 1948.

10/46/48 :

OGUNTUASE ATOMEJI Plaintiff

Vs.

20

A. ATOMOBASE, The Akitipa of Ado Defendant.

The Plaintiff claims for £50 for trespass committed by the Defendant on the Plaintiff's land at Utalila (Ado) during the month of January, 1947.

Parties present.

Williams for the Plaintiff—He asks that the case be struck out owing to some papers relating to certain proceedings in this Court he discovered amongst his client's papers handed to him.

The action is accordingly struck out with £1. 1/- costs to the Defendant.

30

(Sgd.) A. O. ABAYOMI,
Magistrate.

18/2/48.

Ex. L.
Magistrate's
Court Pro-
ceedings in
Case No.
10/46/48,
18th
February
1948.

Exhibits. 10/46/48 :

Defendants' Exhibits.

OGUNTUASE ATOMEJI Plaintiff

Vs.

Ex. L.
Magistrate's
Court Pro-
ceedings in
Case No.
10/46/48,
18th
February
1948,
continued.

A. ATOMOBASE, The Akitipa of Ado Defendant.

Counter-claim : The Defendant claims from the Plaintiff by way of counter-claim the sum of £5 for arrears of Ishakole on the Defendant's farmland situate at Odo in Ado-Ekiti for two years i.e. 1946 and 1947 at £2. 10/- per year.

Parties present—Counter-claim on Suit 10/46/48.

Williams for the Plaintiff—Defendant in person.

10

Williams admits the Defendant's claim.

Judgment for the Defendant for £5 plus 10/6d. costs.

(Sgd.) A. O. ABAYOMI,
Magistrate.

18/2/48.

Ex. B. 1.
Intelligence
Report.
(Extracts
printed.)
20th
November
1933.

Exhibit " B. 1. "

INTELLIGENCE REPORT

(Extracts printed—Sections 73-75 and 152.)

73. Major W. R. Reeve-Tucker was the first Travelling Commissioner stationed at Oke-Imo, Ilesha, when the Lagos Government formed the North Eastern District in 1899. One of his main occupations was to tour the Ekiti Country and his diary entries show that he visited Aisegba and Agbade (January 9th), Ijan (January 13th) and Ado town (January 14th). On January 17th he held the first meeting of Ado village heads but the Olosi of Osi refused to come to Ado until the following day when he was fined £5 for refusing to prostrate himself before the Ewi. Later, (January 31st and February 1st) he visited Igbara-Ode and found the Bale (Olowa) too old to leave his house and he advised the people to place themselves under the Ewi (Appendix D, paragraph 75). On March 21st he visited Are and he went later to Iworo. He then returned to Ilesha (Oke-Imo). 20 30

74. At the establishment of the Ekiti Council for members of the Ekiti Confederacy on 21st June, 1900, the name of the Ewi of Ado was placed third of the Ekiti Obas in order of precedence. The district of the senior Oba, the Ore of Otun has since been transferred to the Ilorin Province.

75. Major Reeve-Tucker resumed his tours in July, 1900 when he informed the Olosi of Osi at Otun that he was under the Ewi of Ado. A few days later (August 9th) he visited Osi town itself and in the same month he stayed at Ode and Lashigidi, returning by Ado town. Early in 1901 (January 18th to 20th) he visited Ilawe, Igede and Uyin and in February he saw Eshure, Iropora, Awo and Eyie, so that from January 1900 to January 1901 he stayed or called at every Ado sub-town or village with the exception of Igbimo, Igbo-Omoba and Egbe.

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E. THE AFIN (PALACE).

10 152. The Afin is the official residence of the Ewi and it was customary for the sub-towns and villages to repair it when called upon to do so. Of recent years this practice has been discontinued and most of the roofing is of corrugated iron. It is said that :—

(1) Ijan, Igbimo and Aisegba repaired the walls.

(2) Ilawe repaired the outer court and the festival meeting place known as "Ubamote."

(3) Are and Odo-Ado repaired the second court known as "Oyeo."

(4) Igbogun repaired the women's court known as "Agbarun."

20 (5) Oke-Ewi repaired the forecourt known as "Areke."

(6) Afao repaired the District and Town Council hall known as "Owa-Iwa."

(7) Iworoko repaired the side court known as "Osanyin."

(8) Oke-Ila repaired the inner court and audience chamber known as "Osunlara."

All the other towns would bring leaves. It should be noted that the towns only repaired the courts, walls or public rooms and not the Ewi's private compartments.

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INTELLIGENCE REPORT

(Extracts printed—Sections 1–22, 52–65.)

EKITI DIVISION.

ADO DISTRICT INTELLIGENCE REPORT.

APPENDIX D.

The relation of the Ado sub-towns and villages to their District Head, the Ewi.

August, 1933. 10

EKITI DIVISION.

INTELLIGENCE REPORT.

ADO DISTRICT.

GENERAL REMARKS.

The substance of this appendix to the Ado District Intelligence Report is such that it is considered essential to publish it as a confidential document. During His Honour the Lieutenant-Governor's visit to Ado-Ekiti in July the suggestion that controversial and confidential matters should be made the subject of separate reports was approved.

2. It is felt that too little is known of the position of the sub-towns 20 under the Ewi of Ado and that it would be useful to place on record my observations gained as a result of visits paid to them during the months of June, July and August. It is indeed important that controversial topics are introduced before any attempt is made to submit a scheme for re-organisation so that a definite policy can be laid down which will assist those who are entrusted with the task of propounding proposals which are acceptable to all classes of the community.

POPULATION AND AREA.

3. The estimated population of the Ado District in 1931 was 47,981. Of this number the mother town of Oke-Ewi (which is actually part of 30 Ado town) consists of 6,753 people and the remaining 22 sub-towns or villages and 13 farm settlements absorb the remainder. The whole are under one District Head, the Ewi of Ado, an Oba or crowned head recognised by the Oni of Ife, who draws a salary of £600 per annum. The area occupied is roughly 539 square miles and the mother town is in the centre so that some of the sub-towns are more than 20 miles distant from the District Headquarters, which is the venue of the one Native Court (B Grade).

NATIVE COURT PARTICULARS.

4. There are at present thirteen Court Members, three from Oke-Ewi 40 (part of Ado town), three from Odo-Ado (part of Ado town), one from Oke-Ila (part of Ado town), one from Uyin (a sub-town) and five from Igbara-Odo (another sub-town). The population of these towns is 19,681, so that it will be seen that 18 towns and 13 settlements with a population of 28,300 are not represented at all.

5. The distance of the outlying towns or villages to Ado and their poor representation on the Court is reflected in the number of cases emanating from them. The figures for 1932 show that a total of 835 cases heard 522 were brought by persons of Ado town (Oke-Ewi, Odo-Ado and Oke-Ila) with a population of 11,128 and therefore only 313 cases were brought by the remaining 36,853 persons. A further inconvenience discourages the people from resorting to local Native Court litigation because, as only seven of the thirteen Court Members are active members, there is considerable delay in disposing of outstanding cases of which there are
10 often as many as one hundred at the end of each month.

TAXATION PARTICULARS.

6. The 1932/33 tax-payers numbered 11,168. The tax amounted to £4,785 8s. 1d. of which Ado town contributed £1,270 1s. 4d. From the commencement of taxation in 1920 the District has contributed £53,731 13s. 7d. of which Ado town's share is £14,594 13s. 5d. leaving £39,137 0s. 2d. to the sub-towns and villages.

7. The Ekiti Native Administration has thus received about £19,500 from the Ado sub-towns. What actually have they received in return? They have been paid about £3,900 as 10% contributions to Village Heads
20 for the collection of tax. A Native Administration motor road was constructed in 1927 through the sub-towns of Uyin and Igede costing £2,000. Another Native Administration motor road was made from Igbara-odo to Ilawe, a distance of 8 miles, costing £525 and a Native Administration Dispensary was erected at Igbara-odo costing roughly £100. One other sub-village, Iworoko, is on the Public Works Department road from Ado to Ilorin. It can be realised that the sub-towns and villages are inclined to feel that they are not seeing much return for their tax
30 contributions, although central expenses, the District Head's salary, and maintenance costs must be reckoned. The present year lends a brighter colour to the picture because a Native Administration motor road has been commenced from Ado town to Lashigidi (or Imessi) (23 miles) which will serve the eastern part of the district while it is anticipated that the Native Administration will be able to assist the towns of Are, Afao and Igbimo by the construction of bridges and culverts on the road they are making for themselves.

8. There is no denying that the improvements made by the Ekiti Native Administration in the past few years have been felt by a large number of people throughout the Ekiti Division but with the resources at its disposal it has been unable to introduce amenities to the outlying parts.
40 A time will come when such places will reap the benefits for which they have waited so patiently.

THE EWI'S DUTY.

9. In the meanwhile the Ewi and his immediate councillors must be urged to adopt a more sympathetic outlook towards his sub-towns. It is this side of the question that has prompted me to treat the sub-towns to a separate paper. The situation at present is far from satisfactory and a survey which has led to this state of affairs is necessary. It is realised that the reasons advanced are open to considerable criticism, but I assert that similar situations exist in other parts of Ekiti to-day.

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SELECTION OF CHIEFS.

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10. It would appear that the law of tanistry (collective living) is applicable in the selection of chiefs in this District, that is to say that the fittest male member of a certain family is chosen and so the chiefship is hereditary as regards the family but elective as far as the individual is concerned. Each town or village of what ever size possesses a head chief or Bale, which is the local Yoruba term employed. In addition, the titled persons in the community form a town or village council taking their position on the council in accordance with the importance of the titles they hold. Appendix C of the Report shows exactly who these people are 10 in their order of precedence. There seems to be an impression that Bales and other important chiefs are either personal appointments of the Oba or that he can veto any appointment made. Such is not the case. Every Bale is elected from a particular family by the most important group of chiefs in his town or village assisted by the local council as has been explained in Appendix B of the Report. Every other chief is nominated by the family which has the privilege of finding a successor to the post and which is requested to act in the matter by the town or village council. (Appendix C.) The council cannot object to the choice of the town nor 20 can the Oba object to the choice of the town or village council in their selection of a Bale although the newly appointed man is introduced to the District Head by the council as an act of courtesy *after his installation.*

SELECTION OF OBA.

11. The appointment of the Oba himself is similar in many respects but with the difference—and here I speak of the Ado District only—that he must be the son of a previous King or Oba who has been born during his father's reign. A further difference is made in that the family from whom the choice is made is not consulted by the committee of selectors which consists of five prominent chiefs in the District Head's own town named Oke-Ewi (a part of Ado town). 30

THE POSITION OF AN OBA.

12. In paragraph 101 of the Oye Intelligence Report I have quoted extracts from Mr. G. H. Findlay's report "The customs and superstitions of the Ekiti people." One extract reads "the Oba does not interfere at all in the internal affairs of his sub-towns. He contents himself with their allegiance insisting only on his right of reference in the selection of a new "Bale" who is elected by his own townspeople in the same way as the Oba by his." My observations in the Ado District prompt me to say that the Oba possesses *no right of reference* at all if local native custom is followed. I feel that the "right of reference" has been bestowed on him 40 by the past policy of the Government. In 1919, Mr. Findlay wrote in his Annual Report that "The establishment of law and order consequent on the British occupation has exalted the Obas to a position which they never held before." What was the position they held before? As a result of further inquiries in the Ado District I have found no reason for departing from the conclusions reached at Oye to the effect that the Oba is not regarded as a man of this world but as a manifestation of the spirit of the clan.

13. It is quite possible to believe that the awe and reverence in which an Oba was held contributed to make him the most powerful baron of all his chiefs and even something of an autocrat before the advent of Government. War was then the chief occupation of the people and a victory meant the capture of slaves and personal chattels and these were offered to the Oba as being earthly representative of the spirit of the clan but later the Obas themselves quite naturally looked upon these gains as their perquisites and their people did not object. Their kingship gradually became absolute. They surrounded themselves with three or four personal advisers (or Agba Ile as they are known) and entrusted important missions to their slaves (or Omodiowa) who became not only their mouthpiece but the intermediaries between them and their sub-towns. They shrouded themselves with a mysterious glamour and contended themselves with what they could get out of the people who were quite willing to acknowledge them as their overlord and pay them tribute. The Yoruba delights in being ruled.

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ADVENT OF GOVERNMENT.

14. It was not until 1899 that the Lagos Government formed the North Eastern District and Major W. R. Reeve Tucker was sent as Officer in charge with headquarters at Ilesha. One of his first duties was to tour the present Ekiti District. He left Ilesha on November 15th, 1899, and on the completion of his tour he wrote to the Honourable Colonial Secretary on February 26th, 1900, "I have called in all the tributary villages to the capital of the several Ekiti Kingdoms and have placed the Bales securely under their kings. The Bales who were endeavouring to make themselves independent, a lingering remnant of their old wars and disputes, I have effectively placed under their proper kings. At each capital I held a palaver and explained the Government policy to them."

FORMATION OF EKITI COUNCIL.

15. The chief result of this hurried tour of three months during which he visited all the chiefs towns and villages in an area of approximately 2,500 square miles and dealing with a population of 124,000 was that the Ekiti council for the members of the Ekiti confederacy which formed a large part of the new District was formed and the first meeting of the council took place at Ilesha on June 21st, 1900, when the representatives of the following Obas attended :—

- (1) The Ore of Awtun (now in Northern Provinces).
- (2) The Elekole of Ikole.
- (3) The Ewi of Ado.
- (4) The Oba of Obo (now in Northern Provinces).
- (5) The Ajero of Ijero.
- (6) The Alara of Ara.
- (7) The Deji of Akure.
- (8) The Alaiye of Efon.
- (9) The Arinjale of Ise.

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- (10) The Olojudo of Iddo.
- (11) The Oloye of Oye.
- (12) The Ologotun of Ogotun.
- (13) The Ogoga of Ikerre.
- (14) The Oloja of Okemessi.
- (15) The Onitaji of Itaji.
- (16) The Onishan of Ishan.

16. The Otun and Obo clans were transferred to the Northern Provinces soon after and in June 1901, the Deji of Akure was placed in the Eastern Division. In 1909, the Ata of Aiyede was placed in the Southern Provinces and in 1914, the Deji of Akure was re-transferred so that the Ekiti Division which had been formed in 1913 consisted of 15 Districts each under an Oba. In 1920 the Elemure of Emure was recognised as an independent Bale and appointed a Native Authority in 1929 making the present number of 16 Districts. 10

CLAIMS TO INDEPENDENCE.

17. While it is easy to be critical of the formation of the Ekiti Council in 1900 as one views the matter thirty-three years later it must be remembered that Major Reeve Tucker, whose policy was ably supported by Captain W. G. Ambrose, succeeded in bringing order out of chaos but that does not get away from the fact that the powers of the Obas were greatly increased and that some towns and villages, who claimed independence but who were unable to produce a crowned head were somewhat arbitrarily placed under these District Heads. The only records which I have been able to trace locally for the years 1898 to 1913 is one official diary (1899 to 1902). Major Reeve Tucker in writing daily notes of his tour shows that the following sub-towns declared their independence at that time :— 20

- (1) The Olosi of Osi—of the Ewi of Ado.
- (2) The Olowa of Igbara-odo—of the Ewi of Ado. 30
- (3) The Alara of Ilara—of the Deji of Akure.
- (4) The Alapa of Apa—of the Alaiye of Effon.
- (5) The Owalogbo of Ologbo—of the Olojudo of Iddo.
- (6) The Elemure of Emure—of the Arinjale of Ise.

18. From then until 1924 claims to independence have been made by :—

- (1) The Owa of Igbara-odo—of the Elekole of Ikole.
- (2) The Owa of Itapa—of the Elekole of Ikole.
- (3) The Onimessi of Imessi (Lashigidi)—of the Ewi of Ado.
- (4) The Olode of Ode—of the Ewi of Ado. 40
- (5) The Alawe of Ilawe—of the Ewi of Ado.
- (6) The Oniyapa of Iyapa—of the Ajero of Ijero.
- (7) The Olowa of Igbara-oke—of the Deji of Akure.
- (8) The Olojudo of Iddo-Irappa—of the Alaiye of Effon.
- (9) The Onire of Ire—of the Oloye of Oye.

19. These claimants were punished and only the Elemure succeeded in becoming a District Head. They all adopted the same cry that they were Obas or crowned heads appointed originally by the Oni of Ife. This claim was somewhat natural because the Ekitis would be inclined to believe that only Obas could be recognised as District Heads although the case of the Elemure should prove that this was not necessarily so. They have appealed to the Oni of Ife—sometimes successfully—but apparently the Oni of Ife is not an infallible guide on the matter. I am informed that four lists of crowned heads have been published by the
 10 Oni and that not one of them is the same. Only the 1903 list is available in the Ekiti District Office.

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CLAIMS IN THE ADO DISTRICT.

20. To revert to the Ado District in which my investigations have been made. Out of the 22 sub-towns six declare that they are independent of the Ewi.

These are :—

- (1) Osi
- (2) Ode
- (3) Lashigidi (or Imessi)
- 20 (4) Egbe
- (5) Ilawe
- (6) Igbara-odo.

Their claims are briefly recorded below, but one or two comments should be made on my line of action in dealing with these matters. In every town or village visited in the Ado District details of the town and family organisation were obtained, particulars were taken of every titled person showing the method of his election, the conduct of judicial affairs in the old days was recorded, information was given concerning the various gods or "Orisha" worshipped by the place, the clubs and age-groups, what history
 30 was known including lists of previous Bales and the wars in which the town took part, what tribute was paid to the District Head and what communal obligations were performed. In matters affecting organisation and chieftainship the details given were much the same everywhere. Similar procedure was adopted in judicial matters. The gods worshipped would vary from town to town. History is not a strong point with the people; every place claims to be descended from the mythical cradle of Ife and their chiefs have a very vague idea of the wanderings of their community before they arrived at their present site. A large number of the Bales mentioned as their predecessors were legendary and had appropriate
 40 appellations. A number of wars took place within the memory of the elders or accounts have passed down by those who took part in them and taking everything into consideration I find that such accounts form a more valuable index of the position between clans and towns in pre-Government days than any other source of information. Finally, the question of tribute—a most debatable subject. I went armed with a list given me by his advisers of the yearly tribute paid to the Ewi and it was more inaccurate than the Oni of Ife's list of crowned heads because in only four cases out of twenty-two the townspeople concerned admit what

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was expected of them. There certainly appears to be no idea of a fixed tribute at the present time but some towns undoubtedly send palm-wine or other present to the Oba when he is celebrating important festivals in his town. These presents are complimentary nowadays but if there were none forthcoming in the old days the defaulting town would have received an unpleasant visit from the Oba's supporters.

21. It will be seen then that it is far from an easy matter to decide whether a particular town is independent. A reference to Ife is unreliable; customs, organisation and judicial procedure are similar; gods are worshipped according to taste; history is vague and the payment of 10 tribute is not obligatory. We are thus left with the old-time alliance or wars. A weak community might have been obliged to join themselves to a stronger one to avoid total annihilation and even to-day they are willing to abide by their old time alliance but a conquered town is in a different category. Modern ideas of administration permit it to express its detestation of its position.

22. The claims of the six anti-Ewi subtowns will now be reviewed.

* * * * *

(E) ILAWE (THE ALAWE) (POPULATION 6,266).

52. This is second largest town in the Ado district consisting of 20 7 quarters and 35 families, and situated 9 miles east south east of Ado town being connected by a Native Administration motor road with Igbara-Odo (8 miles south south east) where the main road from Ado to Igbara-oke is joined.

53. The founder of the town is declared to be one Oliwe who hailed from the Oliwe quarter of Ile-Ife. (N.B.—I am unable to ascertain if there is such a quarter but it is believed that is a family called Iwe.) Leaving Ife he reached the present position *via* Ilesha and Effon and it is confirmed that Ogotun and Igbara-odo were then in existence, although Igbara-odo was not at its present site. Nothing is known of the history 30 of the first seven Alawes but the Ados (Benis) besieged the town during the rule of the eighth Alawe by name Ogube and the people so it is said were driven northwards to Oke-Asha near Esure (north of Ado). The town was captured by the Ikerras at the time of the 11th Alawe, Akubi-Eleyo, and was occupied seven months. The worst phase in the town's history was when the Ilesha (or Ijesha) people encamped at Ibido near the town for six months when Oboyelowoako was 12th Alawe, and it is alleged that the Ewi of Ado encouraged the Ileshas to do so. Prior to this the Ileshas also attacked the neighbouring town of Igbara-Odo driving them to Ilawe and besieging them together with the Ilawes. The Alawe 40 states that they were not affected by the Ibadan (the Are) War nor by Ekiti Parapo, which events took place in the time of the 13th Alawe, Afinbiokin.

54. The 13th Alawe, Afinbiokin, was still head chief when the first recorded European visit was paid to the town, that of Major Reeve Tucker's on January 18th, 1901, after the formation of the Ekiti Council. He remained there a night and no question of independence was mooted. Captain Ambrose did not apparently visit the place. There is then a

considerable gap in our office records until 1917 when Mr. A. D. A. Macgregor paid two visits and nothing of importance is noted. In 1917 and 1919 it was realised that one Court to serve the whole of the Ado District was insufficient and the Resident suggested to the Ewi that one should be opened at Igbara-Odo and at Aisegba. He would not agree but in 1920 he concurred somewhat reluctantly in the provision of a sessional Court at Ilawe which was opened on September 15th, 1921, and at which five Ilawe and five Igbara-Odo chiefs sat as court members. In October, 1922, the Alawe requested that a motor road be constructed from Igbara-Odo to his town. He arranged that his people should do the work for the whole 8 miles. On August 23rd, 1923, Mr. G. H. Finlay, District Officer, visited Ilawe and records then that the Alawe asserted his independence and the Ewi attributes this to the fact that the Alawe had been given a Court and road, which was actually fit for motor traffic on December 13th of the same year.

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55. A summary of events regarding the refusal of the people of Ilawe to acknowledge the Ewi as their overlord was compiled by Mr. H. F. M. White, District Officer, and forwarded under cover of the District Officer, Ekiti's memorandum No. C. 2/1927 dated 1st February, 1932. It will be gathered that with the exception of the Alawe's assertion of independence before Mr. G. H. Findlay in August, 1923, no open defiance of the Ewi, their recognised District Head, was made until November, 1924, when the Alawe refused to recognise the Ewi or call upon his people to subscribe to the rebuilding of the Ewi's Afin, which is merely the official residence of the Oba.

56. Subsequent events were unhappy, and as shown by Mr. H. F. M. White's summary, the 13th Alawe, Afinbiokin, was deported in June, 1925, to Abeokuta where he died in May, 1929. In addition he was fined £20 earlier in 1925 and nine Ilawe chiefs were fined an aggregate sum of £90 by the Ekiti Judicial Council for refusing to recognise the Ewi's authority. In April, 1927, fifteen prominent Ilawe chiefs including the Ejigbo, who was in charge of the town during the Alawe's absence, were sentenced by the Judicial Council to two months' imprisonment with hard labour each in default of payment of £20 fines. This period they served in Benin Prison. In August, 1929, the 14th and present Alawe, Akinola (or Adefolalu) was sentenced to 6 months' imprisonment with hard labour for assuming the position of a Bale without the permission and approval of the Ewi (N.B. the Ewi was evidently using his powers of insistence on a such approval as a District Head and not as an Oba (see paragraph 10 (*ante*)). His five messengers received 12 months' imprisonment with hard labour at the same time for conspiring against the Ewi while four other Ilawe men were punished for inciting persons to cause a breach of the peace. A week later the Odofin of Oke-Ipa (a quarter head) was sentenced to 12 months' imprisonment with hard labour for refusing to recognise the Ewi. The trouble did not end there.

In January, 1930, the Ejigbo, who was again acting as Regent, was sentenced to two years' imprisonment with hard labour and deprived of his title by the Ado Native Court for obstructing persons charged with the executing of a Native Court Warrant and resisting arrest and two others received 12 months' imprisonment with hard labour. In February, 1930,

Exhibits. Akinola the Alawe was called before the Judicial Council and ordered to be detained in Ado town until he acknowledged the Ewi as District Head. This order being considered "*Ultra Vires*" the Alawe was permitted to return to his town in September, 1932.

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57. These reverses and punishments seemed to have stiffened the resistance of the Ilawe people and have not attained the result desired, that of forcing them to acknowledge the Ewi. During my recent visit to Ilawe this month I received every opportunity to study the position closely. The usual enquiries were made as in other towns and the chiefs and peoples were not encouraged to think that there was anything in the nature of a special investigation into their particular trouble. They were however requested to express themselves freely and state their reasons for demanding independence in a manner similar to that adopted by Osi, Ode, Lashigidi, Egbe and Igbara-Odo. 10

58. At first it was difficult to impress the Alawe and chiefs with the fact that no progress would be made if they were shouted down or interrupted by the young men around them. This remark prompts my first observation that this town which is economically progressive is bankrupt in administrative organisation. The reason is not far to seek. The action taken in deporting a Bale for misbehaviour does no particular harm to the administration of the town provided that the prominent chiefs in the council are not banished also but when the head chief and inner council are deported or imprisoned en bloc the administration of the town will suffer because it will get in hands of persons unqualified to act as administrators by native custom. It is realised that this observation will be severely criticised but my experience of Ilawe shows me that the control which should be exercised by chiefs has largely passed out of their hands owing to their enforced absence. Out of the nineteen chiefs in the first group which is named the Elerin, thirteen are dead and their titles have not been filled owing to the fact that there was no Alawe or council to instruct the families to complete the vacancies when they occurred (see paragraph 10 and Appendices B and C). Of the remaining six three have been in prison or detained. It is natural then that any young men inclined to be restive and troublesome have obtained a degree of control in the town and that the townsfolk have been obliged to employ lawyers to advance their cause in the absence of their natural advocates the chiefs. 20 30

59. After the initial noisy meeting, proceedings were conducted in a quiet and sensible manner on subsequent occasions. A study of the organisation of the town and the method of the selection of the Alawe and chiefs produced no startling difference to those in other places. The gods worshipped by Ilawe vary to those worshipped in Ado but they do so in other loyal towns also. The only difference once again is in the attitude taken in war-time. The Ilawes point out quite truly that they never received any assistance from the Ewi at all and that the Ibadan Chief, the Are, in attacking the Ewi and his sub-towns excluded the Alawe. 40

60. The Alawe mentioned his position with regard to other neighbouring towns. He stated that before the Bini and Ikerre wars (paragraph 53) his boundaries were with Ogotun near the present site of Igbara-Odo, with Osi somewhere near an old clearing called Era between Awo and Iropora, and with Ara, Ikerre and Ado where they are at present. 50

He said that the Ado sub-towns of Igede and Uyin seized the land between the Olosi and himself. He added that Ilawe used to have seven sub-villages under her named Igesa, Emila, Arigidi, Idanre, Agbamu, Amelewu, and Igbala. All were exterminated by war.

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61. With regard to the possession of a crown by former Alawes it was stated that all always wore a crown until the Bini and Ikerre wars.

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continued.

62. When I pointed out that it was somewhat extraordinary that the late Alawe did not inform Major Reeve Tucker that he was independent the present Alawe said that his father had always informed visiting officials that he was an Oba and that he was under no other Oba. In support of this remark he informed me that his father was appointed a Court member in May, 1915, but he had never sat once at all until the Ilawe Sessional Court in 1921 (N.B.—Office Records support this statement). The Alawe however agreed that no open breach with Ado occurred before 1924 when the Ewi demanded subscriptions for the rebuilding of his Afin. I inquired why no breach had occurred before as they had paid tax through the District Head, Ewi, from 1920 to 1924 without demur, but the Alawe said that none of the Ado Chiefs or Ewi's messengers accompanied the assessment scribe before 1925. (N.B.—I am informed by the Native Administration Treasurer that the Alawe's statement is incorrect as an Ado chief and Ewi's messenger has always accompanied the clerk. I asked what they did about Court matters. Did they not attend Ado Native Court before 1924? They said that they did and even continued to do so now but that did not imply that they acknowledged the Ewi. In fact, they would go to whatever court the Government ordered them to attend.

63. The following return shows how many cases the Ilawes have brought in the Ado Native Court:—

		<i>Criminal</i>	<i>Civil</i>	<i>Adultery</i>	<i>Total</i>
	1915	2	12	—	14
30	1916	1	28	1	30
	1917	3	40	1	44
	1918	8	28	—	36
	1919	9	61	—	70
	1920	14	73	—	87
	1921	21	71	1	93
	1922	63	84	5	152
	1923	32	78	11	121
	1924	38	94	26	158
	1925	2	2	—	4
40	1926	5	3	—	8
	1927	20	64	17	101
	1928	10	100	16	126
	1929	12	90	12	114
	1930	13	75	5	93
	1931	21	48	2	71
	1932	15	76	7	98

Cases were heard at Ilawe from 1921 to 1924, but the figures for the years 1927–1932 compare quite as favourably as those of other sub-towns.

Exhibits.
Defendants'
Exhibits.

Ex. B. 2.
 Appendix D
 to Intelli-
 gence
 Report.
 (Extracts
 printed.)
 August
 1933,
continued.

64. Tribute and compulsory communal obligations to the Ewi were mentioned. The Alawe emphatically denied that any had been given or performed other than the compulsory work in the Government stations at Oke-Imo (Ilesha) or Ado.

65. I put it to the Alawe and chiefs at a crowded meeting that it was necessary to know whether he claimed to be an Oba or an independent Bale and in the event of the former would he be prepared to stand or fall by the Oni of Ife's decision and in the event of the latter whether he and his townspeople really considered that he was entitled to be recognised as a District Head. The meeting adjourned and re-assembled some four 10 hours later and the Alawe said that he did not persist in his claim to be an Oba unless he was obliged to prove that he was an Oba in order to become a District Head. He did claim that his town was independent of any other and that therefore he should be recognised as District Head. I asked if it was quite understood that a District of the size of Ilawe would be an insignificant unit and that the sole financial support it would get would be from a half share of their tax and court fees which would average about £400 per annum. The Alawe said that that had been taken into consideration but if they could not manage they would be prepared to pool their resources with Igbara-Odo and Ogotun. I remarked that if 20 they were willing to join Igbara-Odo and Ogotun why were they not willing to remain with Ado if they were properly represented but the Ilawes made it quite plain by their determined reply that in their present state of mind they would have nothing to do with the Ewi of Ado whatsoever.

Ex. B. 3.
 Appendix A
 to Intelli-
 gence
 Report.
 (Extracts
 printed.)
 August
 1933.

Exhibit " B. 3. "

APPENDIX A TO INTELLIGENCE REPORT

(Extracts printed—pages A1 and A21–A22 and A25.)

ADO DISTRICT INTELLIGENCE REPORT

APPENDIX A

LIST OF TOWNS IN THE ADO DISTRICT SHOWING THEIR POPULATION,
 TAXPAYERS, QUARTERS, SUB-QUARTERS AND FAMILIES

August, 1933.

REMARKS

The Ado towns and villages consist of a number of families (Ebi) which are grouped into sub-quarters (Ogbon) and quarters (Adugbo or Eku). The Yoruba word "Ogbon" has a similar meaning in English to "Adugbo" or "Eku." These words all apply to what we term a "quarter" but "Ogbon" denotes a smaller and closer group of families

than can be found in any "Adugbo" which is merely a convenient subdivision of the town or village. It should also be noted that it is not always customary for all the members of a family to live together. In Ado town in particular persons live in any quarter they choose. The families shown therefore as belonging to a certain quarter are those whose family house (the compound where the family "god" is kept) is in that quarter.

2. The names appearing in brackets below the town or village, quarter, sub-quarter or family are regarded at present as the men in charge of the unit concerned. Such men do not necessarily hold the most important titles in the town and owing to death some of the posts are filled temporarily. The names or titles of the senior elder of each family are not given as their duties in the Ado District are confined to the care of the family "god."

3. The numbers shown in brackets are those of the 1932/33 taxpayers.

	Sub-town	1931 population	Quarters	Sub-quarters	Families
20	ILAWE (The Alawe) (1408)	6,266	ILAWE—ODO 1. URO (The Ejigbo) (86)	—	1. Afñ (The Odole) 2. Ejigbo (The Ejigbo) 3. Elemosho (The Elemosho) 4. Orunja (The Petu)
30			2. OKELOYE (The Elemo II) (24)		1. Ulemo (The Elerio) 2. Herekun (Ola, N.T.)
40			3. OKEBEDO (The Odofin) I (395)		1. Ujuku (The Ekuasha) 2. Ojoko (The Oisa) 3. Ajana (The Olori Awo) 4. Oniyin (The Ejimo) 5. Oyegbata (Alapala, No. 1) 6. Elekole (The Onimessi) 7. Utaji (The Apo-Ekin) 8. Ogunrin (The Okunato)
50			4. ADIN (The Oloja I) (148)		1. Oloja (The Odole) 2. Aro (The Saruku) 3. Ejisun (The Oisa) 4. Ujado (The Obanla)

Exhibits.
—
Defendants' Exhibits.

—
Ex. B. 3.
Appendix A
to Intelli-
gence
Report.
(Extracts
printed.)
August
1933,
continued.

<i>Exhibits.</i>	Sub-town	1931 population	Quarters	Sub-quarters	Families	
<i>Defendants' Exhibits.</i> Ex. B. 3. Appendix A to Intelligence Report. (Extracts printed.) August 1933, <i>continued.</i>			ILAWE-OKE			
			5. AIYE (The Oloja II) (375)	1. AJAGUN (The Oloja II)	1. Ajagun (The Baisa)	
				2. ALORE (The Sapetu II)	2. Alore (The Olori-Awo)	
				3. ISARO (The Isaro)	3. Isaro (The Isaro)	10
					4. Obuko (The Oisaba)	
					5. Iloro (The Oloro)	
				4. IBORIN (The Ejio)	6. Abire (The Ejio)	
				7. Irorin (The Olorin)		
				8. Ejewi (The Ejewi)	20	
			6. OKE-IPA (The Odofin II) (82)	1. Udaró (The Odofin)		
				2. Odopa (The Odopa)		
			7. OKE-EMO (The Elemo I) (298)	1. Hemo (The Efemo)		
				2. Igbede (The Olumaso)		
				3. Ijimo (The Ejimo)	30	
				4. Ilero (The Elebiyin)		
				5. Udofin (The Odofin)		
			1. UDOFIN (The Odogun)	6. Asawo (The Asawo)		
				7. Idogun (The Odogun)		

N.B.—The Alawe of Ilawe claims to be a Yoruba crowned head and independent of the Ewi of Ado. 40

ADO FARM SETTLEMENTS.

All the undermentioned permanent farm settlements are occupied by people of Ado township (i.e., Oke-Ewi, Odo-Ado and Oke-Ila). Each settlement possesses a number of titled men appointed with the concurrence of the Ewi of Ado.

Settlement	Head	1931 population	1932/33 tax-payers	Remarks
1. Ika	The Olika ..	116	17	All of the Ewi's (Royal) family.
2. Iwere	The Opuakin	29	11	All of the Ererewu family of Oke-Esha Quarter. 50
3. Aye	The Olu ..	31	14	All of the Ewi's (Royal) family.
4. Iso	The Oluso ..	41	11	From different parts of Ado town.

Settlement	Head	1931 population	1932/33 tax-payers	Remarks	<i>Exhibits.</i> <i>Defendants'</i> <i>Exhibits.</i>
5. Ilamowe ..	Aramude ..	45	12	From different parts of Ado town.	
6. Elemiya ..	The Elemiya	24	9	All of the Ogbon-Omo family of Igbehin Quarter.	Ex. B. 3. Appendix A to Intelligence Report.
7. Obo	The Elemobo	189	50	All of the Ora family of Oke-Ila.	(Extracts printed.)
10 8. Igbogun ..	The Ologun	140	31	Some from Oke-Esha quarter and some from Odo-Ado.	August 1933, <i>continued.</i>
9. Egbira-Orokunja	The Orokunja	120	41	All of the Asaiya family of Oke-Esha quarter.	
10. Egbira-Okuta	The Orokunja	58	10	All of the Udemo family of Odo-Ado.	
11. Ago	The Elefoshan	83	18	From different parts of Ado town.	
20 12. Ikewo	The Olikewo	32	7	From the Ikorun family of Irona in Igbehin.	
13. Odo	The Akitipa	136	29	All of the Ewi's (Royal) family.	
14.	Olwawaro ..			" "	
15.	Olugbarye ..			" "	

Exhibit "B. 4."

APPENDICES B AND C TO INTELLIGENCE REPORT

(Extracts printed—B1-B2 and B6.)

30 **ADO DISTRICT INTELLIGENCE REPORT.**

APPENDIXES B & C

SUMMARY OF THE METHOD OF APPOINTMENT OF THE HEAD CHIEFS OF TOWNS AND VILLAGES.

August 1933.

(c) CHIEFTAINSHIP, ETC., Aug. 1933.

REMARKS.

The method of appointment of head chiefs of towns and villages is in many respects similar throughout the Ado District. In all cases the selection is made from a particular family in the town or village (Column 3
40 of the summary on page 5) and the following procedure is not uncommon.

2. After an interval of three lunar months from the death of the previous holder the most important group of town or village chiefs presided over by the Acting Head Chief (Columns 5 and 6 of the summary) usually requests the head of the family concerned (last column of Appendix A)

Ex. B. 4.
Appendices
B and C to
Intelligence
Report.
(Extracts
printed.)

Exhibits. directly or through his quarter Head to submit to that body the names of suitable men (or vice versa) in his family for this post of importance. *Defendants' Exhibits.* The selectors (Column 5) can thus decide at a subsequent meeting which names to submit to the Ifa oracle. A certain Ifa priest or Babalawo (Column 8) is summoned or the chiefs repair to his house where symbols (always cowries in the Ado District) are submitted to the oracle after the name of each candidate has been whispered into each symbol by a prominent chief (Column 9). By means of the Odu (shaped from palm nuts) the priest can pass an opinion on each symbol and the chiefs can ascertain whether the tenure of office of their candidates will be fruitful or the reverse and by these tokens they select their head chief. After the announcement of his name he is fetched by a company before the council, introduced to the public and taken to the compound of a chief (Column 10) where he is kept in seclusion for three months before his entry into his official residence (Afin) where sacrifices are made to the town gods (Orisha) and presents exchanged. 10

Ex. B. 4.
Appendices
B and C to
Intelligence
Report.
(Extracts
printed.)
continued.

3. It should be added that it is the general practice for the principal chiefs to ask the remaining members of the town or village council to assist them in their task. They can thus gauge the feeling of their townfolk or villagers. 20

4. To assist the reader it should be explained that the English equivalents to the terms used in column 5 are somewhat as follows :—

YORUBA (EKITI)			ENGLISH	
The Olori-Marun	..	..	The five principal men.	
The Ihare	..	..	The first in rank.	
The Olori-Elumo	..	..	The principal men in the Council.	
The Olori Ogbon-Meta	..	..	The three family heads.	
The Ihare Pataki	..	..	The highest in rank.	
The Ihare Agba	..	..	The chief elder.	
The Iwarefa Mefa	..	..	The six Iwarefa (a title).	30
The Elerin	..	..	The council of first grade chiefs.	
The Agba Ilu	..	..	The town elders.	

5. In columns 6-8-9 and 10 the quarter and family of the titled men are shown i.e.: The Odogun of Oke-Esha (his quarter) (Esewa) (his family).

6. In addition to the head chiefs, whose titles appear on pages 5 and 6, the following important titled persons are chosen by their families at the request of the head chiefs. The families concerned consult the Ifa oracle and the recipient of the title remains in seclusion for a period of three months :— 40

TOWN	TITLE	POSITION	QUARTER	FAMILY
1. Oke-Ewi	The Odogun	Second Chief	Oke-Esha	Esewa.
	The Ejigbo	Quarter Head	Ejigbo	Osho.
	The Asaiya	Senior Elder	Oke-Esha	Inisaiya.
	The Asha	Quarter Head	Oke-Esha	Asha.
	The Sashere	Quarter Head	Igbehin	Elefa.

1.	2.	3.	4.	5.	Exhibits.
Town or Village	Title or Head Chief	Family from which the chief is always selected	Quarter in which the family lives	Chief Selector	Defendants' Exhibits.
13. Are	The Alare	Ilawemo	Oke-Afin	The Ihares (8)	Ex. B. 4. Appendices B and C to Intelligence Report. (Extracts printed.) <i>continued.</i>
14. Afao	The Odofin	Idofin	—	The Ihares (8)	
15. Igbimo	The Oba-Igbimo	Oba	Uro	The Elumo or Council of 29 Elders	
10 16. Igbo-Omoba	The Ajagun	Isho	—	The Ihare Pataki (6)	
17. Ijan	The Olijan	Ogbon-Omo	Erunwa	The Ihare Pataki (8)	
18. Aisegba	The Apalufin	Afin	Uro	The Ihare Agba (10)	
19. Agbado	The Oro	Oro	Odoro	The Ihare Agba (5)	
20. Ode	The Olode	Ola	Afin	The Iwarefa-Mefa (6)	
21. Imessi (or Lashigidi)	The Onimessi	Osho	Ogun-Osi	The Iwarefa-Mefa (6)	
22. Egbe	The Oligbado	Osho	Egbegede	The Iwarefa-Mefa (6)	
20 23. Ilawe	The Alawe	Afin	Uro	The Elerin (19)	
24. Igbara-Odo	The Olowa	Afin	Idasa	The Agba-Ilu (?)	

Exhibit "T."

EKITI DIVISIONAL FILE No. 280, Vol. 1

(Extracts printed—pages 1-2, 143-152a.)

E.D. 209/18.

(Pages 1-2.)

1st June, 1934.

The Resident,
Ondo Province,
Akure.30 District Officer,
Ekiti Division,
Ado-Ekiti.Ex. T.
Ekiti
Divisional
File No. 280
Vol. 1.
(Extract
copied.)

EKITI INTELLIGENCE REPORTS :

ADO DISTRICT.

26

V. CONCLUSION

61. His Honour is asked to approve the following :—

40 (A) The exclusion of Ilawe from the scope of the present proposals and its direct administration by the District Officer until such time as the people have composed their differences, when the situation can again be reviewed.

*Exhibits.**Defendants' Exhibits.*

Ex. T.
Ekiti
Divisional
File No. 280
Vol. 1.
(Extract
copied.)
continued.

No. 29734/43.
Chief Secretary's Office,
Nigeria,
Lagos.
27th October, 1934.

INTELLIGENCE REPORT

ON THE ADO DISTRICT OF THE EKITI DIVISION.

The Honourable,
The Secretary,
Southern Provinces,
Enugu.

10

I am directed by the Governor to acknowledge the receipt of your letter No. S.P. 10664/43 of the 15th of October, and to convey His Excellency's approval for the proposals contained in paragraph 61 of the Resident's covering report as modified by paragraph 9 of your letter under acknowledgment.

2. I am to add that His Excellency agrees with the views expressed by His Honour.

(Sgd.) GERALD WILLIAMS,
for Acting Chief Secretary to the Government. 20

No. S.P. 10664/55a.
3 November, 1934.

Copy to :—

The Resident,
Ondo Province,
Akure.

For information with reference to my endorsement No. S.P. 10664/48 of the 15th of October, 1934.

(Sgd.) T. A. SHANKLAND,
for Ag. S.S.P. 30

(Pages 143–152a.)

O.P. 724/146.

21 April, 6.

The Honourable,
The Secretary,
Southern Provinces,
Enugu.

Akinola Adefolalu, the Alawe and Chiefs of Ilawe : Petition from.

I discussed your letter No. S.P. 5635/441 of the 18th February, 1936, with His Honour during his recent visit to Akure. Prior to this I visited 40 Ilawe and subsequently recorded the following minute :—

“ Note : —

Together with the District Officer I visited Ilawe on the 5th of March, 1936, and saw the Alawe with a large gathering of Chiefs and people.

“ I spoke briefly of the enquiries which had been made and informed them that the period of direct administration had never been intended to be permanent. It had given time for further enquiry and in His Honour’s opinion the time to reach a final decision had come.

“ I then read out the first paragraph of the Oni’s comments and again explained the position. I did not, however, put the proposals contained in His Honour’s minute to the meeting as I considered that it would be better first to discuss them with His Honour (Mr. Findlay).

“ The Alawe then made a somewhat lengthy speech claiming independence. He felt certain that the Oni could not have understood the position for he said the Oni is my father and his father gave my father a crown. The Alawe stated that he wished to visit the Oni at Ife in order that he himself might state his case.

“ I agreed to this and to give assistance through the District Officer, Ife Division, to enable the Alawe to get an interview. I stipulated that the visit must not be postponed once arranged and departure on the 9th or 10th of March, 1936, was agreed. The Alawe was to obtain a letter from the District Officer on the 9th of March, 1936.

“ It seems to me extremely doubtful if the Alawe will, in fact, go to Ife. If he really thought that anything would come of it he would have gone long since, I think.

“ After this meeting the Alawe and his Chiefs asked to see me privately and at this interview they complained of the lack of facilities for the settlement of matrimonial disputes and stated that the town would very quickly ‘ spoil.’ I observed that their remedy was obvious but a decision must await the result of the Ife visit. I told them that matrimonial cases could not be heard by the Magistrate’s Court or the High Court and could not be settled by the District Officer. At present action in the Supreme Court at Lagos was their only remedy.”

2. The Alawe visited Ife and was received by the Oni who after the interview addressed the following letter to the District Officer, Ife :—

“ I received the Alawe of Ilawe in the inner chamber of my reception hall on the 12th instant in the presence of your Political Agent Daramola. The Alawe then courteously advanced his claim to being one of my sons and to his title to wearing a crown. He gave a long story which for reason of its lengthiness I cannot narrate here.

“ 2. I replied the Alawe as follows :—

(i) That I did not deny him of his connection with the great family of the Odudua as an offshoot of one of the direct or original sons, but that his ancestor was not one of the originals, therefore his title is secondary.

(ii) That he should not be alarmed at that because there are among Ekiti Obas presently wearing crown many whose ancestors, like his, were offshoots of certain original descendants of my family.

Exhibits.
—
Defendants’ Exhibits.
—

Ex. T.
Ekiti
Divisional
File No. 280
Vol. 1.
(Extract
copied.)
continued.

Exhibits.
 ———
Defendants'
Exhibits.
 ———
 Ex. T.
 Ekiti
 Divisional
 File No. 280
 Vol. 1.
 (Extract
 copied.)
continued.

(iii) That if his forefathers had lost the crown as much long as during the Benin-Ekiti wars, he could not now expect my consent to it being restored without the consent of the present 16 heads of Ekiti and an assurance on all sides that it will not present difficulty in the administration of Ekiti and Ado Ekiti district in particular.

(iv) That beside him, there are about five other chiefs in Ekiti who wish to wear beaded crown and there should be no reason why two or three of them should not press hard if he is successful. 10

(v) That it would have been a different thing if in Ekiti an Oba who has the right, after wearing a crown, could still serve under his senior as in the South viz. Ijebu, Abeokuta etc.

“ 3. I believe that the Alawe left Ife convinced that he should act wisely and live now in peace.”

3. In view of the Oni's final decision and of the desirability of bringing an end to the direct administration of Ilawe His Honour informed a meeting of the Ekiti Obas that Ilawe is not independent and that direct administration should be brought to an end as soon as adequate arrangements for their representation in the Native Authority could be made. 20

4. Speaking generally of villages claiming independence His Honour stated that Government did not intend to imprison or fine people for refusing to acknowledge an overlord but unless the Village Head and members of his council attended district council meetings they could not expect money to be provided in estimates for the provision of village services and amenities; orders issued and rules made by the Native Authority would, of course, be operative in the village concerned even if that village declined to attend the meeting of the Native Authority at which such orders or rules were enacted.

5. The District Officer, Captain R. A. Vosper, subsequently visited Ilawe and informed the Alawe, his chiefs and people of His Honour's ruling and explained to them certain proposals for future organisation which I will relate hereafter. The Alawe was pleased at the prospect of a Native Court being established in Ilawe but stated that he did not intend to have anything to do with the Ewi of Ado. The Alawe was quite definite on this point but Captain Vosper gained an impression at the meeting that certain of the Chiefs are willing to attend meetings of the Ado district council but are still influenced by the Alawe and are too frightened to go against him. 30

6. The following are proposals for the future organisation of Ilawe :— 40

(A) the village shall cease to be administered directly and shall be administered as an integral part of the Ado district with equal facilities for representation as is afforded to other villages of the district.

(B) the village council shall be appointed a Native Authority subordinate to the Native Authority for the Ado district. (Reference page C 20 of Appendix C to Captain Weir's Intelligence Report on the Ado district which was sent you under cover of my memorandum No. O.P. 392/136 of the 9th of July, 1934, and

your letter No. S.P. 10664/43 of the 15th of October, 1934). Should this be approved I would ask that this Native Authority may be added to those shown as subordinate to the Native Authority for the Ado district in the list forwarded under cover of my memorandum No. O.P. 352/123 of the 20th of December, 1935.

(C) the Ilawe village council shall form a part of the Ado district council.

10 (D) a Native Court of D (limited) Grade be established for the village of Ilawe with a membership comprising the village council. Should this be approved I will prepare the warrant for the Native Court and send it to you for His Honour's confirmation.

(E) appeals from the Ilawe Native Court shall lie to the Ado district Native Court.

(F) the Alawe shall be appointed a member of the Ado district Native Court.

(G) 10% of the gross tax shall be paid to the village council in respect of all administrative duties.

(H) sitting fees shall be paid as follows :—

20	President (the Alawe)	10/- a sitting.
	Member sitting as President	7/6 a sitting.
	Members	a lump sum of 25/- (maximum) a sitting.

7. Should these proposals be approved and Ilawe be administered as an integral part of the Ado district the following additions to revenue will be made to the Ekiti Native administration estimates for 1936-37 :—

					£
	Head I. General Tax (50%)	..	..	..	294
	„ II. Item 1, Court Fines	..	..	..	5
	„ 2, „ Fees	..	..	..	60
30					<u>£359</u>

I would also ask for His Honour's approval of the following additional expenditure :—

					£
	Head III, Item 3, Percentage of Tax	..	..	..	58
	„ IV, „ 1, Sitting fees	..	..	..	20
	„ IV, „ 4, Scribe	..	..	..	12
	„ VI, „ 5, Olopa	..	..	..	18
	„ XVIII, Capital Works. Court House	..	..	..	50
					<u>£158</u>

40 8. Should the Alawe and his council decline to attend meetings of the Ado district council, and particularly the meeting at which estimates are discussed, then it is proposed that no financial provision for other

Exhibits.

Defendants' Exhibits.

Ex. T.
Ekiti
Divisional
File No. 280
Vol. 1.
(Extract
copied.)
continued.

Exhibits.
 —
Defendants'
Exhibits.
 —
 Ex. T.
 Ekiti
 Divisional
 File No. 280
 Vol. 1.
 (Extract
 copied.)
continued.

than essential services shall be made in future estimates. It is considered necessary to let this be clearly understood from the outset for meetings of the district council are, at present, of no great advantage to any particular village and with a Native Court virtual independence is achieved. Not to provide any deterrent from complete indifference to district organisation would, it is thought, lead to entire lack of co-operation.

9. Should His Honour approve these proposals I suggest that they should have effect as from the 1st of April, 1936.

(Sgd.) F. B. CARR,
 Ag. Resident, Ondo Province. 10
 No. O.P. 724/152.
 Akure, 21st April, 1936.

Copy to the The District Officer,
 Ekiti Division,
 Ado-Ekiti.

M.L.F.

For information with reference to your memorandum No. E.D. 280/136 of the 14th of April, 1936.

(Sgd.) F. B. CARR,
 Ag. Resident, Ondo Province. 20

S.P. 5635/453.

5 May, 1936.

The honourable
 The Chief Secretary to the Government, Lagos.

The Alawe of Ilawe.

With reference to your letter No. 29734/60 of the 20th of January, 1936, I am directed by the Acting Chief Commissioner to inform you that His Honour Mr. Hunt discussed with His Excellency in January the question of the administration of Ilawe in the Ekiti Division of the Ondo Province. The papers in which the decision that it should be administered 30 directly by the District Officer was reached were quoted in paragraph 2 of my letter No. S.P. 10664/115 of the 8th of December, 1935.

2. The Chief Commissioner came to the conclusion that the question of the independence or otherwise of a village was one which should be decided on its merits. Direct administration was a weak and dangerous solution. The Resident had argued the doctrine of self-determination but His Honour did not subscribe to that unreservedly and felt that historical and ethnological considerations could not be left out of account.

3. The independence of Ilawe is bound up with the Alawe's claim to be a "crowned head." The matter was accordingly referred to the 40 Oni of Ife, who wrote, "I affirm that the Alawe of Ilawe is not a direct descendant of Odudua; he may be an offshoot but cannot, by right, wear a crown."

4. The Alawe was not content and with the Resident's permission paid a visit to the Oni with a view to convincing him of his independence. The Oni recorded his reply as follows:—

Exhibits.

—
Defendants' Exhibits.

* * * * *

—
Ex. T.

Ekiti
Divisional
File No. 280
Vol. 1.
(Extract
copied.)
continued.

“ 2. I replied the Alawe as follows:—

(i) That I did not deny him of his connection with the great family of the Odudua as an offshoot of one of the direct or original sons, but that his ancestor was not of the originals, therefore his title is secondary.

10 (ii) That he should not be alarmed at that because there are among Ekiti Obas presently wearing crown many whose ancestors, like his, were offshoots of certain original descendants of the family.

(iii) That if his forefathers had lost the crown as much long as during the Benin-Ekiti wars, he could not now expect my consent to it being restored without the consent of the present 16 heads of Ekiti and an assurance on all sides that it will not present difficulty in the administration of Ekiti and Ado Ekiti district in particular.

20 (iv) That beside him, there are about five other chiefs in Ekiti who wish to wear beaded crown and there should be no reason why two or three of them should not press hard if he is successful.

(v) That it would have been a different thing if in Ekiti an Oba who has the right, after wearing a crown, could still serve under his senior as in the South viz. Ijebu, Abeokuta etc.

3. I believe that the Alawe left Ife convinced that he should act wisely and live now in peace.”

5. His Honour, having considered the situation fully, came to the conclusion that Ilawe has no right to independence and that it should be brought into the Ekiti system of administration. The proposals set out in the following paragraphs will give effect to this decision, and I am to request His Excellency's approval of them.

6. The Village Council of Ilawe will be appointed to be the Native Authority for the Ilawe Village area, subordinate to the Native Authority for the Ado District, namely the Ewi of Ado. The personnel of the Council is set out on page C20 of Appendix C to Captain Weir's report, which was sent to you with my letter No. S.P. 10664/43 of the 15th of October, 1934.

7. The Ilawe Village Council will form part of the Ado District Council.

8. A Native Court of D (Limited) Grade will be established for the village of Ilawe with a membership consisting of the Village Council. Appeals from this Court will lie to the Ado District Native Court; of which the Alawe will be made a member.

Exhibits. 9. The Village Council will receive a salary equivalent to 10% of the gross tax collected in Ilawe.

Defendants' Exhibits.

Ex. T.
Ekiti
Divisional
File No. 280
Vol. 1.
(Extract
copied.)
continued.

10. The foregoing arrangements should, if His Excellency approves, be made with effect from the 1st April, 1936. The consequent additions to the revenue and expenditure estimates of the Ekiti Native Treasury will be made, and the special provision of £210 which is provided in item 50 of Head 30 of the Nigeria Estimates, 1936-37, will not be required.

11. Draft notices regarding the arrangements in paragraphs 6 and 8 will be forwarded if His Excellency approves these proposals.

(Sgd.) A. R. A. DICKINS, 10
for Secretary, Southern Provinces.

No. S.P. 5635/456.
Enugu, 6 May, 1936.

Copy to :

The Resident,
Ondo Province,
Akure.

For information with reference to his letter No. O.P. 724/146 of the 21st of April, 1936,

(Sgd.) JOHN BLAIR, 20
for S.S.P.

Ex. T. 1.
Ekiti
Divisional
File No. 280
Vol. 2.
(Extract
copied.)

Exhibit "T. 1."
EKITI DIVISIONAL FILE No. 280, Vol. 2
(Extracts printed—pages 187-188, 399-400.)
(Pages 187-188.)

Ilawe,
3 November 1936.

From the Alawe S. Council,

To the District Officer,
Ado Ekiti.

30

Sir,

We have deep honour of writing this letter to you and inform you that about Odole, he is given us much trouble about Alawe's palace. By this land the land Odole summoned us last year before D.O. Because this matter was judged by D.O. on the 2sec of December last year 1935. When D.O. said that we must pay £25.0.0 for Odole and at once we paid it for him before the D.O.

Please Sir we accuse Odole to you that on this 2 November 1936 he come to the place of this land and he takes the part of this land in which we have paid him about £25 last year unpon.

40

Sir we do not want to fight him without accusing him to you before. Because when he is going to the land he takes his gun and his cutlass with loaded gun. And then he say that if Alawe would come here and I will fire him or if one of his Chiefs come here and I shall do the same.

Honour Sir we do not to see him there. Because we have paid him £25 that money of this land. So therefore he has nothing to do with the land for ever. But he is not contented for with two places we have given him to build his house there.

We remain yours faithfully,

Akinola, The Alawe of Ilawe with S. Council.

P.O.t.

10

	Mark
(1) Elesi	X
(2) Elejofi	X
(3) Emeniwa	X
(4) Saruku	X
(5) Okunato	X
(6) Odofin	X
(7) Elejofi	X

Written by Lawrence Elejofi.

20

(Pages 399-400.)

Meeting held at Ado-Ekiti in the District Office,
24th October, 1939.

Present. Acting Resident L. R. C. Sumner.

District Officer, R. B. Kerr.

The Alawe.

Many Chiefs and people.

30

The Alawe and his people had come to see me at the special request of the District Officer, though rather reluctantly he tells me. I opened the meeting by explaining the position to them. This was that there were two ways of settling the present dispute :—(1) By friendly agreement between them and the Ados. (2) By the Government stepping in and doing it by force. I explained that the Government were loath to adopt the second course but might be driven to it if they continue their utterly uncompromising attitude. I suggested that they should begin by agreeing to meet the Ewi of Ado in the presence of the District Officer and myself in the Office or the Rest House at Ado. If they were willing to do this I said that the Ewi was also willing to do something on his side, such as provide money to repair their road or some other small thing as a start. The evacuation of their produce was being hindered as the road to Igbara-

40

Odo was so bad.

Their reply was to give me a letter which is at page 311 of this file. This contains demands similar to those that have been turned down by the Governor. I went through their points one by one and said that Government would not build the road or do the other things but that their Native Administration would, as I said before, if they for their part gave a little. Their reply was exactly similar.

Exhibits.
Defendants'
Exhibits.

Ex. T. 1.
Ekiti
Divisional
File No. 280
Vol. 2.
(Extract
copied.)
continued.

Exhibits.
 ———
Defendants'
Exhibits.
 ———

Ex. T. 1.
 Ekiti
 Divisional
 File No. 280
 Vol. 2.
 (Extract
 copied.)
continued.

I made another attempt to get them to see reason by saying that the Oni of Ife had said that their head chief was not entitled to a crown and that they were extremely foolish to throw away their hope of benefits to come by continuing complaints about grievances of the past.

Their reply was that the Oni had told them to come back for their answer and to say that their grievances were too big for any man to forget. They then made the same demands that they had done at the beginning.

I closed the meeting by again urging them not to provoke the Government too long and to think over very carefully what I had said that morning especially as to their agreeing to meet the Ewi and to talk over 10 things in a quiet way.

The district Officer thinks that some good may come of this meeting but I am doubtful. He will report again when they have had time to think it over.

(Sgd.) L. R. C. SUMNER,
 Ag. Resident, Ondo Province.
 At Ondo. 24th October, 1939.

Ex. T. 2.
 Ekiti
 Divisional
 File No. 280
 Vol. 3.
 (Extract
 copied.)

Exhibit "T. 2."
 EKITI DIVISIONAL FILE No. 280, Vol. 3
 (Extracts printed—pages 707–708a.)

20

No. 280/707

District Office,
 Ekiti Division,
 Ekiti,

March 9th 1945.

The Resident,
 Ondo Province,
 Akure.

The Ewi of Ado and Adetokunbo Atomobase the
 Akitipa of Odo Versus Alawe and others.

With reference to your endorsements Nos. 724/592 of 16th February 30 and 724/597 of 27th February, I return the petitions attached to the latter and have to report that the cases between the Ewi and Adetokunbo and Alawe and others were settled out of court this morning. A connected case for damages for trespass on the Odo-Ilawe boundary was also withdrawn.

2. When the case was called, Moore for Defendants claimed privilege and the Judge held that the documents containing the statements complained of were entitled only to qualified privilege. I am uncertain what

this means but I understand that Defendant did not in his pleadings claim absolute privilege. I was then called, and, in accordance with instruction, declined to produce the documents but was unable to answer the Judge's question as to whether privilege was claimed on the grounds of public policy. There was some legal argument, mainly consisting of quotations from legal authorities and before giving a decision on this point the Judge addressed the parties, told them that they were foolish to proceed with an action which could only increase bitterness and adjourned the cases for settlement.

- 10 3. At the request of counsel (Moore and Alakija (O.A.)) a meeting was held at noon that day in this office. It very soon became apparent to the Ewi, counsel and myself that Alawe had little or no idea of what was written in the petitions and he specifically denied all knowledge of the allegations contained in paragraph 6 of the petition of 6th September attached hereto. It was also clear that he was unable to understand the difference between a legitimate complaint that the Ado Minor Court had given a wrong judgment and an allegation that the Ewi himself had dealt with a criminal charge extra-judicially. There could be no doubt that Alawe had been advised by the man J. A. Adebayo that the petitions
- 20 would be of material assistance to his claim for independence and that the Ewi and his chiefs believed that the outcome of these cases would influence Government's decision of this claim. I explained that neither the cases nor the petitions were likely to have any such effect and was supported by counsel. The Ewi expressed his readiness to withdraw his suits and cause the withdrawal of others by Ado people if he was given some assurance that the libels are not repeated. The Alawe demanded that all the summonses should be withdrawn, that the Ados should cease to trespass in Ilawe farms and that the Ewi should pay his costs (£300). The Ewi said that he would agree at once to the first two conditions but
- 30 not to the third.

4. With the consent of counsel but in their absence, I saw the Ewi and Alawe each with one chief in my house that evening. Both expressed a wish to settle the dispute amicably and Alawe said that he had never seen the Ewi before and that he saw now that he was not a "troublesome man." The Ewi agreed to withdraw or cause to be withdrawn all suits against Ilawe people and both agreed to accept my decision on the land dispute after I had visited the scenes of the alleged trespasses. It was also agreed that the question of costs should be allowed to rest until later.

5. The Alawe reached court first this morning and when he arrived
- 40 the Ewi crossed the court to salute him and they exchanged quite genial greetings. Alawe had, however, been got at by Adebayo during the night and his counsel (Moore) informed me that he had been instructed to press for an order that Ewi should pay all Alawe's costs. This was reported to the Judge in Chambers and he asked me to try again. I retired with the parties to the Native Administration Treasury and when Alawe proved adamant, I seized the opportunity to express somewhat forcibly my personal opinion of Adebayo. I left them together for about an hour at the end of which they sent for me and said that they would leave the question of costs to the Chief Commissioner. When the case was called,
- 50 however, all the suits were withdrawn and the Judge was asked to decide

Exhibits.
 ———
Defendants' Exhibits.
 ———
 Ex. T. 2.
 Ekiti
 Divisional
 File No. 280
 Vol. 3.
 (Extract
 copied.)
continued.

Exhibits.
 ———
Defendants'
Exhibits.
 ———

the question of costs. He ordered that each party should pay their own and both seem to be perfectly satisfied. The Ewi has already ordered his people to withdraw from the disputed land, which I will visit in April, and Alawe has given an undertaking to refrain from libellous petitions.

Ex. T. 2.
 Ekiti
 Divisional
 File No. 280
 Vol. 3.
 (Extract
 copied.)
continued.

6. While I am not in the least confident that the Ilawes are fully reconciled or that this dispute will not erupt in a new place in the near future, I think that a distinct step forward has been taken. The Ewi appears to realise how foolish he has been and was extremely reasonable throughout our meetings. Both counsel were helpful.

7. In view of the circumstances set out in paragraph 3, I recommend 10 that the Alawe and J. A. Adebayo be informed that further petitions written by the latter will not be accepted as expressing the views of the Alawe and his chiefs unless there is evidence that they have been read to them and are signed by them.

(Sgd.) District Officer,
 Ekiti Division.

Ex. T. 3.
 Ekiti
 Divisional
 File No. 280
 Vol. 4.
 (Extract
 copied.)

Exhibit " T. 3."
EKITI DIVISIONAL FILE No. 280, Vol. 4
 (Extracts printed—pages 805–807.)

ADDRESS OF WELCOME PRESENTED BY HIS HIGHNESS THE ALAWE OF 20
 ILAWE CHIEFS AND THE ILAWE COMMUNITY TO THE DISTRICT OFFICER
 MR. W. M. MILLIKEN ON HIS VISIT TO ILAWE ON 23RD JUNE, 1947.

My Good Friend,

I the undersigned on behalf of Ilawe Community heartily welcome the District Officer to Ilawe for the 1st time since your assumption of office as the District Officer Ekiti Division.

Despite my letter of thanks dated 26/5/47 addressed to you, I take the opportunity to thank the District Officer for the part played in the restoration of my Crown, silpers and beaded cane which were seized by the Ekiti Obas. I also take this opportunity to ask the District Officer 30 to extend my thanks to the Resident, The Chief Commissioner and the other high Officers of the Government.

I am also glad and thankful to read in the last report of the meeting held by the Obas at Ado on 21/5/47 that the Chief Commissioner has been asked to intimate the Ekiti Obas the entitlement of Alawe to wear the Crown.

Much as I would like to honour any invitation from you, so also I would not like to dishonour my people by disobeying them. My people are determinate that I should not leave Ilawe to honour any invitation without my crown on my head. 40

In view thereof, I hope the District Officer will do all that lies in his power to avert further unpleasant treatment to my person, without which, it will not be possible for me to honour any invitation to attend meeting with the Ekiti Obas.

If my visit to you in my state dress will not be an offence to you as much as I believe it is no offence to the Resident, the Chief Commissioner and the Governor, I shall visit you before long.

I take this opportunity to report to you the unsuitable condition of the girls taking summons to divorce, since the present ruling that such girls, after taking summons, should be allowed to stay with their parents if they sign surety for them or if the parents refuse, with any important person who may sign surety for them.

10 Since this instruction has come into force, I have had no supervision or control of the girls, and it has led many girls to be convinced against their will of divorce, and has also given room to so many unpleasant deeds. In view thereof I hereby request that permission be given me to reverse to the whole system of keeping the girls at the Afin.

I also have to point out this question of my "Olopa" (Court Messenger) in view of the size of this town I have to point out that the work here requires at least two Olopas. At times when the present Olopa is away to a quarter (especially where the quarter is far) on duty, he may be required in another quarter for duty. This part of the administration is therefore not working smoothly.

20 In view thereof, I hope you will give this matter your favourable consideration and to supply me with one more Olopa (Court Messenger).

The next point to be dealt with is the question of the Court Clerk and the Market Keeper who are changed or transferred frequently.

I wish to point out that this does not also run smoothly with us too. By the time they are getting use to the town people and the town people getting use to them they are transferred. As I am not a literate man their frequent transfers do not help me too as I have got to study each of them as they come here. I hope you will give this your consideration as well.

30

I have the honour to be,

Sir,

Your Good Friend,

AKINOLA ADEFOLALU X his mark
Alawe of Ilawe.

ILAWE CHIEFS

1. OLOJA ADIN	his mark	7. EJISUN OKEBEDO	his mark
2. SAPETU ADIN	"	8. ELEJOFI OKEBEDO	"
3. OLOJA AJE	"	9. ELEMO OKELAYE	"
4. ELEJOFI AJE	"	10. OLOTOBO OKELOYE	"
40 5. OLOKOSUN	"	11. EJIEBO INO	"
6. OLOMODUNLAWE	"	12. APETU INO	"
		ELEMO OBEPA	"
		SARUKA OBEPA	"

Exhibits.

Defendants' Exhibits.

Ex. T. 3.
Ekiti
Divisional
File No. 280
Vol. 4.
(Extract
copied.)
continued.

*Exhibits.**Defendants'*
*Exhibits.*Ex. T. 4.
Ekiti
Divisional
File No. 280
Vol. 5.
(Extract
copied.)

Exhibit " T. 4. "

EKITI DIVISIONAL FILE No. 280, Vol. 5

(Extracts printed—pages 985–985a.)

19741/364
19th May, 1949.

Sir,

I am directed to refer to your letter of the 23rd August, 1948, addressed to the Governor and to inform you that your representations have received careful consideration by His Excellency who is not prepared to intervene.

2. Since the independent status of Ilawe with the Ekiti Native Administration has already been recognised and the town has been given full representation on the Federal Native Authority Council your present agitation for separation appears to be putting your personal aggrandisement before the interests of your people. His Excellency is quite unable to accept your suggestion that, because your claim to wear a crown has been rejected, Ilawe should be allowed to leave the Ekiti Federation.

3. His Excellency trusts that nothing further will be heard of this matter.

I have the honour to be,

Sir,

Your Obedient Servant,

(Sgd.) T. M. SHANKLAND,
Actg. Secretary,
Western Provinces.

20

The Alawe of Ilawe,
Ilawe.u.f.s. thro' The Resident,
Ondo Province, Akure.

No. 19741/365.

Ibadan.

19 May, 1949.

30

Copy to :—

The Resident,
Ondo Province,
Akure.

For information with reference to your letter No. 724/710 of the 21st of April.

2. I am to request that the original of this letter be delivered to the addressee.

(Sgd.) FRANCIS McGRATH,
for Actg. Secretary,
Western Provinces.

40

No. 724/712A. *Exhibits.*
 Akure, *Defendants'*
 30th May, 1949. *Exhibits.*

Copy to :—

The District Officer,
 Ekiti Division,
 Ado Ekiti.

Ex. T. 4.
 Ekiti
 Divisional
 File No. 280
 Vol. 5.
 (Extract
 copied.)
continued.

For information with reference to my endorsement No. 724/703 of
 the 30th of November, 1948. Please deliver the original of this letter to
 10 the addressee.

(Sgd.) M. L. FAMAKINWA,
 for Resident, Ondo Province.

Exhibit " T. 6. "

EKITI DIVISIONAL FILE No. 182

(Extracts printed—pages 1, 25–25a, 33–34, 43–44 and 64.)

(Page 1.)

Igbara-Odo.

March 8th 1926.

Ex. T. 6.
 Ekiti
 Divisional
 File
 No. 182.
 (Extracts
 copied.)

20 District Officer,
 Ekiti Division.

IGEDE-ILAWE BOUNDARY DISPUTE.

In accordance with your instructions of the 2nd instant, I referred
 to this matter at my meeting with the Ilawe Chiefs to-day.

Chief Olodi said that Boluado was farming his land, and that the
 River Asa was not the boundary as stated by the Igede people.

He said that the proper boundary at this point was about $\frac{1}{4}$ mile
 north of the River where it flowed between the Ara and Igede bush roads
 to Ilawi.

30 A porogon tree had been planted there but the Igede people had
 up-rooted it.

He said that about 15 years ago, Mr. Ambrose had suggested that the
 River Asa should be the boundary but they had not agreed to this.

The Ewi of Ado had tried to settle the matter without success.

All the other Chiefs agreed with Olodi's statement.

(Signed) NEIL WEIR,
 Assistant District Officer,
 Ekiti Division.

At Ilawe 14/4/26.

40 Boluado told to take action against the trespassers in Ado N.C.
 He quite agrees to do this and the Chiefs appear to agree but they may
 persuade him not to do so.

(Initialled ?)

Exhibits.

(Pages 25-25a.)

Defendants' Exhibits.

AGREEMENT.

Ex. T. 6.
Ekiti
Divisional
File
No. 182.
(Extracts
copied.)
continued.

We the undersigned Bales of Igede and Ilawe agree to accept the arbitration of the District Officer, Ado-Ekiti to determine the right of occupation and use of that land or any part of it now in dispute between us which is situated immediately to the South of Igbo-Oroke and extends for about half a mile to the East and about a mile and a half to the West of the path from Igede to Ilawe passing near the top of Igbo-Oroke, the land in dispute being about a mile in depth from North to South at its broadest point.

10

2. We fully understand that no attempt will be made by the arbitrator to ascertain which party has or has had the right of ownership of the land and that in any boundary he may fix he will have two points only in mind, first to make an unmistakable boundary whose position which will be easily known by all making farm, second, to make such a boundary with the least disturbance of farms existing on the first day of July 1933.

3. It is understood that such a boundary is not a final boundary and that at any time hereafter either of us may proceed in any competent court for its alteration, but unless and until such proceedings are taken and the judgment of the court is delivered, we agree and bind ourselves and the people of our respective towns to observe any boundary fixed by the District Officer, Ado-Ekiti as the limit of the farm land of our respective towns.

20

Bale of Igede his right forefinger mark.

The Bale of Igede's mark affixed this 8th day of July 1933.

Bale of Ilawe his right forefinger mark.

The Bale of Ilawe's mark affixed this 12th day of July 1933.

Witness to marks.

(Sgd.) D. O.

30

(Pages 33-34.)

Note.

Land in dispute visited 7th-8th September. Camped on the site, most unsuitable and unpleasant place in the rains.

Some time was spent in cutting a trace on a magnetic bearing of 280° from the Ilawe shrine at Iqboroke. It transpired however that the area to the south of the long hill Iqboroke, though claimed by Igede had long been continuously occupied by Ilawe and there was no serious dispute over this part.

The dispute was most intense in a smallish area between the West spur of Iqbo Oroke and the hill Obe Aije (see map attached). The farms here both cocoa and annual crops are most hopelessly entangled and it is most difficult ground to survey being thickly overgrown and intersected by the tributary head streams and swamps of Omi Asa.

40

The Ilawes claimed all the land and said that in fact Igede itself was built upon their territory. They further said that all the ground north of Oke Aife up to the Ara motor road was theirs although they admitted that they now had no farms north of that hill.

What is now required is a detailed map of the area between Iqbo Oroke Oke Aije and Oke Orishewe or Ariquidi on a scale of 1 inch—100 yds. to determine existing holdings and evidence of ancient ownership from disinterested parties, if any can be found.

One thing is certain and that is that the boundary fixed by the Ewi in 1930 (or thereabouts) running along the bottom of the East-West valley south of Iqbo Oroke (see pp. 18–21) cannot be upheld.

Intld. 27/9/33.

(Pages 43–44.)

No. E.D. 182/43.

District Office,
Ekiti Division,
Ado-Ekiti, 13th March, 1936.

The Bale of Ilawe,
Ilawe.

Ilawe—Igede Land Dispute.

I am continually receiving complaints about your people trespassing on Igede land, as you know this boundary was fixed sometime ago by the Judicial Council and until I have time to come out to rehear the case both sides must stop trespassing, otherwise it means a palaver and people will be sent to prison for conduct likely to cause a breach of the peace. Please warn your people to be patient and take my advice.

R.O.

Ag. District Officer,
Ekiti Division.

Ilawe.

15/4/37.

The District Officer,
Ekiti Division,
Ado.

30

My Good Friend,

Yesterday the bearers gave report that the Igede people visited their farm and spoiled their yams planted I therefore send them on to you to exhibit the yams spoiled before you for necessary action.

The townspeople here are very much angry at this and should have resulted into serious fight between both towns but we hold on until we hear from you.

The farmland in dispute was once demarcated by the D.O. about 4 years ago and the Igede people are the trespassers.

The D.O. will recollect that they have sued to claim the farm sometimes ago and has not been tried; they have been impatient and they spoil the yams like this. These five loads brought to you are only about 1/20 of the yams they spoil. The owners are farmers and have no other work beside this they trust for their living when new yams grow. How will they live this year now? And they are not expected to steal.

40

Exhibits.
—
Defendants' Exhibits.
—

Ex. T. 6.
Ekiti
Divisional
File
No. 182.
(Extracts
copied.)
continued.

Exhibits. I therefore think the D.O. will sympathise and take necessary action
against the evildoers.

Defendants'
Exhibits.

Your Good Friend,

Alawe His Mark.

Ex. T. 6.
Ekiti
Divisional
File
No. 182.
(Extracts
copied.)
continued.

The Ologun of Odo and Council.

My good friend,

Please enquire into this matter and if necessary prosecute the Igede people concerned.

2. Please return this petition by bearer.

(Sgd.) 17/4/37. Actg. D.O. 10

(Page 64.)

E.P. 4/153.

To The District Officer,
Ekiti Division,
Ado-Ekiti.

5th September, 1938.

From

Alaiyelawa,
Oba Aladesanmi II,
The Ewi of Ado.

20

My Good Friend,

Igede—Ilawe Land Dispute.

The Awusi of Igede has written to inform me of the land dispute existing between his family and the Ilawe people and I send herewith a certified true copy of the statements he submitted.

2. The land dispute started a long time and has since caused continuous trouble between the two parties. I should be glad if you could help to see its permanent demarcation.

Your Good Friend,

(Sgd.) EWI OF ADO-EKITI. 30

Exhibit " T. 10."

COURT OF EKITI JUDICIAL COUNCIL

(Extracts printed—pages 19-25 and 38-40.)

January, 1925.

(Pages 19-25)

IN THE JUDICIAL COUNCIL OF EKITI NATIVE ADMINISTRATION
 Holden at Ado in the Native Court Hall on Wednesday the 7th day
 of January, 1925.

*Exhibits.**Defendants'*
*Exhibits.*Ex. T. 10.
Court of
Ekiti
Judicial
Council.
(Extract
copied.)

Before THE PRESIDENT ELEKOLE AND FOUR MEMBERS.

10

The Oloye
 „ Alaiye
 „ Alara
 „ Ogoga

Judicial Council of Ekiti Refusing to recognise the authority of the Ewi his overlord by using insulting language to him in his Afin and setting himself up as a District head and purchasing two crowns. Contempt of Court by refusing to prostrate to the District heads of Ekiti at J. Council and calling himself an Oba.

20

Alawe of Ilawe.
 Plea not guilty.

The Ewi of Ado.

From time immemorial the Alawe of Illawe has been under me. I do not deprive him from any nation. When I was about to begin with my new building I consulted all my sub towns they are all pleased with it the sub towns and the Ado town each man helped me with one shilling. I send to the Allawe to collect his own one one shilling from the Illawe town as the other subtowns had done, he the Allawe sent a message back to me that since he had been working a motor road do I send any one to salute him? Then I sent a message back to him, that I am too busy here also and that the motor road work he occupied is not by him alone that Igbara Odo people who are my subtown did lot of work there. The third time I sent my message to the Allawe to comfort the Elder chiefs and the young men of the town, who are angry that I do not send messengers to salute them for the motor road works and to bring his help down. He asked the messenger that what Ewi is going to do with money? the messenger replied for the purpose of his new building he told the messenger to go away or the Ewi himself had no sense. Then I summoned the meeting of my chiefs to hear what the Allawe had said. Then my chiefs comforted me, not to be angry but they will send one chief among them to the Allawe to console him and his chiefs. Chief Odolofin from Ado was sent there, no good reply from the Allawe the second time Odolofin was sent comforting the Allawe. He then said he will summon the meeting of his chiefs and whatever comes from their mouth. Ewi will then hear since then no reply whatever. The sixth time I sent to him in his reply to me he said he would not bring money for he has in possession a Court motor road, he is an independent and also Oba. Then after I called the

Exhibits.
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Defendants'
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 copied.)
continued.

attention of my chiefs and brought to their hearing this above mentioned reply of the Allawe. In reply of my chiefs they said it is time now to give complaint to the D. Officer which I did. The D. Officer said he would send to him, on his a light a meeting was summoned at the new hall house of the Ewi. He objected to Salute me before the D. Officer. He calls himself an Oba and that he would not bring his half money. He was then addressing me contemptuously that this small boy "I" the Allawe bathed him from blood when born. The D. Officer said I should get patience and that he will call him up to the Residency and comfort him. He went up the Residency. Afterwards the D. Officer sent to me that I should wait for a week and the matter will be settled. Since then I do not see any change. Hence I made the second complaint to the D. Officer who sent to the Allawe to come. When he came the D. Officer send for me to come reaching up the Residency the Allawe refused to salute me showing arogancy to me "the overlord" and said he would not give money towards the construction of the new building. Hence the D. Officer told him to go. He went away. Afterwards I was made to understand that he bought two (2) wearing crowns to wear. He bought two Crowns from Lamoya of Ara, which is contrary to his office being a Bale and his ancestors never worn it in their lives. He is my subtown, they are (6) six subtowns before him which are greater than he viz. the Bale of Ugin the Bale Are the Bale of Igide the Bale of Igbimo the Bale of Ijan and the Bale of Awigba. Then I consulted the D. Officer who said he was tired of his action and the matter should be brought before the Judicial Council. 10

Today the Judicial Council is being held the Allawe is called in and he showed the contemptuous action as usual to me before the Council. *First* he refused to salute me before the Council whereas I am his overlord. *Second* he said is it on account of him the subtown chiefs gathered together including pride that he had no rank among the sitting ones. It is a contemptuous language none of his ancestors ever dare talk such to the Crown Chiefs before. It is said and made known to me that the people had collected for the Allawe about 5 bags at Illawe whilst I own them all and he fails to collect mine and none of ancestors ever reaped such amount in Illawe before. That is all my complaints. 30

The Allawe of Illawe

All the complaints that the Ewi placed before the Judicial Council are all false Proverb. Where the yams product begins where it ought to be rooted out which means I should begin from the beginning. I first made Iyappa road about 4 years ago then I made Illawe-Igbaraodo road the District Officer sent to me in consultation of Ewi of Ado. I made the roads I do not send message back to Ewi that I will not make it. Then after I completed the road works from Illawe to Igbaraodo (6) six days after the Ewi sent me a messenger to get money from me for the new house building that he is constructing I called the meeting of my chiefs and told them my chiefs refused as well as myself. I said I am not a slave to anybody. I am independent. We are all and same creatures the D. Officer called me for the help to Ewi I replied nay I and my chiefs would not pay for the road works from Igbara Odo to Illawe occupied me for good three years. The Ewi had bribed the Head subtowns chiefs to hear this matter between me and him, this Head subtown chiefs called themselves so. not I call them so. I am Oba myself. Taxes are being 40 50

paid yearly in Ekiti round During the Broken war at Illawe did Ewi give any help to me were he to know that I am under him wont he give me a help even I am the head of all Obas. I have been made Allawe now over 150 years and if any Oba could say the tribute that my forefathers had been giving or paying to the Ewi may come and say publicly I am not under anybody. I am independent I am paying tax but I am not collecting tribute or money to the new building of Ewi I am an Oba . Of course when the District Officer called me before the Ewi and asked me to salute him I refused and I said Ewi is a small boy and that it was I that bathed
 10 him out of blood when born. He is a crown chief as well as myself today the Judicial Council calls me to the meeting in respect of the matter between me and the Ewi. I attended the meeting I refused to kneel down before the crown chiefs and saluted them because I am a crown chief "Oba" as well as they even the present Obas are very small boys I am older than they.

Exhibits.
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 Court of
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 (Extract
 copied.)
continued.

Elekole. Allawe Don't you remember a Court given to you ?

A. Yes.

Is it for spoiling thing ?

If you ask a Court will be given to you also. [*Indirect Answer*]

20 *By Def.* Allawe Don't you remember that Ewi is the overlord of your forefathers and yours ?

A. No. I am under Government "Crown Chief."

Q. Don't you know that Obas are under the Government & the Bales are under the Obas.

A. No I am not a Bale but Oba.

Allawe again states : The Obas now present are District Subtowns. But I am a proper Oba I am not a subtown Oba.

Decision of the Judicial Council

30 First.—For Disobedience to his overlord the Ewi of Ado fined £50 Fifty Pounds for contemptuous language.

Second.—For insulting the Council Members £50 Fifty Pounds.

Third.—The two crowns the Allawe bought should be brought to the next meeting by him and if the Allawe fails to produce them he will be fined a heavy sum of money.

Fourth.—Amount contributed for the Allawe motor is £300 and is to be confiscated for the Ekiti Native Administration use.

Fifth.—The Court House in his town Illawe to be locked up or closed up from this date and nobody should go and hold Court there again for one year.

40 Sixth.—The Motor road in his town is closed by the order of the Council. If you come here Allawe by motor they should carry you home in hammock.

By order of the Council from his hands and feet beads are pulled off and (confiscated temporarily with the Ewi till all be done).

Elekole his X mark.

1.1.25.

Signed ?

Exhibits.

(Pages 38-40.)

Defendants' Exhibits.

March 4th, 1925.

Ex. T. 10.
Court of
Ekiti
Judicial
Council.
(Extract
copied.)
continued.

IN THE JUDICIAL COUNCIL OF THE EKITI NATIVE ADMINISTRATION hold in the Native Court Hall at Ado on the 4th day of March, 1925

Before THE ELEKOLE President and Four Members.

Present

The Elekole

Deji

Asingale

Blaiye

Alara

10

Judicial Council of Ekiti. Refusing to acknowledge his District Head the Ewi of Ado.

Allawe of Ilawe. Contempt of Court before the Judicial Council.
Plea not guilty.

On review by the Resident of Ondo Province

Before the Ekiti Judicial Council.

The Bale of Ilawe was called in before the Judicial Council.

The Elekole ordered the Bale of Allawe to sit on his fan on the ground. 20 He refused, wishing to sit on a chair. The J. Council refused that the Resident talks to the Allawe, that the order to sit on the ground is made by the J.C. not by him Resident asked the Allawe what he had told the D. Officer Mr. Pullen that he was the man that had been washing the feet of the Ewi of Ado is true or not? The Allawe answered Yes. I confirmed the statement. Resident then asked the Allawe that he said he wishes to wear a crown and that if he could bring witnesses to substantiate him let the witnesses come out and say.

The Allawe answered the Oni of Ife could witness and that he begs the Resident to send to the Oni of Ife about it. The Resident answered 30 Allawe The Oni of Ife is your friend and you may send to him. The Resident asked the Elekole that Can the Oni of Ife come here for evidence Elekole answered no as well as the other chiefs Allawe said the Benin war broke him down and that he is a king or an Oba. Resident said that is not the Ewis look-out. Resident advises the Allawe to show obedience to the Ewi of Ado and if he fails to do so he may be fined by the J. Council or to go prison by their order or to be deported from the town. But if you Allawe could give an excuse before the J.C. and the Ewi the fines imposed upon you, may not be probably paid by you and that you may go your home safely. Allawe refused to abide with such advice of the Resident that he 40 did nothing and he does not see why should he make an apology before the J. Council and that he does not know the reason. Resident explained to him for refusing to acknowledge the District Head the Ewi of Ado your overlord.

Allawe sits on a chair by force which shows a contempt of Court—without the J.C.'s order. Resident asked the Obas what to say? Elekole says we all Obas of Ekiti here knew well that Allawe is under the Ewi of Ado. And when he showed disobedience to the Ewi he was brought before the Judicial Council. The then D. Officer Mr. Pullen asked the Allawe to salute us District Heads. He refused.

Exhibits.
—
Defendants' Exhibits.
—
Ex. T. 10.
Court of Ekiti Judicial Council.
(Extract copied.)
continued.

The Resident may again see what the Allawe had been doing again to-day. Showing contempt before the J. Council. Resident asks the J. Council to fine him £20 or two months' Imp.

10 Judgment on review.

Guilty and fined £20 Twenty Pounds for the first charge—or two months' Imp.

Guilty and fined £20 Twenty Pounds for the second charge—or two months' Imp.

Elekole his X Mark.

(Sgd.) ?

4.3.25.

Exhibit " T. 13."

MINUTE BOOK OF EKITI COUNCIL

(Extracts printed—page 40, Sections I-IX, page 42.)

Ex. T. 13.
Minute Book of Ekiti Council.
(Extract copied.)

20 MINUTES OF THE EKITI JUDICIAL COUNCIL MEETING HELD IN THE ADO COURT HOUSE FROM THE 6TH TO 8TH JANUARY, 1925.

Present :—

Capt. A. P. Pullen, the Acting District Officer, Ekiti
W. J. W. Norcott Esqr. Asst. " " "
The Elekole of Ikole
The Ewi of Ado
The Alara of Ara
The Deji of Akure
The Alaye of Effon
30 The Olojudo of Iddo
The Oloye of Oye
The Ogoga of Ikerre
The Ata of Aiyede.

I. OPENING.

The meeting begins at 9 a.m. the District Officer, having saluted and shook hands with members of the Council introduces the subject of the Allawe's misbehaviour towards the Ewi his Overlord.

Exhibits.

Defendants' Exhibits.

Ex. T. 13.
Minute
Book of
Ekiti
Council.
(Extract
copied.)
continued.

II. ALLAWÉ'S MISCONDUCT TOWARDS THE EWI.

The District Officer relates to the Council the Allawe's contemptuous and ignominious behaviour towards the Ewi of Ado his Overlord, which he happened to witness and asks the Council for settlement of the misunderstanding.

III. ALLAWÉ'S ENTRANCE TO THE COUNCIL HALL.

The Allawe is called to enter the Council Room, on entering he fails to salute the members, he is reminded by the Council to give to the members salutation that befits them but he refuses and gives as reply the following words:— "I am not your equal, you small boys and 10 villagers." He is called to order by the District Officer and asked to salute the Obas; but he absolutely refuses and does not do so.

IV. ALLAWÉ'S INSULTING WORDS AGAINST THE EWI AT THEIR PREVIOUS MEETING.

The District Officer reads to the Council some of the statement which the Allawe has spoken to the Ewi at the previous meeting at which the District Officer was present. Some of the words are as follows:— "You are a small boy, I am an old man, it was I who brought you up from childhood; I am not under you, I am an Oba myself." The Council wonders at these words and expresses its indignation towards such 20 unbecoming words from a Bale to his Oba.

V. THE DISTRICT OFFICER'S INTERFERENCE.

The District Officer explains to the Council that the Ewi cannot force the Illawe people to pay this shilling each head towards the building of his new Afin, as they pay annual tribute tax of 6/- per head; but the Bale and his ill-advisers can be brought before the Court to explain their truculent and insulting attitude towards the Ewi their overlord for disputing his authority. The District Officer then explains to the Allawe that he is not called upon by the Council on account of the subscription towards the Ewi's New Afin, but because he has insulted the Ewi his 30 Overlord.

VI. ALLAWÉ'S EXPLANATION.

The Allawe is called upon by the Council for explanation of his misconduct, and he continues as follows:— "I am a District Head, and not subordinate to anyone I pay annual Tribute Tax as other Ekiti towns do. I remember the Ewi has been sending me useless messages to subscribe money to him for his new building. I cannot give such a help. The Ewi has not helped me when the Ibadans captured my town, Illawe. The Ewi thinks I am his slave, he deceives himself; *I am the Head of all Ekiti Obas.*"

40

VII. COUNCIL'S REPLY TO ALLAWÉ.

The Council reminds the Allawe of his position as a mere Bale, and should therefore properly behave himself before the District Heads. It points out to him that he has been under the Ewi from generations and

if he disagrees he should prove it by production of remnant of an old crown worn by his fathers in the past. It also points out that the sources of the Allawe's pride are the Court and Motor Road, which he recently possesses. Notwithstanding the warning of the Council the Allawe is still truculent in his attitude.

*Exhibits.**Defendants' Exhibits.*

Ex. T. 13.

Minute

Book of

Ekiti

Council.

(Extract

copied.)

continued.

VIII. CONSULTATION OF THE COUNCIL MEMBERS.

All the Council members with the exception of the Ewi go to the Court Room for consultation; after an absence of fifteen minutes they come out with a verdict that criminal proceedings should be instituted
10 against the Allawe.

IX. CHARGES AND RESULT.

The Allawe is then charged as follows:—

I. Refusing to recognise the authority of the Ewi his overlord by using insulting language towards him in his Afin and setting himself up as a District Head and purchasing two crowns.

II. Contempt of Court by refusing to prostrate to the District Heads of Ekiti at the Judicial Council and calling himself an *Oba*.

A fine of £50 on each count, Confiscation of £300 cost of his motor, and closing of Illawe Court and Motor Road are the results of the trial.
20 Nine of his minor chiefs are also arraigned before the Council for "Ill-advising and Instigating the Allawe to claim independency," and fined £102.10s. altogether. (Vide Judicial Council Record Book.)

(Page 42.)

MINUTES OF THE EKITI JUDICIAL COUNCIL MEETING HELD IN THE NATIVE COURT HOUSE 4TH MARCH 1925.

Present:—

Major H. R. H. Crawford, Resident, Ondo Province.
Mr. N. Burgess, Acting District Officer, Ekiti Divn.
Capt. E. C. Clegg, Asst. District Officer, Ekiti.
30 The Elekole of Ikole.
The Ewi of Ado.
The Ajero of Ijero.
The Alara of Ara.
The Deji of Akure.
The Alaiye of Effon.
The Ogoga of Ikerre.
The Arinjale of Ise.
The Oloja of Okemessi.
The Onitaji of Itaji.
40 The Onishan of Ishan.
The Elemure of Emure.
The Oloye of Oye.

OPENING.

The Resident saluted the Elekole and Chiefs and informed them that he had called the meeting to settle the matter of the Bale of Ilawe and also that of a petition from one Ojo the Olode of Ogbonmetta, Oye.

BALE OF ILLAWE.

*Exhibits.**Defendants' Exhibits.*

Ex. T. 13.
Minute
Book of
Ekiti
Council.
(Extract
copied.)
continued.

The case of the Bale of Illawe was first investigated and the Resident informed the President and members of Ekiti Judicial Council, that he was sitting as adviser in the case.

The Bale of Illawe was then called and was given permission to sit on his fan as he was an old man, this he refused to do and incurred the displeasure of the Council.

The Resident then explained to the Allawe that he (the Allawe) had stated that he had washed the feet of the Ewi and then asked the Council if this was the position of a minor or that of a superior. The 10 Council then replied that this was the work of the minor. The Allawe then stated that he was the washer of the feet of all the Ekiti Obas.

The Resident then asked the Bale of Illawe to state his case and call his witnesses and the Bale of Allawe replied that the Oni of Ife was his only witness. The Resident then pointed out that the Oni was not allowed to leave his Afin and therefore could not be called.

The Resident then advised the Allawe to apologise to the Elekole and Chiefs as also to the Ewi, and told him that if he did this then the previous proceedings against him will be quashed.

The Allawe then became very truculent and obstinate and the Resident 20 again repeated his advice but the Allawe refused to listen to reason. The Resident subsequently stated that he will recommend the Allawe for deportation if he still persists in refusing to acknowledge the Ewi as his overlord.

The Judicial Council then modified their sentence and the Allawe is sentenced to a fine of £20 or two months imprisonment.

Exhibit "U."

LETTER from District Officer to Ewi of Ado.

No. 3/1927/Vol. 11/

Native Administration Office,
Ado-Ekiti,

16th June, 1932.

My Good Friend,

Igbara-Odo—Ilawe Farm Dispute.

Greetings.

10 The Bale of Igbara-Odo and Chief Aremo of Ilawe tell me that they have a farm dispute. Both parties ask that you should send a messenger to define the boundary and settle the dispute.

I agree that you should do so. If the Ilawe people cause trouble your messenger should return at once and report to me.

Salutations.

Your Good Friend,

(Sgd.) F. R. KERR,
A.D.O.for District Officer
Ekiti Division.

20

The Ewi of Ado,
Ado.*Exhibits.**Defendants'*
*Exhibits.*Ex. U.
Letter
from
District
Officer to
Ewi of Ado,
16th June
1932.

In the Privy Council.

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL.

BETWEEN

**AKINOLA ADEFOLALU, the Alawe of Ilawe for himself and the
people of Ilawe (Plaintiff) - - - - - *Appellant***

AND

- 1. ALADESANMI II, the Ewi of Ado-Ekiti for himself and the
people of Ado-Ekiti - - - - -**
- 2. ADETOKUNBO ATOMOBASE (Defendants) - - - - - *Respondents.***

RECORD OF PROCEEDINGS

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