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26, 1957

No. 4 of 1954. ✓

In the Privy Council.

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**ON APPEAL**

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

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BETWEEN

**TWIMAHENE ADJEIBI KOJO II, substituted for Chief  
Kwame Antwi Adjei, Twimahene (Plaintiff) . . . Appellant.**

AND

**1. OPANIN KWADWO BONSIE  
2. ODIKRO KWAKU MANU, both of Nerebehi (Defendants) Respondents.**

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**RECORD OF PROCEEDINGS**

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A. L. BRYDEN & WILLIAMS,  
53 VICTORIA STREET,  
LONDON, S.W.1,  
*Appellant's Solicitors.*

# In the Privy Council

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

BETWEEN

TWIMAHENE ADJEIBI KOJO II, substituted for Chief KWAME  
ANTWI ADJEL, TWIMAHENE (Plaintiff) . . . . . *Appellant*

AND

1. OPANIN KWADWO BONSIÉ
2. ODIKRO KWAKU MANU, both of Nerebehi (Defendants) . . . . . *Respondents.*

# RECORD OF PROCEEDINGS

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# In the Privy Council.

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

BETWEEN

TWIMAHENE ADJEIBI KOJO II, substituted for  
Chief KWAME ANTWI ADJEI, TWIMAHENE  
(Plaintiff) . . . . . *Appellant*

10

AND

1. OPANIN KWADWO BONSIIE  
2. ODIKRO KWAKU MANU, both of Nerebehi  
(Defendants) . . . . . *Respondents.*

# RECORD OF PROCEEDINGS

*In the  
Asantehene's  
" B " Court.*

No. 1.

CIVIL SUMMONS.

No. 1.  
Civil  
Summons,  
21st  
October [sic]  
1948.

IN THE ASANTEHENE'S *DIVISION* COURT " B ".

Chief KWAMI ANTWI ADJEI on behalf of the  
STOOL per G. S. OSEI . . . . . Plaintiff

20

V.

KWADWO BONSIYE . . . . . Defendant.

To Kwadwo Bonsiye of Bonkwaso.

You are hereby commanded to attend this Court at Kumasi on the  
30th day of November, 1948 at 9.30 o'clock a.m. to answer a suit against  
you by Plaintiff.

The Plaintiff's claims (A) From the Defendant a Declaration of Title  
as per the particulars attached.

Issued at Kumasi, Ashanti on this 21st day of October, 1948.

(Sgd.) OSEI YAW,  
President.

30

Witness to mark :

(Sgd.) J. S. AHENKORA,  
Signature of Registrar.

*In the  
Asantehene's  
"B" Court.*

No. 2.

**APPLICATION by Chief Kweku Manu for Joinder.**

No. 2.  
Application  
by Chief  
Kweku  
Manu for  
joinder,  
6th  
December  
1948.

IN THE ASANTEHENE'S DIVISIONAL COURT "B1" KUMASI.

IN THE MATTER of :—

Chief KWAMI ANTWI ADJAYE for and on behalf  
of the STOOL OF ATWIMA per GEORGE SMILING  
OSSEI of Kumasi . . . . . Plaintiff

v.

1. KWADWO BONSIYEH of Bonkwaso . . . Defendant  
and 10
2. Chief KWEKU MANU of Nerebehi for and on  
behalf of NEREBEHI STOOL . . . Co-Defendant.

APPLICATION ON NOTICE FOR AN ORDER OF THE COURT TO JOIN CHIEF  
KWEKU MANU AS CO-DEFENDANT IN THE ABOVE CITED SUIT IN TERMS  
OF RULE 5 SCHEDULE 3 ORDER 3 CAP. 4 OF THE COURTS ORDINANCE :

I, Chief KWEKU MANUH of Nerebehi in Kumasi Division do hereby  
state as follows :—

1. That it has come to my notice that the above named Plaintiff has  
instituted action against 1st Defendant before the Kumasi Divisional  
Court "B" Kumasi claiming Declaration to a piece or parcel of land 20  
commonly known and called "Bonkwaso" and also for an Injunction.

2. That the land in dispute does not belong to Plaintiff but a property  
attached to my Stool which 1st Defendant is only a mere caretaker  
appointed by me.

3. That, I have an interest in the said land, but I have not as yet  
been made a party to the said suit.

4. That under the circumstance, I submit this application, praying  
that this Honourable Court may make an Order joining me as Co-Defendant  
in the suit to enable me to establish my rights, title and interest to the  
said property, the subject matter in dispute now in terms of rule 5 30  
schedule 3 order 3 Cap. 4 of the Courts Ordinance.

Court to be moved on 7th day of December, 1948, at 9 o'clock a.m.  
or so soon thereafter as the Co-Defendant herein can be heard.

Dated at Kumasi this 6th day of December, 1948.

Chief KWEKU MANU, His  
Co-Defendant, X  
for and on behalf of Nerebehi Stool. mark.

To : The Registrar, Kumasi Divisional Court "B" Kumasi, and  
To : Chief Kwame Antwi Adjaye per George Smiling Ossei, Kumasi.

No. 3.  
COURT NOTES of Joinder.

In the  
Asantehene's  
" B " Court.

IN THE ASANTEHENE'S DIVISIONAL COURT " B1 " held at Kumasi  
on Tuesday December 7, 1948.

No. 3.  
Court Notes  
of joinder,  
7th  
December  
1948.

Chiefs present : KYIDOMHENE NANA OSEI YAW,  
ATIPINHENE OSEI KUFUOR, and  
KYEAME YAW BARIMAH.

Chief KWAME ANTWI ADJAYE per SMILING  
OSSEI for and on behalf of the STOOL OF ATWIMA Plaintiff

10

v.

KWADWO BONSIYEH . . . . . Defendant.

*Issue :* The Plaintiff claims declaration of title to all that piece or parcel of land situate at Bonkwaso, in the Kumasi District of Ashanti and bounded on one side by Hiahene's land, on one side by Bisiasihene's land, on one side by Abongpehene's land and on the other side by Kwabena Annani's land and for the Defendant to show cause why he has refused to return Plaintiff's land to him.

2. An Injunction to restrain the Defendant his wife or wives, agents or servants from entering on the said land pending the final determination of the above case.

3. The Plaintiff also claims such further and other relief as he may be entitled to in the premises against the Defendant.

*Note :—*Chief Kwaku Manu files an application to become a Co-Defendant since he has his interest in the property in dispute.

(Copies already served on parties.)

*By Court :*

Application granted. Let the parties read—

Chief Kwami Antwi Adjaye for and on behalf of the  
Stool of Atwima per George Smiling Ossei . Plaintiff

30

v.

1. Kojo Boseyeh,
2. Chief Kwaku Manu of Nerebehi for and on behalf of Nerebehi Stool . . . . . Defendants.





*In the  
Asantehene's  
" B " Court.*

No. 4.

COURT NOTES granting Injunction.

No. 4.  
Court Notes  
granting  
injunction,  
7th  
December  
1948.

Plaintiff per proxy present.

Defendants present.

Plea : 1.—Not Liable.

2. " "

*1st Defendant* : I have objection to the grant of the Injunction sought.

*2nd Defendant* : —ditto—

*Injunction Order* : The Injunction Order sought is granted. All parties, their workmen, agents, wives or servants are hereby restrained 10 from further (A) entry on the " Bonkwaso " land in dispute, for the purpose of further' cultivation of verdant forest or farmstead, or alienation of the land or (B) withdrawal of any revenue whatsoever accruing from the land, as the allotted share to the owner of this land, and (C) let the Treasurer Kumasi Division Treasury, be appointed the caretaker or receiver thereof, to hold on deposit every sum of money which shall become payable, in respect of the disputed land, to its rightful owner, pending the final determination of this case.

This Order does not prevent farmers retaining their old farms, on the land, weeding therein and living on the foodstuffs therefrom. 20

[sic] Copies of this Order to the *Treasury*, Kumasi Division Treasury and the Timber Contractor working on the land for their information and necessary action.

Case adjourned to 17.1.49.

(Sgd.) OSEI YAW,  
P.

Recorder,  
(Sgd.) J. S. AHENKORA,  
Regr. 7.12.48.

No. 5.  
COURT NOTES of Substitution.

*In the  
Asantehene's  
"B" Court.*

IN THE ASANTEHENE'S DIVISIONAL COURT "B1" held at Kumasi on Saturday the 4th day of February, 1950, before the following Chiefs :—

No. 5.  
Court Notes  
of substitution,  
4th  
February  
1950.

NANA MENSAH YIADOM AMOKOMHENE, President.  
NANA OSEI KUFUOR ATIPINHENE, Member.  
KWAME AMOATENG OKYEAME, Member.

10 Chief KWAME ANTWI ADJEI on behalf of  
ATWIMA STOOL  
v.  
1. KWADWO BONSIÉ,  
2. ODIKRO KWAKU MANU } From Folio 321.

Plaintiff present.

1st Defendant absent.

2nd Defendant in Court.

*Note* : Chief Adjeibi Kojo II files affidavit dated 12th January, 1950, reporting that Atwimahene Kwame Antwi-Adjei is expired and he has succeeded him as Atwimahene. Therefore he prays for his name to be  
20 substituted for Kwame Antwi Adjaye.

*Defendant* : I have no objection to the substitution being made.

*Court* : Substitution granted title of case now to read—

Chief Adjeibi Kojo II, Atwimahene,

v.

1. Kwadwo Bonsie
2. Odikro Kwaku Manu.

*In the  
Asantehene's  
" B " Court.*

*Plaintiff's  
Evidence.*

**PLAINTIFF'S EVIDENCE.**

**No. 6.**

**ADJEIBI KOJO II.**

No. 6.  
Adjeibi  
Kojo II,  
27th  
February  
to 7th  
March  
1950.

IN THE ASANTEHENE'S DIVISIONAL COURT " B1 " held at Kumasi on Monday the 27th day of February 1950 before the following Chiefs :

NANA MENSAH YIADOM, Amakomhene, President.

OSEI KUFUOR ATIPINHENE, Member.

KWAME AMOATENG, Okyeame, Member.

NANA ADJEIBI KOJO II, Atwimahene

10

*v.*

1. KWADWO BONSIÉ,
2. ODIKRO KWAKU MANU.

All parties present.

Plea—Not admitted.

27th  
February  
1950.  
In-chief.

PLAINTIFF OPENS—Sworn Great Oath.

My name is Adjeibi Kojo II. I live at Kumasi, I am the present Atwimahene. The land at Bonkwaso now in dispute is my Stool land. In the olden days, my caretaker on the land was Mumu. I placed him on the land watching my interest thereof. My deputy was a hunter and one Kwabena Tenteng of Nerebehi went to stay with him fishing the river Offin and Bonkwa . . . When my hunter Mumu died, I asked Kwabena Tenteng to watch my interest on the land for me. He was of course not my subject. I later became in need of some money. The Atwimahene then was Kofi Atta who was in need of the money £6, so Kofi Atta sent his Safohene Kofi Kuma Dwahyenso Dikro to ask for £6 loan from the caretaker of the land Kwabena Tenteng with the land as pledge. Kofi Kuma was instructed to ask for the loan through Opanin Kwasi Teng of Nerebehin who occupied Amankwa nin Stool. The conditions of the loan were that Kwabena Tenteng should live and enjoy profits on the land till any time his money £6 would be repaid. Kwabena Tenteng gave the loan and the land has been in his possession since then. The 1st Defendant Kojo Bonsie is the present occupier or inheritor of that Kwabena Tenteng. Over a year ago my immediate predecessor Nana Kwame Antwi Adjei sent bearers with the money £6 to be paid to Kwadwo Bonsie (1st Defendant) in redemption of the pledged land and he (1st Defendant) said he was thinking of the matter for a month before giving reply. One month passed and there was no reply from him so the bearers were returned to him with the money. Bonsie then refused to accept the money saying the land was given him by Nana Bantamahene and not my ancestor on pledge. When this was reported to my predecessor he sent the bearers back swearing the Great Oath that the land belonged to my stool and was pledged to his ancestor Kwabena Tenteng for £6.

20

30

40

1st Defendant refused to respond to the Oath and yet refused to accept the money. He waited for two months and the Oath was not responded and this action was therefore taken for the 1st Defendant to show reason why my ancestors had pledged my Stool land to his ancestors and he refused to accept his money to return the land to me when my Oath was not responded. When we had attended the Court on three occasions, and 2nd Defendant submitted an application to be made Co-Defendant as he gave the land to Kwadwo Bonsie 1st Defendant. That is all my case.

*In the  
Asantehene's  
"B" Court.*

*Plaintiff's  
Evidence.*

*No. 6.  
Adjeibi  
Kojo II,  
27th  
February  
to 7th  
March  
1950.*

*continued.*

*Cross-  
examina-  
tion.*

*XXd. by 1st Defendant.*

10 Q. Since how long did your ancestor pledge this land to Kwabena Tenteng as you say ?

A. About eighty years ago.

Q. Do you remember since Nana Kwabena Tenteng died, I am sixth successor ?

A. I do not know that.

*XXd. by 2nd Defendant.*

Q. What is the position or rank of Amankwa Nim through whom you say you directed your bearer Kofi Kumah to ask for the £6 loan from Kwabena Tenteng ?

20 A. He was a Stool holder at Nerebehi.

Q. The money was paid in what denomination ?

A. By then gold dust was the currency in use ; so it was gold dust.

Q. How did you get the Bonkwaso land ?

A. I chased after Abrimoro, with Hiahene, Akwaboahene, Oyokohene, Besiasehene hence I got the land.

Q. Who was your ancestor during the chase after Abrimoro ?

A. He was Nana Frempong Ameyaw.

Q. Who appointed him (Frempong Ameyaw) to chase Abrimoro ?

30 A. The Bantamahene appointed Akwaboahene as Sahene and also appointed me to go with him as his Obrimpong.

Q. In your chase after Abrimoro, where did you reach and returned home ?

A. When going Hiahene was on my right hand side, Besiasehene on my left. I reached at a valley of a river called Bomkwa where I did not go further.

Q. Did you cross the stream before reaching the valley or you passed the village before reaching the stream ?

A. One crosses the valley before going to the river.

40 Q. Did you meet the Hiahene who was on your right hand side at any point in your chase ?

A. I did not meet him, Hiahene, anywhere ; we were chasing the enemy Abrimoro in a forward march.

*In the  
Asantehene's  
"B" Court.*

*Q.* When chasing the enemy Abrimoro, did you hear of any Osafohene Kwarteng Apegyabi ?

*Plaintiff's  
Evidence.*

*A.* We returned from the chase for several years before he Kwarteng Apegyabi came from Asunengya.

No. 6.  
Adjeibi  
Kojo II,  
27th  
February  
to 7th  
March  
1950.  
Cross-  
examina-  
tion,  
*continued.*

*Q.* Do you remember in the chase my ancestor Kwarteng Apegyabi met Hiahene at a stream called Supon which has been the boundary of my land and Hiahene. He (Hiahene) owning the land on the yonder side of the river and my land on other side ?

*A.* No ; your ancestor was not even here during the chase.

*Q.* Do you remember about 1919 my ancestor litigated in the Chief Commissioner's Court Kumasi in contest for this Bonkwaso land in dispute with the Domiabrahene ?

*A.* I did not know of it ; I pledged the land to 1st Defendant but he did not tell me of any litigation on it.

*Q.* Do you remember during the reign of Nana Bantamahene Kwame Kyem, the case started as an Oath case before him where your predecessor Kwame Antwi-Adjaye was present and when Kwaku Kumah alias Kwaku Assamoa Domiabra Dikro refused to attend being not Bantamahene's subject, hence my predecessor took action in the C.C.A.'s Court for £100 damages ?

20

*A.* No ; my ancestor Kwame Antwi-Adjaye was not present, else, he would have taken up that litigation with your ancestor.

*Q.* Do you remember before giving judgment the Chief Commissioner ordered that any one having land in the vicinity of Bankwaso should meet him on the land and each standing on his boundary line ?

*A.* I do not know of that case and Bonsie who held my land in pledge did not inform me of the case.

*Q.* What forms your boundary line with Besiasihene ?

*A.* My boundary with Besiasihene starts with a bent stately palm tree now fallen bearing a stamp.

30

*Q.* Have you any boundary line with Akroponghe on the land ?

*A.* No ; he has no land in or vicinity ; he has boundary with Hiahene on my right side.

*Q.* Do you remember Akroponghe has boundary with Besiasihene before Hiahene ?

*A.* I do not know when Akroponghe got his land in the vicinity ; so I do not know his boundary line.

*Q.* Where lies your boundary line with your witness Abenpehene ?

*A.* The boundary lies through the valley of Bonkwa to Akyiasiso (Hill).

40

Q. What forms your boundary line with Hiahene ?

A. From Betinpunuye to Dumtokuro on dry land, to the stream Bonkwa, where it is shallow and passes a quick current, thence wading down stream to its confluence with Anankasu.

Case at this stage adjourned till Tuesday 7th March, 1950.

Before Me,  
(Sgd.) MENSAH YIADOM,  
President.

Recorded by :

10 (Sgd.) W. K. ANIN,  
Registrar.

Tuesday the 7th day of March, 1950.

Parties present.

*Plaintiff still XXd. by 2nd Defendant :*

Q. When you say you pledged the land to Kwabena Tenteng what were the terms made on it ?

A. It was arranged that he should enjoy profits on the land till any time the £6 would be paid to redeem the land.

20 Q. Did you pledge all your land in the vicinity or you cut a part for him on the pledge ?

A. Part of my land was presented to Kwasi Teng is now succeeded by Kwabena Anane my witness and the remainder was pledged to Kwabena Tenteng 1st Defendant's ancestor.

Q. When Kwabena Tenteng died, what did you say to his relatives ?

A. I said nothing as I had not got the £6 then to pay.

Q. Is it not custom that on the death of a creditor, the debtor goes to declare his indebtedness to the deceased to the family ?

A. No ; the custom is that, when a debtor dies, the Creditor should report to the deceased's relatives of the debt due to him by the deceased.

30 Q. How could the relatives of Kwabena Tenteng know that you had pledged your land to him for money ?

A. Because there are witnesses on it and any time I would get the money they would prove that it is true.

Q. Do you remember over 40 years ago, Alluvial gold was dug from the land in dispute ?

A. Since I pledged it, I do not go there.

Q. Do you remember your subject Kofi Nwerekviare farms on the land in dispute ?

40 A. Yes ; he applied for the land from you and not from me as I had pledged it to you.

*In the  
Asantehene's  
" B " Court.*

*Plaintiff's  
Evidence.*

No. 6.  
Adjeibi  
Kojo II,  
27th  
February  
to 7th  
March  
1950.  
Cross-  
examina-  
tion,  
*continued.*  
7th March  
1950.

*In the  
Asantehene's  
" B " Court.*

*Plaintiff's  
Evidence.*

No. 6.  
Adjeibi  
Kojo II,  
27th  
February  
to 7th  
March  
1950.  
Cross-  
examina-  
tion,  
*continued.*

*Q.* How did you know I have permitted people to farm on the land during the case, so that Police were set to arrest them ?

*A.* When I was paying the money it was refused and when I took this action, the Court ordered that none of us to farm newly on the land and I heard you have caused farmers to make new farms, so I reported it.

*Plaintiff XXd. by Court :*

*Q.* During the reign of what Asantehene did you go to war to acquire the land ?

*A.* It was during the reign of Nana Katakya of blessed memory.

*Q.* During whose reign did you pledge the land ?

10

*A.* It was during the reign of Nana Agyeman of blessed memory.

*Q.* When you had not pledged the land, what profits on the land was taken for you ?

*A.* My hunters on the land brought me meat (venisen) snails and fish from rivers on the land.

*Q.* Which Chief ordered you or deputed you to go to the war in which you got the land ?

*A.* It was Nana Bantamahene, Amankwatia Panin, who deputed Akwaboahene as Sahene and he also deputed me to help Akwaboahene.

*Q.* Did you fight with Akwaboahene on the same flank ?

20

*A.* No ; the Hiahene who was Sahene appointed by the Asantehene placed me on his left hand side and Akwaboahene on his right.

*Q.* Where did you meet Hiahene and he placed you on his left and right hand sides ?

*A.* We saw him at Bomto near Adankwami and Mfensi.

*Q.* For how long did you possess the land before pledging it ?

*A.* About forty-five years.

*Q.* Where were you, when you were deputed by Bantamahene to go to the war ?

*A.* It was reported to us in the Akyim war that Abrimoro had come to Kumasi and when the Asantehene and all his fighters returned to Kumasi, it was in Kumasi that Nana Bantamahene deputed me and Akwaboahene to chase the enemy. 30

*Q.* Did you take positions with Hiahene and Akwaboahene at Bomto near Nfensi ?

*A.* Yes ; we took flanks at Bomto.

*Q.* Where did you reach during your chase and returned ?

[sic] *A.* We reached Amanfrom in Bonkwaso lands where I was *attached* by Small Pox. I mean my ancestor. When I reported my illness to Hiahene and Akwaboahene, I was asked to stop there as my disease was 40 contagious.

Q. Had you crossed Offin River or you had not yet reached it ?

A. I had crossed it.

Q. What is the worth of your land pledged ?

A. I cannot tell.

Q. What is the annual revenue of your stool ?

A. I cannot tell.

Q. Have you any sources of Revenue ?

A. Yes ; I had shares of gold tribute on Toasehene's lands at Manso.

*In the  
Asantehene's  
" B " Court.*

*Plaintiff's  
Evidence.*

No. 6.  
Adjeibi  
Kojo II,  
27th  
February  
to 7th  
March  
1950.  
Cross-  
examina-  
tion,  
*continued.*

No. 7.

10

**BUAKYE ADADE II, HIAHENE.**

PLAINTIFF'S 1ST WITNESS sworn great oath and states :

My name is Buakye Adade II, Hiahene, Kumasi. During the Ashanti-Akyim war, we were all at Akyim with Bantamahene as Sahene. We heard that Abrimoro King of Aowin had come to Kumasi in our absence plundering. We came to Kumasi and the Asantehene Nana Poku Ware appointed my ancestor as Sahene to chase the enemy Abrimoro who had then gone away. In my Clan Kyidom, the Akyempimhene deputed Bofuo Gwaa Nkawiepaninhene and Bofuo Twim Nyinahinhene to go with me. The custom then prevailing according to the orders of Konfo-Anokye and Asantehene was that Battles should not be fought double sided. That is, one who is Sahene (Captain) in a war which is not ended should not captain another war at the same time. So when the Akyim war was not ended the Bantamahene Nana Amankwatia deputed Akwaboahene Gyenin-Akenten Gyedu Kumanin Barihene, Twimahene Frempong Ameyaw to go with me.

No. 7.  
Buakye  
Adade II,  
Hiahene,  
7th, 16th  
and 21st  
March  
1950.  
7th March  
1950.  
In-chief.

As captain, I placed the Akwaboahene and Barehene on my right hand side and Atwimahene, Nkawiepaninhene and Nyinahinhene on my left flank. We were then chasing the enemy on all sides. When the Hiahene Nana Saabin Kuma *alias* Sabin Domsi took the oath of allegiance, he left Kumasi to sleep at a place near Boheen. Bantamahene told me that the people placed on my left wing with Atwimahene should be commanded by Atwimahene as he was senior amongst all the Chiefs there and Akwaboahene also senior in the right flank. When I overtook the enemy at Bomto near Nfensi on Kumasi-Sunyani Road, I then arranged my army on the positions I have stated. We started fighting Abrimoro. Akwaboahene had then not reached me yet ; he was behind. I placed Atwimahene on my left wing. We chased the enemy when he retreated up to Abonpe when I heard Atwimahene had been *attached* by Small Pox. As the sickness was contagious I sent him word to return home and he said he would stay there waiting for us. His advance guards including Agogohene. I then went forward with Agogohene and when he reached Bare-Ayewa, he Agogohene Darko Tenteng was wounded by the enemy and he was taken back. The Akwaboahene overtook me at Kwakurem between Wiosu and Teppa and

[sic]



*In the  
Asantehene's  
"B" Court.*

*Plaintiff's  
Evidence.*

No. 7.  
Buakye  
Adade II,  
Hiahene,  
7th, 16th  
and 21st  
March  
1950.  
In-chief,  
*continued.*  
[sic]

there I placed him on my right hand and we fought forward and took the enemy the valuables he had plundered. The war lasted for three years. When I was returning I met the Oyokohene who had been sent to re-inforce me at Akyirensua stream. When we came to Kumasi the Asantehene gave the land at Akyirensua to Oyokohene being the place he met me. The Obaapanin of Sukwai was given the land at Sukwai by the Asantehene as she prayed for us "Momome." The Asantehene also gave the land from Kwakorem to the Akwaboahene where his soldiers occupied in the war. Gyedu Kumamin also was given the land by where he took in the war. Nkawiepaninhene Bofuor Gyaa and Nyinahinhene Bofuor Twim were also given the land on which they fought. The Atwimahene was also given the land up to where he fought to and got ill. As Sahene I was given all the land occupied by my subjects in the war up to where we reached and returned. My Safohene Kunso Dikro looks over my land for me. The *Wieso* Dikro also looks over a portion of my land. The Odikro of Mpasaaso also looks over a portion and Sienkyem also looks over a portion and lastly Oppong Adjaye looked on my land at the banks of River Bia. Later Atwimahene told me in conversation that he had pledged his portion of the land to Kwabena Tenteng for £6 and I said it was not my concern. This is all I know. 10

*Examina-  
tion.*

*Xd. by Plaintiff :*

*Q.* You have mentioned the Kontri Chiefs who joined you in the war, as Akwaboahene, Barehene, Agogohene, did any of the Kontri Chiefs, go with us besides those mentioned ?

*A.* They were many but I cannot remember them all.

*Q.* Did you see the Nerebehene Kwarteng Apegyabi in the war fight for us ?

*A.* He was not then in Ashanti at all.

*Q.* You were the Sahene in that war, did the Akwamuhene of Kumasi (Akyamfuo) go with us ? 30

*A.* No ; he did not go with us.

*Q.* Did the Akroponghehene go with us ?

*A.* No ; he used to fight in the deserts ; he has never fought in the forest before.

*Q.* Did any Omanhene take part in the war with us ?

*A.* The Offinsohene at first fought the enemy ; but when I was sent to fight, no Omanhene took sides with me.

*Cross-  
examina-  
tion.*

*XXd. by 1st Defendant :*

No question.

*XXd. by 2nd Defendant :*

*Q.* Did you start from Kumasi to the war the same day with Atwimahene ? 40

*A.* Yes ; with the Akwaboahene, Barihene and all others.

Q. The Atwimahene said he overtook you at Bomto and you say you went along with him, which of you speaks the truth ?

*In the Asantehene's "B" Court.*

A. What the Atwimahene said was true ; because we all left home the same day as he who tarried after swearing the oath contravenes the oath ; but one can sleep at the outskirts.

*Plaintiff's Evidence.*

Q. Do you affirm that it was Abompe that Atwimahene reached in the war and fell ill ?

No. 7.

A. It may be Abompe and it may not be.

Buakye Adade II, Hiahene

10 Q. If the Atwimahene said he fell ill at Amanfram, and you say he reached at Abompe then which of you speaks the truth ?

7th, 16th and 21st March

A. What he said is the real truth ; because I was not fighting with him by the same line ; but it was near Abompe.

1950.

Q. What forms your boundary line with Atwimahene ?

Cross-examination,

A. It starts with Betinpuneye to Duntokuro to a stream called Bonkwa following it down stream to its delta with Anakasu, then following Bonkwa the bigger stream down to Boduako camp otherwise known as Beposu, thence to Asikantia my caretaker the Kunso Dikro will give full details of the boundary line.

*continued.*

Q. Do you know one Kojo Wuahene has ever been on your Stool ?

20 A. Yes ; he was my uncle. I succeeded him.

Q. Do you remember in a case Kwasi Dumasi my predecessor when once litigating with Domiabra Dikro Kwaku Assamoah in contest for the land in dispute and your late uncle Wuahene gave evidence in that case before the Chief Commissioner's Court, that he had boundary with me on the land ?

A. Yes ; I remember ; but Bonsie told my uncle that Kwasi Dumasi should speak for him as his master.

Case adjourned till Thursday 16th March, 1950.

Before me :

30 (Sgd.) W. K. ANIN,  
Registrar.

(Sgd.) MANSAH YIADOM,  
President.

Thursday the 16th day of March, 1950.

Parties present.

16th March  
1950.

PLAINTIFF'S 1st WITNESS (NANA BUAKYE ADADE) still on oath.

*XXd. by 2nd Defendant continued :*

Q. Do you want the Court to understand that Bonsie told your predecessor Kojo Wuahene that he owned the land so he had permitted my predecessor to appear for him so your predecessor should give evidence for him ?

40 A. Bonsie told my predecessor that Kwasi Dumasi was litigating for the land on his behalf.

*In the  
Asantehene's  
"B" Court.*

*Plaintiff's  
Evidence.*

No. 7.  
Buakye  
Adade II,  
Hiahene,  
7th, 16th  
and 21st  
March  
1950.  
Cross-  
examina-  
tion,  
*continued.*

*Q.* Do you affirm that you were appointed to chase Abrimoro in Kumasi by the Asantehene ?

*A.* Yes ; it was in Kumasi that I was deputed.

*Q.* Do you mean to say again that Bantamahene was in Kumasi and also deputed Plaintiff to go with you in the chase ?

*A.* Yes ; he was in Kumasi. I know all the chiefs the Asantehene left at Akyim to continue the fight there.

*Q.* When you passed at Bomto, which place did you reach first Abompe and Bonkwaso ?

*A.* I cannot tell. 10

*Q.* How far is the Odumtokuro standing as boundary head with Plaintiff's away from Bonkwaso ?

*A.* I have not asked a surveyor to measure it, so I cannot tell.

*Q.* What forms your boundary head with Plaintiff on the land ?

*A.* I cannot tell ; but my caretaker on the land Kunso Dikro can tell as I have been to the land several years ago ; but he is a witness in this case and can tell.

*Q.* Do you remember some years ago your predecessor Kofi Nti litigated with Bantamahene's wife Akosua Mansa, Agogohene, Nyinahinhene and myself in contest for the land in dispute before the D.C., Kumasi ? 20

*A.* Yes that is correct ; because when Kwasi Dumasi was litigating with Domjabrahene Bonsie told my predecessor Wuahene that Atwimahene Plaintiff had pledged the land with him and his master was Nerebehi Dikro ; so you were one of the Kronti Chiefs who contested for the land against my stool and you were jointly sued.

*Q.* What did Twimahene say about the case when the Kronti Chiefs were contesting with you for the land ?

*A.* He said nothing about it ; but I think he had not then redeemed the land from Bonsie.

*Q.* If you had won the case and taken possession of the land, would you have returned the land to Atwimahene when he prays Bonsie to redeem the land ? 30

*A.* I would have given him, because I know he owned the land originally.

*Q.* You know the Twimahene Plaintiff owned the land and my elder only held it on pledge, but why did you sue me that is my predecessor claiming owner of the land ?

*A.* There was not Civil Summons issued ; it was a great Oath case regarding two camps on the land ; Bepo Atifi Panin and Beposu Atifi Kumah where a prospector dug a shaft to dig for gold ; and you Kronti Chiefs deemed the camp to be in your land and my ancestor swore the Great Oath claiming them to be located on his land and you responded. 40

*Q.* Was the Bonkwaso land now in dispute involved in that litigation ?

*A.* Bonkwaso was not mentioned in the litigation but I cannot tell if that land was involved.

Q. I put it to you that all the history you have given is not correct and you do not know anything about the land.

A. What I said is correct ; I am Asantehene's Deputy who went to the war, and you were not then in Ashanti ; you were *than* at Asumenja.

*Note* : Chiefs invited to sit on Kumasi Divisional Council.

Case therefore adjourned till Tuesday, 21st March, 1950, for Court to examine Plaintiff's 1st witness.

Before me,  
(Sgd.) MENSAH YIADOM,  
President.

*In the  
Asantehene's  
" B " Court.*

*Plaintiff's [sic]  
Evidence.*

No. 7.

Buakye  
Adade II,  
Hiahene,  
7th, 16th  
and 21st  
March  
1950.

Cross-  
examina-  
tion,  
*continued.*

21st March  
1950.

10

Recorded by,  
(Sgd.) W. K. ANIN,  
Registrar.

Tuesday the 21st day of March, 1950.

Parties present.

*Plaintiff's 1st Witness still examined by Court :*

Q. Do you affirm that your father the Asantehene appointed you in Kumasi to chase Abrimoro ?

A. Yes ; I affirm that.

20

Q. Whom did Amankwatia depute for the Asantehene to be given you in the campaign ?

A. It was in Kumasi where Amankwatia Bantamahene deputed Akwaboahene, Twimahene (Plaintiff) Offinano Barehene and some small Krontihene Chiefs who were fighting in front of the main three chiefs named.

Q. It was during the reign of which Asantehene did Abrimoro *came* [sic] to plunder Kumasi ?

A. It was during the reign of Nana Opoku Ware (Okatakylie) of blessed memory.

30

Q. When you returned from the chase, did you share the land acquired to the chiefs who joined you in the war or it was the Asantehene ?

A. It was the Asantehene who presented the land to us all but he consulted me as Sahene who led that war.

Q. Who was the senior amongst the three Kronti Chiefs who were deputed by the Bantamahene to you ?

40

A. Bantamahene did not tell who was senior all were to help me as Sahene ; but he said " Twimahene and his junior brothers and sub-chiefs should go with you." I affirm that because of what Bantamahene said, Twimahene was the most senior amongst the Krontri Chiefs who joined me in the war.

Q. Did the Atwimahene give flanks to the Kronti Chiefs ?

A. No ; as Sahene, I placed them to their positions.

[sic] In the  
Asantehene's  
"B" Court.

Plaintiff's  
Evidence.

No. 7.  
Buakye  
Adade II,  
Hiahene,  
7th, 16th  
and 21st  
March  
1950.  
Cross-  
examina-  
tion,  
continued.

Q. You said when you *torried* long in the war, the Asantehene sent Oyokohene to see what had happened to you and you met him at Acherensua, did you meet Bantamahene's bearers or Chiefs also who were coming to see the Kronti Chiefs ?

A. I do not know Bantamahene also sent anybody.

Q. Did the Oyokohene come to you as Sahene or to Akwaboahene ?

A. The Asantehene sent him to me as Sahene.

Q. You said you met Oyokohene at Acherensua, but was your flank or position there ?

A. No ; when coming, we were along the main path in Akwaboahene's 10 area.

Q. Did Yokohene meet you all four main Chiefs at Acherensua ?

A. He met us all save Twimahene who was sick in the chase and did not go further.

Q. Where was the Atwimahene when you came back to Kumasi after the war ?

A. He was in hiding at Abompe and I sent for him to meet me in Kumasi before we all came to the Ahinfie to see the Asantehene.

Q. Do you affirm that Bofodwa was with you at Acherensua where you met the Oyokohene ?

20

A. Yes ; I have said it.

Q. Was the Agogohene also with you then ?

A. He was wounded and was not then with us.

Re-  
Examina-  
tion.

*Witness re-examined by Plaintiff :*

Q. Do you know the Akwamuhene has land in the area of the fighting spot ?

A. Yes ; I gave his land there.

Examina-  
tion by  
Court.

*Re-examined by Court :*

Q. Why did you give land to Akwamuhene who did not join in the war ?

30

A. The Akwamu Stool is my Stool son, so he begged for land on which to let a hunter kill meat for him and I gave him a camp called Nyankamasi.

Q. How did Akwamuhene become your Stool son ?

A. It was by paternal line.

Q. Who was the Akwamuhene, Hiahene's son ?

A. I cannot tell. I know of Asafu-Boateng who begged for the land.

Q. Do you know Asafu-Boateng was Nana Oti Akenteng's son ?

A. I do not know.

No. 8.  
TWI KWAKU, Akwaboahene.

*In the  
Asantehene's  
"B" Court.*

*Plaintiff's  
Evidence.*

PLAINTIFF'S 2ND WITNESS s.a.r.b. :

My name is Twi Kwaku. I live at Akwoboa. I am Akwaboahene's Linguist. I am representing the Akwaboahene who was subpoenaed in this case. During the reign of Nana Opoku Ware of blessed memory there was a war with Akyim in which the Asantehene himself Nana Opoku Ware took part with Bantamahene Amankwatia, Twimanhene Frimpong Ameyaw, Gyenin Akenteng, Akwaboahene. Information then reached  
10 us in the war at Akyim that Abrimoro had come to Kumasi to plunder the town and had taken away some valuable persons and things. The Asantehene then retreated to Kumasi with all his army. The Asantehene then told Akyempimhene to give him a chief with arms to chase Abrimoro who was then not gone away very far. The Akyempimhene deputed Hiahene Fri Yamfuo to chase the invader. Bantamahene was also asked to go to the attack and he deputed me Akwaboahene to go with the Hiahene, Bantamahene again nominated Atwimahene and all took the oath of allegiance and did not sleep in Kumasi that day. When they reached at Akwaboa Nkwanta, the Akwaboahene told Twimahene to go to join  
20 Hiahene then at Bomto Nkwanta and he was branching to Akwaboah his capital to get ready to join them later. Later Hiahene sent a bearer for the Akwaboahene as he Hiahene had heard of the enemy. The Akwaboahene did not overtake Hiahene at Bomto-Nkwanta, but reached him at Kurasi now near Kunsu. The Akwaboahene asked about the Twimahene and Hiahene said he had posted him on his left wing. The Hiahene then posted the Akwaboahene on the right wing. Hiahene informed Akwaboahene that he had received message from the Twimahene that he had been attacked by Small Pox Akwaboahene advised that Twimahene should be asked to stay where he was and not to move with the masses  
30 else the army might be attacked by the same disease. The two Chiefs Hiahene and Akwaboahene fought and drove the enemy to Mansa-Ano ; a river and they returned. This is all I know.

No. 8.  
Twi  
Kwaku,  
Akwaboahene,  
21st March  
1950.  
In-chief.

*Xd. by Plaintiff :*

Examina-  
tion.

Q. Can you name the Kronti Chiefs who joined us in the war ?

A. I knew Gyedukumaning Amakyi Barehene was also deputed by the Bantamahene to go with Akwaboahene who was a tight friend to him Amakye Barehene.

Q. Did the Bantamahene depute any of his Gyasi Chiefs to go with us ?

40 A. No ; I saw no Gyasi Chief save you three Kronti Chiefs.

Q. Was the Nerebihin Dikro Kwarteng Apagyabi with us ?

A. I did not see him.

Q. Where was the *Nebahi* Dikro then ?

[sic]

A. He had not come and I did not then know of him. He came by the reign of Nana Okuawia and Nana Adu Gyamara was Bantamahene then.

In the  
Asantehene's  
"B" Court.

Plaintiff's  
Evidence.

No. 8.

Twi  
Kwaku,  
Akwa-  
boahene,  
21st March  
1950.  
Examina-  
tion,  
continued.  
Cross-  
examina-  
tion.

Q. Did Akwaboahene come to see me and the place where I fell ill ?  
A. The bearer who delivered the message said you were at Abompe  
but Akwaboahene did not come there.

XXd. by 1st Defendant :

No question as I am only caretaker of the land for Nerebehin Dikro  
who placed my ancestors on the land.

XXd. by 2nd Defendant :

Q. Who was the senior amongst the Kontri Chiefs deputed by the  
Bantamahene to go to the war with Hiahene ?

A. Akwaboahene was the most senior. 10

Q. Do you not remember the Bantamahene appointed Akwaboahene  
in the Akyim war to come back to fight Abrimoro and not in Kumasi ?

A. No ; Bantamahene was in Kumasi and deputed the Chiefs to  
chase the enemy.

Q. If you say the Bantamahene was in Kumasi, what prevented him  
from chasing Abrimoro so that he deputed other chiefs to do it ?

A. When the Asantehene told Bantamahene to go he said he was  
the Sahene in the Akyim war, so Akwaboahene should represent him to  
fight Abrimoro.

Q. Has your land any boundary with the land in dispute ? 20

A. No.

Q. Do you know where Twimahene reached in the war and fell ill ?

[sic] A. All I heard was that, he was at Abompeh.

Examina-  
tion by  
Court.

Xd. by Court :

Q. Do you affirm that Akwaboahene was appointed Sahene of  
Bantama amongst the three Chiefs ?

A. Yes ; I affirm that.

Q. How did you Chiefs that took part in the war acquire the land  
on which you fought respectively ?

A. After the war the Asantehene gave the land to us, the respective 30  
lands on which we fought.

Q. You said Kurasi where you joined Hiahene was near Kunso about  
what distance ?

A. It is near it when going from Kunsu to Wiosu.

Q. What you say, means that Hiahene had not reached Wiosu where  
Akwaboahene joined him ?

A. Yes ; that is so.

Q. So that the Akwaboahene started fighting on the right hand side  
of Hiahene before they reached Wiosu ?

A. Yes.

Q. Has the Akwaboahene any land in the Wioso area ?

A. He has no land there, because Akwaboahene did not *acutally* fight there as Hiahene's army had gone ahead but it was Benkuro between Hwibaa and Teppa ; so he got land from there.

Q. Did the Akwaboahene send a bearer to see Atwimahene when the latter's illness was reported ?

A. No ; he did not, as they were then busily engaged with the enemy.

Q. Who was Sahene in the war generally ?

A. It was Hiahene.

10 Q. If Hiahene the Sahene says Twimahene was the most senior amongst the Kronti Chiefs that joined him in the war, and you say Akwaboahene was most senior, then who speaks the truth ?

A. What I have said is the truth.

Q. Where did you actually take positions with Hiahene ?

A. At Benkuro.

Q. Do you know a parcel of land called Kwae Kro ?

A. It is the same Bonkuro.

Q. You at first said Akwaboahene took position with the Hiahene at Kunsu ; is it a fact ?

20 A. I said Akwaboahene joined Hiahene at Okurasi ; but it was Benkuro that they parted.

Q. Do you mean to say when Akwaboahene joined Hiahene at Akurasi, they walked on the same path till Benkuro where they parted ?

A. Yes.

Q. Did any Kronti Chiefs take part in the war with you ?

A. No ; only the three named with Agogohene who was a sub-chief fighting in front of Twimahene but the Agogohene was not deputed by Bantamahene.

Q. Did Bafodwaa take part in the war ?

30 A. No, I did not hear of him.

Q. On your return journey from Mansa-Ano, did you all chiefs walk one way to Kumasi or each came back walking on his land ?

A. We all came by our respective areas.

Q. Did Nyinahinhene take part in the war ?

A. No ; I did not hear of him in the war.

Q. Did you come back on the same path with Hiahene ?

A. No ; I came by Mim-Goaso, Acherensua or in short the present motor road, but I only saw Hiahene when I reached in Kumasi.

Q. On your way back did you meet any Chief sent by the Asantehene ?

40 A. I met Oyokohene at Akyerensua ; but Hiahene was not with me there.

In the  
Asantehene's  
" B " Court. [sic]

Plaintiff's  
Evidence.

No. 8.

Twi  
Kwaku,  
Akwa-  
boahene,  
21st March  
1950.  
Examina-  
tion by  
Court,  
*continued.*



In the  
Asantehene's  
" B " Court.

Plaintiff's  
Evidence.

No. 8.  
Twi  
Kwaku,  
Akwa-  
boahene,  
21st March  
1950,  
continued.

Q. Is it not a fact that Oyokohene met you and Hiahene at Akyerensua ?

A. No ; that is not correct.

Q. Did Akwamuhene take part in the war ?

A. No.

Q. Do you know he has land on the area you fought Abrimoro ?

A. No.

Q. Have you ever been to the Abompe land ?

A. No.

No. 9.  
Aboagye  
Asare,  
Besiasihene,  
21st March  
1950.  
In-chief.

No. 9.

ABOAGYE ASARE, Besiasihene.

10

PLAINTIFF'S 3RD WITNESS, Sworn Great Oath.

My name is Aboagye Asare. I live at Besiase. I am the Besiasihene. In the olden days, we were in war with Akyim when Abrimoro invaded Kumasi. It was during the reign of Nana Opoku Ware of blessed memory. So when we came back, the Hiahene, Akwaboahene, Nkawiehene, Besiasihene were sent to chase Abrimoro. The Hiahene saw the linguist of Abrimoro Akonkyi and fought him killing him at Grosso near river Bia. During the chase, my ancestor took position on the Akwaboahene's right hand side with Hiahene on the left. Abrimoro had gone long since so we did not fight him and I reached at Abawianim now Diabaakron. We met 20 Sefwihene's hunters on the land who said Abrimoro had passed away long since. On the return, I reached at Tano-Nsuosu in Bia river when I heard the guns of Hiahene firing in his engagement with Akenkyi at Grosso. I went there to meet Akwaboahene and Hiahene who told us he had weakened and walked over Akonyi so we called the place Essoso. I then returned by Kanyasi to Kumasi, to meet the Asantehene Nana Opoku Ware who welcomed us. Before going to the war, Twimahene was with us and I heard he reached somewhere at Bentinpunuye so he did not pursue the enemy with us to Bia River. The Asantehene gave the land on which we fought respectively. I later presented my land at Kanyasi to my son the Hiawuhene. 30 The Asantehene gave me the land at Betinpunuye where Twimahene also had a *protion* of the land Oyokohene. I have boundaries with these chiefs up [sic] till now. Later Twimahene told me he had given his land to Nerebehin people. The Nerebehin Chief then was Kwarteng Apegyabi. Since then, I had boundary on the land with Kwarteng Apegyabi ; I used to see his subjects on the land. As they are in possession of the land now, when I got litigation on the land I use to call them witnesses. This is all I know.

Examina-  
tion.

*Xd. by Plaintiff :*

Q. Did you see Kwarteng Apegyabi in the war with us ?

A. I did not see him by the time.

40

Q. Did I say I gave the land to Nerebehin people as dash, sale or pledge ?

A. You only told me your land has gone to the Nerebehi people ; but you did not tell me if it was pledge, sale or present and I was not at the transaction.

Q. Do you remember I told you I pledged the land ?

A. Yes ; but I was not present at the time of your transaction if it was on pledge or sale.

Q. Do you remember I told you I had pledged my portion of the land  
10 to Kwaku Tenteng ?

A. No ; you told me Nerebehihene is now in possession of your land which has boundary with my land ; and since then I only see the Nerebehihene.

Q. With whom were you litigating for land and you subpœnæd Nerebehihene ?

A. With Atutuohene ; and I subpœnæd Yaw Bia of Nerebehi.

Q. Do you know one Kwabena Tenteng ?

A. I have heard of his name ; but I do not know him in person.

Q. Do you know one Bonsie who is now successor of Kwabena  
20 Tenteng ?

A. Yes, I know Bonsie I even litigated with Nerebehi people and I called Bonsie as witness.

Q. Have you boundary with Bonsie on the land ?

A. Yes ; the land went to the Nerebehihene and Bonsie is caretaker of Nerebehinhene.

Q. Do you know that Bonsie is the successor of Kwaku Tenteng ?

A. I do not know that.

Q. Do you know Bonsie stays at Bonkwaso on my land ?

A. Yes ; he is caretaker for Nerebehin and lives on the land for him.

Q. Do you remember in the war your position was my left hand side ?  
30

A. Yes ; I was on your left when going.

*XXd. by 1st Defendant :*

Q. If you say the land on which I looked was for Plaintiff why did you not subpœnæ him in your litigation with Atutuohene on the land but me ?

A. You are caretaker of the land for Nerebehinhene hence I subpœnæd you.

Q. Since when did Plaintiff tell you he had given his land to Nerebehinman ?

A. It was long long ago, I cannot tell ; it was during the reign of  
40 Asantehene Nana Agyeman.

*In the  
Asantehene's  
" B " Court.*

*Plaintiff's  
Evidence.*

*No. 9.  
Aboagyè  
Asare,  
Besiasihene,  
21st March  
1950.  
Examina-  
tion,  
continued.*

*Cross-  
examina-  
tion.*

*In the  
Asantehene's  
" B " Court.*

*Plaintiff's  
Evidence.*

No. 9.  
Aboagye  
Asare,  
Besiasihene,  
21st March  
1950.  
Cross-  
examina-  
tion,  
*continued.*

*XXd. by 2nd Defendant :*

*Q.* During the Akim war when Abrimoro came to invade Kumasi, did the Asantehene and Bantamahene depute bearers to chase Abrimoro from Akyim or they came back to Kumasi to depute a few Chiefs to chase him ?

*A.* The Asantehene came to Kumasi before deputing the Chiefs.

*Q.* What was Bantamahene doing so that he did not go himself ?

*A.* Because he was Sahene in the Akyim war and could not be Sahene again in a second war.

*Q.* Who was the senior chief amongst the Kronti Chiefs who went with you to fight Abrimoro ?

*A.* Twimahene was there but I did not know.

*Q.* Who were the chiefs appointed to chase Abrimoro ?

*A.* They were Hiahene, Akwaboahene, Twimahene, Nkawiepaninhene and myself.

*Q.* Could you know if Bantamahene deputed me to join in the war ?

*A.* I do not know the Kronti Chiefs so I cannot tell.

*Q.* Where did Twimahene reach and fell ill in the chase after Abrimoro ?

*A.* He reached at Bonkwaso.

*Q.* Is Abompe the same as Bonkwaso ?

20

*A.* It is just one joint land.

*Q.* When you sued Bonkwaso Dikro to have taken part of your land, was the Bonkwaso and Abompe lands involved ?

*A.* My boundary with him was by Donkoro and he crossed the river to my land to place farmers.

*Q.* Do you remember my boundary head with you and Abompe Dikro is Bentinpunuye ?

*A.* Yes ; that is there ; when the land was originally for Plaintiff it was our boundary head and so when the land came to your hands, it has boundary head.

30

*Examina-  
tion by  
Court.*

*Xd. by Court :*

*Q.* Who deputed you to join the war ?

*A.* It was the Asantehene as I was a separate Chief.

*Q.* Who were your classmen that went with you to the war ?

*A.* They were Apejyabi and Amoaman.

*Q.* If the Hiahene said you did not take part in the war is it correct ?

*A.* It is not correct.

*Q.* Who was your ancestor that joined in the war ?

*A.* It was Twim Appawu, Bessiasehene, Aboagye Asare had died.

Q. By which of your ancestors time did Twimahene tell you he had given his land to Nerebehene people ?

A. It was Nana Twim Appawu's time.

Q. By the time of which Asantehene ?

A. It was Nana Agyeman's time.

Q. Which Asantehene made Oheneba Stool Hiawuhene ?

A. It was Nana Akuawia.

Q. During the reign of Oheneba, had Twimahene given his land to Nerebehene people ?

10 A. Yes ; he was alive.

Q. Who was Twimahene's caretaker on the land before he gave it to Nerebehene people ?

A. I know he had hunters on the land as I had same ; but I did not know of any caretaker.

Q. Were you not a member of the Dumakwai Chiefs by the war or chase of Abrimoro ?

A. I was a Dumakwai Chief.

Q. Who deputed Hiahene as Sahene ?

A. He was deputed by Asantehene.

20 Q. Who was the Chief that deputed Twimahene and Akwaboahene ?

A. I do not know.

Q. Did Oyokohene take part in the war ?

A. No.

Q. But how did he get part of your land where you say he has boundary with you ?

A. I cannot tell.

Q. Part of whose land was given to Oyokohene ?

A. I have boundary with him and Twimahene, our boundary line is Betinpunuye.

30 Q. Which Chief passed on the land given to Oyokohene in the chase.

A. Twimahene and myself.

*Xd. by Court (contd.) :*

Q. What time did Oyokohene get the land ?

A. After returning from the chase.

Case adjourned till 28th March, 1950.

Before Me :

Recorded by :  
(Sgd.) W. K. ANIN,  
Regr. " B1 " Court.

(Sgd.) MENSAH YIADOM,  
President.

*In the  
Asantehene's  
" B " Court.*

*Plaintiff's  
Evidence.*

No. 9.  
Aboagye  
Asare,  
Besiasihene,  
21st March  
1950.  
Examina-  
tion by  
Court,  
*continued.*

In the  
Asantehene's  
" B " Court.

No. 10.

**KWABENA AKYEAMPONG.**

Plaintiff's  
Evidence.

Tuesday the 28th day of March, 1950.

No. 10.

PLAINTIFF'S 4TH WITNESS s.a.r.b. :

Kwabena  
Akyeam-  
pong,  
28th March  
1950.  
In-chief.

My name is Kwabena Akyeampong, I live at Kunsu and I am the Odikro. I am a Safohene to the Hiahene. The Hiahene was chosen to chase Abrimoro in the olden days and he fought and chased him, Abrimoro, to a place beyond Grosso. My ancestor Kra Nteri was with the Hiahene in the war, as Twafohene. So, after the war, I was given the place where fighting started as Caretaker. The land extended from Bomto Nkwanta to the source of river Supon. On the right hand side of the land, he Hiahene and Twimahene had boundary with him there. My boundary head with Twimahene and Besiasihene is Betinpunuye. I own the land facing Kunsu and Twimahene owns the land on the left. The line runs to Odum-tokuro and then to Bonkwa Awuroye—(currents of Bonkwa stream) following the currents to its confluence with Anankasu. Thence following currents of Anankwasu to a place called Brokiwako, thence to Binkyem to Asikantia and thence to Suponti (Supon source) my boundary with Mpasaso then starts Twimahene's land terminates on my left hand side at Suponti. Later, I heard Twimahene had pledged his portion of the land to one Kwabena Tenteng ancestor of Bonsie (1st Defendant). I use to meet Bonsie on our boundary line on inspection. This is all I know.

Examina-  
tion.

*Xd. by Plaintiff :*

*Q.* About two months ago, has 2nd Defendant Kwaku Manu and his Elders come to your town ?

*A.* Yes ; before last Christmas I was attending Court at Mankranso when Odikro Kwaku Manu and his Linguist came to me there, and asked me to go with them to Bonkwaso where they alleged I had permitted a young man to farm on their land. I said the land was for Twimahene so I would not go with him.

Cross-  
examina-  
tion.

*XXd. by 1st Defendant :*

*Q.* Do you remember coming to my village Bonkwaso some time ago with your predecessor Atta and told me you had boundary with Nerebehi Dikro 2nd Defendant on the land ?

*A.* I do not remember coming to Bonkwaso at any time with Atta.

*XXd. by 2nd Defendant :*

*Q.* Do you remember when I had a case with Kwaku Kuma on the land in dispute Hiahene Kojo Wuahene gave evidence in the case that he had boundary with me Nerebehin Dikro in the land ?

*A.* Yes ; Hiahene gave evidence that the land was for Twimahene with Bonsie as caretaker for Twimahene so Kwaku Kuma did not own the land. I heard that story from my uncle Brobey, I was not present when that evidence was given.

40

Q. I put it to you that your evidence to the Court is not correct ?

A. I swear the Great Oath that what I have said is correct.

*In the  
Asantehene's  
"B" Court.*

*Xd. by Court :*

Q. During the reign of which Asantehene was Abrimoro chased as you say ?

A. During the reign of Nana Opoku Ware of blessed memory.

Q. Who appointed Hiahene to chase Abrimoro ?

A. It was Nana Opoku Ware Asantehene.

Q. Where did the Asantehene appoint Hiahene to chase Abrimoro ?

10 A. In Kumasi here.

Q. Who were appointed to go with Hiahene ?

A. He was appointed to go alone and later I heard Akwaboahene followed to help him, as well as Twimahene with their sub-chiefs ; they overtook Hiahene at Bonto-Nkwanta.

Q. Who told you Atwimahene had pledged his land ?

A. My uncle Brobey told me.

Q. During the reign of which Asantehene was Atwimahene's land pledged ?

A. By Nana Agyeman's time.

20 Q. Are you positive that Hiahene was appointed alone to chase Abrimoro and Twimahene and Akwaboahene followed him later to help ?

A. Yes ; I affirm that.

Q. Do you affirm that before the chase of Abrimoro your village Kunso was already established ?

A. Yes ; I affirm that.

Q. What chief owned the land at Kunso then ?

A. It was for Hiahene. I was serving him before that war.

Q. With what Chief had Hiahene boundary then ?

30 A. When I came from the ground, I owned the land at the place I came out from the ground. The whole land was for Hiahene.

Q. Had Hiahene any land from Sribuo to Kunsu before the Abrimoro war ?

A. His land was up to Mankran-Kesi river. His land did not extend to Sribuo.

Q. Who owns the land at Sribuo now ?

A. The Hiahene started chasing Abrimoro from there so he got the land there in addition to his old land at Kunso.

Q. Where was Hiahene's Capital before the Abrimoro war ?

40 A. He was at Esaso near Adankwami ; the footpath then ran at Fufuo. So I did not know who own the land at Sribuo then.

*Plaintiff's  
Evidence.*

*No. 10.*

*Kwabena  
Akyeam-  
pong,  
28th March  
1950.*

*Cross-  
examina-  
tion,  
continued.*

*Examina-  
tion by  
Court.*

*In the  
Asantehene's  
"B" Court.*

*Plaintiff's  
Evidence.*

No. 10.  
Kwabena  
Akyeam-  
pong,  
28th March  
1950.  
Examina-  
tion by  
Court,  
*continued.*

*Q.* Where was and now is Bonto Nkwanta when you say the Akwaboahene and Twimahene overtook Hiahene ?

*A.* It is near Nfensi and Asepenaye, from thence you go to Sribuo before reaching Mankran river.

*Q.* Where did Hiahene place his warriors to that positions ?

*A.* At Bonto Nkwanta.

*Q.* By what means did you reach Bonto Nkwanta ?

*A.* By the old path at Abrepo to Ntinsire and Nfensi but there were no places there.

*Q.* Was Sukwai then not founded ?

10

*A.* It was in a branch way.

*Q.* How long after Hiahene had arrived at Bonto-Nkwanta did Twimahene and Akwaboahene follow up ?

*A.* I cannot tell.

*Q.* Do you affirm that when Hiahene was appointed no other Chief was appointed to go with him ?

*A.* He was appointed alone.

*Q.* Do you know who appointed Atwimahene and Akwaboahene to go to help Hiahene in the war ?

*A.* I cannot tell ; I do not know who appointed them.

20

*Q.* Since when after acquiring the land did you hear Atwimahene had pledged his portion of the land to Bonsie ?

*A.* I cannot tell.

*Q.* When positions were taking at Bonto-Nkwanta, where did the Akwaboahene start ?

*A.* On the right-hand side.

*Q.* Where you were chasing Abrimoro from Bonto-Nkwanta did you see anybody on the land ?

*A.* No ; we saw nobody.

*Q.* After the war, who gave the land to the Chiefs who went to the war ?

30

*A.* The whole land was given to Hiahene by Nana Poku Ware and Hiahene gave a portion to Atwimahene. I cannot tell who gave Akwaboahene land.

*Q.* Had Akwaboahene any land from Bonto-Nkwanta ?

*A.* I cannot tell as Hiahene shared all the land and gave portions to several people.

*Q.* When returning from the war, did all the fighters return by the same path ?

*A.* Each came by his path and I was in the group of Hiahene.

40

No. 11.  
KOJO ABOAGYE.

In the  
Asantehene's  
"B" Court.

PLAINTIFF'S 5TH WITNESS s.a.r.b.

Plaintiff's  
Evidence.

My name is Kojo Aboagye. I live at Boko. I am a farmer. Many years ago during the reign of Nana Agyeman Nana Atwimahene Kofi Atta sent me to pledge his land to Kwabena Tenteng of Nerebehi through Kwasi Tene of Nerebehi. When I arrived at Nerebehi, Kwabena Tenteng was in a village called Ofa-Agya. I therefore went to the cottage with Kwasi Tene from Nerebehi.

No. 11.  
Kojo  
Aboagye,  
28th March  
1950.  
In-chief.

10 (Note: This witness was very shaky in his body and statement. He mentioned some names and later retracted them.)

When we met Kwabena Tenteng, I reported to him as follows:—

“Nana Atwimahene says, I should come to you and to pledge his land in your charge as caretaker to you for a loan of Asuasa £6.”

He promised to give the loan the next day so we returned to pass the night at Nerebehi. The next morning we went to the cottage and Kwabena Tenteng gave us the money £6. When going Kwasi Teng took his weighing scale along and, as the amount was in gold dust, it was weighed. We arranged with him to enjoy values on the land till any time the amount  
20 would be paid to redeem it. I then brought the money to Nana Atwimahene Kofi Atta in Kumasi. A year ago, when Nana Antwi-Adjaye Kumaa was on the Atwimah Stool, he sent me and Gyasehene Kwaku Forkuo to Kojo Bonsie the present survivor of Kwabena Tenteng to pay the money in order to redeem the land. Bonsie was at Bonkwaso and asked us if we saw Nerebehi Dikro before coming to him. I said the loan was not sought for, through Nerebehi Dikro. He asked for a month to consider the matter if he could accept the money or not. After the one month period, we went to him again with the money and 1st Defendant  
30 Kojo Bonsie said he could not accept the money as the land belonged to his ancestors. We swore the Great Oath that the land was a pledge to his ancestors and he did not respond. Nana Atwimahene then took this action. This is all I know.

*Xd. by Plaintiff:*

Q. Do you know my hunter Mumu who lived at Bonkwaso who took charge of my land?

Examina-  
tion.

A. Yes; he was Caretaker of the land and *where* he died, Kwabena Tenteng begged you to be permitted to take care of the land for you. [sic]

*XXd. by 1st Defendant:*

40 Q. Do you remember when you came to me with the money I told you the land was for Nerebehi Dikro for whom I am Caretaker on the first occasion?

Cross-  
examina-  
tion.

A. No; You said you were thinking over the matter for a month.



[sic] *In the  
Asantehene's  
"B" Court.*

*Plaintiff's  
Evidence.*

No. 11.  
Kojo  
Aboagye,  
28th March  
1950.  
Cross-  
examina-  
tion,  
*continued.*

*XXd. by 2nd Defendant :*

Q. How did your Nana Twimahene *got* the land and pledged it ?

A. It was given him by the Asantehene.

Q. What did he do so that the Asantehene gave him the land in recognition ?

A. He took part in the war with Abrimoro.

Q. Before whom was the money weighed and paid to you ?

A. Before Opanin Kwasi Teng of Nerebehi, it was his weighing balance that was used.

Q. What are the boundary marks, points or features in the Plaintiff's 10 land you pledged to Kwabena Teng for the £6 ?

A. Plaintiff had boundaries with Hiahene, Besiasihene and Oyokohene.

Q. What are the boundary marks ?

A. The boundary starts from Anankasu as boundary with Hiahene but I did not go round the whole land to inspect the whole boundary marks.

Q. Whose subject was Kwabena Tenteng to whom you pledged the land ?

A. He is Bantamahene's subject.

Q. Does the Bantamahene know anything about this pledge as you 20 say ?

A. I did not tell Bantamahene before going to seek for the loan.

Q. When Kwabena Tenteng died did you tell his relatives of the pledged land ?

[sic] A. I did not tell them anything as I *owned* the deceased.

Q. Is it custom that when one pledges something to another and the Creditor dies, the debtor should not report the pledge to the relatives of the deceased Creditor ?

A. I do not know if it is custom or not.

Q. Do you remember during the establishment of the Confederacy 30 Council it was proclaimed that all should go to redeem pledge lands or slaves ?

A. I did not hear it.

Q. Did you pledge the whole land or you cut a part aside ?

A. I pledged the whole land.

Q. If the Atwimahene says he cut a portion aside before pledging a portion and you say you pledged the whole, who speaks the truth then ?

A. I have said what I know.

Q. Do you remember thirty-one years ago, Domiabra Dikro exchanged the Great Oath with me in contest for the whole land ?

A. I did not hear of that case.

*Xd. by Court :*

*Q.* Did you take part in the Abrimoro war ?

*A.* Yes ; we went with Hiahene, Akwaboahene, Atwimahene and Gyedu Kumanin ; all were appointed by Nana Bantamahene.

*Q.* From where did the Asantehene appoint the Chiefs to fight Abrimoro ?

*A.* At Kumasi.

*Q.* On what position did Plaintiff fight ?

*A.* On Hiahene's left hand side and Akwaboahene and Gyedu on the  
10 right.

*Q.* Where was Abrimoro chased to ?

*A.* Hiahene and others went far off ; but Small Pox *attached* Atwimahene at Bonkwaso and stayed there till the fighters returned.

*Q.* Did Aboagye Asare take part in the war ?

*A.* I did not see him the chiefs were many and I could see all who fought with us.

*Q.* Who was Sahene in the war ?

*A.* He was Nana Hiahene.

*Q.* Hiahene told us Atwimahene was the senior amongst the Kronti  
20 Chiefs, but if you say Akwaboahene was senior then which of you speaks the truth ?

*A.* I have said what I know.

*Q.* When Twimahene fell ill, who was his sub-chief that fought along with Hiahene and others ?

*A.* He deputed Agogohene who fought with the other chiefs.

*Q.* Has the Agogohene any land beyond Plaintiff's land ?

*A.* Yes ; he has land there, at Mpasaso and Bepero but I do not know the extent.

*Q.* Was any paper made on the pledge ?

30 *A.* No.

*Q.* How could you prove to the Court that the land was not sold outright when you not report to the Survivors of Kwabena Tenteng after the latter's death ?

*A.* There is a witness to it.

*Q.* Who was your ancestor that pledged the land ?

*A.* He was Kofi Kumaa.

*Q.* When Kwabena Tenteng died who inherited him ?

*A.* I cannot tell.

*Q.* How long since did you pledge the land ?

40 *A.* Long ago, I cannot tell.

*In the  
Asantehene's  
" B " Court.*

*Plaintiff's  
Evidence.*

No. 11.  
Kojo  
Aboagye,  
28th March  
1950.  
Cross-  
examina-  
tion,  
*continued.*  
Examina-  
tion by [sic]  
Court.

*In the  
Asantehene's  
"B" Court.*

*Plaintiff's  
Evidence.*

No. 11.

Kojo  
Aboagye,  
28th March  
1950.  
Examina-  
tion by  
Court,  
*continued.*

*Q.* Since the time of your ancestor Kofi Kumah who pledged the land, how many inheritors have preceded you ?

*A.* Kofi Amponsa inherited Kofi Kunsu and Kwasi Nantwiri succeeded Amponsah, I inherited Nantwiri.

*Q.* Is Kwame Ten who was witness in the transaction alive ?

*A.* He is dead.

*Q.* How can his survivors know of the transaction as you never reported to Tenteng's survivors.

*A.* They will know it as history attached to their Stool.

No. 12.

Kwabena  
Anane,  
28th March  
1950.  
In-chief.

No. 12.

10

**KWABENA ANANE.**

PLAINTIFF'S 6TH WITNESS : s.a.r.b.

My name is Kwabena Anane. I live at Nerebehi. I am a cocoa buyer and also Safohene to Nana Bantamahene. I heard of my grand uncle Akaa Yaw, when he died, Kwasi Teng inherited him. During Aka Yaw's time Atwimahene's hunter called Mumu lived on his (Atwimahene's) land at Bonkwaso hunting. The Atwimahene then was Frempong Kwasi. Mumu when passing used to sleep in my ancestor Akaa Yaw's house. My ancestor therefore one day told Mumu to ask Atwimahene to be given a portion of the land on which to hunt. When the matter was reported to Atwimahene he agreed and gave two hunting camps Asikantia and Asibrem to my ancestor Akaa Yaw. When Frempong Kwasi died, Kofi Atta came to the Atwima Stool. Kwasi Teng was then on my stool. One Kwabena Tenteng lived at Bonkwaso with Mumu Dwahyenso Dikro Kofi Kuma a sub-chief to Twimahene one day came to Kwasi Teng that the Twimahene had sent him to pledge the land to Kwabena Tenteng at Fagya. My ancestor went with Kofi Kumah and pledged the land to him Kwabena Tenteng for £6, in those days known as Asuasa gold dust. This is what I know. 20

Examina-  
tion.

*Xd. by Plaintiff :*

30

*Q.* Do you know one Ananse of Nerebehi ?

*A.* I have heard of his name as the first Odikro who founded Nerebehi.

*Q.* Who is the present occupier of Ananse's Stool ?

*A.* He is Kofi Gyawu.

*Q.* Is 2nd Defendant the Odikro of Nerebehi ?

*A.* No ; he is not the Odikro, but Safohene to Bantamahene there are about 10 Asafohene at Nerebehi.

*Q.* Do you remember Kwaku Manu 2nd Defendant is Bantamahene's Gyasihene's sub-chief ?

*A.* Yes ; that is so.

40

Q. Was Kwarteng Apagyabi present when Ananse was founding Nerebehi village ?

A. He was then at Asumenja. He came by the reign of Nana Okuawia.

Q. By what time did he come ?

A. He came when you had already fought Abrimoro by a time my ancestors had not come from Akyim.

Q. So your ancestors and 2nd Defendant's ancestors who came to Nerebehi first or before the other ?

10 A. My ancestors came there first before 2nd Defendant's ancestors. 2nd Defendant's ancestors came by the reign of Nana Adu Gyamara Bantamahene.

*XXd by 1st Defendant :*

No question.

*XXd. by 2nd Defendant :*

Q. What is your rank or position at Nerebehi ?

A. I am the royal of Nerebehi Dikro wing Stool.

Q. Before what Chief was the Asuasa gold dust paid as loan with the land in pledge ?

20 A. It was weighed in the Futuo (balance) of my ancestor Kwasi Teng.

Q. Who were present then at the transaction ?

A. There were several others including Badu and Midagya.

Q. Can you tell the extent of the land pledged for £6 ?

A. I cannot tell as I did not go round it.

Q. Was part of Atwimahene's land reserved ?

A. I do not know that any portion was reserved ; all was pledged to Kwabena Tenteng.

30 Q. Who speaks the truth if Twimahene says he reserved a part of the land ?

A. What I have said is not true then.

Q. The land was pledged during the reign of which Asantehene ?

A. We came during the reign of Nana Katakylie and the land was pledged during Nana Okuawia's time.

Q. Do you know I have a land a Bonkwaso having direct boundary with your land ?

A. Yes ; but I do not know how you got your land.

Q. Do you remember you rendered apology through Bantamahene to me and I gave you the land to live on ?

40 A. I do not remember.

*In the  
Asantehene's  
" B " Court.*

*Plaintiff's  
Evidence.*

No. 12.  
Kwabena  
Anane,  
28th March  
1950.  
Examina-  
tion,  
*continued.*

Cross-  
examina-  
tion.

*In the  
Asantehene's  
"B" Court.*

*Plaintiff's  
Evidence.*

No. 12.  
Kwabena  
Anane,  
28th March  
1950.  
Cross-  
examina-  
tion,  
*continued.*

*Q.* Do you remember lodging a complaint to the Bantamahene about a year ago that I have taken the land he got from me for you ?

*A.* I complained against you for assaulting and insulting me but not on land.

*Q.* Do you remember I have litigated with Domiabra Dikro Kwaku Kumaa on the land in dispute before ?

*A.* Yes ; I remember that.

*Q.* Did Atwimahene say anything in that case ?

*A.* He said nothing about it.

*Q.* Did you also say anything about it as the land was pledged 10 through you ?

*A.* I have no right to say anything about it.

*Q.* Since when was the land pledged ?

*A.* I cannot tell ; I have said it was during Nana Okuawia's time.

*Q.* Is Kwabena Tenteng alive ?

*A.* He is dead.

*Q.* Did you report to Kwabena Tenteng's successors of this pledge when he died ?

*A.* I did not report as the money was not ready.

*Q.* How many people have inherited Kwabena Tenteng since he 20 died ?

*A.* I cannot tell as I know chiefs in my house.

*Q.* Do you remember when Bekwaihene applied for land last year to farm, Bantamahene directed you to cut a part of the land in your care to him through me ?

*A.* Yes ; but Bantamahene asked me to give part of my land to him as I am under Bantamahene, I did so.

Examina-  
tion by  
Court.

[sic]

*Xd. by Court :*

*Q.* Where you given the two camps by Plaintiff Twimahene before pledging the remaining land to Kwabena Tenteng ? 30

*A.* Yes.

*Q.* Do you own the lands on the two hunting camps now ?

*A.* Yes ; Atwimahene dashed them to me and I offered 23/6 Aseda in gold dust ; now if Plaintiff wants it I will give it to him.

*Q.* With whom have you boundaries, with the Atwimahene's land in Bonsie's care, Akwamuhene, 2nd Defendant and Kwaku Forkuo ?

*Q.* Did you give shares of game killed on the land to Twimahene ?

*A.* I used to give him shares of the meat got.

*Q.* Was part of the land given you by Atwimahene the same as that you gave to Bekwaihene when Bantamahene asked you to do so ? 40

*A.* Yes ; that is the same land.

Q. To whom do you give legs of big game killed on the land ?

A. I give to both Bantamahene and Atwimahene.

Q. Has Bantamahene any land at Nerebehi ?

A. No ; he has no land there.

*In the  
Asantehene's  
" B " Court.*

*Plaintiff's  
Evidence.*

*Re-examination by Plaintiff :*

Q. You said my land was pledged by my ancestor Kofi Atta, and you say it was during the reign of Nana Okuawiah, but Nana Kofi Atta reigned by Nana Agyeman's time, how do you account for that ?

A. It means I did not reckon it correctly and you as Plaintiff that  
10 subpoenaed me has divulged it.

Q. Do you mean to say you have told a lie ?

A. As far as the date and time is concerned what I said may not be true.

No. 12.  
Kwabena  
Anane,  
28th March  
1950.  
Examina-  
tion by  
Court,  
*continued.*  
Re-  
Examina-  
tion.

No. 13.

PETER KINGSLEY NTI.

No. 13.  
Peter  
Kingsley  
Nti,  
28th March  
1950.  
In-chief.

PLAINTIFF'S 7TH WITNESS : s.o. B.

My name is Peter Kingsley Nti. I live at Kumasi and I am a Clerk in the Asantehene's Lands Department. I know the Bonkwaso lands are known as Nyase. I remember Messrs. Eagle and Langs have agreement  
20 with some Chiefs to cut timber on the Enyase lands. The Chiefs who signed the Timber Agreement, are the Bantamahene, Akwamuhene, Hiahene, Akroponghe as *guarantors* of the land to the Company, and the Asantehene signed it as confirming party. A copy of that Agreement is in our office and I have been asked to tender it in evidence. I therefore tender it. I also tender the plan made on the land of the Concession.

NOTE : 2nd Defendant—I object to the Agreement being admitted as exhibit in the case because, Nyase lands are quite far about eight miles from Bonkwaso lands. So they are not the same. I was also not present when that Agreement was made.

30 *Court :* The plan shows Bonkwaso lands within it, not outside it, so the Agreement is accepted and marked " A." Plan accepted and marked " B." 2nd Defendant's name appear as witness on the agreement.

*Xd. by Plaintiff :*

No question.

*XXd. by 1st Defendant :*

No question.

Cross-  
examina-  
tion.

*In the Asantehene's 'B' Court.*  
 [sic] *Plaintiff's Evidence.*

*XXd. by 2nd Defendant :*

Q. Does Plaintiff's name appear in the agreement as a *guarantor* ?

A. No ; his name is not in it.

No. 13.  
 Peter Kingsley Nti,  
 28th March 1950.  
 Cross-examination,  
*continued.*

*Xd. by Court :*

No question.

Case adjourned till 14th April, 1950.

Before me,  
 (Sgd.) MENSAH YIADOM,  
 President.

(Sgd.) W. K. ANIN,  
 Repr.

10

Friday the 14th April, 1950.

(Sgd.) W. K. ANIN, Repr. "B1."

Friday 28th April, 1950.

(Sgd.) AGYEI BI KOJO II.

*Defendants' Evidence.*

**DEFENDANTS' EVIDENCE.**

No. 14.  
 Kwaku Manu,  
 28th April 1950.  
 In-chief.

**No. 14.**

**KWAKU MANU.**

DEFENDANTS' CASE OPENS: Sworn. 2nd Defendant for himself  
 and on behalf of 1st Defendant :

20

[sic] My name is Kwaku Manu. I live at Nerebehi and I am the Odikro. I am a Safohene to the Bantamahene. During the Ashanti war, with Akyims, we were engaged in Akyim war when Nana Bantamahene said bearers from Kumasi had come to report that Abrimoro had come behind us to Kumasi to plunder the town. As the war was not ended, the Bantamahene deputed Akwaboahene and Barehene Gyedu Kumanin to return to Kumasi to fight Abrimoro. When the Akyim war ended we came to Kumasi when the Abrimoro persuers had not returned. Hiahene was also deputed by Akyempimhene to join the Kronti Chiefs to fight Abrimoro. When we come to Kumasi, Nana Bantamahene one day told me and his elders that the Asantehene had ordered him to go to help the chiefs who went after Abrimoro. So he ordered us to go ahead of him and he was getting ready to leave Kumasi. We therefore went to Nerebehi and got the young men ready. My town was already established before this war. The following day, we started from Nerebehi and slept at Abompe ; from there we went to sleep at Bonkwaso ; from Bonkwaso we slept at Defiem ; from there we slept at Bonkro. The next day we left

30

Bonkro going and on the way we heard talking in front of us, when we had reached Supong stream we then met the front guard of Hiahene we reported to them that we had returned from the Akyim war and had been sent to help them. They also told us the enemy had been *disermfitted* at Gooso near River Biah so the war had ended and all the Chiefs were coming. We then returned to *Nerebi* and the Hiahene's front guard returned to take a bye way to Wioso. We came to Kumasi and made a report *the* the Bantamahene. He in turn reported to the Otumfuor that his (Gyasihene people) meaning myself and others, had reported that the chiefs who chased Abrimoro were all coming. Later all the fighters came. Later Bantamahene told us that the Asantehene had said we should take the lands on which we reached on our way to help the warriors. We then thanked the Bantamahene. Later, Bantamahene told me and my people Nuako-Panin and Fosu Kesi all on Stools that his brother Akyamfuor had begged him for a portion of the land he had given us to live on for fishing. I had then given Abompe land to Nuoko-Panin and Hunta-Addo on the left hand side to Fosu-Kesi. We therefore gave a camp called Nyankamasi to the Bantamahene to be given to Akyamfuor his brother. Bantamahene also told us to give a portion of the land to his wife Mansah of Akrofrom. We gave her Saakrom camp. Since then we have lived on the land undisturbed and I collect game, snails, rubber and cocoa tribute on the land to my master Nana Bantamahene who shared and gave me a portion. When I shared the land to my elders, I reserved a portion at Bonkwaso for my hunter called Atwidie, who killed animals there for me. In the olden days alluvial gold was worked on the land and Nana Bantamahene sent a bearer to tax the gold diggers "Npesaa tuo" Gold Tribute. It is over 150 one hundred and fifty years now since we occupied the lands and we always bring valuables on them to the Bantamahene and nobody has disturbed us about them. It is only thirty-one years ago when during snail collections on the lands Kwaku Kumaa alias Assamoah the Odikro of Domiabra on Hiahene's land whose boundary with us in Supon stream cross the stream to Krahenekrom on my land for snail tribute. I challenged him for collecting snail tribute on my land and he swore the Great Oath that his boundary with me was River Offin, I responded to the Oath that Supon is our boundary. During that time Kwame Kyem was the Bantamahene so when the matter was reported to him, he sent for Kwaku Kumaa or Asamoah and he refused to come saying he did not serve Bantamahene. Bantamahene therefore assembled all the twelve Kronti Chiefs to consider the matter. The conclusion was that I should take Civil Action for damages against him in the Chief Commissioner's Court. I therefore took the action. During the hearing of the case I subpoenaed Hiahene Wuahene who gave evidence for me that his boundary with me was by Supon stream. So where Kwaku Kumaa collected snail tribute was not his land on which Kwaku Kumaa lived as Caretaker for him. The Chief Commissioner's Court was constituted by the Assistant Chief Commissioner, Ashanti, so after hearing all the evidence in the case, he ordered that we should cut our boundary lines for him to inspect. He first went to Domiabra with us all including Akyamfuor's bearer. The Hiahene showed our boundary head at the Supon stream; we passed on the old path to my boundary with Akyamfuor at Kukrabu stream. After inspecting all the land we came to Kumasi with the Assistant Chief Commissioner, Ashanti. The following

*In the  
Asantehene's  
"B" Court.*

Defendants' [sic]  
Evidence.

— [sic]  
No. 14. [sic]

Kwaku  
Manu,  
28th April  
1950.

In-chief,  
*continued.*



*In the  
Asantehene's  
"B" Court.*

*Defendants'  
Evidence.*

No. 14.  
Kwaku  
Manu,  
28th April  
1950.  
In-chief,  
*continued.*

day, he gave judgment for me, with £100 Damages allowed with £16 fine on the Oath to the Kronti Chiefs for the Great Oath on which he Assamoa proudly refused to go before them for investigation. The Atwimahene Nana Antwi Adjei who was succeeded by the present Plaintiff was all the time present during this case before the Bantamahene and Chief Commissioner, Ashanti. Since then the Atwimahene did not say anything. In 1935 when the Committee of Privileges met to put things right for the Restoration of the Ashanti Confederacy Council, the Atwimahene did not also say anything about his alleged land pledged to us. About fifteen years ago, a European came to see Hills in the land near Mpasaso for 10  
prospection and said he wanted to see the owners of the land in order to give it to him. Hiahene said all the land was for him when the European got a sample on the land. Bantamahene's wife Akosua Mansa, Agogohene, myself, and Nyinahinhene joined to litigate with Hiahene. The case was reported to the District Commissioner Kumasi, the District Commissioner said Bantamahene Awua Bodwese should tell all having lands in the area to go there with him for inspection. The Atwimahene was all the time sitting with Bantamahene in the case. The Bantamahene in person went with us and the District Commissioner to the land on inspection. Nyinahinhene first showed his land, Agogo showed his, Akosua Mansah 20  
showed hers and I showed mine. All the land was measured with Tape. Hiahene's land was also inspected. The District Commissioner after this did not find for anybody and said each should bear his own costs; but he had seen the land of each as shown him. It was there and then that we all entered into agreement with the European who wanted the land for mining purposes and he started paying rents on the land to us till now. I get £7 2/- every year about nine years ago, bearers from Nana Asantehene came to tell me to bring the names of all strangers farming on the land to be registered for tribute on their farms and I did so all round the land. Atwimahene has also not objected to this. About two 30  
years ago, Mr. Boateng Private Secretary to the Asantehene sent for me that a European had come for the land for which I am Caretaker for Bantamahene to cut Timber; so I should come to Kumasi. We met Nana Bantamahene, Akyanfu, Akropongohene, District Commissioner, Kumasi, in Mr. Boateng's office. The agreement was made in which I signed as Caretaker on the land for Bantamahene. After a year and some months ago, 1st Defendant who is Caretaker of part of my land showed me a summons in which Plaintiff had stated that he (Plaintiff) pledged the Bonkwaso land to his ancestors so he was redeeming it. I did not understand the position and applied to the Court to be made 40  
Co-Defendant to this suit as 1st Defendant is only Caretaker on the land for me. I have no boundary with Plaintiff on the land at all. I wish to tender in evidence a copy of the case in the Chief Commissioner Ashanti's Court in which Hiahene gave evidence for me. Accepted and marked "C."

Cross-  
examina-  
tion.

*XXd. by Plaintiff:*

*Q.* You said you took part in the Akyim war, it was during the reign of which Asantehene?

*A.* The war was fought by Nana Osei Tutu, but when we were sent to help the pursuers of Abrimoro, Nana Katakyie was on the Golden 50  
Stool.

Q. Do you affirm that before the Akyim war, your towns Nerebehi was existing ?

A. Yes.

Q. Have you lived at Sepase before ?

A. Yes ; because of guinea worms we removed from there to settle at Nerebehi ; but it was before the war.

Q. From where did you go to stay at Sepase ?

A. From Bantamahene.

10 Q. Do you know that the place you founded Nerebehi was given by me to Bantamahene ?

A. I do not know that.

Q. When you were sent to relieve the pursuers of Abrimoro how many guns " Mpasua " had you ?

A. He Bantamahene sent me and my brothers Gyasi Chiefs I have named and our subjects to go.

Q. Do you remember you are under Bantamahene Gyasihene ?

A. Yes ; I am under him.

Q. When you left Kumasi for how many days did you travel before meeting Hiahene's front or advance guard ?

20 A. I did not take notice of the days.

Q. Do you remember you carry Bantamahene's mat. ?

A. No ; I am his Gyaneni, but I do not carry his mat.

Q. Can you name any of the members of advance guard of Hiahene you met on the road when going to relieve the pursuers ?

A. Yes ; we met Kunso Dikro amongst them.

Q. So if Kunsu Dikro says something about the war, it is correct ?

A. Yes ; because that was what he told me. But the recent Odikro who gave evidence did not speak the truth.

30 Q. Where you passed in following the attackers of Abrimoro did you not observe that people had passed there already in the chase of Abrimoro ?

A. There was no road and nobody had passed there.

Q. Did you see Agogohene anywhere near where you met Hiahene's people ?

A. I did not see him there.

Q. How did you have boundary with Agogohene in the land ?

A. It was later when my hunter met his hunter of a place called Fawotrikosie and they planted figs there to mark it.

Q. What is the name of your hunter who met Agogohene's hunter ?

A. He was known as Atwidie.

40 Q. Who was Agogohene's hunter.

A. I do not know his name.

In the [sic]  
Asantehene's  
" B " Court.

Defendants'  
Evidence.

No. 14.  
Kwaku  
Manu,  
28th April  
1950. [sic]

Cross-  
examina-  
tion,  
continued.

*In the  
Asantehene's  
"B" Court.*

*Defendants'  
Evidence.*

No. 14.  
Kwaku  
Manu,  
28th April  
1950.  
Cross-  
examina-  
tion,  
*continued.*

*Q.* Who was the Sahene appointed by the Bantamahene in the Abrimoro engagement ?

*A.* He appointed Akwaboahene.

*Q.* If the Akwaboahene tells you something of the war, will you believe it ?

*A.* I did not see or meet him when I was sent after them so I cannot know if what he says is correct.

*Q.* Do you remember when Bantamahene deputed Akwaboahene he deputed me also to go with him ?

*A.* No, you were not appointed also. 10

*Q.* Did the Agogohene take part in the war ?

*A.* I did not know Bantamahene deputed Agogohene.

*Q.* How did he get some of Abrimoro's land and formed boundary with you ?

*A.* I do not know how he got his land ; only my hunter met his hunter on the land and we made the place they met our boundary.

*Q.* Are you contesting for the land as your property or for your master Bantamahene ?

*A.* It is for me ; but I serve him with it and when I get any valuable on it, I take to him and he gives me a share ; because he sent me. 20

*Q.* Do you know that my elder Pihasihene has land in the area beyond the Offin River ?

*A.* He has land near Nerebehi village about fifteen miles before going to the land in dispute ; one passes Atutuohene's land, Besiasihene's land before reaching the land in dispute.

*Q.* Do you know I have Eko in Offin river which is fished for me up till now ?

*A.* Yes ; you have two, one is Seseko.

*Q.* How did Pihasehene get his land ?

*A.* I do not know. 30

*Q.* Do you remember we fought the Abrimoro war long after before you came from Asumingya ?

*A.* No ; that is not correct.

*Q.* During the reign of what Asantehene did you come here ?

*A.* During the reign of Nana Osei Tutu of blessed memory.

*Q.* I put it to you that you came during the reign of Nana Okuawia ?

*A.* No ; I do not remember.

*Q.* During the reign of which Bantamahene did you come ?

*A.* It was during the reign of Amankwatia Panin.

*Q.* Do you remember coming by the time of Adu Gyamara ? 40

*A.* No.

Q. Do you not remember it was Bantamahene Adu Gyamara who landed you at Nerebehi ?

A. No ; I do not remember.

Q. Are you the Odikro of Nerebehi ?

A. Yes.

Q. Do you remember you met the Odikro Amansie already at the place ?

A. No ; he was Blacksmith for Bantamahene staying at Odunakye ; after founding the village, he removed to stay with us at Nerebehi ; so he has a lane called Odunakyi at Nerebehi.

Q. Do you remember Anansie whom you met on the land came after the Abrimoro war had been fought ?

A. No I do not remember.

Q. Do you remember there was a village on the land called Fagya ?

A. No ; the village was founded by my ancestors and now in my farm ; it is beyond the stream Fa.

Q. Is 1st Defendant your subject ?

A. He is an elder to my Stool ; his ancestor was Atwidie.

Q. Do you know that 1st Defendant is a descendant of Kwabena Tenteng ?

A. Yes ; that is correct. 1st Defendant is a grand nephew to him.

Q. Do you remember 1st Defendant is one of the Asantehene's musicians at Nerebehi ?

A. Yes ; but the Asantehene's Ahinkwa married a woman from the family and bore sons who served as their father land according to custom.

Q. Do you remember my hunter Mumu stayed at Bonkwaso with Kwabena Tenteng ?

A. I do not know.

Q. Do you know that my ancestor Asenso-Kufu stayed at Abompe ?

A. No ; I did not see him there before.

Q. Did you see one Adoma Akosua ?

A. No.

Q. If anything happened at Bonkwaso, does 1st Defendant inform you ?

A. Yes ; he is my caretaker.

Q. When I recently swore the Great Oath on Bonsie 1st Defendant that Bonkwaso land was for my Stool, did he report to you ?

A. I was off when you swore the Oath, immediately I arrived you had taken this action and I stepped in.

Q. Do you remember I pledged the land to your (1st Defendant's) ancestors for £6 ?

A. No ; that is not correct ; the land is mine. I have no boundary with you at all.

*In the  
Asantehene's  
" B " Court.*

*Defendants'  
Evidence.*

No. 14.

Kwaku  
Manu,  
28th April  
1950.  
Cross-  
examina-  
tion,  
*continued.*

In the  
Asantehene's  
[sic] "B" Court.

Defendants'  
Evidence.

No. 14.  
Kwaku  
Manu,  
28th April  
1950.  
continued.  
Examina-  
tion by  
Court.

*Xd. by Court :*

Q. Who were you sent to relieve *on* re-enforce ?

A. The Bantamahene said Akwaboahene went for a long time, so we were going to relieve the Akwaboahene and others.

Q. Before going did you know by which path Akwaboahene took ?

A. I could not know by where he went as we were then in the Akyim war.

Q. When you met Hiahene's people, did you see Akwaboahene before you returned ?

A. I did not see Akwaboahene as Hiahene's people said all the Chiefs 10 were coming.

Q. Did you take a good errand then, as you did not see Akwaboahene before returning ?

A. Yes ; I took a good errand as Akwaboahene truly came.

Q. Were you present at Akyem and did the Bantamahene depute Akwaboahene in your presence ?

A. I saw him being deputed.

Q. Did Aboagye Asare take part in the Abrimoro war ?

A. I cannot tell.

Q. Do you know how he got his land ?

20

A. I cannot tell.

Q. Who landed you on the Nerebehi land before the Abrimoro war ?

A. It was Bantamahene's Gyasihene who landed us on Bantamahene's land.

Q. Before Abrimoro war, who had boundaries with you on the land of Nerebehi ?

A. I had boundaries with Aboagye Asare and Pihasihene.

Q. Was the Bonkwaso land in dispute for Abrimoro ?

A. Yes.

Q. You say no one had passed at where you met Hiahene's people ; 30 but why did you go by that way after a person who was chasing an enemy ?

A. I found the place a short cut and I luckily met them.

Case adjourned till 19th May, 1950.

Before me :

(Sgd.) MENSAH YIADOM,  
President.

Recorder :

(Sgd.) W. K. ANIN,  
Regr.

Saturday the 27th day of May, 1950.

*In the  
Asantehene's  
"B" Court.*

Parties present.

Plaintiff begs through Court to put a few questions to 1st Defendant.

*Defendants'  
Evidence.*

Q. Do you know that after crossing River Ofin going from Kunsu the whole land was Abrimoro's land ?

A. I cannot tell that, as Abrimoro did not stay in the place.

Q. Where did you pass in going to find the pursuers ?

A. We passed by Ntabnin, Bronsankro.

Q. Was Ntabanu then a town or village ?

10 A. There was no cottage then, it was forest.

Q. But why did you not take that place also and Besiasihene got it ?

A. Besiasihene then had his hunter there.

No. 14.  
Kwaku  
Manu,  
27th May  
1950,  
*continued.*  
Further  
cross-  
examina-  
tion.

No. 15.

**KWAKU GYAWU III, Bantamahene.**

DEFENDANTS' 1ST WITNESS : Sworn Great Oath.

20 Kwaku Gyawu III, I am Bantamahene and living at Bantama. During the reign of Nana Opoku Ware of blessed memory, my ancestor Amankwatia was then occupying the Kудuo Stool of Bantama. Bantamahene was with the Asantehene in a war with the Akyims when report of Abrimoro's plunder in Kumasi the Capital was made. According to our custom, when one war was in progress it should not be left to tackle another one. So Nana Amankwatia deputed Akwaboahene and Gyedu Kumanin to return to fight Abrimoro. After the Akyim war, we returned to find that Akwaboahene and his parties had not returned from the chase of Abrimoro. The Asantehene then told Nana Amankwatia to go to pursue the Chiefs who had gone after Abrimoro. The Asantehene then gave a state umbrella of his called Nsaa-kyineye to my ancestor and I have owned that umbrella till now. I went to the Akyim war with my Gyasi people including Nerebehi Dikro and others. So when Nana  
30 Asantehene told me to pursue the chasers of Abrimoro I told Defendant and his people who were then at Nerebehi to be ready as I was getting ready to move with them. Just as I was getting to move, Defendants' ancestors reported to me that they had met Hiahene's advance guard in a stream called Supon and they had reported that all the chasers of Abrimoro were coming. Hiahene was deputed by the Akyempimhene at Akyim to chase Abrimoro so when I deputed Akwaboahene and Gyedu Kumanin. After the report made to me by Defendants' ancestors, Akwaboahene and others came with a glorious report to the Asantehene that Abrimoro had been completely over-run and defeated. The

No. 15.  
Kwaku  
Gyawu III,  
Bantama-  
hene,  
27th May  
1950.  
In-chief.

*In the  
Asantehene's  
" B " Court.*

*Defendants'  
Evidence.*

No. 15.  
Kwaku  
Gyawu III,  
Bantama-  
hene,  
27th May  
1950.  
In-chief,  
*continued.*

Asantehene then thanked the chiefs and ordered that all who took part in the chase, should take and possess to live on the land on which each chased the invader and to serve him Asantehene with it. I called Nerebehi Dikro and told him to take and possess the land up to the Supon stream where he reached and met Hiahene's people and to bring me any valuable on the land to be given a share thereof. Later my brother Akwamuhene begged me that he did not take part in the Abrimoro engagement but as my Gyasi people had got a share of the land I might give him a portion for hunters to hunt from there for him. I called Nerebehi Dikro to cut a portion for him Akwamuhene and it was so done 10  
—Akwamuhene paid £4 13/- drink to me. (Asuanu ne Nsanu). Later the ancestors of Kwabena Anane Plaintiff's 6th witness begged me for a portion of the land to live on. They are my Futusanfuo; so I asked Nerebehi Dikro and he cut a portion for them. They serve me through Nerebehi Dikro so I did not collect any drink from them. Since then gold dust (alluvial gold) was worked on the land, snail tribute, rubber tribute and cocoa tribute had all been collected on the land for Nerebehi Dikro without interference by anybody. Some years ago Domiabra Dikro trespassed to the land for snail tribute and Nerebehi Dikro had an Oath case with him for it. The case was reported to me and all my elders 20 including the Atwimahene Plaintiff. Domiabra Dikro said he did not serve me so the case was taken to the Chief Commissioner's Court for hearing and Domiabra was found guilty. The Chief Commissioner ordered Domiabra to pay £16 Ntanu to me for the Great Oath exchanged with Nerebehi. So there is no hesitation for me in saying that the land in dispute is for Nerebehi Dikro.

*Examina-  
tion.*

*Xd. by Defendant :*

*Q.* Do you affirm that in the Abrimoro war, the only Kronti Chiefs you deputed to chase the invader Abrimoro were Akwaboahene and Gyedu Kumanin ? 30

*A.* Yes; I affirm that I deputed only these two Kronti Chiefs and none else.

*Q.* Have you at any time heard that Atwimahene had pledged Bonkwaso land to Kwabena Tenteng ?

*A.* Kwabena Tenteng was my subject and if any one had pledged land to him he would have informed me of it; but I have not heard it.

*Q.* When you asked me (Nerebehi Dikro) to go ahead and you were coming, did you tell any of the Kronti Chiefs to proceed with us ?

*A.* No; I told you to get ready and go before me as I was preparing to come. 40

*Cross-  
examina-  
tion.*

*XXd. by Plaintiff :*

*Q.* By the reign of which Asantehene did Nerebehi Dikro come ?

*A.* He came by the time of Nana Osei Tutu of blessed memory.

*Q.* From whence did Nerebehi come ?

*A.* From Asumegyia.

Q. When the Asantehene told you in Kumasi after the Akyim war, to persue the chasers of Abrimoro, did he tell you to go with only your Gyasi people or the whole Kronti Chiefs ?

*In the  
Asantehene's  
" B " Court.*

A. With all the Kronti Chiefs—and I told all of them ; but I told my Gyasi people at Nerebehi to go ahead of me.

*Defendants'  
Evidence.*

Q. Did I take part in the Akyim war ?

A. Yes ; you went with me.

No. 15.  
Kwaku  
Gyawu III,  
Bantama-  
hene,  
27th May  
1950.

Q. Was I present when you deputed Akwaboahene and Gyedu-Kumanin ?

10 A. Yes ; you were present.

Q. During the reign of which Nana Bantamahene did Nerebehi people come from Asumeja ?

A. It was during the reign of Nana Amankwatia Panin.

Cross-  
examina-  
tion,  
*continued.*

Q. I put it to you that Nerebehi people came by the reign of Nana Adu-Gyamara Bantamahene ?

A. No ; it was not so.

Q. I also put it to you that Nerebehi people came by the reign of Nana Okuawia and not by Nana Osei Tutu's time ?

A. No ; they came by Nana Osei Tutu's time.

20 Q. Who was the Chief deputed by the Asantehene at Akyim to the Abrimoro engagement ?

A. When the Asantehene put the matter to Akempimhene he Akyempimhene deputed Hiahene.

Q. Do you know who was Sahene in the Abrimoro war ?

A. It was my deputy Akwaboahene.

Q. Would you believe any report of the Akwaboahene in the war ?

A. Yes ; I would believe his report.

Q. Do you know that Agogohene's land forms boundary with the land in dispute ?

30 A. I do not know the land. I have never been to the land.

Q. Do you know how Agogohene got land there ?

A. I do not know how he got it ; it may be he got it by hunting.

Q. Do you know Agogohene took part in the Abrimoro war ?

A. I do not know ; I have mentioned all the Kronti Chiefs I deputed to go.

Q. Is it customary that your Gyasi people always precede you in wars ?

A. It is not customary ; but this was not a real war ; we were just going to find the chiefs who chased Abrimoro.

40 Q. Did the Gyasi people go with their empty hands without guns as you did not think it was a real war ?

A. They went with guns as they were going in a thick forest.



*In the  
Asantehene's  
" B " Court.*

*Defendants'  
Evidence.*

No. 15.  
Kwaku  
Gyawu III,  
Bantama-  
hene,  
27th May  
1950.  
Cross-  
examina-  
tion,  
*continued.*

[sic]

Q. Do you remember you appointed me in addition to the Akwaboahene to chase Abrimoro ?

A. No ; I did not depute you also.

Q. So if Akwaboahene says he went along with me, will that be correct ?

A. That will not be correct. I deputed Akwaboahene and did not depute you, so what I am saying is correct thing.

Q. Can a chief go to war when his master has not deputed him ?

A. No.

Q. When Defendant returned to tell you they met the advance guard 10 of Hiahene, did they *saw* Akwaboahene your deputy ?

A. No ; they did not say they saw Akwaboahene.

Q. Do you remember it was after the Akyim war when we had all returned to Kumasi that Hiahene, Akwaboahene and all others were sent to chase Abrimoro ?

A. If we were in Kumasi after the Akyim war, there would be no need to send deputies ; I would have proceeded myself with all my Kronti Chiefs.

Q. Do you remember when Abrimoro's arrival and plunder was reported in the Akyim war, the Asantehene chose Bekwaihene and 20 Juabenhene to finish that war as it was nearing completion and he Asantehene returned to Kumasi with us all.

A. No ; that is not correct.

Q. Do you remember the very day we arrived from Akyim, the Asantehene did not permit any chief to enter his house and all the chiefs sent deputies at once to chase Abrimoro ?

A. No ; I do not remember. I would have gone personally as Atufuhene.

Q. Do you remember Hiahene and not Akwaboahene was Sahene in the Abrimoro engagement ?

30

A. I do not remember, Hiahene was Sahene, because my deputy should be senior to Akyempimhene's deputy.

Q. So if Hiahene says he went to the war with me is it not correct ?

A. It can never be correct. I have not sent you, but how would you be with him in the engagement.

Q. Is the land for you or for Nerebehi Dikro ?

A. It is for Nerebehi Dikro who serves me with it. When he gets any valuable on it, he brings it to me and I give him a share. The only hope of Kuduo Stool is Nerebehi.

Q. The land is for Nerebehi Dikro, but why in granting it to a 40 European for Timber operations you signed the agreement as owner of the land and Defendant only signed as witness. I refer to Exhibit " A " ?

A. Yes, I signed the agreement as the senior chief who Nerebehi served. I was asked to sign it by the lawyer who prepared it as it was

going before the High Court and should be signed by senior Chiefs ; so I signed the timber agreement as one of the joint grantors of the land, but in reality the land is for my sub-chief Nerebehi Dikro.

*In the  
Asantehene's  
" B " Court.*

*Q.* Do you mean to say the Nerebehi land is for you ?

*Defendants'  
Evidence.*

*A.* No ; he serves me with it.

*Q.* I put it to you that I went to the Abrimoro war with others and as you know when the land is for your Gyasi, you would enjoy the benefits on it, hence you are giving evidence that I did not take part in the war at all as one of your chiefs deputed to that war ?

No. 15.  
Kwaku  
Gyawu III,  
Bantama-  
hene,  
27th May  
1950.

10 *A.* No ; I have taken the Oath always to speak the truth and what I am saying is the real truth.

Cross-  
examina-  
tion,  
*continued.*

*Xd. by Court :*

*Q.* Do you affirm that you deputed Akwaboahene and Gyedu-Kumanin at Akyim to chase Abrimoro and you did not depute Plaintiff as well ?

Examina-  
tion by  
Court.

*A.* Yes ; I affirm that.

*Q.* During which Asantehene's reign was gold dug on the land ?

*A.* I do not remember that now.

*Q.* To whom was the gold tribute taken ?

20 *A.* To me to the Asantehene in all tributes on the land.

*Q.* When after the war of Akyim the Asantehene told you to pursue the chiefs who chased Abrimoro, was the Atwimahene with you ?

*A.* Yes ; he was present.

*Q.* Where was the Nsaa-Kyiniye given you by the Asantehene ; in the Akyim war or here ?

*A.* It was in Kumasi.

*Q.* When you gave a portion of the land to Akwamuhene others did you give a portion to Atwimahene ?

30 *A.* No ; all the other chiefs begged me before I gave them portions but Atwimahene never begged me.

*Q.* Did you depute Agogohene to go with Akwaboahene ?

*A.* No ; I did not depute him also.

*Q.* During the Akyim war did you assemble the Kronti Chiefs before deputing Akwaboahene and Gyedu-Kumanin or it was by secret errand ?

*A.* They were all assembled and they were all present when Akwaboahene and Gyedu-Kumanin were appointed.

Case adjourned to 3rd June, 1950.

Before me,  
(Sgd.) MENSAH YIADOM,  
President.

40 Recorder :  
(Sgd.) W. K. ANIN,  
Regr.

*In the  
Asantehene's  
" B " Court.*

No. 16.

**KWAME ADJEI-TWUM II, Akwamuhene.**

*Defendants'  
Evidence.*

**DEFENDANTS' 2ND WITNESS : Sworn Great Oath.**

No. 16.  
Kwame  
Adjei-  
Twum II,  
Akwamu-  
hene,  
3rd June  
1950.  
In-chief.

My name is Kwame Adjei-Twum II, Akwamuhene, Kumasi. In the olden days my ancestors went to war at Akyim with the Asantehene. During the war, we had a report that Abrimoro Chief of Awowin had come behind us to Kumasi and plundered the town. Nana Asantehene Opoku Ware of blessed memory informed us all and Bantamahene said we should not discontinue the Akyim War. So deputees were chosen to return to fight Abrimoro. The Bantamahene Nana Amankwatia Panin deputed 10 Akwaboahene, Amakye Barehene. In the Kyidom Clan, Hiahene was all chosen and all left us at Akyim and came back to drive away the invader. When we later finished the Akyim war and returned home, the pursuers of Abrimoro had not returned. The Asantehene then told Barfuor, (Bantamahene) to follow up the Chiefs in pursuit of Abrimoro. Bantamahene then told his Gyasi people to be ready to proceed before him as he would soon leave Kumasi to join them. A few days later, the Gyasi people of Bantama returned with message that all the chiefs who went after Abrimoro were coming, so Bantamahene did not leave the town yet. The principal Gyasi Chief of Bantama whom I heard went 20 before the Bantamahene was Kwartan Odikro of Nerebehi. Later the Asantehene distributed the Abrimoro lands to those chiefs who left the Akyim war to drive Abrimoro, and those who later pursued after them. Bantamahene is my brother so my ancestors begged him for a portion of the land his subordinate chief Kwarteng had got to eat thereon. The Bantamahene told the sub-chief who agreed with his master and I was (or my ancestors were) given the portion of the land on the left hand side of the foot path the people took in pursuing the chiefs. The land given to my stool starts from Aweisam to a stream Kukrabo. I offered £4 13s. stamping drink Aseda over the presentation made to me. Since then 30 my hunters have a camp in the land called Detrem and I have owned the land up till now. My hunters made another camp called Nyankumasi from where he used to set fish traps for fish to me. From time immemorial, I have been given meat, snail tribute rubber tribute and all kinds of tribute on that portion of the land given me. When my original hunter died, I begged my brother Bantamahene to let one of his subjects be caretaker of my land for me and he gave me Nuako-Panin who was Caretaker for me. During the reign of Nana Kwakye Kofi, Domiabra Dikro had a case with Nerebehi Dikro before the Chief Commissioner's Court and during the hearing, there was an order that all having land in the vicinity should go 40 to point out their lands. I therefore went to point out my land and the Commissioner who went to inspect the land took notes of all the boundary before entering judgment, for Nerebehi. In the case, Hiahene was a witness for Domiabra. Since then my stool owns the portion of the land given me. Quite recently, when Eagle and Lang asked to be given all the lands there for Timber Concession, I was one of the Grantors of the land and I signed the Agreement before Nana Asantehene. The Chiefs who signed that Agreement were Hiahene, Bantamahene signed for Nerebehi Dikro as he Bantamahene owned the land. Akroponghe, and the Asantehene. This is all know. After the litigation with Domiabra, 50

I paid £15 to Nerebehi Dikro as help in view of the portion of land given me. On the land given me I have boundary with Kwaku Forkuo of Nerebehi on my left, and also with Kwabena Anane and Defendant Odikro Nerebehi who owns all the land.

*In the  
Asantehene's  
"B" Court.*

*Defendants'  
Evidence.*

*Xd. by 2nd Defendant :*

Q. Who was your ancestor to whom I apportioned the land ?

A. He was Nana Kumaarfo Ayiribi of blessed memory.

No. 16.  
Kwame  
Adjei-  
Twum II,  
Akwamu-  
hene,  
3rd June  
1950.

*In-chief,  
continued.*

*Cross-  
examina-  
tion.*

*XXd. by Plaintiff :*

10 Before asking any questions I beg to inform the Court that Kwaku Fokuo Defendants' witness was in Court hearing evidence of this witness.

*Defendant :*

He is my witness but I do not know he was sitting in Court. So in short I wish to cancel that witness from giving evidence at all.

KWAKU MANU.

His T.  
X  
mark P.

Q. You are one of the principal chiefs in Kumasi as the Bantamahene, so do you affirm that any serious matter reported to the Asantehene will be known by you ?

20 A. I can know all serious matters reported in my presence.

Q. Did I take part in the Akyim war or not ?

A. I cannot tell as I was in a different flank ; it is your master Bantamahene who can tell if you took part in it or not.

Q. How long after Hiahene and others had left Akyim did the war end ?

A. Not quite long after ; but I cannot tell the exact time.

Q. How long after your arrival in Kumasi did the Asantehene send Bantamahene to follow up the Abrimoro pursuers ?

A. About a week or two.

30 Q. Were you present when Bantamahene told Nerebehi Dikro to proceed before him in following the Abrimoro fighters ?

A. I was not present but Bantamahene told me later what action he has taken.

Q. Can you tell who is Bantamahene Gyasi ?

A. Defendant is one and I do not know the others.

Q. Who was the Bantamahene from whom you acquired your portion of the land ?

A. He was Nana Amankwatia Panin of blessed memory.

*In the  
Asantehene's  
" B " Court.*

*Q.* Who were the Kronti Chiefs present, when Bantamahene gave you the land ?

*A.* The Barehene was present and others.

*Defendants'  
Evidence.*

*Q.* Do you know from whence come the Nerebehi people to Ashanti ?

*A.* I do not know as I am in the Akwamu Clan.

No. 16.  
Kwame  
Adjei-  
Twum II,  
Akwamu-  
hene,  
3rd June  
1950.  
Cross-  
examina-  
tion,  
*continued.*

*Q.* I put it to you that Nerebehi people came during the reign of Nana Asantehene Okuawia, and by that time Abrimoro's lands had been apportioned long since.

*A.* I do not remember, what I have said is correct.

*Q.* Do you remember Nerebehi people came during the reign of 10 Bantamahene Adu Gyamara ?

*A.* I do not know ; all I know is that I got my land through Bantamahene from Nerebehi Dikro his subjects during Nana Amankwatia Panin's time.

*Q.* Do you remember it was Hiahene who gave you the land and camp at Nyarkumasi ?

*A.* That is not correct ; a Kyidom Chief cannot give me land ; if he had told the Court so, it is false.

*Q.* Do you remember it was Oyokohene who Nana Asantehene deputed to follow up the Abrimoro pursuers ?

20

*A.* I do not know of that.

*Q.* Do you know who was Sahene in the Abrimoro war ?

*A.* I do not know who was Sahene and I did not take part in it.

*Q.* Do you know from where Sahene of the Abrimoro was appointed ?

*A.* I do not know when that Sahene was appointed ; but all the Chiefs were chosen in battle field at Akyim.

*Q.* Why should Bantamahene sign the Timber Agreement you referred to in your Statement as Grantor when the real owner of the land was there ?

*A.* In 1947 or 1948 the Kumasi Divisional Council ruled that small chiefs who are caretakers of land use to say the lands belong to them solely ; so it was ordered that all should be declared caretaker and their heads in Kumasi should be land owners : hence Bantamahene signed that agreement and Defendant Nerebehi Dikro signed it as witness.

*Q.* If there happens a litigation on the agreement, who will come forward as owner of the land according to the agreement ?

*A.* Bantamahene has right to litigate for Nerebehi and Nerebehi has the right to litigate also.

*Q.* I put it to you that your evidence is not correct ?

*A.* It is correct as I am on Oath.

40

Examina-  
tion by  
Court.

*Xd. by Court :*

*Q.* Do you affirm that Abrimoro came to Kumasi to plunder the town when Nana Asantehene Opoku Ware was at Akyim ?

*A.* I affirm that.

Q. Do you affirm that it was Bantamahene who gifted you the portion of the land in dispute ?

A. I affirm that, he got it for me from Nerebehi Dikro.

Q. Since you were given the land, have you heard Atwimahene has any land in that area in dispute ?

A. No.

Q. During the reign of what Asantehene were you gifted the land ?

A. During Nana Katakylie's reign.

10 Q. Were you present when Akwaboahene and Barehene were deputed by Bantamahene during the Akyim war to come to drive Abrimoro or Bantamahene later told you about it ?

A. Bantamahene told me about it.

*In the  
Asantehene's  
" B " Court.*

*Defendants'  
Evidence.*

No. 16.  
Kwame  
Adjei-  
Twum II,  
Akwamu-  
hene,  
3rd June  
1950.  
Examina-  
tion by  
Court,  
*continued.*

No. 17.

**KWABENA SARFO II, Akroponghe.**

No. 17.  
Kwabena  
Sarfo II,  
Akropong-  
hene,  
3rd June  
1950.  
In-chief.

DEFENDANTS' 3RD WITNESS : Sworn Great Oath.

My name is Kwabena Sarfo II, Akroponghe of Akropong, I am Nana Osei Tutu's servant and Safohene ; he ordered me to stay at Akropong, after driving Dormaa Kusi to keep watch of the road. I also sent my servant Kra Kokor to stay ahead on the road at Adankwami watching  
20 for me. Later during Nana Katakylie's reign, Akyim war broke out. I took part in it. When at Akyim, a report came that Abrimoro had come behind us to Kumasi to plunder the town. The Asantehene asked some of the principal chiefs to nominate their sub-chiefs to come back to drive Abrimoro. I was in the Kyidom Clan but I was not chosen. The Akyempimhene deputed Hiahene from our group Kyidom to go to drive Abrimoro. The Bantamahene also deputed Akwaboahene and Amakye Barehene. Not quite long after, the war ended and we came to Kumasi, when the chosen chiefs to drive Abrimoro had chased him far off and had not returned. The Asantehene ordered that Bantamahene  
30 should follow up ; before Bantamahene's could follow up, message came that the chiefs were all coming back ; before then Bantamahene's advance body reached a stream called Supong before they met the Abrimoro chasers and all returned. When Nana Katakylie was apportioning the lands, though I did not take part in the Abrimoro war I begged Otumfuo that the land on which I lived extended to Bepakokor so he might kindly give me the lands of Nyase in which Anankaso stream runs. He gave that portion to me. My hunter Kra Kokor told me he once met Atwedie in the land at Anankasu stream and that he Atwidie said he was hunter, for Nerebehi Dikro. So since then Anankasu has been my land boundary  
40 with Nerebehi. My boundary head with Nerebehi and Besiasi is Betim punuye. I also have boundary with Hiahene in the land but quite apart. About a year and half ago I was at Akropong when Nana Antwi-Adjaye

*In the  
Asantehene's  
"B" Court.*

*Defendants'  
Evidence.*

No. 17.  
Kwabena  
Sarfo II,  
Akropong-  
hene,  
3rd June  
1950.

*In-chief,  
continued.*

*Examina-  
tion.*

*Cross-  
examina-  
tion.*

Twimahene came to me with one bottle gin saying he wanted to litigate with Nerebehi Dikro on the land he Nerebehi lives, so he would like me to give evidence for him. I said I would opine with my elders. Later he came on the 2nd occasion and I said I had no boundary with him in the land and I could not tell falsehood to give evidence for him. I later had this subpoena from this Court at the instance of Defendant who did not consult me at all before subpoenaing me.

*Xd. by Defendant :*

*Q.* Who was the Chief Bantamahene sent before him to meet the Abrimoro chasers ? 10

*A.* He was Kwarteng Nerebehi Dikro.

*Q.* Do you know how I got my land ?

*A.* I heard Bantamahene sent you ahead of him and you met the Abrimoro chasers at a place and the land there was given you.

*XXd. by Plaintiff :*

*Q.* Were you present when Bantamahene deputed the Chiefs ?

*A.* No ; I only heard it.

*Q.* Was it before the Asantehene where your clan's men Hiahene was deputed by Akyempimhene or somewhere else ?

*A.* It was before the Asantehene who had assembled his principal chiefs. 20

*Q.* Who did the Asantehene nominate to be Sahene ?

*A.* The Asantehene asked his principal chiefs to nominate their Clan Chiefs so he himself did not appoint any one to be Sahene.

*Q.* Who is next senior amongst the three chiefs chosen to be Sahene ?

*A.* I do not know the most senior all were fighters with their soldiers.

*Q.* Would you believe if the fighters tell you something in the war ?

*A.* If they speak the truth I will not be the only judge.

*Q.* Do you affirm that only three chiefs went to drive Abrimoro ?

*A.* I did not take part in it but I know of the three principal ones. 30

*Q.* Do you know Agogohene took part in it ?

[sic] *A.* He took part *it* it but you were not included ; the smaller chiefs under the three principal ones were many.

*Q.* Do you know Pihasihene went also ?

*A.* I do not know that.

*Q.* Who appointed Agogohene to take part in the war ?

[sic] *A.* I cannot tell who deputed him as I know more in my Clan *the* Kyidom Clan.

*Q.* Do you know that in any war Agogohene fights in front of me ?

*A.* I do not know that. In war I fight in front of Hiahene yet he went without me. 40

Q. Why do you say I did not take part in the war ?

A. Because I did not hear you were chosen also.

Q. Did Besiasihene Aboagye Asare take part in the war ?

A. I do not know if he did.

Q. How did he get his land having boundary with you ?

A. I did not know how he acquired it.

Q. I put it to you that I took part in the war hence Agogohene went  
also ?

10 A. I do not know ; I did not hear of your name as amongst the  
chaser.

Q. Who was the Bantamahene who gave the land to Nerebehi ?

A. It was Nana Amankwatia Panin.

Q. I put it to you that Nerebehi came when the Abrimoro war had  
already been fought ?

A. No ; that is not correct.

Q. Do you remember when my predecessor came to you to tell you  
that he was going to subpoena you in this case, you said your land was  
quite far from the land in dispute ?

20 A. No ; I said he had no land in the vicinity to my knowledge so  
that I could *given* evidence for him. [sic]

*Xd. by Court :*

Q. During Nana Opinsua's reign when you stayed at Akropong to  
what extent of the land did you command ?

A. It was up to Bepokokor.

Q. Was that place Bepokokor for Abrimoro ?

A. No ; it was not for Abrimoro.

Q. After Abrimoro's war did you get a share of Abrimoro lands ?

A. No ; I got the land on which my existence extended originally  
from Nana Opinsuo, I did not get any share of Abrimoro lands.

30 Q. Do you know what time Nerebehi got his land ?

A. Yes during Nana Katakylie's reign.

*Defendant :*

I beg to conclude my case so I am cancelling all my remaining witnesses  
from giving any further evidence to waste the Court's time.

Defendants' case therefore closed.

Case adjourned to 23rd June, 1950.

ODIKRO KWAKU MANU  
T. P.

40 Recorder :  
(Sgd.) W. K. ANIN,  
Regr.

Before me,  
(Sgd.) MENSAH YIADOM,  
President.

*In the  
Asantehene's  
" B " Court.*

*Defendants'  
Evidence.*

No. 17.  
Kwabena  
Sarfo II,  
Akropong-  
hene,  
3rd June  
1950.  
Cross-  
examina-  
tion,  
*continued.*

Examina-  
tion by  
Court.



*In the  
Asantehene's  
" B " Court.*

No. 18.

**KWADWO BONISIE.**

*Defendants'  
Evidence.*

Friday the 28th July, 1950.

No. 18.  
Kwadwo  
Bonisie,  
28th July  
1950.  
In-chief.

STATEMENT OF 1ST DEFENDANT s.a.r.b. :

Kwadwo Bonisie. I live at Nerebehi. I am a farmer. From time immemorial, the Odikro of Nerebehi by name Kwarteng Apegyabi gave the land at Bonkwaso to my ancestor Kwabena Atwidie as Caretaker. My ancestor took all valuables on the land to Nerebehi Dikro and it has been so for all time up till now. When my ancestor Atwidie expired his nephew Kwabena Tenteng succeeded him and he also took all valuables and profits on the land to Nerebehi Dikro. When Kwabena Tenteng died Badu succeeded him and Kwaku Gyawu succeeded Badu and Kofi Gyamfi came after Gyawu and when Kofi Gyamfi died I succeeded him as Caretaker of the Bonkwaso land for Nerebehi. Since the time of my ancestor Atwidie, all profits and valuables on the land have been taken to Nerebehi Dikro. About a year and half ago, bearers came to me that Twimahene Plaintiff said Bonkwaso land belonged to his Stool and he pledged it to my ancestors. I said I knew nothing of the transaction so the bearers should go back to tell Twimahene. About a week after they came again and I told them my ancestors had been Caretakers of Bonkwaso land for Nerebehi Dikro. The bearer who came said Twimahene urged him to swear the Great Oath on me that the Bonkwaso land was pledged to my ancestors by him. When he had sworn the Oath I said I was only a Caretaker so I did not respond. By that time, Nerebehi Dikro Kwaku Manu was then away to Nkwanta and I was waiting for him to report to him. He did not come so I went to my cottage Bonkwaso to medicate myself and two weeks after I had this summons. When I returned to Nerebehi, the Odikro Kwaku Manu had come back so I showed him the summons and informed him of the Oath sworn by Twimahene. He Nerebehi Dikro therefore applied to be made Co-Defendant in the case. The case was not heard and Nana Twimahene Antwi-Adjaye expired when the present Twimahene succeeded him and applied for permission to litigate with us. This is all I know.

Cross-  
examina-  
tion.

*XXd. by Plaintiff :*

*Q.* What is your rank ; are you a Stool holder ?

*A.* I hold Black Stool.

*Q.* Do you know from whence came Nerebehi Dikro Kwarteng Apegyabi ?

*A.* He hailed from Asumegya.

*Q.* Did you come along with him ?

*A.* Yes ; I am his servant and I come with him.

*Q.* During the reign of which Asantehene did you come from Asumegya ?

*A.* We came by the time of Nana Okatakyie of blessed memory.

Q. Did you take part in the Abrimoro war ?

A. Yes Nana Kwarteng Apegyabi went or took part in the war.

Q. Did you personally as an elder to him go along with him ?

A. Yes, I went along with him.

Q. How did you go to that Abrimoro war ?

A. During the Akyim war, it was reported that Abrimoro had come behind us to Kumasi ; and the Asantehene deputed some chiefs to come back to fight him. After the Akyim war we all returned to Kumasi and the Chiefs, sent after Abrimoro had gone for and not returned. So the  
 10 Asantehene asked Bantamahene to follow up and he Bantamahene said his Gyasi people should proceed ahead of him Kwarteng Apegyabi is of the Gyasi group and my ancestor therefore went along with him to Supon stream where the Abrimoro fighters were met on the return from the war.

Q. What work does Nerebehi Dikro do for Bantamahene ?

A. He is a " Gyasini " a member of Gyasi group.

Q. Did Bantamahene Guasihene through whom Odikro Nerebehi serves take part in the war of following up as you say ?

A. It was only Nerebehi Dikro who Bantamahene sent.

Q. Has Bantamahene sent Nerebehi Dikro to any war besides this  
 20 one ?

A. No ; save this one.

Q. With how many guns did he venture to go ?

A. I cannot tell how many guns he had then.

Q. Do you remember it was the Oyokohene who was sent by the Asantehene to follow up the Abrimoro pursuers and not Bantamahene as you allege ?

A. I do not know that.

Q. Whom did you meet at Supanti (head or source of Supon stream) on your way after the Warriors ?

30 A. We met Kunsu Dikro.

Q. Were you sent for Kunsu Dikro or the principal chief who went to the war ?

A. We went to see what had happened to all Chiefs that went.

Q. Do you remember it was during the reign of Nana Asantehene Agyeman of blessed memory that my ancestor Kofi Atta pledged this land to your ancestor Kwabena Tenteng for a loan of Asuasa £6 ?

A. I do not remember.

Q. Do you remember you and your master Nerebehi Dikro came by the reign of Nana Okuawia and not Nana Katakylie ?

40 A. I remember we came during the reign of Nana Katakylie.

*In the  
Asantehene's  
" B " Court.*

*Defendants'  
Evidence.*

No. 18.  
Kwadwo  
Bonsie,  
28th July  
1950.  
Cross-  
examina-  
tion,  
*continued.*

*In the  
Asantehene's  
"B" Court.*

*Defendants'  
Evidence.*

No. 18.  
Kwadwo  
Bonsie,  
28th July  
1950.  
Cross-  
examina-  
tion,  
*continued.*

*Q.* I put it to you that the land of Bonkwaso is for my Stool and it was pledged to your ancestor and as Nerebehi Dikro is your master hence you say he gave it to you as Caretaker ?

*A.* All I know is that the land was given my ancestors by Nerebehi Dikro to whom all valuables on the land is paid.

*Q.* Do you remember when the money £6 was taken to you in redemption of the land, you begged for a month to think of the matter ?

*A.* I begged for the time as I was then sick and wanted to think of my medication.

*Q.* Do you remember after the one month period when you were 10 contacted again, you said the land was given you by Bantamahene ?

*A.* No ; I did not say that.

*Q.* Do you remember you told my bearers that you did not know Kwabena Tenteng ?

*A.* No.

*Q.* Co-Defendant Nerebehi Dikro said he came from Asumeja by the reign of Nana Osei Tutu and if you say you came along with him by the reign of Nana Katakylie then which of you should the Court believe.

NOTE : Court ruled that the question is not necessary no answer was asked for.

20

*Q.* Do you remember your ancestor Kwabena Tenteng lived on the land with my hunter Mumu ?

*A.* No ; I do not remember.

*Q.* Do you remember it was six clear months after I sent bearers to swear the Great Oath on you before I took the Summons ?

*A.* I do not remember.

Examina-  
tion by  
Court.

*Xd. by Court :*

*Q.* What profits or valuables on the land have you or your ancestors taken to Nerebehi Dikro ?

*A.* Rubber tribute, Gold dust tribute (Mpesaatuo) snail tribute, 30  
[sic] big of game killed, and cocoa tribute.

*Q.* Since the time you have taken these valuables to Nerebehi Dikro, has anybody questioned you about it ?

*A.* Nobody has asked me about it.

*Q.* Since whose time did your ancestors live at Bonkwaso ?

*A.* By Nana Amankwatia Panin's reign (Bantamahene).

*Q.* During the reign of which Asantehene was gold worked on the land ?

*A.* I cannot tell as I am illiterate.

Q. Have you at any time *litigated* with anybody on the land ?  
 A. Domiabra litigated with Nerebehi Dikro on the land.

*In the [sic]  
 Asantehene's  
 " B " Court.*

Case adjourned finally for Judgment on Friday 4th August, 1950.

*Defendants'  
 Evidence.*

Before me :  
 (Sgd.) MENSAH YIADOM,  
 President.

No. 18.  
 Kwadwo  
 Bonsie,  
 28th July  
 1950.  
 Examina-  
 tion by  
 Court,  
*continued.*

Recorder :  
 (Sgd.) W. K. ANIN,  
 Regr.

10

No. 19.  
**JUDGMENT.**

No. 19.  
 Judgment,  
 4th August  
 1950.

IN THE ASANTEHENE'S DIVISIONAL COURT " B1 " held at Kumasi on Friday 4th August, 1950 before NANA MENSAH YIADOM, Amakomhene, NANA OSEI KUFUOR, Atipinhene, and OKYEAME KWAME AMOATENG.

Chief KWAME ANTWI ADJEI TWIMAHENE,  
 etc. substituted by NANA ADJEIBI KOJO II

*v.*

} From Folio 120.

20

1. KWADWO BONSIÉ
2. ODIKRO KWAKU MANU

Parties present.

**JUDGMENT :**

The Plaintiff in this case sued the 1st Defendant for recovery of possession of Bonkwaso land bounded on all sides by the lands of Hiahene, Besiasihene, Abompehene and Kwabena Anane, and Defendant to show why the land should not be returned to Plaintiff. And the 2nd Defendant later in the cause of the action applied for and was joined as Co-Defendant having interest in the land.

30 The main facts of the Plaintiff's case are that his ancestors were appointed by the Bantamahene and they took part in the Abrimoro war, and fought along with other chiefs up to Bonkwaso when small-pox *attached* the Twimahene; and owing to the infection of the disease he *[sic]* did not proceed with the others and he stopped at Abompe where he stayed till the war was over. That after the war the Asantehene rewarded each chief taking part in that war with the extent of land on which he (Chief)

*In the  
Asantehene's  
"B" Court.*

No. 19.  
Judgment,  
4th August  
1950,  
*continued.*

and his army fought and chased the invader Abrimoro and so while Hiahene, Akwaboahene and others got the land from Bomto-Nkwanta (new Nfensi) to River Bia, he (Twimahene) got only the land to the extent, of where he reached and fell ill Abompeh. That his hunter Mumu lived on the land and killed meat for him and when Mumu died, 1st Defendant's ancestor Kwabena Tenteng was entrusted with the land as Caretaker who took valuables thereon to him; and later the land was pledged to him Kwabena Tenteng for a loan of "Asuasa" in gold dust £6 sterling by Twimahene Kofi Atta with the terms that he Kwabena Tenteng should possess the lands till any time the amount would be paid and the land redeemed. That the land has been in possession of 1st Defendant's ancestors till recently when his (Plaintiff's) immediate predecessor Kwame Antwi Adjaye approached 1st Defendant with the money to redeem the land and it was refused, so that this action was instituted. 10

The case of the 1st Defendant is simply that the land was given his ancestors as Caretakers by the ancestors of 2nd Defendant Nerebehi Dikro. That his ancestor Atwidie was the first Caretaker appointed by Nerebehi Dikro and in succession after Atwidie came Kwabena Tenteng, Badu, Kwaku Gyawu, Kofi Gyamfi and last by himself. That during all the long time of his ancestors up to himself, the valuables taken on the land such as legs of game killed, Gold dust tribute ("Mpesaatuo") snails tribute, Rubber, Cocoa and Timber rents have all been taken to Nerebehi Dikro. 20

The case for the Co-Defendant on the other hand is that his ancestors took part in the Akyim war with their master Bantamahene Nana Amankwatia Panin whose Gyasi people they were; and after their return from the Akyim war, the Asantehene asked the Bantamahene to pursue or go in search of the chiefs who were *chasen* in the Akyim war to return to fight Abrimoro who was reported to have plundered Kumasi, when Ashanti was busy in the Akyim war; and that being a member of the Bantamahene's Gyasi group (servers) the Bantamahene told his ancestor to go ahead in search of the warrior chiefs while he (Bantamahene) was making preparation to follow up. That his village Nerebehi was then already established and from there he proceeded with his men through a thick forest then uninhabited by anybody to Bonkwaso and just when crossing a small stream Supong, they met the advance guard (people fighting in front) of Hiahene and they reported the defeat of that invader Abrimoro and that all the chiefs who took part in the war were on the way coming so they came with the people and reported to the Bantamahene. That the warriors were rewarded with the extent of land on which they fought by the Asantehene and he was also given the extent of the land to the Supong stream where he met Hiahene's men and 1st Defendant's ancestors were entrusted with the land as Caretakers up till — so that all valuables on the land have been taken to him. 30 40

The Court has patiently after several sittings heard the evidence of various witnesses for both parties and carefully perused the exhibits put in as evidences.

1. To start with, the Plaintiff alleges that he originally took part in the Abrimoro war and he was appointed by the Bantamahene, hence he

got the land. The Bantamahene has given evidence that *the* appointed Akwaboahene and later Gyedu-Kumanin for the Abrimoro war and he never appointed Plaintiff. This evidence is credible because as is usual if Plaintiff took part in that war he would have taken position along sides of his Clans people Akwaboahene and Gyedu-Kumanin and not on the left-hand side of a chief from different clan as evidenced by Hiahene Plaintiff's 1st witness.

*In the [sic]*  
*Asantehene's*  
*" B " Court.*  
—  
No. 19.  
Judgment,  
4th August  
1950,  
*continued.*

2. The Plaintiff admits that when Kwabena Tenteng died he did not make mention of this alleged pledge of the land to the relatives and up till quite recently none of the successor after Kwabena Tenteng has been contacted in connection with the said pledge of land, as he had not been ready with the money £6 to be paid to redeem the land. This is also not in accordance with Native Custom. In the olden days papers transactions were unknown and all pledges of land etc. were made by word of mouth but on the week day accounts of the death of a pledgee the debtor makes customary report of his thing pledged with the deceased so that any time thereafter the thing could be redeemed from the successor. But in this case about four successors have come after Kwabena Tenteng to whom Plaintiff alleges to have pledged the land, yet none had been informed of this pledge. The Court therefore does not know from where Plaintiff connects the living thread of his transaction with 1st Defendant's ancestor.

3. The Atwima Stool is one of the prosperous Stools in the Kronti Clan and it is really surprising that for a meagre sum of £6, this Stool would have disposed of this large extent of valuable land on pledge for over eighty years when gold dust (alluvial gold) snails tribute, Rubber, Cocoa, Timber and even mining operations have taken place on this land, with high profits to the owner.

4. In exhibit " C " (proceedings in the C.C.A.'s Court) Chief Kojo Wuahene erstwhile Hiahene gave evidence in a case *Kwasi Dumasi Nerebehi Dikro* versus *Kwaku Asamoah*, Domiabra Dikro in contest for a portion of this disputed land, that his (Hiahene's) land boundary with Nerebehi is the Supon stream. This shows that the land is for Co-Defendant Nerebehi Dikro. It is also evident that portions of the land in dispute have been leased on presented to the Akwamuhene of Kumasi and one of Bantamahene's wives by Nerebehi Dikro since times of old and all to the knowledge of Plaintiff.

In view of the above reasons the Court has no hesitation in finding for Defendants with costs against Plaintiff to be taxed.

£9 6/- collected *vide* R.841978.

(Sgd.) MENSAH YIADOM,  
President.

Recorder :  
(Sgd.) W. K. ANIN,  
Registrar.

**PLAINTIFF'S Preliminary Grounds of Appeal.**

No. 20.

Plaintiff's  
Preliminary  
Grounds of  
Appeal,  
17th August  
1950.

1. JUDGMENT OF COURT BELOW AGAINST THE WEIGHT OF EVIDENCE ON RECORD.

In scrutinizing the evidence on Record, this Honourable Court of Appeal shall without any stretch of imagination come to the only inevitable conclusion that the judgment of the Court below is palpably against the weight of evidence on Record. The decision of this case hinges on Historical facts as to how each of the contestants acquired the disputed land. The Plaintiff Appellant on whom the *Onus probandi* laid proved his case satisfactorily with the convincing, creditable and corroborative evidences of the Hiahene, Akwaboahene and Biseasehene who participated in the war waged against Abrimoro by Asantehene and from which the Plaintiff Appellant had the disputed land. The evidences of these Chiefs who took active part in the Abrimoro war apparently outweighs the flimsy evidence of the Bantamahene who did not take part in that war. Besides this, the Bantamahene and the Akwamuhene of Kumasi are interested persons in this land in dispute and their evidence should have been discredited by the Court below if justice was impartially exercised as in Law the evidence of interested persons are inadmissible. The decision of the Court below is untenable and cannot be upheld in the interest of justice.

2. THE COURT BELOW MISDIRECTED ITSELF :

The case for the Plaintiff Appellant as set out in the Judgment of the Court is that he took active part in the war which the Asantehene waged against Abrimoro and had this land as a reward from the Asantehene. The case for the Co-Defendant is also that he never took part in that Abrimoro war but that he was merely detailed by the Bantamahene (his immediate overlord) to go in search of the warriors who were fighting that enemy and on reaching a stream known as "Supong" he met the advance guard of the Hiahene who made a report to him that the enemy had been defeated and so came to report this news to the Bantamahene and he was given this land. This story of the Co-Defendant is simply fantastic and highly incredible for a mere going to search for the warriors and meeting them coming would not have entitled him to any reward of this disputed land for it was the practice in the time of yore for the warriors who fought and conquered an enemy to be rewarded with the booty and not somebody who merely went to look for them : ridiculous. The incredible story put up by the Co-Defendant should have been discredited by the Court below and to have entered a straight forward Judgment in favour of the Plaintiff Appellant who had appreciably proved his case beyond every reasonable doubt. The Court below therefore misdirected itself in coming to this erroneous conclusion.

3. NATIVE CUSTOMARY LAW ON PLEDGE IGNORED BY THE COURT BELOW.

In that, under Native Customary Law, a pledge of a property can be redeemed at any time upon payment of the amount involved. The long lapse of time in which the disputed land had remained in the hands of the

Respondents cannot be a criterion that the disputed land could not be redeemed from pledge when there is sufficient evidence substantiating the Plaintiff-Appellant's story of the pledge. The Judgment of the Court below is therefore against Native Law and Custom and should be set aside or reversed in the interest of Justice.

*In the  
Asantehene's  
"A" (Native  
Appeal)  
Court.*

4. MATERIAL EVIDENCE IGNORED BY THE COURT BELOW :

In that, the creditable evidence of Kwabina Anane whose ancestors doubtlessly were the first settlers of the Nerebehi land should have weighed the minds of the Panel of the Court below to find for the Plaintiff Appellant  
10 as the evidence of this man (Kwabena Anane) tells strongly in favour of the Plaintiff Appellant. The Judgment of the Court below is therefore bad in Law and should be set aside or reversed and this appeal allowed with costs for the Plaintiff Appellant herein throughout in the interest of Justice.

No. 20.  
Plaintiff's  
Preliminary  
Grounds of  
Appeal,  
17th August  
1950.

Dated at Kumasi this 17th day of August, 1950.

(Sgd.) AGYEI BI KOJO II,  
Twimahene (Plaintiff Appellant).

The Registrar,  
Asantehene's "A2" Native Appeal Court,  
20 Kumasi,

And copies for service on the Defendants Respondents herein at their respective destinations.

W/W to Signature :—

(Sgd.) CHAS. A. DARKOH,  
Lic. No. 27213/50/Ksi.  
Manhyia, Kumasi.  
Fee 10/- for original & Copies.

No. 21.

DEFENDANTS' Reply to Grounds of Appeal.

30 REPLY TO GROUND 1 :

The issue in this case is a simple one of fact and its determination may be summarised as follows :—

(A) That according to the evidences of Appellant and Respondents, which of them is his evidence is true and correct that Bantamahene appointed his predecessor to take part of the Abrimoro war with the Ashanti ?

No. 21.  
Defendants'  
Reply to  
Grounds  
of Appeal,  
25th  
September  
1950.



*In the  
Asantehene's  
"A" (Native  
Appeal)  
Court.*

(B) Whether Appellant's evidence is true that his predecessor pledged the land in dispute to Respondents' ancestors or predecessors for a loan of £6 or not ?

No. 21.  
Defendants'  
Reply to  
Grounds  
of Appeal,  
25th  
September  
1950.

Plaintiff Appellant whom the onus of proof or burden of proof lies to prove or discharge, and whose duty is to have called Bantamahene as witness to give evidence to support his case that it was Bantamahene who really deputed him to chase after Abrimoro as this being the pillar of his case, has failed in this point to call Bantamahene as witness but rather strangers or outsiders whose evidence amount in law to hearsay's character and is of no value to this Court.

10

Respondents wishing the Court to know the correctness or truthfulness of their evidences therefore called Bantamahene who testified on behalf of Respondents as against Appellant that his predecessor deputed Respondents' predecessors to take part of the Abrimoro war and they did (see pages 41 to 45 of Appeal Record).

If Appellant contended that it was Bantamahene who deputed him to go to chase Abrimoro and Bantamahene has given evidence against him that during the Abrimoro war with the Ashanti, he did not appoint Appellant's predecessor to take part of the Abrimoro war but rather Respondents' who were appointed by Bantamahene, and the Court below 20 believed this evidence and gave Judgment against Appellant in favour of Respondents, then, that what is the necessity for Appellant to trouble himself to lodge this Appeal ?

In fact, this is one of the hopeless, frivolous and idle appeals ever come before this Court which Appellant is persuing.

#### AUTHORITY IN POINT :

*" Witness's Evidence— "*

*" parties having agreed to be bound by the evidence of a " certain witness "—held that the verdict depended on his evidence and not on that of other witnesses Numah v. Pamping (1926) P.C. 30 74-28, 92*

Digest of and Index to the reports of cases decided in the Supreme Court of the Gold Coast Colony page 8.

That as already said that the determination of this case is a question of fact before the Court, below which if believed justified the said Court in arriving at the conclusion which it did, this Court therefore has no reason to interfere with the judgment of the said Court, as it is not the function of the Appeal Court to upset the Judgment of the Court below where there is sufficient evidence to support it.

This being so, there is ample evidence before the Court below to justify 40 its findings and that finding must not be disturbed as there is nothing to warrant its departure. This therefore disposes of Appellant's ground one of Appeal.

## REPLY TO GROUND 2 :

Appellant's contention under his ground 2 that his predecessor pledged the land in dispute to Respondents predecessor for a loan of £6 is unfounded allegation for the following reasons :—

*In the  
Asantehene's  
"A" (Native  
Appeal)  
Court.*

No. 21.  
Defendants'  
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of Appeal,  
25th  
September  
1950,  
*continued.*

Because Respondents and their predecessors have been in possession of the land for statutory period, and they have set in adverse claim to declaration of title to the land in dispute, with Appellant's knowledge and eyes opened without any interference and they had used the land for upwards of 200 years and during which time they have assigned a portion  
10 of the land to Respondent's 2nd witness (Akwamuhene) as a gift to him, and they have incurred pecuniary responsibilities by spending money in improving the land or in defending their rights to it (see pages to of Appeal Record).

There is another significant point in the case, is exhibit " C " which is a decision given in favour of Respondent's predecessor by Arthur J. Philbrick Acting Chief Commissioner of Ashanti in the case of *Kweise Dumase v. Kweku Asamoah* concerning the land, the subject matter in dispute, in that case while Respondents' predecessors were litigating for the ownership of the land, Appellant's predecessor was present but did  
20 not join the suit as a party and sat down unconcerned case. This being so, Appellant is estopped by Exhibit " C " as appeared at pages 114 to 115 of Appeal Record to lay any claim to the land in dispute).

That apart from exhibit " C " which is conclusive in favour of Respondents' version, Respondents and their predecessors have collected the following valuable properties from the land in dispute :—

1. Game tribute,
2. Snail tributes,
3. Fishery tribute,
4. Rubber tribute,
- 30 5. Cocoa tribute,
6. Timber concession granted to concessionaires as grantors without any opposition from Appellant herein as opposers and duly executed an agreement with persons having anything to do with the land in dispute, with Appellant's eyes opened and knowledge, without any objection, and if Appellant's story is true that the land in dispute was pledged to Respondents' predecessors for a loan of £6 Appellant would not have sat down unconcern to permit Respondent to enjoy such valuable properties from the land, but would have paid this scanty or *merger* sum of £6 to redeem the land for his  
40 use. But the fact that Appellant's predecessor has not pledged the land to Respondents' predecessor hence no such payment was made ere long or immediately to get the land. [sic]

In the  
Asantehene's  
"A" (Native  
Appeal)  
Court.

No. 21.  
Defendants'  
Reply to  
Grounds  
of Appeal,  
25th  
September  
1950,  
*continued.*

In fact, it would not be equitable on the part of Appellant to allow affairs of this kind to exist, if he is really the owner of the land. No person of average intelligence could understand Appellant's case. The case of the Bokitsi Concession decided by Mr. Justice Morgan is on all fours with this case, in that case, the Judge had occasion to make the following :

\* \* \* \* \*

“ Assuming however that they had proved at some former  
“ period it had been so attached but that the lamfuris had without  
“ any definite permission being granted to them occupied it without  
“ paying tribute and under such circumstances as would cause them  
“ to believe themselves to be the owners of the land and to incur 10  
“ pecuniary responsibilities in consequence of that belief, we think ?  
“ it right to state that in our opinion it would be contrary to the  
“ principles of Equity to allow the Native law to apply in its entirety  
“ such law as we understand it, that the original owner of land  
“ who has not specifically divested himself of his ownership can  
“ after any length of time and under any circumstances obtain  
“ recovery of his land from persons setting up an adverse title  
“ whatever may be the detriment caused to such person by the  
“ fact that the original owner chose to sleep on his rights.”

[sic] Referred to the case of:—*Nchirahene Kojo Ado v. Buoyemhene Kwadwo* 20  
*Wusu*, W.A.C.A. pages 96 to 100 volume 4, in this case the fact is even  
stronger that the foregoing principle of long occupation *enunciated* by this  
“ *Obiter Dictum* ” recognised throughout the Courts in this country,  
because in the present case, not only has the predecessor of the Appellant  
in the present case merely slept on his right for the last 200 years but they  
have in consequence failed to collect any tribute from the land, the principle  
of long occupation is further enunciated in the case of *Fatou N'jie v.*  
*Richard James Hall*, reported in one of the W.A.C.A. pages 100 to 104 which  
the relevant portion of the judgment reads :—

“ If one person allows another to remain in possession of land 30  
“ as a tenant at will for twelve years without payment of rent,  
“ the other person becomes entitled to the land. This is the joint  
“ effect of the limitation acts 1833 (3 & 4 William IV, c. 27) and  
“ 1874 (37 & 38 Vict. c. 57).”

Followed by the case of *Miller v. Kwayisi* reported in volume one  
W.A.C.A. page 7 as follows :—

“ The Court granted a declaration of title to the Plaintiff  
“ who proved use and occupation of the land in dispute to the  
“ knowledge of the owners for upwards of 80 years and the exercise  
“ of ownership during that period.” 40

That if the case of Respondents is very simple and plain one, that it  
was Bantamahene who appointed their predecessors to take part of the  
Abrimoro war and it is through that war that they and their predecessors  
got the land in dispute, and this evidence has been materially supported

by all witnesses called by them more specially Bantamahene who appointed their predecessors to take part of the war, so Respondents and their predecessors got the land in dispute by means of gift as a result of the Abrimoro war which their ancestors took part (see pages 41 to 45 of Appeal Record).

*In the  
Asantehene's  
"A" (Native  
Appeal)  
Court.*

No. 21.  
Defendants'  
Reply to  
Grounds  
of Appeal, [sic]  
25th  
September  
1950,  
*continued.*

The Appellant in the other hand contended that it was the same Bantamahene who appointed his predecessor to take part of the Abrimoro war and so he and his predecessor acquired the land by right of conquer and his predecessor pledged the land in dispute to Respondents' predecessors  
10 for a loan of £6 since over 80 years now (see page 6 of Appeal Record).

Yet Appellant did not call a witness who knows really that Appellant's predecessor pledged the disputed land to Respondents' predecessors for loan of £6 had and received ?

The Bantamahene who is alleged to have appointed Appellant's predecessor to take part of the Abrimoro war denied Appellant's evidence to the effect that his predecessor has never deputed Appellant's predecessor to take part of the Abrimoro war but rather Respondent's predecessors (pages 41 to 45 of Appeal Record) this goes to destroy or weaken Appellant's case.

20 That according to custom, it is either a week-day, fifteen days, forty days or at least one year set aside, during the celebration of the funeral custom of a deceased person, when a deceased debt or property due to the deceased is made known to the deceased relatives.

This customary procedure was not observed by Appellant and this stands to reason that Appellant and his ancestors have not pledged the land in dispute to Respondents' predecessors as falsely alleged by Appellant in his evidence because if such a pledge is in fact exist, Appellant would have approached Respondents' relatives and made known of this land  
30 which was alleged by him that it was pledged to Respondents' predecessors at the time Respondents' predecessors died and their funeral custom was being performed, and in absence of any evidence on record to show that Appellant did make this debt known to Respondents during the funeral celebration of their predecessors who Appellant alleged that his predecessor pledged the land to them, renders Appellant's case more doubtful and unbelievable.

This being so, Respondents' plea of *res judicata*, laches, acquiescence, long possession, estoppel stale claim and real property limitation, should be acceded to by this Court as the Court below did.

40 Referred to W.A.C.A. volume 1 page 162 to 168 which *fours* on this [sic] case, the exhibit " C " tendered in evidence by Respondents also became weapon of estoppel against Appellant to lay any claim to the land in dispute as owner, Grounds 2 and 3 of Appellant fall to the ground *in toto*.

*In the  
Asantehene's  
"A" (Native  
Appeal)  
Court.*

In view of the foregoing submissions, Appellant's grounds of Appeal which contains no substance should be dismissed accordingly with costs.

Dated at Kumasi this 25th day of September, 1950.

No. 21.  
Defendants'  
Reply to  
Grounds  
of Appeal,  
25th  
September  
1950,  
*continued.*

W/W to mark :  
(Sgd.) W. K. WIREDU,  
Lic. No.  
27505/50/Ksi.  
Menhyia-Kumasi  
Fee 10/- orig. & copies.

CHIEF KWAKU MANU                      His  
2nd Defendant-Respondent              X  
For and on behalf of 1st              mark  
Defendant-Respondent.

To the Registrar, Asantehene's "A2" Court, Kumasi-Ashanti, and to 10  
Chief Adjeibi Kojo II Twimahene, Plaintiff-Appellant.

No. 22.  
Plaintiff's  
Supple-  
mentary  
Grounds  
of Appeal,  
7th  
October  
1950.

No. 22.

**PLAINTIFF'S Supplementary Grounds of Appeal.**

1. JUDGMENT OF THE COURT BELOW NOT IN ACCORD WITH THE HISTORICAL  
FACTS ON RECORD.

(A) It is chrystal clear from the evidence of the parties and their witnesses as also from the summary of the Lower Court's Judgment on Record that the parties based their claim to the disputed land on HISTORICAL FACTS and in view of this, the Judgment must naturally hinge on Historical facts proved on Record according to the weight of evidence. 20  
Now turning to the Record of Appeal, it is without gainsay that the evidence on Historical facts as to the acquisition of the disputed land is overwhelmingly in favour of the Plaintiff Appellant herein as this Honourable Court of Appeal would itself find it.

(B) The Plaintiff Appellant's genuine story as to the acquisition of the disputed land is briefly that his ancestor Nana Frempong Ameyaw took part in the War waged against Abrimoro and after the defeat of this foe or invader, the Asantehene rewarded him and the other Chiefs who took part in that War with the extent of land on which each Chief fought and pursued the enemy. The 1st Defendant-Respondent does not claim 30  
ownership of the disputed land but asserts that the land was given to his ancestors as Caretakers by the ancestors of the 2nd Defendant-Respondent. The fictitious story put up by the 2nd Defendant-Respondent as to the alleged acquisition of the disputed land is that after the Akim War, the Asantehene asked the Bantamahene to go in search of the Chiefs who were fighting Abrimoro and he (2nd Defendant) being a member of Bantamahene's Gyase group, the Bantamahene ordered his (2nd Defendant's) ancestor to go ahead of him and on reaching Bonkwaso and just when crossing a small stream Supon, he met the advance guard of Hiahene who

intimated them that the enemy had been annihilated and so he returned to inform the Bantamahene and later he was rewarded with the disputed land.

*In the  
Asantehene's  
"A" (Native  
Appeal)  
Court.*

(c) In the light of these contentions, the only valid evidence required to clarify the ambiguity in the matter is the evidence of the Chiefs who were detailed or took part in the Abrimoro campaign as it is by their testimonies that the Court would know as to whether it was the Plaintiff-Appellant or the 2nd Defendant who took part in the Abrimoro war so as to get a booty (the disputed land) in that war. The Plaintiff Appellant  
10 on whom the *Onus Probandi* laid discharged it satisfactorily with the convincing, creditable and corroborative evidences of the important Chiefs who fought and defeated the enemy Abrimoro. The 1st witness called by the Plaintiff Appellant was the Hiahene who was the "Sahene" (Captain) in that Abrimoro war. His convincing testimony could be read from pages 11-16 of the Record and it speaks for itself.

No. 22.  
Supple-  
mentary  
Grounds  
of Appeal,  
7th  
October  
1950,  
*continued.*

The Hiahene substantiated the Plaintiff Appellant's case when he stated in his evidence in-chief on page 11 of the Record *inter alia* as follows :—

20 " So when the Akyim war was not ended, the Bantamahene  
" Nana Amankwatia deputed Akwaboahene Gyenin-Akuntu, Gyedu  
" Kumanin Barihene, Twimahene Frempong Ameyaw to go with  
" me "

and on page 12 of the Record, the Hiahene further clarified the doubt in the matter when he stated in his evidence in-chief *inter alia* as follows :—

" The Atwimahene was also given the land up to where he  
" fought to and got ill."

30 So that the Hiahene who was the " Sahene " in that Abrimoro war has creditably supported the Plaintiff Appellant's case as to how his (Plaintiff Appellant's) ancestor Frempong Ameyaw took part in that war and got the disputed land. And on page 13 of the Record, the Hiahene further made his evidence more worthy of belief when in his answer to a cross-examination by 2nd Defendant he defined his land boundary with the Plaintiff Appellant.

(D) Regarding the 2nd Defendant-Respondent's fictitious story that his ancestor allegedly took part in the chase of Abrimoro and had this disputed land, the Hiahene who was the " Sahene " in that War clarified the position that it was not correct when he stated in answer to a cross-examination by Plaintiff Appellant on page 12 of the Record as follows :—

40 " Q. Did you see the Nerebehene Kwarteng Begyabi in the  
" war fighting for us ?

" A. He was not then in Ashanti."

So that it cannot be true if the 2nd Defendant alleges that he acquired the disputed land by virtue of his ancestor's alleged participation in the Abrimoro war as the Hiahene who was the Sahene has refuted that statement and made the position clear that the 2nd Defendant's ancestors had not then come to Ashanti at all. The Hiahene further cleared the doubt when he revealed that it was rather the Oyokohene who was

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deputed by the Asantehene to go in search of the Chiefs waging war against Abrimoro and not any of Bantamahene's Gyasefu. The case of the Plaintiff Appellant is proved beyond every reasonable doubt and judgment should have gone in his favour if justice was rightly and impartially exercised by the Court below. The decision of the Court below is untenable and cannot be upheld in the interest of justice.

(E) Nor is this all : the evidence of Akwaboahene (Plaintiff Appellant's) 2nd witness who was the Bantamahene's Deputy has also strongly supported the evidence of Hiahene and made it clear that the Plaintiff Appellant's ancestor took part in the Abrimoro war and from which he acquired the 10 disputed land.

The Akwaboahene in his evidence also clarified the situation that the 2nd Defendant Respondent's ancestor did not take part in that war. In his answers to cross-examinations by the Plaintiff Appellant on page 17 of the Record, the Akwaboahene stated as follows :—

“ Q. Did the Bantamahene depute any of his Gyasi Chiefs to go with us ?

“ A. No ; I saw no Gyasi Chief save three Kronti Chiefs.

“ Q. Was the Nerebehin Dikro Kwartan Abagyabi with us ?

“ A. I did not see him. 20

“ Q. Where was the *Nebahi* Dikro then ?

“ A. He had not come and I did not then know of him, etc.”

(F) Plaintiff Appellant further proved his title to the disputed land by the evidence of his 3rd witness—Aboagye Asare (Besiasene) who also took part in the Abrimoro war and whose evidence could be read from pages 20–23 of the record of Appeal. In his evidence on Record, Besiasene Aboagye Asare also confirmed the evidence of Hiahene and Akwaboahene as to how the Plaintiff Appellant's ancestor took part in the Abrimoro war and had the disputed land which was boundary with his (Aboagye Asare's) land also acquired through the same war. The 30 Besiasene confirmed the evidence of the Hiahene and Akwaboahene to the effect that the 2nd Defendant Respondent's ancestor did not take part in that Abrimoro war nor was he seen at all.

Nor is this all : the evidence of Plaintiff Appellant's 4th witness Kwabena Akyeampong (Odikro of Kunsu) which could be read from pages 24–26 of the Record also strongly supports the Appellants case as to how the Appellant's ancestor took part in the Abrimoro war and had the disputed land. This witness (Kunsu Dikro) also took part in the war and his evidence therefore carries weight.

(G) Regarding how the Plaintiff Appellant's ancestor pledged the 40 disputed land to the 1st Defendant's ancestor Kwabena Tenteng, the evidence of Plaintiff Appellant's 5th and 6th witnesses namely Kojo

Aboagye and Kwabena Anane has corroboratively and creditably confirmed the Appellant's such genuine assertion *vide* pages 27-33 of the Record. The ancestors of these two named witnesses were eye-witnesses to the deal and their evidence which is corroborative in every material detail has shown how the Appellant's ancestor merely pledged the disputed land to the 1st Defendant's ancestor for £6 redeemable at any time on payment of this loan. It is noteworthy that the evidence of these witnesses was not in any way shaken by the bombardment of cross-examination to which they were subjected by both the Defendants Respondents and the Court below: thus their evidence is accepted as true and binding on the Defendants Respondents. Facts are therefore stubborn on Record that the disputed land was acquired by the Plaintiff Appellant's ancestor through his participation in the Abrimoro war and that it was merely pledged to the 1st Defendant Respondent's ancestor Kwabena Tenteng by the Plaintiff Appellant's ancestor for a loan of £6. In Native Customary Law, a pledge of a property if proved is redeemable at any time and that the length of time cannot be a bar to the redemption of the land in dispute once Plaintiff Appellant has sufficiently and convincingly proved by the evidence of neighbouring land owners that the deal was a pledge and not otherwise. The appellant established a good case at the Court below and it is appalling that the Court below gave this erroneous Judgment against him. The Judgment of the Court below is apparently not in accord with the evidence on Record and should therefore be set aside or reversed and this Appeal allowed with costs for the Plaintiff Appellant herein throughout in the interest of Justice.

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## 2. JUDGMENT AGAINST THE WEIGHT OF EVIDENCE ON RECORD :

There can no doubt that the balance of evidence on Record is overwhelmingly in favour of the Plaintiff Appellant herein. The very fabric upon which the Defendants Respondents more especially the 2nd Defendant Respondent built their defence was as weak as it was untenable. The evidence of their 1st and principal witness—the Bantamahene besides being an interested person's evidence is flimsy, conflicting and inadmissible in Law. Exhibit " A " pages 113-114 of the Record vitiates the whole of Bantamahene evidence on which the Defendants Respondents rely.

It is clear from Exhibit " A " (the Timber Concession—Agreement) that the Bantamahene appended his signature to it as the Grantor or owner of the disputed land whilst the 2nd Defendant Respondent merely appended his marked thereto as a witness being so, the Bantamahene who claimed to be the owner of the disputed land under Exhibit " A " should have been the proper person to litigate with the Plaintiff-Appellant and not the 2nd Defendant who was only a mere witness to the deal. The Bantamahene is therefore an interested party in the matter and that any evidence he gave at the Court below should *have discredited* as being null and void as the evidence of interested witnesses is not in Law admissible. [sic]

(B) The Bantamahene who is more or less litigating with the Plaintiff Appellant over the disputed land in view of his signature to Exhibit " A "



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contended in his evidence on Record (pages 41–45 of the Record) that his ancestor deputed only the Akwaboahene and Gyedu Kumanin from the Kronti Clan to join the other Chiefs in fighting Abrimoro but that he never deputed the Plaintiff Appellant's ancestor also to warrant him to get a booty from that war. This piece of evidence given by the Bantamahene is most untrue and incorrect and was merely given by the Bantamahene as an interested person since the Akwaboahene who is admitted by the Bantamahene to have been deputed by him to the war has given evidence for the Plaintiff-Appellant that the Plaintiff Appellant's ancestor also took part in the Abrimoro war and had a share of Abrimoro's lands *vide* 10 pages 17–18 of the Record.

On page 43 of the Record, the Bantamahene (Defendants Respondents' principal witness) stated in answer to the following cross-examination as follows :—

“ Q. Would you believe any report of the Akwaboahene in the war ?

“ A. Yes ; I would believe his report.

If Akwaboahene has therefore given evidence for the Plaintiff Appellant that his (Plaintiff Appellant's) ancestor took part in the Abrimoro war and had the disputed land then it is without gainsay that Akwaboahene's 20 evidence supersedes that of Bantamahene who admittedly took no part in that war.

(c) On page 37 of the Record, the 2nd Defendant Respondent stated in answer to the following cross-examination put to him by the Plaintiff Appellant as follows :—

“ Q. Can you name any of the members of advance guard of Hiahene you met on the road when going to relieve the pursuers ?

“ A. Yes ; we met Kunsu Dikro amongst them.

“ Q. So if Kunsu Dikro says something about the war, it is correct. 30

“ A. Yes ; because that was what he told me etc.

It will be recalled that Kunsu Dikro is the Plaintiff-Appellant's 4th witness who has given a corroborative evidence for the Plaintiff Appellant that the disputed land belongs to the Plaintiff Appellant as he took part in the Abrimoro war *vide* pages 24–26 of the Record. The hopelessness of Defendants Respondents' case is too glaring on Record and that the Court below if not biased should have entered a clean and straight forward Judgment in favour of the Plaintiff Appellant as the owner of the disputed land. The decision of the Court below is highly untenable and cannot be upheld by any Court of Justice. 40

(D) Another fact that unveils the falsity of the Defendants Respondents' story as also that of their principal witness—the Bantamahene is barred in the following cross-examination put to the 2nd Defendant Respondent

and Bantamahene. On page 40 of the Record, the 2nd Defendant Respondent stated in answer to cross-examination put to him by the Court below as follows :—

*In the Asantehene's "A" (Native Appeal) Court.*

“ Q. When you met Hiahene’s people, did you see Akwaboahene before you returned ?

“ A. I did not see Akwaboahene as Hiahene’s people said all the Chiefs were coming.”

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Supplementary Grounds of Appeal, 7th October 1950, continued.

And on page 44 of the Record, the Bantamahene (Defendants Respondents’ 1st and principal witness) stated in answer to cross-examination as follows :—

“ Q. When Defendant returned to tell you they met the advance guard of Hiahene, did they say they saw Akwaboahene your deputy ?

“ A. No ; they did not say they saw Akwaboahene.”

If it were true that the 2nd Defendant Respondents’ ancestor was sent by the Bantamahene to go in search of the Chiefs deputed to persue Abrimoro, the 2nd Defendant Respondent would have naturally seen the Bantamahene’s Deputy—Akwaboahene and hear from him before returning to Bantama to give his report to Bantamahene but would not have merely returned upon allegedly meeting the Hiahene’s advance guard who do not belong to the Kronti Clan. The story is nothing but a tissue of blantant lies and should have been disbelieved and rejected by the Court below if justice was rightly and impartially exercised. The Judgment of the Court below is repugnant to Law and native custom obtaining in Ashanti and should be set aside in the interest of Justice.

(E) And on page 43 of the Record, the Bantamahene stated in answer to the following cross-examination as follows :—

“ Q. Is it customary that your Gyasi people always precede you in wars ?

“ A. It is not customary ; etc.”

If the Bantamahene has admitted on Record that it is not customary for his Gyasi people to go ahead of him in any war, then it cannot be true that the 2nd Defendant-Respondent who is undisputable a member of Gyasi group of the Bantamahene was ever sent to go ahead of the Bantamahene in looking for the Abrimoro pursuers. The Bantamahene further made his evidence unbelievable and untrue when he stated in answer to cross-examination on page 43 of the Record that the Akwaboahene was rather the “ Sahene ” in the Abrimoro war whilst Akwaboahene himself stated in his evidence that it was rather the Hiahene who was “ Sahene ” in that war. And on page 43 of the Record again, the Bantamahene stated, the Agogohene did not take part in the Abrimoro war whilst Akroponghene (Defendants’ 3rd witness) admitted on page 50 of the Record in his answer to a cross-examination that Agogohene took part in that war : an admission which supports the Plaintiff Appellant’s genuine story that he took part in the Abrimoro war since according to custom, the Agogohene always fights in front of Plaintiff Appellant.

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(F) The evidence of Defendants Respondents' 2nd and 3rd *witness* viz. :—the Akwamuhene of Kumasi and Akroponghehene which could be read from pages 46–51 of the Record is completely futile and invalid and does not help the Defendants Respondents' case at all since these two witnesses admitted of taking no part in the Abrimoro war and said they were merely informed by the Bantamahene as to what happened. Their evidence is therefore hearsay and is not admissible in Law. The balance of evidence on Record is overwhelmingly in favour of the Plaintiff Appellant and he should have had Judgment if the Court below was not biased.

10

Another fact that unveils the injustice practised by the Court below against the Plaintiff Appellant could be seen from page 54 of the Record where the Court below unjustifiably interrupted the Defendant in answering a vital cross-examination reproduced below :—

“ Q. Co-Defendant Nerebehi Dikro said he came from Asumeja by the reign of Nana Osei Tutu and if you say you came along with him by reign of Nana Katakylie then which of you should the Court believe.”

“ Note : Court ruled that the question is not necessary so no answer was asked for.”

20

The Court below being biased and finding that an answer to this cross-examination would destroy the Defendants Respondents' case which is already destroyed, hence it interrupted the Defendant to give any answer to this vital question : a practice which is injurious and uncalled for in judicial proceedings.

Exhibit “ C ” (Proceedings in the C.C.A.'s Court) upon which the Court below partly based its faulty Judgment is not binding on the Plaintiff Appellant since the 1st Defendant who holds the property on pledge did not keep the Appellant informed of any such litigation. There is no evidence on Record to support the Lower Court's further summary on Record that the Atwima Stool is one of the prosperous Stools in the Kronti Clan and so for that reason did not think the property was pledged. This has nothing to do with the Court below as its only duty was to give its Judgment according to the weight of evidence on Record and nothing more. Nor is there any use in the opinion expressed by the Court below in paragraph 2 of its Judgment on page 57 that the Appellant did not contact the relatives of the pledgee (Kwabena Tenteng) after his death to make known of this pledge to them. It is obviously unnecessary for the Appellant to have done so when he had not then been ready with the money to re-pay to the pledgee's relatives to redeem the land. In native mortgages, a property pledged if proved is redeemable at any time irrespective of the length of time. The Court below having been convinced that the evidence on historical facts is strongly in favour of the Plaintiff-Appellant and not wishing to give Judgment for him, ridiculously deviated from the real points which should have been the basis of an impartial Judgment in favour of the Plaintiff-Appellant and entered his illicit Judgment in favour of the Defendants-Respondents herein upon frivolous grounds. This Honourable Appellant Court will no doubt be convinced by these grounds

[sic]

of Appeal that the Court below should have entered a straight forward Judgment in favour of the Plaintiff Appellant but for reason one is yet to learn, it denied Appellant with justice and entered this bogus Judgment for the Defendants Respondents herein. Appellant has therefore appealed to this Honourable Court for justice to be administered unto him and this appeal allowed with costs for the Plaintiff-Appellant herein throughout in the interest of Justice.

Dated at Kumasi, this 7th day of October, 1950.

(Sgd.) AGYEIBI KOJO II,  
Twimahene (Plaintiff-Appellant).

10

The Registrar,  
Asantehene's "A" Native Appeal Court, Kumasi,  
and copies to  
Defendants Respondents at Nerebehi.

W/W to signature :—

(Sgd.) CHAS. A. DARKOH.  
Lic. No. 27213/50/Ksi.  
Manhyia, Kumasi.

Fee 20/- for original & Copies.

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20

No. 23.

**REPLY to Supplementary Grounds of Appeal.**

**REPLY TO SUPPLEMENTARY GROUNDS 1 & 2 :**

Appellant's repeated contention under his original and supplementary grounds of Appeal that :—

"That the mere fact that Respondents' predecessors were deputed by Bantamahene to go in search of the *worriers* i.e. [sic] "Hiahene and others who went ahead to fight Abrimoro, does not entitle Respondents to have a share of the disputed land by conquest."

30

The above extract from Appellant's grounds of Appeal, is a complete admission that Respondents' predecessors did take part of the Abrimoro war with the Ashanti, and that, Appellant's grounds of appeal is inconsistent with his evidence on Record to justify this Appellate Court to uphold the Judgment of the Court below that if Appellant contends that Respondents' predecessors were not deputed by Bantamahene to take part of the Abrimoro war, then it is untrue and unfounded allegation.

Appellant's further contention under his grounds of appeal that "the Judgment of the Court below is against the weight of evidence"

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[sic] *In the Asantehene's "A" (Native Appeal) Court.*

is not exact ground which must be taken to decide this Appeal, because Appellant himself has failed to give any traditional or *historial* evidence to show as to how his Ancestors or predecessors came by the disputed land (see pages 6 to 11 of Appeal Record).

[sic] No. 23.  
[sic] Reply to Supplementary Grounds of Appeal, 14th October 1950, *continued.*

Besides Appellant's lack of traditional or historical evidence on Record to prove as to how *he* predecessors acquired the land in dispute, none of witnesses' evidences are accorded or agreed with his evidence but rather full of contradictions, confliction, inconsistent and *discrepances*.

(See Appellant's answers to questions by 2nd Defendant on Record page 7) which read thus :— 10

\* \* \* \* \*

“ Q. In your chase after Abrimoro, where did you reach and returned home ?

“ A. When going Hiahene was on my right hand side, Besiasehene on my left. I reached at a valley of a river called Bomkwa where I did not go further.”

This piece of evidence by Appellant is contracted by his 1st witness—Hiahene's answers to questions by 2nd Defendant at page 13 of Appeal Record—(See Appellant's 1st witness)—Hiahene's further answers to questions by 2nd Defendant page 13 of Appeal Record which reads thus :— 20

\* \* \* \* \*

“ Q. If the Atwimahene said he fell ill at Amanfrom, and you say he reached at Abompe then which of you speaks the truth ?

“ A. What he said is the real truth, because I was not fighting with him by the same line, but it was near Abompe.”

(See Hiahene's further answers to questions by 2nd Defendant page 13 of Appeal Record) which states as follows :—

\* \* \* \* \*

“ Q. What forms your boundary head with Plaintiff on the land ?

“ A. I cannot tell, but my caretaker on the land Kunsu Dikro can tell as I have been to the land several years ago ? but he is a witness in this case and can tell ? ” 30

In fact, such contradictions by Appellant's 1st witness Heahene was so grave that it was unsafe to base any decision upon it. See Appellant's 1st witness—(Hiahene's answer to questions by 2nd Defendant on Record page 13 of Appeal Record) which reads thus :—

\* \* \* \* \*

“ Q. Do you remember in a case Kwasi Dumase, my predecessor when once litigating with Domiabra Dikro Kwaku Asamoa ? in contest for the land in dispute and your late uncle Wuahene gave evidence in that case before the Chief Commissioner's Court that he had boundary with me on the land ?

“ A. Yes I remember, but Bonsie told my uncle that Kwasi Dumasi should speak for him as his master.”  
 (See witness further answer to questions by 2nd Defendant on Record page 14.)

*In the Asantehene's "A" (Native Appeal) Court.*

\* \* \* \* \*

“ Q. Do you remember some years ago your predecessor Kofi Nti litigated with Bantamahene's wife Akosua Mansa, Agogohene, Nyinahينه and myself in contest for the land in dispute before the D.C. Kumasi.

No. 23.  
 Reply to Supplementary Grounds of Appeal, 14th October 1950, continued.

10

“ A. Yes, that is correct, because when Kwasi Dumasi litigating with Domiabraهene, Bonsie told my predecessor Waahene that Atwimahene Plaintiff had pledged the land with him and his Master was Nerebehi Dikro, you were one of the Kronti Chiefs who contested for the land against my Stool and you were jointly sued.

“ Q. What did Twimahene say about the case when the Kronti Chiefs were contesting with you for the land ?

“ A. He said nothing about it, but I think he had not then redeemed the land from Bonsie.

If Appellant's 1st witness—Hiahene's predecessors have given evidence previously in the proceedings between Respondents' predecessor Kwasi Dumase versus witness's sub-chief Kwasi Asamoah concerning Exhibit “ C ” page 114 to 115 of Appeal Record—that the land in dispute belongs to Respondents' predecessors and Respondents' predecessors have won the case and they have been declared ownership of the disputed land, then, the witness present evidence which states that the land does not belong to Respondents, amounts to a crime or offence of perjury and he should have been prosecuted. [sic]

Court's attention is hereby invited to Appellant's 2nd witness—Akwaboahene's evidence on Record page 18 which reads :

\* \* \* \* \*

30

“ Q. Who was the Senior amongst the Kronti Chiefs deputed by the Bantamahene to go to the war with Hiahene ?

“ A. Akwaboahene was the most Senior.”

Whereas at page 15 of Appeal Record, Appellant's 1st witness Hiahene contradicted the evidence of Appellant's 2nd witness evidence on this point.

\* \* \* \* \*

“ Q. Who was the senior amongst the three Kronti Chiefs who were deputed by the Bantamahene to you ?

“ A. Bantamahene did not tell me who was senior all were to help me as Sahene ; but he said ‘ Twimahene and his junior brother and sub-chiefs should go with you ’.”

40

“ I affirm that because of what Bantamahene said Twimahene was the most senior amongst the Kronti Chiefs who joined me in the war.

If Appellant's 2nd witness Akwaboahene has given evidence that he was the senior in the war and Appellant's 1st witness Hiahene also says at

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[sic]

page 15 of Appeal Record that Akwaboahene was not the senior but Twimahene, then these two witnesses' evidences are not corroborated but conflicting and that it is very dangerous to believe such kind of witnesses who tell that a thing is so and so, and then, to-morrow, they come to change it.

(See Appellant's 2nd witness—Akwaboahene's evidence at page 18 of Appeal Record.)

\* \* \* \* \*

“ Q. Has your land any boundary with the land in dispute ?  
“ A. No. ”

This piece of evidence is evident that Appellant's 2nd witness *do* not know anything concerning the land in dispute. (See Appellant's 3rd witness Besiasihene's answers to questions by 2nd Defendant page 22 of Appeal Record.)

\* \* \* \* \*

“ Q. Who was the Chief that deputed Twimahene and Akwaboahene ?  
“ A. I do not know.”

If Appellant based his claim upon the fact that it was Bantamahene who appointed him to go to fight Abrimoro and so, he called Besiasihene as witness to come to confirm same, and Besiasihene says he did not know, then, Appellant's evidence proved to be false and that the Court below was right to the conclusion they did in their Judgment.

(See Appellant's 4th witness Odikro Kwabina Akyeampong's answers to questions by Court page 26 of Appeal Record.)

\* \* \* \* \*

“ Q. How long after Hiahene had arrived at Buto-Nkwanta did Twimahene and Akwaboahene follow up ?  
“ A. I cannot tell.

“ Q. Do you affirm that when Hiahene was appointed no other Chief was appointed to go with him ?

“ A. He was appointed alone.

“ Q. Do you know who appointed Atwimahene and Akwaboahene to go to help Hiahene in the war ?

“ A. I cannot tell, I do not know who appointed them.

“ Q. Since when after acquiring the land did you hear Atwimahene had pledged his portion of the land ?

“ A. I cannot tell.”

That if Appellant's 4th witness has given evidence that he did not know that Appellant was appointed by any Chief to take part of the Abrimoro war, and the witness further stated in his evidence at page 26 of Appeal Record that the land in dispute was not pledged by Appellant to Respondents, then, the Court below was perfectly right to give Judgment against Appellant as none of his witnesses was able to give any convincing evidence to corroborate his case.

The judgment of the Court below is therefore right in law and in accordance with equity, good conscience and the principles of justice, it is submitted therefore that the Appeal therefrom should be dismissed accordingly with costs.

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Dated at Kumasi this 14th day of October, 1950.

ODIKRO KWEKU MANU,  
2nd Defendant-Respondent, His  
X  
mark  
For and on behalf of 1st Defendant-Respondent.

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Reply to  
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mentary  
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of Appeal,  
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10 W/W to mark :

(Sgd.) W. K. WIREDU,  
Lic. No. 27505/50/Ksi.  
Manhyia-Kumasi,  
Fee 10/- Orig. & Copy.

The Registrar, Asantehene's " A2 " Court, Kumasi-Ashanti,  
and

To Chief Kwame Antwi Adjei Twimahene substituted by Twimahene  
Adjeibi Kojo II, Kumasi Bantama.

No. 24.

20

**COURT NOTES.**

IN THE ASANTEHENE'S " A1 " COURT held at Kumasi on Tuesday  
24th October, 1950, before :

NANA BOAKYE TROMU II—Nkwantahene  
NANA BOAKYE DANKWA—Akyempimhene  
NANA KWAKU ASAMANING—Ankobeahene  
CHIEF ADJEIBI KOJO II, Plaintiff-Appellant

*v.*

1. KWADWO BONSI,
2. ODIKRO KWAKU MANU, Defendants-Respondents.

Both parties present in person.

30 This is an Appeal from the Judgment of the Asantehene's Divisional  
Court " B 1 " to this Court.

Appeal Record before Court and read up to the evidence of 2nd witness  
for Plaintiff-Appellant.

No. 24.  
Court  
Notes,  
24th  
October  
to 13th  
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1950.



*In the  
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Appellant at this stage reported to Court that Respondents had permitted certain persons to make new farms on the land in dispute in contravention of an Injunction Order made by Court "A2".

*By Court :*

Let case be adjourned to Tuesday 31st October, 1950, to enable the Order of Injunction made by the "A2" Court to be placed before this Court by the Registrar.

(Sgd.) BOAKYE TROMU II,  
Nkwantahene,  
Pres.

Recorder & W/Signature :

(Sgd.) ENOCH A. KYEREMATEN,  
Registrar—24.10.50.

10

No. 24.  
Court  
Notes,  
24th  
October  
to 13th  
November  
1950,  
*continued.*

Tuesday 31st October, 1950.

Both parties present in person.

Application for Injunction Order by Appellant herein requesting order of the Court to restrain all parties from giving out new portions of land (forest or secondary forest) to people for farming purpose before Court.

Respondent's opposition also before Court.

*By Court :*

Let both parties and/or their agents be restrained from entering into the land in dispute to make new farms until final determination of this Appeal but without prejudice to the land being entered for purposes of working in old existing farms thereon.

Continuation of reading of Appeal Record read from the case of 3rd witness for Plaintiff to the case for 1st Defendant.

Thursday 2nd November, 1950.

Both parties present in person.

Reading of Appeal Record from the evidence of 1st witness for Defendant to that of 2nd witness for Defendant.

Monday 6th November, 1950.

30

Both parties present in person.

Appeal Record read to completion from the evidence of 3rd witness for Respondents together with Exhibits.

Monday 13th November, 1950.

Both parties present in person.

Grounds of Appeal and Reply thereto as well as Supplementary Grounds of Appeal and reply thereto before Court and read.

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## No. 25.

## PARTIES' Submissions and Answers to the Court.

*In the  
Asantehene's  
"A" (Native  
Appeal)  
Court.*

## SUBMISSIONS BY APPELLANT :

I respectfully submit that at the time of the Abrimoro war Respondents' ancestors had not migrated from Essumenja to Kumasi.

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Parties'  
Submissions  
and  
Answers  
to the  
Court,  
13th  
November  
1950.

Furthermore I wish to emphasize the point that 1st Respondent and/or his predecessors have never entered into any litigation whatsoever over the land in dispute which I pledged to them. If therefore 2nd Respondent contends that he had once litigated over the land in dispute his contention does not hold weight as the land in dispute had never been pledged to him (2nd Respondent). If 2nd Respondent litigated over any land in the vicinity of the land in dispute I strongly contend that it must have been a different land.

Furthermore as it is apparent that 1st Respondent with the connivance of 2nd Respondent had made up his intention to dispossess me of ownership of the land in dispute he has not given me any information of 2nd Respondent's claims over the land in dispute.

I also beg to point out that my 6th witness (Kwabena Anane) is not only a native of Nerebehi but he is also the Safuhene of the Bantamahene (1st witness for Respondents).

The evidence of this witness is therefore important and should be accepted as genuine and true.

## SUBMISSIONS BY 1ST RESPONDENT :

Appellant's contention that I had not come from Essumenjah to Kumasi during the Abrimoro war is untrue as the Bantamahene by whom Appellant claims to have been deputed to join the war admitted on record that he deputed me to join the same war.

Now I beg to add that in his Grounds of Appeal Appellant stressed the point that the Bantamahene signed the Agreement Exhibit "A" as owner of the land in dispute ; as such it is contended that Appellant was wrong in directing his claim against 1st Respondent. As the action was taken against 1st Respondent who is my caretaker that is why I applied to be joined to the suit as Co-Defendant.

It is also pointed out that the 6th Witness for Appellant has a dispute with me (2nd Respondent) and so his evidence was biased.

*Appellant Xd. by Court :*

A. The loan was obtained through the predecessor of my 6th Witness who was called Kwasi Teng from 1st Respondent's predecessor Kwaku Tenteng.

A. As I had not redeemed the land in dispute from pledge I had no right to use it.

*In the  
Asantehene's  
"A" (Native  
Appeal)  
Court.*

*No. 25.  
Parties'  
Submissions  
and  
Answers  
to the  
Court,  
13th  
November  
1950,  
continued.*

A. If 1st Respondent and/or his predecessors had at any time told me of any person interfering with their right over the land in dispute as pledgee it should have been my duty to have taken up the matter myself but such report had never reached me.

A. The Akwaboahene (2nd witness for Appellant) who is a member of the Kronti Clan confirmed my statement that the Respondents' ancestors came from Essumenjah to Kumasi during the reign of Asantehene Nana Okoawia of blessed memory.

A. Apart from the portion given to my 6th witness's ancestors the whole land was pledged to 1st Respondent's ancestor Kwabena Tenteng. 10

A. 1st Respondent and/or his ancestors never told me of having given some of the land pledged to him to other people.

A. 1st Respondent's ancestor Kwabena Tenteng was a caretaker prior to the pledge to him so he knew the boundaries of the land pledged by me to him.

A. At present none of my subjects are resident on the land in dispute.

A. Owing to the misconduct of the people of Essumenjah against their Chief during the reign of Asantehene Nana Okoawia of revered memory many of them were brought to Kumasi including Respondent's people. 20

A. I do not know of any litigation by Respondent's predecessors over the ownership of the land in dispute.

A. I was not informed nor did I hear of the concession for timber entered into on the land in dispute by the Bantamahene and 2nd Respondent.

A. I do not know the extent of the land given to the Akwamuhene and the wife of the Bantamahene.

*Respondents Xd. by Court :*

A. The property in dispute was given to the Bantamahene who in turn gave it to me as I am directly under him and he deputed me to go to the Abrimoro war. 30

A. The path followed by me in going after the Chiefs who had gone to the War had not been previously taken by the original pursuers of Abirimoro.

A. All I know of who were detailed by the Bantamahene to pursue the chasers of Abirimoro were the people of the Bantamahene's Gyase.

A. I make it a point that portions of the land in dispute were presented by me to the Akwamuhene and the wife of the Bantamahene.

A. I affirm that it was the Asantehene who deputed the Bantamahene to follow up the Chiefs who had gone to chase out Abirimoro.

A. The Bantamahene sent us (Gyase people) ahead while he was 40 collecting his warriors together but he did not fix a definite time he would follow us with his force.

A. The Gyase people went ahead of Bantamahene and returned back within 8 days and met the Bantamahene at Kumasi as he had not then left Kumasi for the following-up journey.

A. No reason was assigned by the Bantamahene for tarrying for 8 days after the orders to move given him by the Asantehene.

A. The Bantamahene has a Gyasehene under whom I serve the Bantamahene as a Safohene.

A. Bantamahene's Gyasehene did not accompany us in the following up. I was the only Safohene of Gyase who was deputed by the Bantamahene.

10 A. The Gyase people perform the personal domestic services of the Bantamahene during campaigns for example building of camps and carrying personal effects.

A. I followed up to River Supong but did not engage the enemy.

A. I understand that the Oyokohene was also deputed by the Asantehene to follow up the Chiefs who went to fight Abirimoro.

A. I cannot say how the Oyokohene came to possess some of Abirimoro's lands.

A. I was already residing at Nerebehi when I got the land in dispute.

20 A. I was summoned from Nerebehi by the Bantamahene and at Kumasi he ordered me to go ahead.

A. The Appellant had never owned land at the place in dispute.

A. During the reign of Bantamahene Amankwatia Panin portions of the land in dispute were given to the Akwamuhene and the wife of Bantamahene.

*By Court :*

Let case be adjourned to Thursday 16th November 1950, for judgment owing to lack of time.

(Sgd.) BOAKYE TROMU II,  
Nkwantahene Pres.

30 Recorder & W/Signature :

(Sgd.) ENOCH A. KYEREMATEN,  
Registrar—13.11.50.

*In the  
Asantehene's  
"A" (Native  
Appeal)  
Court.*

No. 25.

Parties'  
Submissions  
and

Answers  
to the  
Court,

13th  
November  
1950,

*continued.*

*In the  
Asantehene's  
"A" (Native  
Appeal)  
Court.*

No. 26.  
Judgments,  
9th  
December  
1950.

**No. 26.  
JUDGMENTS.**

IN THE ASANTEHENE'S "A" COURT held at Kumasi on Saturday  
9th December, 1950, before :—

NANA BOAKYE TROMU II—Nkwantahene.

NANA BOAKYE DANKWA—Akyempimhene.

NANA KWAKU ASAMANING—Ankobiahene.

Chief AGYEIBI KOJO II Atwimahene Plaintiff-Appellant

*v.*

1. KOJO BONISIE,
2. ODIKRO KWAKU MANU . . . Defendants-Respondents.

10

Both parties present in person.

**VIEWS OF MEMBERS OF THE COURT.**

**(a) Ankobiahene.**

(A) Anko-  
biahene.

*By Ankobiahene :*

In this case which is on appeal before this Court the gist of the history of it is that while Ashantis were away at Akim at war with the Akims Abirimoro invaded Kumasi from the North. The Asantehene ordered a force to return to Kumasi to drive out the invader and the Krontihene (Bantamahene) detailed the Akwaboahene and the Akyempimhene also detailed the Hiahene. The Atwimahene also together with the Agogohene went to the war. After the invader had been driven out the Asantehene presented the territory covered by each Chief who took part in the campaign to him. 20

The Atwimahene detailed his subject Mumu who was his hunter to take care of his lands in dispute. On the death of Mumu one Kwabena Tenteng was entrusted with the care of the land by Appellant's ancestor. Appellant's ancestor being in financial difficulties pledged the land in dispute to his caretaker Kwabena Tenteng for £6. This land having remained in pledge for a long period the pledgee is now attempting to claim 30 ownership thereof.

Appellant being dissatisfied took this action to claim the title of ownership.

In his contention Appellant has made it clear that long before Respondents came from Essumenjah to settle in Kumasi both the land in dispute and the land at present occupied by Respondents were all the property of Appellant's Stool and it was Appellant's predecessor who gave the land to the Krontihene (Bantamahene) for settlement of Respondents and their people who are the Gyase people of the Krontihene. It is clear that being his land granted to the Respondent's people to settle thereon 40 Appellant's ancestor did reserve the right of fishing in two pools which lie on the land occupied by them.

Furthermore there is the preponderance of evidence on record to show that Appellant's ancestor took part in the Abrimoro campaign and that it was Appellant's ancestor who covered the land in dispute and so became his Stool property.

Respondents having failed to prove their title of ownership in view of the fact that they never took part in the Abirimoro war I am of the opinion that the Appeal should be allowed and that Appellant has the right to redeem the land in dispute from pledge.

(b) **Akyempimhene.**

10 *By Akyempimhene :*

Before giving my views I have to express my regret for the delay in delivering judgment in this case which delay was due to the prolonged sitting of the Asanteman Council which occupied the time of all members of the Court.

Now I agree with the views expressed by the Ankobiahene that the Appeal should be upheld.

In this case the claim of Plaintiff-Appellant (Atwimahene) for recovery of possession of the "Bonkwaso" land pledged by his ancestor to the ancestor of 1st Defendant-Respondent (Kojo Bonsie) on the refund of the  
20 pledge money was disallowed by the Court of first instance.

It must be recalled that at the outset of the proceedings in the Court of first instance 2nd Defendant-Respondent (Odikro Kwaku Manu) applied to the Court to be joined as a Co-Defendant as he had interest in the land in dispute.

As this claim is one of title of ownership of land I am of the considered opinion that a chronological trace of historical facts covering the acquisition of the land as given on record is the principle on which a sound decision can be based.

Now it is abundantly clear from the Appeal Record before this  
30 Appellate Court that while 1st Respondent's plea is that of a caretaker of the land in dispute for 2nd Respondent both Appellant and 2nd Respondent base their respective claim of ownership of the land by right of gift by Asantehene Nana Poku Ware (Katakylie) of revered memory as a result of dint of valour displayed in one and the same war—Abirimoro Campaign.

It therefore follows reasoning that the weight of evidence must necessarily be drawn from the trace of events in the war as given on record by each party.

The case for each party has been clearly set out in the summing up of the Court below.

40 Now after careful scrutiny of the Appeal Record and Grounds of Appeal and replies thereto and also having heard the verbal submissions of both parties and having subjected them to cross-examination in this Court I am fully satisfied that Appellant has proved his title of original ownership of the land in dispute based on consistent trace of historical facts of events in the Abrimoro war and supported by the unshaken

*In the  
Asantehene's  
"A" (Native  
Appeal)  
Court.*

No. 26.  
Judgments,  
9th  
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1950.

(A) Anko-  
biahene,  
*continued.*

(B) Akyem-  
pimhene.

*In the  
Asantehene's  
"A" (Native  
Appeal)  
Court.*

evidence of accredited witnesses. The Court below therefore misdirected itself on the principles of native customary law governing acquisition of lands in Ashanti and consequently arrived at an erroneous decision which must be set aside.

No. 26.  
Judgments,  
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1950.

History is clear on the facts that the Abirimoro war was fought during the reign of Asantehene Nana Poku Ware (Katakylie) of blessed memory and that the land in dispute formed part of the enemy's lands which were over-run and occupied by the army of Ashanti.

(B) Akyem-  
pimhene,  
*continued.*

History is also clear on the fact that after the Abirimoro Campaign the extent of territory covered by each warrior-chief was given to him for occupation by the Asantehene in trust for the Golden Stool. And the contention of both parties is based on these historical facts. 10

Now in my opinion the major issues of this case evidently are (A) Whether or not the ancestors of Appellant and 2nd Respondent took part in the Abirimoro Campaign and (B) Whether the ancestors of Appellant covered the land in dispute in the war or the ancestors of 2nd Respondent did so.

As regards the first point there is overwhelming evidence on record by the first four independent witnesses for Appellant (i.e. Hiahene and Akwaboahene, and Besiasehene and Kunsu Dikro) who are the present occupants of the Stools of the important Chiefs who took part in the Abirimoro Campaign. These witnesses deposed that the ancestor of Appellant took part in the war and that on fighting up to the land in dispute his forces were *attached* by an epidemic of small-pox but the disease being highly contagious orders were issued by the Commander of the Army (Hiahene) to halt there. On the other hand 2nd Respondent and his witnesses clearly deposed that 2nd Respondent's ancestor did not take part in the actual campaign but that when the forces had stayed long in the campaign the Asantehene detailed the Krontihene (Bantamahene) to follow up and look out for what had happened to them. That while the Krontihene (Bantamahene) tarried in Kumasi mustering his forces he detailed 2nd Respondent's ancestor who was sub-chief in the Gyase group of the Krontihene to go ahead, and on doing about four days journey 2nd Respondent's ancestor met the forces of the Ashanti Army on the river Supon returning home after having conquered Abrimoro's Army. 20 30

Now it has been admitted by 2nd Respondent in cross-examination that his principal witness Krontihene (Bantamahene) did not actually leave Kumasi to follow up the campaigners as alleged to have been ordered by the Asantehene and this witness also confirmed the fact in his evidence that he tarried in Kumasi after the alleged orders to follow up by the Asantehene until after about a week 2nd Respondent's ancestor returned to inform him (Bantamahene) that the forward body of the campaigners had been met returning home. But all Chiefs in Ashanti have taken the Oath of Allegiance to the Asantehene that whenever they are ordered to go to war they should proceed at once. If therefore it was a fact that the ancestor of the Krontihene (Bantamahene) was ordered to follow up the chasers of Abirimoro as maintained by him in his evidence and in his capacity as a Head Clan Chief he did tarry in Kumasi for about a week after receiving the orders of the Asantehene to move it was conclusive that 40

the ancestor of the Krontihene should have committed a breach of his Oath of Allegiance by his action which should have landed him in impeachment as custom demanded. The absence therefore of any punitive action against the ancestor of the Krontihene (Bantamahene) for this serious breach of customary obligation is a sure indication of that never at any time did it happen that the Asantehene ordered ancestor of the Krontihene (Bantamahene) to follow up the pursuers of Abirimoro as alleged by 2nd Respondent and his witnesses much more as to give occasion to the ancestor of the Krontihene (Bantamahene) in turn giving charge to his  
 10 Gyase group (Respondent's ancestors) to go ahead. From the Admission of facts by both Respondent and his witnesses I am fully satisfied that Respondent's ancestors did not take part in the Abirimoro Campaign and with the historical facts already set out it is preposterous to think how the Court below arrived at the decision that 2nd Respondent's ancestors could have benefited from the sharing of the booty of a campaign in which they did not take part.

But it is incredible to note that the Court below in summing up its decision attached importance to the evidence of the Krontihene (Bantmahene) who although admitted his ancestor did not take—  
 20 in the Abirimoro Campaign his mere deposition that Appellant's ancestor was not detailed to take part in the campaign gravely misguided the Court to arrive at an erroneous decision. Apart from the fact that the preponderance of evidence supported the case for Appellant the Court below should have clearly discovered that the evidence of the Krontihene (Bantamahene) was that of an interested party. That this witness is an interested party is clearly indicated by his admission in answer to cross-examination by Appellant that 2nd Respondent served him (witness) with the land in dispute and that all valuable derived from it were sent to him (witness) and this is supported by witness' conduct in signing  
 30 Exhibit "A" as a grantor in a Deed of Concession in which the land in dispute is included.

Furthermore not only did the 2nd and 3rd witnesses for Respondents make a candid confession that their ancestors did not take part in the Abirimoro Campaign but it will also be noted that 2nd witness for Respondents has been presented with a portion of the land in dispute and his evidence therefore amounts to that of an interested party.

I am therefore satisfied on all fours that Respondents have failed to adduce any substantial evidence to support their claim that as a result of their ancestors taking part in the Abirimoro war the land in dispute  
 40 became 2nd Respondent's Stool property.

Now turning to the chronological orders of historical events it has been maintained undefined by Appellant that the ancestors of Respondents hailed from Essumenjah and were brought to Kumasi by order of Asantehene Nana Osie Kwame (Kuawia) of revered memory and were placed under the services of the Krontihene (Bantamahene) who in turn placed them in his Gyase group. That Respondent's ancestors first came to Kumasi during the reign of Nana Kuawia was pressed home by Appellant in his cross-examination to Respondents and also gave a brief history of the exodus of Respondent's ancestors from Essumenjah to Kumasi in  
 50 his (Appellant's) answers to cross-examination by the Appellate Court.

*In the  
Asantehene's  
"A" (Native  
Appeal)  
Court.*

—  
No. 26.  
Judgments,  
9th  
December  
1950.

(B) Akyem-  
pimhene,  
*continued.*

[sic]



*In the  
Asantehene's  
"A" (Native  
Appeal)  
Court.*

No. 26.  
Judgments,  
9th

December  
1950.

(B) Akyem-  
pimhene,  
*continued.*

It therefore follows reasoning that Respondent's ancestors became the Gyase people of the Krontihene (Bantamahene) some hundred years after the Abirimoro campaign and 2nd Respondent's main contention that his ancestor acquired the title of ownership of the land in dispute by taking part in the Abirimoro Campaign is a historical anachronism which alone by itself is sufficient to vitiate any claim of ownership of the land in dispute by 2nd Respondent.

Now having been proved to the hilt that Respondent's ancestors never took part in the Abirimoro Campaign and therefore could not have had share of the lands taken as result of the Campaign and also having been established that Respondent's ancestors settled in Kumasi during the reign of Asantehene Nana Kuawia when all Kumasi lands were known to have been apportioned already to caretakers for the Golden Stool the final point evolves itself that the land in dispute could have passed into alien hands by a deed of gift or pledge or outright sale. But that the land in dispute was pledged by Appellant's ancestor to 1st Respondent's ancestor for a loan of £6 ("Asuasa") as maintained by Appellant has been supported by the evidence of accredited witnesses and I am consequently satisfied that being a native pledge where the property pledged has been in the continuous possession of the pledgee for the enjoyment of the *usufract* thereof the pledger has the customary right to claim recovery of the pledged-property on repayment of the pledge-money and that the long continued possession of the land in dispute by 1st Respondent and the lapse of time cannot be accepted to constitute a barrier to redemption of the pledged property by Appellant.

[sic]

I should also refer to the second point stressed in the decision of the Court in which the exposition of the theory of native customary procedure in the case of the death of a pledgee or creditor to be followed by a pledgor or debtor is rather the converse.

The accepted customary procedure is that on the death of a pledgor or debtor the pledgee or creditor discloses the transaction between him and the deceased and when proved to be genuine the deceased's relatives accept it as family liability. This point therefore has no effect whatsoever on the issues of the case. The third point in the summing up of the Court below I opine is mere expression of sentiment and therefore holds no legal weight.

It is also very important that I should touch on the fourth point raised by the Court below in its judgment. Although Exhibit "C" clearly indicates that the predecessor of 2nd Respondent entered into litigation over a trespass committed by the Odikro of Domiabra on 2nd Respondent's Stool land it is also quite clear that neither was Appellant nor 1st Respondent and/or any of their predecessors connected with the claim as Co-Defendants. Furthermore in nowhere in Exhibit "C" is any reference made to the land in dispute (i.e. "Bonkwaso" Land) as the subject matter of the claim for damages.

In view of the fact that 2nd Respondent has his own land I entertain no doubt that his predecessor made the claim in Exhibit "C" in respect of his Stool lands and not in respect of the land in dispute which had been pledged to 1st Respondent's predecessor but not 2nd Respondent's

predecessor. I am therefore satisfied that the contents of Exhibit " C " cannot be construed to be binding on Appellant and to constitute an estoppel to Appellant's claim.

I am therefore finally satisfied that Appellant has proved his title of his original ownership of the land in dispute and its pledge by his ancestor to 1st Respondent's ancestor Kwabena Tenteng and that being a native pledge the right is reserved by native customary law for Appellant to recover possession of the land in dispute on payment of the pledge money of £6 to 1st Respondent.

10

*By Nkwantahene :*

(c) Nkwantahene.

I hold contrary views from the views expressed by the Ankobiahene and Akyempimhene and I am of the well considered opinion that the decision of the Court below is sound in all respects and should not be disturbed.

I need not over-emphasize the fact that the members of the Court of first instance had the opportunity of hearing the evidence of the witnesses for both parties and watching their *demeanour* and they (Court members) were in a better position to believe or disbelieve the respective evidences. Being satisfied with the truth in the statements of Defendants-Respondents and their witnesses did arrive at a conclusion on finding of facts by disallowing the claim of Plaintiff-Appellant. Judgment therefore having been given on points of facts by the Court below I am of the opinion that this Appellate Court should not interfere with it.

20

30

Plaintiff-Appellant's contention is that the predecessor of Krontihene (Bantamahene) deputed his (Appellant's) ancestor to go to the Abirimoro war and it was through this war his (Appellant's) Stool got the land in dispute and it was later pledged to 1st Respondent's predecessor Kwabena Tenteng for a loan of £6. However, the Krontihene (Bantamahene) in his evidence categorically stated that his predecessor Amankwatia Panin during whose reign the Abirimoro war was fought did not depute Appellant's predecessor Frimpong Ameyaw to take part in the war but rather that 2nd Respondent's predecessor Kwarteng Apagyebi was detailed. This witness' evidence I opine strongly destroys the foundation of Appellant's claim and strongly supports the case for 2nd Respondent.

40

There is also further evidence on record to justify the decision of the Court below that if in fact and in truth the land in dispute was ever pledged to the predecessor of 1st Respondent as alleged by Appellant it should have been the customary obligation for Appellant's predecessors to have made known from time to time when any of the predecessors of 1st Respondent died that the land in dispute was still under pledge with 1st Respondent's family. The absence of the performance of such important customary obligation by any of Appellant's predecessors after eight successors had inherited the estate of 1st Respondent's predecessor Kwabena Tenteng to whom the property is alleged to have been pledged is a significant indication that no such pledge as maintained by Appellant ever took place.

Furthermore there is ample evidence in Exhibit " C " to the Appeal Record to show that 2nd Respondent's predecessor Kwasi Dumasi (Odikro

*In the  
Asantehene's  
"A" (Native  
Appeal)  
Court.*

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No. 26.  
Judgments,  
9th  
December  
1950.

(B) Akyem-  
pimhene,  
*continued.*

(c) Nkwantahene.

[sic]

*In the  
Asantehene's  
"A" (Native  
Appeal)  
Court.*

No. 26.  
Judgments,  
9th  
December  
1950.  
(c) Nkwantahene,  
*continued.*

of Nerebehi) litigated with one Kwaku Asamoah (Odikro of Domiabra) over the title of ownership of this land in dispute and although the predecessor of Appellant's 1st witness (Hiahene) gave evidence for the Odikro of Domiabra that witness clearly stated that the land in dispute belonged to 2nd Respondent's predecessor who was accordingly adjudged the titular owner of the land in dispute. This in itself is sufficient to guide any Court of Law to arrive at a decision that 2nd Respondent's predecessor had already been declared the owner of the land in dispute and I am therefore fully satisfied that the Court below gave a sound judgment on this point which judgment I strongly endorse. 10

[sic] Again it is an undisputed fact that 2nd Respondent and his subjects have lived on and enjoyed the benefits of the land in dispute from generation to generation since the reign of Asantehene Nana Poku Ware of revered memory some hundred years past and collected land tribute on such as Cocoa *Frams* and Timber Concessions and Rubber Tapping and Game Hunting and Mining of Gold Dust *etcetera*. Also portions of this land in dispute have been presented to the Akwamuhene of Kumasi (2nd witness for Respondents) and the wife of Krontihene (Bantamahene) and they have lived on these lands given to them for many years without interference from Appellant. If therefore it were true that the land in dispute were the property of Appellant's Stool which had been pledged it should have been customary for Appellant to have challenged the right of Respondents in apportioning the land to beneficiaries as gifts and including them in a Concession with the respective beneficiaries signing as grantors. 20

Also there is sufficient evidence on record that none of Appellant's witnesses was able to give statement that his ancestors were present at the time the alleged pledge took place except Appellant's 6th witness who is also litigating with 2nd Respondent on a portion of the land in dispute. The evidence of this witness I opine is that of an interested party and therefore void of substance. 30

This witness further contradicted his evidence as to the time of which of the predecessors of Appellant the alleged deed of pledge was concluded. It is therefore clear that having found the incredibility of the evidence of Appellant and his 6th witness the Court below came to the decision that the alleged pledge never took place and accordingly disallowed the claim of Appellant.

[sic] Furthermore the evidence of 3rd and 4th witnesses for Appellant does not carry weight as both witnesses admitted in *andwer* to *corss-* examinations that they did not know the Chief who appointed Appellant's predecessor to go to the Abirimoro war. This also confirms the evidence of the Krontihene (Bantamahene) who is the Head Clan Chief of both parties to this suit that the ancestor of Appellant was not deputed by his (witness') ancestor Amankwatia Panin to take part in the Abirimoro war and therefore Appellant's Stool could not have benefited from the booty of a war in which Appellant's ancestors did not take part. 40

If also it were true that Appellant's ancestor took part in Abirimoro war it should have been customary for him to have fought alongside with

his Clan Chiefs Akwaboahene and Barekesehene but not with a Chief of a different Clan that is the Hiahene as evinced by the 1st witness for Appellant.

It is also important to recall that if Appellant fully well knew that the land in dispute were the property of his Stool he (Appellant) should not have remained unconcerned for this land to be included in a Timber Concession by 2nd Respondent on sheer point that he (Appellant) had pledged the land to 1st Respondent and that the land not redeemed from pledge Respondents had the right to use it in any way they care.

10 From the points raised by me in this summing up I am fully satisfied that the Court below gave sound decision on points of facts of both history and usage and with which decision I associate my views that it should not be disturbed.

**MAJORITY JUDGMENT :**

The Appeal is allowed with costs to be taxed and the right is reserved for Plaintiff-Appellant to refund the pledge money of £6 to 1st Respondent in redemption of the land in dispute.

(Sgd.) BOAKYE DANKWA,  
Akyempimhene.  
Member.

20

**MINORITY JUDGMENT :**

The Appeal is dismissed with costs to be taxed in favour of Defendants-Respondents.

(Sgd.) BOAKYE TROMU II,  
Nkwantahene  
President.

W/Witness to Signatures and Mark :

(Sgd.) ENOCH A. KYEREMATEN,  
Registrar.

30

9.12.50.

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*In the  
Asantehene's  
"A" (Native  
Appeal)  
Court.*  
No. 26.  
Judgments,  
9th  
December  
1950.  
(c) Nkwantahene,  
*continued.*

*In the  
Supreme  
Court  
(Land  
Court).*

No. 27.

**REASONS for Grounds of Appeal.**

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

No. 27.  
Reasons for  
Grounds of  
Appeal,  
29th  
December  
1950.

IN THE MATTER of :

Chief KWAME ANTWI ADJEI TWIMAHENE  
substituted by TWIMAHENE ADJEIBI KOJO II  
Plaintiff-Appellant-Respondent

*v.*

1. OPANIN KWADWO BONSIÉ 10
2. ODIKRO KWAKU MANU, all of Nerebehi  
Defendants-Respondents-Appellants.

**APPELLANTS' REASONS FOR GROUNDS OF APPEAL**

*For  
Grounds of  
Appeal see  
p. 92,  
post.*

*Reasons for Ground one explained thus :*

The Judgment was otherwise erroneous and contrary to law.

The Judgment of the Asantehene's " A1 " Court not being unanimous must be set aside, in that, although the 2 other panel members being Chiefs whose respective position dwindle into comparative insignificance to that of the President who is a Paramount Chief gave the view that the Judgment of the Court below not sound and should be set aside, whilst 20 the President of the Asantehene's " A " Court who has a power of Veto to override this erroneous judgment of these lesser Chiefs delivered this sound, fair and equitable judgment in favour of Defendants Respondents now Appellants that there is ample sufficient or overwhelming evidence on the Appeal Record to support the Judgment of the Court of first instance i.e. Asantehene's Divisional " B " Court, and that the said judgment should stand undisturbed.

The question therefore to be considered is not so much a question of a majority and minority judgment but the soundness and the sanity of the President's equitable and sound judgment in favour of Defendants Respon- 30 dents now Appellants must be upheld with costs against the Plaintiff Appellant now Respondent.

*Reasons for Ground 2 explained as follows :*

[sic] Estoppel and *Acquiescence* and etc.

The Asantehene's " A1 " Court misdirected itself in that, it did not take into consideration the documentary evidence Exhibit " C " the Decision of His Honour the Acting Chief Commissioner of Ashanti Mr. J. Philbrick who gave judgment in favour of 2nd Defendant Respondent Appellant's predecessor *Kwesi Dumase v. Kweku Asamoah*, and granted him a declaration of title that the land in dispute is the property of 2nd 40 Defendant Respondent now Appellant's Stool.

While this land litigation was going on in Court Plaintiff was present with his eyes open, knowledge but stood by unconcerned and permitted the 2nd Defendant Respondent Appellant's predecessor—Kwesi Dumase to fight the battle by litigating for the ownership of the land and won it without Plaintiff Appellant Respondent or his predecessor ever thought it wise to apply to the Court for leave to *joine* the suit as Co-Defendant.

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*continued.*

As Co-Defendant or Co-Plaintiff see Plaintiff Appellant Respondent's own 1st, 4th and 6th witnesses' answers to questions by 2nd Defendant Respondent Appellant on the Appeal Record.

10 The Philbrick's Decision Exhibit "C" is therefore binding upon Plaintiff Appellant Respondent, and that, the Asantehene's "A1" Court was wrong to reverse the well reasoned and common sense judgment given in favour of Defendants Respondents now Appellants.

Authority in point: W.A.C.A. Vol. one, *Yode Kwao v. Kwasi Coker* pages 162 to 168, is all fours with this present case and it must be viewed with the same spectacle.

*Reasons for Ground three explained thus:*

20 *Misdirection:* The Asantehene's "A1" Court which reversed the equitable and sound judgment of the Asantehene's Kumasi Divisional Court "B" misdirected itself, in that, it did not take into consideration the evidence of Bantamahene who denied the evidence of Plaintiff Appellant Respondent's evidence as true that Bantamahene appointed his predecessor to go to Abirimoro war. (See Defendants Respondents now Appellants' 1st witness's evidence on Appeal Record).

30 Therefore since the issue for the determination of this case is whose predecessor was appointed by Bantamahene to go to the Abirimoro war, and the Kumasi Divisional Court "B" being a Court of trial having found upon the evidence that Bantamahene did not appoint Respondent's predecessor but rather Appellant's predecessor, there is ample evidence before the Court "B" to justify its finding and that, the finding must be restored with costs in favour of Appellants as against Respondent.

*Reasons for Ground four explained as follows:*

40 *Estoppel:* The Asantehene's "A" Court misdirected itself, in that it did not advise itself the Plaintiff Appellant Respondent's conduct in sleeping over his rights and allowed Defendants Respondents Appellants and their predecessors to set an adverse claim to declaration of title to the land in dispute for upwards of 200 years during the time of Asantehene (Nana Poku Ware) of blessed memory, but in this case the facts are stronger than the foregoing, in that, the land in dispute was acquired by Appellants' predecessor by right of gift through the Abirimoro war which his predecessor took part, with the result that he collected the following: 1. Game Tribute, 2. Fishery Tribute, 3. Snail Tribute, 4. Rubber Tribute, 5. Cocoa Tribute, 6. Timber Concession granted to Concessionaires as grantors without any opposition from Plaintiff Appellant Respondent herein as opposers and duly allocated or apportioned or assigned a portion of the land to Akwamuhene 2nd witness for Appellant and Bantamahene's wife

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as gift with the Plaintiff Appellant Respondent's eyes open, knowledge and acquiescence. How could the Asantehene's "A1" Court reconcile these irresistible facts which were not rebutted and yet gave judgment for Plaintiff Appellant Respondent herein.

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The Judgment of the Asantehene's "A" Court must be set aside to restore the Judgment of the Asantehene's Kumasi Divisional Court "B" based upon findings of fact—As it is certainly not the function of the Appeal Court to interfere with the findings of a Judge upon a question of fact when there is reasonable evidence to support it, the onus being on the Appellant to make out satisfactory that he was wrong. 10

*Reasons for Ground five explained thus :*

*Judgment against the weight of evidence :* The Asantehene's "A1" Court misdirected itself and did not take into consideration the unsupported and uncorroborated evidence adduced by Plaintiff Appellant Respondent and his 3rd, 4th and 5th witnesses that they do not know who appointed Plaintiff-Appellant Respondent's predecessor to go to Abirimoro war nor the land in dispute is held as a pledge by Defendants Respondents Appellants. (See Plaintiff Appellant Respondent's own 3rd, 4th and 5th witnesses' answers to questions by 2nd Defendant Respondent Appellant on Appeal Record). 20

The Judgment of the Asantehene's "A" Court as against the weight of evidence should be reversed to restore the Judgment of the Court of first instance accordingly with costs in favour of Defendants Respondents Appellants as against Plaintiff Appellant Respondent.

*Reasons for Ground six explained as follows :*

*Improper reception and improper rejection of evidence :* The Asantehene's "A" Court was wrong in finding for Plaintiff Appellant Respondent as follows :—

[sic]

\* \* \* \* \*

"It therefore follows *reasing* that Respondents' ancestors "became the Gyase people of the Krontihene (Bantamahene) 30  
"some hundred years after the Abirimoro campaign and  
"2nd Respondent's main contention that his Ancestor acquired  
"the title of ownership of the land in dispute by right of taking  
"part in the Abirimoro campaign is Historical anachronism which  
"alone by itself is sufficient to vitiate any claim of ownership of  
"the land in dispute by 2nd Respondent.

\* \* \* \* \*

"That Respondent's ancestors settled in Kumasi during the  
"reign of Asantehene Nana Kuawia when all Kumasi lands were  
"known to have been apportioned already to caretakers for the  
"Golden Stool the final point evolves itself that the land in dispute 40  
"could have passed into alien hands by a deed of gift or pledge or  
"outright sale."

These views expressed by the Akyempimhene in his summing up and judgment are not supported by any evidence adduced by Plaintiff Respondent or any of his witnesses, the said judgment based outside the evidence on Record should be set aside to restore the Judgment of Kumasi Divisional Court "B" based upon findings of fact and the law.

*Reasons for Ground seven explained thus :*

*The Asantehene's "A1" Court came to wrong conclusion upon evidence : The Asantehene's "A1" Court drew erroneous conclusion upon evidence in finding for Plaintiff Respondent as follows :—*

*In the Supreme Court (Land Court).*

\* \* \* \* \*

“ The Asantehene ordered a force to return to Kumasi to drive out the invader and the Krontihene (Bantamahene) detailed the Akwaboahene and the Akyempimhene also detailed the Hiahene. The Atwimahene also together with the Agogohene went to the war.”

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Reasons for Grounds of Appeal, 29th December 1950, continued.

10 That from the above extract, a question arises as to which Chief appointed Plaintiff Appellant Respondent's predecessor (Twimahene) to go to Abirimoro war? If Ankobiahene has been able to explain in his summing up and judgment that Bantamahene appointed Akwaboahene and Akyempimhene also appointed Hiahene, then, who appointed Twimahene (Respondent) to justify him to deliver judgment for Respondent that his ancestors took part in the Abirimoro war, having regard to the fact that Bantamahene has given evidence to say that his predecessor did not appoint Respondent's predecessor to go to Abirimoro war (see Appellant's 1st witness's evidence on Appeal Record).

20 The Judgment of the Asantehene's "A1" Court based upon misconception, improper reception and improper rejection of evidence, renders the said Judgment absolutely wrong and erroneous and should be reversed to restore the Judgment of Kumasi Divisional "B" Court based upon findings of fact and the law.

In view of the foregoing submissions, Appellants' Appeal should be allowed upon all the grounds accordingly with costs in favour of Defendants Respondents Appellants as against the Plaintiff Appellant Respondent on the face of law and in the paramount interest of Justice.

Dated at Kumasi this 29th day of December, 1950.

30	W/W to mark : (Sgd.) ? Lic. No. 27505/50/Ksi. Menhyia-Kumasi. Fee 6/- Orig. & Copies.	ODIKRO KWEKU MANU, 2nd Defendant-Respondent- Appellant for and on behalf of 1st Defendant-Respondent- Appellant.	His X mark.
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To the Registrar, Land Court, Kumasi  
and

To Chief Adjeibi Kojo II Twimahene  
(Plaintiff-Appellant-Respondent)

40 now at Bantama-Kumasi.





*In the  
Supreme  
Court  
(Land  
Court).*

No. 28.  
Grounds  
of Appeal,  
1st  
February  
1951.

**No. 28.**

**GROUND OF APPEAL.**

1. The Decision on the case turned primarily on questions of fact and the well reasoned Judgment of the trial Court should have been upheld by the majority members of the Appeal Court as it was upheld by the President of the said Appeal Court.

2. The trial Court properly discredited the story of the pledge of the land which the Plaintiff put forward to account for the Defendants' occupation of the land in dispute—And the Appeal Court that did not have the advantage of hearing the evidence first hand, should not have disturbed 10 the finding of fact of the trial Court.

3. The Plaintiff did not sufficiently discharge the burden of satisfactorily accounting for the long occupation of the Defendants of the disputed area and the free exercise of acts of ownership over it to the knowledge of the Plaintiff without objection And the trial Court's decision against the said Plaintiff should not have been disturbed.

[sic] 4. The evidence was overwhelmingly in favour of the Defendants as against the Plaintiff And the Decision of the trial Court in favour of the said Defendants was wrongly set aside by the majority members of the Appeal Court, wherefore the said decision of the trial—should be 20 restored.

Dated at Azinyo Chambers, Accra, this 1st February, 1951.

(Sgd.) K. ADUMUA-BOSSMAN,  
Solicitor for Defendants-Respondents-Appellants.

To the Registrar, Land Court, Kumasi  
and  
To the above-named Plaintiff, Chief Adjeibi Koji II, Atwimahene.

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Reply to  
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**No. 29.**

**REPLY to Reasons for Grounds of Appeal.**

**REPLY TO APPELLANTS' GROUND OF APPEAL.**

30

1. There is not an iota of truth in the Appellants' Ground 1 to the effect that the Judgment of Asantehene's " A1 " Court was erroneous and contrary to Law. The soundness of the Judgment delivered by the Asantehene's " A1 " Court cannot be gainsaid as the hopelessness of the Defendants Respondents Appellants' case is glaring on record. The Appellants are contending in their ground 1 that because the President of

the Asantehene's "A1" Court did not associate himself with the views expressed by the two other members of the Court and therefore the Judgment of that Court was erroneous. This contention of the Appellants is no doubt vague and fantastic for the President has no power of VETO as alleged by the Appellants to override the same views expressed by the majority of the Court Panel. The mere fact that the President (Nkwantahene) did not share the views expressed by the majority of the Court Panel does not mean that the Judgment of the Court below is wrong since the Judgment was based upon majority views which were in  
 10 favour of the Plaintiff Appellant Respondent herein. Appellants' Ground 1 is without substance and must not be countenanced.

2. Appellants in their Ground 2 contended feverishly that the Respondent is estopped by Exhibit "C" (the decision of Mr. J. Philbrick in *re Kwesi Dumase v. Kweku Asamoah*) to lay claim to the disputed land. This contention of the Appellants does not stand in view of the fact that neither the Respondent nor 1st Appellant and/or any of their predecessors connected with the claim in Exhibit "C" as Co-Defendants and further-  
 20 more, no where in Exhibit "C" was any reference made to the land in dispute, i.e., the Bonkwaso land as the subject matter of the claim for damages. The contents of Exhibit "C" cannot be construed to be binding on the Respondent and to constitute an estoppel to his (Respondent's) claim. Appellants' contention based on Exhibit "C" therefore fails *in toto*.

3. Appellants argued in their Ground 3 that the Court below did not take into consideration the evidence of their principal witness—Bantamahene. The Respondent's reply to this ground is that, the Court below was completely justified in not taking into consideration the evidence of the Bantamahene. The fact that the Bantamahene is an interested party in the suit is clearly indicated by his admission in answer to cross-  
 30 examination by Respondent (page 45 of the Record) that 2nd Defendant served him (witness) with the land in dispute and that all valuables derived from it were sent to him (witness) and this is supported by witness' conduct in signing Exhibit "A" as a grantor in a Deed of Concession in which the land in dispute is included *vide* pages 113–114 of the Record of Appeal. The Bantamahene's evidence is no doubt inadmissible and invalid and that the Court below was justified in rejecting it and deciding in favour of the Respondent according to weight of evidence on Record.

4. Appellants' Ground 4 does not stand as in Native Mortgages, a pledge of land if proved is redeemable at any time notwithstanding the  
 40 lapse of time that such property had been in the hands of the pledgee. Facts are stubborn on record that the Respondent is the original owner of the disputed land and there are overwhelming facts also on record that the Respondent's ancestor merely pledged the disputed land to 1st Defendant Respondent Appellant's ancestor Kwabena Tenteng for a loan of £6. Being a native pledge, right is reserved with the Respondent by native customary law to recover possession of the disputed land on payment of the pledge money of £6 to 1st Defendant Respondent Appellant. The mere fact that the Appellants had been in undisturbed possession of the land for many years when the Respondent had not been able to redeem

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the land upon payment of the pledge money cannot be a criterion that the Respondent cannot recover it now. Appellants' argument in their ground does not therefore carry weight and it is submitted that this Honourable Court may not waste its precious time to dispose of it as being without substance.

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5. It is significant to note from the Record of Appeal that all the parties base their claim as to the acquisition of the disputed land on *Historical Facts* and so it is for the Court to examine the evidence on Record as to which of the Parties has a better claim on *Historical Facts*.

In scrutinizing the evidence on Record, it is palpably clear and 10  
manifest that the evidence on Historical Facts is overwhelmingly in  
favour of the Plaintiff Appellant Respondent herein. The Plaintiff  
Appellant Respondent's genuine story as to the acquisition of the disputed  
land is briefly that his ancestor Nana Frempong Ameyaw took part in  
the war waged against Abrimore and that after the defeat of this invader,  
the Asantehene rewarded him and the other Chiefs who took part in that  
war with the extent of land on which each Chief fought and pursued the  
enemy. The 1st Defendant does not claim ownership of the land in  
dispute but alleges that the land was given to his ancestor by the 2nd  
Defendant's ancestor as Caretaker. The 2nd Defendant Respondent 20  
Appellant also maintains that he acquired the disputed land through his  
participation in the same Abrimoro war, so that the evidence of the Chiefs  
who took part in the Abrimoro campaign must be the deciding factor  
on which a sound and impartial Judgment could be based. It is evident  
on record that all the Chiefs who took part in the Abrimoro war gave  
evidence for the Plaintiff Appellant Respondent to the effect that his  
ancestor took part in the Abrimoro war and was rewarded with the disputed  
land. The evidence of Respondent's 1st witness—Hiahene who was the  
Captain (Sahene) in that Abrimoro war supports the Respondent's case  
creditably as to his (Respondent's) ownership of the disputed land *vide* 30  
pages 11–13 of the Record of Appeal. The Hiahene who was the Captain  
in that war made it abundantly clear that the Appellants' ancestors did  
not take part in that war and did not therefore get any land. This  
evidence of the Hiahene was supported by the Akwaboahene (Respondent's)  
2nd witness who was Bantamahene's Deputy in that war (*vide* pages 17–20  
of the Record). If the Akwaboahene who was Bantamahene's Deputy  
in that war has given evidence for the Respondent that the Appellants  
did not take part in the Abrimoro war, then the position is made clear  
that the Appellants are fighting a losing battle in this litigation.  
Respondents 3rd and 4th witnesses (Beseasehene and Kunsu Dikro) 40  
who also took part in the Abrimoro war supported the evidence of Hiahene  
and Akwaboahene (Respondent's 1st and 2nd witnesses) and made the  
position clear that it was the Respondent's ancestor who took part in the  
Abrimoro war and had this disputed land and that Appellants' ancestors  
did not take part in that war at all to warrant them to get this disputed  
land.

6. Regarding the pledge of the disputed land by the Respondent's  
ancestor to the 1st Appellant's ancestor the evidence of Respondent's  
[sic] 5th and 6th witnesses *who* ancestors were eye-witnesses to the deal has

corroboratively supported the Respondent's case and cleared the ambiguity in the matter to the effect that the Respondent's ancestor merely pledged the disputed land to the 1st Appellant's ancestor *vide* pages 27-33 of the Record of Appeal. So that the Respondent has appreciably proved his case beyond every reasonable doubt and that the Court below was justified in reversing the bogus decision of the Court of first instance which was not in accord with the weight of evidence on record. Another fact that supports the Respondent's original title of the land is that, the Respondent has two fishing pools on the land occupied by the Appellants which fact is not denied by the Appellants and which goes to support the Respondent's case that the Appellants had not then been to Kumasi from Essumenja when the Abrimoro war was fought. The Asantehene's "A1" Court gave a sound and well-considered judgment in the case and that such decision must be upheld in the interest of justice.

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7. The hopelessness and futility of Appellants' case is unveiled in the undisputed fact that all the three witnesses they called did not take part in the Abrimoro Campaign and therefore their evidence was invalid and inadmissible. If the acquisition of the disputed land is based on Historical facts and the Appellants' witnesses did not take part in that war, then what use do the Appellants get of their evidence. Facts are stubborn on record that the Respondent is the original owner of the disputed land and that it was merely pledged to the 1st Appellant's ancestor for a loan of £6. Respondent is backed by the native customary law to recover possession of the disputed land upon payment of the pledged amount of £6 irrespective of the duration of time that the Appellants had been in possession of same. The Asantehene's "A1" Court therefore gave a very good decision in the matter compatible with native law and custom and must be upheld in the interest of Justice and Appellants' appeal dismissed for lack of substance.

30 Dated at Kumasi, this 6th day of February, 1951.

(Sgd.) AGYEIBI KOJO II  
Twimahene

Plaintiff-Appellant-Respondent, herein.

The Registrar,  
Land Court, Kumasi  
And copies for service on  
The Appellants herein at Nerebehi.

W/W to signature

(Sgd.) ? APPIAH

40 Lic. No. 28854/51/Ksi.  
Manhyia, Kumasi.

Fee 20/- for original & copies.

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18.5.51.

No. 30.  
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Arguments,  
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IN THE SUPREME COURT OF THE GOLD COAST, Ashanti. At the Land Court held at Kumasi on Friday the 18th day of May, 1951, before His Honour Mr. Justice H. M. WINDSOR-AUBREY.

L.C.A. 76/50.

Chief K. ANTWI ADJEI ETC. . . . Plaintiff-Appellant-Respondent

v.

10

1. OPANIN KWADWO BONSIÉ,  
2. ODIKRO KWAKU MANUH . . . Defendants-Respondents-Appellants

Bossman leading Attoh for Appellants.

Asafu-Adjaye leading Siriboe for Respondent.

*Bossman for Appellants :*

[sic] Judgment pp. 55-57 discredited Plaintiff's story that he *hand* taken part in the Abrimoro war and that he had pledged it for £6. Page 57 gives cogent reasons for judgment. It is an admitted fact that Respondent is member of Bantamahene Clan and would fight at side of Bantamahene. 20

Appellants called Bantamahene who supported them, although clearly a witness who should have been called by Respondent.

As regards pledge—Failure to redeem a small pledge of £6 is incredible. Also failure to report pledge to such successor of pledgee is incredible. Refers page 11 of record where Respondent admits he had ample funds to redeem. Respondent would never have raised loan from a man such as Kwabena Tenteng who is merely a huntsman. He would borrow money from a chief of equivalent rank. Refers Respondent's evidence pp. 6-7. Respondents says he does not know 2nd Appellant at all yet it was 2nd Appellant who was exercising acts of ownership. 30

Evidence of pledge is shocking and uncertain. There is material discrepancy between Respondent's evidence and that of his witness Kwabena Anane. (p. 33 of record—re-examination by Respondent).

[sic] Respondent's 5th witness was held by Court to be "shaky" in statement. Page 27 of record—note. This witness was successor of messenger for loan. Loan was made 45 years after war, i.e., about 1780 (p. 10 of record.)

Some of land in dispute was granted to Bantamahene's brother chief Akwamuhene and also to Bantamahene's wives without protest by Respondent (Judgment p. 86 of record). Evidence in support at p. 35 of record—corroborated also by Bantamahene and by Akwamuhene (pages 42 and 46 of record). 40

Boundary owners evidence supported the Appellants. Buakye Adade II called by Respondent admits in cross-examination that his predecessor had testified that part of the land now *is* dispute belonged to 2nd Appellant (pages 13 and 14 of record. Also refers to Exhibit " C " (page 114 of record) Plaintiff therein was 2nd Appellant's predecessor.

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Generally—Essentially the case is one of fact.

Overwhelming evidence if believed to support Appellants.

The Appellate Court reversed these proceedings on improper grounds.

Analysis Judgment of Ankobiahene.

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10 Court relies on reasons for setting aside judgment never relied on by Respondent (last paragraph of Judgment page 81).

Appellate Court no right to disturb finding of fact because of preponderance of witnesses.

(Sgd.) H. M. WINDSOR-AUBREY,  
J.

19.5.51.

*Bossman continues arguments for Appellants :*

On preponderance of evidence cites *Doybega v. Binbiloe*—W.A.C.A. unreported—2nd June 1949, page 44 of cyclostyled judgments March—  
20 June 1949.

As regards last paragraph of judgment onus was *in* present Respondent in view of fact that present Appellants were in possession. [sic]

In this judgment the Ankobiahene has failed to consider properly the undisputed acts of ownership by Appellants.

Judgment also ignores evidence of predecessor in title of 1st witness for Respondent (*vide* Exhibit " C ").

2nd Majority Judgment of " A2 " Court.

As to jurisdiction re tradition. Tradition is of value but regard must be had to such facts as are manifestly inconsistent with that tradition—  
30 cites judgments of Privy Council 1874–1928. *Omanhene Kweku Dua III v. Omanhene Kwamin Tandoh*, page 139, 2nd paragraph of headnote. Respondent admitted none of his subjects were on the land in dispute, p. 78. Also refers Griffith Digest Volume 184–185.

2nd member bases his views entirely on traditional evidence.

Refers pages 82–85 of judgment. The argument is illogical because it is common ground the Bantamahene sent someone. The issue was did he send Respondent or Appellant.

As to custom *re* pledge—President of Court disagreed with 2nd member. 1st member makes no pronouncement. Where members of Appeal Court  
40 differ on custom the unanimous decision of trial court should be accepted.

Paragraph 2 of p. is a misconception of the evidence. Refers also to evidence of 2nd Appellant pages 34–41 of record.

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Refers paragraph 2 of 2nd member's judgment p. . It is incorrect to say present Respondent's evidence was *undefied*. 2nd Appellant denied allegation pp. 35-41 of record. Bantamahene Appellant's 1st witness corroborated Appellant (pp. 41-45) and 2nd witness pp. 46-49; 3rd witness at pp. 49-51 and 1st Appellant pp. 52-55.

Minority Judgment of President.

A sound reasoned judgment. 1st paragraph of judgment.

Analysis judgment—particularly rights of ownership.

The fundamental error of majority members of Appellate Court is that they placed themselves in position of trial Judges. 10

On Appellate Court function.

*Hontestroom (owners) v. Sagaporack (Owners) 1927 A.C., p. 37.*

(Sgd.) H. M. WINDSOR-AUBREY,  
J.

21. 5. 51.

*Asafu-Adjaye for Respondent :*

Accepted fact those who take part in war are given land they occupied during the war.

Main issue is who took part in Abirimoro war. Refers pp. 58-59, 64-71 of record. Present Respondent's grounds when appealing to "A2" Court. 20  
These are still my grounds.

If 2nd Appellant deputed to fight did he actually fight. Refers p. 34 of record. 2nd Appellant's evidence. 2nd Appellant admits he never actually fought. Refers p. 37 to fact the Konsu Dikro knows all about war. Refers p. 45 of record—Kwaku Gyawu.

Turns to admissions.

Admitted Hiahene, Akwaboahene and Bisiasia were at war. Their evidence essential to determine who actually fought. "A1's" judgment is based on their evidence. They made it clear 2nd Appellant did not take part in war. Hiahene deputed Respondent's ancestor to go with him 30  
(p. 11 of record). Court "B" ignored this evidence and accepted Bantamahene's evidence. Bantamahene is an interested party. 2nd Appellant is Bantamahene's Gyasi. Bantamahene has interest in his Gyasis land. The Respondent's ancestor (Atwimahene) fought (p. 11 of record). Captain states 2nd Appellant's ancestors did not fight at all—this is the evidence of Captain of the war.

Consider Akwaboahene's evidence—the man deputed by the Bantamahene (p. 17 of record) (p. of record refers evidence of Aboagye Asare) (p. 20 of record).

Analysis judgment Court "A." Ankobiahene's judgment. Last 40  
paragraph p. 80. Reference is made to fishery rights reserved to Respondent—evidence in support p. 35. Appellants never took part in war.

Akyempimhene's judgment. Respondent took part in fight—  
2nd Appellant did not. Why should 2nd Appellant be rewarded and not  
Respondent—illogical.

Four independent witnesses support Respondent. Respondent's  
witnesses are not his overlords or in any way connected with him.

Last paragraph p. 82 and first part p. 83 is sound and logical.

2nd paragraph p. 83 records correctly that Bantamahene is an  
interested party. 2nd witness for 2nd Appellant is also interested party in  
Appellant winning.

10 Pledge is a subsidiary matter. If Appellant never fought in war  
he would never have been gifted the land.

There was, however evidence of the pledge—5th and 6th witnesses for  
Respondent.

Court must accept minority view of " A1 " Court on Native Law.

Court " B " drew inferences. It corroborated the impartial nature  
of Respondent's witnesses, and the admission of the 2nd Appellant and his  
witnesses.

Cites *Brantuo v. Poku* 4 W.A.C.A. p. 210.

Discusses Exhibit " C."

- 20 (1) It was no admission by Respondent or his predecessor.  
(2) It is not established it is the same land.  
(3) It is only part of the land.  
(4) Hiahene's predecessor was not giving evidence on issue  
before this Court.  
(5) If land pledged the Hiahene's predecessor would refer to  
pledgee as man with whom he formed boundary finally.

It is admitted fact the Respondent took part in war.

If Appellants believed it means that contrary to custom the  
Respondent has had no reward for fighting. It means also that  
30 2nd Appellant who was merely ready to fight has been rewarded.  
2nd Appellant never called any one who actually took part in the war.

*Bossman in reply.*

Respondent's main point is that it is settled native law that unless  
you actually fight you get no reward.

Evidence does not bear this out. Refers page 12 of record. Principal  
witness for Respondent. The Oyokohene never fought but was rewarded.  
The Obaapanin got land for praying " Memome."

Also evidence that persons who did not even take part in the relief  
force were given land (p. 48 of record).

40 Alleged participants in war are merely successors of participants and  
the most important is the Hiahene whose predecessor's evidence is most  
important. He must know to whom the land to Supong Stream belongs.

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The land was in Respondent's case only pledged to caretaker. We did call the successor of a witness who went to war, namely the 1st Appellant, Akwamahene page 46 an important witness occupying part of the land rewarded (2nd Appellant without protest). Also refers p. 78 of record—land given without protest by Respondent. Respondent allowed Appellant to litigate in respect of land (p. 78 and p. 13).

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We dispute that Respondent went to the war at all. Bantamahene denied Respondent went to the war. Akyempimhene based his whole judgment on following that Bantamahene took part in war. Common ground Bantamahene was deputed. 10

Case purely question of fact. Independent evidence, supports Appellants' case.

Hiahene admits litigation referred to in Exhibit " C " referred to land now in dispute (p. 13 of record).

Trial Court properly assessed value of Exhibit " C."

This evidence of utmost significance to Appellants' case.

Plaintiff's witness Bisiasi supports our case, page 21 of the record—although Respondent's witness he has never heard of alleged pledge, and said he had boundaries with Appellants.

C. A. V.

20

(Sgd.) H. M. WINDSOR-AUBREY,  
J.

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No. 31.  
JUDGMENT.

*In the  
Supreme  
Court  
(Land  
Court).*

IN THE SUPREME COURT OF THE GOLD COAST, Ashanti. At the Land Court held at Kumasi on Thursday the 15th day of November, 1951, before His Honour Mr. Justice WINDSOR-AUBREY.

No. 31.  
Judgment,  
15th  
November  
1951.

L.C.A. 76/1950.

Chief KWAME ANTWI ADJEI TWIMAHENE  
substituted by TWIMANHENE ADJEIBI KOJO II  
Plaintiff-Appellant-Respondent

10

v.

1. OPANIN KWADWO BONSIÉ
2. ODIKRO KWAKU MANU, all of Nerebehi  
Defendants-Respondents-Appellants.

JUDGMENT :

In this case judgment was given for the Appellants by the " B " Court, but on appeal to the Asantehene's " A " Court by majority judgments the decision of the " B " Court was reversed and judgment given for the present Respondent.

2. This appeal undoubtedly raises some point of law but substantially  
20 the issues in the case were issues of fact.

3. Decisions on fact cannot be lightly reversed on appeal and the President of the " A " Court in his minority judgment rightly directed his mind to this point and I set out verbatim a passage from his judgment.

30 " I need not over-emphasise the fact that the members of the Court of first instance had the opportunity of hearing the evidence of the witnesses for both parties and watching their demeanour and they (Court members) were in a better position to believe or disbelieve the respective evidences. Being satisfied with the truth in the statements of Defendants-Respondents and their witnesses did arrive at a conclusion of finding of facts by disallowing the claim of Plaintiff Appellant. Judgment therefore having been given on points of fact by the Court below I am of the opinion that this Appellate Court should not interfere with it."

Counsel for the Appellants has strongly stressed that the issues in this case are questions of fact and has cited the case of *Hontestroom v. Sagaporack* 1927 Appeal Cases page 37 at page 47.

The relevant passage reads as follows :—

40 " What then is the real effect on the hearing in a Court of Appeal of the fact that the trial Judge saw and heard the witnesses ? I think it has been somewhat lost sight of. Of course, there is jurisdiction to retry the case . . . Nonetheless not to have seen the witnesses puts appellate judges in a permanent position of disadvantage as against the trial judge, and, unless, it can be shown that he had failed to use or has palpably misused his advantage,

*In the  
Supreme  
Court  
(Land  
Court).*

No. 31.  
Judgment,  
15th  
November  
1951,  
*continued.*

the higher Court ought not to take the responsibility of reversing conclusions so arrived at, merely on the result of their own comparisons and criticisms of the witnesses and of their own view of the probabilities of the case. The course of the trial and the whole substance of the judgment must be looked at, and the matter does not depend on the question whether a witness has been cross-examined to credit or has been pronounced by the judge in terms to be unworthy of it. If his estimate of the man forms any substantial part of his reasons for his judgment the trial Judge's conclusions of fact should, as I understand the decision, be let alone . . . We must, in order to reverse not merely entertain doubts whether the decision below is right, but be convinced that it is wrong" . . . "The Court will not depart from the rule it has laid down that it will not overrule the decision of the Court below on a question of fact in which the Judge has had the advantage of seeing the witnesses and observing their demeanour, unless, they find some governing fact which in relation to others has created a wrong impression."

The following passages from certain decisions of the Privy Council cited in the case of *A. Kwesi Brantuo v. A. Kwabena Poku*, 4 W.A.C.A. 20 p. 210 at page 214, are particularly apt notwithstanding that a majority of the Court upheld a decision of the Chief Commissioner who had reversed a decision of a native tribunal on fact.

The passage in question reads as follows :—

"In *Abaka Ntah versus Anguah Bennieh* Lord Atkin said :  
"By colonial legislation all suits relating to the ownership of land held under native tenure are placed within the exclusive original jurisdiction of native tribunals, unless satisfactory reason to the contrary is shown. It appears to their Lordships that decisions of the native tribunal on such matters which are peculiarly within their knowledge, arrived at after a fair hearing on relevant evidence, should not be disturbed without very clear proof that they are wrong, and their Lordships fail to find such proof in the present case."

and in *Kisiedu and others v. Dompreeh and others* (Privy Council Appeal No. 59 of 1936 (reported at 2 W.A.C.A. page 281) Lord Russell of Killowen said :—

"No doubt an appeal in a case by a Judge alone is not governed by the same rules which apply to an appeal after a trial and verdict by a jury. It is a rehearing. Nevertheless before an appellate Court can properly reverse a finding of fact by a trial Judge who has seen and heard the witnesses and can best judge not merely of their intention and desire to speak the truth but of their accuracy in fact, it must come to an affirmative conclusion that the finding is wrong. There is a presumption in favour of its correctness which must be displaced. As Lord Esher, M.R., said in *Colonial Securities Trust Co. v. Massey* (1896) 1 Q.B. 38 :—  
"where a case tried by a Judge without a jury comes to the Court of Appeal, the presumption is that the decision of the Court

“ ‘ below on facts was right, and that presumption must be displaced  
 “ ‘ by the Appellant.’ Their Lordships must, they think, apply the  
 “ same test and ask themselves whether in their opinion the pre-  
 “ sumption in favour of the findings of the trial Judge has been  
 “ displaced : and they feel bound to answer this question in the  
 “ negative.”

*In the  
 Supreme  
 Court  
 (Land  
 Court).*

No. 31.  
 Judgment,  
 15th  
 November  
 1951,  
*continued.*

The facts having been fully set out in the judgments of the lower  
 Courts it is not necessary to re-capitulate them in detail, and it suffices to  
 say that the 2nd Appellant and the 1st Appellant as his caretaker, and the  
 10 Respondent claim that the land in dispute was awarded to them respectively  
 by the Asantehene as a reward for their services in the Abrimoro war.  
 The 1st Appellant has been in actual occupation for a great many years  
 and the Respondent alleges that he has been so doing in consequence of  
 an oral pledge of the land by his ancestors to Kwabena Tenteng the  
 predecessor in title of the 1st Appellant. This alleged pledge was for the  
 modest sum of £6 and was made according to the Respondent's own  
 admission about 80 years ago.

In support of his case the Respondent called the descendants of  
 several of the leaders in the Abrimoro war, and his Counsel strongly urges  
 20 that if anyone knows the traditional history of the war and the awards made  
 thereafter these are the persons. He also stresses the independent nature  
 of their evidence and that the “B” Court attached too much weight to  
 Exhibit “C” (the proceedings in the Chief Commissioner's Court) and  
 came to a wrong decision on the Native Customary Law as to the appro-  
 priate action to be taken on the death of a pledge of land.

Undoubtedly the evidence of the descendants of the leaders of the  
 war is very cogent evidence but it must also be weighed against the other  
 evidence. As to Exhibit “C” and the customary law relating to pledges  
 I will comment further thereon subsequently.

30 Counsel for the Appellants stresses that the Respondent failed to  
 call the Bantamahene, who was in fact called by the Appellants. Although  
 the Bantamahene took no active part in the Abrimoro war it is in my  
 opinion established beyond reasonable doubt that the direction of the  
 war was largely in his hands, and he above all others, should know who  
 were selected to lead the armies.

Appellants' Counsel also argues that the minority members of the  
 “A” Court misdirected themselves on the effect of the Bantamahene's  
 evidence in *hold* that it was valueless because the Bantamahene himself [sic]  
 took no part in the war. On the other hand the Respondent's Counsel  
 40 suggests the possibility that the Bantamahene is not an impartial witness  
 and has given some grounds, although not altogether convincing, to  
 support this alleged bias.

Considering the case as a whole the main issues were question of  
 fact, and as the Respondent's Counsel points out the issue as to the pledge  
 of the land is a subsidiary matter. The main issue is whether the land  
 was gifted to the Respondent or the 2nd Appellant. It was fundamentally  
 a case in which the demeanour and credibility of the witnesses was of the  
 utmost importance. To a lesser extent the surrounding circumstances

*In the  
Supreme  
Court  
(Land  
Court).*

and the inherent probabilities were material in deciding these issues of fact although in reaching its conclusions both Courts took into consideration certain points of law.

[sic] No. 31.  
Judgment,  
15th  
November  
1951,  
*continued.*

Reverting again to the evidence in this case, I do not propose to analyse it in detail but only to refer to some of the more important. It seems clear from Exhibit "C" that the Hiahene has formerly given evidence in conflict with his evidence in this case. Exhibit "C" to my mind raises no question of *res judicata* but it does tend to show that the Hiahene, an important witness for the Respondent is unreliable. Further, the grants of parts of the land in dispute to various persons without reference to or protest by the Respondent are circumstantial evidence, against the Respondent, as he has offered no convincing explanation of his inactivity. I do not attach any importance to the timber concession either for or against any of the parties because it is apparently witnessed by Kwame Antwi-Adjaye *was* is presumably, judging from page 5 of the record, the predecessor of the Respondent. As to the view taken by the Akyimpimhene concerning the Bantamahene's evidence I agree with Counsel for the Appellants that he misdirected himself in his reasons for rejecting this evidence because as Appellants' Counsel says it is common ground that the Bantamahene sent some one to the war and the issue was did he send the Appellant or the Respondent ?

[sic] On the question of pledge the opinion of the "B" Court as to customary procedure would seem to me to have at least the merit of common-sense. If the pledgor of the land does not inform the successors of a pledgee in possession that he is entitled to redeem it is almost inevitable that after a lapse of years the pledgee's family will conclude that they own it, and long interrupted possession is strong evidence of title.

Concerning this custom there was some conflict in the two lower Courts. The "B" Court held that the pledgor should report to the pledgee on the death of the latter and this opinion was confirmed by the President of the "A" Court in his minority judgment. Of the other two members one expressed an opinion to a different effect and the other expressed no opinion either way.

Under these circumstances, in my opinion, the ruling of the "B" Court stands.

The Respondent admits that the pledge was never reported to the pledgee's successors, and in view of the small sum involved and the substantial value of the land in dispute it is almost inexplicable that the land was not redeemed long ago.

[sic] I consider that the "B" Court came to a sound opinion in rejecting the story of the pledge and having reached that decision it follows that the Respondent's evidence is not worthy—credence.

I have remarked that the Akyimpimhene also misdirected himself on the Bantamahene's evidence. He, therefore, reversed the decision of the "B" Court on unsound grounds. Of the remaining two judgments of the "A" Court, the other majority member has written a brief judgment

which does not *analyse* the issues fully while the minority member has written a well-reasoned and carefully considered judgment supporting the judgment of the " B " Court which is itself a well-considered judgment.

*In the [sic] Supreme Court (Land Court).*

I have already set out the principles on which decisions of fact can be reversed. The judgment of the Court of first instance on fact is *prima facie* presumed to be correct, and in order to reverse it I must be satisfied that it is manifestly wrong. Far from being satisfied that the " B " Court's judgment is wrong, I feel that although there was substantial evidence in support of the Respondent the balance of probabilities was in favour of the Appellants, under such circumstances the " A " Court, particularly as the Akyimpimhene reversed the decision on unsound grounds, was not justified in disturbing the decision of the " B " Court.

No. 31. Judgment, 15th November 1951. *continued.*

The appeal is therefore allowed and the judgment of the " B " Court restored. The Appellants are awarded costs in this Court and the Courts below. In this Court Counsel's fee is assessed at forty guineas, other costs to be taxed.

(Sgd.) H. M. WINDSOR-AUBREY,  
Puisne Judge.

**No. 32.**

**NOTICE and Grounds of Appeal.**

*In the West African Court of Appeal.*

20

IN THE WEST AFRICAN COURT OF APPEAL (GOLD COAST SESSION) Accra.

L.C.A. 76/1950.

No. 32. Notice and Grounds of Appeal, 11th December 1951.

Chief KWAME ANTWI ADJEI  
TWIMAHENE substituted  
TWIMAHENE ADJEIBI KOJO II

Plaintiff-Appellant  
Respondent-Appellant

*v.*

30

OPANIN KWADWO BONSI  
ODIKRO KWAKU MANUH all of  
Nerebehi . . . . .

Defendants-Respondents-  
Appellants-Respondents.

NOTICE OF APPEAL (RULE 12) WEST AFRICAN COURT OF APPEAL  
RULES, 1950.

TAKE NOTICE that the Plaintiff-Appellant being dissatisfied with the whole Judgment of the Appellate Court Kumasi, contained in the Judgment of His Honour Mr. Justice H. M. Windsor Aubrey, dated the 15th day of November, 1951 as stated in paragraph Two (2) 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.

*In the  
West  
African  
Court of  
Appeal.*

No. 32.  
Notice and  
Grounds  
of Appeal,  
11th  
December  
1951,  
*continued.*

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

(2) The whole of the Judgment of 15th day of November, 1951.

(3) GROUNDS OF APPEAL :

1. *Judgment against the weight of evidence.*

The issue before the Court was as to how each party came into original possession of the land in dispute.

According to both parties, the land was a gift by the Asantehene in recognition of the party's services during the Abrimoro war.

To determine this issue, it is essential to weigh the evidence 10 as to those who took part in the said Abrimoro war. This evidence wholly supports present Appellant's case and it is submitted that the Learned Judge erred in not giving effect to the weighty evidence on this point.

2. The Learned Appellate Judge misdirected himself on the Native Customary Law as regards pledges; pledges according to Native Customary Law being redeemable at any time and there being no law of prescription under Native Custom.

The case of *Agbo Kofi v. Addo Kofi* reported in West African Court of Appeal Judgments Volume (1) one, page 284 is in point 20 where a piece of land was pledged for 6/6 but was subsequently redeemed about Sixty (60) or more years later.

3. The Learned Judge was wrong in holding that on the issue of gift the case was fundamentally one in which the demeanour and credibility of the witnesses was of the utmost importance.

The witnesses to this gift are successors of original persons who witnessed this gift. This evidence was traditional and its cogency is beyond doubt.

(4) Relief sought from the West African Court of Appeal is for the reversal of the Judgment of the Appellate Court in favour of the Appellant 30 with costs.

(5) The persons directly affected by the Appeal are :—

1. Opanin Kwadwo Bonsie, and
2. Odikro Kwaku Manuh, both of Nerebehi.

Dated at Adontene Chambers Kumasi this 11th day of December, 1951.

(Sgd.) J. BOATENG SIRIBOE,  
pp. E. O. ASAFU-ADJAYE & Co.,  
Solicitors for Plaintiff Appellant.

The Registrar,  
Land Court, Kumasi.

With copies for service on :—

1. Opanin Kwadwo Bonsie, and
2. Odikro Kwaku Manuh, all of Nerebehi.

No. 33.

## NOTICE of Preliminary Objection.

*In the  
West  
African  
Court of  
Appeal.*IN THE WEST AFRICAN COURT OF APPEAL (GOLD COAST  
SESSION).

Victoriaborg—Accra.

CHIEF KWAME ANTWI ADJEI, TWIMAHENE,  
substituted by TWIMAHENE ADJEIBI KOJO II,  
Plaintiff-Appellant-Respondent-AppellantNo. 33.  
Notice of  
Preliminary  
Objection,  
2nd  
January  
1953.*v.*

- 10     1. OPANIN KWADWO BONSIÉ, and  
       2. ODIKRO KWAKU MANUH all of Nerebehi,  
           Defendants-Respondents-Appellants-Respondents.

NOTICE OF PRELIMINARY OBJECTION PURSUANT TO RULE 21 (1) W.A.C.A.  
RULES 1950.

NOTICE IS HEREBY given that at the hearing of this Appeal Objection  
will be taken on behalf of the Respondent that the Appeal is not properly  
before the Court, because by virtue of Ordinance No. 6/51 amending  
Section 4 of the West African Court of Appeal Ordinance Cap. 5, the  
Appeal lies only by Special Leave from the decision of the Land Court  
20 affirming or confirming the decision of the Native Court (the Asantehene's  
Divisional Court "B" which was the trial Court)—And Special Leave  
was not obtained.

Dated at Azinyo Chambers, Accra, this 2nd January, 1953.

(Sgd.) K. ADUMUA BOSSMAN,  
Solicitor for Defendants-Appellants-Respondents.To the Registrar,  
West African Court of Appeal,  
Gold Coast Session,  
Victoriaborg—Accra

- 30     and  
To the Plaintiff-Appellant-Respondent-Appellant  
Chief Kwame Antwi Adjei  
or his Solicitor Mr. J. Boateng Siriboe,  
Kumasi.
-



*In the  
West  
African  
Court of  
Appeal.*

No. 34.  
Ruling on  
Preliminary  
Objection,  
7th  
January  
1953.

No. 34.  
**RULING on Preliminary Objection.**

IN THE WEST AFRICAN COURT OF APPEAL (GOLD COAST  
SESSION) *CORAM* FOSTER SUTTON, P., COUSSEY, J. A., &  
KORSAH, J.

44/52.

TWIMAHENE ADJEIBI KOJO II,  
Plaintiff-Appellant-Respondent-Appellant

*v.*

1. OPANIN KWADWO BONSIÉ 10
2. ODIKRO KWAKU MANUH all of Nerebehi,  
Defendants-Respondents-Appellants-Respondents.

Mr. Ollennu (Mr. Siriboe with him) for Appellant.

Mr. Bossman for Respondents.

*Ollennu :*

*Bossman :* I have filed notice of a preliminary objection. Under amendment to section 4 of Cap. 5 introduced by section 3 of Ordinance No. 6 of 1951. Submits means Native Trial Court—"Native Court" is defined in 6 of 1951, section 2. The Native Courts (Colony) Ordinance, 1944 thought it necessary in defining "Native Court" to say—and includes 20 "Native Appeal Court"—but in 5 of 1951—the definition does not go on to say that.

We do not call upon Ollennu :

Held : That "Native Court" means, as indicated in the definition—Section 2 of 6 of 1951—"a Native Court established under any Ordinance" and includes, therefore, a Native Court of Appeal. In this case that being the Court whose decision was under review by the Divisional Court.

(Intd.) S. F. S.  
P.

No. 35.  
Court  
Notes of  
Arguments,  
7th and 8th  
January  
1953.

7th  
January  
1953.

No. 35.  
**COURT Notes of Arguments.**

30

*Ollennu :*

Deals with facts. Appeal from Judgment of Windsor-Aubrey, J.

Page 105 of record—Claim was for a declaration of title.

Land was originally occupied by an invader. Question Court had to determine was which of parties obtained land as a result of war.

Is finding justified and are their reasons right.

Each party had to rely on traditional evidence.

Basis of Judgments was evidence of Bantamahene. Exhibit " C " and non-intervention of Plaintiff when portions of land were disposed of and that they did not in each case of a person dying assert their pledge.

Submits : Bantamahene was person who would benefit from case.

Bantamahene's evidence : He was person to benefit with Defendant.

Was not independent—page 28 line 19.

The Native Court was wrong in holding him to be independent.

10 Exhibit " C " Supong Stream is not claimed by Plaintiff.

Adjourned to 8.1.53.

(Intd.) S. F. S.  
P.

*In the West African Court of Appeal.*

No. 35.  
Court  
Notes of  
Arguments,  
7th and 8th  
January  
1953,  
*continued.*

*Ollennu :*

No independent evidence of tradition.

Coussey J.A. points out that Exhibit " A " is not signed by Appellant.

Action is a result of Exhibit " A." Plaintiff would have been proper person to join in as a party.

20 Deals with evidence regarding pledge. Plaintiff's evidence and that of his 5th witness.

8th  
January  
1953.

*Ollennu :*

Custom of informing relatives of the pledge. Not unusual for pledge to be left unpaid for so long—Smallness of amount is not significant—

Submits judgment ought to have been given for Plaintiff—

We do not call upon Bossman.

Judgment to be delivered on 9.1.53. .

(Intd.) S. F. S.  
P.

**No. 36.  
JUDGMENT.**

WEST AFRICAN COURT OF APPEAL. General sitting held at Accra,  
9th January, 1953. *CORAM*: FOSTER SUTTON, P.,  
COUSSEY, J.A. and KORSAH, J.

Civil Appeal No. 44/52.

TWIMAHENE ADJEIBI KOJO II . Plaintiff-Appellant-  
Respondent-Appellant

*v.*

1. OPANIN KWADWO BONSIÉ, 10
2. ODIKRO KWAKU MANUH all of Defendants-Respondents-  
Nerebehi. Appellants-Respondents.

**JUDGMENT.**

FOSTER SUTTON, P.: The Appellant sued the Respondents claiming a declaration of title to certain land situate at Bonkwaso in the Kumasi District of Ashanti.

The case came for trial before the Asantehene's Divisional Court " B1 " which gave judgment for the Respondents.

Shortly put the Appellant's case was that the land in dispute was his Stool land, but that it had been given in pledge as security for a loan of £6 made to his predecessor in title by a predecessor in title of the 1st Respondent some eighty years ago, and that when he sought to redeem the pledge the Respondents had wrongfully denied his title. 20

The trial Court, after reviewing the facts and indicating that it did not accept the case put forward by the Appellant, concluded its judgment by saying ". . . In view of the above reasons the Court has no hesitation in finding for Defendants."

The Appellant then appealed to the Asantehene's " A " Court which, by a majority judgment, reversed the decision of the " B " Court and entered judgment for the Appellant. 30

The Respondents then appealed to the Supreme Court which restored the judgment of the Asantehene's Court " B " and in doing so the learned appellate Judge quoted the following passage from the minority judgment of the Asantehene's Court " A " :—

" I need not over-emphasise the fact that the members of the  
" Court of first instance had the opportunity of hearing the evidence  
" of the witnesses for both parties and watch their demeanour and  
" they (Court members) were in a better position to believe or  
" disbelieve the respective evidences. Being satisfied with the  
" truth in the statements of Defendants-Respondents and their  
" witnesses did arrive at a conclusion of finding of facts by 40  
" disallowing the claim of Plaintiff-Appellant. Judgment therefore  
" having been given on points of facts by the Court below I am of  
" the opinion that this Appellate Court should not interfere with it."

Both sides alleged that the land in dispute had been granted to their ancestors as a reward after battle, and what is now usually referred to as traditional evidence was tendered by both sides in support of their contentions.

*In the  
West  
African  
Court of  
Appeal.*

The Bantamahene who both sides claim made the grant to them gave evidence for the Defendants, and his evidence, which contradicted the Plaintiff's assertion that the land had been granted to his predecessors, no doubt carried considerable weight with the trial Court.

No. 36.  
Judgment,  
9th  
January  
1953,  
*continued.*

10 Counsel for the Appellant has put forward a number of reasons why he says the trial Court should not have accepted the Respondents' case, among them being that the Bantamahene had an interest in the land in dispute which coincides with that of the Respondents' and should not, therefore, have been relied upon.

It seems to me, however, that the arguments adduced ignore the fact that the Appellant was the person who was seeking relief at the hands of the Court and that the onus of proof was upon him and not upon the Respondents.

20 Moreover, the trial Court had the advantage of seeing and hearing the witnesses. In these circumstances it has consistently been held that before a Court of Appeal interferes with a decision of a trial Court it must come to an affirmative conclusion that the finding is wrong. The presumption is that the decision of the trial Court on the facts was right, and in order to succeed, the Appellant must displace that presumption. In my view he has not succeeded in so doing. I would, therefore, dismiss this appeal with costs, fixed at £36 : 0 : 0.

(Sgd.) S. FOSTER SUTTON,  
P.

COUSSEY, J. A. : I concur.

KORSAH, J. : I concur.

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*In the  
West  
African  
Court of  
Appeal.*

**No. 37.**

**COURT Notes granting final leave to appeal to Her Majesty in Council.**

10th June, 1953.

No. 37.  
Court Notes  
granting  
final leave  
to appeal  
to Her  
Majesty  
in Council,  
10th June  
1953.

IN THE WEST AFRICAN COURT OF APPEAL (GOLD COAST SESSION). *CORAM*: FOSTER SUTTON, P., COUSSEY, J.A., and WINDSOR-AUBREY, J.

Motion No. 13  
of 1953.

10.6.53. TWIMAHENE ADJEIBI KOJO II &c.

*v.*

OPANIN KWADWO BONSIÉ & Anor.

10

Motion on notice by Plaintiff for final leave to appeal to Privy Council.

Mr. Siriboe for Applicant.

Siriboe moves :

Siriboe mentions an application for an injunction made when conditional leave was applied for—

Akyeampong now says he appears—holding Bossman's brief, for the Respondent.

Siriboe now withdraws application for an injunction—agrees he cannot bring himself within Rule 8.

20

Order in terms of motion, costs in the cause.

(Intd.) S. F. S.,  
P.

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## EXHIBITS.

## Exhibit "A."

## Timber Concession Lease of Nyan Lands.

"A"  
Timber  
Concession  
Lease of  
Nyan  
Lands,  
6th  
August  
1947.

(This is a lease dated the 6th August 1947 between Kwaku Gyawu III, Adjaye Twum II, Buakyi Adadi II, and Kwabena Safo II of the Stools of Kronti, Akwamu, Hia and Akropong respectively on behalf of their respective Stools of the first part Otumfuo Sir Osei Agyeman Prempeh II K.B.E. Asantehene, the Occupant of the Golden Stool of Ashanti of the second part (the parties of the first and second parts being jointly referred to as the Grantors  
10 which expression where the context admitted or required include their respective successors and all of them and his or their assigns) and A. Lang Limited a Company incorporated in the Gold Coast of the third part, whereby in consideration of the premium rents payments therein mentioned and the covenants conditions and stipulations therein contained the Grantors demised to A. Lang Limited the Nyan Timber Concession described in the First Schedule thereto and delineated upon the plan Exhibit B by way of a timber cutting concession for 25 years from the 6th August 1947)

## THE FIRST SCHEDULE HEREINBEFORE REFERRED TO :

ALL THAT PIECE OR PARCEL of land situate in the District of Ashanti  
20 and more particularly described and delineated for the purpose of identifica-  
tion but not for limitation on the plan hereto attached and thereon edged  
green Starting from Milestone 25 on the Kumasi-Bechem road the point  
being of the approximate bearing of 6° 51' 20" North and 1° 52' 30" West  
on Greenwich thence in a Northerly direction for approximately 3.75 miles  
to where the most Eastern corner of the Tinte Bepo Eastern Extension  
Forestry Reserve thence following its Southern Boundary till the Tinte  
Extension *Torestry* Reserve Boundary is intersected thence following the [sic]  
said North Eastern Boundary to a place where the longitude of 2 West of  
Greenwich is intersected thence going due South For approximately 1 mile  
30 till the boundary of the Tano Offin Forestry Reserve is intersected thence  
following that Boundary in the Eastern direction and later on generally  
Southern direction to where it intersects the Boundary of the Tano Offin  
Forestry *Serve* and thence following the said boundary in a South *eaterly* [sic]  
direction until the Ata Stream is intersected near Chinchimso thence  
follows the said Ata Stream in a general north-*earsterly* direction for a [sic]  
distance of  $\frac{1}{4}$  mile more or less to Chinchimso thence follows a path leading  
in a general easterly direction through Akonchi for a distance of 8 miles  
more or less to Abasuapayin thence follows the River Offin in a North  
Easterly direction to its confluence with the Mankrankese Stream thence  
40 following in a North Easterly direction to Mankrankese Stream to  
P. W. D. Bridge at Mankrankese on the main road Kumasi-Bechem both  
River being followed on their right banks respectively and thence in a

*Exhibits.* Northerly direction along the Kumasi–Bechem motor road to Milestone at Mile 25 the point of commencement and the area comprising approximately 92 square miles.

“ A ”  
Timber  
Concession  
Lease of  
Nyan  
Lands,  
6th  
August  
1947,  
*continued.*

*Executed by all parties.*

*(The execution of the first four Grantors is witnessed inter alias by Mr. D. M. Allen District Commissioner and by the Second Defendant Respondent as a marksman and the Lease was duly registered in the Gold Coast Registry as No. 870/1947)*

“ C ”  
Proceedings  
in *Kwasi  
Dumaso v.  
Kwaku  
Asamoah*,  
12th and  
22nd  
December  
1919.

**Exhibit “ C.”**

**Proceedings in Kwasi Dumaso v. Kwaku Asamoah.**

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**EXHIBIT “ C.”**

Tendered in evidence by Defendants in case *Adjeibi Kojo II, Atwimahene versus Kwadwo Bonsie and Odikro Kwaku Manu.*

(Sgd.) W. K. ANIN,  
Regr. “ B 1.”  
29.4.50.

[*sic*] IN THE CHIEF COMMISSIONER’S COURT OF ASHANTI *head* at Coomassie on Friday the 12/12/19, before His Honour ARTHUR J. PHILBRICK, Esquire, Acting Chief Commissioner, Ashanti.

KWASI DUMASO	}	Claim for £100 damages for trespass.	20
V.			
KWAKU ASAMOAH			

Both parties present.

Plea : Not liable.

PLAINTIFF s.a.r.b.

Detiem and Krahinkrome are my lands. Kweku Poku lives for me on Krahinkrome land. My Ancestor Kwesi Pon owned this land. Defendant’s ancestors begged for land to live on, and they have since lived on it. I have a boundary with Chief Wuahene of Domeabra, at Buasu. I have a boundary at Kukurabo with Chief Akowua of Coomassie. I have a boundary beyond Kronhinkrome with Osei Agogo. I own one side of the Suponsu, and Chief Wuahene the other. Kweku Poku collected snails at Krahinkrome, Defendant sent people to claim them. I swore Oath on Defendant he refused it. Defendant said he was on Wuahene’s

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land and not on mine. He did not claim it as his own property. This was reported to the Bantamahene and Asamoah was sent for and refused to come in.

*Exhibits.*

“ C ”

He came in eventually, and wrote a letter to the C.C.A. saying he was on Wuahene’s land and that he was paying £2 yearly for the land.

Proceedings  
in *Kwasi  
Dumasio v.  
Kwaku  
Asamoah*,  
12th and  
22nd  
December  
1919.

I will call Chief Wuahene.

DEFENDANT s.a.r.b.

10 My name is Kweku Asamoah. I live on land belonging to Chief Wuahene and I pay him £2 a year rent. The Government has decided all about this land. I don’t know Wuahene’s boundaries. I will call Chief Wuahene.

Adjourned for one week.

22/12. Case resumed.

KOJO WUAHENE s.a.r.b.

I am the owner of Kunsu, Domeabra, Wiosu, Impassaso, Whim.

On the Wiosu-Detiem road my boundary is Suponsu. This is with the Plaintiff. I do not own the village of Krahinkrome. Defendant lives on my land and pays me £2 per year.

*Xd. by Defendant :*

20 I remember the previous case. I told you the land you were living on was for you, and you were not to encroach on other lands. I appointed out the Supon as your boundary. Kweku Poku was on Plaintiff’s Stool then.

Defendant admits having crossed over the boundary and trespassed.

PLAINTIFF s.a.r.b.

The snails would amount to £50.

Judgment for Plaintiff.

Damages £20. An Injunction granted forbidding Defendant to trespass outside Wuahene’s boundaries.

30 Costs—Oath £16 }  
—Oath £16 } £32 costs only.

(Sgd.) ARTHUR J. PHILBRICK,  
Ag. C.C.A.



**In the Privy Council.**

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

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**BETWEEN**

**TWIMAHENE ADJEIBI KOJO II, substituted for Chief**  
**Kwame Antwi Adjei, Twimahene (Plaintiff) . . . Appellant.**

**AND**

**1. OPANIN KWADWO BONSIÉ**  
**2. ODIKRO KWAKU MANU, both of Nerebehi (Defendants) Respondents.**

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**RECORD OF PROCEEDINGS**

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**A. L. BRYDEN & WILLIAMS,**  
**53 VICTORIA STREET,**  
**LONDON, S.W.1,**  
***Appellant's Solicitors.***